INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF MEMBERS OF THE "JOSÉ ALVEAR RESTREPO" LAWYERS COLLECTIVE *v.* COLOMBIA

JUDGMENT OF OCTOBER 18 ,2023

***(Preliminary Objections, Merits, Reparations and Costs*)**

In the case of *Members of the "José Alvear Restrepo" Lawyers Collective v. Colombia,*

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

Ricardo C. Pérez Manrique, President,
Eduardo Ferrer Mac-Gregor Poisot, Vice President,
Nancy Hernández López,
Patricia Pérez Goldberg, and
Rodrigo Mudrovitsch;

also present,

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

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

[*] Judge Humberto Antonio Sierra Porto, who is Colombian by nationality, did not take part in processing the case or in the deliberation or signing of the judgment, in accordance with the provisions of Articles 19(1) and 19(2) of the Rules of Procedure of the Court. Judge Verónica Gómez recused herself from taking part in the case, in accordance with the provisions of Articles 19(2) of the Statute of the Court and 21 of its Rules of Procedure; her disqualification was accepted by the President, and therefore she did not take part in the deliberations or signing of the judgment.

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I
INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* - The Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission) submitted to the jurisdiction of the Court the case of the "José Alvear Restrepo" Lawyers Collective—CAJAR—against the Republic of Colombia (hereinafter "State," "Colombian State" or "Colombia") on July 8, 2020. The Commission said that the case involved the State's alleged international responsibility for acts of violence, intimidation, harassment, and threats against several member of the "José Alvear Restrepo" Lawyers Collective (hereinafter "CAJAR" or "Collective") from the 1990's "until the present," associated with their activities to defend human rights. It argued that, while the identity of those who had committed these "acts of violence" had not been confirmed, the State did carry out "actions [that] contributed materially to [their] occurrence" by conducting "arbitrary intelligence operations such as […] turning this information over to paramilitary groups, while high-level officials issued pronouncements that stigmatized the members of CAJAR and linked them to the guerrillas," which constituted "not only a serious failure of the duty to protect, but stood in patent contradiction to this duty." These actions and omissions by the State, in the view of the Commission, "undermined the regular activities of the organization" by creating "an effect that intimidated CAJAR members from exercising their freedom of expression and freedom of assembly in their work to defend human rights." It also stressed that the State had "failed to conduct a conscientious, exhaustive investigation to discover the truth of the incidents, to identify those responsible, [and] to shed light on the sources of risk facing CAJAR," combined with the fact that the alleged victims had not had "an effective remedy in response to their claims regarding access to information from the State's intelligence data base." It argued, in closing, that the situations experienced by the alleged victims "had filled them with a well-founded sense of danger and fear, which pushed several members of the [Collective] into exile with their families, including minor children."

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

   a) Petition. - The "José Alvear Restrepo" Lawyers Collective and the Center for Justice and International Law (hereinafter also "CAJAR and CEJIL") submitted their initial petition to the Commission on April 19, 2001.

   b) Precautionary measurements ordered by the Commission. - Before the initial petition had been submitted, the Commission had already ordered precautionary measures on May 11, 2000, asking the State to adopt measures to protect the life and personal safety of Alirio Uribe Muñoz,[1] a member of CAJAR. The precautionary measures were expanded on March 19, 2002 to include "the members of the Collective."[2] The Commission noted that the precautionary measures remain in

[1] The Commission sent a notice on May 11, 2000, asking the State of Colombia "to adopt precautionary measures to safeguard the life and safety of Alirio Uribe Muñoz, a well-known human rights defender and active member of the "José Alvear Restrepo" Lawyers Collective. The Commission stated that according to the petition it had received, Uribe Muñoz "ha[d] been subject to surveillance and harassment, and his name ha[d] appeared on lists of people under death threat by illegal groups," and therefore "he [was] in a situation of serious danger and [...] that precautionary measures need[ed] to be adopted immediately to prevent irreparable harm to him." *Cf.* Communication from the Commission, May 11, 2000, regarding Alirio Uribe Muñoz, precautionary measures (evidence file, volume IV, Commission file on precautionary measures, folios 9162 and 9163).

[2] The Commission sent a notice on March 19, 2002, asking the State of Colombia to "adopt all measures necessary to maximize the protection offered to members of the José Alvear Restrepo Lawyers Collective." The Commission explained that it had received information on "acts of intimidation perpetrated from March 9 to 11, 2002, in front of Collective's facilities [...] and in telephone calls." *Cf.* Notice from the Commission, March 19, 2022,

effect at this time.

c) *Admissibility Report.* - The Commission approved Admissibility Report No. 55/06 (hereinafter "Admissibility Report" or "Report 55/06") on July 20, 2006, and the parties were so notified on October 10, 2006.

d) *Report on the Merits.* - The Commission approved Report on the Merits 57/19 (hereinafter "Report on the Merits" or "Report 57/19") on May 4, 2019, drawing a body of conclusions and directing recommendations to the State.

3. *The State is served notice.* - The State was served notice of the Report on the Merits on October 8, 2019, after being granted a two-month term to report on its compliance with the recommendations. The Commission, after granting the State two extensions, refused to grant a third because Colombia "[had] not submitted substantive information to demonstrate meaningful progress in complying with the recommendations."

4. *Submission to the Court*. - The Commission provided the Court with the full set of facts and human rights violations in this case on July 8, 2020. Its decision was based, it explained, on "the need to obtain justice for the [alleged] victims."[3] This Court notes with concern that more than 19 years elapsed from the time the originating petition was lodged with the Commission until the case was submitted to the Court.

5. *Requests by the Commission.* - The Inter-American Commission asked the Court, on this basis, to hold the State of Colombia internationally responsible for violation of the right to life, the right to personal integrity, the right to judicial guarantees, the right to privacy, the right to freedom of expression, the right to freedom of association, the rights of the child, the right to freedom of movement and residence, and the right to judicial protection, enshrined in Articles 4(1), 5(1), 8(1), 11, 13, 16, 19, 22, and 25(1) of the American Convention on Human Rights, read in conjunction with Article 1(1) thereof. The Commission also asked the Court to order the State to provide measures of reparation.

II
PROCEEDINGS BEFORE THE COURT

6. *The State and the two representatives of the alleged victims are served notice.* - Notice that the case had been submitted was sent to the State[4] and to the representatives of the alleged victims, CAJAR and CEJIL, and Dora Lucy Arias Giraldo (hereinafter "Ms. Arias"),[5] on September 7, 2020.

7. *Briefs with pleadings, motions and evidence.* - CAJAR and CEJIL filed their briefs with pleadings, motions and evidence (hereinafter "pleadings and motions brief") on November 9,

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regarding Alirio Uribe Muñoz and members of the JAR Lawyers Collective, precautionary measures (evidence file, volume IV, Commission file on precautionary measures, folio 8920).

[3] The Commission designated the following delegates before the Court: then-Commissioner Antonia Urrejola, then-Executive Secretary Paulo Abrão, and then-Special Rapporteur for Freedom of Expression Edison Lanza, and appointed as legal advisors then-Assistant Executive Secretary Marisol Blanchard Vera, then-attorney with the Executive Secretariat Jorge Humberto Meza Flores, and Executive Secretariat attorneys Erick Acuña Pereda and Cecilia La Hoz.

[4] The State advised on October 7, 2020, that it had assigned Camilo Alberto Gómez Alzate, Director General of the National Agency for the Legal Defense of the State, as its head agent. The State added a later communication on February 19, 2021, designating Leonardo Andrés Romero Mora as assistant agent. Colombia added an alternate agent, Andrés Darío Sarmiento Lamus, in a note on May 13, 2021.

[5] Dora Lucy Arias Giraldo submitted briefs on August 27 and November 10, 2020, certifying her representation of several alleged victims in this case.

2020, and Ms. Arias, on November 10, 2020. CAJAR and CEJIL claimed supervening facts additional to those given in the Report on the Merits and asked the Court to find the State internationally liable for violating the right to defend human rights "as an autonomous right" and to find violation of Articles 5(2), 7, and 17(1) of the American Convention, Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "the IACPPT"), and Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (hereinafter also "Convention of Belém do Pará"). Ms. Arias said she would "stand by the facts and positions set forth" in the Report on the Merits and also asked for the State to be held internationally liable for violation of Articles 15 and 17 of the American Convention. Both representatives requested recognition of additional alleged victims and asked for measures of redress.

8. *Brief of preliminary objections and answering brief.* - The State sent its brief in reply to the Commission's submission of the Report on the Merits and to the pleadings and motions briefs (hereinafter "answering brief") on May 17, 2021. Colombia lodged two preliminary objections in its brief, along with several arguments under the heading of "prior considerations." It asked the Court not to find international responsibility for the alleged violations.

9. *Comments on the preliminary objections.* - The Commission offered comments on the State's preliminary objections in a brief filed on August 18, 2021, and CAJAR and CEJIL and Ms. Arias, on September 3, 2021.

10. *Public hearing*. - The President of the Court issued an order on April 5, 2022, convening the parties and the Commission to a public hearing on the preliminary objections and possible merits, reparations, and costs.[6] The public hearing took place on May 12 and 13, 2022, during the Court's 148th Regular Session.[7]

11. *Amici Curiae*. - The Court received 14 amicus curiae submissions from: (a) Antoine Perret;[8] (b) Article 19, Electronic Frontier Foundation, Karisma Foundation, and Privacy International;[9] (c) Asociación Latinoamericana de Abogados y Abogadas Laboralistas;[10] (d) Law Society of England and Wales;[11] (e) Clínica Jurídica de Derechos Humanos of the Universidad Católica Andrés Bello, Venezuela;[12] (f) Centro de Estudios Legales y Sociales;[13]

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[6] *Cf. Case of Members of the José Alvear Restrepo Lawyers Collective (CAJAR) v. Colombia. Call to a hearing*. Order of the President of the Inter-American Court of Human Rights, April 5, 2022. Available in Spanish at:https://www.corteidh.or.cr/docs/asuntos/miembros_de_la_corporacion_colectivo_de_abogados_05_04_22.pdf.

[7] Participants in the hearing were: (a) for the Commission: Edgar Stuardo Ralón Orellana, Commissioner, and Jorge Humberto Meza Flores, Assistant Executive Secretary; (b) for the representatives of the alleged victims: (i) for Ms. Arias, Dora Lucy Arias Giraldo, Diana Milena Murcia Riaño, Maret Cecilia García Alfonso, and Pedro Julio Mahecha Ávila, and (ii) for CAJAR and CEJIL, Rafael Barrios Mendivil, Reinaldo Villalba Vargas, Jomary Ortegón Osorio, Alejandra Escobar Cortázar, Viviana Krsticevic, Gisella de León, and Florencia Reggiardo, and (c) representing the State, Angelino Garzón, Colombian Ambassador in Costa Rica; Ana María Ordóñez, Director of International Legal Defense in the National Agency for Legal Defense of the State; Leonardo Andrés Romero Mora, Advisor; Andrés Darío Sarmiento Lamus, Advisor; Natalia Mora Arbelaez, Advisor; Juan Camilo Mejía Pinillos, Advisor, and Dania González, First Secretary of the Colombian Embassy in Costa Rica.

[8] The brief was signed by Antoine Perret of the Geneva Centre for Security Sector Governance. It discusses the need for effective control of the private security sector by civil society organizations and human rights defenders.

[9] The brief was signed by Roxanna Altholz and Astha Sharma Pokharel. It discusses the different international standards for intelligence activities by public agencies, with specific reference to the situation in Colombia.

[10] The brief was signed by Rolando E. Gialdino and Matías Cremonte. It discusses the right to work and the right to social security for human rights defenders.

[11] The brief was signed by Marina Brilman and discusses exercise of the legal profession, freely and without interference.

[12] The brief was signed by Jesús María Casal, Leonardo Verónico Osorio, Michelle Pasceri, María Isabel Linares, Valentina Azcárate, Marith Rosales, Carlos Ramírez, and Carmen Arteaga. It discusses the situation of human rights defenders faced by rhetoric from state authorities.

[13] The brief was signed by Paula Litvachky, Diego Morales, Erika Schmidhuber, Luciano Coco Pastrana, Tomás

(g) Freedom of the Press Foundation;[14] (h) Red en Defensa de los Derechos Digitales A.C.;[15] (i) Alberto León Gómez Zuluaga, Carlos Rodríguez Mejía, Carlos José Guarnizo Rico, Marely Constanza Cely Silva, Rafael Rincón Patiño, Jorge Enrique Romero Pérez, Marisol Aldana Malagón, María Elena García del Socorro Ortiz, Natan Felipe Bernal Quirós, Jorge Mateo Romero Aldana, Ana María Medina Moreno, Eduardo Pineda Palomino, Rafael Rodríguez Mesa, Ana Beatriz Moreno Morales, and César Manuel Carrillo Martínez;[16] (j) Asociación de Abogadas Feministas de Chile;[17] (k) World Organisation Against Torture;[18] (l) Lawyers Without Borders Canada and Lawyers' Rights Watch Canada;[19] (m) Red Colombiana de Mujeres Filósofas and Observatorio de Género y Filosofía en Colombia,[20] and (n) Rita Laura Segato.[21]

12. *Final written arguments and observations*. - The Commission, CAJAR and CEJIL, and Ms. Arias submitted their final written observations, and the State, its final written arguments, on June 13, 2022.[22] CAJAR and CEJIL, Ms. Arias, and the State also submitted several annexes.[23]

I. Griffa, and Pablo Ernesto Lachener. It discusses the limitations and constraints that states should apply to intelligence actions and practices.

[14] The brief was signed by Jonathan Bock, Raissa Carrillo Villamizar, and Ángela Daniela Caro Montenegro. It discusses intelligence and counter-Intelligence activities by agents of the state targeting human rights defenders and journalists in Colombia.

[15] The brief was signed by Luis Fernando García Muñoz and discusses intervention of private communications and other arbitrary interference in the private life of individuals, as well as possible measures of redress applicable to the instant case.

[16] The brief was signed by Alberto León Gómez Zuluaga, Carlos Rodríguez Mejía, Carlos José Guarnizo Rico, Marely Constanza Cely Silva, Rafael Rincón Patiño, Jorge Enrique Romero Pérez, Marisol Aldana Malagón, María Elena García del Socorro Ortiz, Natan Felipe Bernal Quirós, Jorge Mateo Romero Aldana, Ana María Medina Moreno, Luis Eduardo Pineda Palomino, Rafael Rodríguez Mesa, Ana Beatriz Moreno Morales, and César Manuel Carrillo Martínez; Carlos Ballesteros Barón added his signature to the brief in a notice on June 1, 2022. It discusses state responsibility for violating certain human rights and possible measures of redress applicable to the instant case.

[17] The brief was signed by Bárbara Sepúlveda Hales and discusses access to justice with a gender perspective.

[18] The brief was signed by Gerald Staberock and discusses state responsibility for acts of torture and mistreatment in the instant case.

[19] The brief was signed by Pascal Paradis and Heather Neum. It discusses state responsibility, in the instant case, for injuring the ability of attorneys and human rights defenders to exercise their rights, their professional duties, and their societal functions.

[20] The brief was signed by María Lucía Rivera Sanín, Ángela Rocío Bejarano, Diana María Acevedo Zapata, Laura Quintana Porras, Camila de Gamboa Tapias, Cam López Duarte, Juliana Gómez Puerta, Catalina González Quintero, Marcela Tovar Thomas, Luisa Fernanda Barrero G., María Victoria Uribe, Catalina López Gómez, Lizeth Palacios Rueda, Carolina Gómez Ortiz, María del Rosario Acosta López, Laura Almandós Mora, Ingrid Tatiana Bohórquez Ortega, Yesica Cortés Alfonso, Dayana de la Rosa Carbonell, Amalia Boyer, Natalia E. González Gil, Diana Muñoz González, Diana Milena Patiño, and Emilse Galvis C. It discusses the particular vulnerabilities that women face as human rights defenders and in the context of the administration of justice.

[21] The brief was signed by Rita Laura Segato and discusses gender-based violence.

[22] The Court Registrar sent a notice on March 29, 2023, at the behest of the full Court, that the State's final written arguments and its annexes would be held as received within the predetermined procedural term (file on the merits, volume VIII, folio 3710).

[23] The documents were: (a) from CAJAR and CEJIL: (i) a note from the petitioners to the Commission, February 24, 2021; (ii) a note from the petitioners to the Commission, June 14, 2021; (iii) a note from the petitioners to the Commission, May 26, 2022; (iv) a document entitled *Hechos estigmatizantes en contra del CAJAR* ("stigmatizing acts against CAJAR"); (v) a statement of costs and expenses and supporting information from CAJAR, and (vi) a statement of costs and expenses and supporting information from CEJIL; (b) from Ms. Arias: (i) a document entitled *Tabla de hechos por temporalidades* ("table of facts and timelines"); (ii) a document entitled *Palabras del Presidente Álvaro Uribe en la posesión de nuevo comandante de la FAC* ("message by President Álvaro Uribe at the inaugural ceremony of the new FAC commander;" (iii) a document entitled *Tabla de hechos mujeres anonimadas* ("table of facts--anonymized women"); (iv) a document entitled *Análisis de los procedimientos penales en el caso del DAS* ("analysis of criminal proceedings in the DAS case"); (v) a document entitled *Cálculo costas y gastos procesales* ("calculation of procedural costs and expenses"); (vi) supporting documents on procedural costs and expenses; (vii) a statement rendered by Diana Milena Murcia Riaño before the Prosecutor General on October 22, 2009, and (viii) identity documents of Rodríguez family members, and (c) from the State: (i) a document entitled *Tabla de investigaciones penales adelantadas contra miembros del extinto DAS con relación a los hechos del presente caso* ("table of criminal investigations conducted against members of the former DAS concerning facts in the instant case"); (ii) a document entitled *Investigaciones penales por el delito de amenazas contra miembros del CAJAR* (criminal investigations for the crime of threats against members of CAJAR"), and (iii) a judgment by the Sixth Criminal Court of the Bogotá Special Circuit of July 21, 2021, case No. 2393-6.

13. *Observations on the annexes to the final written arguments.* - Colombia submitted its observations to the annexes provided by CAJAR and CEJIL and Ms. Arias on July 19, 2022, together with its final written arguments. Some of the annexes by CAJAR and CEJIL proved difficult to download, and the State was given a time extension to submit its observations, which it completed in a brief filed on July 29, 2022. The Commission advised on July 20, 2022, that it had no comments. CAJAR and CEJIL submitted their observations to the State's annexes, together with their final written arguments, on April 10, 2023, and the Commission advised on April 11, 2023, that it had no observations..

14. *Evidence on supervening facts and corroborating evidence*

a) CAJAR and CEJIL filed a brief on August 18, 2021, reporting on facts they deemed as supervening, and submitted supporting documentation;[24]

b) CAJAR and CAJIL reported new facts in a brief on April 10, 2023, justified as supervening, and submitted relevant evidence;[25]

c) the Registrar sent the State a notice on April 14, 2023, asking for further helpful evidence including intelligence files developed on the alleged victims by the Administrative Department of Security (hereinafter "DAS") and other government agencies. Colombia submitted a brief on May 2, 2023, reporting on actions taken to meet this request, with no documentation attached.[26] The Commission responded on May 19 that it had no observations. Ms. Arias stated that Colombia did "not respond effectively" to the request. CAJAR and CEJIL had no comments. The State finally reported on May 22 that storage and classification conditions in the DAS files "made it impossible […] to identify fully the information requested.[27] The Commission replied on

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[24] The following documents: (a) a note from the petitioners to the Commission, February 24, 2021; (b) Ruling 0119/2021 GP, April 21, 2021, by the Investigation and indictment unit of the Special Jurisdiction for Peace, and (c) a note from the petitioners to the Commission, June 14, 2021.

[25] The following document: Final report *Hay futuro si hay verdad* ("there is a future if there is truth"), submitted in June, 2022, by the Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition (*Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición*, CEV).

[26] The State reported as follows: (a) it had conveyed the request to the president of the Special Jurisdiction for Peace (hereinafter "JEP") in response to Note No. 001, March 12, 2018, issued by the executive secretary of that jurisdiction, ordering advance protective measures for the DAS intelligence and counterintelligence files (*infra* para. 355). The JEP Chamber for recognition of truth, responsibility and establishment of facts and conduct responded on April 25, 2023, ordering the the investigation and indictment unit to commission a group of judicial police officers to proceed within five days to undertake measures for "access and consultation of the files and information pertinent" to the Court's request and "immediately" submit "a report on these measures […], making the recovered documentation available," and (b) the request was also transmitted to the Ministry of National Defense, which reported on April 28, 2023, that, "bearing in mind the body of facts of the case, it did not have information on the intelligence procedures regarding the alleged victims." *Cf.* State brief, May 2, 2023, submitted in the process before this Court (file on the merits, volume IX, folio 3772).

[27] The State reported as follows: (a) in response to the April 25, 2023 order by the JEP Chamber for recognition of truth, responsibility and establishment of facts and conduct (*supra* footnote 26), the officers assigned to identify DAS files on the alleged victims said that the files of the former administrative department were held in five different storage areas, contained in 12,550 boxes, and apparently classified according to the department's organizational structure at the time it was eliminated, but this was "an assumption," as insufficient information was available on the method used for filing the material. It was therefore "impossible to identify information useful for linking relevant or underlying data to produce a possible identification of surveillance or intelligence activities by the [DAS] or other government agencies or offices regarding the alleged victims." *Cf.* Report of May 3, 2023, signed by Prosecutor 4 before the Chamber's Investigation and indictment unit (evidence file, volume XLIII, annex 13 to the State's May 22, 2023 submission, folios 47945 to 47954), and (b) on April 25, 2023, the JEP Chamber for recognition of truth, responsibility and establishment of facts and conduct "modified the protective measures ordered for the DAS files," requiring the National Archive, as the agency responsible for archive policies, to "perform the comprehensive assessment, classification, organization and technical inventory of all [DAS] files in its custody to identify files on human rights, historical memory and the armed conflict." *Cf*. May 11, 2023 note signed by the judge of the JEP

June 6 that it had no observations. Ms. Arias sent her observations on June 5, and CAJAR and CEJIL, on June 9.

d) the Registrar sent a notice on May 8, 2023, requesting information and documentation from the Commission and the parties as corroborating evidence.[28] The Commission complied on May 9. The State sent certain documentation on May 22, June 5, and July 6, 2023, and reported on measures taken to comply fully with the Court's request.[29] Ms. Arias replied on May 23 that "she [would] endorse the […] reply" of the Collective. CAJAR and CEJIL submitted various documents on May 26 and June 9 in reply to the request[30]

Chamber for recognition of truth, responsibility and establishment of facts and conduct (evidence file, volume XLIII, annex 14 to the State's May 22, 2023 brief, folios 47956 and 47957).

[28] The following was requested: (a) from the Inter-American Commission, submission of the full written expert testimony of Claudio Grossman; (b) from the two representatives of the alleged victims, information and copies of proceedings on the alleged victims' applications for access to information compiled as part of intelligence operations by state officers, and (c) from the Colombian State: (i) copies of proceedings from files 789107 and 110016000013202000401, lodged with the Prosecutor General, regarding threats and harassment reported by the alleged victims (case files cited by the State's declarant Deicy Jaramillo Rivera; (ii) information and copies of reports from investigations mentioned by the Prosecutor General in notes on May 20, 2020, and July 26, 2020 (annexes to the CAJAR and CEJIL pleadings and motions brief); (iii) information and copies of proceedings from the case file identified as (161-7825/064) IUS-E-2020-013169/IUC D-2020-1444205, lodged with the Prosecutor General (annexed to the CAJAR and CEJIL pleadings and motions brief); (iv) information and copies of proceedings on actions to comply with the orders of Constitutional Court judgment T-1037 of 2008; (v) relevant information and copies on any proceedings undertaken in response to orders in the September 6, 2017 judgment by the Supreme Court's Criminal Chamber of Cassation, file No. 39931; (vi) clarification of the purpose for a procedure ordered by the Chamber of Representatives of the National Congress under which measures had allegedly been taken on June 16 and August 28, 2011, and (vii) information on duties performed and copies of relevant proceedings, inasmuch they were available, from the Legal commission to monitor intelligence and counterintelligence activities (Law 1621 of 2013) and the National system for clearing intelligence and counter-intelligence data and files (Executive Order 2149 of 2017).

[29] The State submitted a brief on May 22, 2023, to report on and submit the following documentation: (a) copy of proceedings contained in file 789107, filed with the Prosecutor General; (b) "as soon as it is obtained," documentation from file 110016000013202000401, filed with the Prosecutor General, would be submitted to the Court; (c) it pointed to various proceedings undertaken in the framework of file 110016000102202000007, also filed with the Prosecutor General, but did not send copies because the information was "confidential"; (d) copies of file (161-7825/064) IUS-E-2020-013169/IUC D-2020-1444205, filed with the Prosecutor General, would be sent "as soon as the information" was obtained; (e) copies of the file on protection measures in case 2007-02160, processed before section three of the Cundinamarca Administrative Court, later selected by the Constitutional Court and used as a basis for the 2008 judgment T-1037. As for the "notebooks from the file on procedures involving the charges of contempt," it reported that they would be submitted "as soon as the folios [were] scanned;" (f) copy of the April 22, 2022 decision by the Investigation and indictment committee of the Chamber of Representatives; (g) copies of several processes brought before this legislative committee on June 16, June 21 and August 18, 2011; (h) "as soon as" information could be obtained by the Legal commission to monitor intelligence and counterintelligence activities, it would be forwarded to the Court, and (i) copy of the summary report of the National system for clearing intelligence and counterintelligence data and files from 2018-2022. Colombia submitted the following documents on June 5, 2023: (a) a May 20, 2020 ruling by the Prosecutor General, file (161-7825/064) IUS-E-2020-013169/IUC D-2020-1444205, and (b) a May 25, 2023 note signed by the Secretary General of the Legal commission to monitor intelligence and counterintelligence Activities. The State also sent a brief on July 6, 2023, with a copy of material from file 110016000013202000401, held by the Prosecutor General.

[30] CAJAR and CEJIL submitted the following documents on May 26, 2023: (a) a letter addressed to the President of Colombia on May 8, 2009 by the "Platforms for human rights and peace"; (b) a letter addressed to the Presidential Human Rights Council on May 26, 2015; (c) a February 20, 2020 communication from the petitioners to the Inter-American Commission; (d) a May 17, 2000 communication to the director of the protection program of the Ministry of Internal Affairs; (e) a document entitled *Línea de tiempo de hechos recientes que denotan situaciones de riesgo* ("timeline of recent facts reflecting situations of risk"), prepared by the national protection unit, May 16, 2017; (f) documents entitled *ayuda memoria reunión de seguimiento y concertación medidas cautelares Colectivo de Abogados José Alvear Restrepo* ("aide-memoire of the meeting for follow-up and consensus-building on precautionary measures, José Alvear Restrepo Lawyers Collective"), February 9, 2017, May 21, 2020, April 23, 2021, and August 5, 2022, prepared by the Ministry of Foreign Affairs; (g) a May 7, 2020 communication addressed to the seventh prosecution unit delegated to the Supreme Court; (h) notes dated May 20 and September 25, 2020, signed by the Secretariat of the Special Investigative Chamber of the Supreme Court; (i) notes dated May 27, June 18 and July 26, 2020, signed by the seventh prosecution unit delegated to the Supreme Court; (j) communications from "December, 2020," addressed to the seventh prosecution unit delegated to the Supreme Court; (k) notes dated December 18, 2020, and January 21, 2021, signed by the seventh prosecutor delegated to the Supreme Court; (l)

and offered observations on the documents submitted earlier by the State. The Commission reported on June 5, June 20, and July 17, that it had no observations to make. The State submitted observations on June 6 and June 20 on the material supplied by CAJAR and CEJIL. Ms. Arias submitted observations on June 6 and June 20 on the documents presented earlier by CAJAR and CEJIL and by the State, and

e) CAJAR and CEJIL filed a brief on June 4, 2023, reporting on new facts described as supervening, and accordingly submitted relevant evidence.[31]

15. *Deliberation of the case.* - The Court deliberated on the judgment on September 2, 2023, during the 160th regular session, on September 18, 19, and 20, 2023, during the 161st regular session, and on October 17 and 18, 2023, during the 162nd regular session.[32]

III
JURISDICTION

16. The Court is competent to hear the instant case pursuant to article 62(3) of the Convention, as Colombia has been a State Party to the American Convention since July 31, 1973, and recognized the contentious jurisdiction of the Court on June 21, 1985. Moreover, Colombia deposited its instrument of accession to the Convention of Belém do Pará on November 15, 1996.

IV
PRELIMINARY OBJECTIONS

17. The State raised two preliminary objections on the following grounds: (a) application of the principle of subsidiarity when human rights violations stem from intelligence activities involving surveillance and monitoring, and (b) failure to exhaust domestic remedies for the

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a communication from "January 2021" addressed to the seventh prosecution unit delegated to the Supreme Court; (m) a brief from "February 2021," requesting protective measures against the seventh prosecution unit delegated to the Supreme Court; (n) a judgment of April 14, 2021, Supreme Court's Chamber of Cassation for Labor Affairs; (ñ) briefs of May 7, 2020, addressed to the Prosecutor General; (o) an email of June 17,2020, addressed to the prosecution delegated for disciplinary affairs; (p) brief of "July 2020," requesting protective measures against the assistant prosecutor for disciplinary affairs; (q) a judgment of August 4, 2020, by Family Court 22 of Bogotá D.C.; (r) an official note of August 10, 2020, signed by the secretary of the assistant prosecutor for disciplinary affairs; (s) joint communiqué of June 15, 2020 by the Inter-American Commission's special rapporteur on the promotion and protection of the right to freedom of opinion and expression; the special rapporteur on extrajudicial, summary or arbitrary executions; the special rapporteur on the situation of human rights defenders; the special rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, and the special rapporteur for freedom of expression; (t) an August 5, 2020 reply by the Colombian Permanent Mission to the United Nations in Geneva, Switzerland; (u) a brief of June 3, 2020, addressed to the Office of the Inspector General; (v) a brief of June 3, 2020, addressed to the Prosecutor General; (w) a May 13, 2020 note to the President, and (x) a July 26, 2001 official note from the director of the President's program on human rights and international humanitarian law. The delegation also submitted the following documents on June 9, 2023: (a) an April, 2019 brief by which the Colombian Commission of Jurists filed a motion with the Council of State for nullification of executive order 2149 of 2017, and (b) a June 6, 2023 brief by which human rights organizations petitioned the President to repeal executive order 2149 of 2017.

[31] Filed as evidence: (a) photographs of what they described as "break-ins" at the homes of Soraya Gutiérrez Argüello, María Irma Argüello Marino, and Reinaldo Villalba Vargas, dated April 30, and May 3, 5, 9, and 17, 2023, and (b) electronic links to the following proceedings: (i) Special Jurisdiction for Peace, single hearing to contribute to the truth, Salvatore Mancuso, session 1, May 10, 2023; available in Spanish at: https://www.youtube.com/watch?v=WwACv-j5_9g, and (ii) Special Jurisdiction for Peace, single hearing to contribute to the truth, Salvatore Mancuso, session 3, May 15, 2023; available in Spanish at: https://www.youtube.com/watch?v=A4uE1B5iyHE.

[32] The deliberations on the instant judgment were held onsite during the 160th regular session and virtually during the 161st and 162nd regular sessions, using electronic media in keeping with the provisions of the Court's Rules of Procedure.

alleged violation of the right to freedom of thought and expression.

18. Colombia also introduced several "prior questions," namely a request for legal review of actions by the Commission, based on the several arguments, including: (a) alleged unequal treatment by the Commission in processing the case, with respect to application of rules-based time limits, and (b) alleged inconsistency in the cause of action as cited by the Commission in its Admissibility Report, Report on the Merits, and submission brief.

19. The Court, in its settled case law, has held that preliminary objections under any name are procedural actions by which the State acts in advance to block analysis of the merits of a case, and to this end can raise an objection to admissibility or to the Court's jurisdiction to hear a case or an aspect of it, based on the person in question, the subject matter, the time, or the place, so long as these arguments are preliminary in nature.[33] The State claims that the Court should refrain from examining the merits of certain features of the case, and as such, the arguments cited in the above paragraph and raised in advance by Colombia will be examined as preliminary objections. The Commission and both representatives of the alleged victims will therefore have an opportunity to comment as they deem appropriate.

A. Preliminary objection on application of the principle of subsidiarity when human rights violations stem from intelligence activities involving surveillance and monitoring

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

20. The ***State*** argued that when applying the principle of subsidiarity, the Court "should refrain from hearing the alleged human rights violations associated with intelligence operations for surveillance and monitoring of CAJAR members" by officers of the Administrative Department of Security, as these events "have already undergone criminal investigation, culminating in the trial and sentencing of those responsible." It pointed to several of these criminal proceedings against certain individuals and the final verdicts.

21. It noted that, in addition to prosecuting and sentencing the DAS officers, the State "has adopted a variety of measures to prevent such incidents from recurring." This was why it enacted constitutional law 1621 in 2013,[34] which, among other things, requires a judicial warrant before private communications can be intercepted and calls for "internal and external mechanisms created for oversight of" intelligence and counterintelligence operations. It asked the Court to "apply the principle of subsidiarity for human rights violations resulting from intelligence operations [against] members of CAJAR," meaning that "there would be no need to rule [...] on these facts."

22. The ***Commission*** held that the State's argument was not properly a preliminary objection because, as the Court has held, "once a petition has been admitted in the framework of an inter-American procedure, any progress made domestically may not alter the jurisdiction by which the bodies of the inter-American system can rule." It added that the State "has not demonstrated that it has recognized the many violations […] or that it has adopted measures

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[33] *Cf. Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2013. Series C No. 270, para. 33, and *Case of Boleso v. Argentina. Preliminary Objections, Merits, Reparations and Costs.* Judgment of May 22, 2023. Series C No. 490, para. 17.

[34] The 2013 Law 1621 "sets up rules to strengthen the legal framework under which agencies conducting intelligence and counterintelligence operations can carry out their constitutionally and legally established mission, as well as other provisions." Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1685400.

of full redress for the [alleged] victims." In any case, an analysis of compliance with the obligation to investigate, prosecute and sanction those responsible for the alleged illegal surveillance and monitoring activities would be part of the merits of the case. It asked the Court to "dismiss the State's objection."

23. ***CAJAR and CEJIL*** said that the principle of subsidiarity "cannot be considered per se as grounds for a preliminary objection, but instead should be applied to analysis of the merits." They added that the arguments on the investigation of the events, the alleged rights, and reparations "are part of the merits." They asked the Court to deny the State's petition.

24. ***Ms. Arias*** held that the State, even when it cited seven criminal proceedings and convictions handed down in the domestic courts, fell short of "challenging the Court's [...] jurisdiction." She posited that the State's argument "fails to show in detail how these processes address the facts held as violations [...], both for the individually submitted claims […] and systematically for the members of CAJAR."

A.2. Considerations of the Court

25. The Court recalls that, pursuant to its case law, pleadings may be held as preliminary objections based exclusively on their content and purpose—that is, if sustained, they would prevent the continuation of the proceeding or a ruling on the merits.[35] Therefore, if in analyzing the State's arguments it is necessary to consider the merits, they lose their preliminary nature and cannot be considered as preliminary objections.[36]

26. The State has asked the Court to apply the subsidiarity principle under which the inter-American human rights system complements the domestic jurisdictions. The Court notes, in this regard, that Colombia's argument is not grounds for a preliminary objection, as it touches on matters that should be addressed in the discussion of the merits of the case, and ultimately, in the analysis of appropriate redress. In fact, the Commission, in its observations, and both representatives of the alleged victims, in their pleadings, considered the timeliness and diligence of the the investigation and trial for the illegal intelligence activities and the adoption of guarantees of nonrepetition, and the Court will need to examine them in depth to determine whether, in the instant case, the alleged human rights violations did in fact take place, and if so, decide on appropriate measures of redress (the State's argument will be examined at the end of the discussion on violations of the right to judicial guarantees and the right to judicial protection in chapter VIII.3 *infra* paras. 804-809).

27. This preliminary objection is therefore denied.

B. Preliminary objection on a claimed failure to exhaust domestic remedies for the alleged violation of the right to freedom of thought and expression

B.1. Arguments of the parties and observations of the Commission

28. The ***State*** said that the representatives had claimed violation of freedom of thought and expression, enshrined in Article 13 of the Convention, alleging that their "right to have access to illegally obtained intelligence information" had been abridged and that they had not been "allowed to exercise effective control over information affecting members of CAJAR and their families."

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[35] *Cf. Case of Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No. 213, para. 35, and *Case of Boleso v. Argentina,* para. 17.

[36] *Cf. Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 6, 2008. Series C No. 184, para. 39, and *Case of Boleso v. Argentina,* para. 17.

29. It argued that the domestic legal system provides an "action of direct redress" in the administrative contentious jurisdiction, which "is an appropriate and effective remedy for recognizing the State's responsibility for human rights violations and for ordering measures needed for full reparation." It noted that the alleged victims had not lodged this judicial action, and therefore "the claims on obtaining measures of redress for the facts involving intelligence activities should be found inadmissible."

30. It also explained that constitutional motions are "appropriate and effective for protecting the rights of the alleged victims to request access to information about themselves contained in the DAS archives." Nonetheless, they had failed to avail themselves of this mechanism to assert their rights.

31. The State said in the public hearing and in its final written arguments that the events involving the illegal intelligence operations had occurred subsequent to the Admissibility Report. It noted that "the first time the petitioners mentioned the claim about access to the information obtained" through these operations was in their observations on the merits, during the process before the Commission, so that "the State's first procedural opportunity to object to this claim was in its initial observations on the merits" in that procedure, in a communication on January 23, 2015. It added that "the claims of the alleged victims concerning financial compensation" for the operations "was raised for the first time" in the CAJAR and CEJIL pleadings and motions brief, and as such, "the first time to object to this claim was in the answering brief."

32. It asked the Court to deny the petitions regarding "indemnification [...] as a consequence of the illegal intelligence operations" and petitions on "access to the information collected" during the intelligence work.

33. The ***Commission*** said that the State's arguments had not been brought up at the correct procedural time, that is, during the admissibility stage. It added that the discussion on the effectiveness of remedies cited by the State was a matter for the merits. It asked the Court to deny the preliminary objection.

34. ***CAJAR and CEJIL*** noted that the proper stage of the proceedings was the admissibility process, but at that time, the State had not cited the remedies that needed to be exhausted, and thus the petition was time-barred. They claimed that the domestic remedies "have proven to be neither appropriate nor effective, as none of the avenues attempted by the [alleged] victims had provided them […] access to all the illegal information in State hands. They asked the Court to deny the preliminary objection.

35. ***Ms. Arias*** said that the State's pleading "was not raised at the appropriate time in the proceedings." She added that during the admissibility stage, the State had made reference "only and exclusively to the criminal process," making no mention of actions for direct redress or for constitutional relief. She asked the Court to deny the preliminary objection.

B.2. Considerations of the Court

36. The Court would begin by recalling that Article 46(1)(a) of the American Convention states that the admissibility of a petition or communication brought before the Commission in accordance with Articles 44 or 45 of the Convention is subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally

recognized principles of international law,[37] or that any of the exceptions given Article 46.2 of the Convention can be demonstrated.

37. The Court has held on several occasions that the correct time in the proceedings for a State to raise any objections alleging the failure to exhaust domestic remedies is during the admissibility stage before the Commission.[38] It has also found that a State bringing this objection must specify which domestic remedies have not yet been exhausted and demonstrate that they are appropriate and effective.[39] Moreover, the arguments given as grounds for the State's preliminary objections before the Commission must be the same as those lodged with the Court.[40] Finally, any objection must undergo a preliminary examination, which does not apply if it concerns a matter that is inseparable from the merits.[41]

38. The Court would emphasize that Colombia's preliminary objection asserts failure to exhaust domestic remedies in two ways: (a) first, concerning the complaint on access to information, and (b) second, concerning the request to order compensation, in both cases, with reference to intelligence operations by State agents targeting the alleged victims.

39. The Court cautions that the facts involving intelligence activities by State authorities, the subsequent "compilation of personal information" on the alleged victims, and the alleged violation of the "right to honor and privacy" as a result of these activities, were first raised by the petitioners at the beginning of the proceedings before the Commission.[42] The State thus was aware of the petitioners' grievances regarding these facts, even prior to the study on admissibility of the case.

40. A study of the files shows that the State of Colombia, subsequent to the publication of the Admissibility Report (Report 55/06, approved on June 20, 2006), in a communiqué on January 23, 2015 (paras. 217 to 225), claimed that the petitioners had not exhausted the motion for constitutional relief as the "best" and "most appropriate and effective mechanism" for "requesting access to intelligence information."[43] The petition is therefore time-barred.

41. The State itself recognized that it had not questioned failure to exhaust the remedy for direct redress until it submitted its answering brief, which further confirms that it was clearly time-barred.

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[37] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 85, and *Case of Bendezú Tuncar v. Peru. Preliminary Objections and Merits.* Judgment of August 29, 2023. Series C No. 497, para. 20.

[38] *Cf. Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107, para. 81, and *Case of Bendezú Tuncar v. Peru, supra*, para. 21.

[39] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections, supra,* para. 88, and *Case of Bendezú Tuncar v Peru, supra*, para. 21.

[40] *Cf. Case of Furlán and family v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2012. Series C No. 246, para. 29, and *Case of Bendezú Tuncar v. Peru, supra*, para. 21.

[41] *Cf. Case of Cortez Espinoza v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 18, 2022. Series C No. 468, para. 24, and *Case of Angulo Losada v. Bolivia. Preliminary Objections, Merits and Reparations.* Judgment of November 18, 2022. Series C No. 475, para. 21.

[42] IACHR. Report No. 55/06. Case 12,380. Admissibility. Members of José Alvear Restrepo Lawyers Collective. Colombia. July 20, 2006:

> The petitioners also alleged other acts designed to inhibit their efforts and increase the risks of their work through the collection of personal information by state authorities in intelligence reports, all of which is contrary to their right to have their honor and privacy respected. In that connection, the petitioners alleged that in Colombia, officials attached to state security agencies collect private information on human rights defenders in order to create intelligence reports that are then used to intimidate the defenders.

[43] *Cf.* Communication by the State on January 23, 2015, file 201550010005831-GDI (evidence file, volume VI, file of the case before the Commission, folios 20365 to 20368).

42. This proposed preliminary objection is therefore denied.

C. Preliminary objections on the request for review of the legality of certain actions by the Commission in processing the instant case

C.1. Alleged unequal treatment by the Commission in processing the case, with respect to application of rules-based time limits

C.1.1. Arguments of the parties and observations of the Commission

43. The ***State*** claimed "procedural imbalance" in the proceedings before the Commission, having received "unjustified unequal treatment" by comparison with "that given to the petitioners." It explained that it had requested an extension through September 24, 2014 to submit its reply to the petitioners' observations on the merits. The Commission had sent a note on October 10, 2014, denying the requested extension.

44. It pointed out that "after two years and ten months during which the petitioners had not submitted their arguments on the merits," the Commission "decided to summon the State to a public hearing," in which the State "repeatedly [...] expressed its disagreement" because, according to the Rules of Procedure in effect at the time, the hearing "could not take place until the victims had submitted their observations on the merits." The petitioners submitted their observations on the merits on December 23, 2013, "seven years […] after the two-month term" that the Commission had granted.

45. The State held that this was "a serious error that justified a decision by the Court to […] exercise a review of legality," as the Commission had processed the case "contrary to its own Rules of Procedure" in effect at the time, Article 38 of which "explicitly and clearly set the time limits available to the parties." Moreover, Article 42 of the Rules of Procedure "define legal consequences for expiration of [these] time limits," providing for the Commission to "decide to archive the file whenever the grounds for a petition or case do not exist or subsist."

46. It added that "the Commission's serious mistake had a profound impact on the State's ability to assert its right of defense," as the "seven-year lapse allowed the petitioners to broaden the corpus of facts and the time span under study, including both facts […] that predated the publication of the Admissibility Report, […] and […] later facts." The consequence of the Commission's behavior, in its view, "was that the State had far too little time to avail itself of its right of defense, […] even less than the limits established in the Rules of Procedure." It asked the Court to "find that the Commission's treatment of the State had been unfair and unjustified," and that the examination of the case should omit "all those facts contained in the observations on the merits that the petitioners had submitted" too late.

47. The ***Commission*** replied that, as the Court has held in the past, "a review of the legality of a case for merely declarative purposes" would be an overreach of the Court's jurisdiction. It noted that "the State's assertion is inaccurate," because on March 13, 2014, it had forwarded to the State the additional observations on the merits submitted by the petitioners and had granted it a four-month term to prepare its observations. The State submitted a note on July 24 of the same year, requesting an extension, which was granted on August 4, 2014. Upon conclusion of "the new term," the State requested a further extension, which the Commission denied, in accordance with Article 37.2 of its Rules of Procedure.

48. The Commission explained that "if petitioners fail to submit their additional observations on the merits, the case is not be procedurally ready, and ultimately, it could be archived." During the processing of the matter at hand, however, the petitioners had expressed "their

desire to continue with the case, and therefore it was not archived." It added that "its actions had been consistent with the Rules of Procedure, at no time was the State's right of defense infringed," and the State "has not explicitly shown how it had been grievously injured."

49. ***CAJAR and CEJIL*** argued that the State had based "its charge of alleged 'procedural imbalance' and injury on the failure to apply Article 42.b of the Commission's Rules of Procedure, which in fact did not exist at the time the [Admissibility] Report was issued," and thus "its claims were groundless." They added, "it is not true, as the State asserts, that it had only two months to respond to the claims of the [alleged] victims," as "strictly speaking, it had at least eight years to respond to the facts set forth in the Admissibility Report and ten years to respond" to the petitioners' communication that included "supplementary information on the facts of the case." They asked the Court to deny Colombia's petition. ***Ms. Arias*** offered no statement on the subject.

C.1.2. Considerations of the Court

50. The Court recalls that one of its powers in matters under its consideration is to review the legality of the Commission's actions, although this does not necessarily mean it would proceed on its own motion to reexamine the Commission's procedures. The Court must preserve a fair balance between the protection of human rights, which is the ultimate purpose of the inter-American system, and the legal certainty and procedural equity that will safeguard the stability and reliability of international protection. The legality review under discussion could take place, then, in cases where one of the parties can demonstrate that a serious mistake caused injury to its right of defense. A complaint or difference of opinion in relation to the actions of the Commission is not sufficient.[44]

51. The State of Colombia requested review of legality based on actions by the Commission on a first point that it called "procedural imbalance" in application of the rules-based time limits. It said the Commission had denied it a time extension to submit its reply to the petitioners' observations on the merits, while the petitioners had been allowed to submit their own observations on the merits seven years later. Colombia closed by saying that the "serious error" imputable to the Commission had infringed its right of defense because, in addition to setting aside its own Rules of Procedure and giving the State "far too little" time to exercise its defense, even less than the rules-based time allowance, it had permitted the petitioners to broaden the corpus of facts and the timeframe of the matter, incorporating events that had occurred both before and after the Admissibility Report was issued.

52. A study of the case files shows that on March 13, 2014, the Commission asked the State for its comments on the matter, presenting it with the petitioners' observations on the merits, and giving it a term of four months to reply.[45] The State responded on July 24, 2014, requesting a time extension to "compile the information necessary for a response";[46] the Commission replied on August 4, 2014, granting the extension through September 25.[47] The State requested an additional time extension on September 24, 2014,[48] but the Commission

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[44] *Cf. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 28, 2007. Series C No. 172, para. 32, and *Case of Álvarez v. Argentina. Preliminary Objection, Merits and Reparations.* Judgment of March 24, 2023. Series C No. 487, para. 36.

[45] *Cf.* Communication from the Commission, March 13, 2014 (evidence file, volume VI, Commission case file, folio 20277).

[46] *Cf.* Communication from the State, July 24, 2014, file 20145010040261-GDI (evidence file, volume VI, Commission case file, folio 20279).

[47] *Cf.* Communication from the Commission, August 04, 2014 (evidence file, volume VI, Commission case file, folio 20280).

[48] *Cf.* Communication from the State, September 24, 2014, file 20145010057471-GDI (evidence file, volume VI, Commission case file, folio 20284).

denied this request on October 1, based on Article 30(3) of its Rules of Procedure.[49]

53. The Court cautions that, after granting the first extension, the Commission did not agree to the State's second request, based on its own rules and regulations. The Court finds no arbitrary treatment in the Commission's denial of the second request for an extension. Nor does it see that the term granted to Colombia was less than the rules allow, as the State claims without providing any relevant evidence.[50]

54. It should also be noted that Article 42 of the Commission's Rules of Procedure provides for a petition to be archived under three conditions:[51] (a) if it is found that the grounds for the petition do not exist or subsist; (b) if the information necessary for the adoption of a decision is unavailable, and (c) if the unjustified procedural inactivity of the petitioner constitutes a serious indication of lack of interest in the processing of the petition. If these conditions are in place, the rules require the Commission first to ask the petitioners to submit the necessary information, advising them of the possibility of a decision to archive; only after the time limit granted for this purpose has expired may it proceed with this decision.[52]

55. After the Commission issued its Admissibility Report, it proceeded in accordance with these rules as cited, and on September 24, 2013, it contacted the petitioners and requested "up-to-date information to determine whether the grounds for the case subsist," explaining that, "if the Commission does not receive this information, […] it can archive the file."[53] The petitioners replied by submitting their observations on the merits.[54] Again, the Commission can decide to archive the file on a petition only after requesting information from the petitioners, advising them that this consequence may occur.

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[49] *Cf.* Communication from the Commission, October 1, 2014 (evidence file, volume VI, Commission case file, folios 20285). Article 30.3 of the Rules of Procedure of the Commission states:

> Admissibility procedure. […] 3. The State shall submit its response within two months from the date the request is transmitted. The Executive Secretariat shall evaluate requests for extensions of this period that are duly founded. However, it shall not grant extensions that exceed four months from the date of the first request for information sent to the State.

Cf. Rules of Procedure of the Commission, approved at its 137th Regular Period of Sessions, held from October 28 to November 13, 2009, and modified on September 2nd, 2011 and during the 147th Regular Period of Sessions, held from 8 to 22 March , August 01, 2013 for entry into force on August 1st, 2013. Available at: https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/mandate/basics/rulesiachr.asp.

[50] Article 37 of the Rules of Procedure of the Commission states:

> Procedure on the Merits. 1. Upon opening the case, the Commission shall set a period of four months for the petitioners to submit additional observations on the merits. The pertinent parts of those observations shall be transmitted to the State in question so that it may submit its observations within four months. 2. The Executive Secretariat shall evaluate requests for an extension of the time periods established in the preceding subparagraph that are duly founded. However, it shall not grant extensions that exceed six months from the date the initial request for observations was sent to each party. […]

[51] The provisions on means to archive a petition were added to the Commission's Rules of Procedure in a text approved in 2009. Available at: https://www.oas.org/en/iachr/mandate/Basics/rulesiachr2009.asp.

[52] Article 42 of the Rules of Procedure of the Commission:

> Archiving of Petitions and Cases 1. At any time during the proceedings, the Commission may decide to archive the file when it verifies that the grounds for the petition or case do not exist or subsist. The Commission may also decide to archive the case when: (a) the information necessary for the adoption of a decision is unavailable, despite attempts to secure such information; or (b) the unjustified procedural inactivity of the petitioner constitutes a serious indication of lack of interest in the processing of petition. 2. Before considering the archiving of a petition or case, it shall request that the petitioners submit the necessary information and notify the possibility of a decision to archive. Once the time limit specified for that purpose has expired, the Commission shall proceed to adopt the corresponding decision. […]

[53] *Cf.* Communication from the Commission, September 24, 2013 (evidence file, volume VI, Commission case file, folio 13075).

[54] *Cf.* Communication from the petitioners, December 23, 2013 (evidence file, volume VI, Commission case file, folio 13076).

56. Thus, even setting aside the clear and excessive delay in processing the case, a point on which the Court again expresses its concern (*supra* para. 4), there is no evidence that the procedures constitute breach of the rules and regulations that govern the Commission's conduct, in injury of the State's interests.

57. Add to this that the Commission's Rules of Procedure grant it broad scope to convene hearings, regardless of the status of the processing of a case, whether to discuss matters of the admissibility procedure or to address the analysis of the merits and, in general, "any other matter pertinent to the processing of the petition or case," so that this claim by the State is groundless.[55]

58. Finally, the Court would recall, regarding Colombia's argument that the Commission's conduct had permitted an inappropriate expansion of the corpus of facts and time period in the case, that the powers and duties assigned to the Inter-American Commission include the ability to determine and delimit the facts included in the case (see Article 50(1) of the American Convention). In the end, the State had opportunities to submit its arguments while the case was being processed before the Commission. Colombia's claim therefore cannot be accepted as there is no evidence that an error may have infringed its right of defense.

59. The Court does take note that the State, using a variety of arguments, is challenging the delimitation of the corpus of facts in the case brought before its jurisdiction, and this will be examined in the next chapter of the judgment ("prior questions").

60. In conclusion, this preliminary objection is denied.

C.2. Alleged inconsistency in the cause of action as cited by the Commission in its Admissibility Report and Report on the Merits, and the submission brief

C.2.1. Arguments of the parties and observations of the Commission

61. The ***State*** argued that the Commission had made "mistakes […] when it defined the timeframe of the facts of the case." It said that, although the Admissibility Report did not establish a timeframe, it did claim to cover "incidents starting in 1990, and this conclusion was also drawn in the Report on the Merits." In its submission brief to the Court, however, the Commission had said that the case addressed incidents that took place from the 1990s until the present.

62. The State argued that "there are inconsistencies […] regarding the determination of the timeframe of the facts […], which has shifted at different stages of the proceedings and […] has seriously undermined" its right of defense. It noted that "ascribing the facts to such a broad time period, including present-day circumstances, undermines the very conception of international justice," in view of the fact that "international human rights systems," in essence, "are subsidiary and complementary, but this becomes blurred if anyone can turn directly to the international jurisdiction when the facts have not first been aired domestically."

63. It added that when the Commission "waited until the time of the submission brief]...]

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[55] Article 64(1) of the Commission's Rules of Procedure states:
Hearings on petitions or cases shall have as their purpose the receipt of oral or written presentations by the parties relative to new facts and information additional to that which has been produced during the proceeding. The information may refer to any of the following issues: admissibility; the initiation or development of the friendly settlement procedure; the verification of the facts; the merits of the matter; follow-up on recommendations; or any other matter pertinent to the processing of the petition or case.

to set 'the present' as the maximum time limit for the facts of the case," it forced the State to bear "the burden of defending itself against all the events […] that may have unfolded and […] that bore some relation to any fact of the case," and worse yet, "allowed the other parties […] to introduce additional facts almost without limit." It asked the Court "to set the date of issue of the Admissibility Report as the final limit for the timeframe of the case" and "rule that the timeframe of the case presented …] in the submission brief should be denied because it breaches the State's right of defense."

64. The ***Commission*** said that its report 57/19 "stated explicitly that the instant case involved 'a sequence of alleged violations of human rights from 1990 to the present,'" that is, the date when the report was approved. It explained that the corpus of facts dated back to "the date of the debate among the parties, which involved this same sequence of acts against the [alleged] victims," as became clear "in the analysis of admissibility" and its reference to the "ongoing risk" they were facing. It said that the State had been given opportunities to present its defense as provided in the international proceedings, combined with the fact that its argument "focuses on challenging the inclusion of certain items in the Report on the Merits," but this is not a preliminary objection. ***CAJAR and CEJIL*** and ***Ms. Arias*** made no comments.

C.2.2. Considerations of the Court

65. The Court takes note that the argument on the timeframe of the facts of the case was also raised by the State in its request to delimit the corpus of facts, which will be examined in depth in the next chapter of this judgment.

66. With respect to the State's claim of error and its request for review of the legality of the Commission's actions, the Court finds that the Admissibility Report contains reference to facts brought by the petitioners from the beginning, saying that members of CAJAR "since early 1990 [...] have been victims of continual threats, attacks, surveillance, harassment, public defamation of their work, and public statements that heighten the level of risk in their activities."[56]

67. The Commission's Report on the Merits says that the instant case "does not center its analysis on isolated events, but rather on a sequence of alleged violations of human rights from 1990 to the present."[57] Finally, the Commission's submission brief bringing the case before the jurisdiction of the Court states that the matter "addresses acts of violence, intimidation, harassment ad threats against members of CAJAR since the 1990s and to the present, associated with their activities in defense of human rights."[58]

68. Along these same lines, the Court has detected no so-called "mismatch" concerning the timeframe of the cause of action, based on the three documents cited herein (Admissibility Report, Report on the Merits, and submission brief).

69. The Court is fully aware that, as the State has said, the length of time covered by the corpus of facts in the case calls for extra effort by the parties to the dispute and by both bodies of the inter-American system to determine, examine, and classify the facts of the case. Notwithstanding this, the rules and regulations that govern the work of both the Commission and the Court are consistent in authorizing a broad span of time to the corpus of facts, as in

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[56] *Cf.* IACHR. Report No. 55/06. Case 12,380. Admissibility. Members of José Alvear Restrepo Lawyers' Collective. Colombia. July 20, 2006, para. 9.

[57] *Cf.* IACHR. Report No. 57/19. Case 12,380. Merits. Members of José Alvear Restrepo Lawyers' Collective. Colombia. May 4, 2019, para. 260.

[58] *Cf.* Submission brief of the case to the Court, July 8, 2020 (file on the merits, volume I, folio 2).

the instant case, under the assumption of "supervening facts,"[59] "event[s] which occurred after the procedural moments indicated,"[60] or later facts,[61] that is, closely linked to the original petition, or if relevant, the cause of action defined in the Report on the Merits, because they arose as the initial situation developed or evolved, they occurred after the procedural stages in a final or on-going sequence of events, and they are not independent or self-standing events."[62]

70. The important point, though, is that in the proceedings before both the Commission and the Court, the parties are to be given a broad margin of defense—opportunities to examine, discuss or refute the facts—such that the final decision settling the dispute not be delivered until all parties have first been given the right to speak.

71. Ultimately, in the instant case, Colombia did not allege that its right of defense had been abridged with respect to the timeframe of the corpus of facts in this matter. Instead, the State's argument suggests a discrepancy concerning the length of the timeframe, which cannot be the object of a request for review of legality of the Commission's actions. This preliminary objection is therefore denied.

V
PRIOR QUESTIONS

72. The State submitted several matters to the consideration of the Court under the heading "prior questions"; the Court will consider them in the following order: (a) the alleged victims, and (b) the corpus of facts of the case and the scope of the examination of the merits.

A. As to the alleged victims in the case

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

73. The ***State*** saw a need to delimit the number of alleged victims included in the international dispute. It said that, in keeping with Article 35 of the Court's Rules of Procedure, the Report on the Merits is "the procedural stage for identification" of victims, and "any later inclusion […] in subsequent stages would abridge legal certainty." It pointed out that "the representatives should identify all the alleged victims during the proceedings before the Commission." Both representatives of the alleged victims, however, in their pleadings and motions briefs, had asked to include 61 additional victims, "even though they had been named neither in the Report on the Merits nor in the submission brief" of the case to the Court.

74. It argued that the representatives of the alleged victims had based their request on the exception provided in Article 35(2) of the Court's Rules of Procedure, justifying it in view of "the time elapsed since the events occurred" and the "State's responsibility […] to provide information indicating which of the CAJAR members or their relatives had been targeted by intelligence operations." It noted that the case at hand was not about "indeterminate alleged victims," and that "there was no proof that they would be impossible to identify," as required in the rule as

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[59] Article 42.3 of the Rules of Procedure of the Commission.

[60] Art. 57(2) of the Rules of Procedure of the Court.

[61] *Cf. Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 59; *Case of Members and Militants of the Patriotic Union v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 27, 2022. Series C No. 455, para. 94; *Case of Nissen Pessolani v. Paraguay*. *Merits, Reparations and Costs.* Judgment of November 21, 2022. Series C No. 477, para. 15, and *Case of Álvarez v. Argentina, supra, para. 48*.

[62] *Cf. Case of the Mapiripán Massacre v. Colombia, supra*, para. 59; *Case of Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations and Costs.* Judgment of February 6, 2020. Series C No. 400, paras. 20 and 25, and *Case of Álvarez v. Argentina, supra,* para. 48.

cited.

75. The representatives of the alleged victims, it said, had also alluded to a material error by the Commission. The Court, in earlier cases, had found "unjustified errors due to the failure to enumerate or digitize the lists of victims, causing injury to one or two victims." This was not the case, however, as the representatives "are asking to introduce a considerable number of alleged victims—61—who were not included in the Report on the Merits." In any event, the Commission had "limited the universe of victims to 23 persons," 17 of whom were CAJAR members, and the others were family members, including children and minors. It added that "the failure to justify the exclusion of 61 alleged victims from the Report on the Merits resulted from a rigorous analysis of the facts that had been brought before [the Commission] and not to […] 'material error.'"

76. It alleged that CAJAR and CEJIL wanted to add Sebastián Escobar Uribe as an alleged victim, based on "facts supervening the Report on the Merits." The addition of Mr. Escobar Uribe, in the State's view, "broadens the scope of the Report on the Merits," as it is justified by events "that do not serve to clarify or supplement the facts […]," but instead are "acts of victimization that occurred subsequent to the report."

77. It argued that Ms. Arias, without identifying the members of the Rodríguez Castillo family or the members of the ACADHEUM organization (*Asociación Colombiana de Abogados Defensores de Derechos Humanos*, Colombian association of human-rights defense attorneys) or the Ríos Vivos Movement, had attempted to add them as alleged victims. The Court's case law, it noted, had said that "when victims are not direct family members for whom the *iuris tantum* assumption would apply," regarding violation of their rights to psychological and moral integrity for acts committed against their loved ones, "it is the duty of the representatives to prove that these third parties suffered some direct damage associated with the violations being alleged," but this had not been proven in the instant case for these persons and organizations.

78. It added that, in the account of the facts in the Report on the Merits, the Commission "named nine minors," but "in the analysis of the merits, […] it definitively identified only three as alleged victims," and therefore, "these are the only minors that were recognized as such" in the annex to the case submission brief.

79. It requested: (a) that the "61 people the representatives had included in their pleadings and motions brief who were not included" in the Report on the Merits "be removed from the universe of victims"; (b) that "the use of the exception given in Article 35(2) of the Rules of Procedure be held inadmissible"; (c) that "Sebastián Escobar Uribe be removed because his experiences with victimization broaden the corpus of facts of the case," and that the same apply for "members of the Rodríguez Castillo family […] [and] members of the organizations […] ACADHEUM and the Ríos Vivos Movement," and (d) as a result, that "the universe of victims of the instant case be set at the 23 alleged victims named, noted, and identified […] [in the] Report on the Merits."

80. The ***Commission*** said that "the violations identified in the Report on the Merits took place over an extensive period of time […] against a collective of people," and moreover, "one component of this case involves the intelligence operations conducted by the State." It therefore asked the Court, for the purposes of individually identifying the alleged victims, not only to consider the information contained in the Report on the Merits and provided by the applicants, but also to allow that "the difficulties described […] [justify] applying Article 35(2) of the Rules of Procedure," making it necessary to take into account the claims of the applicants "concerning the impossibility of definitively identifying the universe of [alleged] victims until the State shares full information on the impact on all the members of CAJAR and their families."

81. It said that, even though the petitioners had individually identified the alleged victims during the proceedings before the Commission, the Report on the Merits had not given the full set of names, but the situation was explained in the submission brief and in an attached annex with these names. Although both representatives had requested permission to add other relatives of the Collective members as alleged victims, those represented by CAJAR and CEJIL "did submit annexes with this information during the proceedings before the Commission, which was forwarded to the State. It asked the Court to understand what had happened as "a material error," as it has done in precedent cases, that had caused no impairment to the State's right of defense. It added that "the universe of identified [alleged] victims […] consists of 69 [people]: (i) 35 […] members of CAJAR and (ii) 34 family members," and that it had attached an annex identifying them in its final written observations.

82. ***CAJAR and CEJIL*** requested that Article 35(2) of the Rules of Procedure be applied, based on "the amount of time that elapsed since the facts first began," and during which time the State had not guaranteed the Collective "access to full information on which of its members or their families had been victims of the intelligence activities, or what information had been collected." It pleaded that, "at a minimum, the people named in the list" attached to its pleadings and motions brief "be recognized as [alleged] victims, leaving open the possibility that other persons who may yet be identified also be considered as beneficiaries of any reparations as may be determined." They said that when the Commission had issued its Report on the Merits, it had committed a "material error," and although 102 alleged victims had been duly named during the proceedings, 66 had been left out, and the list attached as an annex to the submission brief included only 61 alleged victims, such that the other five people were once again omitted. They explained that "Sebastián Escobar Uribe had been added as an [alleged] victim of the case" in the pleadings and motions brief because of "facts subsequent to the Report on the Merits."

83. ***Ms. Arias*** then argued that the alleged victims she represents "are included in the documents from the proceedings before the Commission, and naturally, also in the Report on the Merits, although not so systematically or exhaustively as she would have liked," and this was "inexplicable and inexcusable and had opened the door for the State to request that they be excluded, which if it occurred, would impinge on their right of access to international justice." She also mentioned the relatives of CAJAR members, saying that, in addition to the fact that some of them had been directly subjected to profiling and surveillance, they had "experienced the agony suffered by anyone whose loved ones are facing enormous risk." She added that the persecution experienced by attorney Dora Lucy Arias Giraldo had brought repercussions on the organization Ríos Vivos Movement, ACADHEUM, and the Rodríguez Castillo family, whom she was representing legally and accompanying. The Court, she pointed out, should "correct this conduct and guarantee that [the alleged victims] have access on an equal footing with the other members of CAJAR."

A.2. Considerations of the Court

84. The State's request to delimit the list of alleged victims in this case calls for an examination of several different points, which the Court will discuss in the following order: (a) the material error ascribed to the Commission regarding the identification of alleged victims, and (b) the application of the Article 35(2) exception from the Court's Rules of Procedure and the requests to include additional alleged victims.

A.2.1. The material error ascribed to the Commission in the identification of alleged victims

85. The Court must respond to this point raised by Colombia by considering the chain of events that have taken place since the proceedings before the Commission.

86. The petitioners sent notes on December 20, 2013,[63] November 2, 2017,[64] and December 22, 2018,[65] prior to the release of the Report on the Merits, concerning the group of alleged victims in the case. When the Commission released Report 57/19, it named 17 members of CAJAR as alleged victims,[66] as well as family members of four of them, specifically identifying 11 people.[67] The Report on the Merits included a total of 28 alleged victims. This does not match the number given by the State (23 names), but the Court understands the identification of alleged victims in the Report on the Merits as the result of a full reading of the entire text, not limited to the section on legal analysis.

87. When the Commission submitted the case to the Court, it attached an annex adding 38 names to the list of alleged victims (16 CAJAR members[68] and 22 family members[69]), but omitted the names of five people who appeared in the Report on the Merits.[70] The Commission explained that it had submitted the annex because it needed to "clarify and correct the material omission" committed when the Report on the Merits was approved, due to the fact that during the relevant proceedings and prior to the release of the report, the petitioners had reported on the list of alleged victims.

88. The Commission reiterated in its observations on the State's preliminary objections that it had committed a "material omission" with the list of alleged victims that the petitioners has reported within the permissible time limits. Finally, when the Commission submitted its final written observations, it repeated that it had committed a material error and concluded that the "universe of [alleged] victims […] consists of 69" people (35 members of CAJAR and 34 members of their families), and accordingly attached an annex identifying the names of these people, added

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63 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13076). The petitioners sent this note with a list naming 99 alleged victims.

64 *Cf.* Communication from the petitioners, November 2, 2017 (evidence file, volume VI, Commission case file, folio 21420). The petitioners sent this note to add six more names to the list of alleged victims submitted earlier.

65 *Cf.* Communication from the petitioners, December 22, 2018 (evidence file, volume VI, Commission case file, folio 21440). The petitions added one more name to the earlier list in this note.

66 The names are: Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Miguel Puerto Barrera, Soraya Gutiérrez Argüello, Reinaldo Villalba Vargas, Diana Milena Murcia Riaño, Diana Teresa Sierra Gómez, Efraín Cruz Gutiérrez, Javier Alejandro Acevedo, Adriana Cuéllar Ramírez, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Eduardo Carreño Wilches, Olga Hernández Villalba, and Martha Eugenia Rodríguez.

67 The people are: (a) family members of Reinaldo Villalba Vargas: Juan David Villalba (child) and Jheyson Arias (child); (b) family member of Soraya Gutiérrez Argüello: Paula Camila Romero Gutiérrez (child); (c) family members of Alirio Uribe Muñoz: David Uribe (child), Miguel Uribe (child), and Luisa Uribe (child); (d) family members of Luis Guillermo Pérez Casas: Katia Karina Niño, Camilo Ernesto Pérez Niño (child), and Katia Karina Pérez Niño (child), and (e) family members of Rafael Barrios Mendivil: Kimberly Stanton, and Juan Pablo Barrios Romero. It also listed the "minor (underage) child of Dora Lucy Arias" and the family of Miguel Puerto, but did not identify their names. The case files show that at the proper time during the proceedings before the Commission, the petitioners provided the names of Ms. Arias' son (Leandro Jurado Arias) and the family members of Miguel Puerto Barrera (Elizabeth Santander Durán, Diana Escobar Santander, Miguel Ernesto Puerto Santander, and Carolina Elizabeth Puerto Santander). *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folios 13082 and 13202).

68 *Cf.* Document entitled: "*Anexo - listado de víctimas identificadas*" (Annex--list of identified victims) (evidence file, volume III, annex to the Report on the Merits, folio 8660). The names are: Adriana Fuentes, Adriana López, Andrea Torres, Andrés Rivera Acevedo, Camilo Andrés Galindo Marín, Carlos Lozano Acosta, Chennyer Piñeros, Fernando Lemus, Ingrid Fernández, Liliana Romero, Marcela Cruz, Mónica Zuluaga, Natalia Hernández, Olga Lilia Silva, Sandra Yalin Ariza, and Yessika Hoyos Morales.

69 The people are: (a) family members of Soraya Gutiérrez Argüello: Álvaro Romero, María Irma Argüello Marino, Irma Helena Gutiérrez Argüello, Omar Gutiérrez Argüello, and Astrid del Pilar Sánchez Martínez; (b) family members of Rafael Barrios Mendivil: Ana Mendivil de Barrios, Rafael Barrios Zapata, Marta Carolina Barrios Romero, Diana María Barrios Sabogal, Rafael Barrios Sabogal, Laura Camila Barrios Sabogal, Antonio Rafael Barrios, Nubia Barrios de Noguera, Carlos José Barrios Mendivil, Elsye del Socorro Barrios Mendivil, and Ana Barrios Mendivil; (c) family members of Luis Guillermo Pérez Casas: Olivia Casas and Heidy Andrea Pérez Buitrago, and (d) family members of Miguel Puerto: Elizabeth Santander Durán, Diana Escobar Santander, Miguel Ernesto Puerto Santander, and Carolina Elizabeth Puerto Santander.

70 The names are: Juan David Villalba, Jheyson Arias, David Uribe, Miguel Uribe, and Luisa Uribe. As already mentioned, the Commission also omitted the name of the son of Dora Lucy Arias Giraldo (*supra* footnote 67).

two other members of CAJAR, and again included in the annex attached to the submission brief the names of the people who had been excluded.[71]

89. The Court agrees that the Commission did indeed commit a material error when it identified the alleged victims in the case; this error occurred when the Report on the Merits was issued and still continued when the matter was submitted to the jurisdiction of the Court.[72]

90. Having seen this, the Court recalls that, while Article 35(1) of its Rules of Procedure requires the Report on the Merits to identify the alleged victims, in cases where it is clear that the representatives informed the Commission of the names of all the alleged victims at the proper time during the Commission's processing of the case and before it released its Report on the Merits, and although the Commission failed to include the full number of these people without justifying the reasons therefor, the Court deems that it was a material error that does not hinder consideration of the group of people who were named individually at the correct time as alleged victims.[73]

91. Thus, seeing that the Commission's material error had been noticed and the Commission explicitly recognized it, the Court understands that the full group of alleged victims in the case is as given in the latest listing attached to the final written observations. This listing includes people whose names were reported by the petitioners at the correct time during the proceedings before the Commission.

92. The Commission's error led to the initial omission of a considerable number of alleged victims, but this does not mean that alleged victims were deliberately excluded, thus denying that their rights had been violated, as the State suggests, as no such conclusion can be drawn from the content of Report 57/19, and in the end, it would contradict the position expressly espoused by the Commission.

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[71] *Cf.* Document entitled: "*Anexo - listado de víctimas*" (Annex--list of victims) (evidence file, volume VIII, annex to the final written observations, folio 2935). The people are: (a) members of CAJAR: Maret Cecilia García Alfonso and Pedro Julio Mahecha Ávila, and (b) family members: (b)(1) family members of Reinaldo Villalba Vargas: Juan David Villalba and Jheyson Arias; (b)(2) family members of Alirio Uribe Muñoz: David Uribe, Miguel Uribe, and Luisa Uribe, and (b)(3) family member of Dora Lucy Arias: Leandro Jurado Arias.

[72] A comparison of the Commission's lists of alleged victims on both occasions reveals that it made the following mistakes: (a) in the Report on the Merits, it did not include the names of the following people, who were later added in the annex to the Commission's final written observations: (i) members of CAJAR: Adriana Fuentes, Adriana López, Andrea Torres, Andrés Rivera Acevedo, Camilo Andrés Galindo Marín, Carlos Lozano Acosta, Chennyer Piñeros, Fernando Lemus, Ingrid Fernández, Liliana Romero, Marcela Cruz, Mónica Zuluaga, Natalia Hernández, Olga Lilia Silva, Sandra Yalin Ariza, Yessika Hoyos Morales, Maret Cecilia García Alfonso, and Pedro Julio Mahecha Ávila; (ii) family members of Soraya Gutiérrez Argüello: Álvaro Romero, María Irma Argüello Marino, Irma Helena Gutiérrez Argüello, Omar Gutiérrez Argüello, and Astrid del Pilar Sánchez Martínez; (iii) family members of Rafael Barrios Mendivil: Ana Mendivil de Barrios, Rafael Barrios Zapata, Marta Carolina Barrios Romero, Diana María Barrios Sabogal, Rafael Barrios Sabogal, Laura Camila Barrios Sabogal, Antonio Rafael Barrios, Nubia Barrios de Noguera, Carlos José Barrios Mendivil, Elsye del Socorro Barrios Mendivil, and Ana Barrios Mendivil; (iv) family members of Luis Guillermo Pérez Casas: Olivia Casas and Heidy Andrea Pérez Buitrago; (v) family members of Miguel Puerto: Elizabeth Santander Durán, Diana Escobar Santander, Miguel Ernesto Puerto Santander, and Carolina Elizabeth Puerto Santander; (vi) family members of Alirio Uribe Muñoz: David Uribe, Miguel Uribe, and Luisa Uribe; (vii) family members of Reinaldo Villalba Vargas: Juan David Villalba and Jheyson Arias, and (viii) a family member Dora Lucy Arias Giraldo: Leandro Jurado Arias, and (b) in the annex to the case submission brief, it did not include the names of the following people, who were eventually listed in the annex to its final written observations: (i) members of CAJAR: Maret Cecilia García Alfonso and Pedro Julio Mahecha Ávila; (ii) family members of Alirio Uribe Muñoz: David Uribe, Miguel Uribe, and Luisa Uribe; (iii) family members of Reinaldo Villalba Vargas: Juan David Villalba and Jheyson Arias, and (iv) a family member Dora Lucy Arias Giraldo: Leandro Jurado Arias.

[73] *Cf. Case of Dismissed Employees of Petroperú et al. v. Peru*. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2017. Series C No. 344, paras. 53 and 55, and *Case of Baptiste et al. v. Haiti. Merits and Reparations.* Judgment of September 1, 2023. Series C No. 503, para. 14.

A.2.2. Application of the exception provided in Article 35(2) of the Court's Rules of Procedure and the requests to include additional alleged victims

93. The Court has been asked in the instant case to apply the exception set forth in Article 35(2) of its Rules of Procedure,[74] based on the lengthy span of time during which the facts took place and the difficulties in obtaining information and records that had been developed from the intelligence operations by public agencies, with the claim that this made it impossible to identify the total group of alleged victims.

94. The Court recalls its practice to apply Article 35(2) of the Rules of Procedure based on the particular characteristics of each case and has accepted it in instances of massive or collective cases that posed difficulties for identifying or contacting all the alleged victims, as for example in the presence of armed conflict, displacement,[75] or when the the bodies of the alleged victims have been burned,[76] or where entire families are missing, leaving no one to speak for them.[77] It has also taken account of difficulties reaching the area where the facts occurred, the lack of records on inhabitants of the area, and the passage of time,[78] as well as the particular features of the alleged victims of the case, as when they come from family clans with similar names and surnames,[79] or if they are migrants.[80] Similarly, it has considered the conduct of the State, as when claims have been made that the failure to investigate contributed to the incomplete identification of alleged victims,[81] in a case of slavery,[82] and in a matter where acts of systematic extermination were verified against members of a political organization over a lengthy period.[83]

95. In the instant case, as will be seen in this judgment's chapter on the merits (*infra* para. 641), the Court finds that a considerable span of time has passed without any real progress in clearing the intelligence files associated with the facts that are currently in the international jurisdiction. The situation, although it will be examined with respect to the arguments on human rights violations, has hindered an exhaustive identification of the full universe of persons, members of the Collective and of their families, who may have been targeted by the State's intelligence activities. This, combined with the collective nature of the case, the time elapsed, and the undercover environment in which intelligence activities are conducted, leads the Court to find that there were clear obstacles to identifying the total number of alleged victims. The Court therefore deems that the instant case reasonably justifies application of the exception provided in Article 35(2) of its Rules of Procedure.

96. The Court also cautions that when the two representatives presented their pleadings and motions briefs, they did ask for other persons to be included as alleged victims, whose names were not given in the Report on the Merits, in the annex to the submission brief, or in the annex

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74 Art. 35(2) of the Rules of Procedure of the Court: "When it has not been possible to identify one or more of the alleged victims who figure in the facts of the case because it concerns massive or collective violations, the Tribunal shall decide whether to consider those individuals as victims."

75 *Cf. Case of the Río Negro Massacres v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 04, 2012. Series C No. 250, para. 48.

76 *Cf. Massacres of El Mozote and surrounding areas v. El Salvador. Merits, Reparations and Costs.* Judgment of October 25, 2012. Series C No. 252, para. 50.

77 *Cf. Case of the Río Negro Massacres v. Guatemala, supra, para. 48.*

78 *Cf. Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, supra,* para. 41, and *Case of Favela Nova Brasília v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 16, 2017. Series C No. 333, para. 38.

79 *Cf. Case of the Río Negro Massacres v. Guatemala, supra*, para. 48.

80 *Cf. Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs.* Judgment of October 24, 2012. Series C No. 251, para. 30.

81 *Cf. Case of the Río Negro Massacres v. Guatemala, supra*, para. 48.

82 *Cf. Case of the Hacienda Brasil Verde Workers v. Brazil. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 22, 2017. Series C No. 337, para. 48.

83 *Cf. Case of Members and Militants of the Patriotic Union v. Colombia, supra,* para. 135.

to the Commission's final written observations.[84] The Court recalls that it is the Commission's task to identify alleged victims, and this judgment cannot realistically cover people additional to those named in the final listing that the Commission submitted (Anzualdo to its final written observations). This will not affect the Court's final decision on reparations, given the application of Article 35(2) of the Rules of Procedure (Chapter IX, *infra* para. 1000).

97. Finally, regarding Ms. Arias' request to include the organizations Ríos Vivos Movement and ACADHEUM as alleged victims, the Court recalls that Article 1(2) of the Convention states that the rights recognized therein pertain to persons, that is, human beings.[85] This judgment, therefore, will not admit the request.

B. As to the corpus of facts of the case and the scope of the examination of the merits

98. Colombia asked several questions about the corpus of facts of the case, and the Court will examine them in the following order: (a) the request to omit facts included in the procedure for precautionary measures; (b) the request to omit facts and legal claims included in the pleadings and motions brief, and (c) the request to omit discussion of the context as presented by the Commission and the two representatives of the alleged victims.

B.1. The request to omit facts included in the procedure for precautionary measures

B.11. Arguments of the parties and observations of the Commission

99. The ***State*** said that some of the events set forth in the corpus of facts of the case "were made known to the Commission when CAJAR requested precautionary measures for Alirio Uribe Muñoz, in May, 2000." The Commission had sent a note on May 11 of that year, informing the

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[84] The people in question are: a) from the CAJAR and CEJIL pleadings and motions brief: (i) family member of Eduardo Carreño Wilches: María Isabel Cruz; (ii) family members of Alirio Uribe Muñoz: Gladys E. Laverde, Rosalvina Neira de Laverde, Julián Efraín Rincón Laverde, Fanny Aidee Laverde Abril, Gloria Stella Laverde Neira, Fabio Hernán Laverde Abril, and Jairo Laverde Abril; (iii) family members of Reinaldo Villalba Vargas: Camilo Ernesto Villalba Mahecha, María Eugenia Villalba Vargas, Nancy Yolanda Cruz Lozano, Olimpia Vargas de Villalba, Reinaldo Villalba Gil, Hely Villalba Vargas, Alba Cecilia Villalba Vargas, Clara Yaneth Villalba Vargas, and Francisco Arias Vargas; (iv) family members of Jomary Ortegón Osorio: Jairo Augusto Ortegón, Luz Marina Osorio, and Cris Ortegón Osorio; (v) family members of María del Pilar Silva Garay: Jilmar Alexander Barrios Silva, Nelson Sánchez Martínez, Damaris Esperanza Silva Garay, Pedro Pablo Silva Garay, José Joaquín Silva Garay, María Cecilia Silva Garay, José Ángel Silva Garay, Martha Helena Silva Garay, José Arturo Silva Garay, and Flor María Silva Garay; (vi) family members of Adriana Cuéllar Ramírez: María Elena Ramírez de Cuéllar, Raúl Fernando Cuéllar Ramírez, and Manuel Orlando Cuéllar Ramírez; (vii) family members of Javier Alejandro Acevedo: Claudia Rocío Rueda Badillo, Javier Alejandro Acevedo Barroso, and María Alejandra Acevedo Valencia; (viii) family member of Olga Hernández Villalba: Darly Hasbleidy Muñoz Hernández; (ix) family members of Martha Eugenia Rodríguez: Isauro Rojas Victoria and Gloria Amparo Rodríguez, and (x) Sebastián Felipe Escobar Uribe, and (b) from the pleadings and motions brief submitted by Ms. Arias: (i) family member of Diana Milena Murcia Riaño: Anatilde Riaño Ramírez; (ii) family members of Maret Cecilia García Alfonso: Álvaro Iván Prieto Hernández, Lina María Hernández García, Diego Alejando Prieto García, Fredy Arturo Prieto García, and Ana Teofilde Alfonso; (iii) family members of Dora Lucy Arias: Jaime Jurado Alvarán, Samantha Rodríguez Arias, Nicolás Jurado, and Zoley Natalia Giraldo Arias; (iv) family members of Pedro Julio Mahecha Ávila: Nelly Patricia Beltrán Nova, Federico Mahecha Beltrán, Valentina de la Primavera Mahecha Beltrán, Luz Mercedes Mahecha Ávila, Mariela Mahecha Ávila, Stella Mahecha Ávila, and Astrid Mahecha Ávila, and (v) Rodríguez Castillo family.

[85] *Cf. Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 207, para. 45; *Case of Granier et al. (Radio Caracas Television) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 22, 2015. Series C No. 293, para. 19; *Entitlement of legal entities to hold rights under the Inter-American Human Rights System (Interpretation and scope of Article 1(2), in relation to Articles 1(1), 8, 11(2), 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62(3) of the American Convention on Human Rights, as well as of Article 8(1)(A) and (B) of the Protocol of San Salvador).* Advisory Opinion OC-22/16 of February 26, 2016. Series C No. 22, para. 37, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra,* para. 89.

State that it would be necessary to adopt precautionary measures. Later, during a period that lasted until the year 2020, "the alleged victims have informed the Commission of new facts involving threats, surveillance and harassment against them, which should be examined in the context of the procedure for precautionary measures."

100. It said that "the Court […] cannot rule on these facts," as can be seen in its case law, given the difference in nature between the procedure for precautionary measures and the processing of matters brought as individual petitions. It added that "inclusion of the facts examined in the procedure for precautionary measures [was] a serious error" by the Commission, and it "prevented the State from asserting its right of defense by submitting its arguments regarding the presence of grounds for inadmissibility in accordance with Articles 46 and 47 of the American Convention." It asked the Court to "omit from its analysis […] all the facts" regarding the precautionary measures granted by the Commission.

101. The ***Commission*** pointed out that the Court, in a number of cases, had used the file on precautionary measures on a matter as a source of information for determining the body of facts. It asked that the State's motion be denied.

102. ***CAJAR and CEJIL*** said that "the State's argument is mistaken because it assumes that a fact that is on the record in a process of monitoring precautionary measures should be omitted from the cognizance of the Court […], regardless of whether it was included in the submission" of the case. They noted that the argument is based on an "out-of-context understanding [...] of the Court's case law." They asked the Court "to take full cognizance of the file on precautionary measures, which is an inseparable part of the underlying case."

103. ***Ms. Arias*** stated that during the proceedings before the Commission, "the State's actions were oriented toward fully merging the proceedings" for precautionary measures and the initial petition, and therefore by raising this point, Colombia "clearly contradicted its own earlier actions."

B.1.2. Considerations of the Court

104. The Court will reply to the State's concerns by noting that the Commission, in the Admissibility Report, brought up facts from the procedure on precautionary measures (MC-128-00).[86] This means the Admissibility Report reflected the State's position at that stage of the procedure for the petition and made explicit reference to the implementation of protective measures requested earlier by the Commission for the members of CAJAR.[87]

105. Moreover, the Commission sent the State a note on December 3, 2015, reporting that

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[86] IACHR. Report No. 55/06. Case 12,380. Admissibility. Members of José Alvear Restrepo Lawyers Collective. Colombia. July 20, 2006.

[87] The Admissibility Report said:

> Position of the State. 24. The State requested that the case be declared inadmissible. The State began its reply to the petition clarifying that, "given that the case is also the object of precautionary measures granted by the [...] Commission, the Government's opinion on the processing of the case before the Inter-American Commission will address the requests made in the petition, on the understanding that the Commission and the petitioners have been duly informed as to the implementation of protection on behalf of the beneficiaries of the Commission's order, the respective criminal investigations, and the steps taken by the Office of the Vice President of the Republic with regard to the intelligence reports." 25. The State mentioned that the allegations contained in the petition regarding the acts of harassment and the "pattern of threats" against the members of "José Alvear Restrepo" Lawyers Collective have been dealt with by the State in the terms that it has already described to the Commission in its communications on the processing of the precautionary measures granted by the IACHR to the alleged victims.

Cf. IACHR. Report No. 55/06. Case 12,380. Admissibility. Members of José Alvear Restrepo Lawyers Collective. Colombia. July 20, 2006, paras. 24 and 25.

"ultimately, the decision on the merits […] would take into account the information supplied in the procedure for precautionary measures.[88] The Report on the Merits then included, as part of the body of facts, several events pertaining specifically to the procedure for precautionary measures.

106. The Court, in earlier contentious cases, has included facts concerning the Commission's proceedings for precautionary measures as part of the corpus of facts. This was the case, for example, in *Manuel Cepeda Vargas v. Colombia*[89], *Barrios family v. Venezuela*[90], *Wong Ho Wing v. Peru*[91], and *Villaseñor Velarde et al. v. Guatemala*[92]. In other cases, *Kichwa Indigenous People of Sarayaku v. Ecuador*[93] and *Yarce et al. v. Colombia,*[94] the Court held the briefs and submissions from the Commission's procedure for precautionary measures as part of the body of evidence.

107. It should be noted, in reference to the State's pleading, that while the Court, in the case of *Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, set aside from its examination the documents added during the procedure for precautionary measures, the decision was made because the documents in question addressed facts unrelated to the corpus of facts of the contentious case.[95]

108. Admittedly, precautionary measures and contentious cases are distinctly different in nature and serve different purposes (as was clearly stated in the judgment cited above); but the question of whether facts proper to the procedure for precautionary measures can realistically be included in a case brought before the contentious jurisdiction of this Court depends on the whether those same facts had been included earlier in the corpus defined during the procedure before the Commission, given the clear convergence between the people involved (whether beneficiaries in the former case or alleged victims in the latter), and between the purposes of the two different procedures.[96]

109. The Court finds prima facie that the group of beneficiaries in the Commission's procedure for precautionary measures matches the set of alleged victims in the case at hand, primarily the members of CAJAR, and furthermore, the object of both procedures, that is, the alleged acts of violence, intimidation, harassment and threats that they experienced, are also the same. Similarly, it should be stressed that the corpus of facts duly established by the Commission, with the prior knowledge of the petitioners and the State (Admissibility Report and the December 3, 2015 note, *supra* paras. 104 and 105), included material from the procedure for precautionary

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[88] *Cf.* Communication from the Commission, December 3, 2015 (evidence file, volume VI, Commission case file, folio 21374).

[89] *Cf. Case of Cepeda Vargas v. Colombia, supra*, paras. 89, 93, 95, 98, and 200.

[90] *Cf. Case of Barrios Family v. Venezuela. Merits, Reparations and Costs.* Judgment of November 24, 2011. Series C No. 237, paras. 94, 117, 124, and 132.

[91] *Cf. Case of Wong Ho Wing v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 30, 2015. Series C No. 297, paras. 67 and 68.

[92] *Cf. Case of Villaseñor Velarde et al. v. Guatemala. Merits, Reparations and Costs.* Judgment of February 5, 2019. Series C No. 374, paras. 70, 94, and 106.

[93] *Cf. Case of Kichwa Indigenous People of Sarayaku v. Ecuador*. *Merits and* Reparations. Judgment of June 27, 2012. Series C No. 245, para. 48.

[94] *Cf. Case of Yarce et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 22, 2016. Series C No. 325, para. 65.

[95] *Cf. Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, supra*, paras. 52 and 423.

[96] The Court discussed procedures for provisional measures vis-a-vis contentious cases in *Kichwa Indigenous People of Sarayaku v. Ecuador*, and said that, setting aside the different nature of the two, in the instant case "the presumed victims [...] ha[d] also been beneficiaries of [...] protective measures; in other words, the specific or potential group of beneficiaries [wa]s identical to the group of persons that comprises the presumed victims," added to the fact that "the purpose of the provisional measures coincide[d] with many substantive aspects of the case," and therefore, the briefs and submissions from the procedure for provisional measures was held to be part of the body of evidence. *Cf. Case of Kichwa Indigenous People of Sarayaku v. Ecuador,* para. 48.

measures, now incorporated into the case brought before the jurisdiction of this Court. Based on these points, the Court will take into account, as relevant, the facts presented during the Commission's procedure for precautionary measures when it assembles the facts of the case.

110. Therefore, the State's motion is denied.

B.2. The request to omit facts and legal claims included in the pleadings and motions brief

B.2.1. Arguments of the parties

111. The ***State*** argued that certain facts included in the different pleadings and motions briefs "exceed the substantive framework of the Report on the Merits." Other facts given in the briefs, it added, "lie outside the timeframe of the […] dispute." It said that in the case of CAJAR and CEJIL, specific incidents set forth in the pleadings and motions brief would "enlarge the platform of facts in the case in terms of both substance and time." It noted that these facts "do not serve the purpose of clarification, nor do they shed further light on the facts in the Report on the Merits, but instead, introduce new acts of victimization that had been neither selected nor considered" by the Commission.

112. The pleadings and motions brief submitted by Ms. Arias, it stated, "includ[ed] or add[ed] new facts as an inappropriate and unfounded means to expand the platform of facts," and therefore should be removed from the analysis of the merits.

113. It stated that both representatives of the alleged victims, based on facts not included in the Report on the Merits, had brought claims for the violation of new rights, which was out of order. This was the case with the alleged violations of Article 7 of the American Convention and Article 7 of the Convention of Belém do Pará, based on facts not included in the Report on the Merits. The same is true, it added, with the alleged violation of Article 17 of the American Convention, as it is based on material that "is not part of the corpus of facts" of the case, and the CAJAR and CEJIL pleadings and motions brief "does not clearly identify" the alleged victims of the violation, instead addressing "all the relatives of the named victims" without considering that "many of them had not been identified individually" by the Commission.

114. On this basis, it asked the Court to: (a) "[o]mit from its analysis […] all facts" that lie outside the framework of facts of this case; (b) "[o]mit from its analysis the claims of alleged violations of Article 7 of the American Convention and Article 7 of the Convention of Belém do Pará," and (c) "[l]imit its analysis of alleged violations of Article 17 of the American Convention" by "[r]efraining from analyzing the new facts" that have been introduced and "[l]imiting its study to the [alleged] victims included and individually identified by the Commission."

115. ***CAJAR and CEJIL*** asked the Court to "add the supervening facts to the case file and the analysis."

116. ***Ms. Arias*** said that her intention in her pleadings and motions brief was "to illustrate the facts of the case more thoroughly, […] and therefore she had gone into greater […] detail on facts useful […] to clarify, supplement, and explain, […] taken from the material used for the procedures and for the brief Report on the Merits." She noted that some of the facts she had presented within the regulatory time limits had been excluded from the Report on the Merits "due to an error by the Commission," and it would fall to the Court "to correct this anomaly." The ***Commission*** offered no arguments on this matter.

B.2.2. Considerations of the Court

117. The Court's case law has repeatedly found that the factual framework of the proceedings consists of the facts contained in the Merits Report submitted to the Court's consideration. Accordingly, it is not admissible to assert new facts other than those in the application, unless they explain, clarify, or refute facts given in the Merits Report, or answer any of the Commission's claims (also called "supplementary facts"). The exception to this principle are facts that qualify as supervening, which can be submitted to the Court at any stage of the proceedings prior to the delivery of judgment.[97]

118. Accordingly, the Court will circumscribe the facts in consideration to the material given in the Report on the Merits, the supplementary facts (to the extent that they clarify or explain the main facts) contributed by the two representatives of the alleged victims, and the supervening facts (that occurred subsequently), so long as they are consistent with the object of the instant case, based on circumstances alleged to have violated the human rights of the persons involved and within the timeframe of the corpus of facts of the case (*supra* para. 69). The Court cannot distinguish among these facts a priori, but will do so in the relevant chapter of this judgment (chapter VII).

119. Finally, the Court recalls that the alleged victims and their representatives may invoke violation of rights other than those included in the Report on the Merits, so long as they remain within the corpus of facts defined by the Commission, as the alleged victims are holders of all the rights embodied in the American Convention.[98] In these cases, it falls to the Court to decide which arguments concerning the corpus of facts are relevant, safeguarding the procedural balance of the parties.

120. This judgment's discussion of the merits will examine whether the claims for violation of Articles 7 and 17(1) of the American Convention and Article 7 of the Convention of Belém do Pará are based on events that are part of the body of facts in the case, which is the only criterion for a ruling on the representatives' argument.

B.3. The request to omit discussion of the context as presented by the Commission and the two representatives of the alleged victims

B.3.1. Arguments of the State

121. The ***State*** found that the description given by the Commission and the representatives on a context of violations against human rights defenders was not based on evidence; instead, Colombia can safely claim to have undertaken major actions to guarantee the rights of these people, including measures of protection from potential threats, as well as efforts in the area of investigation, prosecution and sanctions for acts of violence against them.

122. It asked the Court "to eliminate from the analysis of the instant case the context described by the Commission and the representatives of the alleged victims," and instead "take a positive view of the public authorities' continuing efforts to guarantee the rights of human rights defenders."

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[97] *Cf. Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs.* Judgment of May 19, 2011. Series C No. 226, para. 32; *Case of Casierra Quiñonez et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs.* Judgment of May 11, 2022. Series C No. 450, para. 40; *Case of Members and Militants of the Patriotic Union v. Colombia, supra,* para. 94, and *Case of Álvarez Vs. Argentina, supra,* para. 48

[98] *Cf. Case of the "Five Pensioners" v. Peru. Merits, Reparations and Costs.* Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of Guzmán Medina et al. v. Colombia. Merits, Reparations and Costs.* Judgment of August 23, 2023. Series C No. 495, Footnote 9.

B.3.2. Considerations of the Court

123. The Court recalls its practice in certain cases of highlighting the context in which the facts took place, since it reveals a political and historical environment that is essential for establishing the legal consequences in the matter under study.[99] Thus, fitting the facts into a background framework makes it easier to understand them and qualify them.[100]

124. The Court has held, ever since it ruled on its first contentious case, that it cannot disregard the special seriousness of attributing to a State Party to the American Convention the charge of having executed or tolerated a practice of human rights violations in its territory. This requires the Court to apply a standard of proof which considers the seriousness of the charge and which, notwithstanding what has already been said, be able to establish the truth of the allegations in a convincing manner.[101]

125. When it weighs the facts, the Court will take into account the contextual material brought by the Commission and the representatives, if it is drawn from sources of information and evidence, as it will allow the Court to draw its conclusions, without ignoring the other facts raised by the State, similarly based on a sound evidentiary footing. It would not be correct, therefore, to grant prima facie the Colombian request.

VI
EVIDENCE

A. Admissibility of documentary evidence

126. The Court received several documents submitted as evidence by the Commission and the parties, together with their main briefs (*supra* paras. 4, 7, and 8). As in other cases, the Court receives only those documents that are submitted within the established time limits (Article 57 of the Rules of Procedure)[102] by the parties and the Commission, the admissibility of which is neither challenged nor contested, and whose authenticity is not questioned.[103]

A.1. Evidence on supervening facts

127. CAJAR and CEJIL submitted briefs on August 18, 2021, April 10, 2023, and June 4, 2023,

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99 *Cf. Case of the Miguel Castro Castro Prison v. Peru. Merits, Reparations and Costs.* Judgment of November 25, 2006. Series C No. 160, para. 202; *Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs.* Judgment of September 22, 2006. Series C No. 153, para. 63; *Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs.* Judgment of May 11, 2007. Series C No. 163, para. 76, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, Reparations and Costs.* Judgment of November 20, 2012. Series C No. 253, para. 52.

100 *Cf. Case of the Rochela Massacre v. Colombia*, *supra*, para. 32.

101 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 129. See also, inter alia, *Case of Godínez Cruz v. Honduras. Merits.* Judgment of January 20, 1989. Series C No. 5, para. 135; *Case of Escué Zapata v. Colombia. Merits, Reparations and Costs.* Judgment of July 04, 2007. Series C No. 165, para. 45; *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 05, 2008. Series C No. 182, para. 97; *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194, para. 136; *Case of Gutiérrez and family v. Argentina. Merits, Reparations and Costs.* Judgment of November 25, 2013. Series C No. 271, para. 79, and *Case of Cruz Sánchez et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of April 17, 2015. Series C No. 292, para. 282.

102 Documentary evidence may be submitted, generally and in keeping with Article 57(2) of the Rules of Procedure, together with the briefs included in the application, whether the brief of motions and arguments, or the answering brief, and no evidence may be admitted if presented outside these time limits, except in the cases set forth in Article 57(2) of the Rules of Procedure (that is, force majeure or serious impediment), or in the case of a supervening fact that took place subsequently to these procedural stages.

103 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 140, and *Case of Córdoba v. Paraguay. Merits, Reparations and Costs.* Judgment of September 5, 2023. Series C No. 505, para. 20.

introducing documents that had not been sent earlier and explaining that they referred to new or supervening facts. The Court recalls that, according to Article 57(1) of the Rules of Procedure, the general practice is for documentary evidence to be submitted together with the case submission briefs, the pleadings and motions brief, or the answering brief, whichever applies. The Court therefore notes that evidence submitted outside the procedural time limits is not admissible, except as stated in Article 57(2) the Rules of Procedure, that is, in cases of force majeure or serious impediment, or if it addresses an event that occurred subsequent to the expiration of the time limit.[104] The documents under discussion here introduce facts associated with the case that arose after the pleadings and motions brief had been submitted. They supply evidence of supervening facts as defined in Article 57(2) of the Rules of Procedure, and therefore, they are admitted if there are no objections.[105]

A.2. Annexes to the final written arguments

128. CAJAR y CEJIL, Ms. Arias, and the State submitted documents attached to their final written arguments. The State asked that three of the documents submitted by CAJAR and CEJIL, concerning notices sent to the Commission during the proceedings for precautionary measures, not be admitted; it also asked for six documents adduced by Ms. Arias to be disallowed, arguing that they were time-barred. The Court would reiterate, in response to the State's observations, that its consideration of the facts will include, as relevant, the material submitted during the Commission's proceedings on precautionary measures (*supra* para. 109), and therefore the request to bar documents considered in that procedure is inadmissible; the documentation will be admitted, regardless of whether it is already present in the case file.[106] As there are no objections, it will also admit the other documents provided by CAJAR and CEJIL.[107]

129. The Court takes note that Ms. Arias attached documents to her final written arguments; two contain "tables" that summarize facts related to the cause of action, and the other is an "analysis" of criminal proceedings that also pertain to the cause of action. The State objected to the admission of these documents, claiming that they were time-barred; the Court understands, however, that although the content of the documents addresses facts that occurred prior to the pleadings and motions brief, they do contain a recapitulation or analysis that, rather then confirming facts or adding new ones, are useful for complementing and clarifying the pleadings given in the final arguments. These three documents will therefore be admitted, as will the other

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[104] *Cf. Case of Barrios family v. Venezuela, supra*, paras. 17 and 18, and *Case of Rodríguez Pacheco et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 1, 2023. Series C No. 504, Footnote 17.

[105] The documents were: (a) submitted on August 18, 2021: (i) a note from the petitioners to the Commission, February 24, 2021; (ii) Ruling 0119/2021 GP, April 21, 2021, by the Investigation and indictment unit of the Special Jurisdiction for Peace, and (iii) a note from the petitioners to the Commission, June 14, 2021; (b) submitted on April 10, 2023: Final report *Hay futuro si hay verdad* ("there is a future if there is truth"), submitted in June, 2022, by the Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition (*Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición*, CEV), and (c) submitted on June 6, 2023: (i) photographs of "break-ins" at the homes of Soraya Gutiérrez Argüello, María Irma Argüello Marino, and Reinaldo Villalba Vargas, dated April 30, and May 3, 5, 9, and 17, 2023, and (ii) electronic links to the following proceedings: Special Jurisdiction for Peace, single hearing to contribute to the truth, Salvatore Mancuso, session 1, May 10, 2023, available in Spanish at: https://www.youtube.com/watch?v=WwACv-j5_9g, and Special Jurisdiction for Peace, single hearing to contribute to the truth, Salvatore Mancuso, session 3, May 15, 2023; available in Spanish at: https://www.youtube.com/watch?v=A4uE1B5iyHE.

[106] The note from the petitioners to the Commission, May 26, 2022, submitted by CAJAR and CEJIL, will be admitted. The following documents will not be admitted here, as they are in the case file: (a) a note from the petitioners to the Commission, February 24, 2021, and (b) a note from the petitioners to the Commission, June 14, 2021.

[107] The following documents: (a) *Hechos estigmatizantes en contra del CAJAR* ("stigmatizing actions against CAJAR"); (b) a statement of costs and expenses, with supporting documentation, from CAJAR, and (c) a statement of costs and expenses, with supporting documentation, from CEJIL.

material on which no objections have been put forward.[108] Other documents will not be admitted because they are time-barred; their purpose is to introduce facts that predate the pleadings and motions brief, and they should have been submitted at an earlier stage of the proceedings.[109]

130. CAJAR and CEJIL asked that two of the documents that the State had attached to its final written arguments[110] be declared inadmissible as time-barred; they consisted of "tables" on criminal investigations undertaken by national authorities. The documents will be admitted, however, following the line of argumentation given above. The July 21, 2021 judicial ruling by the domestic courts, also submitted by Colombia, will also be admitted because it is a supervening fact.

A.3. Further helpful evidence, links to electronic data, press releases, and audiovisual material

131. The Court requested further helpful evidence on April 14 and May 8, 2023 (*supra* para. 14), and the Commission sent material on May 9. The State submitted documents on May 22, June 5, and July 6, 2023, and CAJAR and CEJIL, on May 26 and June 9. The Court will hold these submissions admissible, as they were provided in response to its own requests based on Article 58 of the Court's Rules of Procedure.

132. The briefs submitted by the Commission and the parties also included links to documents available digitally. The Court has established that if a party provides at least a direct hyperlink to the document it cites as evidence and it is possible to access the document at the time the brief is lodged, neither legal certainty nor procedural balance is impaired, because it can be found immediately by the Court and by the other parties.[111]

133. Finally, the Court recalls from its case law that press clippings and audiovisual material are admitted and weighed if they contain public and well-known facts or public statements by State authorities, or if they corroborate details about the case, so long as their source and date of publication can be verified.[112] The Court will therefore admit those documents that are complete, or that at least have a verifiable source and date of publication, and it will weigh them together with the full body of evidence, the observations by the parties, and the rules of sound judicial discretion.[113]

B. Admissibility of expert witness and statements

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[108] The documents submitted by Ms. Arias are: (a) *Tabla de hechos por temporalidades* ("table of events by date"); (b) *Tabla de hechos mujeres anonimadas* ("table of facts involving anonymized women"); (c) *Análisis de los procedimientos penales en el caso del DAS* ("analysis of criminal proceedings in the DAS case"); (d) *Cálculo costas y gastos procesales* ("calculation of procedural costs and expenses"), and (e) supporting documents on procedural costs and expenses.

[109] The following documents: (a) statement before the Prosecutor General by Diana Milena Murcia Riaño, October 22, 2009, and (b) identity documents for members of the Rodríguez family. The document that will not be admitted at this stage because it is already in the case file is: *Palabras del Presidente Álvaro Uribe en la posesión de nuevo comandante de la FAC* ("words by the President Álvaro Uribe at the swearing-in of the new FAC commander").

[110] (a) *Tabla de investigaciones penales adelantadas contra miembros del extinto DAS con relación a los hechos del presente caso* ("table of criminal investigations conducted against members of the former DAS concerning facts in the instant case"); (b) *Investigaciones penales por el delito de amenazas contra miembros del CAJAR* (criminal investigations for the crime of threats against members of CAJAR"), and (c) a judgment by the Sixth Criminal Court of the Bogotá Special Circuit of July 21, 2021, case No. 2393-6.

[111] *Cf. Case of Escué Zapata v. Colombia, supra*, para. 26, and *Case of Julien Grisonas family v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 23, 2021. Series C No. 437, para. 49.

[112] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 146, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra,* para. 173.

[113] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, para. 76, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra,* para. 173

134. The Court holds admissible the statements rendered before a public attestor[114] and in the public hearing[115] if they are relevant to the purpose set in the President's Order of summons and with the cause of this action.[116]

135. The State asked that the written opinion submitted by expert witness Federico Andreu Guzmán be refused for the following reasons: (a) it was not provided within the established time limits, as the President said in the public hearing that the document should have been submitted within ten days, that is, by May 23, 2022 at the latest, but the expert lodged his written opinion on May 26, 2022; (b) The expert witness in his written opinion discussed the concept of "internal enemy," which is unrelated to the purpose defined for his opinion and fell outside the sphere of issues that the expert presented at the hearing, and (c) the expert witness made "utterly unfounded subjective statements."

136. The Court points to Article 58(a) of its Rules of Procedure, under which it may admit documents that, although submitted outside the time limits, are deemed useful and necessary for settling the dispute; similarly, the Court cautions that the State has not been deprived of its right of defense because it had the opportunity to see the written version of the expert opinion and provide any observations it found relevant. In any event, it reiterates that the written expert statement will be admitted because it is consistent with the purpose defined in advance for the expert witness by the Court President and with the cause of action, and this will be assessed when it weighs the content of the opinion. As for the conclusions drawn in the expert statement, the Court recalls that the task of the expert witness is to assist the Court by informing it about "issues in contention inasmuch as they relate to his or her special area of knowledge or experience" (Article 2(23) of the Rules of Procedure), and when the Court examines the document, it will be able to weigh the substance of the expert witness' statements, how they fit in with the purpose of this international proceeding, and most importantly, their relevance to the knowledge or experience for which the particular expert witness was chosen for the instant case. Therefore, the written statement by expert witness Federico Andreu Guzmán is admitted, subject to the exception mentioned.

VII
FACTS

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114 The Court received statements rendered before a public attestor from Yessika Hoyos Morales, Reinaldo Villalba Vargas, Eduardo Carreño Wilches, Rafael Barrios Mendivil, Jomary Ortegón Osorio, Luis Guillermo Pérez Casas, María del Pilar Silva Garay, Sebastián Escobar Uribe, Lincoln Miguel Puerta Barrera, Andrés Rivera Acevedo, Gladys Laverde, Katia Karina Niño, Damaris Esperanza Silva Garay, Marcela Cruz, Andrea Torres, Maret Cecilia García Alfonso, Pedro Julio Mahecha Ávila, Nelly Patricia Beltrán, Anatilde Riaño, Federico Mahecha, Álvaro Prieto, Dora Lucy Arias Giraldo, Jaime Jurado Alvarán, Jhon Jairo Gutiérrez, Nicolás Escandón Henao, Gimena Sánchez, Julián Fernando Martínez Vallejos, Ema Graciela Romero Silvera, Soraia da Rosa Mendes, Adolfo Maldonado, Jose Germán Arenas Acosta, María Paulina Riveros, Claudia Jiménez Jaramillo and Mauricio Castro Forero (jointly), Deicy Jaramillo Rivera, Hugo Tovar Pérez, Alfonso Campo Martínez, and Juan Carlos Botero Ospina (evidence file, volumes XXXII, XXXIII, and XXXIV affidavits, folios 44399 to 44580, 44581 to 44860, and 45740 to 46229). It also received expert statements rendered before a public attestor from (a) Angela María Buitrago, (b) Lourdes Castro García and Leonardo Díaz Morales (joint experts); (c) Ángela Ospina Rincón, Gabriel Rueda Cifuentes, José Luis Blanco Núñez, Rocío Clarisa Lemus Rodríguez, Lucía del Pilar Dueñas Barreto, Helena Manrique Charro, and Yaneth Reina Otero (hereinafter "Joint written expert opinion from members of the Psycho-social Care Center (CAPS)") (evidence file, volume XXXIII, affidavits, folios 45246, 45645, and 45659); (d) Laura Angélica Espinosa Gómez, Clemencia Correa González, Rodrigo Morales Romero, and Sofía Angélica Silva Gracia (joint experts); (e) David Kaye; (f) Susan Benesch; (g) Luisa Fernanda Gómez Duque, and (h) Claudio Grossman (evidence file, volumes XXX, XXXI, XXXIII, and XXXV, affidavits, folios 44294 to 44376, 44377 to 44398, 44861 to 45737, and 46231 to 46239).

115 The Court heard statements in the public hearing from Alirio Uribe Muñoz, Soraya Gutiérrez Argüello, and Diana Milena Murcia Riaño. Expert statements were taken at the public hearing from Federico Andreu Guzmán, Antonio Agustín Aljure Salame, Rodrigo Uprimny Yepes, and Luis Guillermo Guerrero Pérez and also submitted in written form (evidence file, volumes XXXVI, XXXVII, and XXXVIII, folios 46241 to 46343, 46345 to 46397, and 46399 to 46438).

116 The purposes of the statements are outlined in the Court President's Order of April 5, 2022.

137. The Court will examine the facts of the instant case based on the evidentiary material brought by the Commission, additional facts reported by the two representatives of the alleged victims in their pleadings and motions briefs, supervening facts reported during the international process, the State's pleadings and arguments, and evidence contained in the case file.

138. The facts will be discussed here in the following order, to facilitate understanding: (a) contextual information on the situation in Colombia for human rights defenders; (b) the "José Alvear Restrepo" Lawyers Collective; (c) acts of violence, intimidation, harassment, and threats against CAJAR and its members; (d) intelligence activities involving members of CAJAR; (e) statements and rulings by current and former public officials concerning CAJAR and its members; (f) measures of protection for CAJAR and its members adopted by the State, and (g) judicial and administrative processes pursued.

A. Contextual information on the situation in Colombia for human rights defenders

139. A number of international organizations have reported on the situation of human rights defenders (hereinafter also "defenders") in Colombia, including United Nations rapporteurs and special procedures, treaty organizations, and the Office of the High Commissioner for Human Rights in Colombia[117] (hereinafter "OHCHR" or "Office"), as well as Colombian institutions.[118]

A.1. Rulings and reports by international organizations

A.1.1. The situation in the 1990s

140. The work of human rights defenders in Colombia was under attack on a number of fronts during the 1990s, including homicides, disappearances, acts of aggression, threats, acts of physical violence, and harassment, in retaliation for the work they were doing.[119] State security forces were found responsible for these acts, as were illegal armed gangs, especially "self-defense" or "paramilitary" groups, who sometimes enjoyed the support of public security forces. Guerrilla groups were also identified as perpetrators of these actions.[120]

141. Legal work particularly stands out in this setting, especially for attorneys working on cases of human rights violations, as they "live under permanent threat—conveyed over the telephone or in writing—and are often forced to leave their areas of work and residence."[121]

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[117] See United Nations General Assembly Resolution 48/141, December 20, 1993. The United Nations High Commissioner for Human Rights opened an office in Colombia in 1997. *Cf.* Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights on Colombia, U.N. Doc. E/CN.4/1997/11, January 24, 1997.

[118] The Inter-American Commission also spoke on the subject in its annual reports (1996 through 2022), drawing attention to situations that were interfering with the work of the defenders in Colombia. Available at: https://www.oas.org/en/iachr/reports/ia.asp.

[119] *Cf.* Commission on Human Rights, Report of the Working Group on Enforced or Involuntary Disappearances, U.N. Doc. E/CN.4/1993/25, January 7, 1993, para. 173; Report of the Representative of the Secretary General on internally displaced persons, Francis Deng, case study on internally displaced persons: Colombia, U.N. Doc. E/CN.4/1995/50/Add.1, October 3, 1994, para. 48; Report of the United Nations High Commissioner on Human Rights, U.N. Doc. E/CN.4/1998/16, March 9, 1998, paras. 113 and 186, and Report of the Working Group on Enforced or Involuntary Disappearances, U.N. Doc. E/CN.4/2000/64, December 21, 1999, para. 39.

[120] *Cf.* Commission on Human Rights, Report of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, U.N. Doc. E/CN.4/1999/39/Add.1, January 6, 1999, paras. 58 and 62, and Report of the Representative of the Secretary General on internally displaced persons, patters of displacement: country visit to Colombia, U.N. Doc. E/CN.4/2000/83/Add.1, January 11, 2000, para. 76.

[121] *Cf.* Commission on Human Rights, Joint report of the Special Rapporteur on the question of torture, Mr. Nigel

Thus, after his visit to Colombia in September, 1996, the Special Rapporteur on the independence of judges and lawyers reported that several lawyers, "in particular those involved in cases against high-ranking military officials, have been forced to leave the country, due to persistent death threats related to their work."[122]

142. The international organizations overtly expressed their concern about official sources who questioned the legitimacy of the work of human rights defenders, specifically "army officers," who made public statements against a variety of sectors, including "human rights defense groups," accusing them of "alleged partiality or sympathy towards the guerrillas."[123]

143. By the end of the 1990s, the OHCHR had pointed to "breakdown" in the human rights situation due to "worsening of the armed conflict,"[124] the failure of the State to implement effective measures such as actions directed against the paramilitary forces, against impunity, or for the protection of human rights defenders, whose situation was described as "precarious" and "very worrisome." The Office also emphasized that military intelligence services possessed certain "reports on the defenders."[125]

A.1.2. The situation in the 2000s

144. The early years of the 2000s saw "an alarming increase in threats, harassment and attacks on human rights defenders," who continued to "carry out their work under very difficult conditions."[126] The OHCHR reported that "[p]aramilitary groups seemed to be responsible for most of the cases reported, but others were attributable to the guerrillas." It added that "public officials themselves," including the President, "helped make the situation even more dangerous," [...] "by speaking out against human rights defenders."[127]

S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, visit to the Republic of Colombia, U.N. Doc. E/CN.4/1995/111, January 16, 1995, paras. 25, 41, and 42.

122 *Cf.* Commission on Human Rights, Report of Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, report on the mission to Colombia, U.N. Doc. E/CN.4/1998/39/Add.2, March 30, 1998, para. 110.

123 *Cf.* Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights on the Office in Colombia, U.N. Doc. E/CN.4/2000/11, March 9, 2000, paras. 27, 32 and 120.

124 On the armed conflict in Colombia and the illegal armed groups known as "paramilitary," see, inter alia, *Case of the Mapiripán Massacre v. Colombia, supra*, paras. 96.1 to 96.3:

> Various guerrilla groups began to operate in Colombia since the 1960s, and due to their activities the State declared that there was a "disturbance of public order and established a state of siege in the territory of the country." In face of this situation, on December 24, 1965, the State issued Legislative Decree 3398 "which organized national defense" […]. Articles 25 and 33 of said Legislative Decree provided the legal basis for the establishment of the "self-defense groups." […] In the framework of the struggle against the guerrilla groups, the State fostered the creation of said "self-defense groups" among the civilian population, and their main aims were to assist the security forces in counterinsurgency operations and to defend themselves from the guerrilla groups. The State granted them permits to bear and possess weapons, as well as logistic support. […] During the 1980s, especially after 1985, it became obvious that many "self-defense groups" had changed their objectives and had become criminal groups, commonly called "paramilitary."

125 *Cf.* Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights on the Office in Colombia, U.N. Doc. E/CN.4/1999/8, March 16, 1999, paras. 21, 33, 102, 144, and 159.

126 *Cf.* Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. E/CN.4/2001/15, March 20, 2001, paras. 169, 173, 230, 259 and 260; Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. E/CN.4/2003/13, February 24, 2003, paras. 61, 105 and 106, and Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. E/CN.4/2004/13, February 17, 2004, paras. 38, 85 and 88. See Human Rights Committee, Concluding observations: Colombia, U.N. Doc. CCPR/CO/80/COL, May 2, 2004, paras. 11 and 18; Commission on Human Rights, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, mission to Colombia, U.N. Doc. E/CN.4/2005/88/Add.2, November 10, 2004, para. 29, and Report of the Special Rapporteur on freedom of opinion and expression, Ambeyi Ligabo, mission to Colombia, U.N. Doc. E/CN.4/2005/64/Add.3, November 26, 2004, paras. 7, 67 and 82.

127 *Cf.* Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights on the

145. The United Nations Special Representative of the Secretary General on Human Rights Defenders visited Colombia in October, 2001, and reported having observed "a pattern of serious abuses" against these people, including threats, disappearances, and murders, "violations [that] are never or rarely properly investigated." She found that threats "were among the most common violations," coming "in the form of anonymous phone calls or notes;" moreover, "[s]ome [...] defenders [had] received funeral wreaths or invitations to their own funerals." The Special Representative said she was "especially concerned" about the intelligence files, as there were "clear parallels between the information collected by military intelligence regarding human rights defenders and the information that appear[ed] in public threats issued by paramilitary forces." Finally, she drew attention to "statements by public officials and the military that publicly assimilated human rights defenders to terrorists," which "contributed directly to creating a climate conducive to the making of threats."[128]

146. Starting in 2005, the OHCHR registered an uptick in threats against human rights defenders, who continued to be victims of homicides and other acts of violence attributed to members of new illegal armed groups, guerrilla groups, and paramilitary groups. According to the Office, rates of impunity remained high, as many of the investigations undertaken by authorities had failed to identify, prosecute, or charge the perpetrators of these acts.[129] It emphasized that in the context of polarization and confrontation between top government officials and members of nongovernmental organizations, the threats and stigmatization of defenders had worsened.[130]

147. By 2009, the situation was arousing greater concern as further information corroborated "that DAS […] had conducted widespread and systematic illegal intelligence operations going at least as far back as 2003" against human rights defenders and others, to "invalidate" their work, considering them "legitimate targets for being potential opponents to Government policies.[131] According to the OHCHR, "some members of the public security forces continued to use State intelligence services to conduct illegal and clandestine operations."[132]

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human rights situation in Colombia, U.N. Doc. E/CN.4/2002/17, February 28, 2002, para. 286, and Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. E/CN.4/2005/10, February 28, 2005, paras. 11 and 120.

128 *Cf.* Commission on Human Rights, Report of the Special Representative of the Secretary-General on Human Rights Defenders, pursuant to Commission on Human Rights resolution 2000/61, Hina Jilani, mission to Colombia, U.N. Doc. E/CN.4/2002/106/Add.2, April 17, 2002, paras. 19, 43, 60, 86, 266, 267, 269 and 283. See also, Commission on Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy, mission to Colombia, U.N. Doc. E/CN.4/2002/83/Add.3, March 11, 2002, paras. 22 and 90.

129 *Cf.* Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. E/CN.4/2006/9, January 20, 2006, paras. 83 and 102; Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/4/48, March 5, 2007, para. 34, and Annex II "Situación de grupos en particular condición de vulnerabilidad o discriminación," paras. 1, 2 and 5, and Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/7/39, February 28, 2008, paras. 60 to 63. See, Commission on Human Rights, Working Group on Enforced or Involuntary Disappearances, mission to Colombia, U.N. Doc. E/CN.4/2006/56/Add.1, January 17, 2006, para. 82.

130 *Cf.* Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/10/32, March 9, 2009, paras. 75 to 79. The protection of human rights defenders in Colombia and the need to adopt measures against their stigmatization were also examined during the universal periodic review in 2008. *Cf.* Human Rights Council, Report of the Working Group on the Universal Periodic Review: Colombia, U.N. Doc. A/HRC/10/82, January 9, 2009, para. 87.

131 See Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Summary of cases transmitted to Governments and replies received, U.N. Doc. A/HRC/14/23/Add.1, June 1, 2010, para. 521.

132 *Cf.* Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/13/72, March 4, 2010, paras. 14, 18, 22 and 29.

148. The then Special Rapporteur on the situation of human rights defenders paid a visit to Colombia in September, 2009, and voiced her concern "about the widespread phenomenon of threats being made against the [...] defenders and their families," adding that the threats "generate[d] a climate of terror within the human rights defenders' community, and impede[d] their legitimate work." The Special Rapporteur described the stigmatization of human rights defenders as a "a crucial issue in Colombia." She emphasized that "[i]mpunity for violations committed against human rights defenders also contribute[d] significantly to their insecurity." She made special mention of women human rights defenders:

> [W]omen human rights defenders are most at risk of harassment and persecution. […] The sexual and gender-based dimension of the attacks, threats, insults and humiliating practices suffered by women defenders in Colombia should be emphasized."[133]

149. The Special Rapporteur on the independence of judges and lawyers issued a report after a visit to Colombia in December, 2009, and cited "criminal lawyers who reported several cases of intimidation and threats" and "claimed that they were often accused, without evidence, of belonging to guerrilla organizations or being linked to them."[134]

A.1.3. The situation in the 2010s

150. The OHCHR expressed concern in 2010 about the "increase in violence caused by illegal armed groups" that emerged after demobilization of paramilitary organizations,[135] "motivated primarily by economic gain from illicit activities," whose victims included human rights defenders. It reported "continuing homicides, threats, attacks, information theft, illegal surveillance and intimidation targeting human rights defenders and their organizations."[136] The situation continued in subsequent years, with " new reports of illegal [intelligence] activities, targeting in particular human rights defenders."[137]

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133 *Cf.* Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, mission to Colombia, U.N. Doc. A/HRC/13/22/Add.3, March 1, 2010, paras. 14, 15, 31, 62, 87, 105 and 120. See Human Rights Council, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, mission to Colombia, U.N. Doc. A/HRC/14/24/Add.2, March 31, 2010, paras. 74 and 75.

134 *Cf.* Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Carina Knaul de Albuquerque e Silva, mission to Colombia, U.N. Doc. A/HRC/14/26/Add.2, April 16, 2010, paras. 55, 66 and 67.

135 On the process of demobilization of paramilitary groups, see, inter alia, *Case of the Rochela Massacre v. Colombia, Colombia, supra*, footnote 188 and paragraph 181:

> In August 2002, several leaders of the United Self-Defense Forces of Colombia [...] publicly announced their intention to negotiate terms for the demobilization of their forces. […] Decree 128 of 2003 established socio-economic and other benefits for those individuals who demobilized. Article 13 established "juridical benefits" and stipulated that, "pursuant to the law, those who formed part of illegal armed organizations who demobilize will have the right to a pardon, conditional suspension of the execution of sentence, cessation of proceedings, preclusion of the investigation, or a writ of prohibition, according to the stage of the proceedings"

136 *Cf.* Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/16/22, February 3, 2011, paras. 10, 23, 32 and 33. See also, Committee Against Torture, concluding observations: Colombia, U.N. Doc. CAT/C/COL/CO/4, May 4, 2010, para. 23; Committee on the Rights of the Child, Concluding observations: Colombia, U.N. Doc. CRC/C/OPAC/COL/CO/1, June 21, 2010, para. 21, and Human Rights Committee, Concluding observations: Colombia, U.N. Doc. CCPR/C/COL/CO/6, August 6, 2010, paras. 8 and 16.

137 *Cf.* Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/19/21/Add.3, January 31, 2012, paras. 14 and 23; Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/22/17/Add.3, January 7, 2013, paras. 37 and 41; Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/25/19/Add.3, January 24, 2014, paras. 69, 75 and 91, and Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/28/3/Add.3, January 23, 2015, paras. 14, 66 and 70. See also, Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, Missions to Colombia and Nepal: follow-up to the recommendations made by the Working Group, U.N. Doc. A/HRC/19/58/Add.4, February 13, 2012, para. 6; Human Rights Council, Report of the Working Group on the Universal Periodic Review: Colombia, U.N. Doc.

151. The Office also stressed that the Public Prosecutor had "adopted a priorization policy and created a new criminal investigation system to improve the investigation and sentencing" of illegal intelligence activities and, among other crimes, the killing of human rights defenders. However, the "lack of results" in these areas "was due to strategic deficiencies including failure to apply situational crime analysis methodologies to link investigations and disarticulate criminal structures."[138]

152. The OHCHR continued after 2016 to report acts of violence against human rights defenders, including killings, threats, violations of the right to privacy and the right to property, disappearances, and sexual violence. According to the Office, the bulk of violent deaths was likely committed by persons linked to criminal interests and connected to paramilitary or guerrilla groups and, to a lesser degree, to State security forces. Furthermore, most of these crimes were committed in rural areas against those who supported policies derived from the Peace Agreement,[139] "such as substitution of illicit crops and the integral rural reform," all of it related to the following factors: (a)power vacuums being left by FARC-EP; (Revolutionary Armed Forces of Colombia-People's Army); (b) scarce or ineffective State presence; (c) the perception by criminal actors that human rights defenders are obstacles to their interests; (d) the persisting stigmatization of human rights defenders; (e) competition among criminal groups to control illegal economic activities, and (f) limited access to economic, social and cultural rights. All of this was compounded by "the high level of impunity for aggressions against human rights defenders."[140] The OHCHR said in 2019 that "[d]efending human rights continued to be a high-risk activity in Colombia."[141]

153. The United Nations Special Rapporteur on the situation of human rights defenders visited Colombia in November and December, 2018, and reported that it was still "the country with the highest number of murders of human rights defenders in Latin America." It emphasized that human rights defenders were "killed and abused for keeping the peace,

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A/HRC/24/6, July 4, 2013, para. 116; Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of Colombia, U.N. Doc. CEDAW/C/COL/CO/7-8, October 29, 2013, para. 23; Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Colombia, U.N. Doc. CRC/C/COL/CO/4-5, March 6, 2015, para. 15; Committee Against Torture, Concluding observations on the fifth periodic report of Colombia, U.N. Doc. CAT/C/COL/CO/5, May 29, 2015, para. 26, and Committee on the Elimination of Racial Discrimination, Concluding observations on the combined fifteenth and sixteenth periodic reports of Colombia, U.N. Doc. CERD/C/COL/CO/15-16, September 25, 2015, para. 27.

138 *Cf.* Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/31/3/Add.2, March 15, 2016, paras. 36, 53, 54 and 79.

139 The " Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace," signed on November 24, 2016, by the Government of Colombia and the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP). Available in Spanish at: https://www.jep.gov.co/Normativa/Paginas/Acuerdo-Final.aspx.

140 *Cf.* Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/34/3/Add.3, March 23, 2017, paras. 54 and 66; Annual Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/37/3/Add.3, March 21, 2018, paras. 8 and 20, and Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/40/3/Add.3, February 4, 2019, paras. 15, 22 and 30. See, Committee Against forced disappearance, concluding observations: Colombia, U.N. Doc. CED/C/COL/CO/1, 27 October 2016, para. 27; Human Rights Committee, Concluding observations: Colombia, U.N. Doc. CCPR/C/COL/CO/7, November 17, 2016, para. 38; Committee on Economic, Social and Cultural Rights, Concluding observations: Colombia, U.N. Doc. E/C.12/COL/CO/6, October 19, 2017, para. 9, and Human Rights Council, Report of the Working Group on the Universal Periodic Review: Colombia, U.N. Doc. A/HRC/39/6, July 9, 2018, para. 120.

141 *Cf.* Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/43/3/Add.3, May 8, 2020, paras. 16, 17, 20, 22, 26 and 28. See also, Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/46/76, March 17, 2021, paras. 21 to 24; Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/49/19, May 17, 2022, paras. 39 to 41, and Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/52/25, February 27, 2023, paras. 61 and 66.

acting against the interests of organized crime, illegal economic activities, corruption and illegal land holdings and for protecting their communities," adding that the "impunity rate for murders of human rights defenders in Colombia [...] stood at around 95 per cent," which "sen[t] a message that the important work they do in society is not recognized, and [was] an invitation to continue violating their rights." The Special Rapporteur also reported having received information that "political leaders, public officials, persons of influence, including from the private sector, and members of illegal armed groups" had stigmatized human rights defenders as as "guerrilleros," "terrorists," "anti-development" and "informants." He said the following about the situation of lawyers:

> Both lawyers representing victims of serious human rights violations during the conflict and human rights lawyers are at risk. They receive death threats and are falsely accused of belonging to subversive groups, and their houses and associations are subject to searches.[142]

A.2. Statements and rulings by national authorities

154. Multiple domestic authorities have also spoken publicly about the "special situation of vulnerability and the "special level of risk" facing human rights defenders in Colombia.[143]

155. The Constitutional Court of Colombia found in Judgment T-1191/04, November 25, 2004:

> [H]uman rights defenders are in a particularly vulnerable position specifically because of their unique exposure to risk due to the types of work and activities they perform. […] Most particularly, regarding the right to life and the right to personal integrity, and in view of the country's serious failure to protect the lives of human rights defenders, this Collective […] announced that the state of affairs was unconstitutional,[144] with the idea that measures would be adopted to protect their rights in the face of constant threats against their lives.[145]

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[142] *Cf.* Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Colombia, mission to Colombia, Michel Forst, U.N. Doc. A/HRC/43/51/Add.1, December 26, 2019, paras. 20, 25, 26, 27, 46, 52 and 58. See also, Committee on the Elimination of Discrimination against Women, Concluding observations on the ninth periodic report of Colombia, U.N. Doc. CEDAW/C/COL/CO/9, March 14, 2019, para. 17; Committee on the Elimination of Racial Discrimination, Concluding observations: Colombia, U.N. Doc. CERD/C/COL/CO/17-19, January 22, 2020, para. 28, and Committee on Enforced Disappearances, Concluding observations: Colombia, U.N. Doc. CED/C/COL/OAI/1, June 2, 2021, para. 24.

[143] The Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition said in its final report that "the harassment experienced by victims [of the armed conflict] is palpable in the persecution of human rights defenders." *Cf.* Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, final report, *Hay futuro si hay verdad: hallazgos y recomendaciones*, ("there is a future if there is truth: findings and recommendations"), Bogotá, June 28, 2022, pp. 473 and 474 (evidence file, volume XLII, annex to the brief of CAJAR and CEJIL, April 10, 2023, folios 47424 and 47425). The Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition was created by Legislative Decree 1 of 2017 as a "temporary, extrajudicial body," one of whose purposes was to "find the truth of what happened in the framework of the [armed] conflict, help shed light on the violations and infringements committed in it, and offer all of society an explanation of its complexity." See the website of the Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, available in Spanish at: https://web.comisiondelaverdad.co/.

[144] Constitutional Court Judgment T-590/98, October 20, 1998 (available in Spanish at: https://www.corteconstitucional.gov.co/relatoria/1998/T-590-98.htm) found, in response to a constitutional motion brought by attorney Pedro Julio Mahecha Ávila:

> [T]he attack on human rights defenders has continued […], and the State has been negligent in protecting them, especially given its knowledge of the climate of threats against these activists. […] It is clear, then that […] there is an unconstitutional state of affairs in the failure to provide human rights defenders with due protection.

[145] *Cf.* Constitutional Court Judgment T-1191/04, November 25, 2004, available in Spanish at: https://www.corteconstitucional.gov.co/relatoria/2004/T-1191-04.htm. The Constitutional Court, in Judgment T-124/15, March 26, 2015 (available in Spanish at: https://www.corteconstitucional.gov.co/relatoria/2015/T-124-15.htm), pointed to "the situation generally facing women human rights defenders because they are exposed to special risks as women and as people who specifically promote and protect women's rights."

156. The Constitutional Court revisited the situation of human rights defenders years later, in 2020, in the scenario that emerged after the Government and the FARC-EP signed the peace agreement in November, 2016:

> The defense of rights is "an activity that entails serious risks, especially in view of the context of armed conflict the country has experienced, which renders them vulnerable."[146] [T]he power vacuum brought by the demobilization of the most powerful guerrilla group in the territories, combined with the State's failure to enter these areas fully and effectively, opened doors to new violent actors. […] [I]t is undeniable that the violence against human rights leaders and defenders is a complex phenomenon, with multiple players and many structural factors that feed the cycles of violence. The murder of social leaders is a problem that cannot be solved simply by assigning more armored vehicles or escorts. […] A comprehensive response to this alarming situation would mean addressing problems that cut across social, environmental, and economic life […].[147]

157. The Ombudsman published a report in 2017 entitled *Violencia y amenazas contra los líderes sociales y los defensores de derechos humanos* ("violence and threats against social leaders and human rights defenders"), stating:

> Attacks on human rights defenders mainly consist of assaults on their lives and personal integrity. They sometimes begin with threats, later becoming attacks by paid killers. The threats are a way of goading the defenders into dropping their work of demanding rights, and the fear spreads to their families and the entire community or social setting where they are active. […] When the aggressors are unable to intimidate them with threats and harassment, murders ensue. Murder is the materialization of the assault on any work to defend human rights. […] Other cases involve forced disappearance, by which the violent action in rendered invisible and uncertainty spreads among social organizations and in community processes.[148]

A.3. Government measures adopted for the protection of human rights defenders[149]

A.3.1. Protection programs and other public policy measures

158. Article 81 of 1997 Law 418 ordered the national Government to create and operate a "program for the protection of persons facing imminent danger to life, integrity, safety, or freedom for reasons associated with political or ideological violence or with the internal armed conflict," including "[l]eaders or activists of human rights organizations."[150]

159. Order 2816 in 2006 set up the "Human Rights Protection Program" under the auspices

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[146] Extract from Constitutional Court Judgment T-555/2017, August 30, 2017, available in Spanish at: https://www.corteconstitucional.gov.co/relatoria/2017/C-555-17.htm.

[147] *Cf.* Constitutional Court Judgment T-469/20, November 3, 2020, available in Spanish at: https://www.corteconstitucional.gov.co/relatoria/2020/T-469-20.htm.

[148] *Cf.* Ombudsman. Special report on risk: *Violencia y amenazas contra los líderes sociales y los defensores de derechos humanos*, Bogotá, March, 2017, pp. 28, 56 and 57. Available in Spanish at: https://docplayer.es/55892602-Informe-especial-de-riesgo-violencia-y-amenazas-contra-los-lideres-sociales-y-los-defensores-de-derechos-humanos.html.

[149] The Inter-American Court has said:

> [T]his Court recognizes […] that the [Colombian] State has adopted a series of measures designed to assist and protect human rights defenders including, in particular, the following: (i) legal recognition of human rights organizations; (ii) public recognition of organizations composed of human rights defenders by State authorities; (iii) the formulation and implementation of the National Action Plan on Human Rights and International Humanitarian Law; and (iv) provision of police protection to human rights organizations, among others.

Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 85.

[150] 1997 Law 418, "[t]o adopt instruments for building peaceful coexistence and effective justice, and to provide other measures." Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1659899. The law was adopted for a two-year term (Article 131), extended under the 1999 Law 548 (three years, Article 1), 2002 Law 782 (four years, Article 1), and 2006 Law 1106 (four years, Article 1).

of the then Ministry of Internal Affairs and Justice, designed to "support the national Government in safeguarding the life, integrity, freedom, and safety of population groups […] in certain, imminent and exceptional danger as a direct consequence and result of the exercise of their activities or functions." The program covered "[l]eaders or activists of human rights organizations." The rules tasked the program to "perform its duties of protection and personal safety in conjunction with the National Police or the Administrative Department of Security (DAS),"[151] both of which were assigned to implement protection systems for program beneficiaries.[152]

160. The early warning system (SAT) was created in 2001, understood initially as a committee of the Ombudsman's Office to document violations committed by different parties. The SAT is currently managed by a specific delegate of the Ombudsman, a position that was set up in 2003. The more recent 2017 Order 2124 created the Inter-sectoral commission for rapid response to early warnings (CIPRAT), one of whose tasks is to "coordinate and promote preventive and rapid response measures when the Ombudsman warns of risk factors, such that […] competent authorities can urgently adopt all necessary and relevant measures to prevent and avert risks and threats."[153]

161. Meanwhile, the President issued 1999 Executive Order 7, highlighting the importance of organizations that work to defend human rights, ordered all civil servants to avoid: (a) challenging the legitimacy of these organizations and their members; (b) making statements that could discredit them, harass them, or incite others to harass them, and (c) making public or private statements that stigmatize their work.[154]

162. A later 2011 Order, number 4065, provided for the creation of the National Protection

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[151] See Orders 625 of 1974 (Article 1.c), 512 of 1989 (Article 6.c) and 2110 of 1992 (Article 6.3) for more details on the protection duties of the DAS. Other regulatory provisions addressed this task directly, including 2000 Order 978, "to create the Special Comprehensive Program for leaders, members, and survivors of the Patriotic Union and the Colombian Communist Party." Order 218 in 2000 (Article 3) mandated the DAS to "coordinate with other public organizations offering protection services and transferring this role to them," such that DAS "would continue to lend such services […] until they were taken on by other governmental entities or bodies;" this was terminated under 2004 Order 643 (Article 2, *infra* para. 314). Order 2816 in 2006 then set up the "Program for the Protection of Human Rights," under the then Ministry of Internal Affairs and Justice, and ordered that DAS protection duties "should be gradually curtailed as the different stages of the transfer process were completed, that is, on December 30, 2008" (Article 3), but the date was extended under 2008 Order 4785, 2009 Order 4864, and 2010 Order 1030, through June 30, 2010; this term was reiterated in 2010 Order 1740 (regulating Article 81 of 1997 Law 418). Finally, 2011 Order 4057 eliminated the DAS, transferring these duties to the National Protection Unit (created under 2011 Order 4065). See the joint statement by Claudia Jiménez Jaramillo and Mauricio Castro, May 2, 2022, rendered before a public attestor (evidence file, volume XXXIV, affidavits, folios 45891 to 45893).

[152] 2006 Order 2816, to "design and regulate the Human Rights Protection Program of the Ministry of Internal Affairs and Justice, and adopt other provisions." Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?id=1777505. The regulations cover a variety of "protection and emergency measures," "prevention measures," and "protection measures" for program beneficiaries.

[153] Order 2124 of 2017, "regulating the system for prevention and rapid response alerts to the presence, actions, and/or activities of criminal organizations, acts and conduct that jeopardize the rights of the population and the implementation of the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace." Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?id=30034436#ver_30139336. See the State's answering brief, May 17, 2022, submitted in the proceedings of this Court (merits file, volume II, folio 1010).

[154] 1999 Presidential Executive Order 7, September 9, 1999. Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=DirectivasP/30021530. The Ministry of National Defense issued 2003 Order No. 09, setting its policies "for protecting the human rights of union organizers and human rights defenders," and, among other things, ordering "members of the military and police, in the performance of their duties, to respect at all times the work that trade-union leaders and human rights defenders play in society, so long as their work remains within the current legal framework." *Cf.* Order 09 MDDHH-725, July 8, 2003, of the Ministry of National Defense (evidence file, volume XVII, annex 39 to the answering brief, folios 32471 to 32473). The Colombian State also reported that the Office of the Solicitor General approved 2017 Order 002, "urging civil servants, in the framework of their duties, to respect and guarantee activities performed by human rights defenders and […] to avoid any conduct that could discredit them or incite others to harass their work" (merits file, volume II, folio 1032).

Unit as a "specialized body that will perform the duties heretofore developed by the Ministry of Internal Affairs and Justice and the" DAS in this area.[155]

A.3.2. Measures for investigation and prosecution of crimes committed against human rights defenders

163. The Prosecutor General (hereinafter also "Prosecution") in 2016 designed the "Strategy for investigation and prosecution of crimes against human rights defenders" to "ensure that investigations of crimes committed against human rights defenders proceed in accordance with international standards of due diligence."[156] The Prosecutor General then issued Order 002 on November 30, 2017, "setting general guidelines for the investigation of crimes committed against human rights defenders in Colombia."[157]

164. Order 898 of 2017 created a new unit inside the Office of the Prosecutor General, the "special investigative unit tasked with dismantling the criminal organizations and behaviors responsible for murders and massacres perpetrated against human rights defenders, social movements, or political movements, or threatening or attacking people involved in implementing the peace agreements and peace building, including criminal organizations that are acknowledged successors of the paramilitary movement and its support networks." The order assigned this special unit to investigate and chase down "the criminal organizations and conducts responsible for homicides, massacres, systematic violence especially against women, or who threaten or attack people taking part in the implementation of the agreements and the building of peace"[158] and prosecute them either in the regular courts or in the Justice and Peace jurisdiction.[159]

165. Another measure was the 2018 creation of a national working group in the Office of the Prosecutor General "to support, promote, and coordinate the analysis, investigation, and prosecution of cases of threats against human rights defenders."[160]

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[155] Order 4065 of 2011, "to create the National Protection Unit (UNP) and define its purpose and structure." Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1541025. In the words of witness María Paulina Riveros, the creation of the National Protection Unit gathered into a single agency "the more than 10 protection programs existing at that time in Colombia." *Cf.* Statement by María Paulina Riveros, May 2, 2022, rendered before a public attestor (evidence file, volume XXXIV, affidavits, folio 46182).

[156] *Cf.* Strategy for investigation and prosecution of crimes against human rights defenders (evidence file, volume XIX, annex 69 to the answering brief, folios 35085 to 35087). The strategy sets out eight lines of action, as follows: (a) begin to build an institutional culture with the entire staff of the Prosecution; (b) first hypothesis for investigation: a link between the criminal act and the human rights defense work; (c) apply a methodology for tracing connections among cases; (d) create roving units able to arrive quickly at the scene of the incident; (e) develop and apply protocols for intervention that guarantee the greatest possible effectiveness in securing the scene of the crime and safeguarding evidentiary material; (f) issue guidelines to standardize the investigation of crimes against human rights defenders (2017 Order 002); (g) strengthen investigations for the crime of threats against defenders, and (h) a work plan for internal coordination among the different departments.

[157] *Cf.* Prosecutor General order 002, November 30, 2017, setting general guidelines for the investigation of crimes against human rights defenders in Colombia (evidence file, volume XIX, annex 68 to the answering brief, folios 35073 to 35083). The order issues instructions on three specific points: (a) the concept of the human rights defender; (b) due diligence in investigations of crimes against human rights defenders, including, among other things, that "criminal investigation begins with the hypothesis that the crime was committed because of the human rights defense work or to put a stop to it," and that "investigations should be developed with a view to tracing connecting lines among cases, either through patterns that explain how the crime was committed, or based on the status of the victims within the particular context of social conflict, geographic space, or political disputes," and (c) evidentiary details about the crime of homicide against human rights defenders.

[158] 2005 Law 975 "provided for the reintegration of members of illegal armed groups to contribute effectively toward bringing about peace in the country, as well as other provisions for humanitarian agreements;" it also made reference to "processes of justice and peace," familiar to judicial officials. Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1672044.

[159] 2017 Order 898. Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/30031846.

[160] *Cf.* The State's answering brief of May 17, 2022, submitted as part of the proceedings before this Court (merits

166. Finally, 2018 Law 1908 added Article 188E to the 2000 Criminal Code, Law 599, to codify the crime of "threats against human rights defenders and civil servants."[161]

B. The "José Alvear Restrepo Lawyers Collective"

167. CAJAR is a nongovernmental organization that acquired legal personality with Colombian authorities in 1980, registered in the public books as a "nonprofit entity."[162] It is headquartered in the city of Bogotá, and its purpose, according to its website, is to:

> Defend and promote human rights understood comprehensively, assuming that all rights and freedoms are indivisible and interdependent, to contribute to the fight against impunity and the building of a just, equitable society, from the perspective of political, economic, social, and cultural inclusion, and foster respect for and full exercise of the rights of peoples and sovereignty, self-determination, development, and peace with social justice.[163]

168. The "lines of action" that the organization develops in its human rights defense work include: (a) fighting against impunity, (b) defending territory and fighting the "climate crisis," and (c) overcoming the armed conflict and building peace.[164]

169. As part of its work, the collective has represented several victims before the inter-American system.[165] The State spoke about the work of CAJAR in its answering brief, saying

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file, volume II, folio 1038), and statement by Hugo Alexander Tovar Pérez, May 2, 2022, given before a public attestor (evidence file, volume XXXIV, affidavits, folios 46028 and 46030). Hugo Alexander Tovar Pérez stated, under Court Order 0-0775 of April 29, 2021, that the Office of the Prosecutor General had created the "national working group to facilitate, support, and provide nationwide coordination of the analysis, investigation, and prosecution of threats against human rights defenders or members of specific population groups," and at the same time implemented mechanisms to bring about "better coordination" among the institution's different departments responsible for prosecuting these crimes.

[161] Law 1908 of 2018, "strengthening the investigation and prosecution of criminal organizations, implemented measures for bringing them to justice and also enacted other provisions." Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/30035424. The newly codified crime is regulated as follows:

> Article 188E. Threats against human rights defenders and civil servants. Whoever uses any means to intimidate or threaten a person working in activities to promote and protect human rights or members of this person's family, or any organization engaged in the defense of human rights, or political or union leaders, informing them of the intent to cause them harm in ways that constitute one or more crimes because of or on the occasion of their activities, shall be subject to a prison sentence of seventy-two (72) to one hundred twenty-eight (128) months and a fine of seventeen point seventy-seven (17.77) to two hundred monthly minimum wages at the rate in effect at the time. […]

[162] *Cf.* Certificate of creation and legal representation of the nonprofit organization: José Alvear Restrepo Lawyers Collective, issued by the Bogotá Chamber of Commerce on August 29, 2002 (evidence file, volume VI, file of the proceedings before the Commission, folios 18774 to 18776). Rafael Barrios Mendivil, one of the founding members of the Collective, stated in January, 1980, that the organization had attempted to acquire legal personality in 1980, but was refused the first time because the by-laws said that its purpose was to "defend people in prison or experiencing political persecution." In response, he explained, they had removed this item from their objectives, after which CAJAR was authorized to operate on May 16, 1980. *Cf.* Statement by Rafael María Barrios Mendivil, March 3, 2022, rendered before a public attestor (evidence file, volume XXXIII, affidavits, folio 44630).

[163] Website of the José Alvear Restrepo Lawyers Collective, "Who are we?" Available in Spanish at: https://www.colectivodeabogados.org/quienes-somos/.

[164] Website of the José Alvear Restrepo Lawyers Collective, Lines of action. Available in Spanish at: https://www.colectivodeabogados.org/ejes-de-trabajo/.

[165] See, *Case of Gutiérrez Soler v. Colombia*. Judgment of September 12, 2005. Series C No. 132, paras. 5 and 16; *Case of the Mapiripán Massacre v. Colombia, supra*, paras. 5 and 17; *Case of the Rochela Massacre v. Colombia, supra*, paras. 1 and 4; *Case of Escué Zapata v. Colombia, supra*, footnote 1 and para 5; *Case of Cepeda Vargas v. Colombia, supra*, paras. 1 and 4; *Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits and Reparations.* Judgment of November 30, 2012. Series C No. 259, para. 2 and footnote 5; *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 14, 2014. Series C No. 287, footnote 1 and para. 6; *Case of Villamizar Durán et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 20, 2018. Series C No. 364, paras. 2 and 8; *Case of Petro Urrego v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 8, 2020. Series C No. 406, para. 2, and *Case of Movilla Galarcio et al. v. Colombia. Merits, Reparations and*

that the organization "has stood up to a variety of people—members of Government, economic sectors, and illegal organizations—in defense of the rights of victims," and that the State "recognizes the great social task it [...] is performing for the protection of rights."[166]

C. Acts of violence, intimidation, harassment, and threats against CAJAR and its members

170. The petitioners in the procedure before the Commission reported incidents they described as acts of violence, intimidation, threats, and harassment against the Collective as an organization and against some of its members and their families. CAJAR and CEJIL reported additional incidents as supervening facts during the process before the Court.

C.1. Acts against CAJAR

171. A poster was put up on May 21, 2002, in several universities and in the Office of the Prosecutor General, with the heading "Solidarity with a national hero,"[167] listing several signors, including "retired fellow military personnel." The text on the poster described the Collective as the "legal wing of the E.L.N. [Army of National Liberation]," singling out the lawyer Luis Guillermo Pérez Casas, a member of CAJAR, as "head of the legal wing of the E.L.N." The poster also said that the Collective "ha[d] been operating for a long time in the guise of a [human rights] defense organization with advisory status before the [Organization of American States], duping everyone, with offices in Brussels, Switzerland and other countries where it manage[d] finances and international political warfare."[168]

172. A notice was issued on September 29, 2003, signed by "commanders of paramilitary groups" and making reference to "Allied farmer self-defense forces," "Bolívar central bloc" and "Conquerors of Arauca." The notice was dated September 17 of that year and alluded to "the most recent public statements by the […] President" (*infra* para. 368). It read as follows:

> There cannot be the slightest doubt about the deep-seated sense of democratic authority that our country is currently feeling, when we hear the Chief of State speaking out such harsh, real truths, things that our country had not heard for so many decades […]. Groups of lawyers are at work in Colombia, defending "political prisoners" and bearing such suggestive, emblematic names as that of José Al[v]ear Restrepo […]. Using more familiar speech, that is, the language of those who, like us, are stuck in the very scene of the conflict, the NGOs that stir up controversy about the armed conflict must be described in terms of their goal […] of defending human rights, in these terms: [i]f the goal

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Costs. Judgment of June 22, 2022. Series C No. 452, para. 2 and footnote 1.

166 The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1051).

167 CAJAR and CEJIL reported that the poster urged "solidarity" on behalf of an Army officer who, at the time, was under investigation for his alleged participation in acts including extrajudicial execution and torture. The Collective had served as legal representatives for the civilian parties in these criminal proceedings (case file, volume I, folio 493).

168 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folios 13119 and 13120); document entitled *Solidaridad con un héroe nacional* ("solidarity with a national hero") (evidence file, volume I, annex to the Report on the Merits, folio 2865), and statement before a public attestor by Luis Guillermo Pérez Casas, April 29, 2022 (evidence file, volume XXXIII, affidavits, folio 44677). CAJAR y CEJIL said that the Collective had reported the incident publicly at the time; available at:http://www.derechos.org/nizkor/colombia/doc/colectivo.html. The Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Representative of the UN Secretary General on the Situation of Human Rights Defenders sent the Colombian Government a joint communiqué on the matter. *Cf.* Commission on Human Rights, Report of the Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, Situations in specific countries or territories, U.N. Doc. E/CN.4/2003/65/Add.1, February 25, 2003, para. 37. The OHCHR 2002 annual report said: "A matter of special concern is the situation faced by some members of human rights organizations such as [...] the José Alvear Restrepo Association of Lawyers, who in some cases have had to abandon their offices owing to repeated threats." *Cf.* Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. E/CN.4/2003/13, February 24, 2003, para. 103.

> is to play along with the communist guerrillas, then we can see that this is the group of nongovernmental organizations, defenders of the rights of certain humans or defenders of the "rights" of those who are inhuman. Here they gather together, the organizations that howl against the exercise of authority, and the well-paid detractors of the policy for democratic security, […]. These organizations, heavily funded by communist terrorism, invest their millions in aggressive publicity campaigns against democratic governments and societies, as occurred recently with the glossy publication "the authoritarian bewitchment" […].[169]

173. The communiqué made reference to a publication entitled *El embrujo autoritario* ("the authoritarian bewitchment") "critical of Government policies,"[170] that, according to statements by the alleged victims, was claimed to have been produced by several nongovernmental organizations, including the Collective.[171]

174. The Collective lodged a motion for constitutional relief in 2004 against the then President for statements he had made (*infra* para. 456), and said that on February 16 of that year, they had received an email saying:

> [T]here is a clearly evident, highly illegal interest at the top levels and among organizations such the one cited, the José Alvear Lawyers Collective, who have been loudly weeping and wailing, defending these outlaws tooth and nail. It is all because of what we have briefly explained here, as we will soon be sending you a notice that we hope you will keep in mind and not ignore for your own good […].[172]

175. CAJAR also said in its constitutional motion that it had received another email on March 5, 2004, that read as follows:

> [Y]ou, members of José Alvear, you group of sponsors of the guerrillas, have been constantly, defiantly haranguing the self-defense forces […]. [T]he Alvear group has always been named […] on the black list of people who sneer at these armed activists[,] you are qualified and/or classified as agitators and monopolizers of uncontrolled action, so you will have to pay for your crass, glaring mistakes.[173]

176. Attorney Soraya Gutiérrez Argüello filed a claim in a statement to the Prosecutor General on May 27, 2005, saying that several classified ads had appeared that same month in the *El Tiempo* newspaper, without authorization by the Collective, announcing that it was hiring people to fill several positions. The ads, she pointed out, announced that interviews would be held by appointment at the same date and time already scheduled for meetings with victims of cases being litigated by CAJAR. Ms. Gutiérrez Argüello explained that these notices "could

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169 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13122); document *Por qué ladran los perros?* ("why do dogs bark?"), September 17, 2003 (evidence file, volume I, annex to the Report on the Merits, folios 2914 to 2918), and statement before a public attestor by Jomary Liz Ortegón Osorio, May 2, 2022, (evidence file, volume XXXIII, affidavits, folio 44646). The State, in its answering brief on May 17, 2022, submitted in the proceedings before this Court, said, "[i]t is true that the communiqué included statements apparently spoken by" the United Self-Defense Forces of Colombia (merits file, volume II, folio 1068).

170 *Cf.* Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, final report *Hay futuro si hay verdad* ("there is a future if there is truth"): findings and recommendations, Bogotá, June 28, 2022, pp. 395 and 396 (evidence file, volume XLII, annex to the brief of CAJAR and CEJIL, April 10, 2023, folios 47346 and 47347):

> When a group of nongovernmental organizations (NGOs) published the report "The authoritarian bewitchment" in 2003, criticizing Government policies, President Uribe gave a vehement speech that was broadcast at prime time over all the television channels, referring to the human rights defenders as "people playing politics at the service of terrorism, with their cowardly waving of the human rights flag, trying to return to terrorism the spaces that law enforcement and the general citizens of Colombia have wrested from it" […].

171 *Cf.* Statement before a public attestor by Reinaldo Villalba Vargas, April 28, 2022 (evidence file, volume XXXIII, affidavits, folio 44596), and statement before a public attestor by Jomary Liz Ortegón Osorio, May 2, 2022 (evidence file, volume XXXIII, affidavits, folio 44646). Attorney Villalba Vargas said in his statement that the work of the Collective "in the 2000s" "was oriented toward shining a light on and defending those who were victimized by public statements of the democratic security policy."

172 *Cf.* Constitutional Court Judgment T-1062/05, October 20, 2005. Available in Spanish at: https://www.corteconstitucional.gov.co/Relatoria/2005/T-1062-05.htm.

173 *Cf.* Constitutional Court Judgment T-1062/05, October 20, 2005.

have been a veiled threat, saying that someone from the office […] may no longer be around."[174] Information made available to the Court reveals that the investigation for the incident is currently at the stage of preliminary inquiries (*infra* para. 400).

177. Another email was received on May 8, 2006, signed by "Colombia forever free of the left," whose text included the following:

> To: [A]lvear [R]estrepo [C]ollective, [this is an invitation for you to join our crusade against terrorism or else be ready for every one of your members to suffer the full weight of our presence, we enjoy the favor of the armed forces of state who always support us in a grand display of sovereignty].[175]

178. A printed "communiqué" appeared on April 10, 2010, signed by the "[armed group Los Rastrojos—urban commandos]" and leveling threats at several organizations, including the Collective. The threat made reference to "a new, exhaustive, lengthy intelligence process that included surveillance" and "direct infiltration of social organizations," and telling them "...you will drop your subversive talk," because "otherwise things will not stop at threats and we will go back to what was happening in the 90s with no mercy and no fear," as well as other similar messages.[176]

179. An email was received on May 14, 2010, containing a "threatening message," signed by the "Black Eagles central bloc" and fingering CAJAR and other organizations for "[interfering with the policies of] the [Colombian Government]," while "declaring" them a "[target for military action and for an extermination plan]." A new threat came to light on May 17, 2010, that "included CAJAR," was signed by the "[armed group Los Rastrojos—urban commandos]," and said that "due to repeated disobedience by the organizations described in the April 10 notice" (*supra* para. 178), "we cannot be held responsible for what could happen to the leaders of these organizations […], since we have already begun to exterminate every one of them without mercy."[177]

180. "Another threat was received" by email on June 11, 2010, signed by the "Black Eagles metropolitan bloc." It named several organizations, including the Collective, and described them as "vultures and birds of prey," adding: "We continue to declare them military targets, and now international NGOs are hiding among them in disguise with the intention of helping

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[174] *Cf.* File 110016000027200500148 (evidence file, volume XIX, annex 63 to the answering brief, folios 34661 and 34662). According to the complainant, one of the ads recruited: "A[ttorneys, psychologists, sociologists, other professions and students of these professions, with or without experience, to begin immediately.] I[nquire for] J[osé] A[lvear] [R]estrepo." Another ad said: "Company seeking guards of either sex, no experience necessary]. E[xcellent compensation, to begin immediately, interviews Saturday, May 14, 2005, from 8:00 AM to 2:00 PM, report with resume to 6-66 16th Street, office 25-06, Avianca] building, ask for J[osé] A[lvear]." The State's May 17, 2022, answering brief confirmed that "this publication does indeed exist" (merits file, volume II, folio 1097).

[175] *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folios 13123 and 13124), and document including a copy of an email dated May 8, 2006 (evidence file, volume I, annex to the Report on the Merits, folios 3000 and 3001). The State said in its answering brief, "the document does indeed exist" (merits file, volume II, folio 1069). The Representative of the UN Secretary General on the Situation of Human Rights Defenders sent a note to the Government of Colombia concerning the "threatening email." *Cf.* Human Rights Council, Report of the Special Representative of the UN Secretary General on the Situation of Human Rights Defenders, Hina Jilani, U.N. Doc. A/HRC/4/37/Add.1, March 27, 2007, para. 177. See also, Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, Doc. A/HRC/4/48, March 5, 2007, Annex II "Situación de grupos en particular condición de vulnerabilidad o discriminación," para. 3.

[176] *Cf.* Communication from the petitioners to the Commission, April 30, 2020, (evidence file, volume III, annex to the Report on the Merits, folio 7758), and copy of the document "Comunicado público # 003" dated April 10, 2010 (evidence file, volume III, annex to the Report on the Merits, folio 7764).

[177] *Cf.* Communication from the petitioners to the Commission, May 21, 2010 (evidence file, volume III, annex to the Report on the Merits, folios 7737 and 7738); a document containing a copy of an email dated May 14, 2010 (evidence file, volume III, annex to the Report on the Merits, folios 7740 and 7741), and copy of the document "Threatening text received May 17, 2010" evidence file, volume III, annex to the Report on the Merits, folio 7742).

the FARC, who have international assistance and paint their helpers as human rights defenders."[178]

181. A call went out in late August, 2010, for a demonstration against the Collective; it was held on September 1, 2010 in front of its head offices in the city of Bogotá. The protest was organized by the "Nationalist movements and active reserve of Colombia" and the "Asociación colombiana de oficiales en retiro de las fuerzas militares" (*Colombian association of retired military officers*, ACORE).[179] Protesters held up posters and signs against CAJAR, branding its members, among other things, as "terrorists," "guerrillas," and "traitors of the country." The slogans particularly targeted Collective member Rafael Barrios Mendivil, whose work in several legal processes included representing the victims of the "Palace of Justice" case.[180] Another protest took place one month later, on October 1, with a lower turnout, but repeating the same messages against the organization and Mr. Barrios.[181]

182. A "threatening email" was received on October 10, 2010, signed by the "Black Eagles," and saying: "[we are still declaring you a military target]" and "[the extermination plan against the guerrilla leaders who hide their faces behind the facade of NGOs and organizations of displaced persons and who help them in the guise of human rights defenders]."[182]

183. A threat was sent on February 15, 2011, "to the email addresses of journalists, human rights defense organizations, leaders of the victims of forced displacement and of those involved in proceedings to recover their land, social movements, indigenous movements, trade union activists, and victims of [a] threat," signed by "Black Eagles capital bloc," and saying: "[the time has come to exterminate and annihilate all the people and organizations that pass for human rights defenders]."[183]

184. "A threat was received" on June 2, 2011, signed by "Los Rastrojos—urban commandos" against several human rights organizations. The threat read: "we will not allow you to wreck the policies of our President […] and anyone who gets in the way will be declared a military target, no matter how much protection they have."[184]

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178 *Cf.* Communication from the petitioners to the Commission, June 15, 2010, (evidence file, volume III, annex to the Report on the Merits, folio 7727), and a document containing a copy of an email dated June 11, 2010 (evidence file, volume III, annex to the Report on the Merits, folio 7740 and 7741).

179 CAJAR and CEJIL added that the ACORE organization published an article on August 8, 2018, *Retos para el campo militar* ("challenges for the military"), stating that "human rights organizations are 'fighting a legal battle' against the Armed Forces." *Cf.* CAJAR and CEJIL pleadings and motions brief before this Court, November 9, 2020 (merits file, volume I, folio 547), and communication from the petitioners to the Commission, September 25, 2018, (evidence file, volume V, electronic file on precautionary measures before the Commission, folios 12822 and 12823). The State said in its answering brief on May 17, 2022, that "[t]he publication is real"; however, "it makes no direct reference to CAJAR" (merits file, volume II, folio 1135).

180 See, *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia, supra*.

181 *Cf.* Communication from the petitioners to the Commission, October 27, 2010 (evidence file, volume V, electronic file on precautionary measures before the Commission, folios 10183 and 10184), and statement before a public attestor by Jomary Liz Ortegón Osorio, May 2, 2022, (evidence file, volume XXXIII, affidavits, folio 44648). According to CAJAR and CEJIL, a retired member of the military, convicted for the Mapiripán massacre, sent a letter to the President expressing his support for the September 1, 2010 demonstration. *Cf.* The CAJAR and CEJIL pleadings and motions brief before this Court, November 9, 2020 (merits file, volume I, folio 616). The State confirmed in its answering brief that the September 1, 2010 demonstration "did occur," although "there is no evidence that it was attended by government personnel or people who have held similar movements against human rights organizations" (merits file, volume II, folio 1129).

182 *Cf.* Communication from the petitioners to the Commission, October 27, 2010, (evidence file, volume III, annex to the Report on the Merits, folio 7617), and a document containing a copy of an email dated October 10, 2010 (evidence file, volume III, annex to the Report on the Merits, folio 7666).

183 *Cf.* Communication from the petitioners to the Commission, February 21, 2011 (evidence file, volume III, annex to the Report on the Merits, folios 7501 and 7502).

184 *Cf.* Communication from the petitioners to the Commission, June 6, 2011 (evidence file, volume III, annex to the Report on the Merits, folio 7411).

185. "A manila envelope" was delivered to the Collective's offices on February 27, 2012, "sent from a false addressee called ''José Alfredo Jiménez,'" containing "a threat by […] 'Los Rastrojos urban commandos,' [and] declaring [CAJAR] and other organizations as military targets."[185]

186. "A threat" sent by e-mail on July 4, 2012, fingered several individuals and branded lawyers Yessika Hoyos Morales and Soraya Gutiérrez Argüello as "guerrillas disguised as human rights defenders."[186]

187. An email was sent on November 13, 2012, from an account identified as *Águilas Fénix* ("phoenix eagles"), leveling "death threats" against several individuals and human rights organizations, including the Collective, and accusing them of being "[guerrillas hiding behind the facade of] NGOs."[187]

188. "A new threating leaflet" issued in April 1, 2013 and signed by "Los Rastrojos" declared a number of organizations to be "military targets," including CAJAR,[188] and claiming that intelligence activities were being conducted against them. A similar notice was distributed on August 4 of the same year, signed by "Los Rastrojos—national urban commando."[189]

189. An email was received on September 10, 2013, signed by "Los Rastrojos" and labeling several organizations, including the Collective, as "military targets."[190]

190. CAJAR and CEJIL reported that from November 12 to 14, 2013, while CAJAR was in Brasilia, Brazil, at a public hearing to represent the alleged victims of the *Rodríguez Vera et al. v. Colombia* case before the Inter-American Court, the "Colombia First Foundation" published "a spurious document" from a meeting with members of the Collective and the FARC negotiating team in Havana, Cuba. The meeting had indeed taken place with the prior authorization of the Government, but the press releases outlined in the alleged document laid false claims to statements by CAJAR, such as a proposal to ask the State of Colombia to withdraw from the jurisdiction of the International Criminal Court.[191]

191. An email was received on February 4, 2014, from "Black Eagles," leveling "a threat against several human rights defenders and opposition politicians," including the Collective and Alirio Uribe Muñoz, who at the time was a candidate for election to the Chamber of Representatives of the Colombian Congress.[192]

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185 *Cf.* Communication from the petitioners to the Commission, April 11, 2012 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12297).

186 *Cf.* Communication from the petitioners to the Commission, July 11, 2012 (evidence file, volume III, annex to the Report on the Merits, folio 7281).

187 *Cf.* Communication from the petitioners to the Commission, November 20, 2012, (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12406), and a document containing a copy of an email dated November 13, 2012 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12409).

188 *Cf.* Communication from the petitioners to the Commission, April 10, 2013, (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12414), and a copy of a document "Public communiqué #001," dated April 1, 2013 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12415).

189 *Cf.* Communication from the petitioners to the Commission, August 7, 2013 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12424).

190 *Cf.* Communication from the petitioners to the Commission, September 12, 2013 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12445).

191 *Cf.* Communication from the petitioners to the Commission, November 21, 2013 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12483).

192 *Cf.* Communication from the petitioners to the Commission, February 14, 2014, (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12493), and a document containing a copy of

192. The National Center for Historical Memory[193] received a pamphlet on December 9, 2014, from the "Black Eagles," "containing threats against several activists and human rights defenders," including CAJAR.[194]

193. An email on March 9, 2015 conveyed a "threat" by the "Black Eagles southern bloc" against people and organizations dedicated to the defense of human rights. The message said: "[communist guerrillas […] your days are numbered]."[195]

194. Another "threatening leaflet was distributed" on September 3, 2018, signed by the "Black Eagles" and describing "human rights defenders, journalists, opposition politicians, and others as military targets."[196]

C.2. Threatening acts, intimidation, harassment, and aggression against CAJAR members and their families

195. This section describes acts including threats, intimidation, harassment, and aggression against some of the alleged victims, according to information lodged by CAJAR and CEJIL as petitioners in the proceedings before the Commission. The summaries of these acts were drawn from information and statements by the alleged victims as reported by CAJAR and CEJIL within the established time limits.

C.2.1. Rafael Barrios Mendivil

196. Lawyer Rafael María Barrios Mendivil was born on April 3, 1950. He was a charter member of CAJAR. He is still part of the organization today, sits on the council of members, and works in the area of international litigation.[197]

197. He began to be shadowed by vehicles in 1993, which according to the representatives, belonged to the State; he also received repeated death threats while he was serving as a lawyer in the cases of the "Caloto" and "Los Uvos" massacres (these names refer to locations where acts of violence took place in the 1990s during the armed conflict). The threats took the form of telephone calls from strangers. In another incident, a soldier who had taken part in the "Los Uvos massacre" and testified against his fellow soldiers retracted his testimony four months later and accused Mr. Barrios Mendivil of having offered him money and overseas travel if he testified against his commanding officers. These factors were compounded when lawyer Oscar Elías López, who worked with him on the "Caloto massacre" case, was murdered

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an email dated February 4, 2014 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12496).

193 According to information from the website https://centrodememoriahistorica.gov.co/contexto/, the National Center for Historical Memory is a nationwide public institution run by the Government of Colombia, whose "goal is to receive, recover, preserve, compile and analyze all documentary material, oral testimonies or those obtained via any other means, concerning the violations that took place at the time of the internal armed conflict."

194 *Cf.* Communication from the petitioners to the Commission, January 12, 2015 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12553).

195 *Cf.* Communication from the petitioners to the Commission, March 18, 2015 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12583).

196 *Cf.* Communication from the petitioners to the Commission, October 1, 2018 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12807).

197 *Cf.* Website of the José Alvear Restrepo Lawyers Collective, at the tab "El equipo." Available in Spanish at: https://www.colectivodeabogados.org/el-equipo/; statement before a public attestor by Rafael María Barrios Mendivil, March 3, 2022 (evidence file, volume, XXXIII, affidavits, folios 44628 to 44629), and document: *Síntesis de los hechos padecidos por las víctimas del caso 12.380 Colectivo de Abogados José Alvear Restrepo* ("synthesis of experiences by the victims of case 12,380, José Alvear Restrepo Lawyers Collective") (evidence file, volume XI, annex 3 to the CAJAR and CEJIL pleadings and motions brief, folio 26216).

in 1992,[198] and the alleged victim had to leave the country in October 1993 and took shelter in Brussels for six months.[199]

198. CAJAR and CEJIL reported that from July to August, 1999, Mr. Barrios Mendivil had received several threats after the Constitutional Court admitted his constitutional appeal against regulations that banned homosexual persons from joining the armed forces. Around that time, his 22-year-old son, Juan Pablo Barrios Romero, was attacked by a person driving a motorcycle without license plates. That same night, he received a call announcing the delivery of a parcel, supposedly sent by his father, who was in the United States of America at the time. A Navy officer, at the end of a meeting with the top military command and several non-governmental organizations, told Mr. Barrios Mendivil that "a common friend […] [w]ants you to know that you had better stop defending all those 'faggots'."[200] The representatives said that, in view of these incidents, Mr. Barrios Mendivil and his son left the country on August 5, 1999. His son was a university student at the time and had to suspend his studies. Mr. Barrios Mendivil remained "in exile" until 2005.[201]

199. Unknown persons entered Mr. Barrios Mendivil's home on May 8, 2006, and stole computers.[202]

200. CAJAR and CEJIL reported that in 2011, Mr. Barrios Mendivil's wife, Kimberly Ann Stanton, received a telephone call playing back a recording of a conversation she had had with her husband several days earlier when they were riding in a vehicle assigned by the authorities for their protection.[203]

201. They also reported that on February 1, 2012, Mr. Barrios Mendivil's daughter, Diana María Barrios Sabogal, after she had boarded a taxi outside the offices of the Prosecutor General, was approached by men unknown to her. The taxi driver had made a telephone call, and afterwards, two strange men entered the vehicle, threatened Ms. Barrios Sabogal with a firearm, and attacked her physically, saying it was a robbery. They verified that she worked in the Office of the Prosecutor General, then consulted with people riding a motorcycle, and finally dropped Ms. Barrios Sabogal near a main highway, having taken no money or objects of value.[204] Criminal charges were filed, but dismissed on June 10, 2019, by the prosecutor

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198 *Cf.* Press report, *El Tiempo*, June 1, 1992: *Otro crimen anunciado* ("Another crime foretold"). Available in Spanish at: https://www.eltiempo.com/archivo/documento/MAM-131254.

199 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, file on precautionary measures before the Commission, folios 13108 and 13109), and statement before a public attestor by Rafael María Barrios Mendivil, March 3, 2022 (evidence file, volume XXXIII, affidavits, folios 44632 and 44633). Colombia, in its answering brief on May 17, 2022, said, "[i]t is true that Rafael Barrios Mendivil left the country in October, 1993, but the State has no knowledge that he did so because of alleged threats" (merits file, volume II, folio 1054).

200 *Cf.* Letter from CAJAR to the Minister of Internal Affairs and Minister of Foreign Affairs, April 25, 2001 (evidence file, volume VI, Commission case file, folio 19711).

201 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13109), and statement before a public attestor by Rafael María Barrios Mendivil, March 3, 2022 (evidence file, volume XXXIII, affidavits, folios 44633 and 44634). Colombia lodged its answering brief on May 17, 2022, saying, "[i]t is true that Rafael Barrios and his son Juan Pablo left the country; however, "[t]he State has no knowledge that he left because of the threats he has described" (merits file, volume II, folio 1058).

202 *Cf.* Statement before a public attestor by Rafael María Barrios Mendivil, March 3, 2022 (evidence file, volume XXXIII, affidavits, folio 44635).

203 *Cf.* Statement before a public attestor by Rafael María Barrios Mendivil, March 3, 2022, (evidence file, volume XXXIII, affidavits, folio 44635). The Special Rapporteur on freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders submitted a joint notice about the incident to the Colombian Government on May 30, 2011. *Cf.* Human Rights Council, Communications report of special procedures, U.N. Doc. A/HRC/19/44, February 23, 2012, para. 12.

204 *Cf.* Communication from the petitioners to the Commission, February 7, 2012 (evidence file, volume III, annex to the Report on the Merits, folio 7349), and statement before a public attestor by Rafael María Barrios Mendivil, March 3, 2022 (evidence file, volume XXXIII, affidavits, folios 44635 and 44636).

(*infra* para. 420).

202. It was also reported that in November, 2013, while Mr. Barrios Mendivil was in Brasilia, Brazil for the public hearing by the Inter-American Court on the *Rodríguez Vera et al.* case against Colombia, his sisters Elsye Barrios Mendivil, Nubia Barrios Mendivil, and Ana Barrios Mendivil said that their telephones had been tapped, because when they tried to place calls, "there was noise on the line, and the calls were cut off."[205] Ana Barrios Mendivil received an anonymous call on February 9, 2014, from the United States of America, asking for "your brother Rafael."[206]

203. Available information also says that at 8:00 p.m. on November 21, 2013, a black motorcycle carrying two people hit the back left door of the vehicle belonging to Mr. Barrios Mendivil's son Juan Pablo Barrios Romero; when he accelerated, the motorcycle stayed behind him, and the driver extended his hand in a gesture as if he were firing a gun, while the rider mimicked holding a pistol in front of his abdomen. Mr. Barrios Romero drove on to a place where a police car was usually parked, so the motorcycle accelerated, thinking that Mr. Barrios Romero had gone. Further down the road, they were waiting for him in an area where there was very little traffic, and they nodded as he approached and then left.[207]

C.2.2. Luis Guillermo Pérez Casas

204. Lawyer Luis Guillermo Pérez Casas was born on December 10, 1962. He worked at the Collective from 1988 to 2018, sat on the general council of members, and has served as a judge on the National Board of Elections of Colombia.[208]

205. CAJAR and CEJIL said that in 1994, Mr Pérez Casas and his wife, Katia Karina Niño, who was pregnant at the time, were targeted by death threats, harassment and pressure. In response, they moved to the city of Ibagué, in the department of Tolima, together with their child, Camilo Ernesto Pérez Niño.[209] Graffiti writing appeared on the outer wall of the building where they had taken up residence in Ibagué, saying, "keep an eye on the little monkey," in reference to Camilo, who was known by that nickname because of his light brown hair. The family responded to the message by deciding to leave the country in the first quarter of 1995, two weeks after the birth of their younger daughter, Katia Karina de la Libertad Pérez Niño.[210] While they were overseas, Mr. Pérez Casas received a telephone call in 1998 with a message threatening his children. Mr. Pérez Casas returned to Colombia in January, 1999, and a few days after his arrival, an invitation to his funeral was received at his mother's apartment.[211]

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205 *Cf.* Communication from the petitioners to the Commission, November 21, 2013 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12482).

206 *Cf.* Communication from the petitioners to the Commission, February 14, 2014 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12494).

207 *Cf.* Communication from the petitioners to the Commission, November 25, 2013 (evidence file, volume V, electronic file on precautionary measures before the Commission, folios 12487 and 12488).

208 *Cf.* Statement before a public attestor by Luis Guillermo Pérez Casas, April 29, 2022 (evidence file, volume XXXIII, affidavits, folio 44671), and document: *Síntesis de los hechos padecidos por las víctimas del caso 12.380 Colectivo de Abogados José Alvear Restrepo* ("synthesis of experiences by the victims of case 12,380, José Alvear Restrepo Lawyers Collective") (evidence file, volume XI, annex 3 to the CAJAR and CEJIL pleadings and motions brief, folio 26224).

209 Fonlem Camilo Ernesto Pérez Niño was born on March 28, 1987. *Cf*. Birth certificate (evidence file, volume XIII, annex 89 to the CAJAR and CEJIL pleadings and motions brief, folio 28818).

210 Katia Karina de la Libertad Pérez Niño was born on January 29, 1995. *Cf*. Birth certificate (evidence file, volume XIII, annex 89 to the CAJAR and CEJIL pleadings and motions brief, folio 28817).

211 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13109), and statement before a public attestor by Luis Guillermo Pérez Casas, April 29, 2022 (evidence file, volume XXXIII, affidavits, folios 44673 and 44674).

206. Mr. Pérez Casas became aware in April, 2001 that men unknown to him were hovering around his home in a vehicle that had counterfeit license plates. When he went to military battalion 13 in the city of Bogotá that June, on business concerning the events of the Mapiripán massacre, the tires of his vehicle were slashed. When he visited the same facility again on June 22, the director of the prison ordered him to leave. This was reported shortly thereafter to the prosecutor (*infra* para. 402). It was for these reasons that Mr. Pérez Casas "went back into exile for the second time."[212]

207. The Collective received a visit on May 4, 2001, from a witness in a case it was litigating, who said he had learned about a plan by a paramilitary group operating in the department of Cundinamarca, whose goal was to kill Alirio Uribe Muñoz, Luis Guillermo Pérez Casas, and Maret Cecilia García Alfonso.[213]

208. Mr. Pérez Casas reported in 2001 that an echo could be heard on the telephone lines to his home and to the offices of the Collective, as well as sounds "that suggested the calls were being recorded."[214]

209. A poster was distributed on May 21, 2002, calling Mr. Pérez Casas the "head of the legal wing of the E.L.N." (*supra* para. 171).[215]

210. Reports indicate that Mr. Pérez Casas was in Panama in January, 2012, on a mission with the International Federation for Human Rights involving the claim for political exile by a former employee of DAS. Apparently, "an alleged organization" had been sent there and "was introduced to the news media as a mission sent by former President Álvaro Uribe Vélez to reveal alleged evidence of the lawyer's connection" with the FARC.[216]

211. The representatives said that in April, 2012, the Collective "was informed confidentially by a reliable source" that the name of Mr. Pérez Casas "had appeared on a list of people to be murdered."[217]

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212 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13117), and statement before a public attestor by Luis Guillermo Pérez Casas, April 29, 2022 (evidence file, volume XXXIII, affidavits, folios 44676 and 44677). Colombia said in its answering brief on May 17, 2022, that "[i]t is true that Luis Guillermo Pérez left the country," adding that "the State has no knowledge of the reasons for his departure or that he was the victim of surveillance, a break-in, or other acts of harassment because of his work reporting crimes and representing victims of the Mapiripán massacre" (merits file, volume II, folio 1061). The Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Representative of the UN Secretary General on the Situation of Human Rights Defenders Special Representative of the UN Secretary General on the situation of human rights defenders sent the Government of Colombia a joint urgent appeal on July 12, 2001, concerning Attorney Luis Guillermo Pérez Casas, who "had been the subject of continuous harassment, and that he had frequently been followed since he started working on the Mapiripán massacre in 1997." *Cf.* Commission on Human Rights, Report of the Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, U.N. Doc. E/CN.4/2002/72, February 11, 2002, para. 29.

213 *Cf.* Statement by Maret Cecilia García Alfonso before the Office of the Prosecutor General, May 21, 2001 (evidence file, volume I, annex to the Report on the Merits, folio 2697), and statement by Luis Guillermo Pérez Casas before the Office of the Prosecutor General, June 26, 2001 (evidence file, volume I, annex to the Report on the Merits, folio 2725).

214 *Cf.* Statement by Luis Guillermo Pérez Casas before the Office of the Prosecutor General, June 26, 2001 (evidence file, volume I, annex to the Report on the Merits, folio 2728).

215 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folios 13119 and 13120); document *Solidaridad con un héroe nacional* ("solidarity with a national hero") (evidence file, volume I, annex to the Report on the Merits, folio 2865), and statement before a public attestor by Luis Guillermo Pérez Casas, April 29, 2022 (evidence file, volume XXXIII, affidavits, folio 44677).

216 *Cf.* Communication from the petitioners to the Commission, April 11, 2012 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12296).

217 *Cf.* Communication from the petitioners to the Commission, April 11, 2012 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12298).

212. Mr. Pérez Casas' security detail was blocked by two taxis on February 6, 2013, while parked outside the Office of the Prosecutor General; they were driven by two young men with loudspeakers, who claimed to be armed. Two vehicles stopped outside Mr. Pérez Casas' farm on October 6, 2013, and the people in the cars began to take pictures; when he went to open the door, the vehicles left.[218]

213. Mr. Pérez Casas received an alert on his computer on October 27, 2014, that another person had been using his IP address and gaining access to the data in his computer and communication equipment. The next month, in November, the driver assigned to him by the National Protection Unit said he had received a strange telephone call at his home from an alleged banking institution, requesting personal data.[219]

214. It was also reported that on February 12, 2015, Mr. Pérez Casas was in a public place in the city of Villavicencio, department of Meta, meeting with family members of victims of the Mapiripán massacre, and noticed a man observing them from a nearby SUV with polarized windows. The man had a mobile telephone in his hand and was exchanging signals with the occupants of a motorcycle that was loitering around.[220]

C.2.3. Alirio Uribe Muñoz

215. Lawyer Alirio Uribe Muñoz was born on November 28, 1960. He joined CAJAR in 1991, has sat on general council of members, and has held a variety of leadership positions, including serving as president. He was elected to a seat on the Chamber of Representatives of the Colombian Congress in 2013.[221]

216. CAJAR and CEJIL reported that Mr. Uribe Muñoz had been followed on several occasions by strangers on motorcycles without license plates; he had also received calls from unknown persons at his home telephone and at the university where he worked, and visits to his office by suspicious persons who claimed to need his professional assistance. He has also experienced harassment for his legal work.[222]

217. A leaflet was distributed on August 17, 1999, on public streets in the city of Bogotá, signed by the "Colombian Rebel Army"; it made reference to several people alleged to be "enemies of the peace process" in Colombia, and named Mr. Uribe Muñoz.[223] Later that year,

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218 *Cf.* Communication from the petitioners to the Commission, January 12, 2015 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12550).

219 *Cf.* Communication from the petitioners to the Commission, January 12, 2015 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12551).

220 *Cf.* Communication from CAJAR to the President of Colombia, February 23, 2015, (evidence file, volume III, annex to the Report on the Merits, folio 6773).

221 *Cf.* Website of the José Alvear Restrepo Lawyers Collective, at the tab "El equipo." Available in Spanish at: https://www.colectivodeabogados.org/el-equipo/; marriage license (evidence file, volume XIII, annex 92 to the CAJAR and CEJIL pleadings and motions brief, folio 28845), and statement by Alirio Uribe Muñoz at public hearing before this Court. Mr. Uribe Muñoz reported that he worked "outside the Collective" during his term of office in the Chamber of Representatives.

222 *Cf.* Order by the Office of the Prosecutor General, National Unit for human rights and international humanitarian law, September 12, 2006, file 912 (evidence file, volume I, annex to the Report on the Merits, folio folio 2668), and communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio, 13108). The Special Rapporteur on the independence of judges and lawyers sent an urgent appeal to the Government of Colombia on November 17, 1997, saying: "Alirio Uribe Muñoz, President of the [C]collective, was [allegedly] accused of supporting a wing of the ENL. The accusations were reportedly made in a report submitted by the army to the Bogotá regional prosecutor's office." *Cf.* Commission on Human Rights, Report of the Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, U.N. Doc. E/CN.4/1998/39, February 12, 1998, para. 51.

223 An open letter to the then President claimed that the pamphlet said:

the office of the Workers Central (CUT) received a document revealing an extermination plan against several people, including Mr. Uribe Muñoz. Another leaflet appeared on May 5, 2000, announcing a paramilitary offensive in the city of Bogotá in which several people would be executed, including Mr. Uribe Muñoz.[224] The home of a former member of the Army was raided on March 3, 2001, as part of the investigation for an attack on a union leader, and police found a scanned color photograph of Mr. Uribe Muñoz.[225]

218. These facts as described above were reported to the Prosecutor General, who on September 12, 2006 issued a decision not to investigate (*infra* para. 402).

219. Mr. Uribe Muñoz' young daughter received a telephone call in December, 1999, telling her that they were looking for him to "give him a present." Whenever they picked up the handset of his home telephone, they could hear sounds of a radio station, and they occasionally heard an answer from the police station. On another occasion, when Mr. Uribe Muñoz sent a fax to the university where he taught, he received a call from an office of the Ministry of Defense, asking him who his fax was for.[226]

220. A leaflet was distributed on September 6, 2000, under the title "Alert! The coup is coming!" It was signed by the "Revolutionary Intelligence Headquarters" and named Alirio Uribe Muñoz as part of a group of people who would be killed in coming months.[227] Information appeared that same year that "an order had been issued" by a paramilitary group called "United Self-Defense Forces of Colombia" (AUC) to execute several prosecutors and members of human rights defense organizations, including Alirio Uribe Muñoz and Luis Guillermo Pérez Casas.[228]

221. The representatives reported that in 2012, Mr. Uribe Muñoz took part part in a criminal case to investigate the former peace commissioner appointed by the President of the Republic, and during that time, his mobile telephone was constantly blocked and tapped. The same year, on February 21, he received an email saying "Web Check-in successful," from an airline

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> ERC [-] Colombian Rebel Army. Do you know the names of the enemies of the peace process that Colombia wants? Here they are: […] Alirio Uribe […]. These sinister characters fuel the war among Colombians, they push hatred and the class struggle, they make a living on war. It is not right for this handful of warmongers to destroy peace for 40 million Colombians. They will pay for destroying the peace process. ERC [-] Colombian Rebel Army. August, 1999.

Cf. Open letter from CAJAR to the President of Colombia, August 24, 1999, (evidence file, volume I, annex to the Report on the Merits, folios 2660 to 2665).

[224] The Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on extrajudicial, summary or arbitrary executions sent a joint urgent appeal about Mr. Uribe Muñoz on May 23, 2000, about the leaflet that had been distributed on May 5 of that year. *Cf*. Commission on Human Rights, Report of Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, report on the mission to Colombia, U.N. Doc. E/CN.4/2001/65, February 1, 2001, para. 73.

[225] *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folios 13116 and 13117), and order by the Office of the Prosecutor General, National Unit for human rights and international humanitarian law, September 12, 2006, file 912 (evidence file, volume I, annex to the Report on the Merits, folios 2668 and 2669). The Special Representative of the UN Secretary General on the situation of human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions sent an urgent appeal to the Government of Colombia on April 2, 2001, concerning Mr. Uribe Muñoz because, according to information they had received, "in March, 2002, a group of professional paid killers had received instructions to kill him." *Cf.* Commission on Human Rights, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangi, U.N. Doc. E/CN.4/2002/74/Add.2, May 8, 2002, para. 62.

[226] *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13113).

[227] *Cf.* Copy of the document "Alert! The Coup is coming!" (evidence file, volume VI, Commission case file, folios 15903 and 15904). The State said in its answering brief on May 17, 2022, that "the leaflet does indeed exist" (merits file, volume II, folio 1059).

[228] *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folios 13115 and 13118).

confirming a trip to the city of Neiva, in the department of Huila, which he had not requested; he checked with the airline and was told that "someone had ordered the flight over the telephone but there was no further information."[229]

222. As Mr. Uribe Muñoz and his wife approached their home in Bogotá on August 7, 2016, at approximately 8:00 p.m., the building security guard told them he had surprised two men with a ladder climbing to the terrace of their apartment; the men had broken through the bars of the perimeter fence and tried to break into the apartment but had fled when they were discovered by the guard.[230]

223. The official website www.aliriouribe.com, posting Alirio Uribe Muñoz's work as a member of the Chamber of Representatives, was offline on the morning of August 30, 2016, and remained inaccessible for approximately 12 hours. The IT technician examined the problem and reported that he "found a brute force attempt to attack the site and guess the manager's password, and because of these attacks, […] the hosting service had temporarily suspended the account, blocking the site from being consulted freely."[231]

C.2.4. Lincoln Miguel Puerto Barrera

224. Lawyer Lincoln Miguel Puerto Barrera was born on January 22, 1961. He joined the Collective in 1995 and has sat on the council of members.[232]

225. CAJAR and CEJIL stated that Mr. Puerto Barrera had experienced threats and harassment since the 1990s.[233]

226. Mr. Puerto Barrera learned in September, 1997, that the national army brigade in Arauca had declared him a "military objective." He received this information from a person he was representing at court.[234]

227. When Mr. Puerto Barrera approached his home in a residential complex on July 12, 2000, the security guard told him that two men had been asking for him and knew exactly which apartment was his. The strangers asked the guard what time the lawyer usually arrived home, then waited for two hours and finally left.[235]

228. The representatives explained that multiple threats, instances of being followed, and

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229 *Cf.* Communication from the petitioners to the Commission, April 11, 2012 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12297).

230 *Cf.* Communication from the petitioners to the Commission, September 19, 2016 (evidence file, volume V, electronic file on precautionary measures before the Commission, folios 12753 and 12754).

231 *Cf.* Communication from the petitioners to the Commission, September 19, 2016 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12754).

232 *Cf.* Statement before a public attestor by Lincoln Miguel Puerto Barrera, April 26, 2022, (evidence file, volume XXXIII, affidavits, folio 44728 and 44734).

233 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13108), and statement before a public attestor by Lincoln Miguel Puerto Barrera, April 26, 2022 (evidence file, volume XXXIII, affidavits, folios 44733). The Special Rapporteur on the independence of judges and lawyers sent an urgent appeal on November 17, 1997, concerning lawyers Alirio Uribe Muñoz, Rafael Barrios Mendivil, and Miguel Puerto Barrera, saying that "[a]llegedly, the lawyers had suffered threats and harassment for several months," and that Mr. Puerto Barrera, "legal representative of the victims, was declared a military objective by the army." *Cf.* Commission on Human Rights, Report of the Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, U.N. Doc. E/CN.4/1998/39, February 12, 1998, para. 51.

234 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13111), and statement before a public attestor by Lincoln Miguel Puerto Barrera, April 26, 2022 (evidence file, volume XXXIII, affidavits, folios 44736).

235 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13116).

harassment had finally convinced Mr. Puerto Barrera to leave the country, together with his wife and children, and seek exile in London, England, in 2001.[236]

C.2.5. Soraya Gutiérrez Argüello

229. Lawyer Soraya Gutiérrez Argüello was born on June 20, 1967. She joined the Collective in 1993, and held a variety of positions there, becoming the first woman to serve as president (2004-2005). She is still a member of the organization, sits on the general council of members, and works as coordinator of the peace-building work.[237]

230. Ms. Gutiérrez Argüello was intercepted on February 14, 2003, by an automobile carrying four persons unknown to her, three of whom alighted from the vehicle bearing machine guns and approached the car of the alleged victim, attempting to open the doors. The alleged victim accelerated and was able to escape, even as the strangers fired their weapons.[238] The Prosecutor General opened three investigations; one ended in a decision not to investigate, proceedings were dropped in a second, and the third is still in the preliminary stage (*infra* paras. 401, 413 and 418).

231. Over the next few days, Ms. Gutiérrez Argüello received constant intimidating calls to her home telephone five or six times a day, with the sound of children laughing. A man called her home telephone on March 3, 2003, and asked what time her young daughter, Paula Camila Romero Gutiérrez, would arrive home.[239] A few minutes later, her domestic worker went out to pick up the child and observed a taxi following her; the driver approached and asked "whether she was going to pick up Soraya's daughter." The man parked the taxi, alighted from the vehicle, and stood waiting for the child for about ten minutes, but left the area when the child arrived.[240]

232. That same day, the doorman at the residential complex where Ms. Gutiérrez Argüello lived told her that a man identified as the employee of a cable television company, whose services she had never contracted, had requested information about the address of her home and, when he failed to obtain the information, lost his temper and left in anger.[241]

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236 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folios 13179 and 13199), and statement before a public attestor by Lincoln Miguel Puerto Barrera, April 26, 2022 (evidence file, volume XXXIII, affidavits, folios 44740 and 44741). Colombia said in its answering brief on May 17, 2022, "[i]t is true that Miguel Puerto Barrera left the country, but the State has no knowledge that it may have been a consequence of threats against him" (merits file, volume II, folio 1059).

237 *Cf.* Website of the José Alvear Restrepo Lawyers Collective, at the tab "El equipo." Available in Spanish at: https://www.colectivodeabogados.org/el-equipo/; statement by Soraya Gutiérrez Argüello at public hearing before this Court; birth certificate (evidence file, volume XIII, annex 88 to the CAJAR and CEJIL pleadings and motions brief, folio 28807), and document: *Síntesis de los hechos padecidos por las víctimas del caso 12.380 Colectivo de Abogados José Alvear Restrepo* ("synthesis of experiences by the victims of case 12,380, José Alvear Restrepo Lawyers Collective") (evidence file, volume XI, annex 3 to the CAJAR and CEJIL pleadings and motions brief, folio 26242).

238 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13198). Attorney Gutiérrez Argüello described the incident in a statement, as follows: "the car ahead of me turned sideways and cut me off […], men […] came out […] with long-range weapons, two of them approached the side of my car and said, 'get out, get out of the car' […], I screwed up my courage and finally got away." *Cf.* Statement at public hearing before this Court, by Soraya Gutiérrez Argüello. The State said in its answering brief on May 17, 2022, that the statement "is true" (merits file, volume II, folio 1069). The Special Representative of the UN Secretary General on human rights defenders sent a note to the Government of Colombia on September 20, 2004, concerning these facts. *Cf.* Commission on Human Rights, Report of the Special Representative of the UN Secretary General on the situation of human rights defenders, Hina Jilani, U.N. Doc. E/CN.4/2005/101/Add.1, March 16, 2005, para. 167.

239 Paula Camila Romero Gutiérrez was born on May 24, 1998. *Cf*. Birth certificate (evidence file, volume XIII, annex 88 to the CAJAR and CEJIL pleadings and motions brief, folio 28813).

240 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13132).

241 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI,

233. Ms. Gutiérrez Argüello received a package at her home on May 13, 2005, delivered by a private courier service. She had the National Police open the package, as she feared it could be an explosive device. The package contained "a doll that had been beheaded and dismembered, partially burned, its whole body stained with red nail polish," and "a cross drawn on its torso."[242] Attached to the doll was a handwritten note saying: "You have a beautiful family take care of it and do not sacrifice it."[243] Two investigations of the incidents were initiated by the Prosecutor General and are currently in the preliminary investigation stage (*infra* paras. 399 and 400).

234. Ms. Gutiérrez Argüello and her daughter were forced to leave their home temporarily on two different occasions because of these incidents. The first time she stayed away for eight months, and when she returned home to retrieve certain personal effects, she saw DAS agents taking pictures of her (*infra* para. 328).[244] Ms. Gutiérrez Argüello and her family later left the

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Commission case file, folios 13132 and 13133).

[242] Ms. Gutiérrez Argüello said the following at public hearing before the Court:

> [W]hen I got home […] I found a package in the lobby […], it was gift-wrapped and had information that I started to wonder about because supposedly it had been sent by my father, who was deceased, and had addresses where I had lived as a child, so right away I contacted my colleagues …] and they […] said: "Leave it alone, it could be explosive." The explosives team came […] and when they opened the box it contained a doll that had been dismembered, burned with a cigarette, painted like blood, and with a message saying: "You have a beautiful family don't sacrifice it" […]."

Cf. Statement at public hearing before this Court, by Soraya Gutiérrez Argüello.

[243] *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13146). The Special Rapporteur on Freedom of opinion and expression and the Special Representative of the UN Secretary General on human rights defenders sent the Government of Colombia an urgent appeal concerning Ms. Gutiérrez Argüello because of the incidents on May 13, 2005, and the notices published that month in the *El Tiempo* newspaper (*supra* para. 176). *Cf.* Commission on Human Rights, Report of the Special Rapporteur on freedom of opinion and expression, Ambeyi Ligabo, Summary of cases transmitted to Governments, and replies received, U.N. Doc. E/CN.4/2006/55/Add.1, March 27 2006, para. 201. The Inter-American Commission said in its 2005 annual report:

> On May 13, as she was arriving at her home in Bogotá, the President of [CAJAR], Soraya Gutiérrez Arguello, received a strange package from the guard at the residential complex where she lived. The package had been delivered by a courier service. The human rights defender immediately contacted the National Police to have its anti-explosives team examine the contents of the package. When they opened the package, the police found inside a beheaded and dismembered doll; there were burn marks on the doll and it had been stained with red nail polish—to simulate blood. A cross had been drawn on the doll's torso. With the doll was a handwritten note that read: "You have a very attractive family; take good care of it; don't sacrifice it." The Collective [...] reported that on that same day, persons not associated with the organization published classified ads in newspapers with nationwide circulation, intended to threaten the members of the Collective. The first classified ad was seeking attorneys, psychologists, sociologists, other professionals [...]. According to the human rights defenders, the idea was to give the impression that the organization's current members might be killed, thus creating vacancies that would have to be filled.

Cf. IACHR. Annual Report 2005, OEA/Ser.L/V/II.124, Doc. 7, February 27, 2006, chapter IV, paras. 36 and 37. See, IACHR. Report on the situation of human rights defenders in the Americas, OEA/Ser.L/V/II.124, Doc. 5 rev. 1, March 7, 2006, para. 159. The OHCHR also reported on the case:

> [I]n 2004 and 2005, the DAS Intelligence Special Team G-3 ordered operations similar to the following, with the intention to instill fear in victims and force them to cease their activities. In 2005, a female lawyer, who is a human rights defender, received at home a package reading "For my beloved daughter" with a doll and a note: "You have a very attractive family; take good care of it; don't sacrifice it." The doll had the head and the arms separated from the body, a broken leg and torn clothes. The doll also had the pelvic area painted in red, like blood, and a cross on the chest, with cigarette burns on one of the arms, the back and the eyes

Cf. Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/13/72, March 4, 2010, Annex "Illustrative cases of violations of human rights and breaches of international humanitarian law."

[244] The OHCHR 2005 annual report pointed to "reports of death threats against the president of [CAJAR] and her family." *Cf.* Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. E/CN.4/2006/9, January 20, 2006, para. 83.

country temporarily, in fear of an imminent attack.[245]

235. Ms. Gutiérrez Argüello was photographed on October 27, 2014, as she left the offices of the Collective in Bogotá.[246]

236. While she was taking part in a public hearing on February 6, 2015, on a case for the murder of a union leader, Ms. Gutiérrez Argüello was harassed by one of the witnesses testifying, and she decided to withdraw from the case. She then received a call on February 8 of the same year, asking for "Francisco," the name of the intelligence officer charged with the murder of the union leader.[247]

237. Ms. Gutiérrez Argüello was representing the victims in a judicial hearing on June 15, 2017, when she and Yessika Hoyos Morales, one of the victims, became aware that unknown persons were present, with an intimidating attitude, taking pictures of the participants in the hearing.[248]

238. Information supplied to the Court points to a public hearing on July 6, 2017, on a case being aired before the Constitutional Court. Ms. Gutiérrez Argüello was taking part in the case, and the representative of ACORE "made scornful remarks about the lawyer's involvement, suggesting that the human rights and victims' organizations had ties to guerrilla groups and were responsible for conducting an alleged 'legal war' against the armed forces." When Ms. Gutiérrez Argüello finished her statement in the hearing, an unknown woman approached her and said, "[W]e are worried about your safety; an incident has just occurred in the courthouse corridor, so we want to know whether you have protection." The alleged victim replied that yes, she did have protection, to which the unknown woman said, "[I]n any case, GAULA is outside and knows about your situation, so if anything happens, GAULA is watching," whereupon the woman moved away. Ms. Gutiérrez Argüello was puzzled about the situation, so she approached the woman and asked, "Who are you?" The woman replied, "I am a human rights defender," and said nothing else. The National Police later confirmed that GAULA was not present, and no incident had occurred.[249]

239. That same evening, while Ms. Gutiérrez Argüello's husband was on his way home, he received a call on his mobile phone, and the caller asked, "Do you know Soraya Gutiérrez? Please, Soraya Gutiérrez? Do you have the phone number of Soraya Gutiérrez?" He replied that he did not know her, and ended the call.[250]

240. The husband of Soraya Gutiérrez Argüello received a call from his sister, Astrid del Pilar Sánchez, on July 12, 2017, at around 5:15 p.m. When the call went through, Ms. Sánchez heard the voice of a strange woman and thought it could be Ms. Gutiérrez Argüello, so she asked, "Soraya? Is this the number of Soraya Gutiérrez?" The woman on the line replied, "No." Meanwhile, when Ms. Gutiérrez Argüello's husband took the call, he heard the voice of

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245 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folios 13146 and 13147).

246 *Cf.* Communication from the petitioners to the Commission, January 12, 2015 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12551).

247 *Cf.* Communication from CAJAR to the President of Colombia, February 23, 2015 (evidence file, volume III, annex to the Report on the Merits, folios 6772 and 6773).

248 *Cf.* Communication from the petitioners to the Commission, July 24, 2017 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12782).

249 *Cf.* Communication from the petitioners to the Commission, July 24, 2017 (evidence file, volume V, electronic file on precautionary measures before the Commission, folios 12782 and 12783). According to the representatives, GAULA is a team of the National Police of Colombia, the "Unified Action Group for Personal Freedom," which fights kidnapping and extortion.

250 *Cf.* Communication from the petitioners to the Commission, July 24, 2017 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12783).

two strange men talking to each other. According to the representatives, this fact shows that the telephone of the husband of Ms. Gutiérrez Argüello had been tapped in some way.[251]

241. Ms. Gutiérrez Argüello's husband was with her in Ciudad Bolívar, south of Bogotá, on July 17, 2017, attending a public hearing with the participation of several congressional representatives and members of the National Police. At the end of the activity, he found a doll on top of his vehicle, which caused "distress" to Ms. Gutiérrez Argüello, reminding her of the threatening message she had received in 2005 (*supra* para. 233).[252]

C.2.6. Reinaldo Villalba Vargas

242. Lawyer Reinaldo Villalba Vargas was born on July 15, 1959. He joined CAJAR in 1992. He is currently a member of the organization, sits on the membership council, and works in the area of criminal law.[253]

243. Mr. Villalba Vargas received a sympathy note on February 28, 1996, signed by *Colombia sin guerrilla*" ("Colombia free from guerrillas," COLSINGUE), expressing condolences for the soul of a person the lawyer was defending in a criminal suit.[254] The incident was reported to the Prosecutor General, which decided not to open an investigation (*infra* para. 414).

244. Attorney Villalba Vargas received a summons from the Office of the Prosecutor on May 13 of the same year in a case for the crime of actionable verbal abuse lodged by the commander of the Bogotá metropolitan police, as a result of statements Mr. Villalba Vargas had made to the *El Espectador* newspaper to the effect that police officers had committed assault against a group of students. The complaint was dismissed, and in the end, the investigation was dropped.[255]

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[251] *Cf.* Communication from the petitioners to the Commission, July 24, 2017 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12783).

[252] *Cf.* Communication from the petitioners to the Commission, July 24, 2017 (evidence file, volume V, electronic file on precautionary measures before the Commission, folios 12783 and 12784). The State said in its answering brief on May 17, 2022, that the fact about the doll "is true" (merits file, volume II, folio 1123). The Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, the Special Rapporteur on the situation of human rights defenders, the Working Group on the issue of discrimination against women in law and in practice, and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence sent a joint communication to the Government of Colombia on October 19, 2017, concerning "allegations of intimidation and harassment" against Ms. Gutiérrez Argüello and against "other women lawyers, all of them members of [CAJAR], for their support of the integrity of the transitional justice system." The communication made reference to the events of July 6 and 17, 2017. *Cf.* Communication of October 19, 2017, reference AL COL 4/17. Available in Spanish at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23364.

[253] *Cf.* Website of the José Alvear Restrepo Lawyers Collective, at the tab "El equipo." Available in Spanish at: https://www.colectivodeabogados.org/el-equipo/; birth certificate (evidence file, volume XIII, annex 84 to the CAJAR and CEJIL pleadings and motions brief, folio 28746); statement before a public attestor by Reinaldo Villalba Vargas, April 28, 2022 (evidence file, volume XXXIII, affidavits, folio 44588), and document: *Síntesis de los hechos padecidos por las víctimas del caso 12.380 Colectivo de Abogados José Alvear Restrepo* ("synthesis of experiences by the victims of case 12,380, José Alvear Restrepo Lawyers Collective") (evidence file, volume XI, annex 3 to the CAJAR and CEJIL pleadings and motions brief, folio 26236).

[254] *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folios 13109 and 13110), and statement before a public attestor by Reinaldo Villalba Vargas, April 28, 2022 (evidence file, volume XXXIII, affidavits, folio 44592). The State said in its answering brief on May 17, 2022, that "the sympathy note does indeed exist" (merits file, volume II, folio 1056). The Special Rapporteur on the independence of judges and lawyers sent an urgent appeal to the Government of Colombia on March 18, 1996, concerning "the death threats against [Ms. MA] and a human rights lawyer, Reinaldo Villalba Vargas," adding: "The message containing the threats was reportedly signed by a paramilitary group called COLSINGUE, and was also considered to be an indirect threat against Mr. Villalba Vargas who is defending Mrs. [MA] in a trial." *Cf.* Commission on Human Rights, Report of the Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, U.N. Doc. E/CN.4/1997/32, February 18, 1997, para. 95.

[255] *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI,

245. A union leader was murdered in March, 2001; one week earlier, he had said that he and other persons, including Mr. Villalba Vargas, were named "on a list of social leaders to be executed by military groups."[256] The incident was reported, and on July 16, 2002, the prosecution ordered that the investigation be dropped "because the existence and truthfulness of the threats has not been demonstrated" (*infra* para. 410).

246. The representatives reported that one of the drivers of the protection vehicles assigned to CAJAR received a call from an unknown person on December 7, 2011, revealing to Mr. Villalba Vargas and the driver that they had been followed the night before.[257]

247. The guard at the building where Mr. Villalba Vargas lived reported in October, 2014, that "a stranger tried to ask questions about you."[258] Mr. Villalba Vargas also observed on February 8, 2015, that a man accompanied by two other people was taking pictures of him without his consent.[259]

248. Mr. Villalba Vargas was photographed by a stranger on February 18, 2015, as he walked from the CAJAR offices toward a nearby location in downtown Bogotá.[260]

C.2.7. Diana Milena Murcia Riaño

249. Lawyer Diana Milena Murcia Riaño was born on November 7, 1978. She worked in the Collective from 2002 to 2008 and sat on the general council of members.[261]

250. Ms. Murcia Riaño, who was in charge of a project for monitoring "Plan Colombia,"[262] sent a message from her personal email account, "addressed to friends" and attaching "a page from the *El Tiempo* newspaper with a parody of Colombia's official seal under the administration of President Álvaro Uribe Vélez." She received an anonymous email on November 14 of the same year, in reply to her message. The email read in part:

> [D]o you find it amusing to be reviling the toads and sellouts[263] in our country like this? […] I hope you

Commission case file, folio 13110).

256 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folios 13116 and 13117).

257 *Cf.* Communication from the petitioners to the Commission, April 11, 2012 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12296).

258 *Cf.* Communication from the petitioners to the Commission, January 12, 2015 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12551).

259 *Cf.* Communication from the petitioners to the Commission, March 18, 2015 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12582).

260 *Cf.* Communication from CAJAR to the President of Colombia, February 23, 2015, (evidence file, volume III, annex to the Report on the Merits, folio 6775).

261 *Cf.* Birth certificate of Diana Milena Murcia Riaño (evidence file, volume IX, annex 2.5 to the pleadings and motions brief of Ms. Arias, folio 24890); statement by Diana Milena Murcia Riaño at public hearing before this Court, and communication from the petitioners to the Commission, December 20 2013 (evidence file, volume VI, Commission case file, folio 13082).

262 Lawyer Murcia Riaño said that "Plan Colombia" "was essentially a plan for military assistance to the country's drug control policy." *Cf*. Statement by Diana Milena Murcia Riaño at public hearing before this Court. The Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition said the following in its final report: "The government of the United States [of America] worked out an agreement with the government of Colombia as a key strategy for confronting the FARC-EP, […] for in-depth professionalization of the Army"; as a result, "Plan Colombia called for an investment of ten billion dollars in [2000] and, although it also included social components, most of the aid targeted military, technology and arms concerns." *Cf.* Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, final report, *Hay futuro si hay verdad: hallazgos y recomendaciones*, ("there is a future if there is truth: findings and recommendations"), Bogotá, June 28, 2022, pp. 366 and 367 (evidence file, volume XLII, annex to the brief of CAJAR and CEJIL, April 10, 2023, folios 47317 and 47318).

263 According to the Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, the term

> will take this message as sounding an alarm and be more careful about what you say, and remember that not everything that pops up on the web is worth spreading around. We could consider it a good measure of redress for you to circulate a document, any one at all, whichever one you choose, from the website www.colombialibre.org[.] […] p.s. the matter of the colombialibre website [is an assignment, and we expect you to do it].[264]

251. It was explained in the proceedings before the Commission that the Internet address named in the email pertained to the "website of the United Self-Defense Forces of Colombia."[265] The incident was reported to the Prosecutor General, which issued a decision not to investigate on July 28, 2006 (*infra* para. 403).

C.2.8. Diana Teresa Sierra Gómez

252. Lawyer Diana Teresa Sierra Gómez was born on December 17, 1980. She worked at CAJAR several times between 1999 and 2005, first as a legal aide, then in the area of press relations and publications, and finally, as an attorney.[266]

253. Ms. Sierra Gómez and the journalist Adriana Cuéllar Ramírez, CAJAR press chief, were outside the organization's headquarters on October 24, 2003, when they were photographed by two strangers, a man and a woman, who fled the scene when they realized they had been seen.[267]

254. Ms. Sierra Gómez again discovered that she was being photographed by a stranger while she was in the airport of the city of Armenia, in the department of Quindío, on June 28, 2004.[268]

C.2.9. Javier Alejandro Acevedo Guerrero

255. Lawyer Javier Alejandro Acevedo Guerrero was born on September 6, 1965. He worked for CAJAR from 2001 until 2005.[269]

"toads" "is often used in criminal organizations in reference to informers." *Cf*. Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, final report, *Hay futuro si hay verdad: hallazgos y recomendaciones*, ("there is a future if there is truth: findings and recommendations"), Bogotá, June 28, 2022, p. 95 (evidence file, volume XLII, annex to the brief of CAJAR and CEJIL, April 10, 2023, folio 47046).

264 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13120); document containing a copy of an email dated November 14, 2002, subject line: "Concerning your email about the twisted shield" (evidence file, volume I, annex to the Report on the Merits, folios 2867 and 2868), and statement by Diana Milena Murcia Riaño at public hearing before this Court. The State said in its answering brief on May 17, 2022, that lawyer Murcia Riaño "was named as an 'instigator of alliances against Plan Colombia'" (merits file, volume II, folio 1163).

265 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13120).

266 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13082), and statement before a public attestor by Diana Teresa Sierra Gómez, October 26, 2020 (evidence file, volume XI, annex 25 to the CAJAR and CEJIL pleadings and motions brief, folio 26561).

267 *Cf.* Statement before a public attestor by Diana Teresa Sierra Gómez, October 26, 2020 (evidence file, volume XI, annex 25 to the CAJAR and CEJIL pleadings and motions brief, folio 26562).

268 *Cf.* Statement before a public attestor by Diana Teresa Sierra Gómez, October 26, 2020 (evidence file, volume XI, annex 25 to the CAJAR and CEJIL pleadings and motions brief, folio 26562). The Special Rapporteur on freedom of opinion and expression and the Special Rapporteur on the independence of judges and lawyers sent a joint communication to the Government of Colombia on September 6, 2004, concerning the incidents of October 24, 2003, and June 28, 2004, and noting that "fear had been expressed for the physical and psychological integrity of" lawyer Sierra Gómez. *Cf.* Commission on Human Rights, Report of the Special Rapporteur on freedom of opinion and expression, Summary of cases transmitted to Governments and replies received, U.N. Doc. E/CN.4/2005/64/Add.1, March 29, 2005, para. 243.

269 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13082); statement before a public attestor by Javier Alejandro Acevedo Guerrero, November 7, 2020 (evidence file, volume XI, annex 43 to the CAJAR and CEJIL pleadings and motions brief, folio 26696, and document entitled: *Síntesis de los hechos padecidos por las víctimas del caso 12.380 Colectivo de*

256. Mr. Acevedo Guerrero was followed on November 19, 2002, by unknown persons on a motorcycle without license plates and in a blue pick-up. The people in the pick-up followed him until he arrived at the campus of the Universidad Nacional in Bogotá. When he reached the campus, the driver of the vehicle alighted and idled around a newsstand until the alleged victim left the university.[270] The incident was reported to the Prosecutor General, who issued a decision not to investigate on July 28, 2006 (*infra* para. 403).

C.2.10. María del Pilar Silva Garay

257. Lawyer María del Pilar Silva Garay was born on November 15, 1962. She joined the Collective in 1992 and currently sits on the membership council, serving as coordinator of the area of reparations for victims.[271]

258. Ms. Silva Garay received several telephone calls in December, 2014, from an unknown person asking her about a case she was developing in CAJAR. When she began to provide information, the caller insulted her and threatened her.[272]

C.2.11. Jomary Ortegón Osorio

259. Lawyer Jomary Liz Ortegón Osorio was born on March 25, 1979. She joined CAJAR in 2001. She is currently part of the organization, sitting on the council of members and working in the area of international litigation.[273]

260. CAJAR and CEJIL reported that Ms. Ortegón Osorio's computer was stolen in a home burglary in 2004.[274]

C.2.12. Dora Lucy Arias Giraldo

261. Lawyer Dora Lucy Arias Giraldo was born on July 23, 1971. She worked at CAJAR from 2001 to 2019 and sat on the council of members.[275]

Abogados José Alvear Restrepo ("synthesis of experiences by the victims of case 12,380, José Alvear Restrepo Lawyers Collective") (evidence file, volume XI, annex 3 to the CAJAR and CEJIL pleadings and motions brief, folio 26263).

[270] *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13120), and order by the Office of the Prosecutor General, National Unit for human rights and international humanitarian law, July 28, 2006, file 1577 (evidence file, volume II, annex to the Report on the Merits, folio 4530).

[271] *Cf.* Website of the José Alvear Restrepo Lawyers Collective, at the tab "El equipo." Available in Spanish at: https://www.colectivodeabogados.org/el-equipo/; statement before a public attestor by María del Pilar Silva Garay, February 22, 2022 (evidence file, volume XXXIII, affidavits, folio 44700), and document: *Síntesis de los hechos padecidos por las víctimas del caso 12.380 Colectivo de Abogados José Alvear Restrepo* ("synthesis of experiences by the victims of case 12,380, José Alvear Restrepo Lawyers Collective") (evidence file, volume XI, annex 3 to the CAJAR and CEJIL pleadings and motions brief, folio 26257).

[272] *Cf.* Communication from CAJAR to the President of Colombia, February 23, 2015, (evidence file, volume III, annex to the Report on the Merits, folio 6772).

[273] *Cf.* Website of the José Alvear Restrepo Lawyers Collective, at the tab "El equipo." Available in Spanish at: https://www.colectivodeabogados.org/el-equipo/; statement before a public attestor by Jomary Liz Ortegón Osorio, May 2, 2022 (evidence file, volume XXXIII, affidavits, folio 44643), and document: *Síntesis de los hechos padecidos por las víctimas del caso 12.380 Colectivo de Abogados José Alvear Restrepo* ("synthesis of experiences by the victims of case 12,380, José Alvear Restrepo Lawyers Collective") (evidence file, volume XI, annex 3 to the CAJAR and CEJIL pleadings and motions brief, folio 26254).

[274] *Cf.* Statement by Jomary Liz Ortegón Osorio before the Office of the Prosecutor General, November 20, 2009, file 12495-11 (evidence file, volume I, annex to the Report on the Merits, folio 4317).

[275] *Cf.* Identification card of Dora Lucy Arias Giraldo (evidence file, volume IX, annex 4.1.1 to Ms. Arias' pleadings and motions brief, folio 25188), and statement before a public attestor by Dora Lucy Arias Giraldo, April 29, 2022 (evidence file, volume XXXII, affidavits, folios 44518 and 44558).

262. The representatives declared that Ms. Arias Giraldo was at the Tolemaida military base in the department of Cundinamarca on October 31, 2002, visiting the Court of Military Criminal Investigation to examine a case file for which she was representing the victims. A military officer blocked her entrance, claiming he had superior orders. Another officer began to film the alleged victim and her entourage on a video camera without their consent, and when they protested, he said that "the filming was a routine procedure" and "information had come to light that people matching their description were trying to get into the base for purposes of terrorism."[276]

C.2.13. Eduardo Carreño Wilches

263. Lawyer Eduardo Carreño Wilches was born on November 18, 1952. He was a charter member of CAJAR. He is still part of the organization, sitting on the council of members and working in the area of criminal law.[277]

264. CAJAR and CEJIL reported that Mr. Carreño Wilches had been experiencing threats and harassment in the 1990s.[278]

265. Mr. Carreño Wilches and Luis Guillermo Pérez Casas were photographed by an officer of the National Police outside the sectional council of the judiciary in the city of Bogotá on February 8, 2013.[279]

C.2.14. Yessika Hoyos Morales

266. Lawyer Yessika Johanna Hoyos Morales was born on January 30, 1984. She joined CAJAR in 2003. She is still in the organization, sits on the council of members, and works in the area of criminal law.[280]

267. Ms. Hoyos Morales was in the city of Sincelejo in the department of Sucre on June 17, 2011, developing information on her cases, when she was approached by a man unknown to her, who reached his hand into a suitcase as a sign that he had a weapon, and said, "so we meet again; you had better be careful." Then he left. Shortly after that trip, between June 13 and June 20, 2011, the Sucre chapter of the national movement of victims (MOVICE) received an email "threat" signed by the "Flying Eagles" and reading: "the guerrillas are still antagonizing […] it's a signal that we must take action, we have repeatedly asked you to

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[276] *Cf.* Communication from the petitioners to the Commission, November 25, 2002 (evidence file, volume IV, file on precautionary measures before the Commission, folios 8740 and 8741), and statement before a public attestor by Dora Lucy Arias Giraldo, April 29, 2022, (evidence file, volume XXXII, affidavits, folio 44521).

[277] *Cf.* Website of the José Alvear Restrepo Lawyers Collective, at the tab "El equipo." Available in Spanish at: https://www.colectivodeabogados.org/el-equipo/; statement before a public attestor by Eduardo Carreño Wilches, February 21, 2022 (evidence file, volume XXXIII, affidavits, folio 44613), and document: *Síntesis de los hechos padecidos por las víctimas del caso 12.380 Colectivo de Abogados José Alvear Restrepo* ("synthesis of experiences by the victims of case 12,380, José Alvear Restrepo Lawyers Collective") (evidence file, volume XI, annex 3 to the CAJAR and CEJIL pleadings and motions brief, folio 26222).

[278] *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13108), and statement before a public attestor by Eduardo Carreño Wilches, February 21, 2022 (evidence file, volume XXXIII, affidavits, folio 44616).

[279] *Cf.* Communication from the petitioners to the Commission, April 10, 2013 (evidence file, volume III, annex to the Report on the Merits, folio 7261).

[280] *Cf.* Website of the José Alvear Restrepo Lawyers Collective, at the tab "El equipo." Available in Spanish at: https://www.colectivodeabogados.org/el-equipo/; statement before a public attestor by Yessika Johanna Hoyos Morales, November 3, 2020 (evidence file, volume XI, annex 37 to the CAJAR and CEJIL pleadings and motions brief, folio 26643), and document: *Síntesis de los hechos padecidos por las víctimas del caso 12.380 Colectivo de Abogados José Alvear Restrepo* ("synthesis of experiences by the victims of case 12,380, José Alvear Restrepo Lawyers Collective") (evidence file, volume XI, annex 3 to the CAJAR and CEJIL pleadings and motions brief, folio 26258).

go."[281]

268. Information from the representatives shows that on June 4, 2015, at a session of the committee on political Affairs, security and human rights of the Euro-Latin American Parliamentary Assembly,[282] taking place in Brussels, Belgium, two European parliamentarians moved that Ms. Hoyos Morales' scheduled presentation be blocked; she had been invited to speak on behalf of several platforms of human rights organizations. Participants in the Eurolat Assembly suggested that CAJAR had close ties with the FARC-EP guerrillas, "and therefore, human rights defender Yessika Hoyos should not have a voice in the current session, because she would be speaking for that organization." A vote was held after these insinuations were raised, and Mrs. Hoyos Morales' intervention was canceled.[283]

269. Ms. Hoyos Morales' day-care provider for her 16-month-old daughter was approached by three unknown persons in a vehicle on September 10, 2015. The occupants of the vehicle, pretending to be acquaintances of the lawyer, asked what time she would be home and who would be in charge of the baby at that time, pointing out that they would be watching for her arrival to contact her.[284]

270. The representatives reported that CAJAR was advised in early 2016 that "military intelligence was plotting an attack on lawyer […] Hoyos Morales, because as part of her work, […] she [had] proven that law enforcement officers had taken part in serious crimes and human rights violations." The message said specifically, "stop bothering the generals."[285]

271. As Ms. Hoyos Morales was driving home in November, 2018, she observed a white pick-up following her with no headlights. She decided to drive all the way around the block to confirm her suspicions. Assured that she was in fact being followed, the alleged victim quickly turned into the entrance to her house, and the pick-up sped away.[286]

C.2.15. Maret Cecilia García Alfonso

272. Lawyer Maret Cecilia García Alfonso was born on January 27, 1961. She worked at the Collective from 1993 to 2002 and sat on the council of members.[287]

273. CAJAR and CEJIL claimed that Ms. García Alfonso had experienced threats and harassment since the 1990s.[288]

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[281] *Cf.* Communication from the petitioners to the Commission, April 11, 2012 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12295).

[282] The Euro-Latin American Parliamentary Assembly, created in the framework of summits of the European Union, Latin America, and the Caribbean, is a forum that brings together members of the European Parliament and Latin American regional parliaments. See: https://www.europarl.europa.eu/eurolat/en/home.

[283] *Cf.* Communication from the petitioners to the Commission, September 11, 2015 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12712), and statement by Alirio Uribe Muñoz at public hearing before this Court.

[284] *Cf.* Communication from the petitioners to the Commission, September 11, 2015 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12711), and statement before a public attestor by Yessika Johanna Hoyos Morales, November 3, 2020 (evidence file, volume XI, annex 37 to the CAJAR and CEJIL pleadings and motions brief, folio 26646).

[285] *Cf.* Communication from the petitioners to the Commission, June 08, 2016 (evidence file, volume V, electronic file on precautionary measures before the Commission, folios 12732 and 12733).

[286] *Cf.* Communication from the petitioners to the Commission, February 20, 2020 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12843).

[287] *Cf.* Statement before a public attestor by Maret Cecilia García Alfonso, April 30, 2022 (evidence file, volume XXXII, affidavits, folios 44402 and 44407), and passport of Maret Cecilia García Alfonso (evidence file, volume IX, annex 3.6 to Ms. Arias' pleadings and motions brief, folio 24928).

[288] *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13108).

274. A witness in one of the cases being litigated by CAJAR reported to the organization on May 4, 2001, that he had learned about a plan by a paramilitary group to kill Ms. García Alfonso, Alirio Uribe Muñoz, and Luis Guillermo Pérez Casas.[289] Ms. García Alfonso then left the country, fearing for her life.[290]

C.2.16. Pedro Julio Mahecha Ávila

275. Lawyer Pedro Julio Mahecha Ávila was born on January 30, 1950. He worked for the Collective from 1993 until 2005 and sat on the council of members. He currently serves as a judge in the Special Jurisdiction for Peace[291] (hereinafter "JEP").[292]

276. Mr. Mahecha Ávila had been experiencing threats and harassment since the 1990s.[293]

277. A taxi pulled up and parked near Mr. Mahecha Ávila's vehicle on March 9, 2002, at approximately 8:00 p.m. The building guard found the presence unusual, approached the taxi, and asked the occupants whether they were residents of the housing complex. The driver told him to "mind his own business" and insulted the guard, who responded to the insult. The driver did not leave his vehicle, but drew a machine gun and held it up as if to fire, but was dissuaded by the other people in the taxi. The guard hid behind a bus, and the people fled the premises at top speed.[294]

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289 *Cf.* Statement by Maret Cecilia García Alfonso before the Office of the Prosecutor General, May 21, 2001 (evidence file, volume I, annex to the Report on the Merits, folio 2697), and statement by Luis Guillermo Pérez Casas before the Office of the Prosecutor General, June 26, 2001 (evidence file, volume I, annex to the Report on the Merits, folio 2725).

290 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13199), and statement before a public attestor by Maret Cecilia García Alfonso, April 30, 2022 (evidence file, volume XXXII, affidavits, folio 44404). The Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Representative of the UN Secretary General on human rights defenders sent the Government of Colombia a joint urgent appeal on July 12, 2001, concerning lawyers Alirio Uribe Muñoz, Luis Guillermo Pérez Casas y Maret Cecilia García, who had been "subjected to death threats from a paramilitary group." *Cf.* Commission on Human Rights, Report of the Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, U.N. Doc. E/CN.4/2002/72, February 11, 2002, para. 29.

291 According to Legislative Report 1 of 2017, "to create a chapter in the Constitution with transitional provisions for ending the armed conflict and building a stable, lasting peace, and to enact other provisions," the Special Jurisdiction for Peace "will administer justice […] and be given preferential rights over all other jurisdictions for exclusive attention to cases involving acts committed prior to December 1, 2016, because of, at the time of, or with a direct or indirect relationship to the armed conflict." Its purposes are to "satisfy the right of victims to receive justice; offer truth to Colombian society; protect the rights of victims; contribute to achieving a stable, lasting peace; and adopt decisions that will provide full legal certainty to those who took part […] in the internal armed conflict" (transitional article 5). Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Acto/30030428.

292 *Cf.* Statement before a public attestor by Pedro Julio Mahecha Ávila, April 29, 2022 (evidence file, volume XXXII, affidavits, folios 44473 and 44480).

293 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13108), and statement before a public attestor by Pedro Julio Mahecha Ávila, April 29, 2022 (evidence file, volume XXXII, affidavits, folio 44474). The Special Rapporteur on the independence of judges and lawyers sent and urgent appeal to the Government of Colombia on December 12, 1996, concerning lawyer Mahecha Ávila, "who was reportedly being followed and watched by unknown individuals," […] acts of intimidation [that] might be linked to his work as the lawyer of persons who are detained for political reasons, including members of a guerrilla-group," and added, "The Special Rapporteur was informed that since the establishment of the lawyers' collective several of its members had been receiving death threats related to their work as human rights lawyers." *Cf.* Commission on Human Rights, Report of Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, report on the mission to Colombia, U.N. Doc. E/CN.4/1997/32, February 18, 1997, para. 96.

294 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13132). The Special Representative of the UN Secretary General on the situation of human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions sent a joint urgent

278. Information supplied by the representatives indicated that Mr. Mahecha Ávila had made a work trip to the city of Cartagena in the department of Bolívar on May 13, 2004. He paid a visit to a prison and noticed that he was being followed by two people on a motorcycle; he informed the prison guards, who asked the subjects to identify themselves and confirmed that they were DAS agents. They gave no explanation as to the reasons why they were following him. The lawyer then went to the transport terminal for a working meeting and observed that other men were following him. The alleged victim finished his meeting and was preparing to travel on to Barranquilla, in the department of Atlántico, when he realized he was being followed by a taxi with polarized windows. He decided to cancel his trip and return immediately to Bogotá.[295]

C.2.17. Adriana Patricia Fuentes López

279. Lawyer Adriana Patricia Fuentes López was born on August 9, 1981. She worked at CAJAR from 2002 to 2006, first as a paralegal, and later as a lawyer.[296]

280. The representatives said that in November, 2014, during the time Ms. Fuentes López was working on Congressman Alirio Uribe Muñoz' legislative team while he was serving on the Chamber of Representatives, she received a call on her personal mobile telephone with a voice message making insinuations about possible acts of sexual violence against her. This was a few days after a public hearing in the national Congress as follow-up to laws guaranteeing access to justice for victims of sexual violence; Congressman Uribe Muñoz had helped organize the event and was one of the speakers, and Ms. Fuentes López had assisted him as advisor.[297]

C.2.18. Efraín Cruz Gutiérrez

281. Efraín Cruz Gutiérrez was born on March 30, 1982. He worked at the Collective as a paralegal in the international area from 2004 to 2006.[298]

282. According to CAJAR and CEJIL, a computer and a fax machine were stolen from Mr. Cruz Gutiérrez' home on September 15, 2004.[299]

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appeal to the Government of Colombia on March 18, 2002, concerning Mr. Mahecha Ávila because of the incidents on March 9 of that year. *Cf.* Commission on Human Rights, Report of the Special Representative of the UN Secretary General on the situation of human rights defenders, Hina Jilani, U.N. Doc. E/CN.4/2003/104/Add.1, February 20, 2003, para. 97.

295 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13135). The Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on the independence of judges and lawyers, and the Special Representative of the UN Secretary General on human rights defenders sent a joint communication to the Government of Colombia on July 7, 2004, concerning the "acts of harassment by the DAS" against Mr. Mahecha Ávila. The communication added, "reports indicated that DAS agents had ordered an operation in the city of Cartagena to demonstrate that Pedro Julio Mahecha Ávila was a [FARC] guerrilla." *Cf.* Commission on Human Rights, Report of the Special Rapporteur on freedom of opinion and expression, Summary of cases transmitted to Governments and replies received, U.N. Doc. E/CN.4/2005/64/Add.1, March 29, 2005, para. 239.

296 *Cf.* Statement before a public attestor by Adriana Patricia Fuentes López, October 27, 2020 (evidence file, volume XI, annex 33 to the CAJAR and CEJIL pleadings and motions brief, folio 26621).

297 *Cf.* Communication from the petitioners to the Commission, September 18, 2014 (evidence file, volume V, electronic file on precautionary measures before the Commission, folios 12521 and 12523).

298 *Cf.* Statement before a public attestor by Efraín Cruz Gutiérrez, November 3, 2020 (evidence file, volume XI, annex 36 to the CAJAR and CEJIL pleadings and motions brief, folio 26638), and document: *Síntesis de los hechos padecidos por las víctimas del caso 12.380 Colectivo de Abogados José Alvear Restrepo* ("synthesis of experiences by the victims of case 12,380, José Alvear Restrepo Lawyers Collective") (evidence file, volume XI, annex 3 to the CAJAR and CEJIL pleadings and motions brief, folio 26276).

299 Information supplied by the Collective in a 2004 motion for constitutional relief against the then President of Colombia based on his statements (*infra* para. 456). *Cf.* Constitutional Court Judgment T-1062/05, October 20, 2005.

283. Mr. Cruz Gutiérrez was shadowed by a pick-up truck on October 1 of the same year; it was driven by suspicious-looking individuals and followed him from the time he left the offices of the prosecutors in downtown Bogotá until he reached CAJAR headquarters. Subsequent inquiries identified the vehicle license plate as pertaining to an official entity of the Ubaté municipal government in the department of Cundinamarca.[300] The incident was reported to the Prosecutor General, who on March 3, 2006, issued an order not to investigate because it was a case of non-criminal conduct (*infra* para. 412).

C.2.19. Adriana Cuéllar Ramírez

284. Journalist Adriana Elena Cuéllar Ramírez was born on October 9, 1966. She worked as press chief for the Collective from 2003 to 2013.[301]

285. Information from CAJAR and CEJIL indicated that Ms. Cuéllar Ramírez had received three telephone messages on November 24, 2003, with death threats. Unknown persons entered her home the next day, November 25, and took several documents belonging to her.[302] The incident was reported to the Prosecutor General, which on February 17, 2005, issued an order to discontinue the investigation (*infra* para. 416).

286. In the midst of the commemoration of national human rights day in Colombia on September 8 and 9, 2014, over 80 people received email threats. The threatening messages were also sent to the email address of Ms. Cuéllar Ramírez, who at that time was working on the legislative team of Congressman Alirio Uribe Muñoz during his term on the Chamber of Representatives.[303]

C.3. Acts of violence, intimidation, harassment, and threats registered after the case had been submitted to the Court

287. During the proceedings before the Court, CAJAR and CEJIL reported supervening facts that affected certain of the alleged victims. References to persons not previously recognized as alleged victims derive exclusively from facts reported by the two organizations.

288. On June 3, 2019, the vehicle belonging to Álvaro Enrique Romero Jaimes, father of Soraya Gutiérrez Argüello's daughter, was photographed while it was outside the lawyer's residence. The private security guard of the residential complex observed the incident.[304]

289. On June 9, 2019, Paula Camila Romero Gutiérrez, daughter of lawyer Gutiérrez Argüello,

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300 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13133).

301 *Cf.* Statement before a public attestor by Adriana Elena Cuéllar Ramírez, October 26, 2020 (evidence file, volume XI, annex 26 to the CAJAR and CEJIL pleadings and motions brief, folio 26569), and document: *Síntesis de los hechos padecidos por las víctimas del caso 12.380 Colectivo de Abogados José Alvear Restrepo* ("synthesis of experiences by the victims of case 12,380, José Alvear Restrepo Lawyers Collective") (evidence file, volume XI, annex 3 to the CAJAR and CEJIL pleadings and motions brief, folio 26265).

302 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folio 13120). The Special Representative of the UN Secretary General on human rights defenders sent an urgent appeal to the Government of Colombia on December 3, 2003, concerning Ms. Cuéllar Ramírez for the incidents on November 24 and 25 of that year. *Cf.* Commission on Human Rights, Report of the Special Representative of the UN Secretary General on the situation of human rights defenders, Hina Jilani, U.N. Doc. E/CN.4/2004/94/Add.3, March 23, 2004, para. 111.

303 *Cf.* Communication from the petitioners, September 18, 2014 (evidence file, volume V, electronic file on precautionary measures before the Commission, folios 15521 and 15522).

304 *Cf.* Communication from the petitioners to the Commission, February 20, 2020 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12843).

was the victim of harassment as she sat in a vehicle parked in an area to the north of the city of Bogotá and was approached multiple times by a man riding a motorcycle.[305]

290. On June 12, 2019, at approximately 11:30 a.m., the mother of Paula Camila Romero Gutiérrez' younger sister attempted to call her on her mobile telephone but had trouble getting through, "and it seemed suspicious," as was the fact that her call was answered by a man who appeared to be giving orders to people around him. Paula Romero and her sister spoke to each other later and said that, when they answered the multiple calls, there was no one on the line.[306]

291. On June 13, 2019, CAJAR "triggered an urgent early warning due to imminent risk to the victims of the Guaripa massacre and the people accompanying them," including lawyer Alirio Uribe Muñoz. This was because on June 10 of that year, unknown persons had contacted two members of the *Movimiento de víctimas de crímenes de Estado* (Movement of victims of crimes of State, MOVICE), to intimidate them so they and their lawyers would not attend the hearing scheduled for June 14, 2019.[307]

292. On June 15, 2019, lawyer Yessika Hoyos Morales was at a shopping center in Bogotá with her mother and three young daughters, when she noticed that they were being followed by an unknown man. He followed the family twice, maintaining visual contact with the lawyer, so that she would be aware of his presence.[308]

293. On June 26, 2019, a threatening leaflet was handed out, signed by the "Black Eagles—capital bloc" and threatening several individuals and organizations, directly naming CAJAR.[309]

294. On July 24, 2019, a man wearing dark glasses and a cap that covered part of his face entered the CAJAR offices, claiming to have an appointment with a lawyer, but he gave the name of a person who did not work there; when told that the person was not a member of the Collective, the man refused to leave the building and proceeded to take panoramic photographs of the facility with his mobile telephone. When he was reprimanded for his behavior and asked to leave, the man threatened one of the people working there.[310]

295. On December 9, 2019, the mother of Yessika Hoyos Morales received a telephone call informing her about an package delivery for the lawyer's husband. When she returned the call to the same number, it was answered by a man who said he knew nothing about the message.[311]

296. On January 18, 2020, a threat began to circulate on social media, dated January 15 of the same year and signed by the "Black Eagles—D.C. capital bloc." The communication included a list of persons and human rights organizations, including the Collective, "accused of being 'guerrillas in disguise'." The message said that these individuals "would be murdered

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[305] *Cf.* Communication from the petitioners to the Commission, February 20, 2020 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12843).

[306] *Cf.* Communication from the petitioners to the Commission, February 20, 2020 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12843).

[307] *Cf.* Communication from the petitioners to the Commission, February 20, 2020 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12844).

[308] *Cf.* Communication from the petitioners to the Commission, February 20, 2020 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12843).

[309] *Cf.* Communication from the petitioners to the Commission, February 20, 2020 (evidence file, volume V, electronic file on precautionary measures before the Commission, folios 12842 and 12843).

[310] *Cf.* Communication from the petitioners to the Commission, February 20, 2020 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12845).

[311] *Cf.* Communication from the petitioners to the Commission, February 20, 2020 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12845).

and their protection services could not stop it"; the message "announced vicious acts such as torture, kidnapping, forced disappearance, mutilation, and dismemberment, and offered a reward of thirty million *pesos* to anyone willing to attack the people named in the threat."[312]

297. A threat signed by the "Black Eagles—D.C. capital bloc" was circulated on February 6, 2020, naming several individuals and organizations, accusing them of being "mouthpieces" for guerrilla groups and giving them 30 days to leave the country. These people included Alirio Uribe Muñoz.[313]

298. On February 26, 2020, following the public hearing before the Inter-American Court on the *Petro Urrego v. Colombia* case, in which the Collective had represented the victim, unknown persons entered the offices of the foundation managed by the brother of Gustavo Petro Urrego and left behind a threatening leaflet signed by the "Black Eagles."[314]

299. On June 11, 2021, after a private hearing before the Special Jurisdiction for Peace, with the participation of lawyer Yessika Hoyos Morales, two threatening messages were left on her mobile telephone. A similar message was left on the telephone of the father of one of the victims in the trial.[315]

300. On the night of June 12, 2021, a cousin of Ms. Hoyos Morales received a message on Facebook, allegedly from Ms. Hoyos Morales' mother, asking him for a favor. The conversation ended, as he "quickly realized that the message was fake and that the lawyer's mother's account had been hacked."[316]

301. On the night of April 30, 2023, while Soraya Gutiérrez Argüello was away from her home in Bogotá, unidentified intruders entered her residence and attempted to steal three mobile telephones, two speakers, a camera, and "other items of little value." An alarm was set off in the residential complex at 9:56 p.m., and the persons fled, leaving behind the items they had meant to steal. When Ms. Gutiérrez Argüello arrived home, she could see by the mess that the persons had inspected several different rooms. Unknown persons entered the home of María Irma Argüello Marino, mother of Ms. Gutiérrez Argüello, located in the municipality of Sogamoso, department of Boyacá, on May 5 and 9, 2023; a subsequent inspection of the scene found that the unknown persons had rifled through the drawers and closets around the house, leaving objects and personal items on the floor.[317]

302. On May 3 and 17, 2023, unknown and unauthorized persons entered a home rented by Reinaldo Villalba Vargas in Fusagasugá, department of Cundinamarca.[318]

D. Intelligence activities involving members of CAJAR

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312 *Cf.* The CAJAR and CEJIL pleadings and motions brief before this Court, November 9, 2020 (merits file, volume I, folio 552). Deicy Jaramillo Rivera said that the Prosecutor General was pursuing the investigation of this incident under file 110016000013202000401 (attached to file 050016099166201918264), currently on "active status," and that charges had been filed against "the author of the leaflet." *Cf.* Statement before a public attestor by Deicy Jaramillo Rivera, May 2, 2022 (evidence file, volume XXXIV, affidavits, folios 45986, 45987 and 46004).

313 *Cf.* Communication from the petitioners to the Commission, February 20, 2020 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12842).

314 *Cf.* Communication from the petitioners to the Commission, May 13, 2020 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 12876).

315 *Cf.* Communication from the petitioners to the Commission, June 14, 2021 (evidence file, volume XXVIII, annex to the the CAJAR and CEJIL brief of August 18, 2021, folio 44245), and statement before a public attestor by Yessika Johanna Hoyos Morales, April 30, 2022 (evidence file, volume XXXIII, affidavits, folio 44583).

316 *Cf.* Communication from the petitioners to the Commission, June 14, 2021 (evidence file, volume XXVIII, annex 3 to the CAJAR and CEJIL brief of August 18, 2021, folio 44246).

317 *Cf.* The CAJAR and CEJIL brief before this Court, June 4, 2023 (merits file, volume X, folios 3918 to 3921).

318 *Cf.* The CAJAR and CEJIL brief before this Court, June 4, 2023 (merits file, volume X, folios 3921 and 3922).

D.1. The document entitled "Miscellaneous"

303. The office of the prosecutor was developing an investigation (file 9668) that called for an inspection of the facilities of the Army school of artillery on November 6, 1996.[319] Part of the operation was to collect documents, including several under a cover page with the title "Miscellaneous." One of the documents was subtitled "S[upport networks for the] UC - ELN [Camilo Union—National Liberation Army]," with the following entry:

> A[lirio] U[ribe], Director of the J[osé] A[lvear] [L]awers [C]ollective: […] has been carrying out a campaign to have outlaws now held in various prisons to be declared political prisoners.[320]

304. The Prosecutor General decided in 2002 to drop the investigation into the alleged threats against Mr. Uribe Muñoz based on the content of the document, because it was a case of "utterly noncriminal conduct" (file 590, *infra* para. 395).[321]

D.2. Report from the Solicitor General, May 7, 1999

305. The Solicitor General prepared a report[322] on May 7, 1999, reviewing "intelligence files being held in some of the State institutions."[323]

306. The report said that, starting with a visit to the facilities of the Administrative Department of Security on December 15, 1998, the delegates from the Solicitor General were given magnetic files with records containing entries on particular individuals, including: (a)

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[319] The purpose of the investigation was to look into the death and injuries of military personnel during a clash on May 10, 1992, against alleged members of the FARC. *Cf*. Order by the Office of the Prosecutor General, National Unit for human rights and international humanitarian law, October 4, 2002, file 590 (evidence file, volume VI, Commission case file, folio 18746).

[320] *Cf.* Order by the Office of the Prosecutor General, National Unit for human rights and international humanitarian law, October 4, 2002, file 590 (evidence file, volume VI, Commission case file, folios 18747, 18748 and 18755), and statement by Alirio Uribe Muñoz at public hearing before this Court. The Inter-American Commission published a 1999 report on the situation of human rights in Colombia that said:

> [A] military report has led to the initiation of a criminal investigation against Alirio Uribe of the "José Alvear Restrepo" Lawyers' Collective." That military report apparently links Mr. Uribe to criminal activity on the grounds that he provides legal assistance to criminal defendants. The report states that Mr. Uribe is "dedicated to having bandits held in various jails declared 'political prisoners.'"

Cf. IACHR. Third report on the human rights situation In Colombia, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, chapter VII, para. 35.

[321] *Cf.* Order by the Office of the Prosecutor General, National Unit for human rights and international humanitarian law, October 4, 2002, file 590 (evidence file, volume VI, Commission case file, folios 18747, 18748, 18755, 18759 and 18762). The Prosecutor considered, among other things, that the document known as "Miscellaneous" was not a military intelligence report and its content "merely […] offered an unfortunate labeling […] that revealed no evidence nor indicated any facts or circumstances that […] could frame [Alirio Uribe Muñoz] as a member or participant in the UC-ELN rebel group."

[322] The Colombian Constitution assigns the Office of the Solicitor General the task of "protection and promotion of human rights, protection of the public interest, and oversight of the official conduct of those performing public duties." The Solicitor General is the managing director of the office of the Solicitor General. One of the responsibilities of the Solicitor General, who heads the office, is to "ensure the diligent, efficient performance of administrative duties" and "exercise maximum oversight of the official conduct of those who hold public positions.." *Cf.* Constitution of Colombia, articles 118, 275 and 277, paragraphs 5 and 6. Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Constitucion/1687988.

[323] *Cf.* Report from the Office of the Solicitor General, May 7, 1999 (evidence file, volume III, annex to the Report on the Merits, folio 8269). The report said that several people had requested intervention by the Office of the Solicitor General "to clarify the situation in view of certain entries that, it was assumed, had been found in the files of the State security agency." The Inter-American Commission, in its 1999 report on the human rights situation in Colombia, said it is "concerned that the State security forces direct intelligence activities against human rights organizations and their members based solely on their status as such," and "appear to assume automatically that [they] present a danger to the public order." *Cf.* IACHR. Third report on the human rights situation In Colombia, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, chapter VII, para. 46.

Eduardo Carreño Wilches (tagged as item No. 6701), linking him to the Communist Party, detailing his duties as the statutory officer of the Collective, and identifying him as the legal representative of the *Asociación de Familiares de Detenidos Desaparecidos* (Association of Family Members of the Detained-Disappeared, ASFADDES); (b) Reinaldo Villalba Vargas (No. 680086), describing his activities as representative of CAJAR and identifying him as legal representative of ASFADDES, and (c) Alirio Uribe Muñoz (No. 680085 and No. 680184), detailing his tasks as a member and officer of the Collective.[324]

307. The report described a visit to the intelligence archives of the National Police on January 6, 1999 to review the magnetic records, where "the archives of 'Dijin' [Judicial Investigation Department]' turned up entries on several people, including Rafael Barrios Mendivil (No. 904700), Pedro Julio Mahecha Ávila (No. 920661) and Alirio Uribe Muñoz (No. 835298 and No. 906339). The report cited the logbook, which "showed that [Mr. Uribe Muñoz] been brought into the Medellín prison on October 2, 1990, charged with breach of executive order 180 of 1988."[325]

308. The report also gave an account of a visit to the army's military intelligence headquarters to review magnetic files contained in the information system. These records included items concerning several persons, including Rafael Barrios Mendivil (position No. 59402), identified as a sympathizer of the Colombian Communist Party.[326]

309. CAJAR and CEJIL said that the information contained in the archives of the DAS and the military intelligence headquarters was "inaccurate."[327] The State of Colombia corroborated that the information was present in the archives, but that it could not confirm whether the content was true or false.[328]

D.3. Requests for an explanation addressed to the President and Vice President of the Republic

310. Reinaldo Villalba Vargas, in his capacity as president of CAJAR, sent an "open letter" to the President of Colombia on September 7, 2000, "demanding an immediate explanation from the State of Colombia for the reasons why members of [that] institution are arbitrarily and illegally named in multiple military intelligence reports."[329]

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[324] *Cf.* Report of the Office of the Solicitor General, May 7, 1999 (evidence file, volume III, annex to the Report on the Merits, folios 8269 and 8270), and a July, 2006 document listing organizations and persons who had asked the Office of the Solicitor General to be cognizant of their identity during its review of any intelligence files on human rights organizations and their members (evidence file, volume I, annex to the Report on the Merits, folios 1918 to 1921).

[325] *Cf.* Report from the Office of the Solicitor General, May 7, 1999 (evidence file, volume III, annex to the Report on the Merits, folios 8271 and 8272). Executive order 180 of 1988, "to supplement several articles of the Criminal Code and introduce other provisions to restore public order," was handed down during the state of siege declared under Executive Order 1038 of 1984; it codified crimes including terrorism, torture, extortion, kidnapping, and producing or trafficking military grade weapons and ammunition allowed only for the military or the National Police. Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1040981.

[326] *Cf.* Report from the Office of the Solicitor General, May 7, 1999 (evidence file, volume III, annex to the Report on the Merits, folio 8272), and document giving a July, 2006 document listing organizations and persons who had asked the Office of the Solicitor General to be cognizant of their identity during its review of any intelligence files on human rights organizations and their members (evidence file, volume I, annex to the Report on the Merits, folio 1917).

[327] *Cf.* The CAJAR and CEJIL pleadings and motions brief before this Court, November 9, 2020 (merits file, volume I, folio 490).

[328] *Cf.* The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1063).

[329] *Cf.* Open letter from CAJAR to the President of Colombia, September 7, 2000, (evidence file, volume I, annex to the Report on the Merits, folios 2607 to 2609). CAJAR and CEJIL also said that they learned in 2002 "about intelligence report 01579" signed by military authorities, "pointing to the Collective […] as an organization of the FARC guerrillas and the offices of this human rights organization as a center of operations for the Antonio Nariño bloc

311. The director of the President's program for human rights and international humanitarian law replied to the Collective in May, 2001, saying that it was interested in "pursuing the matter of intelligence reports by State security agencies," and that it was "following up on the 'Miscellaneous' intelligence report."[330] CAJAR and CEJIL submitted information, corroborated by the State, that the director of the President's program "committed to intercede with law enforcement and the Office of the Solicitor General to declassify and purge the intelligence reports."[331]

312. Alirio Uribe Muñoz, on behalf of CAJAR, sent a communication on November 22, 2002, to the then Vice President of the Republic, to "express […] his concern for the […] acts of aggression […] against members of the Collective […] and demand compliance with the commitments acquired by the State of Colombia under the leadership of the former administration […] to declassify the intelligence reports." This note reported acts of wiretapping, surveillance and shadowing that had been experienced by the members of the organization. The Collective also reiterated its requested for an explanation as to why several of its members had been included in intelligence reports.[332]

D.4. DAS intelligence activities

D.4.1. The Administrative Department of Security (DAS)

313. The Administrative Department of Security (DAS) was created by the President of Colombia via Executive Order 1717 of 1960, to replace the former Administrative Department of the Colombian Intelligence Service, created in 1953.[333] Article 1 of Executive Order 643 of 2004, which most recently amended the structure of the DAS,[334] defined its purpose as follows:

> [T]o develop and adopt policies, general plans, programs and projects of the administrative sector. The Administrative Department of Security, in pursuit of this goal, will produce the intelligence needed by the State, providing the executive with an instrument for making decisions and formulating the State's

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of that organization." They added, "we lodged a complaint, to no avail" (merits file, volume I, folio 491). No evidence was submitted to the Court to corroborate these claims.

330 *Cf.* Notice from the director of the President's program for human rights and international humanitarian law to the president of CAJAR, May 18, 2001 (evidence file, volume I, annex to the Report on the Merits, folios 2611 and 2612). CAJAR and CEJIL said that the President's program "had promised to intercede with law enforcement and the Office of the Solicitor General to declassify and purge the intelligence reports, and for this purpose called a number of meetings and ultimately failed to fulfill these commitments (merits file, volume I, folio 491).

331 *Cf.* CAJAR and CEJIL pleadings and motions brief before this Court, November 9, 2020 (merits file, volume I, folio 491), and the State's answering brief before this Court, May 17, 2022 (merits file, volume II, folio 1064). See a July 26, 2001 note from the director of the President's program for human rights and international humanitarian law to members of CAJAR (evidence file, volume XLIV, annex to the CAJAR and CEJIL brief, May 26, 2023, folio 48677).

332 *Cf.* Communication from CAJAR to the Vice President of Colombia, November 22, 2002 (evidence file, volume I, annex to the Report on the Merits, folios 2882 to 2885).

333 Executive Order 1717 of 1960, "[t]o organize the Administrative Department of Security" (available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1801084), assigned the following tasks to the new institution: (a) discharge judicial police duties, "cooperating in crime investigation"; (b) "[c]ontribute to preserving public order under the guidance of the executive and in close cooperation with the national police," and (c) "[k]eep a registry of foreigners in the country and ensure that immigration laws are enforced" (Article 1). Under the terms of Executive Order 3398 of 1965, "[t]o organize the national defense" (*supra* footnote 124, available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/30036380), the leadership and coordination of the DAS were assigned to "the commanders of the armed forces […] to carry out their missions for national defense (Article 19). Executive Order 2110 of 1992, "[t]o restructure the Administrative Department of Security" (available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/30019385), defined the DAS as a "civilian intelligence corps" (Article 6).

334 The structure and duties of the DAS had been amended earlier under Executive Orders 625 of 1974, 512 of 1989, 2110 of 1992, 218 of 2000, 1272 of 2000 and 1409 of 2002.

domestic and foreign security policies, in accordance with the provisions of Colombia's Constitution and laws.[335]

314. The many functions of the DAS, according to Article 2 of 2004 Executive Order 643, include:

> 1. Produce State intelligence needed by the Government and design intelligence policies for the administrative sector[336] to guarantee domestic and foreign State security[337] for Colombia. […]
> 3. Obtain and process information, both domestic and foreign, on matters involving national security, for the purpose of producing State intelligence to support the President in developing policies and making decisions.
> 4. Take part in preparing the program of the State's intelligence needs as proposed by the President.
> 5. Direct the State's strategic intelligence,[338] both domestically and internationally.
> 6. Coordinate the exchange of information and cooperation with other national and international agencies performing similar roles.
> 7. Carry out counterintelligence actions[339] to protect the interests of the State in the face of hostile activities originating at home or abroad. […]
> 10. Exercise immigration control over domestic and foreign citizens and administer the identification records of foreign nationals.
> 11. Serve as the judicial police, in coordination with the Prosecutor General, for criminal investigations relevant to the institution's nature and purpose.
> 12. Administer criminal records and national identification registries, and issue judicial certificates based on internal exchange and the reports or advisories that should be delivered promptly to Colombian judicial authorities.
> 13. Serve as the Interpol National Central Bureau, NCB, for the exchange of information and reciprocal assistance, respecting applicable legal provisions and by-laws.
> 14. Provide security services for the President and his or her family, the Vice President and his or her family, cabinet ministers and former Presidents; information involving their safety is legally protected as confidential. […]
> Paragraph. When persons and dignitaries other than those indicated in subparagraph 14 of this article require State protection services, agreement must be worked out for other government agencies providing protection services to assume this task. The Administrative Department of Security will continue to lend these services until they are assumed by other agencies, based on pertinent risk analyses.

D.4.2. Special intelligence group 3 (G3) and its activities

315. The Prosecutor General began an investigation following the appearance of an article in the February 22, 2009 issued of the news magazine *Semana*, entitled "The DAS is still taping." The article described agents of this administrative agency wiretapping Supreme Court justices, prosecutors, journalists, politicians, military personnel, and government

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335 Executive Order 643 of 2004, "to amend the structure of the Administrative Department of Security and order other measures." Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1137628.

336 Article 38 defined the concept of "intelligence":
> Knowledge obtained through the effective processing of information, delivering it to those responsible for making decisions on a given subject. The type and content of intelligence depend essentially on the level of decisions for which guidance is being sought. […]

337 Article 34 defined the concept of "national security":
> The State's guarantee to its associates that it will fulfill and safeguard the nation's objectives by identifying and profiling opportunities, barriers, and threats, both domestic and foreign, that could have a positive or negative impact on them. This is essentially a political role that calls for social, political, economic, and military actions.

338 Article 41 defined "strategic intelligence":
> Special knowledge with which to probe the future, reduce uncertainty, and contribute to the executive's decision-making. This means that strategic intelligence […] identifies the risks, opportunities, and relevance of matters of national interest so as to reduce uncertainty concerning the identification of short-, medium-, and long-term scenarios, allowing the executive to preserve national security.

339 Article 39 defined "counterintelligence":
> This work is eminently preventive and intended to protect the potential of intelligence it possesses against adversaries of the State. Its methods rest on the application of active or passive measures designed to detect, neutralize, and counter the intelligence activities of outside organizations […].

authorities.[340]

316. The prosecutor's investigation consisted of judicial inspections at DAS headquarters, which produced numerous documents, including intelligence reports, memoranda, official notes, minutes of meetings, requests for information, transcripts of taped communications, and records and profiles of people considered "targets" or objects of investigation.[341] All this documentation was combined with statements by various people, including DAS agents, and the findings of other investigation operations, which confirmed that this administrative office, during the period from March, 2003, to October, 2005, had been operating "Special intelligence group 3," also known as the G3, whose task was to "use dubious means to obtain private information on people opposed to the Government at the time." The existence and operations of the G3 were corroborated by the courts.[342]

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[340] *Cf.* Ruling by the Superior Court of the Judicial District of Bogotá, Criminal Chamber, August 8, 2017 (evidence file, volume XX, annex 73 to the answering brief, folio 35391). The issue of the news magazine *Semana* can be found at: https://www.semana.com/nacion/articulo/el-das-sigue-grabando/100370-3/. According to the publication, DAS agents had been working from January 19 to 21, 2009, to destroy "recordings, secret documents, and intelligence analysis containing information on a wide variety" of people targeted by illegal activities.

[341] *Cf.* Report of the Prosecutor General, April 3, 2009, by the field investigator, technical investigation team (evidence file, volume VI, Commission case file, folio 15588):

> [The] office [of the prosecution unit delegated to the Supreme Court] ordered several investigation activities, such as inspections of various areas of the […] DAS; the most significant of these operations, on February 22, March 1, and March 19, 2009, yielded a trove of documents that were reviewed by a multidisciplinary team of investigators from the [Technical Investigation Team], who issued field reports based on the files and documents provided them […] for study […]. [The report] begins with the results of the analysis […] of documentation found in the archives of the office of the assistant director of analysis, produced by a group known as Special intelligence group 3, [or] G-3 […]. We report […] our opinion, that the DAS documents published in the *Semana* magazine […] are the same ones developed by the G-3, given the work being done there […].

[342] *Cf.* Inter alia, ruling by the Superior Court of the Judicial District of Bogotá, Criminal Chamber, March 7, 2014 (evidence file, volume XI, annex 46 to CAJAR and CEJIL pleadings and motions brief, folios 26883, 26884, 26890 and 26961 to 26968). As part of the prosecutor's investigation, a statement was taken from the person designated by directors of the DAS as "coordinator of the G3" (JFOO), whose testimony was weighed as evidence by judicial authorities and who said, among other things:

> In 2003, I was appointed by the then director of intelligence […] to help set up a group that would operate under the recently appointed advisor to the DAS director [José Miguel Narváez Martínez], who gave me the responsibility of obtaining information on NGOs. At first the group […] began to work out of an office on the 10th floor [of the main DAS building, in the city of Bogotá], and later we moved to the boardroom of the director general of intelligence; in 2004, we were assigned a group of larger offices on the eighth floor, and the group continued to expand as other people joined us, up until October 25, 2005, when the decision was made to shut it down. […] It was a group assigned directly to the Director General of Intelligence, although in fact it reported to [José Miguel Narváez Martínez], who later became assistant director of the DAS and continued to lead the [G3]; he was the one who decided what strategies and activities the group would develop, and it should be understood that from 2004 to 2005, [Jorge Aurelio Noguera Cotes], director of the DAS, supervised these activities together with [José Miguel Narváez Martínez], through meetings we held approximately every two weeks […]. The group was created, without any type of legal backing, to identify the risks and threats to national security created by local and international NGOs, as their strategy was to smear the State of Colombia, both at home and abroad. […] I would receive material from the director general of intelligence, […] like wiretapping and intercepted emails from member organizations of NGOs that the managers in the meetings had told us were targets […]. We would receive information on the targets through the office of the director general of intelligence […], that is, they were the ones who sent us the emails and other information, and we processed it and analyzed it to produce reports alerting about their maneuvers against the State, both at home and abroad. […] In the meetings when they ordered us to develop more in-depth information on certain targets, they would give us information about emails and telephone numbers that should get us more knowledge about the threats and risks to national security […] due to the actions of NGOs on the Commission on Human Rights, the European Union, the Inter-American Court of Human Rights in San José, Costa Rica, and the OAS Commission on Human Rights in Washington […]. The main target of the group was the José Alvear Restrepo Lawyers Collective and its directors […].

Cf. Order by the Prosecutor General, unit delegated to the Supreme Court, July 30, 2009, file 12495-11 (evidence file, volume VI, Commission case file, folios 15421 to 15423); Order by the Prosecutor General, unit delegated to the Supreme Court, January 26, 2010, special assignment filing 12495-11 (evidence file, volume XX, annex 80 to

317. As judicial authorities have confirmed, the G3 was created by order of DAS leadership, without issuing any administrative record or other document certifying that it had been formally installed.[343] The domestic courts pointed to the "mission" of the G3, which they described as "criminal enterprise," "organized crime," and "criminal conspiracy," in the following terms:

> Ascertain whether human rights organizations, NGOs, or political figures opposed to the current administration had ties to illegal groups, specifically guerrilla groups; for this purpose, they used surveillance, wiretapping, and interception of correspondence and email, without permission from any judicial authority, and all the information collected was sent to the director of the DAS and then passed on to the President, so he could direct his democratic security policies intended to neutralize their activities.[344]

318. Judicial authorities also examined the modus operandi of the G3 and concluded that "targets" or "subversive targets" were identified at the highest levels of the DAS; these were individuals or organizations whose information should be obtained because they were deemed to be "a peril for constitutional stability." The purpose was to "learn about their movements and alert the national government about [them], and to design strategies to weaken and intimidate those who held different ideologies and convictions."[345]

319. Once the "targets" had been identified, a complex distribution of activities was orchestrated, including surveillance, shadowing, collecting information, wiretapping land lines and mobile lines, and intercepting email and correspondence, without judicial authorization, and this was performed by the different units of the DAS organizational structure, as follows:

> [T]he task of the "special intelligence group 3" […], with support from the General Directorate of Intelligence in coordination with the assistant directors for operations, counterintelligence, human sources, analysis, technological development, and the sectional departments, [all of them part of the DAS,] was to trace the activities of the NGOs, their members, journalists and known human rights defenders to the illegal armed groups, specifically the FARC and ELN (National Liberation Army), and

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the answering brief, folios 35873, 35874 and 35876 to 35878), and investigation of JFOO before the Prosecutor General, unit delegated to the Supreme Court, July 1, 2009 (evidence file, volume VI, Commission case file, folios 15199, 15200, 15202, 15203, 15205, 15206 and 15213).

343 *Cf.* Judgment by the Third Criminal Chamber of the Specialized non-territorial circuit, Bogotá, November 30, 2012, file 2010-00020 (evidence file, volume XII, annex 51 to the CAJAR and CEJIL pleadings and motions brief, folios 27637 and 27639):

> The criminal idea started with the top leadership of the DAS […] and somewhat higher, as the victims themselves have claimed; it grew until it succeeded in obtaining private information from persons in opposition to the current administration, using the DAS agency as its tool […]. G3 affairs were managed by DAS director [Jorge Aurelio Noguera Cotes], the advisor to the director [José Miguel Narváez Martínez], who was later made assistant director of the DAS, the directors general of intelligence, […], and several assistant directors of intelligence […].

The prosecutor further explained that the G3 "was created and acted de facto, but not de jure," and therefore described it as a "clandestine-style parallel agency within the structure of the DAS." *Cf.* Order by the Prosecutor General, unit delegated to the Supreme Court, July 11, 2012, file 12490-7 (evidence file, volume IX, annex 1.7.8. to Ms. Arias' pleadings and motions brief, folio 24400).

344 *Cf.* Judgment by the Sixth Specialized Criminal Circuit Court of Bogotá, September 19, 2014, filing 1417-6 (evidence file, volume XIV, annex 11 to the answering brief, folios 27637 and 29840). The domestic courts said the following about the G3 modus operandi:

> Once the G3 had been created, its methodology was to hold regular meetings to discuss the development of the group, as much as possible not keeping minutes of the meetings or not signing them […]. These were the meetings where goals were set for wiretapping, intercepting email, and surveillance and shadowing operations, so they could be processed by the different intelligence offices of the assistant directors of the DAS.

Cf. Judgment by the Third Criminal Chamber of the Specialized Non-territorial Circuit, Bogotá, November 30, 2012, file 2010-00020 (evidence file, volume XII, annex 51 to the CAJAR and CEJIL pleadings and motions brief, folio 27640.

345 *Cf.* Order by the Prosecutor General, unit delegated to the Supreme Court, January 26, 2010, special assignment file 12495-11 (evidence file, volume XX, annex 80 to the answering brief, folio 35874).

> find ways to discredit them. […] In order to meet this illegal goal, [the advisor for matters of strategic intelligence, later appointed assistant director of the DAS, José Miguel Narváez Martínez,] was responsible for deciding which targets or objectives should be reported to [the director of the DAS], after which a meeting would be held with the assistant directors of the General Directorate of Intelligence to distribute the tasks as follows: the analysis team provided intelligence information; operations performed surveillance and monitoring; counterintelligence intercepted email and telephones; human sources recruited individuals, and the G-3 coordinated all activities and received the information produced by all the groups, processed it, and produced intelligence reports for the director general of Intelligence and the director of DAS.[346]

320. Among the "targets" identified were "members and directors" of CAJAR, as part of the so-called Operation *Transmilenio*,[347] whose objectives, according to investigations by the prosecution,[348] were:

> [A] general goal is to neutralize the destabilizing actions of NGOs in Colombia and the world; [and a] specific goal is to shed light on the links with narcoterrorist organizations and bring them to justice. With express emphasis on the destabilization goals and intelligence operations. Strategies for this purpose include discrediting them in the news media, distributing leaflets, pamphlets, posters, accusations and set-ups, creating websites to send out communications, accusations, set-ups; a strategy of sabotage based on explosive and incendiary terrorism, blocking public services and

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[346] *Cf.* Judgment by the Chamber of Criminal Cassation of the Supreme Court, September 6, 2017, file-39931 (evidence file, volume XII, annex 48 to the CAJAR and CEJIL pleadings and motions brief, folios 27156, 27158 and 27159).

[347] The Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition said the following in its final report:

> The DAS was active from 2003 to 2009, leading an enormous operation of illegal stalking, surveillance, monitoring, and wiretapping of individuals and organizations, both public and private, both Colombian and foreign, that it saw as opposition to government policies. The stalking also applied to family members of the persons targeted by the intelligence activities, including children. […] Operation *Transmilenio*, created to perform infiltration and set-ups so that Colombian and international human rights organizations could be prosecuted and discredited, and also against the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and the office in Colombia of the United Nations High Commissioner for Human Rights.

Cf. Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, final report, *Hay futuro si hay verdad: hallazgos y recomendaciones*, ("there is a future if there is truth: findings and recommendations"), Bogotá, June 28, 2022, pp. 412 and 413 (evidence file, volume XLII, annex to the brief of CAJAR and CEJIL, April 10, 2023, folios 47363 and 47364).

[348] The prosecution's investigation included analysis of documentation found at DAS headquarters detailing the different operations conducted by the G3:

> The available documents [...], illustrated with the use of *PowerPoint,* cover the subject […] dubbed "Political Warfare," whose objectives were to "defend democracy and the nation and create awareness of the consequences of a communist system." Activities were priority-ranked along these lines for Operations *Amazonas*, *Transmilenio* and *Bahía* […]. The purpose was to seek and obtain results such as disinformation targeting people who supported Government critics, generate division inside opposition movements, block events convened by the opposition, and ideological transfer. […] Courses of action were defined, such as[:] Operation Publication. Goal[:] block the publication of books; strategies[:] sabotage and pressure; action: public services, distribution trucks, threats, legal warfare. Operation *Hallowen*. Goal[:] raise public awareness about the reality of the communist ideology; strategies: discredit[…]. Operation *Arauca*. Goal: trace links between [C]AJAR and the ELN; strategies[:] sabotage; action: messaging with ELN commanders, which will be found during raid[s]. Operation Exchange. Goal: neutralize the influence in the Inter-American Court of Human Rights; strategies[:] discredit and sabotage; action: partnership with foreign intelligence services, communiqués, accusations on websites, and legal warfare. Operation Europe. Goal[:] neutralize influence in the European legal system, the European Parliament Commission on Human Rights, the Office of the High Commissioner on Human Rights, […] and national governments; strategies[:] discredit; and action: communiqués and accusations on websites, legal warfare […]. […] Operation Internet. Goal: build controversy about NGOs; strategies: discredit; and action: issue communiqués by creating the websites "Truth and Justice Collective" and "Colombian Information and Statistics Service for the Prevention of Conflict." […] Operation Encounter. Goal[:] highlight terrorist strategy of the FARC and EN; strategies: sabotage and discredit; and action: as defined in the Second Encounter of Victims of Crimes against Humanity and Human Rights Violations, to present propaganda (videos, posters, brochures) from the news media.

Cf. Office of the Prosecutor General, report 498742, November 10, 2009 of the technical investigations unit (evidence file, volume XXI, annex 89 to the answering brief, folios 36792, 36793 and 36794).

> technologies, and a strategy of pressure using threats and blackmail. […] [P]apers were found that confirmed information given in documents contained in the total collection of [files] inspected, about intelligence work in the proceedings against Adriana Cuéllar, Eduardo Carreño Wilches, Pedro Julio Mahecha Ávila, Javier Alejandro Acevedo, […] and Jomary Ortegón, all of them members of CAJAR at the time, and recording the work of possible infiltration of the Lawyers Collective through personnel including escorts and drivers on whom data of personal interest was recorded.[349]

321. From this it can be concluded that illegal actions were taken against several members of CAJAR in the framework of G3 operations, including trailing, surveillance, wiretapping, taking photographs of their homes, offices and workplaces, and families.[350] Judicial authorities cited the actions taken against the Collective and its members as follows:

> As part of this criminal structure, Alirio Uribe Muñoz, the office he represented, CAJAR, and several of its members were targeted by actions such as wiretapping land lines, mobile lines, email, stalking, surveillance, financial investigations, infiltration and perpetration against them as "targets" of the so-called "Operation *Transmilenio*," despite the fact that they were […] human rights defenders and critics of the government administration with no ties to illegal organizations or actions. This is clear in numerous transliterations made from the tapping of CAJAR telephones between March, 2004 and September, 2005, many documents obtained from the fax machine, summaries of the emails of Alirio Uribe Muñoz and information obtained through infiltration against him in his office. There is also information about Uribe Muñoz' private life, with reports from undercover trailing, pictures of his home, of himself and his spouse and children, handwritten reports from surveillance of his home between March and September, 2004; they include physical descriptions of people visiting him, identification of automobiles that came and went, and mention of film records and seizing of documents, which points to activities of infiltration and/or entry into his home. Using these illegal activities, DAS was able to put together a file on the life of Alirio Uribe Muñoz, with information including the restaurants he frequented, his psychological profile, habits, routines, hobbies, strengths, weaknesses, and illnesses, but they never said what illegal actions he was committing that could have justified their surveillance of him. They also obtained access to information as it entered and left the office, and especially they could find out what cases he was working on in Colombia and abroad, what judicial authorities and international organizations knew him, his reports, defensive strategies, communications between him and his clients and of course, matters of a strictly personal nature. The General Directorate of Intelligence carried out all these actions against other members of CAJAR, including Adriana Cuéllar, Pedro Julio Mahecha Ávila, Soraya Gutiérrez, Dora Lucy Arias […] and Javier Alejandro Acevedo, and the G-3 approached the assistant director of counterintelligence for authorization to tap their cell telephone accounts, as well as the email accounts of Jomary Ortegón, […] Eduardo Carreño Wilches and the press office of the Lawyers Collective, and all of it was done without judicial warrants or any legal grounds whatsoever. They also set up operations to follow Pedro Julio Mahecha, Jomary Ortegón, […] Soraya Gutiérrez Arg[ü]ello[,] Kimberly Ann Stanton, Dora Lucy Arias Giraldo, Eduardo Carreño, Diana Teresa Sierra and Adriana Cuéllar […]. DAS intelligence work on Reinaldo Villalba Vargas included surveillance, telephone calls, and photographs of his family members to find out where he lived, stalk him, and learn about his daily routine for going to work.[351]

322. All these actions, as the State confirmed in its answering brief, had "clear objectives to undermine the credibility of CAJAR nationally and internationally"; the objectives of these DAS operations, in addition to shadowing, surveillance, wiretapping and collecting information, included "express actions such as 'sabotage', 'pressure', 'stigmatization', 'threats', and

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[349] *Cf.* Order by the Prosecutor General, unit delegated to the Supreme Court, July 11, 2012, file 12490-7 (evidence file, volume IX, annex 1.7.8. to Ms. Arias' pleadings and motions brief, folios 24418 and 24419).

[350] With respect to activities by the G3, Ms. Soraya Gutiérrez Argüello said:

> [T]he DAS carried out a complete offensive, an operation whose purpose was not just intelligence on us, but an operation designed to neutralize […], to hold us as legitimate targets, to spy on the life of the Lawyers Collective, in what they called Operation *Transmilenio*. There were at least seven DAS operations against [us], they inspected our financial accounts, they put together biographical sheets on our lives, […] they had photographs of our children […], they pried into everything about our personal lives, they told us what our psychological weaknesses were, what our strengths were, where they could attack us, they carried out smear campaigns […]. [I]n short, the DAS performed a scrupulous task designed […] to destroy our work, to threaten us, to destroy us morally, and of course, […] to remove us from the public scene.

Cf. Statement at public hearing before this Court by Soraya Gutiérrez Argüello.

[351] *Cf.* Judgment by the Chamber of Criminal Cassation of the Supreme Court, September 6, 2017, file-39931 (evidence file, volume XII, annex 48 to the CAJAR and CEJIL pleadings and motions brief, folios 27162 and 27163).

'operational investigation'."[352]

(a) Surveillance and monitoring

323. The investigation by the prosecution found surveillance and monitoring operations targeting several members of the Collective, including in some cases, tracking and monitoring their daily activities and the movements of their family members. Domestic and international travel was also monitored.[353] These actions led to a record (sometimes in great detail) of where the alleged victims lived and worked, the places they frequented, and their individual and family routines, sometimes including photograph and video evidence. Some of the surveillance and monitoring intelligence reports included information provided by "reliable sources with direct access to the targets."[354]

324. The material found at DAS headquarters included documents with plans to "infiltrate persons into the security detail of CAJAR members who had been given protection service, and for this purpose, giving the names of potential escorts or drivers, including photographs." Agents of the prosecutor's technical investigations unit said, after having analyzed this material and the extensive information compiled on the alleged victims, that they could "assume that these achievements were the result of the infiltration strategies implemented by this expert intelligence group [G3], as can be seen in several different documents, especially in the case of CAJAR."[355]

325. Alirio Uribe Muñoz was rated as a "primary target,"[356] and the investigation report on him described multiple cases of constant surveillance and shadowing operations (including by stakeouts and preparation of daily detailed reports) regarding himself and his family, as

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[352] The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1096).

[353] The prosecutor's investigation found the following operations for monitoring the members of CAJAR:

> Of special note is the […] [m]emorandum of May 11, 2004, signed and confirmed by [the coordinator of the G3, JFOO], asking the […] assistant director of operations […] to proceed with undercover intelligence operations at El Dorado Airport to obtain identifications, a film record, and place of residence of: Pedro J[ulio] M[ahecha] Á[vila], indicating the city where he is traveling, date, time, flight number, and return information. A[lirio] U[ribe] – D[iana] S[ierra,] indicating city where she is traveling, date, time, flight number, and return information. S[oraya] G[utiérrez,] indicating city where she is traveling, date, time, flight number, and return information.

Cf. Office of the Prosecutor General, report 498742, November 10, 2009 of the technical investigations unit (evidence file, volume XXI, annex 89 to the answering brief, folio 36725).

[354] *Cf.* Office of the Prosecutor General, report 498742, November 10, 2009 of the technical investigations unit (evidence file, volume XXI, annex 89 to the answering brief, folios 36725 and 36726:

> There is an unnumbered memorandum dated February 18, 2004, signed and endorsed by [JFOO], asking the […] assistant director of operations […] to proceed with intelligence operations to: […] Verify the location of an alleged office of CAJAR […]. Verify the place of residence of CAJAR directors, […] including whether their spouses and children are present, their occupations, and other pertinent data. Ascertain whether the CAJAR directors are in Colombia, so as to take pictures of them and prepare tailing operations to identify their contacts. […] These same activities are described in another document […] that includes Alirio Uribe Muñoz, Luis Guillermo Pérez Casas, Pedro Julio Mahecha Ávila, Reinaldo Villalba Vargas, Rafael Barrios Mendivil, Eduardo Carreño Wilches, […] Maret Cecilia García Alfonso, […] Lincoln Miguel Puerto Barrera, […] Soraya Gutiérrez Arg[ü]ello, Martha Eugenia Rodríguez Orozco, […] and CAJAR administrative staff.

[355] *Cf.* Office of the Prosecutor General, report 498742, November 10, 2009 of the technical investigations unit (evidence file, volume XXI, annex 89 to the answering brief, folios 36798 and 36931).

[356] *Cf.* Office of the Prosecutor General, report 498742, November 10, 2009 of the technical investigations unit (evidence file, volume XXI, annex 89 to the answering brief, folio 36799):

> Activity report logging the successful collection of biographic, family and employment data on CAJAR members, as well as vehicles used; on operations to cover events in which CAJAR members took part; priority attention to A[lirio] U[ribe] M[uñoz] as the primary target, whose place of residence and telephone accounts are already known, as well as family pictures, workplace pictures, vehicles he drives, and places he frequents.

follows:

> [I]ntelligence report, October 25, 2004, detailing surveillance of the house where Alirio Uribe Muñoz and his family live. The operation obtained the names of his children, their high school and university, and grade level or semester; name of the housekeeper, information on Uribe Muñoz' parents, vehicles he drives, telephone numbers he uses, both land line and mobile, people who visit him and information on their cars, and also his and his family's routines. Together with this document are photographs that show the CAJAR member, his wife and visitors leaving the home, and the driver's route and vehicle.[357]

326. Thus, Mr. Uribe Muñoz' daughter and sons, Luisa Fernanda,[358] David Alirio[359] (both minors at the time), and Miguel Ángel,[360] surnames Uribe Laverde, were also stalked and photographed. Intelligence reports even reveal "material recovered from the trash" of the family home, consisting of "letters and a telephone datebook" of David Alirio Uribe Laverde. The domestic courts "inferred infiltration and/or entry of the family home."[361]

327. Mr. Uribe Muñoz said in a declaration that when the DAS began these activities, "they rented a house, an apartment across from [his own] house, called the static point," from which "they produced daily handwritten reports" describing their surveillance, including that "he got up at 4:00 in the morning, turned on the light, began working, and at 5:30 his children left the house and then they followed them to their schools and took pictures of them."[362]

328. The investigation of Soraya Gutiérrez Argüello turned up documentation including an intelligence report dated May 23, 2005, saying:

> A reliable human source with direct access to the information reported that S[oraya] G[utiérrez], president of CAJAR, arrived at her house on the evening of Sunday, May 22, 2005, at approximately 9:10 p.m., having not returned home since Friday, May 13, 2005, because of a threat against her. The source reported that she had come to retrieve clothes and other necessary personal items, while her daughter waited for her in the pick-up […] until she finished collecting her things, and then she and her daughter left the home at 9:55 p.m. and went to an unknown destination. It was raining when she arrived at her home, her escort was not with her, and she entered the house quickly, leaving the door open.[363]

329. Photographs were found of Ms. Gutiérrez Argüello's home and of herself and her daughter, the child Paula Camila Romero Gutiérrez.[364]

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357 *Cf.* Report of the Prosecutor General, April 3, 2009, by the field investigator, technical investigations unit (evidence file, volume VI, Commission case file, folio 15590.

358 Luisa Fernanda Uribe Laverde was born on August 14, 1986. *Cf*. Birth certificate (evidence file, volume XIII, annex 92 to the CAJAR and CEJIL pleadings and motions brief, folio 28863).

359 David Alirio Uribe Laverde was born on December 20, 1990. *Cf*. Birth certificate (evidence file, volume XIII, annex 92 to the CAJAR and CEJIL pleadings and motions brief, folio 28861).

360 Miguel Ángel Uribe Laverde was born on June 25, 1984. *Cf*. Birth certificate (evidence file, volume XIII, annex 92 to the CAJAR and CEJIL pleadings and motions brief, folio 28865).

361 *Cf.* Document entitled *Seguimiento a miembros del C[AJAR] y sus familiares* ("surveillance of CAJAR members and their families") (evidence file, volume I, annex to the Report on the Merits, folios 3900 to 3961); document *Expedientes que reconocen a menores de edad como objeto de actividades de inteligencia y seguimiento* (reconnaissance files identifying minors to be targeted by intelligence and monitoring activities) (evidence file, volume XXVII, annex 199 to the answering brief, folios 44195 to 44211); Office of the Prosecutor General, report 498742, November 10, 2009 of the technical investigations unit (evidence file, volume XXI, annex 89 to the answering brief, folio 36799), judgment of the Supreme Court, Chamber of Criminal Cassation, September 6, 2017, file 39931 (evidence file, volume XII, annex 48 to the CAJAR and CEJIL pleadings and motions brief, folio 27163), and judgment by the Sixth Specialized Criminal Circuit Court of Bogotá, March 19, 2014, file 1269-6 (evidence file, volume XII, annex 49 to the CAJAR and CEJIL pleadings and motions brief, folios 27288). The State's May 17, 2022, answering brief said that "all the information recounted by the petitioners is true" (merits file, volume II, folio 1078).

362 *Cf.* Statement at public hearing before this Court by Alirio Uribe Muñoz.

363 *Cf.* Document entitled *Acciones desarrolladas contra el CAJAR y sus integrantes* ("actions against CAJAR and its members") (evidence file, volume I, annex to the Report on the Merits, folio 4205).

364 *Cf.* Document entitled *Acciones desarrolladas contra el CAJAR y sus integrantes* ("actions against CAJAR and its members") (evidence file, volume I, annex to the Report on the Merits, folios 4205 to 4209). Documentation collected during the investigation showed that the surveillance continued even when Ms. Gutiérrez Argüello was in

330. Intelligence reports on Reinaldo Villalba Vargas described how he had been followed, reporting on his daily routine activities, and describing the people who entered and left the building identified as his residence, including the child Jheyson Andrés Arias Zambrano,[365] son of his sister's common-law husband.[366]

331. Pedro Julio Mahecha Ávila and Eduardo Carreño Wilches were targeted by surveillance activities to determine where they lived and report on their routine activities; in the specific case of Mr. Carreño Wilches, pictures were taken of his home. The surveillance and monitoring work also covered Adriana Cuéllar Ramírez, Dora Lucy Arias Giraldo, Diana Teresa Sierra Gómez, Jomary Ortegón Osorio, Adriana Patricia Fuentes López, and Kimberly Ann Stanton, wife of Rafael Barrios Mendivil.[367]

(b) Wiretapping

332. It has already been shown that the operations of the G3 included interception of business and personal telephones of CAJAR members, both land lines and mobile lines, as well as email accounts and even fax communications, all without a judicial warrant.[368]

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the municipality of Sogamoso, department of Boyacá, with members of her family. *Cf.* Document entitled *Acciones desarrolladas contra el CAJAR y sus integrantes* ("actions against CAJAR and its members") (evidence file, volume I, annex to the Report on the Merits, folios 4029 to 4036). Ms. Gutiérrez Argüello spoke about being followed in the public hearing before this Court:

> My brother Diego [Alejandro Gutiérrez Argüello] was killed [in 2004] under strange circumstances in the city of Bogotá; he was 20 years old, and afterwards, […] in all the surveillance material that DAS did on us, we found extensive information about our family structure, the names of our parents, information about my brother, with his death notice and a record of his birth.

Cf. Statement at public hearing before this Court by Soraya Gutiérrez Argüello.

365 Jheyson Andrés Arias Zambrano was born on June 11, 1992. *Cf*. Birth certificate (evidence file, volume XIII, annex 84 to the CAJAR and CEJIL pleadings and motions brief, folio 28744).

366 *Cf.* Document entitled *Seguimiento a miembros del C[AJAR] y sus familiares* ("surveillance of CAJAR members and their families") (evidence file, volume I, annex to the Report on the Merits, folios 3991, 3994, 3996, 3999 to 4003, 4021 and 4023), and judgment by the Supreme Court, Chamber of Criminal Cassation, September 6, 2017, file 39931 (evidence file, volume XII, annex 48 to the CAJAR and CEJIL pleadings and motions brief, folio 27163). The State said in its May 17, 2022, answering brief, "it is true that all these surveillance activities were conducted" (merits file, volume II, folio 1085). The personal file compiled on lawyer Reinaldo Villalba Vargas gave detailed information, obtained by shadowing, that "two children were observed exiting the building in the morning, one of them 13 years old, slender, white complexion, […] and entered the *Instituto Técnico Industrial Piloto* school." *Cf.* Document entitled *Hojas de vida, perfiles biográficos e información personal de integrantes del CCAJAR* ("personal profiles, biographic summaries and personal information on members of CAJAR) (evidence file, volume I, annex to the Report on the Merits, folio 3597). The 13-year-old boy, as Mr. Villalba Vargas later explained to the prosecutor, was "[the] son of his sister's common-law husband." The alleged victim added in his statement that "the child returned home terrified, saying that strangers were taking pictures of him and filming him." *Cf.* Statement by Reinaldo Villalba Vargas before the Office of the Prosecutor General, October 26, 2009, file 12495-11 (evidence file, volume I, annex to the Report on the Merits, folio 4288).

367 *Cf.* Document entitled *Seguimiento a miembros del C[CAJAR] y sus familiares* ("surveillance of CAJAR members and their families") (evidence file, volume I, annex to the Report on the Merits, folios 3966, 3993, 4010, 4011, 4023, 4039, 4042, 4068, 4168 and 4173); document *Expedientes que reconocen a menores de edad como objeto de actividades de inteligencia y seguimiento* (reconnaissance files identifying minors to be targeted by intelligence and monitoring activities) (evidence file, volume XXVII, annex 199 to the answering brief, folios 44195 to 44211); Office of the Prosecutor General, report 498742, November 10, 2009 of the technical investigations unit (evidence file, volume XXI, annex 89 to the answering brief, folios 36754, 36716, 36799 and 36804), judgment of the Supreme Court, Chamber of Criminal Cassation, September 6, 2017, file 39931 (evidence file, volume XII, annex 48 to the CAJAR and CEJIL pleadings and motions brief, folio 27163).

368 The documentation found at DAS headquarters in the investigation by the prosecution included a March 18, 2004, note making reference to intervention of the telephones of Adriana Cuéllar, Pedro Julio Mahecha Ávila, Soraya Gutiérrez, Dora Lucy Arias, Javier Alejandro Acevedo, and Diana Murcia. *Cf*. Document entitled *Muestreo sobre interceptación de comunicaciones* ("sampling of wiretap communications) (evidence file, volume I, annex to the Report on the Merits, folio 4044). The prosecution also reported having found documentation in the DAS archives containing several "outgoing and incoming communications from the CAJAR fax line." *Cf.* Office of the Prosecutor General, report 498742, November 10, 2009 of the technical investigations unit (evidence file, volume XXI, annex

333. Telephone communications were intercepted on the following people, as well as other members of CAJAR: Diana Milena Murcia Riaño, Dora Lucy Arias Giraldo, Reinaldo Villalba Vargas, Jomary Ortegón Osorio, Rafael Barrios Mendivil, Diana Teresa Sierra Gómez, Alirio Uribe Muñoz, Eduardo Carreño Wilches, Soraya Gutiérrez Argüello, Javier Alejandro Acevedo Guerrero, Adriana Cuéllar Ramírez, María del Pilar Silva Garay, Nubia Liliana Romero Bernal,[369] Sandra Yalin Ariza,[370] Olga Lilia Silva López,[371] Pedro Julio Mahecha Ávila, Camilo Andrés Galindo Marín,[372] Yessika Hoyos Morales, Chennyer Jairt Piñeros Fuquen,[373] Carlos Lozano Acosta,[374] Andrés Rivera Acevedo,[375] Mónica Lorena Zuluaga Patiño,[376] Adriana Lizeth López Rojas,[377] Lyda Natalia Hernández García,[378] Andrea del Rocío Torres Bobadilla,[379] Efraín Cruz Gutiérrez, Olga Marcela Cruz López,[380] Olga Hernández Villalba,[381] and Ingrid Osnay Fernández Rengifo.[382] Several of these communications were later transcribed from the intercepted communications.[383]

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89 to the answering brief, folios 36703, 36707, 36728, 36762, 36764, 36776, 36777, 36786, 36797, 36802, 36828 and 36829).

369 Nubia Liliana Romero Bernal, who holds an undergraduate degree in political science, has worked with the Collective as an advisor on specific projects since 2002. *Cf*. Statement before a public attestor by Nubia Liliana Romero Bernal, November 9, 2020 (evidence file, volume XIII, annex 96 to the CAJAR and CEJIL pleadings and motions brief, folio 28887).

370 Sandra Yalin Ariza worked for the Collective as a manger and bookkeeper. *Cf*. Document entitled: *Síntesis de los hechos padecidos por las víctimas del caso 12.380 Colectivo de Abogados José Alvear Restrepo* ("synthesis of experiences by the victims of case 12,380, José Alvear Restrepo Lawyers Collective") (evidence file, volume XI, annex 3 to the CAJAR and CEJIL pleadings and motions brief, folio 26280).

371 Olga Lilia Silva López worked for the Collective as a legal aide from 2000 to 2005. *Cf*. Statement before a public attestor by Olga Lilia Silva López, October 23, 2020 (evidence file, volume XI, annex 39 to the CAJAR and CEJIL pleadings and motions brief, folio 26657).

372 Camilo Andrés Galindo Marín worked for the Collective as a legal aide from 2004 to 2008. *Cf*. Statement before a public attestor by Camilo Andrés Galindo Marín, October 6, 2020 (evidence file, volume XI, annex 30 to the CAJAR and CEJIL pleadings and motions brief, folio 26598).

373 Chennyer Jairt Piñeros Fuquen worked for the Collective as a legal aide from 2003 to 2005; he later supported training activities from August to December, 2013. *Cf*. Statement before a public attestor by Chennyer Jairt Piñeros Fuquen, October 5, 2020 (evidence file, volume XI, annex 32 to the CAJAR and CEJIL pleadings and motions brief, folio 26616).

374 Carlos Lozano Acosta worked for the Collective as a legal aide from 2004 to 2007. *Cf*. Statement before a public attestor by Carlos Lozano Acosta, October 13, 2020 (evidence file, volume XI, annex 31 to the CAJAR and CEJIL pleadings and motions brief, folio 26605).

375 Andrés Rivera Acevedo worked for the Collective from 2002 to 2005, first as a legal aide, and later on the training team. *Cf*. Statement before a public attestor by Andrés Rivera Acevedo, April 19, 2022 (evidence file, volume XXXIII, affidavits, folio 44756).

376 Mónica Lorena Zuluaga Patiño worked for the Collective as a legal aide from 2005 to 2007. *Cf*. Statement before a public attestor by Mónica Lorena Zuluaga Patiño, October 5, 2020 (evidence file, volume XI, annex 34 to the CAJAR and CEJIL pleadings and motions brief, folio 26628).

377 Adriana Lizeth López Rojas worked for the Collective as a legal aide in 2004. *Cf*. Statement before a public attestor by Adriana Lizeth López Rojas, October 14, 2020 (evidence file, volume XI, annex 29 to the CAJAR and CEJIL pleadings and motions brief, folio 26593).

378 Lyda Natalia Hernández García worked for the Collective as a volunteer and legal aide from 2004 to 2005. *Cf*. Statement before a public attestor by Lyda Natalia Hernández García, October 14, 2020 (evidence file, volume XI, annex 35 to the CAJAR and CEJIL pleadings and motions brief, folio 26632).

379 Andrea del Rocío Torres Bobadilla worked for the Collective as a legal aide from 2004 to 2008. *Cf*. Statement before a public attestor by Andrea del Rocío Torres Bobadilla, April 28, 2022 (evidence file, volume XXXIII, affidavits, folio 44808).

380 Olga Marcela Cruz López worked for the Collective as a legal aide from 2000 to 2008. *Cf*. Statement before a public attestor by Olga Marcela Cruz López, April 28, 2022 (evidence file, volume XXXIII, affidavits, folio 44799).

381 Olga Hernández Villalba worked for the Collective as an administrative assistant from 1991 to 2018; according to CAJAR and CEJIL, she passed away in May, 2018. *Cf*. Document entitled: *Síntesis de los hechos padecidos por las víctimas del caso 12.380 Colectivo de Abogados José Alvear Restrepo* ("synthesis of experiences by the victims of case 12,380, José Alvear Restrepo Lawyers Collective") (evidence file, volume XI, annex 3 to the CAJAR and CEJIL pleadings and motions brief, folio 26267).

382 Ingrid Osnay Fernández Rengifo worked for the Collective as a receptionist from 2002 to 2006. *Cf*. Statement before a public attestor by Ingrid Osnay Fernández Rengifo, October 5, 2020 (evidence file, volume XI, annex 28 to the CAJAR and CEJIL pleadings and motions brief, folio 26588).

383 *Cf.* Document entitled *Muestreo sobre interceptación de comunicaciones* ("sampling of wiretap

334. Email accounts were also intercepted, targeting Diana Milena Murcia Riaño, Dora Lucy Arias Giraldo, Soraya Gutiérrez Argüello, Alirio Uribe Muñoz, Rafael Barrios Mendivil, Sandra Yalin Ariza, Luis Guillermo Pérez Casas, Adriana Cuéllar Ramírez, Reinaldo Villalba Vargas, Eduardo Carreño Wilches, Jomary Ortegón Osorio, Diana Teresa Sierra Gómez, Olga Marcela Cruz López, Adriana Patricia Fuentes López and Pedro Julio Mahecha Ávila.[384]

335. Surveillance of Rafael Barrios Mendivil produced a copy of a letter sent by fax to his wife Kimberly Ann Stanton, with information about foreign travel plans.[385]

(c) Surveillance and monitoring of CAJAR activities and cases in litigation

336. G3 operations also included surveillance of cases being litigated by the Collective before the inter-American system.[386] The prosecution's investigation found the following materials in DAS headquarters and developed a description of the different emails and fax communications of members of the Collective who were under surveillance:

> Documentation on communications sent to members of CAJAR, rulings by the Inter-American Court, […] intelligence reports, analysis and follow-up on cases submitted and currently being processed, as well as cases of human rights violations already adjudged by the IACHR. The documents also analyzed the alleged smear campaign that NGOs and other groups, including members of CAJAR, were conducting before foreign authorities and countries.[387]

337. The State of Colombia confirmed that "specific instructions" were handed down "to trace cases being litigated by][the Collective], identify weaknesses in the State's defensive strategy in cases adjudged by the Inter-American Court, and […] adopt mechanisms necessary to prevent any further convictions."[388] The then DAS advisor on strategic intelligence, later appointed assistant director and responsible for identifying DAS "targets," said:

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communications") (evidence file, volume I, annex to the Report on the Merits, folios 4044 to 4162), and judgment by the Supreme Court, Chamber of Criminal Cassation, September 6, 2017, file 39931 (evidence file, volume XII, annex 48 to the CAJAR and CEJIL pleadings and motions brief, folios 27156, 27162 and 27163).

384 *Cf.* Report of the Prosecutor General, April 3, 2009, by the field investigator, technical investigations unit (evidence file, volume VI, Commission case file, folios 15590, 15593 to 15595, 15603 and 15609 to 15611), and report of the Prosecutor General No. 498742, November 10, 2009, technical investigations unit (evidence file, volume XXI, annex 89 to the answering brief, folios 36707 to 36720, 36723, 36735 to 36737, 36740, 36741, 36748, 36756 to 36759, 36761 to 36763, 36768, 36772 to 36775, 36777, 36779 to 36785, 36800, 36801, 36803, 36823, 36824, 36828, 36830, 36871, 36890, 36900, 36920, 36921, 36926 and 36932).

385 The State said in its May 17, 2022 answering brief, "it is true that interceptions included personal communications between the lawyers and their domestic partners" (merits file, volume II, folio 1090).

386 The documentation found at DAS headquarters included a "report on the Inter-American Court, […], describing its composition, a list of cases against Colombia, NGOs responsible, […] and a summary of the cases currently being processed or completed. *Cf*. Office of the Prosecutor General, report 498742, November 10, 2009 of the technical investigations unit (evidence file, volume XXI, annex 89 to the answering brief, folio 36777). One of the documents found was dated "May, 2005" and entitled: "E[xecutive summary. International legal war against Colombia"], described the Inter-American Commission and Court as "strategic political scenarios used by local and international NGOs as a way to discredit the State […] through claims of human rights violations by security agencies or the negligence of governments to address social issues." Another report discussed the mobilization of DAS agents to San José, Costa Rica, from May 16 to 19, 2005, "to strengthen the exchange of information with the Costa Rican department of intelligence and 'raise awareness' about the current dynamics of political warfare," also pointing to the possibility of "posting one of our agents in Costa Rica," and thus "consolidating a permanent presence of DAS in Central America." *Cf.* Document entitled *Monitoreo al trabajo de incidencia y litigio internacional del C[AJAR]* ("monitoring the advocacy and litigation work of CAJAR") (evidence file, volume I, annex to the Report on the Merits, folios 4398 to 4412).

387 *Cf.* Office of the Prosecutor General, report 498742, November 10, 2009 of the technical investigations unit (evidence file, volume XXI, annex 89 to the answering brief, folios 36760 and 36761). The document also reported the intervention of many emails and fax communications from Collective members.

388 *Cf.* The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1091).

> [I]t was necessary to have an understanding of what the State of Colombia would need for defending itself from international grievances brought before the Inter-American Court of Human Rights by certain organizations. […] My mission was to try to propose options for the defense before the Court […] so that the [judges] of the Court could have the clearest possible explanation to further their knowledge of the facts being aired, and while I could come up with suggestions that might help prevent a repetition of past procedural or operational mistakes that may have been unconstitutional or unlawful, it was also my obligation to highlight the matter of these grievances so the DAS would find out and consider publicizing them.[389]

338. A memorandum on August 16, 2005, entitled "Interference by the José Alvear Restrepo Lawyers Collective in the international judicial system" reported an analysis of information concerning the different cases being heard by the Inter-American Commission and Court. The memorandum cited a number of cases, including the work of Rafael Barrios Mendivil, Eduardo Carreño Wilches, Jomary Ortegón Osorio and Alirio Uribe Muñoz before the two inter-American bodies, and the document described their work as "procedures involving their political war against Colombia";[390] it also mentions the activities of Kimberly Ann Stanton, the wife of Rafael Barrios Mendivil.[391]

339. CAJAR and CEJIL reported on a DAS operation that on September 2, 2004, had forced attorney Diana Teresa Sierra Gómez "to suspend her participation in the Assembly of States Parties" to the Statute of Rome of the International Criminal Court."[392] The State responded by saying, "[i]t is true that Diana Teresa Sierra did not report to the airport to travel to The Hague," and "[i]t is true that that there was monitoring of the work before the International Criminal Court […] by […] Alirio Uribe and Diana Teresa Sierra and that the G3 ordered interception of communications and obtained a copy of the reports […] that CAJAR submitted to the cooperation agencies."[393]

340. The G3 operations also included surveillance of the following CAJAR professionals, including monitoring of their activities overseas: Jomary Ortegón Osorio,[394] Diana Teresa

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[389] *Cf.* Procedure for an initial statement by the accused José Miguel Narváez Martínez to the Prosecutor General, unit delegated to the Supreme Court, June 5, 2009 (evidence file, volume I, annex to the Report on the Merits, folios 3407, 3410 and 3411). José Miguel Narváez Martínez said in his statement that his objective in the DAS "was to help make sure that the integrity of the Colombian State would not be impaired by the interference of illegal actors wanting to damage it."

[390] The material found at DAS headquarters included a document entitled "Simón Bolívar Lawyers Collective. Website–Costa Rica," saying: "Objective: create a nongovernmental organization that will defend the interests of the State of Colombia and reveal the manipulation of the Inter-American Court […] and Commission […] by organizations serving as the face of outlaw groups. *Cf.* Document entitled *Monitoreo al trabajo de incidencia y litigio internacional del C[AJAR]* ("monitoring the advocacy and litigation work of CAJAR") (evidence file, volume I, annex to the Report on the Merits, folios 4355 to 4357).

[391] *Cf.* Document entitled *Monitoreo al trabajo de incidencia y litigio internacional del C[AJAR]* ("monitoring the advocacy and litigation work of CAJAR") (evidence file, volume I, annex to the Report on the Merits, folios 4348 to 4353).

[392] *Cf.* The CAJAR and CEJIL pleadings and motions brief before this Court, November 9, 2020 (merits file, volume I, folio 517). Attorney Sierra Gómez said in a statement on September 2, 2004, that she had received a telephone call from her travel agency, asking who would be traveling internationally and reporting that the DAS was "inquiring about the itinerary" and that "this request from the government agency included a suggestion that they would block the trip no matter what," and she therefore decided to cancel her trip. *Cf.* Statement before a public attestor by Diana Teresa Sierra Gómez, October 26, 2020 (evidence file, volume XI, annex 25 to the CAJAR and CEJIL pleadings and motions brief, folio 26562).

[393] *Cf.* The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1093). The Special Rapporteur on freedom of opinion and expression and the Special Rapporteur on the independence of judges and lawyers sent the State a joint communication on this matter on September 6, 2004. *Cf.* Commission on Human Rights, Report of the Special Rapporteur on freedom of opinion and expression, Summary of cases transmitted to Governments and replies received, U.N. Doc. E/CN.4/2005/64/Add.1, March 29, 2005, para. 243.

[394] Report of the Prosecutor General, April 3, 2009, by the field investigator, technical investigations unit (evidence file, volume VI, Commission case file, folio 15592: "[R]eport […] in response to the requirement of the

Sierra Gómez,[395] Diana Milena Murcia Riaño,[396] Rafael Barrios Mendivil, Eduardo Carreño Wilches, and Alirio Uribe Muñoz.[397], [398]

341. Moreover, the State confirmed that it had performed "detailed tracking of national and international travel […] consisting of a record of exits and entrances [into Colombia] with precise identification of destinations" on Reinaldo Villalba Vargas, Alirio Uribe Muñoz, Javier Alejandro Acevedo Guerrero, Soraya Gutiérrez Argüello, Jomary Ortegón Osorio, Andrés Rivera Acevedo, Olga Lilia Silva López, and Olga Hernández Villalba;[399] also on Luis Guillermo Pérez Casas, Eduardo Carreño Wilches, Dora Lucy Arias Giraldo, Pedro Julio Mahecha Ávila, and Rafael Barrios Mendivil.[400] The purpose was "to find out what places they had visited,

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'Valledupar work plan' […] that […] orders monitoring and surveillance of Jomar[y] Liz Ortegón, taking photographs of her and her main contacts." The report describes surveillance operations during meetings that Ms. Ortegón Osorio and other persons held in the city of Valledupar, department of César, with members of the Inter-American Commission (one commissioner and other staff from the Executive Secretariat) and the then United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples. *Cf.* Document entitled *Monitoreo al trabajo de incidencia y litigio internacional del C[AJAR]* ("monitoring the advocacy and litigation work of CAJAR") (evidence file, volume I, annex to the Report on the Merits, folios 4407 to 4411). The Inter-American Commission said in its 2009 annual report:

> [I]t became common knowledge that […] he G3 had conducted an intelligence operation on the occasion of the visit of an IACHR delegation headed by former Commissioner Susana Villarán to the city of Valledupar in 2005, "to determine the cases studied by the Rapporteur [...] and the testimony presented by the NGOs, as well as the lobbying these organizations are doing to pressure for a condemnation of the State." On the basis of this information, the IACHR requested the State [...] for detailed information on all of the intelligence operations conducted by state agencies regarding members of the IACHR and the staff of its Executive Secretariat […]. The Commission made the information available to the [Organization of American States] Secretary General and the Permanent Council, so that they could adopt relevant measures.

Cf. IACHR. Annual Report 2009, OEA/Ser.L/V/II, Doc. 51 corr. 1, December 30, 2009, chapter IV, paras. 125 to 127. See also, IACHR. Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II, Doc. 49/15, December 31, 2015, para. 59.

[395] The prosecutor's investigation cited a September 6, 2004, intelligence report on the surveillance of Diana Teresa Sierra Gómez at the El Dorado Airport in the city of Bogotá on September 3, for a trip to Paris, France. *Cf*. Document entitled *Monitoreo al trabajo de incidencia y litigio internacional del C[AJAR]* ("monitoring the advocacy and litigation work of CAJAR") (evidence file, volume I, annex to the Report on the Merits, folio 4386).

[396] The prosecutor's investigation also found an intelligence report dated September 30, 2004, on surveillance during the "Andean Amazon Forum" in the city of Popayán, department of Cauca, from September 15 to 18 of that year, in which the lawyer Diana Milena Murcia Riaño was actively involved. *Cf*. Document entitled *Monitoreo al trabajo de incidencia y litigio internacional del C[AJAR]* ("monitoring the advocacy and litigation work of CAJAR") (evidence file, volume I, annex to the Report on the Merits, folios 4438 to 4446). Ms. Murcia Riaño said in her statement:

> [T]he situations I experienced were the consequence of my work monitoring the impacts of the plan known as *Plan Colombia*. Several of the DAS archives contain notes [showing that] they were interested in my trips to Ecuador […]. [T]he State of Colombia was interested in these trips and in neutralizing these situations. I traveled to Washington in 2004 with Soraya Gutiérrez, […] and we met with the United States Department of State to talk about human rights violations committed by the military units that were partially supported by the *Plan Colombia* project, that over the years transformed into what they call false positives, that is, extrajudicial executions, and there was clearly interest in neutralizing that […].

Cf. Statement by Diana Milena Murcia Riaño at public hearing before this Court.

[397] *Cf.* Document entitled *Monitoreo al trabajo de incidencia y litigio internacional del C[AJAR]* ("monitoring the advocacy and litigation work of CAJAR") (evidence file, volume I, annex to the Report on the Merits, folios 4330 to 4413).

[398] The State said in its answering brief on May 17, 2022, that "[i]t is true that the DAS conducted missions on international events in which CAJAR members took part," such as the "Thirty-fifth Congress of the International Federation for Human Rights (FIDH) in Quito (Ecuador), the Social Forum of the Americas in Quito (Ecuador), and […] the World Social Forum in Sao Paulo - Brazil in 2004" (merits file, volume II, folio 1092). Mr. Uribe Muñoz said at public hearing: "I do not understand how they followed me to Brazil to the World Social Forum, […] to the European Social Forum, […] to international conferences in Germany, Chile, […] Australia, many places […]." *Cf.* Statement at public hearing before this Court by Alirio Uribe Muñoz.

[399] Answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1094).

[400] *Cf.* Document entitled *Monitoreo al trabajo de incidencia y litigio internacional del C[AJAR]* ("monitoring the advocacy and litigation work of CAJAR") (evidence file, volume I, annex to the Report on the Merits, folios 4452 to

their activities, national and international contacts they made, and other information useful for determining the dimension and type of work CAJAR was doing outside the country." The wiretapping also told them "in advance the dates, times, destinations, and purposes of national and international travel scheduled by members of CAJAR, as well as their working schedules and meetings."[401]

(d) Information gathering and the preparation of records, entries and profiles

342. The actions against the members of CAJAR provided many kinds of data, including "personal, financial, professional, and employment information, contacts, family groups, participation in public forums [and] trips abroad,"[402] which was analyzed by the people at the G3 (the "analysts"),[403] who put together "profiles" of the different "targets" for use in making decisions "on how to counteract them,"[404] or as they stated to Colombian courts, "block their legitimate exercise of human rights defense and opposition to the national government."[405]

343. The prosecutor's investigation found that the activities operated by the G3 yielded information and the development of profiles on members of CAJAR, as follows: (a) for Jomary Ortegón Osorio, Javier Alejandro Acevedo Guerrero, Andrés Rivera Acevedo, Olga Hernández Villalba, and Martha Eugenia Rodríguez Orozco,[406] records of personal information, containing, in each case, their identification numbers, place and date of birth, home and work addresses, telephone numbers, both land lines and mobile, Avantel radio communication information, email address, names of parents and family members, employment history, and more; (b) for Diana Milena Murcia Riaño, Dora Lucy Arias Giraldo, Reinaldo Villalba Vargas, Eduardo Carreño Wilches, Luis Guillermo Pérez Casas, Pedro Julio Mahecha Ávila, Lincoln Miguel Puerto Barrera, and Olga Lilia Silva López, the records also included financial information, migratory movements, information about their security plans, tables of their contacts, with entries

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4460).

401 *Cf.* Office of the Prosecutor General, report 498742, November 10, 2009 of the technical investigations unit (evidence file, volume XXI, annex 89 to the answering brief, folio 36785):

> Report of 10/25/05, stating that R[einaldo] V[illalba] will arrive in Colombia from Toronto […]. Report of 10/25/05, announcing the arrival in Colombia of R[afael] M[aría] B[arrios] M[endivil]. […] Intelligence reports of 10/25/05: reporting that J[omary] O[rtegón] arrived in Colombia on 10/20/05, announcing that he will be on tour in the USA, where he will be in touch with foreigners. […] Report of 10/20/05, warning that the Inter-American Court had been asked for […] precautionary measures for Morris Rincón through his proxies Rafael Barrios and [J]omary Ortegón. […] Reports of 10/06/05, reporting that A[lirio] U[ribe] will take a tour through Europe, and the purpose of the trip. […] A document dated 09/26/05, saying that D[iana] M[ilena] M[urcia] of [C]AJAR will travel to Brussels.

402 *Cf.* Order by the Prosecutor General, unit delegated to the Supreme Court, July 11, 2012, file 12490-7 (evidence file, volume IX, annex 1.7.8. to Ms. Arias' pleadings and motions brief, folio 24424). The prosecution, based on its investigation, concluded that the work of the G3 went so far as to "cover national and international events for the single purpose of finding out what the so-called 'targets or objectives' were doing there."

403 Judicial authorities have confirmed that "each G3 analyst or member was assigned a particular NGO or target on whom they were to constantly analyze the information compiled or obtained." This information "was managed on profiles created for each target using the *Word* system; later a [computer system called SIIE] was created for the G3, but it was never implemented because the group was terminated." *Cf.* Judgment by the Third Criminal Chamber of the Specialized Non-territorial Circuit, Bogotá, November 30, 2012, file 2010-00020 (evidence file, volume XII, annex 51 to the CAJAR and CEJIL pleadings and motions brief, folio 27639.

404 *Cf.* Judgment by the Third Criminal Chamber of the Specialized Non-territorial Circuit, Bogotá, November 30, 2012, file 2010-00020 (evidence file, volume XII, annex 51 to the CAJAR and CEJIL pleadings and motions brief, folio 27645.

405 *Cf.* Judgment by the Chamber of Criminal Cassation of the Supreme Court, September 6, 2017, file-39931 (evidence file, volume XII, annex 48 to the CAJAR and CEJIL pleadings and motions brief, folio 27166).

406 Martha Eugenia Rodríguez Orozco joined the Collective in 2002, and since that time, has been working as a statutory auditor for the organization. *Cf*. Document entitled: *Síntesis de los hechos padecidos por las víctimas del caso 12.380 Colectivo de Abogados José Alvear Restrepo* ("synthesis of experiences by the victims of case 12,380, José Alvear Restrepo Lawyers Collective") (evidence file, volume XI, annex 3 to the CAJAR and CEJIL pleadings and motions brief, folio 26268).

detailing work activities, complaints lodged, public declarations, and publications; they also included personal photographs and pictures of their identity documents. The records on Dora Lucy Arias Giraldo included copies of the passport and birth certificate of her minor son, Leandro Jurado Arias,[407] and (c) for Alirio Uribe Muñoz and Soraya Gutiérrez Argüello, records contained all the above information as well as a narrative of their personal habits, strengths and weaknesses, and psychological particulars including personality traits, behavior, interpersonal relationships and moods.[408]

344. The prosecution found "considerable information handled by the G3" on Rafael Barrios Mendivil, Maret Cecilia García Alfonso, and Fernando Lemus Rodríguez,[409] "as members of the Collective."[410]

345. The inspection of DAS archives also turned up an "activities report" with "an organizational chart showing photographs of the main members" of the Collective. The document bore the title, "Legal and political-psychological support arm of the FARC," and showed "individual links to" the following people: Alirio Uribe Muñoz, Pedro Julio Mahecha Ávila, Luis Guillermo Pérez Casas, Martha Eugenia Rodríguez Orozco, Eduardo Carreño Wilches, Soraya Gutiérrez Argüello, and Reinaldo Villalba Vargas, and for each one of these, included personal information and intelligence entries.[411] Another document gave the organizational chart of CAJAR, specifying the members of the board of directors and the areas they covered (administration, national, and international), along with names, job titles and photographs of 30 of the members, with intelligence entries.[412]

346. A document was found under the title "Sword of Bolívar," that according to the prosecutor's investigation, was the "name given to a strategy of foreign governments to expand the Bolivarian revolution throughout the continent."[413] The personal profile on Eduardo Carreño Wilches included an entry saying, "[Senator Gustavo Petro had been selected as the main promoter of the project in Colombia, with the advisory assistance]" of Mr. Carreño Wilches.[414]

347. The actions against CAJAR and its members included the requisitioning of financial, banking and property information from banking institutions (both public and private), financial entities, risk rating agencies, land survey agencies, vehicle registries, and commercial registrations (chamber of commerce).[415] The Colombian courts of justice made this publicly

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[407] Leandro Jurado Arias was born on October 13, 1994. *Cf*. Birth certificate (evidence file, volume IX, annex 4.1.1 to Ms. Arias' pleadings and motions brief, folio 25185).

[408] *Cf.* Document entitled *Hojas de vida, perfiles biográficos e información personal de integrantes del CCAJAR* ("personal profiles, biographic summaries and personal information on members of CAJAR) (evidence file, volume I, annex to the Report on the Merits, folios 3520 to 3775).

[409] Fernando Lemus Rodríguez worked in the Collective as a messenger from 1989 to 2011. *Cf*. Document entitled: *Síntesis de los hechos padecidos por las víctimas del caso 12.380 Colectivo de Abogados José Alvear Restrepo* ("synthesis of experiences by the victims of case 12,380, José Alvear Restrepo Lawyers Collective") (evidence file, volume XI, annex 3 to the CAJAR and CEJIL pleadings and motions brief, folio 26279).

[410] *Cf.* Order by the Prosecutor General, unit delegated to the Supreme Court, July 11, 2012, file 12490-7 (evidence file, volume IX, annex 1.7.8. to Ms. Arias' pleadings and motions brief, folios 24414 and 24415).

[411] *Cf.* Office of the Prosecutor General, report 498742, November 10, 2009 of the technical investigations unit (evidence file, volume XXI, annex 89 to the answering brief, folio 36799).

[412] *Cf.* Document entitled *Hojas de vida, perfiles biográficos e información personal de integrantes del CCAJAR* ("personal profiles, biographic summaries and personal information on members of CAJAR) (evidence file, volume I, annex to the Report on the Merits, folio 3520).

[413] *Cf.* Office of the Prosecutor General, report 498742, November 10, 2009 of the technical investigations unit (evidence file, volume XXI, annex 89 to the answering brief, folio 36728).

[414] *Cf.* Document entitled *Hojas de vida, perfiles biográficos e información personal de integrantes del CCAJAR* ("personal profiles, biographic summaries and personal information on members of CAJAR) (evidence file, volume I, annex to the Report on the Merits, folio 3706).

[415] The investigation discovered a trove of documentation at DAS headquarters, including:

known as follows:

> The General Directorate of Intelligence, through the assistant director of counterintelligence, had been working since 2004 to collect information on Colombian checking and savings accounts belonging to the Collective and to several of its members, including international movements and drafts, foreign exchange, and currency declarations for the receipt of donations denominated in foreign currency, bank transfers and service payments, fixed-term CDs (certificates of deposit), balances, and more, even though no criminal investigation or criminal charges were pending against them. Along with the unlawful work was a report from the fourth quarter of 2004 and January, 2005 […]. It details: (i) bank accounts of the lawyers collective; (ii) bank movements; (iii) salary and social security payments for Alirio Uribe Muñoz, Soraya Gutiérrez Arg[üello], and Eduardo Carreño Wilches, and (iv) financial products belonging to Alirio Uribe Muñoz, Eduardo Carreño Wilches, Pedro Julio Mahecha Ávila, Luis Guillermo Pérez Casas, Martha Eugenia Rodríguez Orozco, Re[i]naldo Villalba Vargas, and Soraya Gutiérrez Arg[ü]ello, none of whom was authorized for legal investigation.[416]

348. Records were compiled with banking, financial, and property information on Alirio Uribe Muñoz, Soraya Gutiérrez Argüello, Eduardo Carreño Wilches, Reinaldo Villalba Vargas, Luis Guillermo Pérez Casas, Jomary Ortegón Osorio, Rafael Barrios Mendivil, Martha Eugenia Rodríguez Orozco, and Dora Lucy Arias Giraldo.[417]

349. The prosecutor's investigation confirmed furthermore that considerable financial and banking information had been obtained on CAJAR as a legal entity.[418] Financial information was also sought on Pedro Julio Mahecha Ávila.[419]

350. As has already been said, the intelligence operations implemented under the work of the G3 led to several prosecutorial investigations and subsequent judicial findings that held several current and former DAS staff criminally liable. The relevant section of this chapter lists the criminal proceedings initiated for this purpose (*infra* paras. 422 to 446).

D.4.3. Closure of the DAS and custody of the intelligence and counterintelligence archives

351. The DAS was shut down under Executive Order 4057 of 2011, which reassigned its duties to other administrative divisions as follows: (a) "immigration control for nationals and foreigners and identification records of foreigners" was assigned to the special administrative unit Immigration Colombia, under the Ministry of Foreign Affairs; (b) "Judicial police for criminal investigations" was assigned to the Prosecutor General; (c) "criminal records and

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> A memorandum signed by [the coordinator of the G3, JFOO], ordering the collection of biographic information on 14 different people, all of them members of CAJAR, including their telephone and fax numbers, email addresses, post office boxes, curriculum vitae, photocopies of identity documents, alphabetic card, photographs, immigration records, information on property holdings, Chamber of Commerce, CIFIN [financial information center of the Colombian Banking Association], DATA CR[É]DITO [credit rating], mobile telephones, police records, intelligence entries, information on family members, siblings, spouses, and children. This was followed by several profile sheets with the information requested, backed by images of the target individuals and photographs taken during stakeouts and records of property, vehicles, persons, license plates, etc.

Cf. Report of the Prosecutor General, April 3, 2009, by the field investigator, technical investigations unit (evidence file, volume VI, Commission case file, folio 15603.

416 *Cf.* Judgment by the Chamber of Criminal Cassation of the Supreme Court, September 6, 2017, file-39931 (evidence file, volume XII, annex 48 to the CAJAR and CEJIL pleadings and motions brief, folios 27161 and 27162).

417 *Cf.* Document entitled *Información financiera CCAJAR, integrantes CCAJAR y sus familias (muestreo)* ("financial information on CAJAR, members of CCAJAR, and their families (sample)) (evidence file, volume I, annex to the Report on the Merits, folios 3808 to 3815).

418 *Cf.* Document entitled *Información financiera CCAJAR, integrantes CCAJAR y sus familias (muestreo)* ("financial information on CAJAR, members of CCAJAR, and their families (sample)) (evidence file, volume I, annex to the Report on the Merits, folios 3808 to 3815).

419 *Cf.* Judgment by the Chamber of Criminal Cassation of the Supreme Court, September 6, 2017, file-39931 (evidence file, volume XII, annex 48 to the CAJAR and CEJIL pleadings and motions brief, folio 27162).

identification records of nationals and release of judicial certificates" was assigned to the Ministry of National Defense, National Police,[420] and (d) "security services" for certain individuals and officers was assigned to the national protection unit.[421] Executive Order 4179 of 2011 created the National Directorate of Intelligence "as a civilian security agency to develop strategic intelligence and counterintelligence."[422]

352. Article 6 of 2011 Executive Order 4057 made the following provisions for DAS personnel:

> The national Government will eliminate positions held by employees of the Administrative Department of Security (DAS) who had been performing the duties that have now been transferred and will order the receiving entities and agencies of the executive branch to incorporate the officers performing these duties into their own staff. The Prosecutor General will assign them to the positions created for this purpose […]. The remaining positions will be eliminated according to the elimination plan that the director of the outgoing Administrative Department of Security (DAS) will submit to the national Government within two (2) months of the effective date of this executive order. […][423]

353. The same 2011 Executive Order 4057 makes the following provisions for the intelligence archives:

> The custody and maintenance of archives containing intelligence information of the Administrative Department of Security (DAS) will remain under the responsibility of the now defunct DAS. The Office of the Solicitor General, which is responsible for prevention, will oversee the process of custody, consultation and clearing of the intelligence data and archives of the now defunct DAS. […] Access to and review of the documentation in the now defunct DAS intelligence archives will be subject to legally required confidentiality as established in the Constitution and laws. Information will therefore be provided only to administrative and judicial authorities and other entities that so request for reasons of security and national defense in the performance of their duties and mandates. Any agency or entity taking receipt of the material will be held fully responsible for the use and management of the information.

354. Following the final termination of the DAS, 2014 Executive Order 1303[424] makes

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[420] Under 1993 Law 62, "the Ministry of Defense exercises leadership and command over the National Police (article 10). Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1614896.

[421] Executive Order 4057 of 2011, "eliminating the Administrative Department of Security (DAS), reassigning some of its duties, and ordering other […] actions." Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1540898.

[422] Executive Order 4179 of 2011, "creating an administrative department and setting its objective, duties, and structure." Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1543351. Claudia Jiménez Jaramillo and Mauricio Castro stated that the executive order to eliminate the DAS "was based" on a technical report by a "mission" created under 2005 Executive Order 4201 (available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1543724), to "detect and analyze possible causes that led the [DAS] into an institutional crisis; detect and analyze risks to which it could be exposed, and propose administrative measures as necessary." These declarants cited the technical report, dated March, 2006, as saying that the "mission" found, among other matters, that because of the variety and breadth of duties acquired by the DAS, "it had no clear mission focus"; it also pointed to "the criticisms and the institutional public process of the DAS in recent years," which revealed "mistrust in the entity's activities," leading to "irreparable actions making it necessary to create a new institution with a new legal framework." *Cf.* Joint statement before a public attestor by Claudia Jiménez Jaramillo and Mauricio Castro, May 2, 2022 (evidence file, volume XXXIV, affidavits, folios 45836, 45838, 45843 y 45844).

[423] The Inter-American Commission, in its Second report on the situation of human rights defenders in the Americas, said:

> The IACHR is concerned because in September 2011 it was publicly made known that in the transition process from the DAS, some operatives who were facing dismissal decided to sell or leak information in their possession to individuals, illegal groups, or other interested groups. The information leaked allegedly included DAS operatives' "front names" along with their real names; the year they began and the office to which they were assigned; and information about Supreme Court justices, diplomats, alleged foreign spies, and citizens of other nationalities.

Cf. IACHR. Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, Doc. 66, December 31, 2011, para. 74.

[424] Executive Order 1303 of 2014, "to provide enabling regulations for Executive Order 4057 of 2011." Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1808361.

provision for custody and maintenance of the intelligence and counterintelligence archives, including access and viewing rights, as follows:

> Article 1. […] Until such time as the intelligence and counterintelligence archives of the former Administrative Department of Security (DAS) have been cleared under the terms of Article 30 of 2013 Law 1621, and decisions are made as to the final destination of the data and intelligence and counterintelligence archives to be removed, the custody and maintenance of the archives containing intelligence, counterintelligence, and confidential expenditure information of the DAS will be under the responsibility of the National General Archive beginning when the National Directorate of Intelligence completes the closure process. The National Directorate of Intelligence will be the competent authority for granting access or viewing rights to the documentation in the intelligence archives that contain information on intelligence and counterintelligence and confidential expenditure information of the Administrative Department of Security (DAS).
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> Paragraph 1. Access and viewing rights to documents in the intelligence archives will be subject to confidentiality requirements under the Constitution and laws. Information will therefore be provided only to judicial authorities who so request as part of judicial proceedings, or to oversight entities upon request or order. The National Directorate of Intelligence will acquire or develop the necessary security protocols for activities of viewing and access to information on intelligence, counterintelligence, and confidential expenditures of the [DAS].
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> Paragraph 2. The Office of the Solicitor General, in accordance with the provisions of 2011 Executive Order 4057 and in the exercise of its preventive duties, will oversee the process of custody, access rights, and clearing of the data and intelligence archives.[425]

355. The Executive Secretariat of the Special Jurisdiction for Peace (JEP)[426] issued Judicial Order 001 on March 12, 2018, to adopt advance precautionary measures over the DAS intelligence and counterintelligence archives, under which JEP authorization was required to grant rights of viewing or access to the archives. The order stated, inter alia, that "multiple criminal investigations, some completed and some currently underway, were based primarily on documents that revealed alleged criminal activities by DAS operatives and employees" and "ties to groups operating outside the law," so that, given the links between DAS archives and the armed conflict, "the preservation and availability of these files is extremely important for the Special Jurisdiction for Peace to discover the truth and restore the rights of victims." It also noted that "both human rights defense organizations and the news media have repeatedly shown that the archives […] of the now defunct DAS are exposed to real risk." It therefore ordered:

> To order the national Government to make the archives on intelligence, counterintelligence, and confidential expenditures of the former DAS available to the Special Jurisdiction for Peace under the custody of the National General Archive. This means the process for the identification, classification, access, and viewing of documentation from the archives on intelligence, counterintelligence, and confidential expenditures of the former DAS requires authorization by the competent judicial authority from the Special Jurisdiction for Peace.[427]

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[425] The regulations are repeated in 2017 Executive Order 2149 (available at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/30034443), which states:
Article 2.2.3.12.5.7. […] The National General Archive will keep custody of the archives on intelligence, counterintelligence, and confidential expenditures of the former DAS. The National Directorate of Intelligence will be the competent authority to authorize access or viewing rights to documents in the archives on intelligence, counterintelligence, and confidential expenditures of the former DAS. Viewing and access to the archives on intelligence, counterintelligence, and confidential expenditures of the former DAS will be subject to the confidentiality requirements established in the Constitution and laws. Viewing or access to the information will therefore be granted only to judicial authorities who so request as part of judicial proceedings, or to oversight entities that need them for the exercise of their constitutional or legal mission.

[426] Transitional article 7 of legislative record 1 of 2017, "that creates a chapter in the Constitution with transitional provisions for ending the armed conflict and building a stable, lasting peace and sets forth other provisions:" "The Executive Secretariat will be responsible for managing, administering and implementing the resources of the Special Jurisdiction for Peace. The Executive Secretary may adopt advance precautionary measures to preserve documents concerning the armed conflict, according to law.

[427] *Cf.* Judicial Order 001, March 12, 2018, by the Executive Secretariat of the Special Jurisdiction for Peace (evidence file, volume XVII, annex 43 to the answering brief, folios 32561, 32563 and 32565). The decision was

D.5. Communication to the President of the Republic on the continuation of intelligence activities against members of CAJAR

356. Luis Guillermo Pérez Casas, as president of the Collective, sent a note on February 23, 2015, to the then President of Colombia, reporting that his organization and its members "continue to be victims of systematic, widespread persecution and attacks by intelligence authorities and agencies." The note gave an account of several incidents involving threatening calls and messages, wiretapping, taking of photographs, tailing, surveillance, and harassment experienced by members of CAJAR. The communication also asked the President "to adopt effective measures for the intelligence agencies working with the Army, the National Police and other agencies […] [to cease] their illegal intelligence operations and persecution of the members of the Collective."[428]

D.6. New publications on intelligence operations and subsequent State actions

357. The January 13, 2020, edition of the *Semana* news magazine ran a story entitled *Chuzadas sin cuartel* ("Unfettered illegal wiretaps"), describing wiretapping operations by certain army units.[429] The piece said specifically that the activities "compromised the cyberintelligence battalions […] that used to belong to military intelligence brigades, and also the information security counterintelligence battalion." The publication reported that the digital archives contained "reports, extracts of conversations and audio recordings," "video and photographic evidence of the stalking of journalists," and "information on DIAN [Directorate of Taxes and Customs] officers, lawyers collectives, human rights defenders, and others."[430]

358. Media reports following the publication in *Semana* said that CAJAR "demanded an investigation to determine whether its members were being targeted by illegal wiretaps and illegal surveillance," and "asked the President of the Republic and the Prosecutor General to provide concrete, transparent information for identifying the victims of these criminal activities."[431]

359. The May 1, 2020 issue of *Semana* ran a piece entitled *Las carpetas secretas* ("the secret files"), saying that from February through December, 2019, "certain units of the army conducted […] one of the most sensitive espionage cases in the country's recent history," and

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upheld by the Chamber for recognition of truth, responsibility and establishment of facts and conduct on October 26, 2018. *Cf.* Judicial Order 73, October 26, 2018, of the May 11, 2023 note signed by the Chamber for recognition of truth, responsibility and establishment of facts and conduct of the Special Jurisdiction for Peace (evidence file, volume XVII, annex 44 to the State's answering brief, folio 32626).

428 *Cf.* Communication from CAJAR to the President of Colombia, February 23, 2015, (evidence file, volume III, annex to the Report on the Merits, folios 6771 to 6776).

429 The same edition of the *Semana* magazine also reported that a raid had been carried out on December 18, 2019, of "a strategic army facility," where hours earlier, "high-ranking officers had ordered that all information be erased from hard discs, and they attempted several times to sabotage the operation." *Cf*. *Semana* magazine, "'¡Tapen, tapen, tapen!': así fue el allanamiento de la Corte Suprema a una instalación del Ejército," January 13, 2020. Available in Spanish at: https://www.semana.com/nacion/multimedia/nuevas-chuzadas-del-ejercito-en-colombia/647868/. Witness Julián Fernando Martínez Vallejo, a journalist, said that the term "chuzada" in Colombia means "an illegal wiretap." *Cf*. Statement before a public attestor by Fernando Martínez Vallejo, May 2, 2022 (evidence file, volume XXXIII, affidavits, folio 44844).

430 *Cf. Semana* magazine, "Chuzadas sin cuartel," January 13, 2020. Available in Spanish at: https://www.semana.com/nacion/articulo/chuzadas-por-que-se-retiro-el-general-nicacio-martinez-del-ejercito/647810/.

431 *Cf.* W Radio, "Colectivo de Abogados pide determinar si fue víctima de 'chuzadas'," January 16, 2020. Available in Spanish at: https://www.wradio.com.co/noticias/actualidad/colectivo-de-abogados-pide-determinar-si-fue-victima-de-chuzadas/20200116/nota/4003855.aspx.

that "over 130 citizens were targets of what the military called 'profiling' and "special operations'." The article said that the magazine had gained access to certain documents "naming members of the José Alvear Restrepo Collective, some of whom are lawyers for the victims of false positives [extrajudicial execution] or are litigating processes against retired generals accused of these practices."[432]

360. In January 2020, after the article came out in *Semana* magazine, the Prosecutor General initiated inquiries (filing 110016000102202000007) "for possible irregular actions inside the army by military intelligence and counterintelligence battalions," to "determine what types of activities were committed to meddle with fundamental rights." As part of its investigation, the prosecutor issued requests for information and reported that, among other people, two CAJAR lawyers, including Reinaldo Villalba Vargas, "are named as targets for cyber-surveillance by the army."[433]

361. Attorney Alirio Uribe Muñoz, representing Mr. Villalba Vargas, filed requests on May 7 and June 10, 2020, for the release of copies and delivery of related evidence contained in the

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[432] *Cf.* *Semana*, "Las carpetas secretas," May 1, 2020. Available in Spanish at: https://www.semana.com/nacion/articulo/espionaje-del-ejercito-nacional-las-carpetas-secretas-investigacion-semana/667616/. The Inter-American Commission said in its 2020 annual report:

> The Commission also expressed its concern over allegations of illegal spying for the purpose of preparing intelligence reports on journalists, justice operators, human rights defenders, and political leaders, allegedly carried out by at least four battalions and intelligence and counterintelligence brigades of the Armed Forces in Colombia. For this purpose, information was allegedly gathered through the monitoring of these persons and through various computer tools for collecting data on private communications, telephone calls, emails, places of residence and work, data on their families and contact persons, intrusions into their privacy and even direct interceptions of the communications of the aforementioned persons.

Cf. IACHR. Annual Report 2020, Chapter IV.A, para. 252. The Commission's Rapporteur on freedom of expression said:

> On December 18, 2019, a commission from the Investigation Chamber of the Supreme Court of Justice and judicial police from the Special Investigations Directorate of the Attorney General's Office raided the Cyber Intelligence Battalion in Facatativá [department of Cundinamarca], in search of evidence regarding the complaint of illegal surveillance. The officers who were at the facilities allegedly denied carrying out illegal activities and having computer software or tools, but several pieces of equipment were seized, including ten hard drives, five cell phones, eight sim cards, 12 USB sticks, a micro-SD memory, 316 DVDs and compact discs [...], 189 pages of documents and five Arduinos (boards that can be programmed for Windows, Mac, or free software).

Cf. IACHR. 2020 Annual report of the Office of the Special Rapporteur for freedom of expression, OEA/Ser.L/V/II, Doc. 28, March 30, 2021, para. 407.

[433] *Cf.* Note dated June 18, 2020, signed by the seventh prosecution unit delegated to the Supreme Court (evidence file, volume, XIII, annex 57 to the CAJAR and CEJIL pleadings and motions brief, folios 27988 and 27989), and a note dated May 27, 2020, signed by the prosecutor of the seventh prosecution unit delegated to the Supreme Court (evidence file, volume XLIII, annex to the State's May 22, 2023 brief, folios 47749 and 47754). A joint communication was sent on June 15, 2020, by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Commission's Special Rapporteur for freedom of expression, to "draw the Government's urgent attention […] to the information […] received concerning the alleged activities involving irregular use of military intelligence capabilities for surveillance and profiling" of individuals, "performed by members of armed forces intelligence units," expressed "their profound concern," and requested information on the matter. The note said that two lawyers from the Collective, Reinaldo Villalba Vargas and Sebastián Escobar Uribe, were included in the group of people being "profiled." *Cf.* Communication of June 15, 2020, reference AL COL 5/20. Available in Spanish at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25338. The Government of Colombia replied to the note on August 5, 2020, reporting that, among other things, the seventh prosecution unit delegated to the Supreme Court had initiated a criminal investigation on January 14 of that year, and that the Solicitor General had issued orders "on January 9" for disciplinary inquiries against whoever was responsible. The Government also reported changes to the command structure of the army and other actions designed to improve internal control capabilities in the institution. Available in Spanish at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=35465.

investigation records.[434] The seventh prosecution unit delegated to the Supreme Court replied on May 27 and July 26, 2020, denying the request for "procedural reasons and in order to guarantee the integrity of the preliminary investigation," because "the record contained confidential information."[435] Another request was filed, which the prosecutor again denied on December 18, 2020, based expressly on the "legally sanctioned confidentiality" of the "documents, information and technical materials" in the hands of the intelligence agencies, in keeping with the provisions of Constitutional law 1621 of 2013 (Article 33, *infra* footnote 864). Faced with the prosecutor's denial, and having unsuccessfully challenged this decision, the complainants lodged a motion for constitutional relief, which was dismissed on first and second application under rulings dated February 25, 2021, and April 14, 2021[436]

362. The State reported that, over the course of the prosecution's investigation, from January 16, 2020, through February 7, 2023, over 40 warrants were issued "to judicial police" to "obtain information from public data bases, inspections of places other than the scene of the crime, extraction of information from electronic devices and/or digital storage, interviews, computer analysis, and document analysis."[437]

363. The Court notes for the record that it had requested the State to provide further helpful evidence including "information on the beginning, implementation, and progress of the investigations and, if applicable, a copy of investigation records" as cited in the above paragraph; Colombia did not comply with this request, instead transcribing the response of the prosecutor who had said that it was not feasible "to release [copies] of the records" requested by this Court because the information was held legally "confidential" (*supra* footnotes 28 and 29).[438]

364. Finally, the Disciplinary Chamber of the Office of the Solicitor General, as part of a disciplinary process, issued an order on May 20, 2020, announcing a "list of charges" against several members of the army, inter alia, for "having allegedly committed major offenses" and "obtaining information on journalists, politicians, civic organizations and citizens, without respecting constitutional and legal rights and guarantees, culminating in the development of profiles on them by the cyberintelligence battalion […] during the year 2019." The list of people who had been "targets of the collection of information and profiling" included members of the Collective.[439]

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434 *Cf.* Communication of May 7, 2020, from Alirio Uribe Muños to the unit delegated to the Supreme Court and the Prosecutor General (evidence file, volume XLIV, annex 10 to the CAJAR and CEJIL brief of May 26, 2023, folios 48446 to 48448).

435 *Cf.* Note dated May 27, 2020, signed by the seventh prosecution unit delegated to the Supreme Court (evidence file, volume, XLIII, annex to the State's May 22, 2023 brief, folios 47749 and 47754), and a note dated July 26, 2020, signed by the prosecutor of the seventh prosecution unit delegated to the Supreme Court (evidence file, volume XIII, annex 58 to CAJAR and CEJIL pleadings and motions brief, folios 27991 to 28013).

436 *Cf.* Communication of December, 2020, from Alirio Uribe Muñoz to the seventh prosecution unit delegated to the Supreme Court (evidence file, volume XLIV, annex 16 to the CAJAR and CEJIL brief of May 26, 2023, folios 48494 to 48498); note of December 18, 2020, signed by the seventh prosecution unit delegated to the Supreme Court (evidence file, volume XLIV, annex 17 to the CAJAR and CEJIL brief of May 26, 2023, folios 48500 to 48516); communication of January, 2021, from Alirio Uribe Muñoz to the seventh prosecution unit delegated to the Supreme Court (evidence file, volume XLIV, annex 18 to the CAJAR and CEJIL brief of May 26, 2023, folios 48518 to 48527); note of January 21, 2021, signed by the seventh prosecution unit delegated to the Supreme Court (evidence file, volume XLIV, annex 19 to the CAJAR and CEJIL brief of May 26, 2023, folios 48529 to 48530); judicial ruling of February 25, 2021, by the Superior Court of the Judicial District of Bogotá, D.C., Labor Chamber, and judicial ruling of April 14, 2021, by the Supreme Court, Chamber of Labor Cassation (evidence file, volume XLIII, annex 9 to the State's brief of May 22, 2023, folios 47838 to 47869).

437 *Cf.* State brief, May 22, 2023, submitted in the process before this Court (file on the merits, volume IX, folios 3858 and 3859).

438 *Cf.* State brief, May 22, 2023, submitted in the process before this Court (file on the merits, volume IX, folios 3859 and 3861).

439 *Cf.* Order of the Office of the Solicitor General, May 20, 2020, filing IUS-E-2020-013169 (IUC-D-2020-1444205) (evidence file, volume XLV, annex 1 to the States June 5, 2023 brief, folios 48681 to 48757). The JEP

365. The Office of the Solicitor General also issued a ruling on September 22, 2020, ordering a group of people to be recognized "as victims," including Reinaldo Villalba Vargas and another Collective lawyer, which would allow them to take part as subjects in the proceedings. The Disciplinary Chamber said in its order that during the development of a search and raid operation on the facilities of the Army cyberintelligence battalion, located in the municipality of Facatativá, department of Cundinamarca, operatives from the Solicitor General's National Directorate for Special Investigations found magnetic devices containing, among other things, a file labeled "Special Case Brigade," with "'significant notations' on certain persons related to the Collective," that is, according the the Solicitor General, "they reveal military activities to search for information."[440] The Court has no information on the progress of this procedure.

E. Statements and rulings by current and former public officials concerning CAJAR and its members

366. Eduardo Carreño Wilches, in his capacity as president of CAJAR, sent an "open letter" to the President of Colombia on August 24, 1999, reporting "the systematic policy of persecution [against] numerous national personages and human rights defenders," and asked him to intervene as head of state "to protect fundamental rights […] and take the actions necessary to identify and sanction those responsible." The letter detailed these and other cases:

> In response to a public complaint lodged by several human rights NGOs concerning police actions in the southern region of the department of Bolívar on April 28, 1999, the […] commander of the fifth army brigade sent a letter to several human rights NGOs, including the Lawyers Collective, accusing them of "being a megaphone for subversion" and responsible for the violence in the country. […] The commander of the fifth brigade […] sent a letter on July 26, 1999, […] to the Secretary of Internal Affairs of the Department of Norte de Santander, reiterating his attack on the human rights NGOs. The letter says: "nothing but twisted, biased comments can be expected, because their orchestrated smear campaign against everything the army does is widely known both here and abroad, especially when this campaign, with its defamatory writings and comments, suggests that the troops are collaborating with groups operating outside the law […]."[441]

367. The website of the National Narcotics Control Bureau, under the Ministry of Internal Affairs and Justice, ran an item from 2001 to 2003 referring to the Collective and its members as "traditional defenders of the FARC," in reaction to the lodging of a judicial action "against the illegal crop eradication program using the herbicide glyphosate."[442] The Constitutional Court handed down Judgment T-1062/05 on October 20, 2005 (*infra* para. 457), affirming

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issued a decision on May 28, 2020, to "take over the processing of a precautionary measure for protection of" Reinaldo Villalba Vargas, Soraya Gutiérrez Argüello, and Olga Silva López, among others. This order was issued in consideration of, inter alia, the reports published in the *Semana* magazine. *Cf.* Order of May 28, 2020 of the section on the failure of the Special Jurisdiction for Peace to recognize truth and responsibility, file 202003001547 (evidence file, volume XIII, annex 59 to the CAJAR and CEJIL pleadings and motions brief, folios 28034 to 28041).

[440] *Cf.* Order of the Solicitor General, Disciplinary Chamber, September 22, 2020, file (161-7825/064) IUS-E-2020-013169/IUC D-2020-1444205 (evidence file, volume XIII, annex 56 to the CAJAR and CEJIL pleadings and motions brief, folios 27979 to 27986).

[441] *Cf.* Open letter from CAJAR to the President of Colombia, August 24, 1999, (evidence file, volume I, annex to the Report on the Merits, folios 2660 to 2665).

[442] The petitioners sent a communication to the Commission on October 28, 2004, reporting that the text of the publication read as follows:

> Significant legal matters. Popular action against the program for illicit crop eradication using the herbicide glyphosate. These people, with the help of, among others, […] Representative Gustavo Petro and the José Alvear Restrepo Lawyers Collective (traditional defenders of the FARC), headed by their president Alirio Uribe, lodged a popular motion in the Administrative Court of Cundinamarca on January 22, 2001, against the Ministry of Environment, the Colombian Agricultural Institute (ICA), and the National Narcotics Control Bureau.

Cf. Communication from the petitioners to the Commission, October 28, 2004 (evidence file, volume III, annex to the Report on the Merits, folios 8005 and 8006).

that on April 6 of that same year, the Ministry of Internal Affairs and Justice reported "that it had ordered removal of the reference to the José Alvear Restrepo Lawyers Collective from the website of the National Narcotics Control Bureau." The Constitutional Court warned the department "to refrain from publishing on its Internet platform or by any other useful medium, any information claiming to link [CAJAR] to matters under your field of action, so long as there is no decision by any judicial authority allowing such publication."[443]

368. The then President of Colombia, Álvaro Uribe Vélez, made the following statements on September 8, 2003, at the inauguration ceremony for the new Air Force commander at Air Command headquarters for military transport in the city of Bogotá:

> General […]: you are taking on the command of the Air Force at a crucial time for the nation, when the enormous majority of the people of Colombia have made the decision to defeat the terrorists, and the Air Force must take part in a task that is essential, both strategically and tactically. […] [T]his democratic security policy is a policy for human rights. […] Although the Government and law enforcement see human rights as a commitment every day, other sectors use human rights as a political banner for special occasions. Colombia has much to consider. For example, I have seen among the critics certain people who are very theoretical, and while I disagree with them, I respect them. I have observed respectable human rights organizations who have freedom to range all across Colombia and who must enjoy the full protection that our institutions provide. I have also observed writers and political hacks who ultimately are at the service of terrorism and shield themselves like cowards by wrapping themselves in the flag of human rights. They are afraid to confess their political ambitions, so they need to hide behind the human rights flag. […] [W]hile the FARC and their ever-present terrorism, while this terrorist organization violates human rights every day, these people who play politics with human rights go out to defend the FARC under the pretext of defending human rights. […] Every time Colombia has a security policy to defeat terrorism, whenever the terrorists start to feel that they are losing power, immediately they send out their mouthpieces to talk about human rights. […] They know that their only weapon is the lies that hide hypocritically behind human rights. These people should know how determined we are to defeat terrorism and all its henchmen, and that one of our political decisions is to isolate terrorism and in order to isolate it, we will capture all those who commit crimes of complicity or concealment. […] They talk about police raids. Good God! […] What has this administration done? […] hand in hand with the Constitution, and in the framework of human rights principles, it has sought out actions to isolate the terrorists so it can capture all their henchmen and accomplices. We will continue to do what we have been doing: receiving information, converting it into intelligence, putting it into the hands of the prosecutors. And then when the prosecutors deliver it to our law enforcement: arrest warrants, catching terrorists. […] There have been no raids, as the human rights political hacks claim arbitrarily. Here there is a policy with a strategy and one of the points of this strategy requires isolating the terrorists, capturing all their accomplices across the board. […] These prophets of doom, who cannot see matters clearly except when terrorism reigns supreme, talk about democratic restrictions. What restrictions? Colombia has the greatest freedom of the press and opinion in the entire world. […] But we are used to it. […] When I began serving as governor of my province, our job was to fight terrorism, and immediately certain voices piped up that we had never heard before. They were weak, imperceptible, in the days of terrorist domination but they became loud and strident when we started to take action against terrorism. Lawyers collectives cropped up, under one name or another, mouthpieces for terrorism. Not to attack terrorists, but to attack the will of local government to defeat them. They filed every legal action they could think of! They came up with every excuse they could imagine! And whenever the governor was attacked, they said not a word! And they have the money to publish books and trample on the honor of our generals and of us, the Colombians who have fought against terrorism, and they shamelessly try to deceive international opinion with their books that have no serious sources. So it does not surprise us one bit that they are starting to agitate. They have already been to London months ago, to start once again deceiving international opinion, which ignored them, trying to get them to stop all aid to Colombia. They started to realize in Europe that here we have human rights traffickers who live full-time begging for help from the European Union and other organizations, simply to support themselves, because they have made this their modus vivendi and because they need that money to hobble the State's authority to act, which is the way to stop the defeat of terrorism. […] General […]: you are taking command of the Air Force for the purpose of defeating terrorism. The human rights traffickers must not stop you! Make no mistake about it, may the entire Colombian Air Force provide this great nation with the service of helping us be free of this nightmare once and for all![444]

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443 *Cf.* Constitutional Court Judgment T-1062/05, October 20, 2005.

444 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folios 13121 and 13122); Judgment T-1062/05, October 20, 2005, Constitutional Court of

369. Reinaldo Villalba Vargas said in his statement that the President's words were spoken "in reaction" to the publication of the report *El embrujo autoritario*" ("the authoritarian bewitchment") (*supra* para. 173).[445]

370. Information provided by CAJAR and CEJIL showed that on February 9, 2004, then President Uribe Vélez said in a meeting with human rights organizations in Brussels, Belgium, that the Collective "was hiding behind human rights defense to support terrorism."[446] They also said that the former President had made reference to a member of the Collective on February 10 of the same year, describing lawyer Reinaldo Villalba Vargas, but not mentioning his name, as "a ghost meandering through the corridors of the European Parliament and who […] belongs to an NGO, […] that hides behind its facade as a human rights organization to defend the guerrillas."[447]

371. CAJAR and CEJIL said that, "around the same time," the then President, speaking before the External Relations Section of the European Union in Strasbourg, France, said:

> [T]he issue of human rights cannot be used as an excuse to cover up terrorists. […] If the Lawyers Collective wants to defend terrorists, let them do it under the law, but they should not be disguising themselves as human rights organizations.[448]

372. Alirio Uribe Muñoz, in his capacity as president of CAJAR, sent an open letter to the then President of Colombia on February 20, 2004, saying that he "reject[s] the statements made during your European tour," which, according to the letter, "amounts to ignoring your international obligation to provide guarantees to human rights defenders [and] a frontal attack on human rights organizations, that reflects the government's intolerance of any criticism about the lack of a public policy to guarantee human rights." The letter then asked

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Colombia, and document *Palabras del Presidente Uribe en posesión de nuevo comandante de la FAC* ("message by President Uribe on the inauguration of the new Air Force commander") (evidence file, volume I, annex to the Report on the Merits, folios 2887 to 2894). See, "Posesión del nuevo comandante de la FAC, September 8, 2003 (Bogotá - Cundinamarca)," available in Spanish at: https://alvarouribevelez.com.co/discursos-2003-64776/.

445 *Cf.* Statement before a public attestor by Reinaldo Villalba Vargas, April 28, 2022 (evidence file, volume XXXIII, affidavits, folio 44596).

446 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folios 13122 and 13123).

447 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folios 13122 and 13123); statement before a public attestor by Reinaldo Villalba Vargas, April 28, 2022 (evidence file, volume XXXIII, affidavits, folio 44597), and Judgment T-1062/05, October 20, 2005, Constitutional Court of Colombia.

448 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folios 13122 and 13123); statement before a public attestor by Reinaldo Villalba Vargas, April 28, 2022 (evidence file, volume XXXIII, affidavits, folio 44596); statement by Soraya Gutiérrez Argüello at public hearing before this Court, and Judgment T-1062/05, October 20, 2005, Constitutional Court of Colombia. The Inter-American Commission said in its 2004 annual report:

> The IACHR is also concerned by the repeated official accusations (*señalamientos*) directed against the [...] Colectivo de Abogados "José Alvear Restrepo […]. Among the incidents in 2004, special mention should be made of President Uribe's speech to the European Union on February 10, 2004 […]; the insinuations by the departmental authorities of Cesar […]; and the characterization of the Colectivo de Abogados […] as "traditional defenders of the FARC" on the web site of the […] National Narcotics Control Bureau. […] Representatives of all branches of the State have repeatedly made generic accusations (*señalamientos*) directed at the Colectivo […] as well as other human rights organizations. The IACHR must repeat once against that the words of the President of the Republic may be considered by illegal groups as an accusation that not only increases the risks human rights defenders face, but could also suggest that the acts of violence aimed at hushing them somehow enjoy the acquiescence of the Government.

Cf. IACHR. Annual Report 2004, OEA/Ser.L/V/II.122, Doc. 5 rev. 1, February 23, 2005, chapter IV, paras. 37 and 38. The Inter-American Commission also sent a communication to the then Minister of Foreign Affairs on March 11, 2004, expressing its concern about the President's February 10, 2004 statements. *Cf.* Constitutional Court Judgment T-1062/05, October 20, 2005.

the President to "publicly retract the accusations and recriminations against the Collective […] and in general against human rights workers in Colombia."[449]

373. CAJAR and CEJIL said that a national senator (EGH) had made the following comment in an interview on July 22, 2004: "Here we have associations: […] the Lawyers Collective, [that] works nonstop against the interests of Colombia and of course behind it […] is all that dark money that moves the guerrilla forces."[450] Both organizations also reported that a meeting had taken place on October 11, 2004, in the city of Valledupar as part of the Inter-American Court's monitoring of provisional measures on behalf of the Kankuamo indigenous people;[451] the then governor of the department of Cesar (HMA) said in that meeting to lawyer Jomary Ortegón Osorio that CAJAR was "the lapdog of the guerrillas" and that its members "portrayed themselves as 'good citizens,' but with their criticisms against the government, they were not contributing to peace," making reference to the President's visit to Europe.[452]

374. A retired member of the armed forces who had been convicted for the Mapiripán massacre, a case in which the Collective represented the victims, sent a letter to the then President of Colombia on September 16, 2010, saying, "throughout the entire judicial proceedings, the manipulation of the evidence […] was patently obvious."[453] The State confirmed in its answering brief that this person "did in fact send a letter to President Juan Manuel Santos."[454]

375. Senator Álvaro Uribe Vélez, former President (2002-2010) and former national senator (1986-1994 and 2014-2020), ran the following posts on his Twitter account on July 9, 2011:

> Lawyers [] of the [] Collective and others who are attacking [former DAS director MPHA] and telling lies in Panama won't talk about their likely connections to the guerrillas[.]
> The Lawyers Collective that is blocking our defense from vicious lies won't answer questions about its own defense of the guerrillas and links to them.
> Lawyers Collective attacking [MPHA] in Panama does not answer questions about its links to and defense of the guerrillas.[455]

376. Mr. Uribe Vélez posted more messages to Twitter on February 8, 9 and 28, 2015:

> *El Espectador* [a widely circulated national newspaper] and the Lawyers Collective are partners in promoting the criminals who are out to benefit from serving as false witnesses.
> [Senator] Iván Cepeda, Alirio Uribe from the Collective, professional defamers and sympathizers of the

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449 *Cf.* Open letter from CAJAR to the President of Colombia, February 20, 2004 (evidence file, volume VI, Commission case file, folios 16137 to 16145).

450 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folios 13121 and 13169). See Constitutional Court Judgment T-1062/05, October 20, 2005.

451 *Cf. Matter of Indigenous Community Kankuamo regarding Colombia. Provisional measures*. Order of the Inter-American Court of Human Rights, July 5, 2004.

452 *Cf.* Communication from the petitioners to the Commission, October 28, 2004 (evidence file, volume III, annex to the Report on the Merits, folios 8005 and 8006), and statement before a public attestor by Jomary Liz Ortegón, May 2, 2022 (evidence file, volume XXXIII, affidavits, folios 44647).

453 *Cf.* Communication from the petitioners to the Commission, October 27, 2010 (evidence file, volume V, electronic file on precautionary measures before the Commission, folio 10184).

454 *Cf.* The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1129).

455 *Cf.* Communication from the petitioners to the Commission, April 11, 2012 (evidence file, volume V, electronic file on precautionary measures before the Commission, folios 12295 and 12296). The State said in its answering brief on May 17, 2022, that the statement "is true" (merits file, volume II, folio 1130). CAJAR and CEJIL reported that the former president had posted other messages on March 22 and 23, 2012, January 23, and February 28, 2015. See CAJAR, "New defamation and accusations against Luis Guillermo Pérez Casas and CCAJAR by former President Álvaro Uribe Vélez," March 26, 2012, website of the José Alvear Restrepo Lawyers Collective. Available in Spanish at: https://www.colectivodeabogados.org/nuevas-difamaciones-y-acusaciones-contra-luis-guillermo-perez-casas-y-el-ccajar-por-parte-del-ex-presidente-sr-alvaro-uribe-velez/, and PBI Colombia, "CCAJAR 2014-2016," June 11, 2016, available in Spanish at: https://pbicolombiablog.org/2016/06/11/ccajar-2014-2016/.

> FARC, in Havana for a meeting with the terrorists.
> On Tuesday, in a message before the [Supreme] Court, I will talk about the deep pain I am feeling. We will fight internationally against the Lawyers Collective and the FARC.[456]

377. CAJAR and CEJIL also reported about articles and opinion pieces, news reports, television programs, and social media messages in which particular persons or strangers publicly made different claims to discredit the Collective, saying that it was an organization "whose extreme leftist ideological profile makes it a weapon more lethal than FARC rifles," or saying that its members admired or favored guerrilla groups, were "enemies of the State," were "fighting against democracy," and similar expressions.[457]

E.1. Declarations about the Mapiripán massacre proceedings

378. The news media ran a testimony in October, 2011, from a family member of three of the victims recognized in the Court's judgment on the case of the Mapiripán massacre, who confessed that her children had not gone missing at that time, but previously.[458] According to CAJAR and CEJIL, the then President of the Colombia, Juan Manuel Santos, made the following statements:

> [I] cannot fail to mention—because it is very much related to corruption—the bizarre situation that arose, and has been been revealed by our Prosecutor General, about murder claims in the so-called Mapiripán massacre, committed by paramilitary forces in 1997, many of which now turn out to be false. […] This is extremely serious, because not only does it commit fraud against the state—at the hands of counterfeit victims and their attorneys—but also it makes a mockery of the international human rights system and the inter-American system, which we have defended so much. […] Apparently, certain lawyers were advising their clients not to reconcile in the domestic justice system because they can always cut a better deal, get better compensation […]. What we never imagined, what never even crossed our minds, was that they could encourage them to tell lies and pass for victims when they were not. What could possibly be more corrupt than that?[459]

379. Several news outlets ran similar statements by other public officials at the time, including the President,[460] Vice President,[461] Minister of Foreign Affairs,[462] Minister of

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[456] *Cf.* IACHR. Report No. 57/19. Case 12,380. Merits. Members of José Alvear Restrepo Lawyers' Collective. Colombia. May 4, 2019, para. 171. See press release published in *El Heraldo*, February 28, 2015, "Former President Uribe, pained by conviction of Hurtado and Moreno," available in Spanish at: https://www.elheraldo.co/nacional/expresidente-uribe-dolido-por-condena-de-hurtado-y-moreno-185868.

[457] *Cf.* The CAJAR and CEJIL pleadings and motions brief before this Court, November 9, 2020 (merits file, volume II, folios 544 to 547). See *El Tiempo*. "El colmo de los colmos," November 21, 2013, available in Spanish at: https://www.eltiempo.com/archivo/documento/CMS-13212340, and PBI Colombia, "CCAJAR 2014-2016," June 11, 2016, available in Spanish at: https://pbicolombiablog.org/2016/06/11/ccajar-2014-2016/.

[458] *Cf.* The CAJAR and CEJIL pleadings and motions brief before this Court, November 9, 2020 (merits file, volume I, folio 548). See, *Case of the Mapiripán Massacre v. Colombia. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights, November 23, 2012, para. 17. The OHCHR said in its 2011 annual report:

> A person recognized by the State as a victim of the 1997 massacre in Mapiripán (Meta) withdrew her testimony. Acknowledging the need to investigate this and other similar cases, OHCHR-Colombia is concerned about attempts to use this fact to delegitimize victims, human rights defenders and their organizations, and regional protection mechanisms.

Cf. Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/19/21/Add.3, January 31, 2012, para. 22.

[459] *Cf.* Words of President Juan Manuel Santos at the presentation of the book *Superando la Corrupción* ("overcoming corruption") by Bertrand de Speville, Bogotá, October 27, 2011, available in Spanish at: http://wsp.presidencia.gov.co/Prensa/2011/Octubre/Paginas/20111027_11.aspx.

[460] *Cf.* Press report, Caracol Radio, October 27, 2011, "Colombia pedirá a la OEA que estudie en cumbre de cancilleres caso de 'falsas víctimas' de Mapiripán" (evidence file, volume X, annex 5.13 to Ms. Arias' pleadings and motions brief, folio 25635).

[461] *Cf.* Press report on Caracol Radio, October 27, 2011, "Vicepresidente invitó a la CIDH a Colombia a discutir masacre de Mapiripán" (evidence file, volume X, annex 5.13 to Ms. Arias' pleadings and motions brief, folio 25643).

[462] *Cf.* Press report, Radio Santa Fe, November 2, 2011: "Canciller dice que CIDH tiene mucho que reflexionar sobre caso Mapiripán" (evidence file, volume X, annex 5.13 to Ms. Arias' pleadings and motions brief, folios 25652 and 25653).

Defense,[463] Minister of Justice,[464] and the Solicitor General.[465]

380. All this exposed lawyers Eduardo Carreño Wilches and Luis Guillermo Pérez Casas to a disciplinary investigation by the High Council of the Judiciary, which in the end "was dropped for lack of merit." Rafael Barrios Mendivil, Jomary Ortegón Osorio, and Mr. Carreño Wilches were subject to a prosecutorial investigation by the Comptroller General, which was also dismissed.[466]

381. Throughout 2013, Fernando Londoño Hoyos, who had served as Ministry of Internal Affairs (2002-2004), said that the Mapiripán massacre had been "a ploy set up by the Lawyers Collective." According to his claims, "on February 16, in the office of the 75th prosecutor to the Superior Court of Bogotá, a reconciliation was reached as part of the process that CAJAR had lodged against him for libel and slander."[467] The State said that these claims were true.[468]

382. Jomary Ortegón Osorio, in her capacity as president of CAJAR, sent a letter to the then Minister of Defense on February 16, 2016, requesting a meeting "to discuss certain matters of the Mapiripán massacre case, concerning the question of [her] safety, honor, and reputation."[469] The Deputy Minister of Defense replied in a note on February 25, 2016, that the Collective was "the place best suited for discussing the matter; […] it would be a meeting for follow-up and for agreeing on the precautionary measures" granted by the Commission for the members of CAJAR.[470]

383. CAJAR and CEJIL reported that a member (JJU) of the Chamber of Representatives had made a statement before Congress on August 2, 2018,[471] "attacking the members" of the Collective "concerning the case of the Mapiripán massacre and their work representing" the victims' organization. He reiterated his statement on a radio program the next day.[472]

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[463] *Cf.* Press report, RCN, October 28, 2011: "Ministerio de Defensa será víctima en el caso Mapiripán: MinDefensa" (evidence file, volume X, annex 5.13 to Ms. Arias' pleadings and motions brief, folios 25668 and 25669

[464] *Cf.* Press report, RCN, October 26, 2011: "El engaño de las supuestas víctimas de Mapiripán es evidente: MinJusticia" (evidence file, volume X, annex 5.13 to Ms. Arias pleadings and motions brief, folios 25675 and 25676).

[465] *Cf.* Press report, Caracol Radio, October 26, 2011: "Procuraduría pide investigaciones penales y disciplinarias por 'falsas víctimas' de Mapiripán" (evidence file, volume X, annex 5.13 to Ms. Arias pleadings and motions brief, folio 25655), and press report, *El Espectador*, October 26, 2011: "Procuraduría solicitó revisar condena contra el Estado por Mapiripán" (evidence file, volume X, annex 5.13 to Ms. Arias pleadings and motions brief, folio 25657). CAJAR and CEJIL also said that copies of a leaflet had been handed out on March 6, 2012, at bus stops on the "Transmilenio" lines in the city of Bogotá near the offices of the Collective, containing such phrases as "never forget," "fake victims," and "the collective does not care if victims go to jail." *Cf.* Communication from the petitioners to the Commission, March 12, 2012 (evidence file, volume III, annex to the Report on the Merits, folio 7333). The Inter-American Commission said in its 2011 Annual Report, "the Procurator General of the Nation [...] is said to have stated that members of [CAJAR] could have committed the crimes of fraud upon the law (fraude procesal) and falsity (falsedad)"; The Commission therefore "considers that statements such as these, before the State has carried out the respective investigations, may have a negative impact on the work of Colombian human rights organizations." *Cf.* IACHR. Annual Report 2011, chapter IV, para. 119.

[466] *Cf.* Order of the Comptroller General, November 29, 2012, order 28 (evidence file, volume XI, annex 16 to the CAJAR and CEJIL pleadings and motions brief, folio 26513). The order said that these lawyers had reimbursed a sum of money they had received as fees for the Mapiripán case.

[467] *Cf.* The CAJAR and CEJIL pleadings and motions brief before this Court, November 9, 2020 (merits file, volume I, folio 550).

[468] *Cf.* The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1138).

[469] *Cf.* Letter to CAJAR of February 15, 2016, from the Minister of Defense (evidence file, volume XI, annex 17 to the CAJAR and CEJIL pleadings and motions brief, folio 26518).

[470] *Cf.* Note of February 25, 2016, signed by the Deputy Minister for international policies and affairs (evidence file, volume XI, annex 18 to the CAJAR and CEJIL pleadings and motions brief, folio 26520).

[471] Under Article 114 of the Constitution of Colombia, "The Congress of the Republic consists of the Senate and the Chamber of Representatives."

[472] *Cf.* Communication from the petitioners to the Commission, October 1, 2018 (evidence file, volume V, electronic file on precautionary measures before the Commission, folios 12805 and 12806).

E.2. Facts reported after the case had been submitted to the Court

384. The Special Jurisdiction for Peace issued a communiqué on February 18, 2021, entitled *La JEP hace pública la estrategia de priorización dentro del Caso 03, conocido como el de falsos positivos* ("JEP announces the strategy for priority ranking in Case 03, known as the case of false positives"). Among other things, it says, "various official and nongovernmental sources identified the years from 2002 to 2008 as the period that saw the largest number of victims,"[473] and "this stage accounted for 78% of total victims ever recorded." Former president Uribe Vélez sent a post to Twitter the same day, entitled "Response to the biased message from the JEP," that began with the following text: "More JEP abuse for false positives. One purpose only, already praised by *The Economist*: to smear me. The organizations they listen to, with a clear political bias and declared enemies of my administration: […]" followed by a list of organizations, including the "José Alvear Restrepo Lawyers Collective (CAJAR).[474]

385. The attorney Sebastián Escobar Uribe, member of CAJAR, took part in a television program on February 12, 2020, debating the proposal to bring a retired military officer to justice before the JEP. Several people took part in the program, including a woman who introduced herself as a political party activist and advisor to the Ministry of Internal Affairs, and who, in her comments, pointed to the Collective as one of the organizations that are "public enemies of the Government" and "public enemies of the soldiers who performed their duties for the Government and accomplished great things."[475]

386. In another instance, a senator (PV) speaking before a sitting of the National Senate on May 18, 2020, said that, "Pedro Julio Mahecha […] was part of the [José Alvear Restrepo Lawyers Collective] that stood in opposition to our armed forces in many legal proceedings, including the Mapiripán case, where the [José Alvear Restrepo Lawyers Collective] has been convicted for claiming false victims."[476]

F. Measures of protection adopted by the State for CAJAR and its members

F.1. Protective measures adopted from 2001 to 2011

387. The State said that it had granted various protection measures since 2001, which it described as "reinforced arrangements," consisting of an armored vehicle, an escort, and a communication device, ordered in May, 2001 for four members of CAJAR, and had built defensive measures on one of their homes May, 2006, and another in June, 2008. The same measure was ordered in November, 2005 for another member of the Collective, whose home defenses were fortified in May, 2006. "Avantel" communication devices were provided to three CAJAR members, two of them to provide "security for the organization."[477]

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[473] *Cf.* Special Jurisdiction for Peace, "*La JEP hace pública la estrategia de priorización dentro del Caso 03, conocido como el de falsos positivos*," February 18, 2021. Available in Spanish at: https://www.jep.gov.co/Sala-de-Prensa/Paginas/La-JEP-hace-p%C3%BAblica-la-estrategia-de-priorizaci%C3%B3n-dentro-del-Case of -03,-conocido-como-el-de-falsos-positivos.aspx#:~:text=019%20de%202021-,La%20JEP%20hace%20p%C3%BAblica%20la%20estrategia%20de%20priorizaci%C3%B3n%20dentro%20del,nacional%20entre%202002%20y%202008.

[474] *Cf.* Communication from the petitioners to the Commission, February 24, 2021 (evidence file, volume XXVIII, annex 1 to the CAJAR and CEJIL brief of August 18, 2021, folio 44229).

[475] *Cf.* The CAJAR and CEJIL pleadings and motions brief before this Court, November 9, 2020 (merits file, volume I, folio 548), and Zona Franca, "¿Cómo va el proceso de los falsos positivos en la JEP?" available in Spanish at: https://www.youtube.com/watch?v=yimpy2oOlG8. The State said in its answering brief on May 17, 2022, that the fact "is true" (merits file, volume II, folio 1136).

[476] *Cf.* Remote plenary session of the National Senate, May 18, 2020. Available in Spanish at: https://www.youtube.com/watch?v=v12iiA3MC8U.

[477] *Cf.* The State's answering brief, May 17, 2022, submitted in the process before this Court (file on the merits,

388. The State also provided protection for the Collective as an organization by approving "defensive shielding for the building" in July, 2003, and p[roviding "an Avantel communication device" in November, 2005.[478]

389. The members of CAJAR returned four assigned vehicles on April 7, 2011, and released to the authorities the escorts who had been providing their protection services. They said in a letter to the then President of Colombia that the decision was made because of mistrust in the protection service "in which the DAS plays a leading role" and "misuse of the protection service to shadow them."[479] The material was returned to the then director of the DAS, which was the institution that provided protection services at the time (*supra* para. 159).[480]

F.2. Protective measures beginning in 2020

390. The State of Colombia also reported that the Technical Corps for information gathering and analysis (CTRAI) had "proceeded with a risk analysis on CAJAR," examining "the degree of vulnerability of the organization," to submit its findings to the Committee for risk analysis and recommendation of measures (CERREM). Both entities work under the umbrella of the National Protection Unit (*supra* para. 162).[481]

391. The CTRAI observed the following "factors of risk exposure": (a) stigmatizing and denigration, because they defended cases of national and international significance; (b) smear campaigns and reputational damage in the news and social media against the members and the work of the Collective; (c) intimidating leaflets and threats signed by groups operating outside the law; (d) stalking members of the Collective and harassment by strangers taking pictures of the organization's facilities; (e) cyberattacks on the Collective's website and email; (f) information about an alleged plan to attack a member of the Collective; (g) entry into the homes of Collective members, and (h) cases lodged by the Collective being ignored by the State.[482]

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volume II, folios 1235 and 1236).

478 *Cf.* The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1237).

479 *Cf.* Letter from members of CAJAR to the President, April 7, 2011, annex to the communication from the petitioners to the Commission, May 18, 2011 (evidence file, volume III, annex to the Report on the Merits, folios 7525 to 7531). The letter read:

> We believe that the State has not fully met its obligation of protection, and instead has performed actions and serious omissions that further endanger us. Under current circumstances and conditions, it is impossible for us to continue receiving the protection services assigned to us by the protection program of the Ministry of Internal Affairs. We do not trust and do not feel safe with the current service when the DAS plays a leading role, nor do we trust the private security company for reasons of which the Government is already aware. […] This morning, Thursday, April 7, 2011, the vehicles are being delivered by the official drivers, who are hereby released back to the official program. We would like to state for the record that our decision to [return] the material resources of protection was not made freely, but is an outcome of our great fear and extreme mistrust resulting from State persecution through officials at the highest levels, as well as the intelligence agencies. We are forced to make this decision because of the way the protection program has been used to persecute us.

480 *Cf.* Letter from CAJAR to the director of DAS, April 7, 2011 (evidence file, volume III, annex to the Report on the Merits, folio 7519).

481 Executive Order 1066 of 2015 charged the committee on risk analysis and recommendation of measures (CERREM) to "ascertain the risk levels based on information provided by the Technical Corps for information gathering and analysis (CTRAI) under the National Protection Unit" and to "define a roadmap that identifies the entities involved, specific persons responsible, timelines and plans for implementation, and other factors relevant for implementing collective measures as proposed by" the CTRAI. *Cf.* Executive Order 1066 of 2015, "to issue the single regulatory order for the administrative sector of internal affairs" (article 2.4.1.5.13). Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/30019912.

482 *Cf.* Note signed by the head of the legal advisory office of the National Protection Unit, September 29, 2020 (evidence file, volume XVII, annex 46 to the answering brief, folio 32667).

392. The State reported that the CTRAI also took into account the "early warnings" issued by the office of the Ombudsman, which had issued a total of 24 early warnings involving CAJAR. As a result, "sufficient information was found to verify the existence of a risk that led to activation of the State prevention and protection program," when the Collective's situation was weighed as "[extraordinarily] high risk."[483]

393. The CERREM session on June 12, 2020 recommended protective measures for different members of the Collective, which were adopted by the director of the National Protection Unit on July 9, 2020, and according to information supplied by the State, are still in effect. The measures include, in general terms, seven armored vehicles and eight escorts.[484]

G. Judicial and administrative processes lodged

G.1. Criminal investigations for acts of violence, intimidation, harassment, and threats

394. Various acts of violence, intimidation, harassment, and threats against members of CAJAR triggered investigations by the Prosecutor General, some of which were discontinued at the investigation stage, dismissed, or suspended;[485] others—excepting one file only—are currently in the stage of preliminary investigation (that is, before the prosecutor files charges against a person as the perpetrator or participant in the incident),[486] as detailed below. The different investigations will be identified for this purpose using the file number assigned by the prosecution.

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[483] *Cf.* Note signed by the head of the legal advisory office of the National protection unit, September 29, 2020 (evidence file, volume XVII, annex 46 to the answering brief, folio 32667).

[484] *Cf.* Note signed by the head of the legal advisory office of the National Protection Unit, September 29, 2020 (evidence file, volume XVII, annex 46 to the answering brief, folios 32667 to 32671). Alfonso Rafael Campo Martínez said in a statement that the National Protection Unit had adopted the measures recommended by CERREM in an order released on July 9, 2020, with a follow-up report in the CERREM session on June 28, 2021 and an order on August 17, 2021. *Cf.* Statement before a public attestor by Alfonso Rafael Campo Martínez, May 2, 2022 (evidence file, volume XXXIV, affidavits, folio 45758).

[485] The Criminal Procedural Code, Law 600 of 2000 (available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1663904), applicable to the investigation of events that occurred prior to January 1, 2005, said:

> Article 325. Duration of preliminary investigation and right of defense. The preliminary investigation shall not exceed a period of six (6) months and shall close with an order either to open the investigation or not to proceed. […]
>
> Article 326. Suspension of the preliminary investigation. The Prosecutor General or his/her delegate shall suspend the preliminary investigation if the identity of the suspect has not yet been established after one hundred eighty (180) days. […]
>
> Article 327. Order not to investigate. The Prosecutor General and his/her delegate shall not initiate the investigation if it is found that the conduct did not exist, was noncriminal, that the criminal process cannot be initiated or continued, or if grounds for relief from responsibility have been demonstrated. This decision shall be made by means of an order not to investigate, which can be challenged in a motion for reconsideration by the Solicitor General, the accuser, or the complainants or their certified representatives. […]

Events occurring after January 1, 2005 are covered by Law 906 of 2004, the Criminal Procedural Code (available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1670249):

> Article 79. Dismissal of proceedings. The prosecutor shall order dismissal of the proceedings if it is proven that there are no motives or factual circumstances that could lead to classifying a fact as a crime, or that show whether it existed as a crime. If new evidence comes to light, the investigation shall be resumed unless the statute of limitations on the criminal proceedings has lapsed.
>
> Article 175. Duration of the proceedings. […] The prosecution shall have a maximum term of two years, as of the time the notice of the alleged crime is received, to file charges or lay grounds for ordering the file to be dismissed. The maximum term shall be three years for cases of compound crimes or crimes that involve three or more suspects. The maximum duration for the investigation of crimes under the jurisdiction of criminal judges in the specialized circuit shall be five years. […]

[486] See Articles 200, 286 and 287 of Law 906 of 2004, Criminal Procedural Code.

395. Filing 590: investigation of incidents including: (a) the name of Alirio Uribe Muñoz appears on a document entitled "Miscellaneous" (*supra* para. 303), and (b) a leaflet was handed out on August 17, 1999, signed by the "Colombian Rebel Army," which allegedly threatened several people, including Mr. Uribe Muñoz (*supra* para. 217). The prosecution decided on October 4, 2002, to drop the investigation of these facts for the following reasons: (a) with respect to the leaflet, the prosecutor said, "the evidence on the identity of the authors or participants did not meet the required minimum," and (b) with respect to the the document "Miscellaneous," the prosecutor said it was not a military intelligence report and the reference to Mr. Uribe Muñoz "was not an effective means to spread ideas consistent with the technical definition" of the crime of threats, and the conduct was therefore deemed noncriminal.[487] Prosecutor 48 delegated to the Superior Court of Bogotá heard the matter on appeal and on August 15, 2006, reversed the decision not to investigate. A new order not to investigate, based on the noncriminal nature of the conduct, was again issued on May 11, 2017, and Reinaldo Villalba Vargas appealed; he later dropped his appeal.[488]

396. Filing 110016000049200604272: investigation on the May 29, 2006 threats against several organizations, including the Collective, in the form of emails, leaflets, and text messages (complaint lodged on July 24, 2006). The investigation was assigned to the prosecutor's Specialized section on human rights violations (hereinafter "DECVDH) and is currently in the preliminary investigation stage; several procedures have been conducted.[489]

397. Filing 110016000049201407683: investigation of a threat against several persons and organizations, including CAJAR. The threat signed by the "Black Eagles capital bloc" was delivered by email on February 4, 2014 (complaint filed on June 28, 2014). The inquiry was reassigned to the National Working Group to support, promote, and coordinate the analysis, investigation, and prosecution of cases of threats against human rights defenders (hereinafter "National Working Group," *supra* para. 165), and is currently under preliminary investigation.[490]

398. Filing 110016000099200800003: investigation into email threats on March 6, 2008, against several individuals, including the lawyer Eduardo Carreño Wilches, and signed by the "Central Command of the rearmed Black Eagles" and the "Black Eagles Bogotá metropolitan bloc" (report filed on March 31, 2008). The investigation is currently in the preliminary stage by the National Working Group, and several procedures have been carried out, including raids and selective data searches.[491]

399. Filing 110016000049200501798: investigation into the events of May 13, 2005, when Soraya Gutiérrez Argüello received a doll with a threatening note attached (*supra* para. 233, report filed on June 12, 2005). The prosecutor ordered on September 11, 2007, for the case to be dropped, on the grounds that the conduct was noncriminal; the order said that Ms. Gutiérrez Argüello had not responded when she was summoned to state her case, and it was

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[487] *Cf.* Order by the Office of the Prosecutor General, National unit for human rights and international humanitarian law, October 4, 2002, filing 590 (evidence file, volume VI, Commission case file, folios 18736 to 18762).

[488] *Cf.* Filing 590 (evidence file, volumes XVII and XVIII, annex 47 to the answering brief, folios 32675 to 33342 and 33343 to 34290). In the framework of the proceedings, the prosecutor in charge of the investigation issued an order on June 19, 2000, for the Prosecutor General's victim and witness protection bureau to implement measures as indicated for Mr. Uribe Muñoz and others.

[489] *Cf.* Statement before a public attestor by Deicy Jaramillo Rivera, May 2, 2022 (evidence file, volume XXXIV, affidavits, folios 45977 and 45978).

[490] *Cf.* Statement before a public attestor by Deicy Jaramillo Rivera, May 2, 2022 (evidence file, volume XXXIV, affidavits, folios 45978 and 45979).

[491] *Cf.* Filing 110016000099200800003 (evidence file, volume XIX, annex 55 to the answering brief, folios 34415 to 34449).

therefore deemed that "there was no probable cause to […] prosecute the criminal action." The prosecution issued an order on May 7, 2012, for the files to be reactivated, and they were reassigned to the National Working Group in 2020. The investigation is currently in the preliminary stage and was joined to filing 110016000049200502740, which had been initiated for the same facts.[492]

400. Filing 110016000027200500148: investigation into the following complaints: (a) complaint lodged on May 27, 2005, by Soraya Gutiérrez Argüello concerning: (i) notices published in a nationally circulated newspaper in May, 2005, that the Collective had job openings (*supra* para. 176), and (ii) a package with threatening content that she received on May 13, 2005 (*supra* para. 233); and (b) a complaint filed by CAJAR on May 25, 2006, that on May 8 and May 24, it had received four email messages with threats against members of the organization, signed by the "United Self-defense Forces of Colombia," "Colombia free of the left forever," and "Eastern Command" (*supra* para. 177). The investigation is currently in the preliminary stage by the National Working Group.[493]

401. Filing 11001606606420030008698: investigation of the following incidents involving Soraya Gutiérrez Argüello (reported on March 3, 2004): (a) an alleged attack against her on February 14, 2003, when her vehicle was, she claimed, intercepted and attacked with firearms (*supra* para. 230); (b) intimidating telephone calls reportedly received at her home in February, 2003 (*supra* para. 231); (c) shadowing of her daughter and housekeeper (*supra* para. 231), and (d) a request for personal information allegedly made on March 3, 2003, by strangers at the front gate of the housing complex where she lived (*supra* para. 232). The 245th sectional prosecution decided to suspend the investigation on May 3, 2004, and archived the files. The Prosecutor General issued an order on May 7, 2012, for the case to be reactivated. The investigation is currently in the preliminary stage by the 45th specialized prosecutor of the DECVDH, and several procedures have been undertaken.[494]

402. Filing 912: investigation of reports lodged on the following incidents: (a) the name of Alirio Uribe Muñoz appeared on the so-called "'Miscellaneous' military intelligence report" (*supra* para. 303); (b) the leaflet distributed on August 17, 1999, leveled threats by the Colombian Rebel Army against several people, including Mr. Uribe Muñoz (*supra* para. 217); (c) Mr. Uribe Muñoz was being followed, and Reinaldo Villalba Vargas was receiving threats and was "arbitrarily held"; (d) The Workers Central lodged a complaint about a document released in late 1999, allegedly making reference to an "extermination plan" against several people, including Mr. Uribe Muñoz (*supra* para. 217); (e) the leaflet distributed on May 5, 2000, that allegedly named Mr. Uribe Muñoz as the target of a paramilitary offensive, and (f) a photograph of Mr. Uribe Muñoz was found in a raid conducted after an attack on a union leader (*supra* para. 217). The following incidents were also investigated in this process: (a) information was obtained in May, 2001, on the existence of a plan by a paramilitary group for an attack on the lives of Alirio Uribe Muñoz, Luis Guillermo Pérez Casas, and Maret Cecilia García Alfonso (*supra* paras. 207 and 274), and (b) Mr. Pérez Casas allegedly experienced harassment in June, 2001 at the headquarters of military battalion no. 13 in Bogotá (*supra*

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492 *Cf.* Filing 110016000049200501798 (evidence file, volume XIX, annex 59 to the answering brief, folios 34519 to 34557), and statement before a public attestor by Deicy Jaramillo Rivera, May 2, 2022 (evidence file, volume XXXIV, affidavits, folios 45981 and 45982).

493 *Cf.* Filing 110016000027200500148 (evidence file, volume XIX, annex 63 to the answering brief, folios 34661 to 34701), and statement before a public attestor by Deicy Jaramillo Rivera, May 2, 2022 (evidence file, volume XXXIV, affidavits, folios 45982 and 45983). Deicy Jaramillo Rivera stated, "the investigation activities" underway "have been trying to verify whether the defunct DAS had a plan to allegedly intimidate members of CAJAR."

494 *Cf.* Filing 8698 (evidence file, volume XVIII, annex 50 to the answering brief, folios 34313 to 34345), and statement before a public attestor by Deicy Jaramillo Rivera, May 2, 2022 (evidence file, volume XXXIV, affidavits, folios 45983 and 45984).

para. 206).[495] The prosecutor issued an order on September 12, 2006, not to pursue the investigation on the following grounds: (a) he first pointed to the "Miscellaneous" document and the leaflet signed by the "Colombian Rebel Army," saying that it was a case of res judicata because the investigation under filing number 590, October 4, 2002, had ended with an order not to investigate (*supra* para. 395), and (b) he said that investigation of the other incidents was time-barred under the five-year statute of limitations. This order was appealed to prosecutor 42, delegated to the Superior Court of Bogotá, who upheld the decision to vacate in a ruling on April 25, 2007.[496]

403. Filing 1577: investigation of a complaint lodged for the following incidents: (a) Diana Milena Murcia Riaño reported that her email was being intercepted and allegedly received an intimidating message on November 14, 2002 (*supra* para. 250), and (b) Javier Alejandro Acevedo Guerrero was allegedly being followed on November 19, 2002 (*supra* para. 256). Specialized prosecutor 14 issued an order on July 28, 2006, not to investigate, saying that: (a) the email received by attorney Murcia Riaño "was not a case of criminal conduct," as "it did not contain the subjective ingredient required for the legally codified crime, that is, arousing alarm or terror, because the content merely made comments about email messages she had sent from her account"; he also applied the "special-purpose statute of limitations" contained in Article 531 of the Criminal Procedural Code, Law 906 of 2004; (b) he held that the crime of tampering with mail was noncriminal conduct because "the emails were replies to email sent by the victim, specifically as a response to them, and therefore her privacy had not been invaded, and furthermore, it was impossible to verify that illegal interceptions had taken place, and (c) as for Mr. Acevedo Guerrero having been followed, the prosecutor said that the people "doing the alleged surveillance did not commit any action constituting a threat, and therefore the conduct was noncriminal. The Office of the Solicitor General and Ms. Murcia Riaño both filed motions for reconsideration, and both challenges were dismissed on August 26, 2006 "as groundless."[497]

404. Filing 110016099066201400021: investigation of threatening emails and leaflets targeting the Collective and other organizations from April, 2013 through February, 2015, signed by "Los Rastrojos," "Los Rastrojos northern command," "Black Eagles high command," "Black Eagles capital bloc," and "Gaitán Self-defense Forces of Colombia" (original claim lodged on September 8, 2014, which has been joined to other claims). The investigation is currently in the preliminary investigation stage and was reassigned in 2021 to the National Working Group; it has been joined to nine other criminal reports.[498]

405. Filing 110016000013202000401: investigation of the release on January 18, 2020, of a leaflet signed by the "Black Eagles capital bloc" and leveling threats against several organizations, including the Collective (the investigation had begun that same day). The file was joined to case 050016099166201918264, in the hands of prosecutor 42 of the Medellín section, under which charges were filed against a person for having produced threatening leaflets on June 24, 2019, and January 18, 2020, which featured the name "Black Eagles."[499]

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[495] *Cf.* Official note, January 9, 2002, signed by the specialized prosecutor of the National Unit for human rights and international humanitarian law of the Office of the Prosecutor General, filing 912 (evidence file, volume II, annex to the Report on the Merits, folios 4494 and 4495), and order of the Prosecutor General, prosecution unit delegated to the Superior Court of Bogotá, April 25, 2007, filing 912 (evidence file, volume II, annex to the Report on the Merits, folios 4497 to 4503).

[496] *Cf.* Filing 912 (evidence file, volume XVIII, annex 49 to the answering brief, folios 34307 to 34311).

[497] *Cf.* Order by the Office of the Prosecutor General, National unit for human rights and international humanitarian law, July 28, 2006, filing 1577 (evidence file, volume II, annex to the Report on the Merits, folios 4522 to 4532), and filing 1577 (evidence file, volume XVIII, annex 48 to the answering brief, folios 34291 to 34305).

[498] *Cf.* Statement before a public attestor by Deicy Jaramillo Rivera, May 2, 2022 (evidence file, volume XXXIV, affidavits, folios 45985 and 45986).

[499] *Cf.* Statement before a public attestor by Deicy Jaramillo Rivera, May 2, 2022 (evidence file, volume XXXIV,

The Court has no further information about progress with the case.

406. Filing 8699: investigation of reported threats against several organizations, including CAJAR, May 23, 2006. An order was issued on November, 6 2006, to close the file on the grounds that the conduct was noncriminal. The case was reassigned on August 3, 2012, to the National unit for human rights and international humanitarian law. The case was ordered to be closed on June 26, 2018, because the alleged fact did not exist and the victim could not be located.[500]

407. Filing 110016000049201111020: investigation of various threatening acts against several organizations, including the Collective, in leaflets, emails, and telephone calls, attributed to "Los Rastrojos urban commandos" and "Black Eagles capital bloc" (reported on July 19, 2011). The investigation was reassigned in 2020 to the National Working Group and is currently in the preliminary investigation stage.[501]

408. Filing 11006000099201400015: investigation of threats against several people, including the attorney Soraya Gutiérrez Argüello, in leaflets on March 28, 2012, signed by "Los Rastrojos urban commandos" and "Black Eagles capital bloc" (reported on April 29, 2012). The investigation is currently in the preliminary stage by the National working group.[502]

409. Filing 536081: investigation of a reported threat, lodged on February 2, 2001, by the attorney Luis Guillermo Pérez Casas. The investigation was sent to prosecutor 287 of the National Directorate in 2001, and is currently inactive.[503] The Court was not informed as to the specific complaints that were filed, the procedures implemented, or the reasons why the investigation was closed.

410. Filing 562699: investigation of a complaint filed on June 5, 2001, for threats against Alirio Uribe Muñoz, Reinaldo Villalba Vargas, Luis Guillermo Pérez Casas, and Maret Cecilia García Alfonso (the complaint was about facts associated with the assault on a union leader and murder of another, *supra* paras. 207, 245 and 274). The prosecution ordered on July 16, 2002, that the investigation should be dropped "because there is no evidence that the threats were made or were true," and the conduct was noncriminal, and therefore he said, inter alia, "there is no indication that the intent was […] to intimidate people with death threats […] strong and convincing enough to trouble their peace of mind and make them […] think that their lives were in danger," and that the facts "appeared to be nothing more than foolish intimidation by word of mouth caused by the well-known and notorious improper use of the telephone by unofficial persons trying to upset their targets temporarily." The prosecution declared on April 19, 2017, that the statute of limitations on the criminal action had run out.[504]

411. Filing 763443: investigation of the complaint lodged on July 1, 2004, for threats against Diana Milena Murcia Riaño, Pedro Julio Mahecha Ávila, and Reinaldo Villalba Vargas. An order

affidavits, folios 45986 and 45987).

[500] *Cf.* Filing 8699 (evidence file, volume XIX, annex 60 to the answering brief, folios 34559 to 34565).

[501] *Cf.* Statement before a public attestor by Deicy Jaramillo Rivera, May 2, 2022 (evidence file, volume XXXIV, affidavits, folios 45990 and 45991).

[502] *Cf.* Statement before a public attestor by Deicy Jaramillo Rivera, May 2, 2022 (evidence file, volume XXXIV, affidavits, folio 45991).

[503] *Cf.* Statement before a public attestor by Deicy Jaramillo Rivera, May 2, 2022 (evidence file, volume XXXIV, affidavits, folios 45968, 45991 and 45992).

[504] *Cf.* Official note of September 16, 2002, signed by the judicial assistant to the unit on crimes against personal liberty, other guarantees and others (evidence file, volume II, annex to the Report on the Merits, folio 4475), and filing 562699 (evidence file, volume XIX, annex 52 to the answering brief, folios 34360, 34386, 34387, 34388 and 34399).

was given on April 26, 2005, to close the case file.[505] The Court was not informed as to the specific complaints that were filed, the procedures implemented, or the reasons why the investigation was closed.

412. Filing 789107: investigation of a complaint filed for alleged harassment and persecution of Mr. Efraín Cruz Gutiérrez, October 1, 2004 (*supra* para. 283). The prosecution issued an order not to investigate on March 3, 2006 based on noncriminal conduct, finding that the incident "was merely a short-lived circumstance involving the presence of cars […] with darkened windows […], but Mr. [Cruz Gutiérrez] has said that there was no action or expression by which to infer that they were following him […] or planned to hurt him in some way." This decision was later reversed on April 19, 2017, with a declaration that the statute of limitations on the criminal action had run out.[506]

413. Filing 701328: investigation of a complaint about threats against Soraya Gutiérrez Argüello in the aftermath of an attack against her on February 14, 2003 (*supra* para. 230). The prosecution issued a ruling on May 3, 2004, to suspend the investigation "because the relevant measures have been taken, but no perpetrators or participants in the incidents have been individually identified."[507]

414. Filing 28126, reassigned as filing 420211: investigation of cases of alleged threats against Reinaldo Villalba Vargas and another person by means of a letter of condolence signed by "Colombia free from guerrillas" (COLSINGUE), mailed on February 28, 1996 (*supra* para. 243). The regional prosecution sent the files (28126) on July 6, 1999, as the case was under the jurisdiction of the prosecutorial unit of Santafe de Bogotá, and they were assigned to prosecutorial section 239, the unit on simple kidnapping and extortion (reassigned as filing 420211). That prosecutor decided on August 12, 1999, not to open the investigation, finding that the crime of threats was not present, "because it all comes down to the letter of condolence that the attorney received, and there is no evidence of a plurality of unambiguous, permanent, and persistent criminal actions."[508]

415. Filing 22342, reassigned as filing 421312: investigation of threats allegedly made against the lawyer Rafael Barrios Mendivil, as reported on September 28, 1993. The case was reassigned to prosecutorial section 242 (as filing 421312), which decided on December 1, 1999 not to open the formal investigation because the statute of limitations on the criminal action had run out. According to the files, the complainant claimed to have received "threats against his life," and was was forced to "leave the country."[509]

416. Filing 731980: investigation of the complaint by Adriana Cuéllar Ramírez that she had been filmed and photographed in October, 2003 (*supra* para. 253), and that someone had entered her apartment on November 25 of the same year and removed documents (*supra* para. 285). Prosecutorial section 59 ordered on February 17, 2005, that the investigation should be suspended because the perpetrators had not been identified.[510]

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[505] *Cf.* Statement before a public attestor by Deicy Jaramillo Rivera, May 2, 2022 (evidence file, volume XXXIV, affidavits, folio 45992).

[506] *Cf.* Filing 789107 (evidence file, volume XLIII, annex 10 to the State's brief, May 22, 2023, folios 47871 to 47903).

[507] *Cf.* Filing 701328 (evidence file, volume XIX, annex 53 to the answering brief, folios 34403 to 34405).

[508] *Cf.* Official note of October 23, 2001, signed by the prosecutorial section of the kidnapping unit of the Prosecutor General (evidence file, volume II, annex to the Report on the Merits, folio 4470), and filing 420211 (evidence file, volume XIX, annex 66 to the answering brief, folios 35027 and 35031).

[509] *Cf.* Official note of October 23, 2001, signed by the prosecutorial section of the kidnapping unit of the Prosecutor General (evidence file, volume II, annex to the Report on the Merits, folio 4469), and filing 421312 (evidence file, volume XIX, annex 67 to the answering brief, folio 35069).

[510] *Cf.* Filing 731980 (evidence file, volume XVIII, annex 51 to the answering brief, folios 34347 to 34349), and

417. Filing 7141: investigation of threats against members of CAJAR. The prosecution decided on November 3, 1994, to suspend and provisionally close the investigation.[511] The Court was not informed as to the specific complaints that were filed, the procedures implemented, or the reasons why the investigation was closed.

418. Filing 678599: investigation of the attack on Soraya Gutiérrez Argüello, February 14, 2003 (*supra* para. 230). The prosecution handed down a decision on May 26, 2003, not to open an investigation "because it was not possible to identify or individualize the perpetrator of the act being investigated."[512]

419. Filing 8690: investigation of email threats against members of the Collective. Several different procedures were pursued in the investigation.[513] The State reported that the prosecution "ordered the process to be closed because it had been impossible to find the active subject of the conduct."[514]

420. Filing 110016000013201202284: investigation of the complaint lodged on February 1, 2012, for unlawful detention of Diana María Barrios Sabogal, daughter of Rafael Barrios Mendivil, that same day (*supra* para. 201). The case was ordered closed on June 10, 2019 because it had been "impossible to find or establish the active subject."[515]

421. Filing 8426: investigation of a brief submitted on April 7, 2011, by Rafael Barrios Mendivil, on behalf of CAJAR, to the then President of Colombia, stating that the Collective was "a high-priority victim of the systematic persecution unleashed" by operatives of the DAS and other intelligence agencies. It also said that the protection program run by the Ministry of Internal Affairs had been used to stalk them and monitor them, which was why they had returned the protection measures they had been granted (*supra* para. 389). The file of investigatory action was ordered closed on August 30, 2013, as it was deemed that "there were no motives or fact-based circumstances by which the [incidents] could be classified as a crime."[516]

G.2. Criminal proceedings on DAS intelligence activities

422. The Prosecutor General, after the *Semana* magazine published its article on communication interceptions by DAS agents (*supra* para. 315), ordered an investigation, order 0593 of February 22, 2009, and assigned it to prosecutor eight delegated to the Supreme Court, with support from prosecutor eleven delegated. Multiple procedures were conducted in the investigation, including judicial inspections of the DAS offices, which resulted in: reports by the technical investigations unit; interviews with agents of intelligence, counterintelligence, and DAS operations; extraction of images from coding equipment;

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an official note, May 15, 2009, signed by the director of international affairs of the Prosecutor General (evidence file, volume XIII, annex 99 to the CAJAR and CEJIL pleadings and motions brief, folio 28926).

511 *Cf.* Note signed by the head of the National unit on human rights of the Prosecutor General, August 29, 2001 (evidence file, volume II, annex to the Report on the Merits, folio 4467).

512 *Cf.* Filing 678599 (evidence file, volume XIX, annex 54 to the answering brief, folios 34412 and 34413), and an official note, May 15, 2009, signed by the director of international affairs of the Prosecutor General (evidence file, volume XIII, annex 99 to the CAJAR and CEJIL pleadings and motions brief, folio 28928).

513 *Cf.* IACHR. Report No. 57/19. Case 12,380. Merits. Members of José Alvear Restrepo Lawyers' Collective. Colombia. May 4, 2019, para. 204.

514 *Cf.* The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1300).

515 *Cf.* Prosecutor General, report of the complaint lodged by Diana Barrios Sabogal, February 1, 2012 (evidence file, volume XI, annex to the CAJAR and CEJIL pleadings and motions brief, folios 26382 to 26387).

516 *Cf.* Filing 8426 (evidence file, volume XIX, annex 57 to the answering brief, folios 34487 and 34488).

interception of communications and actions of surveillance and shadowing of persons, and more.[517]

423. An order was given on May 26, 2009, to "sever procedural unity" in view of the dates when the incidents being investigated were committed (filing 11000160000686200900002), so the offenses that occurred prior to January 1, 2005, would be investigated separately under the procedural rules of Law 600 of 2000, the Criminal Procedural Code.[518] The prosecution ordered on May 28, 2009, that the investigation should be opened against multiple DAS operatives and former operatives.[519]

424. The State reported that "because some of the accused accepted the charges," while "others claimed constitutional immunity," further procedural severance would be needed, which meant that relevant judicial decisions were handed down at different times.[520] Following are the various judicial processes that have been undertaken, identified according to the filing number assigned by the judicial bodies hearing them and the verdicts delivered.[521]

G.2.1. Filing 1258- 6

425. The prosecution issued an order on January 26, 2010, with charges against seven people, directors and former directors of the DAS, including José Miguel Narváez Martínez, who in the end was identified by judicial authorities as having been responsible for identifying the "targets" of the G3. They were charged with the crimes of aggravated conspiracy, unlawful violation of communications, unlawful use of transmitters and receivers, and abuse of authority for an arbitrary and unjust act (in the latter case, with the exception of José Miguel Narváez Martínez).[522]

426. CAJAR was a plaintiff in the trial. The oral proceedings were held on July 14, 2011, and the order was given to sever procedural unity in the case of José Miguel Narváez Martínez when his defense attorney resigned, in order to proceed with the trial of the other six defendants while processing his case separately.[523]

427. The Third Criminal Chamber of the Specialized Non-territorial Circuit Court of Bogotá handed down its judgment on November 30, 2012, convicting five of the people at trial on all counts, and they were sentenced to 105 months in prison and a fine equivalent to two months of the minimum wage in effect at the time. The other defendant, José Alexander Velásquez Sánchez, was convicted only for the crime of abuse of authority by arbitrary and unfair action, and was sentenced to a fine equivalent to two months of the minimum wage. The court

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[517] *Cf.* Order by the Prosecutor General, unit delegated to the Supreme Court, July 11, 2012, filing 12490-7 (evidence file, volume IX, annex 1.7.8. to Ms. Arias' pleadings and motions brief, folios 24361 and 24362).

[518] *Cf.* Article 533 of Law 906 of 2004, Criminal Procedural Code.

[519] *Cf.* Order by the Prosecutor General, unit delegated to the Supreme Court, January 26, 2010, special assignment filing 12495-11 (evidence file, volume XX, annex 80 to the answering brief, folio 35859).

[520] *Cf.* The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 948).

[521] The Supreme Court, in a judgment delivered on April 28, 2015, convicted two former public officers (former director of the DAS and former director of the administrative department of the Office of the President) for a variety of crimes committed in 2007 and 2008 when they took part in intelligence activities involving members of the Supreme court, opposition politicians, and others. This judicial process, according to the State's answering brief of May 17, 2022 (merits file, volume I, folio 973), is unrelated to the activities conducted by the DAS against the Collective. *Cf.* Judgment by the Sixth Chamber of Criminal Cassation of the Supreme Court, April 28, 2015, filing 36784 (evidence file, volume XVI, annex 27 to the answering brief, folios 31680 to 31970).

[522] *Cf.* Order by the Prosecutor General, unit delegated to the Supreme Court, January 26, 2010, special assignment file 12495-11 (evidence file, volume XX, annex 80 to the answering brief, folios 35858 to 35897).

[523] *Cf.* Judgment by the Sixth Specialized Criminal Circuit of Bogotá, July 18, 2016, filing 110013107006201100077 (1408-6) (evidence file, volume XV, annex 18 to the answering brief, folio 30830).

concluded in its presentation of the proven facts that the conduct of the accused had included illegal intelligence actions against the members of CAJAR, in the framework of G3 operations.[524]

428. The verdict was appealed by the defense attorneys, the prosecution, and the Collective. In response, the Criminal Chamber of the Superior Court of the Judicial District of Bogotá issued an order on March 7, 2014 for a partial reversal of the appealed judgment and, accordingly, to convict José Alexander Velásquez Sánchez as perpetrator of the crimes of aggravated conspiracy, unlawful violation of communications, and unlawful use of transmitters and receivers, sentencing him to 105 months in prison.[525]

429. The decision on appeal was challenged with a motion of cassation by the defense attorneys of some of the defendants. The Chamber of Criminal Cassation of the Supreme Court handed down a judgment on October 28, 2016, partially vacating the appealed ruling by declaring that the process followed for the crimes of abuse of authority by arbitrary and unjust acts was invalid "because there was no criminal complaint," as was the crime of unlawful violation of communications "because the complaint was time-barred and had lapsed," and consequently "the procedure was closed for these actions with respect" to the six defendants. The chamber therefore "revised the sentence for these defendants, reducing it to 93 months in prison.[526]

G.2.2. Filing 1408-6

430. After the procedural severance decision on July 14, 2011 (*supra* para. 426), a trial was held for the case against José Miguel Narváez Martínez. The Sixth Specialized Criminal Circuit Court of Bogotá handed down its verdict on July 18, 2016, convicting the accused of the crime of aggravated conspiracy, and sentencing him to 94.5 months in prison. The court applied the statute of limitations for the crimes of unlawful violation of communications and unlawful use of transmitters and receivers, for which he had also been charged (*supra* para. 425). The verdict listed the proven facts, including that the accused "led the existence of the G3 […] and set its goals targeting well-known opponents of the Government, ordering interception of all types of communications and surveillance, without a judicial warrant," and that the victims included the members of CAJAR.[527]

431. The verdict was appealed by the prosecution and the Collective, and the Criminal Chamber of the Superior Court of Bogotá ruled on November 18, 2016, inter alia, that the crime of unlawful use of transmitters and receivers had not lapsed under statute of limitations, and held the defendant guilty of this crime. The chamber also held that although the statute of limitations had not run out on the crime of unlawful violation of communications, prosecution could not proceed absent a criminal complaint, as in this case. The ruling on

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524 *Cf.* Judgment by the Third Criminal Chamber of the Specialized Non-territorial Circuit Court of Bogotá, November 30, 2012, filing 2010-00020 (evidence file, volume XII, annex 51 to the CAJAR and CEJIL pleadings and motions brief, folios 27822 to 27825.

525 *Cf.* Ruling by the Superior Court of the Judicial District of Bogotá, Criminal Chamber, March 7, 2014 (evidence file, volume XI, annex 46 to the CAJAR and CEJIL pleadings and motions brief, folio 27022).

526 *Cf.* Ruling by the Chamber of Criminal Cassation of the Supreme Court, October 28, 2016 (evidence file, volume XV, annex 17 to the answering brief, folios 30775 to 30781 and 30816). The Supreme Court deemed in its judgment on the crime of abuse of authority for an arbitrary and unjust act that the date when the prosecution learned about the facts, that is, February 22, 2009, when the publication came out in the *Semana* magazine, a complaint for criminal action could have become enforceable, but this did not occur in this specific case. It added, in the case of the crime of unlawful violation of communications, that the date when the prosecution learned about the facts was already beyond the limits for lodging the complaint, and therefore it was time-barred.

527 *Cf.* Judgment by the sixth criminal court of the Bogotá special circuit Sixth Specialized Criminal Circuit of Bogotá, July 18, 2016, file 11001310700620110007 7 (1408-6) (evidence file, volume XV, annex 18 to the answering brief, folios 31013, 31014, 31027 and 31028).

appeal therefore amended the sentence, increasing it to 106.5 month in prison.[528]

432. The same criminal chamber ruled on December 15, 2016, that the statute of limitations had run out on the criminal action for the crimes of aggravated conspiracy and unlawful use of transmitters and receivers, declared closure of the proceedings against the accused, and ordered his release. The chamber held that the time period for the statute of limitations, in this specific case six years and eight months, had begun when the "final judgment was handed down" on March 23, 2010, and therefore the criminal action had lapsed on November 23, 2016, when the proceedings were still "with the registrar of the court to determine transfer for the defendants seeking appeal to lodge their motion for cassation."[529]

G.2.3. Filing 1269-6

433. The prosecution first "declared that the use of a type of plea bargaining had failed," and on April 26, 2010, filed charges for the crimes of aggravated conspiracy, unlawful violation of communications, unlawful use of transmitters and receivers, and abuse of authority by an arbitrary, unjust act, against a former director of the DAS, Carlos Alberto Arzayús Guerrero.[530] CAJAR was a plaintiff in the trial.

434. The Sixth Specialized Criminal Circuit Court of Bogotá handed down a decision on March 19, 2014, convicting the accused on all counts and sentencing him to 118.5 months in prison and a fine equivalent to 20 monthly minimum wages. The court found the defendant guilty of illegal intelligence activities, in the framework of G3 operations, and emphasized that the accused "recognized his participation in certain acts committed, […] specifically the shadowing of some of the targets […] and mentioned, as an example, the incidents with the José Alvear Restrepo Lawyers Collective, including multiple cases of wiretapping the telephones and intercepting email."[531]

435. The verdict was appealed by the defendant and his lawyer, and the Criminal Chamber of the Superior Court of the Judicial District of Bogotá delivered its judgment on February 2, 2015, amending the sentence and reducing it to 105 months. In its decision, the chamber ordered that the crime of conspiracy was in fact subject to a lighter sentence because it was

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528 *Cf.* Ruling by the Superior Court of the Judicial District of Bogotá, criminal chamber, November 18, 2016 (evidence file, volume XVI, annex 19 to the answering brief, folios 31101 to 31104, 31115 and 31116

529 *Cf.* Ruling by the Superior Court of the Judicial District of Bogotá, Criminal Chamber, December 15, 2016 (evidence file, volume XIII, annex 54 to the CAJAR and CEJIL pleadings and motions brief, folios 27874, 27875 and 27876). The chamber based its decision on several provisions of the Criminal Code, Executive Order 100 of 1980, including:

> **Article 80.** Time limits on the statute of limitations for the action. The criminal action shall lapse after a period equal to the maximum sentence set by law in the case of a prison sentence, but in no case shall it be less than five years or more than twenty. Concurrent mitigating and aggravating circumstances shall be considered for this purpose. […]
>
> **Article 82.** Statute of limitations for crimes committed by a public employee. The term of the statute of limitations indicated in Article 80 shall be increased by one-third, up to the maximum indicated therein, if the crime was committed in the country by a public employee in the exercise of his duties or position, or on the occasion thereof. […]
>
> **Article 84.** Interruption of the statute of limitations on the action. The term of the statute of limitations on the criminal action is interrupted by a definitive order to commence investigation, or its equivalent. After the term for the statute of limitations is interrupted, it will begin to run again for a period equal to one-half of the term indicated in Article 80. Such term may not be less than five years.

Cf. Criminal Code, Executive Order 100 of 1980 (available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1705120), repealed by Article 474 of Law 599 of 2000, Criminal Code (available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1663230).

530 *Cf.* Order by the Prosecutor General, unit delegated to the Supreme Court, April 26, 2010, special assignment of filing 12839-11 (evidence file, volume XXI, annex 86 to the answering brief, folios 36457 and 36499).

531 *Cf.* Judgment by the Sixth Specialized Criminal Circuit Court of Bogotá, March 19, 2014, file 1269-6 (evidence file, volume XII, annex 49 to the CAJAR and CEJIL pleadings and motions brief, folios 27250 and 27331.

a convergence of "two circumstances […] of lesser gravity."[532]

G.2.4. Filing 1417-6

436. The prosecution brought charges on March 4, 2011, against five former officers of the DAS for the crimes of aggravated conspiracy, unlawful violation of communications, unlawful use of transmitters and receivers, and abuse of authority by means of an arbitrary, unjust act.[533] CAJAR was a plaintiff in the trial.

437. The Sixth Specialized Criminal Circuit Court of Bogotá delivered a judgment on September 19, 2014, convicting three of the accused of all charges and sentencing two of them to 115.5 months in prison, the other to 118.5 months in prison, and all three to pay a fine equivalent to 10 minimum wages. The court invoked the statute of limitations for the other two accused, applicable to the crimes of unlawful violation of communications, unlawful use of transmitters and receivers, and abuse of authority by an arbitrary, unjust act, convicting them only for the crime of aggravated conspiracy and sentencing one of them to 90.5 months in prison, and the other, to 80.5 months. The court held as proven facts that the conduct of the accused had included unlawful intelligence actions as part of the G3 operations against multiple persons, including members of CAJAR.[534]

438. The decision was appealed by the prosecution and the defense attorneys. The Superior Court of the Judicial District of Bogotá handed down a judgment on August 8, 2017, overruling the proceedings followed for the crimes of abuse of authority by an arbitrary and unjust act "in the absence of a criminal complaint," and unlawful violation of communications "because the complaint had lapsed" in the case of the three defendants and, consequently, "the proceedings for these actions are closed" for all three. The chamber then ordered that the sentence be "revised" to 82.5 months in prison for one of the accused and 79.5 months in prison for each of the other two.[535]

439. The defendants appealed on cassation but were denied by the Supreme Court on March 16, 2018.[536]

G.2.5. Filing 39931

440. The prosecution filed charges on July 11, 2012, against Jorge Aurelio Noguera Cotes, who had been director of the DAS from August 16, 2002 through October 25, 2005, for the following crimes: (a) as joint perpetrator of the crimes of aggravated conspiracy and abuse of authority by an arbitrary and unjust act, and (b) as mastermind of the crimes of unlawful violation of communications and unlawful use of transmitters and receivers.[537] CAJAR was the plaintiff in the process.

441. The Chamber of Criminal Cassation of the Supreme Court was the only venue that could

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[532] *Cf.* Ruling by the Superior Court of the Judicial District of Bogotá, Criminal Chamber, February 2, 2015 (evidence file, volume XX, annex 76 to the answering brief, folio 35648 and 35649).

[533] *Cf.* Order by the Prosecutor General, unit delegated to the Supreme Court, March 4, 2011, filing 12753-11 (evidence file, volume XXI, annex 85 to the answering brief, folio 36451).

[534] *Cf.* Judgment by the Sixth Specialized Criminal Circuit Court of Bogotá, September 19, 2014, filing 1417-6 (evidence file, volume XIV, annex 11 to the answering brief, folios 29879 and 29886).

[535] *Cf.* Ruling by the Superior Court of the Judicial District of Bogotá, criminal chamber, August 8, 2017 (evidence file, volume XX, annex 73 to the answering brief, folio 35445).

[536] *Cf.* Ruling by the Chamber of Criminal Cassation of the Supreme Court, March 16, 2018 (evidence file, volume XV, annex 14 to the answering brief, folio 30295).

[537] *Cf.* Order by the Prosecutor General, unit delegated to the Supreme Court, July 11, 2012, filing 12490-7 (evidence file, volume IX, annex 1.7.8. to Ms. Arias' pleadings and motions brief, folio 24436).

try the case because of the administrative position the accused had held.[538] The chamber heard the case and handed down an order on October 8, 2013, declaring that "the statute of limitations had run out on the criminal action" for the crimes of unlawful violation of communications, unlawful use of transmitters and receivers, and abuse of authority by an arbitrary and unjust act; in the latter case, the statute of limitations applied to "acts committed in Colombia, leaving aside actions effected in other countries."[539]

442. The same Supreme Court ruling included orders to "issue a copy of the […] case record to the prosecution […] and copies of the declarations given" by Soraya Gutiérrez Argüello, Jomary Ortegón Osorio, and Rafael Barrios Mendivil, among others, "so as to proceed with an investigation of the alleged crimes of torture or threats."[540] The fifth prosecutorial office delegated to the Supreme Court issued an order on November 20, 2017, to disqualify itself from prosecuting the crime of threats against Jomary Ortegón Osorio and Soraya Gutiérrez Argüello "because the statute of limitations had run out on the criminal action," and to disqualify itself from initiating the investigation for the crime of torture against Soraya Gutiérrez Argüello, for lack of evidence.[541]

443. The Supreme Court handed down a decision on September 6, 2017, as follows: (a) it ordered closure of the proceedings for the crime of abuse of authority by an arbitrary and unjust act, "because the criminal action cannot be initiated in the absence of a criminal complaint"; (b) it convicted the accused as joint perpetrator of the crime of aggravated conspiracy and sentenced him to seven years, 10 months and 15 days in prison, and (c) it ordered "copies of the procedural records […] to be issued to the Indictment Committee of the Chamber of Representatives so that, if it finds merit, it can investigate former President Álvaro Uribe Vélez for the conducts enumerated" in the verdict."[542]

444. In its consideration of the facts, the Supreme Court concluded that the defendant had committed illegal actions as part of G3 operations targeting the members of CAJAR (several paragraphs of the judgment were discussed above by this Court, *supra* paras. 319, 321 and 347).

G.2.6. Filing 2293-6

445. The Sixth Specialized Criminal Circuit Court of Bogotá delivered a judgment on July 21,

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538 Article 235 of the Constitution of Colombia states: "The Supreme Court has the following powers:: […] 5. When charges are filed by the Prosecutor General, […] to try the directors of administrative departments for punishable acts attributed to them […]."

539 *Cf.* Order by the Chamber of Criminal Cassation of the Supreme Court, October 8, 2013, file 39931 (evidence file, volume XVI, annex 25 to the answering brief, folios 31549 and 31550).

540 *Cf.* Order by the Chamber of Criminal Cassation of the Supreme Court, October 8, 2013, filing 39931 (evidence file, volume XVI, annex 25 to the answering brief, folios 31548 to 31550). The ruling said that, "in view of the record of conducts related to the crimes of torture or threats against […] Soraya Gutiérrez Arg[ü]ello, Jomary Ortegón Osorio, […] and Rafael Barrios, among others, a copy shall be made of this decision and of the statements made by the complainants before the prosecutorial office […] for relevant action.

541 *Cf.* Order by the Prosecutor General, fifth prosecutor delegated to the Supreme Court, November 20, 2015, filing 13351-5 (evidence file, volume XII, annex 52 to the CAJAR and CEJIL pleadings and motions brief, folios 27866 and 27867).

542 *Cf.* Judgment by the Chamber of Criminal Cassation of the Supreme Court, September 6, 2017, filing 39931 (evidence file, volume XII, annex 48 to the CAJAR and CEJIL pleadings and motions brief, folios 27133 and 27174). Article 174 of the Constitution of Colombia says, "the Senate shall hear charges formulated by the Chamber of Representatives against the President of the Republic or the person holding said position […] even after the President is no longer in office," in which case, "it shall hear cases involving acts or omissions that occurred in the discharge" of the mandate. Article 175 of the Constitution speaks to "crimes committed in the exercise of office," saying that the only sanction the Senate can order is "removal from office, or temporary or absolute loss of political rights"; however, "the prisoner shall face criminal trial before the Supreme Court if acts committed may incur liability for an offense that merits another sentence."

2021, against four former employees of the DAS for the crime of aggravated conspiracy[543] and sentenced them to 72 months in prison (the decision also acquitted five other people). The judgment found, among other things, that the G3 had existed and operated for the purpose of "gathering the greatest possible amount of information on people in opposition to the administration [including CAJAR] by means of wiretapping, surveillance and monitoring, and afterward seeking to limit their movements by means of threats and harassment."[544]

446. The Court has no information on challenges to this verdict.

G.2.7. Procedure before the Investigations and indictment committee of the Chamber of Representatives

447. The Investigations and indictment committee of the Chamber of Representatives began an investigation "on its own motion" into the "possible intervention" by former President Álvaro Uribe Vélez in the acts of unlawful wiretapping by DAS employees. It ordered several procedures, including, at the former President's request, an invitation on June 1, 2011 for him to make "an open-ended statement" to the committee.[545] The procedure was scheduled for June 16 of that year, but was later suspended because of a challenge against certain members of the committee. The challenge was brought by the lawyer Luis Guillermo Pérez Casas on behalf of the recognized plaintiffs, including the Collective.[546] The hearing finally took place on August 18, 2011,[547] and the plaintiffs "were unable to cross-examine."[548]

448. The representative in charge of the investigation declared on April 22, 2022, that the prosecution for the crimes of aggravated unlawful violation of communications, unlawful use of transmitters and receivers, and abuse of authority by an arbitrary and unjust act had lapsed under the statute of limitations, and ordered the investigation to continue for "alleged acts of torture […], surveillance, […] aggravated conspiracy, threats against witnesses […] and concealing, altering, or destroying evidence."[549] The decision was submitted to the full Investigations and indictment committee and was endorsed by a majority vote of the members in session on June 8, 2022."[550] The Court was not informed about procedures

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[543] The judgment noted that orders issued on October 8 and November 27, 2013, declared that the statute of limitations had run out on the criminal action for the crimes of unlawful violation of communications, unlawful use of transmitters and receivers, and abuse of authority by an arbitrary and unjust act, in favor of the accused. *Cf.* Judgment by the Sixth Specialized Criminal Circuit Court of Bogotá, July 21, 2021, filing 2293-6 (evidence file, volume XLI, annexes to the State's final written arguments, folio 46815).

[544] *Cf.* Judgment by the Sixth Specialized Criminal Circuit Court of Bogotá, July 21, 2021, filing 2293-6 (evidence file, volume XLI, annexes to the State's final written arguments, folio 46885). During the process before the Inter-American Commission, the State reported that on August 9, 2011, the Sixth Specialized Criminal Circuit Court of Bogotá had handed down convictions against two DAS employees for the crimes of aggravated conspiracy, unlawful violation of communications, unlawful use of transmitters and receivers, and abuse of authority by an arbitrary and unjust act, and sentenced them to 73 months in prison. The verdict was upheld by the Criminal Chamber of the Superior Court of the Judicial District of Bogotá on September 27, 2012. *Cf.* Communication from the State to the Commission, January 23, 2015 (evidence file, volume VI, Commission case file, folio 20346). The Court does not have documentation to corroborate the decisions or to verify that they are related to the intelligence activities targeting CAJAR and its members.

[545] *Cf.* Order by the Investigations and indictment committee of the Chamber of Representatives, June 1, 2011, file 3086 (evidence file, volume XLIII, annex to the State's May 22, 2023 brief, folios 47937 and 47938).

[546] *Cf.* Record of proceedings by the Investigations and indictment committee of the Chamber of Representatives, June 16, 2011, (evidence file, volume XLIII, annex to the State's May 22, 2023 brief, folio 47939).

[547] *Cf.* Record of proceedings by the Committee on investigations and charges of the Chamber of Representatives, August 18, 2011, (evidence file, volume XLIII, annex to the State's May 22, 2023 brief, folio 47941).

[548] *Cf.* CAJAR and CEJIL pleadings and motions brief before this Court, November 9, 2020 (merits file, volume I, folio 568), and the State's answering brief before this Court, May 17, 2022 (merits file, volume II, folio 1159).

[549] *Cf.* Ruling by the representative in charge of the investigation, April 22, 2022, filings 2221-3086-3125-3126-3152-3249-3265-3266-4317, Investigations and indictment committee of the Chamber of Representatives (evidence file, volume XLIII, annex to the State's May 22, 2023 brief, folios 47930 and 47931).

[550] *Cf.* State brief, May 22, 2023, submitted in the process before this Court (file on the merits, volume IX, folio

undertaken from 2011 through 2022, or subsequent procedures.

G.3. Disciplinary investigations against public officials

449. Domestic authorities have begun various investigations in the administrative disciplinary jurisdiction against public officials for matters associated with the instant case. This section contains an account of the procedures that have been followed, identified using the filing number assigned by the Office of the Solicitor General,[551] as well as decisions already handed down.

450. Filing 008-59071-2001: on a complaint lodged on April 24, 2001, for threats against Reinaldo Villalba Vargas and Alirio Uribe Muñoz. The Solicitor General issued an order to close the case on March 22, 2002, and said that Mr. Villalba Vargas and Mr. Uribe Muñoz "failed to respond when summoned" by the institution, "and we can thus infer […] that they were not interested in cooperating with the case," adding, "if the targets of the threats do not report who threatened them, who they suspect was responsible, or what the cause of the threats may have been, the State agency cannot be held to charges of impunity."[552]

451. Filing 008-113526 of 2004: on a complaint lodged for threats and harassment against Diana Teresa Sierra Gómez in 2003 by "unknown persons [with] some tie to members of the […] DAS." The Solicitor General's disciplinary delegate for the defense of human rights issued an official note on December 1, 2004, stating that the facts cited in the complaint "[were] not under the jurisdiction of this office," and ordered that the case files be sent to the Solicitor General's prevention delegate for human rights, ethnic affairs and prison affairs."[553] The Court has not been informed as to subsequent procedures regarding this complaint.

452. Filing 001-159863-07: on the investigation that was ordered after the magazine *Semana* ran an article in May, 2007, concerning illegal interceptions of communications. The Office of the Solicitor General issued a note on April 2, 2008, reporting that the Collective "was not among the persons affected by the interceptions included in the disciplinary procedures."[554]

453. Information supplied by CAJAR and CEJIL, corroborated by the State, says that the investigations into the following matters had also been dropped: (a) the harassment of Luis Guillermo Pérez Casas at the headquarters of army battalion 13 (*supra* para. 206), filing 15558753-01; (b) illegal actions by the DAS against the Collective, filing 143-160635, and (c) a DAS operative who allegedly prevented Diana Teresa Sierra Gómez from traveling to The Hague, Netherlands, to take part in the Assembly of States Parties to the Rome Statute of the International Criminal Court (*supra* para. 339), filing 008-113526-2004.[555]

454. Filing IUS 2009-57515: on illegal wiretaps and surveillance by the DAS. The Office of the Solicitor General issued a ruling on October 1, 2010, to deliver its unappealable decision,

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3865).

551 The Constitution of Colombia tasks the Solicitor General "alone or by means of delegates and agents," "to exercise higher-order oversight of the official conduct of those who perform public duties […]; to exercise primarily disciplinary powers; to pursue relevant investigations and to apply sanctions as provided by law" (Article 277, numeral 6).

552 *Cf.* Order of the Office of the Solicitor General, March 22, 2002, filing 008-59071-2001) (evidence file, volume II, annex to the Report on the Merits, folios 4625 to 4628).

553 *Cf.* Official note, December 1, 2004, signed by the Solicitor General's disciplinary delegate for the defense of human rights, filing 008-113526 of 2004 (evidence file, volume II, annex to the Report on the Merits, folio 4618).

554 *Cf.* Official note, April 2, 2008, signed by the Solicitor General's national director of special investigations, filing 001-159863-07 (evidence file, volume II, annex to the Report on the Merits, folio 4630).

555 *Cf.* CAJAR and CEJIL pleadings and motions brief, November 9, 2020, submitted in the proceedings before this Court (file on the merits, volume II, folio 569), and the State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folios 1159 and 1160).

based on the declaration of disciplinary liability, to sanction eight people (including Jorge Aurelio Noguera Cotes, José Miguel Narváez Martínez. and Carlos Alberto Arzayús Guerrero) with dismissal and prohibition on holding public employment for a specific period of time (the sanctions varied from 15 to 20 years of prohibition); the ruling also sanctioned one other person with an eight-month suspension on holding public employment. The Solicitor General concluded in the ruling that the activities of the G3 "are not consistent with the State's institutional purposes, were performed illegally, and served the primary purpose of using State resources and instruments against persons or organizations opposed to the sitting administration," and this did not respond to "objectives of general interest, but instead reflected a concept proper to a police state that persecutes its opposition for the mere act of opposing."[556]

455. The State of Colombia reported that three of the people sanctioned had lodged "complaints for invalidity and restoration." Moreover, the Council of State,[557] in a judgment on September 12, 2019, concerning one of the complainants, "overruled the sanctions in view of the fact that the 'alleged conduct did not have sufficient merit to hold it as a disciplinary offense […].'" The other two complaints (including one by Jorge Aurelio Noguera Cotes) are awaiting a decision by the Council of State.[558] The Court has not been informed as to subsequent decisions.

G.4. Motion for constitutional relief against the then President of Colombia

456. Attorney Soraya Gutiérrez Argüello, representing CAJAR, lodged a motion for constitutional relief against the then President of Colombia on March 5, 2005, for the following incidents: (a) statements made on September 8, 2003, at the inauguration ceremony for the new commander of the Air Force (*supra* para. 368); (b) statements made on February 10, 2004, in his speech before the European Union External Relations Section in Strasbourg, France (*supra* para. 371), and (c) his reference that same day to lawyer Reinaldo Villalba Vargas (*supra* para. 370). The Collective said in its complaint that, as a result of the President's statements, its members had been subject to threats in messages signed by groups operating outside the law, in emails, and in harassment and surveillance, combined with later statements made by other public officials. It also said that it had called for the statements to be retracted. CAJAR therefore asked for Constitutional protection of the rights

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556 *Cf.* Order the Office of the Solicitor General, October 1, 2010, filing IUS 2009- 57515 (evidence file, volume XII, annex 53 to the CAJAR and CEJIL pleadings and motions brief, folios 27915, 27916, 27918, 27919, 27995, 28498 and 28499). The ruling also said:

> The […] so-called special intelligence group 3, or G3, was created in March, 2003, and documents on its operations can be traced to late November, 2005. The members of the group worked openly and publicly on the eighth and tenth floors of the [...] DAS building and were allocated resources, furniture, computer equipment, and a coordinator; it had a team of people, it had special information management software and had been assigned duties and specific tasks; the activities performed by its members took place under the coordination, supervision, oversight and direction of high-level […] DAS officials. […] The stated intentions of this group are contrary to the constitutional and legal order; in a clear overreach of their duties, they labeled entities and persons who lodged complaints or initiated processes or actions against the sitting administration on matters of human rights as a legitimate target of intelligence, including when these groups or sectors demanded civil and political rights, which in the view of the creators of the G3 group constituted a threat to national security and the existence of the Colombian State. […] In pursuit of what it called "[Operation] T[ransmilenio]," the special intelligence group 3, or G3, conducted intelligence operations against the "José Alvear Restrepo" Lawyers Collective in which it requested, received, analyzed, and processed confidential information from the Collective and from its primary members and then shared it with their superiors; it requested and received the results of wiretapping and communications intercepts (land line telephones, mobile telephones, and email); it requested and received the results of surveillance activities and shadowing.

557 The Constitution of Colombia tasks the Council of State, under the judicial branch, with "performing the functions of the highest-level court for administrative disputes" (Article 237, numeral 1).

558 *Cf.* The State's answering brief, May 17, 2022, submitted in the process before this Court (file on the merits, volume II, folios 1327 and 1328).

to life, to personal integrity, to equality, to freedom of opinion and expression, to honor and a good name, to petition and defense of its members, and for the President to be ordered to retract his statements publicly.[559]

457. In the first-tier proceeding, the jurisdictional disciplinary chamber of the Sectional Council of the Judiciary of Cundinamarca denied the motion for protection on April 1, 2005. The Collective appealed, and the disciplinary chamber of the Superior Council of the Judiciary decided on May 11, 2005, to amend the first-tier verdict and declare instead that the motion for constitutional protection lacked merit.[560] The Constitutional Court, in a motion for review, issued Judgment T-1062/05[561] on October 20, 2005, as follows:

> [T]he alleged violation of individual rights claimed by the complainant organization was not verified in the speech on September 8, 2003, as was recognized by the Constitutional Court in […] Judgment T-1191 of 2004,[562] because "the specific case failed to show sufficient evidence to claim that the President's accusations were directed specifically against the complainant nongovernmental organizations" […]. […] The complainant made no express reference to this, but the chamber does not find evidence that the President's speech before the European Parliament on February 10, 2004, made any reference to deliberately question any activity by any NGO defending human rights. […] Thus, no direct allusion to the work of the lawyers collective can be drawn from the speech, and less so, a reference to any of its members. […] The lawyers collective holds that the President of Colombia, in a meeting on February 10, 2004, with the European Union External Relations Section in Strasbourg, reiterated his criticism of the work of certain nongovernmental human rights organizations, naming the José Alvear Restrepo Lawyers Collective as an example when he said "the subject of human rights cannot be used as an excuse to cover up terrorists," [and that] "if the lawyers collective wants to defend terrorists, they should do it in keeping with the law, but should not hide behind the facade of being human rights organizations." The lawyers collective also claims that in the same meeting, the President made reference to Reinaldo Villalba Vargas as: "a ghost meandering through the corridors of the European Parliament" who "belongs to an NGO—the lawyers collective—that hides behind its facade as a human rights organization to defend the guerrillas." […] Even so, this chamber, following a close examination of the content of evidentiary material submitted to the proceedings, cannot draw any sufficiently convincing evidence to conclude with certainty that (i) the statements by the President of Colombia, as they were quoted, were actually made, and (ii) that, in the sense in which they have been quoted, they made any reference to the Lawyers Collective or any of its members. […] For these reasons, the Chamber will not order the requested protection.

458. The Constitutional Court decided therefore to reverse the finding of the second-tier court

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559 *Cf.* Constitutional Court Judgment T-1062/05, October 20, 2005.

560 *Cf.* Constitutional Court Judgment T-1062/05, October 20, 2005. In its decision, the sectional council of the judiciary of Cundinamarca found that "insufficient sound evidence was available to hold that the President's statements constituted a direct, decisive accusation" against CAJAR. The disciplinary chamber of the Superior Council of the Judiciary said that the lodging of the motion for constitutional protection "13 months after the facts nullifies the condition of immediacy that is required for a motion of constitutional relief," combined with the fact that the complainant entity "did not appeal to natural judges for protection from the offenses reported," and for these reasons it amended the grounds for first-level decision by declaring that the motion for constitutional relief lacked merit.

561 The Constitution of Colombia says that one of the functions of the Constitutional Court is to "review, in conformity with the law, judicial decisions on motions for protection of constitutional rights" (Article 241, numeral 9). Article 33 of Executive Order 2591 of 1991 (available in Spanish at https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1470723) says that the Constitutional Court "shall designate two of its justices to select, without express grounds and according to their own best judgment, which judgments on constitutional motions should be subject to review."

562 The Constitutional Court, in Judgment T-1191/04 of November 25, 2004, heard in review the motion for constitutional protection brought by several organizations against the President due to several statements he had made (including those of September 8, 2003, and February 10, 2004) that in their view, discredited them. The Constitutional Court said in its judgment:

> [C]onstitutional relief is inadmissible in the absence of active standing for such a case because of the failure to identify the subjects whose rights may have been threatened or violated by the President's statements, as his message pointed to a very broad class of organizations and individuals—human rights defenders—such that it becomes impossible to individualize specific persons whose rights may have been breached. […]. In other words, in the view of the chamber, the President's statements were ambivalent and vague concerning exactly which nongovernmental organizations he respects and which he does not for their alleged links with terrorism.

and upheld the April 1, 2005 judgment of the disciplinary jurisdictional chamber of the Sectional Council of the Judiciary of Cundinamarca, which had denied the requested motion for relief.[563] The Constitutional Court said in its decision that "the considerations set forth in Judgment T-1191/04 are still in effect," concerning the "commitment by public authorities to protect the rights of human rights organizations," and reiterated the views given in that judgment, in the following terms:

> The President's power to address the community through the communications media is not unlimited, as it entails a corresponding duty to respect objectiveness, which in fact is expected of the President when he expresses his opinion on specific subjects; and when he talks about exercising freedom of expression, he should talk about minimum justification in the use of reasonable criteria.[564]

VIII
MERITS

459. The instant case is about alleged violations of multiple human rights against members of CAJAR and their families, in connection with their activities to defend human rights.

460. The Court will examine the merits of the case in the following order: (a) a general discussion of the role of human rights defenders in a democratic system, the conditions necessary for them to do their work, and their situation in Colombia; (b) right to privacy, right to freedom of thought and expression, and rights of the child, read in conjunction with the obligation to respect rights and the obligation to adopt domestic legal effects, with respect to the intelligence activities and public statements by state authorities; (c) the right to a fair trial and the right to judicial protection, as related to the legal proceedings initiated to shed light on the facts that affected the alleged victims, and (d) the right to life, right to personal integrity, right to freedom of thought and expression, and right to freedom of association, rights of the child, right to protection of the family and freedom of movement and residence, in relation to the obligations to respect and guarantee rights and refrain from any action or practice of violence against women, with relation to the acts of violence, threats, intimidation and harassment.

VIII.1
GENERAL DISCUSSION OF THE ROLE OF HUMAN RIGHTS DEFENDERS IN A DEMOCRATIC SYSTEM, THE CONDITIONS NECESSARY FOR THEM TO DO THEIR WORK,[565] AND THEIR SITUATION IN COLOMBIA

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563 *Cf.* Constitutional Court Judgment T-1062/05, October 20, 2005. As for the decision by the second-tier court that the motion lacked merit, the Court held that the complainant entity "requested a retraction within the space of one year," and therefore the decision by the second-tier court to dismiss the motion based on "non-compliance with the rule of immediacy" cannot stand, and this is sufficient reason to hold that the request for relief in fact has merit."

564 The Constitutional Court held as follows, inter alia, in Judgment T-1191/04:
> Public statements by the President of the Republic are not absolutely unrestricted, and […] they should respect strict parameters of objectivity and truthfulness when it is simply a matter of conveying information or public data; […] they have greater latitude when they are intended to set political positions, propose government policies, or respond to criticism from the opposition, but even in these circumstances, expressions spoken by the President must be formulated based on at least a minimum of real, factual, justification and standards of reasonableness, and […] in any case, his communication with the nation must contribute to the defense of fundamental individual rights, especially for those who merit special protection. […] In view of the conflict situation in the country and the role of human rights defenders in the formation of public opinion and in promoting and reporting violations of these rights, and given the impact of their work as a basic component of political life of Colombia, interaction between these persons and the Government becomes a compelling mandate for giving content to public policies on the protection and guarantee of human rights.

565 Articles 4, 5, 8, 13, 15, 16 and 25 of the American Convention on Human Rights, read in conjunction with Article 1.1 thereof.

A. Arguments of the parties and observations of the Commission

461. The ***Commission*** said that the instant case fits into an alleged "pattern of persecution" of CAJAR members, who have reported threats, harassment, stigmatizing statements, intelligence activities, interception of communications, and more, resulting from the organization's work to defend human rights. It added that these facts "have occurred in the midst of an atmosphere of risk to human rights defenders in Colombia," as documented by the Commission itself and "other international organizations."

462. ***CAJAR and CEJIL*** argued that the many acts of harassment, intimidation, public smears, threats, and assaults against the members of the Collective "can be understood only as part of a concerted plan whose purpose was to inhibit the work" of the organization in retaliation for its defense and protection of human rights, particularly in the judicial and international sphere in which landmark cases have been litigated. They said that the national security doctrine, together with notions of the "internal enemy" and "legal warfare," created "an environment of disdain for the work of defending human rights, which encouraged violations of the rights of defenders, and specifically, of the alleged victims in this case.

463. ***Ms. Arias*** said that the case targets persecution and harassment that were "organized, systematic, intensive and constant over a stretch of approximately 20 years" against a group of citizens who defended human rights as part of a nongovernmental organization. She argued that the acts of aggression against the alleged victims could be sorted into three stages "of repression": (a) stage one, from 1990 to 2001, was characterized by threats as a "reaction or retaliation" for participation in cases that found members of the Army responsible for grave violations of human rights; (b) stage two, from 2002 to 2009, saw a consolidation of the aggression by means of "offensive intelligence operations," starting with "stigmatization of NGOs" by "the President of the Republic," and (c) stage three, from 2010 to date, "has consisted of reprisals for action taken in judicial cases and reactivation of certain features of the earlier program of offensive intelligence."

464. The ***State*** said that, although "protection of the rights of human rights defenders has been identified as an on-going issue" in Colombia, "the causes, parties, and context in which the alleged human rights violations occurred have varied." It said that, as can be seen in the reports of the Special Rapporteur on the situation of human rights defenders, "there were reasons in 2002 to find agents of the State responsible for acts of violence," with an impact primarily on populations located in "the main cities," for "reasons associated directly with the political or judicial work of organizations of human rights defenders." It was clear by 2019 "that this violence originated mostly from groups operating outside the law […] under conditions prevailing subsequent to the Final Peace Agreement," which had a particularly harmful impact on certain populations, mainly "social or environmental leaders and rural municipalities affected by more forceful implementation of policies to replace illicit crops."

465. It pointed out that the facts the Commission and representatives were "attempting to fit into a general context of violence against human rights defenders […] from 1990 until today in fact differ in ways that play an essential role in determining the context," which means that "it is impossible to draw a general analysis of State responsibility, but instead, the case requires a particular analysis of specific facts." It added that Colombia "has responded to the various scenarios of violence against human rights defenders" by means of "public policies designed to solve the problems."

B. Considerations of the Court

466. The arguments in the instant case on violations of the rights of the alleged victims,

members of CAJAR, are tied to their work as human rights defenders.

467. The Court will begin its analysis of the merits by addressing the following points: (a) the status of the alleged victims as human rights defenders; (b) human rights defenders and the importance of their work in a democratic system; (c) conditions necessary to exercise the right to defend human rights, and (d) the context of violence against human rights defenders in Colombia and its impact in the instant case

B.1. The status of the alleged victims as human rights defenders

468. The Court has held that a person's status as a human rights defender derives from the work carried out, regardless of whether the person who does it is a private individual or a public official,[566] or whether the defense is related to civil and political rights or economic, social, cultural and environmental rights.[567] The Court has also stated that activities for the promotion and protection of rights may be carried out intermittently or occasionally, so that being a human rights defender is not necessarily a permanent condition.[568]

469. The Court has established criteria in its case law to determine whether individuals qualify as human rights defenders, based on "the identification of the work they do."[569] On this basis, there is no question that the lawyers working in the Collective over the years do hold that status,[570] given their legal work in the justice system, both domestic and inter-American, their work to accompany victims of violations of rights, and their advocacy in different arenas, all of which was intended to safeguard and promote human rights.

470. The category so defined is "broad and flexible due to the very nature of this activity,"[571] and therefore the legal aides in the Collective also deserve to be held as human rights defenders,[572] because they worked directly with the attorneys and performed their jobs and professional activities in the effort to defend and protect human rights.[573] The same is true for the CAJAR press officer, who in her own professional capacity was responsible for publicizing the work of the organization, and this required clear action to promote human

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566 *Cf. Case of Luna López v. Honduras. Merits, Reparations and Costs.* Judgment of October 10, 2013. Series C No. 269, para. 122, and *Case of Baraona Bray v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2022. Series C No. 481, para. 70.

567 *Cf. Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs.* Judgment of April 3, 2009. Series C No. 196, paras. 147 and 148, and *Case of Baraona Bray v. Chile*, *supra*, para. 70.

568 *Cf. Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 28, 2014. Series C No. 283, para. 129, and *Case of Baraona Bray v. Chile*, *supra*, para. 70.

569 *Cf. Case of Luna López v. Honduras, supra*, para. 122, and *Case of Acosta et al. v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 25, 2017. Series C No. 334, para. 139.

570 Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Soraya Gutiérrez Argüello, Reinaldo Villalba Vargas, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, Diana Teresa Sierra Gómez, Javier Alejandro Acevedo Guerrero, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, Pedro Julio Mahecha Ávila, and Adriana Patricia Fuentes López.

571 *Cf. Case of Baraona Bray v. Chile*, *supra*, para. 71. See OHCHR, Fact Sheet No. 29, Human Rights Defenders: Protecting the Right to Defend Human Rights. Geneva, 2004.

572 Efraín Cruz Gutiérrez, Olga Lilia Silva López, Camilo Andrés Galindo Marín, Chennyer Jairt Piñeros Fuquen, Carlos Lozano Acosta, Andrés Rivera Acevedo, Mónica Lorena Zuluaga Patiño, Adriana Lizeth López Rojas, Lyda Natalia Hernández García, Andrea del Rocío Torres Bobadilla, and Olga Marcela Cruz López.

573 The legal aides were responsible for: (a) following up on cases being litigated by the Collective in administrative venues and in the courts; (b) supporting the implementation of legal procedures; (c) drafting briefs for judicial cases; (d) gathering information and evidentiary material, and (e) accompanying and guiding victims represented by the organization. *Cf*. Statements before a public attestor by Adriana Lizeth López Rojas, Camilo Andrés Galindo Marín, Carlos Lozano Acosta, Chennyer Jairt Piñeros Fuquen, Adriana Patricia Fuentes López, Mónica Lorena Zuluaga Patiño, Lyda Natalia Hernández García, Efraín Cruz Gutiérrez, and Olga Lilia Silva López (evidence file, volume XI, annexes 29, 30, 31, 32, 33, 34, 35, 36 and 39 to the CAJAR and CEJIL pleadings and motions brief, folios 26593, 26598, 26605, 26616, 26621, 26628, 26632, 26638 and 26657).

rights.[574] It also covers a person who worked with the Collective on specific projects based on her knowledge of political science, given the nature of her work in the field of human rights.[575] Finally, the concept of human rights defenders, which is wide-ranging and flexible, needs to be examined in each concrete situation; therefore, the technical and administrative staff of CAJAR can also be considered human rights defenders, given the critical importance of their work for the mission of the organization and their identification with the Collective's goals and purposes to defend and promote human rights.[576]

B.2. Human rights defenders and the importance of their work in a democratic system

471. This Court has often discussed human rights defenders and the paramount role they play in the framework of a democratic system.[577] It has repeatedly emphasized the importance of the work of human rights defenders,[578] which it deems fundamental for

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[574] Journalist Adriana Cuéllar Ramírez, in her statement before a public attestor, said that her duties as press officer for CAJAR included "publicizing all the work being done" by the organization, "managing all the social media […], […] writing weekly newsletters to summarize all the urgent actions coming in, […] writing other material I would prepare on my own to be sent out in Colombia and abroad," and "accompanying victims […] in the various actions being taken." *Cf*. Statement before a public attestor by Adriana Elena Cuéllar Ramírez, October 26, 2020 (evidence file, volume XI, annex 26 to the CAJAR and CEJIL pleadings and motions brief, folio 26569).

[575] Nubia Liliana Romero Bernal said in her statement before a public attestor that her work with the Collective included organizing activities with the International Federation for Human Rights, as well as such other projects as: (a) coordinating the technical secretariat of the Movement of victims of crimes of State (MOVICE); (b) conducting investigations on Plan Colombia and its effects on human rights; (c) supporting the observatory of transnational enterprises; (d) supporting the working group for comprehensive reparation; (e) supporting the development of materials for human rights training, and (f) supporting the development of a self-protection guidebook for human rights defenders. *Cf*. Statement before a public attestor by Nubia Liliana Romero Bernal, November 9, 2020 (evidence file, volume XIII, annex 96 to the CAJAR and CEJIL pleadings and motions brief, folio 28887 and 28887).

[576] Fernando Lemus Rodríguez, Ingrid Osnay Fernández Rengifo, Olga Hernández Villalba, Sandra Yalin Ariza, and Martha Eugenia Rodríguez Orozco.

[577] *Cf. Inter alia*, *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary Objections and Merits*. Judgment of November 28, 2006. Series C No. 161; *Case of Valle Jaramillo et al. v. Colombia, supra*; *Case of Kawas Fernández v. Honduras, supra*; *Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 6, 2009. Series C No. 200; *Case of Fleury et al. v. Haiti. Merits and Reparations*. Judgment of November 23, 2011. Series C No. 236; García and Family v. Guatemala. *Merits, Reparations and Costs.* Judgment of November 29, 2012 Series C No. 258; *Case of Luna López v. Honduras, supra*; *Case of Human Rights Defender et al. v. Guatemala, supra*; *Case of Yarce et al. v. Colombia, supra*; *Case of Acosta et al. v. Nicaragua, supra*; *Case of the Xucuru Indigenous People and its members v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 5, 2018. Series C No. 346; *Case of Escaleras Mejía et al. v. Honduras*. Judgment of September 26, 2018. Series C No. 361; *Case of Digna Ochoa et al. v. México. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 25, 2021. Series C No. 447; *Case of Sales Pimenta v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 30, 2022. Series C No. 454, and *Case of Baraona Bray v. Chile, supra*.

[578] The Court and the Court President, having examined multiple requests for provisional measures, have reiterated that the work of human rights defenders "makes a positive and complementary contribution to the State's efforts" to protect the rights of persons under its jurisdiction." *Cf*. *Inter alia*, *Matter of Monagas Judicial Confinement Center ("La Pica") regarding Venezuela. Provisional measures*. Order of the Inter-American Court of Human Rights, February 9, 2006, whereas clause 14; *Matter of the Forensic Anthropology Foundation of Guatemala regarding Guatemala. Provisional measures*. Order of the President of the Inter-American Court of Human Rights, April 21, 2006, whereas clause 9; *Matter of Mery Naranjo et al. regarding Colombia. Provisional measures*. Order of the of the Inter-American Court of Human Rights, July 5, 2006, whereas clause 8; *Case of García Prieto et al. v. El Salvador. Provisional measures*. Order of the Inter-American Court of Human Rights, September 26, 2006, whereas clause 8; *Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo regarding Brazil. Provisional measures*. Order of the of the Inter-American Court of Human Rights, September 30, 2006, whereas clause 24; *Matter of Gladys Lanza Ochoa regarding Honduras. Provisional measures*. Order of the Inter-American Court of Human Rights, September 2, 2010, whereas clause 17; *Matter of the Inter-Ecclesial Commission on Justice and Peace regarding Colombia. Provisional measures*. Order of the Inter-American Court of Human Rights, November 22, 2010, whereas clause 23; *Matter of the Colombian Commission of Jurists regarding Colombia. Provisional measures*. Order of the of the Inter-American Court of Human Rights, November 25, 2010, whereas clause 24; *Matter of Guerrero Gallucci regarding Venezuela. Provisional measures*. Order of the of the Inter-American Court of Human Rights, November 21, 2011, whereas clause 33; *Matter of Giraldo Cardona et al. regarding Colombia. Provisional measures*. Order of the of the Inter-American Court of Human Rights, January 28, 2015,

strengthening democracy and the rule of law,[579] and this is the reason why the States have a special duty to protect them.[580]

472. The Court's settled case law has also held that respect for human rights in a democratic State depends largely on effective, appropriate guarantees that allow human rights defenders to conduct their work freely, and this is why any actions that may limit or hinder their work merit special attention.[581] Given the particular importance of the role of human rights defenders in society, their monitoring, denunciation, and educational activities make an essential contribution to respect for human rights, because they act as guarantors against impunity; as such, they supplement the role of the States and the inter-American system overall.[582]

473. The Court has also underscored the importance of other international instruments, in this case, the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereinafter "UN Declaration"),[583] approved by the General Assembly on March 8, 1999, and Article 1 of which recognizes the right to defend human rights, stating that "[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels."[584]

474. The United Nations Declaration was mirrored in the regional protection systems: the

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whereas clause 40; *Matter of Certain Penitentiary Centers of Venezuela. Humberto Prado. Marianela Sánchez Ortiz and family regarding Venezuela. Provisional measures*. Order of the of the Inter-American Court of Human Rights, November 13, 2015, whereas clause 47; *Matter of Danilo Rueda regarding Colombia. Provisional measures*. Order of the Inter-American Court of Human Rights, November 14, 2017, whereas clause 15; *Matter of the Nicaraguan Center for Human Rights and the Permanent Commission of Human Rights (CENIDH-CPDH) regarding Nicaragua. Provisional measures*. Order of the Inter-American Court of Human Rights, October 14, 2019, whereas clause 32 and *Matter of the Nicaraguan Center for Human Rights and the Permanent Commission of Human Rights (CENIDH-CPDH) regarding Nicaragua. Provisional measures.* Order of the Inter-American Court of Human Rights, September 1, 2021, whereas clause 22.

579 *Cf. Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 87, and *Case of Baraona Bray v. Chile*, *supra*, para. 78.

580 *Cf. Case of Nogueira de Carvalho et al. v. Brazil*, *supra*, para. 77, and *Case of Baraona Bray v. Chile*, *supra*, para. 79.

581 *Cf. Case of Nogueira de Carvalho et al. v. Brazil*, *supra*, para. 74, and *Case of Sales Pimenta v. Brazil*, *supra*, para. 88.

582 *Cf. Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 88, and *Case of Sales Pimenta v. Brazil*, *supra*, para. 88.

583 The Special Representative of the Secretary-General on Human Rights Defenders has stated that the UN Declaration "represented a clear commitment to acknowledge, promote and protect the work and rights of human rights defenders around the world." *Cf*. Commission on Human Rights, Report of the Special Representative of the UN Secretary General on the situation of human rights defenders, Hina Jilani, U.N. Doc. E/CN.4/2001/94, January 26, 2001, para. 2.

584 *Cf.* United Nations General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, U.N. Doc. A/RES/53/144, March 8, 1999. Based on the Declaration, in 2000, the United Nations Commission on Human Rights asked the Secretary General to appoint "a special representative" who would "report on the situation of human rights defenders in all parts of the world and on possible means to enhance their protection in full compliance with the Declaration." *Cf.* Commission on Human Rights, Human rights defenders, Resolution of April 26, 2000, Doc. U.N. E/CN.4/RES/2000/61. The Human Rights Council decided on March 27, 2008, to extend the mandate and entrust it to a Special Rapporteur. *Cf.* Human Rights Council, Mandate of the Special Rapporteur on the situation of human rights defenders, Resolution 7/8 of March 27, 2008.

Inter-American,[585] European,[586] and African[587] systems. The Court also finds it appropriate to cite the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, known as the "Escazú Agreement, adopted in 2021. Article 9 incorporates specific State obligations regarding the role of human rights defenders in environmental matters, holding that each State should: (i) guarantee a safe and enabling environment in which defenders are able to act free from threat, restriction and insecurity; (ii) take adequate and effective measures to recognize, protect and promote all the rights of defenders, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, and (iii) take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that defenders may suffer while exercising their rights and duties.[588]

475. The Colombian legal system began to highlight the essential work of defending and disseminating human rights in the 1991 Constitution, as a "foundation of peaceful coexistence."[589]

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[585] The General Assembly of the Organization of American States, at every regular session from 1999 through 2014, adopted a resolution entitled "Human Rights Defenders: Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights In the Americas," under which the parties agree "to reiterate [their] support for the work carried out at both national and regional level by human rights defenders, and to recognize their valuable contribution, inter alia, to the promotion and protection of, and respect for, human rights and fundamental freedoms in the Hemisphere." *Cf*. General Assembly of the Organization of American States, Human Rights Defenders: Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights In the Americas, AG/RES. 1671 (XXIX-O/99); AG/RES. 1711 (XXX-O/00); AG/RES. 1818 (XXXI-O/01); AG/RES. 1842 (XXXII-O/02); AG/RES. 1920 (XXXIII-O/03); AG/RES. 2036 (XXXIV-O/04); AG/RES. 2067 (XXXVO-O/05; AG/RES. 2177 (XXXVI-O/06); AG/RES. 2280 (XXXVII-O/07); AG/RES. 2412 (XXXVIII-O/08); AG/RES. 2517 (XXXIX-O/09); AG/RES. 2579 (XL-O/10); AG/RES. 2658 (XLI-O/11); AG/RES. 2715 (XLII-O/12); AG/RES. 2789 (XLIII-O/13), and AG/RES. 2851 (XLIV-O/14). The General Assembly adopted similar resolutions starting in 2015. The Inter-American Commission created the Unit for Human Rights Defenders in 2001 under the Executive Secretariat, and in 2011, it created the Office of the Rapporteur on the Situation of Human Rights Defenders. *Cf.* IACHR. Annual report 1998, OEA/Ser.L/V/II.102, Doc. 6 rev., April 16, 1999, para. 36, and Annual report 2011, para. 19. See also, the IACHR Report on the situation of human rights defenders in the Americas. OEA/Ser.L/V/II.124, Doc. 5, rev. March 1, 2006; Second report on the situation of human rights defenders in the Americas. OEA/Ser.L/V/II, Doc. 66, December 31, 2011; Towards effective integral protection policies for human rights defenders, OEA/Ser.L/V/II, Doc. 207/17, December 29, 2017, and Report on the situation of human rights defenders and social leaders in Colombia, OEA/Ser.L/V/II, Doc. 262, December 6, 2019.

[586] See, Council of Europe, Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, February 6, 2008, and Parliamentary Assembly of the Council of Europe, *The situation of human rights defenders in Council of Europe member states,* Resolution 1660, April 28, 2009. Moreover, the European Union in 2009 approved guidelines on human rights defenders whose purpose is to " provide practical suggestions for enhancing EU action" in the sphere of "supporting and assisting human rights defenders." *Cf.* Council of the European Union. Ensuring protection – European Union Guidelines on Human Rights Defenders. Brussels, 16332/2/08, REV 2, PESC 1562, COHOM 138, June 10, 2009.

[587] See, Grand Bay Declaration and Plan of Action, adopted by the Ministerial Conference on Human Rights of the African Union, April 12 to 16, 1999, Grand Bay, Mauritius: "19. The Conference notes that the adoption of the UN Declaration [...] marks a significant turning point and calls on African governments to take appropriate steps to implement the Declaration in Africa." See also, African Commission on Human and Peoples' Rights, Resolution on the Protection of Human Rights Defenders In Africa, adopted at the 35th ordinary session, held from May 21 to June 4, 2004, in Banjul, the Gambia, Doc. ACHPR/Res.69(XXXV)03, which appoints a Special Rapporteur on human rights defenders in Africa, whose mandate includes "to seek, receive, examine and to act upon information on the situation of human rights defenders in Africa," and "to raise awareness and promote the implementation of the UN Declaration on Human Rights Defenders in Africa."

[588] *Cf.* Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, adopted in Escazú, Costa Rica, September 27, 2018. Available at: https://repositorio.cepal.org/entities/publication/86cae662-f81c-4b45-a04a-058e8d26143c.

[589] Article 95 of the Constitution of Colombia states: "[…] The duties of individuals and citizens are to: […] 4. Defend and disseminate human rights as a foundation of peaceful coexistence; […]." The Constitutional Court has held that:

> The defense of human rights is a fundamental right in the Colombian constitutional framework and is twofold. First, it is a prerogative benefiting the people whom it empowers, whether individually or collectively, to disseminate, publicize, and demand respect for human rights. This power makes them holders of special State protection […]. Second, as a duty, the defense of human rights is enshrined

476. In view of the arguments brought before it, the Court will delve more deeply into the matter of the right to defend human rights in a later section (chapter VIII.4).

B.3. Conditions necessary to exercise the right to defend human rights

477. The Court has found that the States have the duty to provide the resources necessary for human rights defenders to conduct their activities freely, to protect them when they are subject to threats to their lives or safety, to refrain from setting up hindrances that might make their work more difficult, and to conduct conscientious, effective investigations of violations against them, thus preventing impunity.[590] Inter-American case law has repeatedly found that the defense of human rights can be exercised freely only when those engaged in it are not victims of threats or any kind of physical, mental or moral violence, or other acts of harassment.[591]

478. The Court has also held that threats and attacks on the safety and life of human rights defenders and the impunity of those responsible for such actions are particularly grave because they have an impact that is not only individual, but also collective. When such things happen, society is prevented from learning the truth about whether the rights of persons are being respected or violated under the jurisdiction of a given State.[592]

B.4. The context of violence against human rights defenders in Colombia and its impact in the instant case

479. The Court takes note of the State's objection to the Commission's portrayal of the context as part of the corpus of facts in the Report on the Merits, and its implications for the situation of human rights defenders in Colombia; it also challenged the conclusions drawn from the context by the Commission and both representatives of the alleged victims. The State's objections, in summary, revolve around the alleged mutability of the causes, motives, and parties to the violence against human rights defenders over the years, and the inaccuracy of using that context as a basis for establishing its international responsibility.

480. The Commission and the two representatives of the alleged victims found that a context of violence did exist against human rights defenders in Colombia, but as said earlier, the State questions this assertion with the argument that the violence, both its extent and the factors that gave rise to it, "mutated" through the years.

481. The Court will reply in this section to the first point being challenged by the State; the matter of international responsibility will come under analysis in later sections of the discussion of the merits.

482. The previous chapter pointed to multiple reports, observations, and declarations by international organizations (*supra* paras. 140 to 153), ruled on and verified by domestic institutions (the Constitutional Court and the Ombudsman, *supra* paras. 154 to 157, and more recently, the Commission for Clarification of the Truth, Peaceful Coexistence, and

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explicitly in Article 95 numeral 4 of the Constitution […].
Cf. Ruling 098/13 of the Special chamber for monitoring judgment T-025 of 2004 and its rulings on compliance, May 21, 2013. Available at: https://www.corteconstitucional.gov.co/relatoria/autos/2013/A098-13.htm#_ftnref54.

590 *Cf. Case of Nogueira de Carvalho et al. v. Brazil*, *supra*, para. 77, and *Case of Sales Pimenta v. Brazil, supra*, para. 86.

591 *Cf. Case of Fleury et al. v. Haiti*, *supra*, para. 81, and *Case of Bedoya Lima et al. v. Colombia. Merits, Reparations and Costs. Judgment of August 26, 2021. Series C No. 431*, para. 152.

592 *Cf. Case of Nogueira de Carvalho et al. v. Brazil*, *supra*, para. 76, and *Case of Sales Pimenta v. Brazil*, *supra*, para. 89.

Nonrepetition,[593] *supra* footnotes 143 and 170). All this clearly shows that during the time covered by the case ("1990 to date," *supra* paras. 67 and 68), Colombia has experienced an ever-present situation of risk for the work being done by human rights defenders as a result of their activities to promote, protect, and ensure the effective exercise of human rights,[594] and over the course of the years, this has been caused by the convergence of multiple causes and the intervention of a variety of parties.[595]

483. This ever-present risk has taken the form of diverse actions perpetrated against human rights defenders, human rights organizations, and family members and other persons related to them; the following list is merely a sample: (i) attacks, both attempted and failed, against life, safety, and personal freedom (murder, assault, forced disappearance, and arbitrary detention); (ii) threats and frightening warnings using multiple methods, often anonymous (leaflets, posters, condolences, obituaries, emails, written messages, telephone calls, and other actions that reveal an intent to cause fear); (iii) attacks against professional practice and against property (damage to property, raids on offices and homes, theft of information, and cyber attacks); (iv) harassment, surveillance, and intimidation (shadowing, interfering with professional practice, taking unauthorized photographs and films of homes, offices, and family members); (v) vilification and other actions intended to disparage and discredit (challenges, accusatory statements, declarations by current and former public officials and private individuals, and publications by official agencies), and (vi) surveillance, monitoring, and investigations by police officers and government intelligence agencies (spying, wiretapping, taking photographs, compiling information, and developing records and profiles). Many of these actions, with only a few exceptions, (vii) were never investigated by the justice system to identify those responsible, apply sanctions, and prevent recurrence, and in several cases, (viii) the measures of protection offered by domestic authorities have been inadequate to the magnitude of risk factors, full implementation has been delayed, and beneficiaries have even suspected that the measures were being used by the authorities to raise the level of risk they were facing.[596]

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[593] The Court has held that the creation of a truth commission, depending on its purposes, procedures, structure and mandate, can contribute to building and preserving historical memory, shedding light on facts, and establishing institutional, social and political responsibilities in certain historical periods of a society. *Cf*. *Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations and Costs.* Judgment of July 4, 2007. Series C No. 166, para. 128, and *Case of Casierra Quiñonez et al. v. Ecuador, supra*, para. 154.

[594] The Court has already addressed the conditions of risk that face human rights defenders in Colombia. In the case of *Valle Jaramillo*, it said, "by contributing to the establishment of these ["self-defense"] groups, the State objectively created a dangerous situation for its inhabitants and did not adopt the necessary and sufficient measures to prevent these groups from continuing to commit acts" that impaired their rights; it added, "the danger created by the State aggravated the situation of vulnerability of human rights defenders who, like Jesús María Valle Jaramillo [murdered in 1998], denounced the violations committed by paramilitary groups and the armed forces." *Cf. Case of Valle Jaramillo et al. v. Colombia, supra*, paras. 80 and 81. The Court said in the *Yarce et al.* case, "the facts occurred [2001-2004] in a context of violence against women human rights defenders in Colombia," involving "simultaneous forms of harassment, threats, and reprisals against them," which translated into "a perilous situation for them." *Cf. Case of Yarce et al. v. Colombia, supra*, para. 99.

[595] María Paulina Riveros said that while a "plan of action was being developed" to address the risks facing human rights defenders in Colombia, in approximately 2004, the human rights platforms "expressed their concern" about the following "sources of risk:" (a) their work was being stigmatized; (b) they were being profiled in State intelligence files; (c) government officials and law enforcement officers were receiving very little training on matters of human rights and international humanitarian law; (d) protection measures were inadequate; (e) judicial investigations were greatly delayed, and (f) actions were being taken by "emerging gangs and criminal gangs" (BACRIM) and armed agents. *Cf*. Statement before a public attestor by María Paulina Riveros, May 2, 2022, (evidence file, volume XXXIV, affidavits, folio 46156). Expert witnesses Lourdes Castro García and Leonardo Díaz Morales, in their joint statement, identified "the following structural factors that have helped fuel the recurring, persistent aggressions against human rights defenders in Colombia: (a) stigmatizing practices; (b) high levels of impunity; (c) the persistent armed conflict, and (d) the dynamics of socio-political violence. *Cf.* Joint written expert opinion by Lourdes Castro García and Leonardo Díaz Morales, April 25, 2022 (evidence file, volume XXXIII, affidavits, folio 45089).

[596] The Special Representative of the UN Secretary General on human rights defenders visited Colombia in 2001 and said that the human rights defenders sometimes "refused State protection," in the belief that accepting these measures would turn them into a "target for attack." *Cf*. Commission on Human Rights, Report of the Special

484. The State argued that factors and circumstances of the context as described have been changing over more than three decades, depending on the complexity and development of the armed conflict, and more particularly, on the phenomenon of violence in Colombia, which is the framework in which the work of the human rights defenders was taking place, particularly, the alleged victims in the instant case.

485. Thus, as has been noted by both international[597] and Colombian spokespersons, including the Constitutional Court,[598] the risk that human rights defenders were facing in the 1990s and 2000s because of their work was very closely tied to and conditioned by the rival positions present in the scenario because of the armed conflict, with the interaction of Government authorities, police officers, and guerrilla and paramilitary groups;[599] all this was,

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Representative of the UN Secretary General on the situation of human rights defenders, Hina Jilani, U.N. Doc. E/CN.4/2002/106/Add.2, April 17, 2002, para. 262. The person appointed in October, 2005 to run the DAS said, in a statement to the office of the prosecutor, that "the protectees often suspected that the protection plans could have been used to collect information on their private lives." *Cf.* Procedure for an initial statement by AMP to the Prosecutor General, unit delegated to the Supreme Court, July 1, 2009 (evidence file, volume I, annex to the Report on the Merits, folio 3862). See also the April 7, 2011, letter to the President of the Republic in which several members of CAJAR said they were returning the vehicles assigned to them and released back to the authorities the escorts taking part in the protection service provided by the DAS because they mistrusted the service and the "use of the protection program as a tool to monitor them" (evidence file, volume III, annex to the Merits Report, folios 7525 to 7531).

[597] Many reports have highlighted the shifting conditions over time, including the OHCHR annual reports, the reports by the Special Representative of the UN Secretary General on human rights defenders, and the Special Rapporteur on the same subject in their visits to Colombia in 2001, 2009, and 2018. The report from 2001 said that human rights defenders were living in "a climate of fear and uncertainty, […] caught in the cross-fire between the various parties to the conflict" and emphasized "that the main perpetrators of violations of [their] rights are the paramilitary groups." *Cf.* Commission on Human Rights, Report of the Special Representative of the Secretary-General on Human Rights Defenders, pursuant to Commission on Human Rights resolution 2000/61, Hina Jilani, mission to Colombia, U.N. Doc. E/CN.4/2002/106/Add.2, April 17, 2002, paras. 19 and 285. By 2009, when the phenomenon of violence stemming from the conflict was compounded by the process of demobilizing paramilitary groups, the responsibility for violence against human rights defenders was attributed to "guerrillas, new illegal armed groups and paramilitary groups," with special mention that "a prime reason" for the violence against them is "systematic stigmatization and branding of defenders by Government officials and non-State actors," combined with "widespread illegal surveillance […] by civil and military intelligence services." *Cf.* Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, mission to Colombia, U.N. Doc. A/HRC/13/22/Add.3, March 1, 2010, paras. 13, 60 and 64. Finally, the 2018 report, two years after the signing of the peace agreement, found that "Colombia was the country with the highest number of murders of human rights defenders in Latin America," and that the defenders working in rural areas faced the greatest risks for "keeping the peace, acting against the interests of organized crime, illegal economic activities, corruption and illegal land holdings and for protecting their communities." It highlighted the presence of other factors contributing to the climate of violence that affected human rights defenders, including high rates of impunity for violation of their rights and stigmatization of them by political leaders, public officials, persons of influence, including from the private sector, and members of illegal armed groups." *Cf.* Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, mission to Colombia, Michel Forst, U.N. Doc. A/HRC/43/51/Add.1, December 26, 2019, paras. 20, 25, 27 and 32.

[598] Judgment T-590/98 by the Constitutional Court, October 20, 1998, declared "the unconstitutional state of affairs in the lack of due protection for the defenders of rights," and while not making explicit reference to the armed conflict, nevertheless emphasized "the climate of intolerance and violence" prevailing in Colombia. The same court's Judgment T-1191/04, November 25, 2004, similarly underscored "the vulnerable state" of human rights defenders, as seen "in a greater level of exposure to risks of an extraordinary nature and threats to their rights," in a context marked by "widespread violence, armed conflict, and the aspiration for multifaceted coexistence." Its Judgment T-124/15, March 26, 2015, said that the work done by human rights defenders "in the midst of an internal armed conflict […] brings considerable risk upon them, making them especially vulnerable." The Constitutional Court's Judgment T-469/20, November 3, 2020, pointed to the violence against human rights defenders and social leaders, saying, "the power vacuum left by the demobilization of the most powerful guerrilla group in the territory, and the State's ineffectiveness at fully entering these areas," "opened the doors to new violent actors," resulting in a "coexistence of so-called post-paramilitary groups alongside criminal gangs, groups working for the drug lords, other forms of organized crime, dissidents from the FARC-EP, and the traditional guerrilla groups (ELN y EPL)," all of whom "are fighting to control territories and press them into service for illegal activities."

[599] The Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition discussed the phenomenon of paramilitary groups and their role in the armed conflict in Colombia in its final report, as follows:

> Paramilitary groups are not merely an armed faction, understood as private armies with strategies of

on balance, detrimental for a number of sectors of the population, including human rights defenders, with particular repercussions for anyone who reported crimes or took part in judicial proceedings for serious human rights violations and other circumstances associated with the conflict.[600]

486. The Court found in earlier cases that the reigning violence during the armed conflict in Colombia was related to the fact that certain social groups had been identified using the concept of "the enemy within," fostered by the so-called "national security doctrine" endorsed in Decree 3398 of 1965 (*supra* footnote 333) adopted by the Armed Forces since the early 1960s, and set out in a number of military regulations and manuals.[601] The Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition said in its final report that the national security doctrine "typical of a war against communism" "made it possible to label alternative social and political movements as the equivalent of the 'enemy,' so much so that "in political and social culture," "the collective imagination [had been strongly stamped with the idea of a direct link] between the political opposition or social alternatives and the risk of vilification and persecution." As a corollary, in the framework of conflict, the armed forces and security agencies persecuted "small farmers, trade union activists, indigenous and Afro-descendant people, and students, as well as members of the political opposition and social and women's organizations," which included "anyone who denounced or monitored abuses, such as journalists and human rights defenders," along with other social organizations."[602]

487. The Peace Agreement was signed on November 24, 2016 (*supra* footnote 139), and as could be expected, this and other events marked many changes in the political, social, and economic environment since the 2010s. Changes were seen in certain features of the mesh of violence against human rights defenders,[603] because more (although not all) of the risks of their work could be found in rural areas, where the power of the State was scarcely present, and where groups operating outside the law, often organized crime, focused on illegal actions with financial ends.[604]

> terror against the civilian population, but rather a mesh of interests and alliances also associated with economic, social, and political goals, which succeeded in imposing armed territorial controls by the use of terror and violence, and also through mechanisms to build legitimacy and establish rules and regulations. The Commission's investigation has shown that paramilitary groups have historically been linked to decisions by the government and institutions of the State grounded in the State's tendency to delegate public safety, law enforcement, and weapons to groups of armed civilians and agencies responsible for providing private security for the purpose of national security and national defense.

Cf. Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, final report, *Hay futuro si hay verdad: hallazgos y recomendaciones*, ("there is a future if there is truth: findings and recommendations"), Bogotá, June 28, 2022, p. 249 (evidence file, volume XLII, annex to the brief of CAJAR and CEJIL, April 10, 2023, folio 47200).

600 The OHCHR said in its 1997 annual report that the polarization of positions resulting from the armed conflict "opened the door for people exercising legitimate activities to be seen as part of the conflict when the nature of their work led them to take a critical stance," as was the case of human rights defenders, whose situation was described in the report as "dramatic." *Cf*. Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights, U.N. Doc. E/CN.4/1998/16, March 9, 1998, para. 111. By 2006, the OHCHR was saying, "the context of violence and armed conflict […] continued to have a particular impact" on human rights defenders, along with other groups, whose "situation of risk […] had convinced them to pull back and […] self-censor." *Cf.* Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, Doc. A/HRC/4/48, March 5, 2007, para. 34, and Annex II "Situación de grupos en particular condición de vulnerabilidad o discriminación", para. 5.

601 *Cf. Case of Isaza Uribe et al. v. Colombia. Merits, Reparations and Costs.* Judgment of November 20, 2018. Series C No. 363, paras. 124, 127 and 128, and *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 62.

602 *Cf.* Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, final report, *Hay futuro si hay verdad: hallazgos and recomendaciones*, ("there is a future if there is truth: findings and recommendations"), Bogotá, June 28, 2022, p. 390 (evidence file, volume XLII, annex to the brief of CAJAR and CEJIL, April 10, 2023, folio 47341).

603 See, statement before a public attestor by María Paulina Riveros, May 2, 2022, (evidence file, volume XXXIV, affidavits, folio 46156).

604 The OHCHR said in its 2014 report that 25 years earlier, "urban middle-class human rights defenders would

488. The Court would emphasize, based on all this, that at particular times over the years covered by the instant case, the context of risk for the work of human rights defenders in Colombia was linked to their position regarding certain lines of government policy, to their role of promoting and protecting human rights, and in response to the vision or actions of the authorities at any given time. Indeed, the annual reports of the OHCHR and the reports of other United Nations agencies, as well as the body of evidence submitted to the international proceedings point to a pattern made up of interrelated facts, with the intention of counteracting the work of the human rights defenders because of their critical stance and their tendency to draw attention to policies and decisions fostered or promoted from Government spheres. This pattern can be seen in several ways, including explicit, direct actions among the ranks of public power to disparage the commitment and legitimacy of human rights defenders and, in general, of human rights organizations (accusing them of "being at the service of terrorism" and of being "guerrilla sympathizers," or suggesting "that their work was contrary to the interests of the State"[605]), all of this compounded by the incidents that occurred under the operations of the so-called "special intelligence group 3" (G3) inside the DAS against human rights defenders and other social critics of the government administration at the time.[606]

489. There is no doubt in the instant case that the G3 intelligence operations did in fact occur, especially the so-called "Operation *Transmilenio*"[607] (*supra* para. 320), as well as statements proffered by the then President of Colombia on September 8, 2003, during the swearing-in ceremony of the new Air Force commander (in which he mentioned the existence of "political hacks who ultimately are at the service of terrorism and shield themselves like cowards by wrapping themselves in the flag of human rights," *supra* para. 368). This statement is uniquely interesting for this analysis because of its content, because of the official rank of the

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often be considered enemies of the State as the armed conflict dominated mindsets," but although this situation had changed "for many urban defenders," it had not changed for "many rural human rights defenders," who "still confront hostility and a counter-insurgency construct." *Cf*. Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/28/3/Add.3, January 23, 2015, para. 14. Similarly, by 2017, the OHCHR found that several human rights defenders had been "killed because of their support for policies deriving from the agreement, such as the substitution of illicit crops and integral rural reform," and this marked "a new trend in motives behind killings" because in "previous years, most human rights defenders were killed because of their opposition to government policies, not for their support of them." *Cf.* Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/37/3/Add.3, March 2, 2018, para. 11.

[605] *Cf.* Inter alia, Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. E/CN.4/2003/13, February 24, 2003, para. 105; U.N. Doc. E/CN.4/2004/13, February 17, 2004, para. 88, and U.N. Doc. E/CN.4/2005/10, February 28, 2005, para. 120. The OHCHR reports were released alongside statements from other United Nations agencies, expressing their concern for the social polarization and the constant expressions to disparage and challenge the work of human rights defenders. *Cf.* Inter alia, Commission on Human Rights, report of the Special Rapporteur on education, Katarina Tomaševski, mission to Colombia, U.N. Doc. E/CN.4/2004/45/Add.2, February 17, 2004, para. 6; report by Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, mission to Colombia, U.N. Doc. E/CN.4/2004/18/Add.3, February 23, 2004, para. 42; report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, mission to Colombia, U.N. Doc. E/CN.4/2005/88/Add.2, November 10, 2004, para. 29, report of the Special Rapporteur on freedom of opinion and expression, Ambeyi Ligabo, mission to Colombia, U.N. Doc. E/CN.4/2005/64/Add.3, November 26, 2004, para. 82, and Human Rights Committee, concluding observations: Colombia, U.N. Doc. CCPR/CO/80/COL, May 2, 2004, para. 18.

[606] The Inter-American Commission said in its 2009 annual report that, according to information it had received, the measures taken by the DAS "were part of a pattern of intimidation and harassment designed to neutralize or restrict activities of individuals and organizations with opposition leanings." *Cf*. IACHR. Annual report 2009, OEA/Ser.L/V/II, Doc. 51 corr. 1, December 30 2009, para. 132.

[607] Ms. Arias, in her final written arguments, gave an explanation of the name of this operation, saying that it "evoked the 'collective' sense of the public transportation system in the city of Bogotá," which bears the same name; "collective sense" is here associated with the number of people and organizations that were the "targets" of the operation (merits file, volume VIII, folio 3333).

speaker, and because of the occasion on which it was said, all of which will come under scrutiny in this judgment (chapter VIII.2), even without overlooking that in his words, the Chief of State pointed to intelligence actions intended to "capture" "the terrorists," "their henchmen" and their "aides." Also clearly true, for the specific case of the alleged victims, is the fact that, from 2001 through 2003,[608] the website of the National Narcotics Control Bureau, which operates under the Ministry of Justice, ran a text describing the Collective and its members as "long-time defenders of the FARC" (*supra* para. 367).

490. The terms "political warfare,"[609] "political-psychological warfare, and "legal warfare"[610] took on greater visibility in this framework of attacks against human rights defenders because of their work for human rights and their role of challenging the government by filing complaints. Such terms were used explicitly in intelligence entries and records of the former DAS (*supra* paras. 338 and 345 and footnotes 348 and 386), using the language of armed conflict[611] to conceptualize and encompass the work and strategies of the human rights defenders and thus justify actions to counteract them, neutralize them, and discredit them, as this was the vision that guided the operations of the G3.[612]

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608 The post made explicit reference to the judicial action filed on January 22, 2001 (*supra* footnote 442). CAJAR and CEJIL said in their pleadings and motions briefs that the material was posted in 2001, while Ms. Arias said it was in 2003 (merits file, volume I, folios 255 and 491). Constitutional Court Judgment T-1062/05, October 20, 2005, said that the Ministry of Internal Affairs, in "its 2003 annual report," had ordered the National Narcotics Control Bureau to withdraw the post from its website.

609 Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights, U.N. Doc. E/CN.4/1998/16, March 9, 1998, para. 112:

> Members of Army intelligence brigade XX told the Office in Colombia that 85% of the people they considered subversive were conducting what the military called "political warfare." […] In their view, only 15% of the "subversives" were actually bearing arms. An Army commander, in a report to the director of the various offices of the prosecution […], said: "… as is known, subversion has an armed faction and a political faction, which together comprise the entire left wing, supported by various organizations that they control, especially in the areas of influence, such as human rights offices, which in turn are backed by the national and international nongovernmental organizations."

Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, final report, *Hay futuro si hay verdad: hallazgos and recomendaciones*, ("there is a future if there is truth: findings and recommendations"), Bogotá, June 28, 2022, p. 413 (evidence file, volume XLII, annex to the brief of CAJAR and CEJIL, April 10, 2023, folio 47364):

> The ongoing modus operandi of the different intelligence agencies was based on the concept of the internal enemy, which portrayed many of the struggles to defend human rights as a "form of warfare," as if it were a "legal war," a concept that has been used to justify the attack on human rights defenders, ignore their denunciations, or to maintain impunity for many actions. This relationship between the concept of "enemy" and the action of intelligence agencies has been a constant thread throughout the armed conflict. Changing the perspective of these agencies, having effective control mechanisms, and no longer considering the population and the social organizations and movements as the social basis for the guerrillas are part of the change of tools and mentalities that are needed to build peace.

Commission on Human Rights, Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, visit to the Republic of Colombia, U.N. Doc. E/CN.4/1995/111, January 16, 1995, paras. 25:

> The category "internal enemy," applied to everyone who is regarded as supporting the guerrilla in one way or another [...], is allegedly extended to all those who express dissatisfaction with the political, economic and social situation, particularly in the rural areas. Consequently, leaders and members of trade unions, political opposition parties, human rights organizations, social workers, etc., have been, alongside with peasants, the main victims of human rights violations in areas where there is armed conflict.

612 The former coordinator of the G3 (JFOO) said in his statement to the prosecution:

> When I say "political warfare", it means a strategy used by communism to take power through institutional destabilization; this political warfare makes up 70% of the effort of communism, and the other 30% comes from armed warfare […]. These strategies consist of very important players, NGOs, politicians, journalists, etc., who are trying to bring about national destabilization with their work.

Cf. Procedure for an initial statement by JFOO to the Prosecutor General, unit delegated to the Supreme Court, July 1, 2009 (evidence file, VI, file in the proceedings before the Commission, folios 15216 and 15218). The person appointed to head the DAS in October, 2005 (AMP), said in a statement before the prosecutor that this administrative agency "had significant ideological influence," adding:

> Sometimes it seemed to me that in the Paloquemao building [headquarters of DAS offices in Bogotá],

491. The Inter-American Court would clarify that, although it does not have sufficient information to mark out with precision the exact dates when this specific pattern of attacks against human rights defenders, including CAJAR and its members, was occurring, it is reasonable to conclude that it happened at least during the time the G3 was in operation and until the public became aware of the arbitrary actions that were committed as part of its work, that is, from 2003 through 2009 (*supra* paras. 315 and 316), although other facts can also be identified prior to that period. These dates can be drawn from the coinciding time and motivations between the content of disparaging public statements by the political elite, the operation and mission of the G3 as part of the structure of the DAS,[613] and the continuous presence of illegal actions by the G3 agents of the office even after the group ceased operations.[614] It is striking to see the ongoing concern expressed by international organizations before and during this period, about the recurring pattern of authorities publicly disparaging human rights defenders, which not only intensified by comparison with earlier years, but also widened to involve officials and employees of different sectors and hierarchies of the civil service, no longer limited only to members of the military (*supra* paras. 142, 144 and 145).[615] International organizations also spoke about the denunciations and information concerning irregular actions by the intelligence services and, specifically, suspicions about interception of communications, although this would not be corroborated until 2009, when the news media reported on the activities of the DAS (*supra* paras. 145 and 147).

492. It should be added here that the Supreme Court, in its verdict on one of the criminal proceedings against former DAS officers, pointed to a lengthy list of individuals and organizations, even beyond CAJAR and its members, who were branded "targets" for the purpose of intelligence operations, including numerous human rights defense institutions, defenders, opposition politicians, and journalists, who were singled out, according to the findings of the Court, to "block the legitimate exercise of human rights defense and government opposition."[616] This multiplicity of victims and the similar reasons for actions

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> the cold war had never ended. I was surprised and terribly concerned about the intense interest I saw in what they tended to call "political warfare," which traditional books describe more truthfully as black propaganda or smear campaigns.

Cf. Procedure for an initial statement by AMP to the Prosecutor General, unit delegated to the Supreme Court, July 1, 2009 (evidence file, volume I, annex to the Report on the Merits, folio 3856).

613 The Chamber of Criminal Cassation of the Supreme Court delivered a judgment on September 6, 2017, saying the person accused in the case (who had held the post of DAS director from August 16, 2002 through October 25, 2005) testified that the G3 "developed strategic intelligence as part of the policy of democratic security upheld by" the administration at the time the facts occurred; he also emphasized that intelligence reports and entries introduced as evidence in the process "mentioned the Office of the President of the Republic." *Cf*. Judgment by the Chamber of Criminal Cassation of the Supreme Court, September 6, 2017, file-39931 (evidence file, volume XII, annex 48 to the CAJAR and CEJIL pleadings and motions brief, folio 27173).

614 The Supreme Court convicted two former public officers, including the former director of the DAS (MPHA, 2007-2008), for a variety of crimes committed in 2007 and 2008 when they took part in intelligence activities involving members of the Supreme Court, opposition politicians, and others. *Cf*. Judgment by the Sixth Chamber of Criminal Cassation of the Supreme Court, April 28, 2015, file 36784 (evidence file, volume XVI, annex 27 to the answering brief, folios 31680 to 31970). The members of CAJAR proceeded on April 7, 2011, to return the vehicles assigned to them and release back to authorities the escorts taking part in their protection service because they did not trust the service "in which the DAS played a leading role" and because of "the use of the protection program as a tool to monitor them." *Cf.* Letter to the President of Colombia, April 7, 2011, annex to the State's brief of April 14, 2011 (evidence file, volume III, annex to the Report on the Merits, folios 7525 to 7531).

615 The Inter-American Commission said the following in 2019:

> The phenomenon of stigmatizing human rights defenders in Colombia emerged more than 40 years ago with the implementation of the "doctrine of the internal enemy," by which many individuals and organizations who were defending human rights were described as enemies of the State for supposedly standing in the way of national security objectives.

Cf. IACHR. Human Rights Defenders and Social Leaders in Colombia, OEA/Ser.L/V/II Doc. 262, December 6, 2019, para. 135.

616 *Cf.* Judgment by the Chamber of Criminal Cassation of the Supreme Court, September 6, 2017, file-39931 (evidence file, volume XII, annex 48 to the CAJAR and CEJIL pleadings and motions brief, folios 27164 to 27166).

against them by the former public intelligence agency corroborate the intended purpose of preventing human rights organizations and defenders, as well as others, from criticizing the policies and decisions of the authorities holding power at the time.

493. For the particular case of the alleged victims, the discrediting of their work in a setting of attacks and aggression against them began to worsen in 2001, when the publication described above appeared on the website of the National Narcotics Control Bureau. Specific acts of harassment, intimidation, threats, and disparagement of the alleged victims during this time were a reflection of the specific intent to silence the human rights defenders or weaken their efforts.[617] All this was enmeshed in an environment of extreme political and social polarization reigning in the midst of the armed conflict.[618]

494. The Court would like to highlight the following facts to illustrate: (a) the communiqué issued on September 29, 2003, signed by "commanders of paramilitary groups" and making reference to certain of these groups, which alluded to the President's statements in recent days and disparaging the work of CAJAR and the human rights organizations as being "financed by communist terrorism" (*supra* para. 172); (b) the package delivered to Soraya Gutiérrez Argüello at her home on May 13, 2005, containing "a doll that had been beheaded and dismembered, partially burned, and its body painted with red nail polish," "with a cross drawn on its chest" and a handwritten message saying, "You have a beautiful family; don't sacrifice it" (*supra* para. 233), and (c) classified ads in a widely circulated national newspaper on May 27, 2005, announcing the possibility of job openings in the Collective, interpreted as a "veiled threat" against the organization (*supra* para. 176).

495. These incidents demonstrate a consistent intention to intimidate and discredit the organization and its members (marked by the use of terms also common in the framework of G3 operations—"legal arm" or support of guerrilla groups, or "political warfare"), as well as explicit support for disparaging statements by national authorities concerning human rights organizations or challenging critics of current Government policies.[619] It cannot be ignored that at the time Ms. Gutiérrez Argüello received the threatening package, she was serving as president of the Collective,[620] and this reveals that the incident was part of a deliberate move

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[617] That is, "undermining the credibility of CAJAR, both nationally and internationally," as the State described it, with reference to the concrete actions of the G3, which had now added new objectives for its work—"spying," "pressure," "defamation," and "threats." *Cf*. The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1096).

[618] Commission on Human Rights, Report of the Special Rapporteur on freedom of opinion and expression, Ambeyi Ligabo, mission to Colombia, U.N. Doc. E/CN.4/2005/64/Add.3, November 26, 2004, paras. 7 and 8:

> The Colombian army, paramilitary forces and guerrilla groups have carried on an uncompromising 40-year-old civil war without reprieve. […] Human rights defenders, trade union leaders, Church dignitaries and media representatives are among the most common targets in the civil war. Owing to the complexity of the conflict, the simple fact of expressing opinions may expose the ordinary citizen to retaliation. […] The Government of President Álvaro Uribe [...] has been characterized by the polarization of opinions and the stigmatization of opponents. […] Any kind of criticism, remark or observation might be interpreted as an attack on the State and might bring legal or paramilitary forces to react, with devastating effect for pluralistic debate. The Government's struggle against terrorism is legitimate, but it should not be used to the detriment of the true exercise of political opposition and of the work for the promotion and protection of human rights.

Expert witnesses Lourdes Castro García and Leonardo Díaz Morales spoke of the "persistence of socio-political violence" as one of the "structural factors" in the aggression against human rights defenders in Colombia, understood as "premeditated violence by different [not exclusively State] actors for political, social, economic, or cultural reasons, selectively and systematically against individuals or social groups considered as opposition or uncomfortable for certain interests or visions of society." *Cf.* Joint written expert opinion by Lourdes Castro García and Leonardo Díaz Morales, April 25, 2022 (evidence file, volume XXXIII, affidavits, folio 45067).

[619] Attorney Alirio Uribe Muñoz said at public hearing before this Court that, in the framework of G3 operations, "not only the Lawyers Collective, but also the human rights movement overall, were declared to be enemies." *Cf*. Statement at public hearing before this Court by Alirio Uribe Muñoz.

[620] *Cf.* Statement at public hearing before this Court by Soraya Gutiérrez Argüello.

to undermine her as a human rights defender, along with the organization she led.[621]

496. To all this should be added the failure of the justice system to take effective action to shed light on the acts of violence perpetrated against human rights defenders (which will come under examination in chapter VIII.3), and this point has been raised repeatedly over the years by international organizations[622] and has also been considered by the Colombian Constitutional Court.[623]

497. This Court therefore cannot dismiss Colombia's argument concerning the complexity of the context surrounding the situation of human rights defenders in the country and the risks they have faced and continue to face. This complexity is evident in an analysis of the period approximately from 2003 to 2009, with a pattern of harassment, intimidation, aggression and threats against the Collective and its members, enmeshed in an overall dynamic of attacks and vilification of human rights defenders for their work and their critical stance against the government authorities at the time.

498. As the different reports and international declarations have also shown, an analysis of the situation of violence facing the human rights defenders in Colombia reveals multiple legal professionals who have been threatened because of their participation in proceedings involving human rights violations, some of them associated with the armed conflict, and this, in several cases, pushed them out of their homes or offices, or even out of the country.[624]

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621 This was the view of the prosecution in its investigation of the incident, when it said, "this was not done only at the personal [level], but was intended to create alarm or fear among the members of the institution" that Ms. Gutiérrez Argüello represented. *Cf*. Filing 110016000027200500148 (evidence file, volume XIX, annex 63 to the answering brief, folio 34700).

622 *Cf.* Inter Alia, Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. E/CN.4/2001/15, March 20, 2001, para. 230; Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/4/48, March 5, 2007, Annex II "Situación de grupos en particular condición de vulnerabilidad o discriminación," para. 5; U.N. Doc. A/HRC/7/39, February 28, 2008, paras. 62. U.N. Doc. A/HRC/13/72, March 4, 2010, para. 23; U.N. Doc. A/HRC/16/22, February 3, 2011, para. 13; U.N. Doc. A/HRC/22/17/Add.3, January 7, 2013, para. 41; U.N. Doc. A/HRC/25/19/Add.3, January 24, 2014, para. 75; U.N. Doc. A/HRC/28/3/Add.3, January 23, 2015, para. 70; U.N. Doc. A/HRC/31/3/Add.2, March 15, 2016, para. 54; U.N. Doc. A/HRC/34/3/Add.3, March 15, 2017, para. 59; U.N. Doc. A/HRC/37/3/Add.3, March 2, 2018, para. 17; U.N. Doc. A/HRC/40/3/Add.3, February 4, 2019, para. 30, and U.N. Doc. A/HRC/43/3/Add.3, May 8, 2020, para. 28. See also, Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, mission to Colombia, U.N. Doc. A/HRC/13/22/Add.3, March 1, 2010, para. 120; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, mission to Colombia; U.N. Doc. A/HRC/14/24/Add.2, March 31, 2010, para. 74, Report of the Special Rapporteur on the situation of human rights defenders, visit to Colombia, Michel Forst, U.N. Doc. A/HRC/43/51/Add.1, December 26, 2019, para. 25, and Human Rights Committee, Concluding observations on the seventh periodic report of Colombia, U.N. Doc. CCPR/C/COL/CO/7, November 17, 2016, para. 38. The Inter-American Commission, in its 2013 report on the situation of human rights in Colombia, cited "impunity" in cases of aggression and harassment against human rights defenders, saying, "one of the problems identified [...] that favors impunity [was] the lack of specialized protocols for investigation that make it possible to effectively coordinate and join investigations," and added,

> "as part of the due diligence required in investigations into violations of the rights of a human rights defender, that authority should take into account his or her activity to identify the interests that could have been affected in the course of that activity, and thereby be able to establish lines of investigation and hypotheses as to the crime. The Commission also considers that coordination and, as the case may be, unifying the investigations into the crimes committed against civil society organizations or human rights defenders, could contribute to progress in the investigations by identifying the number of incidents, and the nature of these incidents, and possibly patterns of attacks or other acts of aggression or harassment against human rights defenders."

Cf. IACHR. Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, paras. 1153 and 1198.

623 The Constitutional Court, in Judgment T-469/20 of November 3, 2020, examined "data on the investigation and prosecution of crimes against human rights defenders," particularly crimes of threats, and stressed that "only 1.26% showed progress in solving the crimes, and if convictions are considered as the only true marker of crime solving, the figure drops to 0.18%, bringing impunity to 99%."

624 *Cf.* Commission on Human Rights, Joint report of the Special Rapporteur on the question of torture, Nigel S.

The Court cautions, in this setting, that certain members of the Collective have also been targeted by threats, specifically because of their role in investigations and judicial cases to clear up different acts of violence, some of them extremely serious, attributed to the armed forces. It is safe to suggest that these acts of threats, harassment and intimidation were apparently committed in retaliation by those who felt that their interests had been jeopardized by the work of CAJAR, or eager to hinder its work in the justice system.

499. Information submitted to this proceeding shows that CAJAR (as has also occurred with other entities and human rights defenders) has been targeted by constant offenses and threats via different avenues, mainly printed texts and email, most of them allegedly signed by armed groups operating outside the law, more particularly, paramilitary organizations. At least since the 2000s, the perpetrators of these threats have associated the Collective and sometimes its particular members, identified specifically, with guerrilla or subversive groups, therefore declaring them "military targets" and giving them warnings clearly intended to intimidate, suggesting that they be "exterminated" or "annihilated." All of this includes a barrage of insults and vilification of their work. The threats even sounded alarm bells among international institutions.[625]

500. It should be stated in closing that, even after the Peace Agreement was signed in 2016 and the context of violence against human rights defenders saw some changes, the defenders, including the alleged victims in this case, have continued up to the present day to complain of actions perpetrated in Colombia over the course of decades, including the illegal intelligence activities and public statements by officials and agencies, delegitimizing them and discrediting them, even as little or no progress was made in investigations for the acts of violence unleashed against them.[626] All this has been brought before the Court in the instant case and has continued to be a source of concern for multiple international entities.[627]

501. As a corollary, the members of CAJAR have faced constant peril since the 1990s because

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Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Bacre Waly Ndiaye, visit to the Republic of Colombia, U.N. Doc. E/CN.4/1995/111, January 16, 1995, para. 41; Report of the Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, mission to Colombia, U.N. Doc. E/CN.4/1998/39/Add.2, March 30, 1998, para. 110; Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. E/CN.4/2002/17, February 28, 2002, para. 88, and Report of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, mission to Colombia, U.N. Doc. E/CN.4/2002/106/Add.2, April 17, 2002, para. 60.

625 *Cf.* Inter alia, Commission on Human Rights, Report of Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, report on the mission to Colombia, U.N. Doc. E/CN.4/2001/65, February 1, 2001, para. 73., and U.N. Doc. E/CN.4/2002/72, February 11, 2002, para. 29. See also, Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/4/48, March 5, 2007, Annex II "Situación de grupos en particular condición de vulnerabilidad o discriminación", para. 3, and Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilanie, U.N. Doc. A/HRC/4/37/Add.1, March 27, 2007, para. 177.

626 Juan Carlos Botero Ospina said in his statement, "the Government understands" that "the problem" with "progressing in the development and adoption of a consensus-based policy on respect and guarantees for the work of defending human rights" "is limited by the fact that the trials for damage to human rights defenders are associated with: (a) the presence of illegal armed groups and illegal economic activities; (b) prejudices and stereotypes against human rights defenders, and (c) the challenges that face institutional capacity and the ability to coordinate all the stages of investigation, trial and sanction for the aggressions against human rights defenders. The witness added, "in the view of social organizations," the court cases are also addressing: (a) situations of social conflict involving judicial and administrative processes for corruption cases; (b) stigmatizing; (c) the practice of social protest; (d) opposition to mining projects, and (e) political opposition. *Cf.* Statement before a public attestor by Juan Carlos Botero Ospina, May 2, 2022 (evidence file, volume XXXIV, affidavits, folio 46123).

627 *Cf.* Inter alia, Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, U.N. Doc. A/HRC/34/3/Add.3, March 15, 2017, para. 57, and U.N. Doc. A/HRC/49/19, May 17, 2022, para. 40. See also, Committee Against Torture, Concluding observations on the fifth periodic report of Colombia, U.N. Doc. CAT/C/COL/CO/5, May 29, 2015, para. 26, and Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, visit to Colombia, Michel Forst, U.N. Doc. A/HRC/43/51/Add.1, December 26, 2019, para. 27.

of their activities to promote, protect, and defend human rights. This risk has been shaped over the years by the convergence of different causes and a variety of factors, all of which has been compounded into a situation that, given certain actions perpetrated against the alleged victims, qualify as extreme vulnerability. The Court will devote the following chapters to a discussion of the violation of human rights enshrined in the American Convention in this context of extreme vulnerability.

VIII.2
RIGHT TO PRIVACY, RIGHT TO FREEDOM OF THOUGHT AND EXPRESSION, AND RIGHTS OF THE CHILD, READ IN CONJUNCTION WITH THE OBLIGATION TO RESPECT RIGHTS AND THE OBLIGATION TO ADOPT DOMESTIC LEGAL EFFECTS,[628] WITH RESPECT TO THE INTELLIGENCE ACTIVITIES AND PUBLIC STATEMENTS BY STATE AUTHORITIES

502. The Court will now examine the arguments concerning human rights violations through (i) intelligence activities against the alleged victims, and (ii) public statements about the alleged victims by State authorities.

A. Right to privacy, right to freedom of thought and expression, and rights of the child, with respect to intelligence activities targeting the alleged victims

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

503. The ***Commission*** argued that the operation of special intelligence group 3 inside the DAS "has been established," and that it conducted activities detrimental to the alleged victims. It said that the State had reported no actions taken at the time of the facts to adopt regulations that would govern the ongoing surveillance and monitoring activities, such that the necessary safeguards were not in place to prevent these activities from violating human rights. The activities were not conducted under judicial oversight, no limit was set on their scope or duration, no grounds were given to justify them, nor had competent authorities been empowered to authorize or supervise them.

504. It noted that Colombia had violated the right to privacy "in injury of of the persons who were members of CAJAR at the time of the intelligence operations." The intelligence activities, it stated, "impaired the regular work of the organization and necessarily had an intimidating effect on the effective exercise of their rights to freedom of expression and freedom of association, which was prejudicial to the members of" the Collective.

505. It argued that only in 2013 had Colombia "adopted a law allowing the effective exercise of the right to *habeas data* so that" those who had been victims of "arbitrary intelligence activities" would have "access to their own data and thus would be able to request that they be corrected, updated, or if relevant, cleared from the intelligence archives." The State, therefore, "has not provided the victims with an effective remedy to address their grievances about access to information in the military intelligence data bases."

506. ***CAJAR and CEJIL*** argued that the State had violated the rights of the members of the Collective and their families because of "interference in all spheres of their lives by means of the illegal intelligence activities," of which the authorities had been aware since 1999. They pointed out that there were no grounds for these activities "in any law at all, they did not pursue a legitimate purpose, and they were not necessary, proportional or reasonable." They

[628] Articles 11, 13 and 19 of the American Convention on Human Rights, read in conjunction with Articles 1(1) and 2 thereof.

said that the stated purpose of the actions was unlawful, as "they sought to undermine the human rights defense work that the Collective was doing." The intent was to cause the alleged victims "to abandon their human rights defense work," and it impaired the exercise of their right to "personal autonomy," thus violating Article 11(2) of the American Convention.

507. They added that the investigations undertaken by the State "did not cover all the perpetrators or all the facts." Moreover, "the measures adopted by the State, […] such as […] the law governing intelligence activities, do not meet with inter-American standards. The State, they pointed out, failed to abide by the obligations set forth in Article 2 of the American Convention, because at least until 2013, it had no legislative framework on intelligence activities.

508. They argued that the members of CAJAR and their families had experienced "infringement of their right of […] access to their intelligence information gathered by the security forces," as "they have never had access to the full content" of information, despite formal applications to receive it. They asked that the State be found liable for violating Articles 11(1), 11(2), 11(3), 13(1) and 13(2) of the American Convention, read in conjunction with Articles 1(1) and 2 thereof, in injury of "the members of CAJAR and their families."

509. ***Ms. Arias*** argued that the illegal intelligence activities against members of the Collective served "the unlawful purpose of undermining their credibility," which led to "arbitrary, abusive interference in the private lives of the lawyers and their families." She added that the private family life of the alleged victims was violated by the illegal wiretapping and stalking that prevented them from being able to communicate freely.

510. She held that the State "made no distinction between" adults and minors, "as can be seen in the DAS reports profiling CAJAR members and their families," including children, and this was "a direct attack on the rights of the child, curtailing their ability to enjoy a peaceful childhood under the State's duty to guarantee protection."

511. She added that the State's response concerning the intelligence activities "has not been sufficient to rectify the consequences of the alleged violations," because "there has been no investigation or sanctions for the one person who can be considered the maximum authority responsible, that is, the direct superior and beneficiary of DAS intelligence activities." She argued that even the proceedings that had been taken were of limited scope, addressing only the actions that violated of the right to privacy. Moreover, "the international offense has not been remedied," and "the State's measures have not been effective and have not achieved the desired effect." She asked for the State to be found internationally liable for violating Articles 11 and 13 of the American Convention, in injury of of the former CAJAR members she was representing.

512. The ***State*** argued that it had "implemented activities intended to fully rectify the human rights violations that had occurred as a consequence of the intelligence operations," and that the incidents had been "duly prosecuted, investigated, tried, and sanctioned," and therefore the principle of subsidiarity "precluded a ruling by the Court." It noted that "not only is it unnecessary, but also unfounded for the Court […] to rule on facts that, far from being ignored by the State, are receiving its full attention."

513. It then responded to the claim that the alleged victims had been given no access to the information obtained during the intelligence operations, saying that there had been no "evidence submitted to corroborate that they had requested access to the information." After the DAS was eliminated, the custody and clearing of its "so-called intelligence, counterintelligence, and expenditure archives" had been assigned to the Office of the Solicitor

General, and the alleged victims had not applied to that institution for access to the desired information, nor had they sought relief from the National Directorate of Intelligence, "the entity responsible for maintenance and review of the [...] DAS archives." Moreover, the information on file had not been completely unknown to the alleged victims, who had been aware of it through a "report by the Office of the Solicitor General."

514. It added that the JEP, in the use of its powers under Order 001 of March 12, 2018, had called for the adoption of "protective measures on the intelligence and counterintelligence archives of the former" DAS, "to preserve documents from the armed conflict." Therefore "it is not true […] that the State is deliberately and arbitrarily refusing access to the information held in the archives; instead, this information must remain classified under the terms of the protective measures," which were necessary, "not only because of national security concerns, but also for the safety of the alleged victims."

515. Finally, it reiterated that the alleged victims had not availed themselves of the possibility of applying for constitutional relief as the "best and most effective mechanism for requesting an unappealable order on access to information about them in the DAS archives." Based on these arguments, it said that "there are insufficient grounds to conclude that the State is responsible for violating Article 13 of the American Convention."

A.2. Considerations of the Court

516. It has been established in the instant case that public officials conducted operations that included surveillance, monitoring, interception of communications, photographing, information gathering, and development of intelligence profiles and records containing personal, family, and professional information, as part of the intelligence activities targeting the alleged victims.

517. These activities, whose scope and impact varied over time, were corroborated by the Office of the Solicitor General in a report on May 7, 1999, when, having reviewed intelligence archives of the DAS, the National Police, and the Army military intelligence headquarters, it found entries in the magnetic files showing information and data that had been collected on the members of the Collective (*supra* paras. 305 to 309). The document "Miscellaneous" (described as an "intelligence report" by the then director of the President's program for human rights and international humanitarian law, *supra* para. 311), found by the prosecution during an inspection of the Army school of artillery on November 6, 1996, contained information on Alirio Uribe Muñoz (*supra* para. 303). The courts also corroborated the activities being conducted by the DAS through its G3 operations from March, 2003 through October, 2005 (*supra* paras. 315 to 350).

518. Finally, according to the body of evidence in the proceedings, the prosecution ordered an investigation after a news publication in 2020 that pointed to intelligence actions by units of the Army. The prosecution at that time reported that among the persons "referenced" as "targets of data surveillance" were two lawyers from the Collective (*supra* para. 360). The disciplinary chamber of the Office of the Solicitor General issued an order on September 22, 2020, recognizing the lawyers as "victims" in a process against members of the Army (*supra* para. 365).

519. The Court will now examine the different arguments about human rights violations committed through these intelligence activities, beginning with an identification of the parameters that will be useful for the analysis.

A.2.1. General considerations on human rights and State's implementation of intelligence activities

520. A review of the criteria applicable to intelligence activities requires awareness of the scope of human rights and the legitimate limitations that can be placed on them. This is because of the close link between the types of activities common in the framework of State intelligence activities and human rights, in two senses: (a) first, intelligence activities must necessarily be conducted for the ultimate purpose of protecting the people living in the national territory, and this includes safeguarding their rights and freedoms; and (b) second, the very exercise of intelligence activities, given the methods employed and their usefulness for obtaining and using information, including personal data, presuppose interference in the sphere of personal rights, particularly the right to private life;[629] because of all this, clear boundaries must be placed on the demands, requirements, and controls established to ensure that these activities will be compatible with the conditions and purposes of the rule of law and, accordingly, with the content of the American Convention.

521. The Court's case law has made specific reference to this right in its analysis of Article 11 of the Convention, which prohibits any arbitrary or abusive interference in a person's private life and spells out various areas of this, such as the privacy of his family, his home or his correspondence.[630] The Court has held that the sphere of privacy is characterized by being exempt from and immune to abusive and arbitrary invasion or attack by third parties or public authorities.[631] The Inter-American Court has also indicated in its case law that the right to private life is not an absolute right and, therefore, may be restricted by the States provided that the interference is not abusive or arbitrary. Consequently, such interference must be established by law, seek a legitimate purpose, and comply with the requirements of suitability, necessity and proportionality; in other words, it must be necessary in a democratic society.[632]

522. The Human Rights Committee has said, with reference to the right enshrined in Article 17 of the International Covenant on Civil and Political Rights,[633] that any "[i]nterference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant," and must be "reasonable in the particular circumstances."[634]

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629 The United Nations Special Rapporteur on the right to privacy has said that the right to privacy is "a necessary precondition for the protection of fundamental values, including liberty, dignity, equality and freedom from government intrusion," which makes it "an essential ingredient for democratic societies" which therefore requires "strong protection." *Cf.* Human Rights Council, Report of the Special Rapporteur on the right to privacy, U.N. Doc. A/HRC/40/63, October 16, 2019, para. 51.

630 *Cf. Case of Ituango Massacres v. Colombia.* Judgment of July 1, 2006. Series C No. 148, para. 193, and *Case of Manuela et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 2, 2021. Series C No. 441, para. 204.

631 *Cf. Case of Ituango Massacres v. Colombia*, *supra*, paras. 193 and 194, and *Case of Tzompaxtle Tecpile et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 7, 2022. Series C No. 470, para. 189.

632 *Cf. Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs.* Judgment of January 27, 2009. Series C No. 193, para. 56, and *Case of Fernández Prieto and Tumbeiro v. Argentina. Merits and Reparations*. Judgment of September 1, 2020. Series C No. 411, para. 105.

633 Article 17 of the International Covenant on Civil and Political Rights reads: "1. No one may be the object of arbitrary or abusive interference with his private life, his family, his home or his correspondence, or of unlawful attacks on his honor or reputation. 2. Everyone has the right to the protection of the law against such interference or attacks." Article 11 of the American Convention was written in terms similar to those of the Covenant and Article 12 of the Universal Declaration of Human Rights, which reads: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." It is also substantially the same as the corresponding text in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

634 *Cf.* International instruments on human rights, Compilation of general comments and general recommendations adopted by human rights treaty bodies, General comment No. 16 of the Human Rights Committee:

523. In consideration of the scope of the right to privacy and other rights that stand to be injured,[635] and in view of the requirements the States must meet when setting legal, reasonable limits on these rights, international forums have identified a body of human rights standards and criteria that would be applicable to intelligence activities by public authorities and to the array of actions and strategies they may include. The Court will now review the criteria contained in its own case law and that of other regional human rights courts, in statements and reports by various United Nations bodies,[636] and in other international instruments.[637] This summary of criteria and standards makes no claim to cover all matters

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Article 17 - Right to privacy, U.N. Doc. HRI/GEN/1/Rev.7, May 12, 2004, paras. 3 and 4 (hereinafter "General Comment No. 16 of the Human Rights Committee"). See, "Human Rights Council. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, U.N. Doc. A/HRC/13/37, December 28, 2009, paras. 16 and 17, and United Nations General Assembly, The right to privacy in the digital age, U.N. Doc. A/RES/75/176, December 28, 2020, para. 4.

635 The OHCHR has said that other rights in addition to privacy may be affected by surveillance, the interception of communications and the collection of personal data, including the right to freedom of opinion and expression, the right to seek, receive and impart information; and the freedom of peaceful assembly and association. *Cf.* Human Rights Council, The right to privacy in the digital age, Report of the Office of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/27/37, June 30, 2014, para. 14. The OHCHR has also spoken about infringement of rights through control of online content, saying that the gathering, storage and use of data "can have an impact on a number of human rights, including the rights to privacy, freedom of peaceful assembly and association, and freedom of movement." The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression goes on to say that online surveillance "may also undermine the right to form an opinion, as the fear of unwilling disclosure of online activity, search and browsing, may deter individuals from accessing information, particularly where such surveillance leads to repressive outcomes." *Cf.* Human Rights Council, Report on best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism, Report of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/33/29, July 21, 2006, para. 56.

636 The Court would single out the following: (a) Human Rights Council, Report of Martin Scheinin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight, U.N. Doc. A/HRC/14/46, May 17, 2010 (hereinafter "Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46"). The Special Rapporteur says in his report that the compilation of "good practices" was not intended "to promulgate a set of normative standards," but rather to "identify common practices that contribute to the respect for the rule of law and human rights by intelligence services" (para. 5); thus, the content of the report is particularly relevant for the task of distinguishing the demands, requirements, and controls applicable to intelligence activities. The report also says that "the legal and institutional frameworks which apply to intelligence services' counter-terrorism activities cannot be separated from those which apply to their activities more generally" (para. 6); (b) Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, U.N. Doc. A/HRC/23/40, April 17, 2013 (hereinafter "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/23/40"); (c) Human Rights Council, The right to privacy in the digital age, Report of the Office of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/27/37, June 30, 2014 (hereinafter "The right to privacy in the digital age, OACNUDH report, A/HRC/27/37"), and (d) United Nations General Assembly, The right to privacy in the digital age, U.N. Doc. A/RES/75/176, December 28, 2020 (hereinafter "General Assembly Resolution A/RES/75/176").

637 The Court notes the importance of the following documents: (a) The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (hereinafter "Johannesburg Principles"), developed in 1995 by a group of experts on international law, security, and human rights. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has said that these principles "offer useful guidance in assessing the often competing claims of freedom of expression and national security." *Cf.* Commission on Human Rights, Report of the Special Rapporteur, Abid Hussain, U.N. Doc. E/CN.4/1996/39, March 22, 1996, para. 4. The report of the Special Rapporteur, including the Johannesburg Principles as an annex, is available at: https://undocs.org/Home/Mobile?FinalSymbol=E%2FCN.4%2F1996%2F39&Language=E&DeviceType=Desktop&LangRequested=False; (b) The Tshwane Principles on National Security and the Right to Information, known as the "Tshwane Principles" (hereinafter "Tshwane Principles"), drafted in 2013 by 22 organizations and academic centers, with the advisory assistance of over 500 experts from more than 70 countries, including special rapporteurs from the United Nations and from the regional human rights systems. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has said that these principles "provide guidance for States seeking to balance their interests in protecting information and ensuring the public's right to know." *Cf.* United Nations General Assembly, Note by the Secretary-General, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, U.N. Doc. A/70/361, September 8, 2015,

of interest regarding State intelligence activities, but only those that are applicable to the cause of action in this international proceeding. The compilation of such standards in this judgment is equally important because the obligations of the States under the American Convention are not limited merely to the literal text of its articles, but also extend to the case law of the Inter-American Court, which is the final arbiter of the Convention.[638] Ultimately, the obligation to incorporate these standards into domestic law, in keeping with Article 2 of the Convention, is binding on the entire public edifice, including legislative activity.

524. The discussion of accepted standards will focus on two different dimensions useful for the examination of the arguments in the instant case, as follows: (a) standards on the powers, constraints and controls app0licable to authorities regarding intelligence activities, and (b) standards for the collection, management, and access to personal data in the hands of intelligence agencies: protection of personal data and the right to informational self-determination

a. Criteria on the powers, constraints and controls applicable to authorities regarding intelligence activities

525. The first point to be underscored is international acceptance of the importance of and need for intelligence services or agencies in the different States, implemented by civil, police or military authorities, whose role is "fundamental" for protecting overall society and individuals and their rights, in the face of a variety of "threats" that may arise. Intelligence activities entail multiple tasks, conducted using a variety of mechanisms and strategies designed to track, obtain, compile, sort, categorize, process, record, use, evaluate, analyze, interpret, produce, and disseminate different kinds of information, including personal data, which are useful and necessary for those whose duty is to direct public affairs and exercise authority to develop security policies, if they are to make sound, relevant, timely decisions that will guarantee protection of society, individuals, and ultimately, their rights and freedoms.[639]

526. The Court is aware of this, and recognizing the power of the States to pursue intelligence

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para. 44. The principles are available at: https://sgp.fas.org/library/tshwane.pdf, and (c) the following documents by the Inter-American Juridical Committee: (i) Model Inter-American Law on Access to Public Information 2.0, Doc. OEA/Sec.General, DDI/doc. 3/20, March 18, 2020 (hereinafter "Model inter-American law on access to public information"), which includes in an annex the Model inter-American law on document management (hereinafter, the "Model inter-American law on document management"); they were drafted by the advisory group on legal affairs of the Organization of American States (OAS), tasked to promote the progressive development and codification of international law (Articles 53 and 99 of the OAS Charter). The two documents were drafted in response to a mandate of the OAS General Assembly (Strengthening Democracy, AG/RES. 2905 (XLVII-O/17), para. ix), reflecting its interest in supporting "the efforts of member states [...] to adopt legislative and other appropriate measures to ensure access to public information and protection of personal data in accordance with their domestic laws and consistent with their international obligations and commitments." Available at: https://www.oas.org/en/sla/dil/docs/publication_Inter-American_Model_Law_2_0_on_Access_to_Public_Information.pdf, and (ii) Updated principles on privacy and protection of personal data, with notes, Doc. OEA/Ser. Q, CJI/RES. 266 (XCVIII/21), April 9, 2021 (hereinafter "Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes"); this document was also the drafted in response to instructions by the OAS General Assembly (International Law, AG/RES. 2926 [XLVIII-O/18], June 5, 2018). Available at: https://www.oas.org/en/sla/iajc/docs/Publication_Updated_Principles_on_Privacy_and_Protection_of_Personal_Data_2021.pdf.

638 *Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, and *Case of García Rodríguez et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 25, 2023. Series C No. 482, para. 177.

639 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, paras. 2 and 6, and Practice 1. See ECtHR, inter alia, *Klass and others v. Germany,* No. 5029/71, Judgment of September 6, 1978, para. 42; *Rotaru v. Romania* [GS], No. 28341/95, Judgment of May 4, 2000, para. 47, and *Segerstedt-Wiberg and others v. Sweden*, No. 62332/00, Judgment of September 6, 2006, para. 88.

activities,[640] it has emphasized the requirements and controls that should be in place to guarantee effective protection of human rights. Thus, in the case of *Myrna Mack Chang v. Guatemala*, the Court said that public agencies responsible for intelligence "must be […] respectful, at all times, of the fundamental rights of persons" and "subject to control by civil authorities, including not only those of the executive branch, but also, insofar as pertinent, those of the other public powers." The Court went on to say, "[m]easures to control intelligence activities must be especially rigorous because, given the conditions of secrecy under which these activities take place, they can drift toward committing violations of human rights and illegal criminal actions."[641] The same view was reiterated in *Landaeta Mejías Brothers et al. v. Venezuela.*[642]

527. The challenge is therefore to identify the requirements and controls under which intelligence activities should operate if they are to be valid and legitimate in a democratic system and, consequently, compatible with human rights and the American Convention. This exercise is of paramount importance, not only because of the friction that will immediately arise between intelligence activities and the rights of persons, but also because such operations, if they are to fulfill their mission effectively, must generally take place in secret or in confidentiality, outside the awareness of the population and without the consent of those who could be directly affected, and this raises the risk of abusive or arbitrary exercise of public power.[643]

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640 A general review of domestic regulations in the States that have recognized the contentious jurisdiction of the Inter-American Court reveals the different standards that govern the powers of particular bodies to conduct intelligence activities: (a) Republic of Argentina: Ley de Inteligencia Nacional, Law No. 25,520; (b) State of Barbados: Defence Act, No. 1979-25; (c) Plurinational State of Bolivia: Ley Orgánica de la Policía Nacional, Law No. 734; (d) Federative Republic of Brazil: Law No. 9,883 (Agência Brasileira de Inteligência); (e) Republic of Chile: Ley del Sistema de Inteligencia del Estado, Law No. 19,974; (f) Republic of Colombia: Law 1621 of 2013 (Ley estatutaria sobre actividades de inteligencia y contrainteligencia); (g) Republic of Costa Rica: Ley General de Policía, Law No. 7410; (h) the Dominican Republic: Law 857 (Departamento Nacional de Investigaciones); (i) Republic of Ecuador: Ley de Seguridad Pública y del Estado, published September 28, 2009; (j) Republic of El Salvador: Ley del Organismo de Inteligencia del Estado, Legislative Decree No. 554 of 2001; (k) Republic of Guatemala: Ley Marco del Sistema Nacional de Seguridad, Executive Order 18-2008; (l) Republic of Haiti: Executive Order of November 25, 2020 (Agence nationale d'intelligence); (m) Republic of Honduras: Ley de Inteligencia Nacional, Executive Order No. 211-2012; (n) United Mexican States: Ley de Seguridad Nacional, published January 31, 2005; (o) Republic of Nicaragua: Ley de Seguridad Soberana de la República de Nicaragua, Law No. 919; (p) Republic of Panama: Executive Order No. 98 (Consejo de Seguridad Pública y Defensa Nacional); (q) Republic of Paraguay: Law No. 5241 (Sistema Nacional de Inteligencia); (r) Republic of Peru: Decreto Legislativo de Fortalecimiento y Modernización del Sistema de Inteligencia Nacional, Decree No. 1141; (s) Republic of Suriname: Constitution of Suriname (Article 178, police tasks), and (t) Eastern Republic of Uruguay: Law No. 19696 (Sistema Nacional de Inteligencia del Estado).

641 *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs.* Judgment of November 25, 2003. Series C No. 101, para. 284.

642 *Cf. Case of Landaeta Mejías Brothers et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 27, 2014. Series C No. 281, para. 126.

643 Inter-American case law has seen cases in which government intelligence services have overreached the power they can legitimately hold in a democratic system and have violated human rights in a variety of ways. These include: *Case of Myrna Mack Chang v. Guatemala, supra*; *Case of Maritza Urrutia v. Guatemala. Merits, Reparations and Costs.* Judgment of November 27, 2003. Series C No. 103; *Case of Huilca Tecse v. Peru. Merits, Reparations and Costs.* Judgment of March 3, 2005. Series C No. 121; *Case of Blanco Romero et al. v. Venezuela. Merits, Reparations and Costs.* Judgment of November 28, 2005. Series C No. 138; *Case of Goiburú et al. v. Paraguay*, *supra*; *Case of La Cantuta v. Peru. Merits, Reparations and Costs.* Judgment of November 29, 2006. Series C No. 162; *Case of Escher et al. v. Brazil, supra*; *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 22, 2009. Series C No. 202; *Case of Gelman v. Uruguay. Merits and Reparations*. Judgment of February 24, 2011. Series C No. 221; *Case of Gonzalez Medina and family v. The Dominican Republic. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 27, 2012. Series C No. 240; *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala, supra*; *Case of García and Family v. Guatemala, supra*; *Case of Landaeta Mejías Brothers et al. v. Venezuela, supra*; *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia, supra*; *Case of Julien Grisonas family v. Argentina, supra*; *Case of Maidanik et al. v. Uruguay. Merits and Reparations*. Judgment of November 15, 2021. Series C No. 444; *Case of Movilla Galarcio et al. v. Colombia, supra*, and *Case of Deras García et al. v. Honduras. Merits, Reparations and Costs.* Judgment of August 25, 2022. Series C No. 462.

a.1. The need for legal standards on intelligence activities: the principle of non-delegable legislative powers

528. The first requirement in this area is that established law must define intelligence activities, their intended purpose, and the powers of competent agencies and authorities.[644] It is therefore essential to have a law that specifically regulates these matters, and the content of the law must be accessible to the public.[645] This first requirement is consistent with inter-American case law on restrictions to rights,[646] particularly the right to privacy (*supra* para. 521), and its purpose is to ensure that intelligence activities do not stray from serving the general interests of society, becoming themselves a threat to respect for the dignity and rights of persons. Such a law must be enacted by the legislative branch[647] ("law" in the formal sense), and must establish as specifically as possible the different threats that could create the need to undertake intelligence activities by agents of the State who are qualified in this field and whose powers should be clearly and exhaustively established, so as to place effective limits on their actions, prevent arbitrariness in their operations, and make it possible to control their work and, ultimately, hold them liable.[648]

529. The Court has held that this first condition, known as "*reserva de ley,*" means that certain rights can be defined only by an act of the legislative branch; it is characteristic of "democratic constitutionalism," is "essential to the legal protection and full existence of [...] rights, and "effectively ensure[s] […] control of the manner in which the organs exercise their powers."[649]

530. The need for the law to be accessible to the public means that, unlike intelligence activities per se, the legal framework authorizing and regulating them must never be kept confidential, so that anyone can learn what powers the State may hold in this area, and on that basis, be able to anticipate that such activities could potentially affect their own sphere of rights.[650]

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644 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practices 2 and 20, and The right to privacy in the digital age, Report of the OHCHR, A/HRC/27/37, para. 23.

645 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practices 2 and 20, and The right to privacy in the digital age, Report of the OHCHR, A/HRC/27/37, para. 23.

646 See, inter alia, *The Word "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 22, and *Case of Baraona Bray v. Chile, supra,* para. 137.

647 *Cf.* Advisory opinion OC-6/86, *supra*, paras. 22 and 38, and *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 56. The Court has asserted that any possible restriction on human rights must be set forth in a law enacted by the legislative branch ("law" in the formal sense) because such a procedure "clothes these acts with the assent of the people" and "allows minority groups to express their disagreement, propose different initiatives, participate in the shaping of the political will, or influence public opinion so as to prevent the majority from acting arbitrarily," as "an important obstacle to the arbitrary exercise of power," all of which are inherent to representative democracy. See also, The right to privacy in the digital age, OHCHR report A/HRC/27/37, para. 29, and United Nations General Assembly, Note by the Secretary-General, Promotion and protection of human rights and fundamental freedoms while countering terrorism, U.N. Doc. A/69/397, September 23, 2014, paras. 39 and 40.

648 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practices 3 and 4, and The right to privacy in the digital age, Report of the OHCHR, A/HRC/27/37, para. 23.

649 *Cf.* Advisory Opinion OC-6/86, *supra*, para. 24.

650 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practices 3, 4 and 5; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/23/40, para. 92; The right to privacy in the digital age, OACNUDH report, A/HRC/27/37, para. 23, and United Nations General Assembly, Note by the Secretary-General, Promotion and protection of human rights and fundamental freedoms while countering terrorism, U.N. Doc. A/69/397, September 23, 2014, para. 36. The European Court of Human Rights (ECtHR) has found that "domestic law must be sufficiently clear to give citizens an adequate indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to [...] measures" such as those of intelligence activities. *Cf.* ECtHR, inter alia, *Rotaru v. Romania* [GS], No. 28341/95, Judgment of May 4, 2000, para. 52; *Roman Zakharov v. Russia* [GS], No. 47143/06, Judgment of

a.2. Intelligence activities must pursue aims that are legitimate and necessary in a democratic society

531. A second requirement for intelligence activities is that they must pursue legitimate aims.[651] Such legitimate aims, according to the Court's case law on restrictions of rights, should be understood as "necessary in a democratic society" (*supra* para. 521). The American Convention itself details what can be considered legitimate aims for which rights may be restricted (Articles 13, 15, 16 and 22 of the Convention, consistent with the text of the International Covenant on Civil and Political Rights, Articles 12, 14, 19, 21 and 22). The following can thus be considered legitimate aims in this area: (a) protecting national security; (b) maintaining public order; (c) safeguarding public health, and (d) protecting human rights.

532. The Court would like to clarify the scope of these concepts, which must be defined and limited by domestic legislation. In the first place, national security interests may justify the use of intelligence activities to protect or defend the very existence of the nation, its territorial integrity, or its political independence against any possible threats.[652] Maintenance of public order, in turn, refers to the sum of the rules that ensure the proper functioning of society, or the set of principles on which society is founded,[653] which includes the democratic system of governance, its institutions, and respect for human rights. Public health may also be a valid aim for intelligence activities in the presence of a serious threat to health or health conditions for the general population or some of its members.[654] Finally, the protection of human rights could be a legitimate aim of intelligence activities if specific situations have been identified that, rationally and specifically, constitute a risk to the effective enjoyment and guarantee of rights. In any such case, the goal is to prevent the use of vague and unspecified notions to justify actions by intelligence agencies that stray from those purposes, and instead contradict them or negate them.[655]

533. These goals become "legitimate aims" to the degree that they correspond to the purpose that ultimately underlies and guides the existence of a rule of law,[656] that is, as this Court has

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December 4, 2015, para. 229, and *Big Brother Watch and others v. United Kingdom* [GS], No. 58170/13, 62322/14 and 24960/15, Judgment of May 25, 2021, para. 333.

651 *Cf.* The right to privacy in the digital age, OACNUDH report, A/HRC/27/37, para. 23. See ECtHR, inter alia, *Klass and others v. Germany,* No. 5029/71, Judgment of September 6, 1978, para. 42; *Rotaru v. Romania* [GS], No. 28341/95, Judgment of May 4, 2000, para. 47, and *Big Brother Watch and others v. United Kingdom* [GS], No. 58170/13, 62322/14 and 24960/15, Judgment of May 25, 2021, para. 332.

652 *Cf. Mutatis mutandis*, Commission on Human Rights, Siracusa Principles on the limitation and derogation provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, September 28, 1984, annex, para. 19, and Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21), U.N. Doc. CCPR/C/GC/37, September 17, 2020, para. 42.

653 *Cf. Mutatis mutandis*, Commission on Human Rights, Siracusa Principles on the limitation and derogation provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, September 28, 1984, annex, para. 12, and Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21), U.N. Doc. CCPR/C/GC/37, September 17, 2020, para. 44.

654 *Cf. Mutatis mutandis*, Commission on Human Rights, Siracusa Principles on the limitation and derogation provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, September 28,1984, annex, para. 15.

655 See, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/23/40, paras. 50, 58 and 60; United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, Joint Declaration on surveillance programs and their impact on freedom of expression, June 21, 2013, para. 9 (available at: https://www.oas.org/en/iachr/expression/showarticle.asp?artID=926&lID=1), and Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, U.N. Doc. A/HRC/35/22, March 30, 2017, paras. 18 and 19.

656 The Court's case law has consistently interrelated the concepts of "rule of law," "human rights, "guarantees," and "democracy," and has understood that "[i]n a democratic society, the rights and freedoms inherent in the human

found (citing the American Declaration of the Rights and Duties of Man): "the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness."[657]

534. Therefore, the "threats" that domestic legislation authorizes as justification for the conduct of intelligence activities must of necessity respond to factors or situations that, rationally and specifically considered, can jeopardize those legitimate aims, without which it is not lawful for State authorities to undertake actions or strategies of this kind.[658] This means, as noted, that the law must specify such aims and identify potential threats to them, because the purpose of intelligence activities is to prevent or neutralize threats; this will avert overreach in the use of government powers, particularly in a sphere where, as has also been noted, the risk of arbitrary action is higher given the nature of these government activities and the classified status generally granted.[659]

535. As should be clear, the legitimate aims identified above proscribe any intelligence activity intended to serve purposes of discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth, or any other social condition (Article 1(1) of the American Convention). Accordingly, the operations of intelligence agencies must not be conducted with the goal of promoting, benefiting, or affecting a particular activity, person or group based on their ideology or political opinion, religious belief, social condition, economic status, or any other such factor.[660]

a.3. Intelligence activities must respect the principles of suitability, necessity and proportionality in the circumstances of the particular case

536. The third requirement for intelligence activities is that they must satisfy standards of suitability, necessity and proportionality,[661] that is, they must satisfy the "proportionality test" that inter-American case law has applied consistently for evaluating and weighing any measure that restricts human rights.[662]

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person, the guarantees applicable to them and the rule of law form a triad." *Cf*. *Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*. Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 24, and *Case of Baraona Bray v. Chile, supra*, para. 89.

657 *Cf.* Advisory Opinion OC-6/86, *supra*, para. 29, and *Case of Salvador Chiriboga v. Ecuador. Preliminary objection and Merits.* Judgment of May 6, 2008. Series C No. 179, para. 74.

658 See ECtHR, inter alia, *Klass and others v. Germany*, No. 5029/71, Judgment of September 6, 1978, para. 51; *Kennedy v. United Kingdom,* No. 26839/05, Judgment of May 18, 2010, paras. 31 and 32, and *Roman Zakharov v. Russia* [GS], No. 47143/06, Judgment of December 4, 2015, para. 260.

659 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practices 1, 2 and 3, and The right to privacy in the digital age, Report of the OHCHR, A/HRC/27/37, para. 29. See, "Human Rights Council. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, U.N. Doc. A/HRC/13/37, December 28, 2009, para 60, and Human Rights Council, The right to privacy in the digital age, Report of the United Nations High Commissioner for Human Rights, Doc. A/HRC/39/29, August 3, 2018, para. 35.

660 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practices 11, 12 and 13.

661 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practice 20; The right to privacy in the digital age, OACNUDH report, A/HRC/27/37, para. 23; Human Rights Council, Report of the Special Rapporteur on the right to privacy, U.N. Doc. A/HRC/40/63, October 16, 2019, para. 46, and Committee on the Rights of the Child, General comment No. 25 (2021) on children's rights in relation to the digital environment, U.N. Doc. CRC/C/GC/25, March 2, 2021, para. 69. See also, ECtHR, inter alia, *Roman Zakharov v. Russia* [GS], No. 47143/06, Judgment of December 4, 2015, para. 236; *Kennedy v. United Kingdom*, No. 26839/05, Judgment of May 18, 2010, para. 155, and *Big Brother Watch and others v. United Kingdom* [GS], No. 58170/13, 62322/14 and 24960/15, Judgment of May 25, 2021, para. 334.

662 The African Court on Human and Peoples' Rights has also upheld the need to meet these requirements when measures restricting rights are needed. *Cf*. *Ingabire Victoire Umuhoza v. Rwanda*, No. 004/2013, Judgment of December 5, 2014, paras. 126 to 166, and *Lohé Issa Konate v. Burkina Faso*, No. 003/2014, Judgment of November

537. In short, intelligence activities must be regulated by law and should satisfy the proportionality test; the factors in the test should be specified in regulations that cover these activities and should be applied directly when competent authorities make a judgment of proportionality before authorizing or implementing intelligence activities in concrete cases. The proportionality test should consider the legal basis for any activities, determine whether they serve legitimate aims, and include the following: (a) intelligence actions or operations should be suitable and appropriate to meet the legitimate aims they serve; (b) intelligence activities in general, and the particular actions or methods they employ, should be necessary, meaning that they be absolutely essential to serve the desired ends, and a consideration of other actions or strategies equally suited to the objective has found no other alternative, less intrusive measures to meet the established goals while producing less interference with the right to privacy or any other right that could be breached, and (c) intelligence actions should be strictly proportional, such that the inherent sacrifice of restricting a right would not be excessive or out of proportion to the advantages to be gained or the purpose to be met with the use of the restriction.[663]

a.4. Controls and restrictions that should govern intelligence activities

538. Domestic legislation must also provide "a well defined, comprehensive system to authorize, oversee and supervise" intelligence activities in concrete situations. Domestic legislation, making specific reference to the measures, actions, and strategies that intelligence agencies have available to obtain and compile information, assuming the prohibition of torture and inhuman and degrading treatment for such purposes (Article 5(1) of the Convention),[664] must set out, as specifically as possible, the following points: (a) the types of intelligence measures and actions authorized for collecting and compiling information; (b) the permissible objectives for these measures; (c) the categories of persons and activities on which information may be collected and compiled, always depending on identification of threats to the legitimate aims established beforehand; (d) the threshold of suspicion to justify the use of information collection and compilation measures; (e) time limits on the use of these measures and strategies, and (f) useful procedures for authorizing, overseeing, and reviewing the measures and actions for collecting and compiling information.[665]

539. If legislation allows for intelligence sharing among domestic or foreign intelligence agencies, regulations must outline clear parameters for such exchange, allowable purposes

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24, 2017, para. 133 to 163. See also, Human Rights Committee, General Comment No. 27: Article 12 - Freedom of movement, U.N. Doc. CCPR/C/21/Rev.1/Add.9, November 1, 1999, paras. 11 to 18.

663 *Cf. Inter alia, mutatis mutandis*, *Case of Durand and Ugarte v. Peru. Merits.* Judgment of August 16, 2000. Series C No. 68, para. 79; *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs.* Judgment of November 22, 2005. Series C No. 135, para. 197; *Case of Tristán Donoso v. Panama, supra*, para. 76; *Case of Escher et al. v. Brazil, supra*, para. 129; *Case of Nadege Dorzema et al. v. The Dominican Republic, supra*, para. 85; *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile. Merits, Reparations and Costs.* Judgment of May 29, 2014. Series C No. 279, para. 164; *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 28, 2018. Series C No. 371, para. 162, and *Case of García Rodríguez et al. v. Mexico, supra*, paras. 156 to 158.

664 The Court's case law has recognized as *ius cogens* the absolute prohibition on all forms of physical or psychological torture and the prohibition of cruel, inhuman or degrading treatment. *Cf.* Inter alia, *Denunciation of the American Convention on Human Rights and the Charter of the Organization of American States and the consequences for state human rights obligations (interpretation and scope of articles 1, 2, 27, 29, 30, 31, 32, 33 a 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States).* Advisory Opinion OC-26/20 of November 9, 2020. Series A No. 26, para. 106. See Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practice 29.

665 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practices 20 and 21, and The right to privacy in the digital age, Report of the OHCHR, A/HRC/27/37, para. 28. See:
ECtHR, *Huvig v. France,* No. 11105/84, Judgment of April 24, 1990, para. 34.

for exchange, entities authorized, and safeguards that apply to keep the information safe (especially in the case of personal data).[666]

540. Because effective control measures must be ensured (*supra* para. 526), intelligence activities should be formalized with the use of step-by-step processes; each stage must be duly recorded, including a timeline and a log of access to electronic systems. When intelligence agencies process personal data, safeguards must be in place (*infra* para. 576), and this means that records must be kept, as much as possible, indicating (i) the identification of the people responsible for data processing; (ii) the purposes of processing the information compiled, indicating the origin and category of the data; (iii) the legal basis for the operations; (iv) how long the material will be kept, and (v) data processing methods used. Operations with personal data must also be reported in chronological records of access, modification, queries, erasure, or sharing of the data and the names of all persons who gained access to them.[667]

541. The issues cited above tend to reflect the most significant concerns surrounding intelligence activities, not only because, in practical application, they reveal the scope and possible effects of these activities, but also because the conduct of actions, measures, and strategies to gather and compile information reveals the obvious clash between these activities and the sphere of personal rights and freedoms. Actions such as undercover surveillance, wiretapping, or collecting personal data, if they are explicitly allowed under established laws on intelligence operations, constitute unquestionable interference in the exercise of rights, which is why specific standards must be in place to regulate them, and effective controls must be implemented to avert abuses or arbitrary actions by the authorities.[668]

542. It is therefore imperative for authorization of "intrusive intelligence collection methods" to be in the hands of judicial authorities, as in the case of interception of communications, whether by telephone, correspondence, or email, and other methods involving information technologies and communications, or raids of homes, workplaces or other private areas.[669]

543. The Inter-American Court has previously spoken on the subject of privacy protection in communications, and its findings are fully applicable to intelligence activities that employ surveillance of communications. The Court has held, in this regard, that even though telephone conversations are not expressly mentioned in Article 11 of the Convention, they are a form of communication included within the sphere of the protection of privacy.[670] The Court has also held that the scope of Article 11 applies to telephone conversations irrespective of their content and can even include technical operations designed to capture this content by recording it and listening to it, as well as any other element of the communication process itself, as for example, the numbers of outgoing or incoming calls, the identity of callers, frequency, time of day, and duration of calls, all of which can be verified without the need to record the content of the call by taping conversations. The Court clearly believes that the protection of privacy is manifested in the right of individuals to be free from having their

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666 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practices 31, 32 and 33.

667 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practices 6, 22, 24 and 31. See Articles 24 and 25 of the Directive (EU) 2016/680 of the European Parliament and of the Council of the European Union, on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, (UE) 2016/680, April 27, 2016. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0680.

668 *Cf. Case of Myrna Mack Chang v. Guatemala, supra*, para. 284, and *Case of Landaeta Mejías Brothers et al. v. Venezuela, supra*, para. 126.

669 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46 22, Practice 22.

670 *Cf. Case of Tristán Donoso v. Panama, supra*, para. 55, and *Case of Escher et al. v. Brazil, supra*, para. 114.

communications followed by others who illegally obtain information on the content of telephone conversations or other aspects inherent in the communication process, such as those mentioned above.[671]

544. The European Court of Human Rights has judged on surveillance of communications and held that the mere existence of legislation which allows a system for this type of secret monitoring entails "a threat of surveillance for all those to whom the legislation may be applied," which in turn poses a threat to "freedom of communication between users of the telecommunications services and thereby amounts in itself to an interference with the exercise of the applicants' rights," specifically, respect for their privacy and their correspondence.[672]

545. The Court has also addressed the specific matter of wiretapping and found that it constitutes direct interference with the right to privacy; thus, in line with the standards outlined above (*supra* para. 536), it has demanded that the measure, if it is to be compatible with the American Convention, (i) must be regulated by law, (ii) must pursue legitimate aims, and y (iii) must meet requirements of suitability, necessity and proportionality.[673]

546. Any measure designed to monitor communications may also undermine respect for the right to freedom of thought and expression, enshrined in Article 13 of the Convention, because, as the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has said, "[t]he right to privacy is essential for individuals to express themselves freely,"[674] and thus, "[u]ndue interference with individuals' privacy can both directly and indirectly limit the free development and exchange of ideas."[675]

547. The effective protection of the right to privacy and the right to freedom of thought and expression, combined with the extreme risk of arbitrariness in the use of selective or large-scale methods of communications surveillance, especially given today's new technologies, have led this Court to hold that any such measure (including interception, surveillance and monitoring any kind of communication, including by telephone, data transmission, or other networks[676]) may be adopted only by decision of a judicial authority determining whether it is allowable and defining limits as to nature, scope, and duration of the measure authorized.[677]

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671 *Cf. Case of Escher et al. v. Brazil, supra*, para. 114.

672 *Cf.* ECtHR, Weber and Saravia v. Germany, no. 54934/00, Decision of June 29, 2006, paras. 78 and 79. See also, ECtHR, *Klass et al. v. Germany,* No. 5029/71, Judgment of September 6, 1978, para. 48.

673 *Cf. Case of Escher et al. v. Brazil, supra*, paras. 114 and 131.

674 *Cf.* Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, U.N. Doc. A/HRC/17/27, May 16, 2011, para. 53.

675 *Cf.* Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/23/40, para. 24. See also, the United Nations Special Rapporteur for freedom of expression, Organisation for Security and Cooperation in Europe (OSCE), Representative on Freedom of the Media, the Inter-American Commission on Human Rights Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information, Joint Declaration on Freedom of Expression and Responses to Conflict Situations, May 4, 2015, para. 8.a (available at: https://www.oas.org/en/iachr/expression/showarticle.asp?artID=987&lID=1.

676 Communications surveillance includes "monitoring, interception, collection, preservation and retention of information that has been communicated, relayed or generated over communications networks." *Cf.* Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/23/40, paras. 6.a and 37.

677 *Cf.* Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/23/40, para. 81; Human Rights Council, Report of the Special Rapporteur on the right to privacy, U.N. Doc. A/HRC/34/60, September 6, 2017, para. 27, and Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/41/35, May 28, 2019, para. 50. Also, Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, U.N. Doc. CCPR/C/USA/CO/4, April 23, 2014, para. 22; Concluding observations on the fifth periodic report of France, U.N. Doc. CCPR/C/FRA/CO/5, August 17, 2015, para. 12; Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, U.N. Doc. CCPR/C/GBR/CO/7, August 17, 2015, para. 24; Concluding observations on the sixth periodic report of Italy, U.N. Doc. CCPR/C/ITA/CO/6, May

548. The Court has also adjudicated the matter of searches or raids of private homes or facilities, holding that, in light of Article 11(2) of the Convention, it is mandatory as a general rule to obtain proper judicial authorization,[678] which in turn demands compliance with the requirements of suitability, necessity and proportionality.

549. International bodies emphasize the need to separate the tasks proper to public safety from those of intelligence agencies, because assigning both to the same institution could entail a greater risk of arbitrariness and, ultimately, a breach of human rights. This is why intelligence services do not hold powers of arrest, detention, or law enforcement over individuals;[679] also of concern is the work of criminal investigation (or investigations by the judicial police) into concrete illegal conduct slated for prosecution, because, according to this Court, the guarantees of due process and the standards of independence and objectivity are mandatory for agencies that conduct pre-trial investigations;[680] these measures cannot easily be controlled when they are conducted secretly or using undercover methods, and more so, if the intelligence activities are of a nature and pursue goals that are not consistent with those of a criminal investigation. Several States of the region have explicitly included these prohibitions in their domestic legislation.[681]

550. Intelligence activities in general terms can therefore be defined as actions designed to collect, analyze, and disseminate information to support decision-making by entities responsible for implementing security policies[682] (*supra* para. 525). By contrast, criminal investigation employs procedures to obtain information and background evidence on a suspected criminal offense. Both work to find and process information, and both may use similar methods such as monitoring communications and data capture, but they pursue essentially different purposes, as intelligence services do preventive work, rather than direct enforcement of criminal laws. Information gathered by intelligence activities is therefore used to support decision-making on the security and protection of society and the population.[683].

1, 2017, para.372; Concluding observations on the fifth periodic report of Belarus, U.N. Doc. CCPR/C/BLR/CO/5, November 22, 2018, para. 44, and Concluding observations on the seventh periodic report of Germany, U.N. Doc. CCPR/C/DEU/CO/7, November 30, 2021, para. 43. The European Court of Human Rights has held that "in a field where abuse is potentially so easy [...] and could have such harmful consequences for democratic society as a whole, it is in principle desirable to entrust supervisory control to a judge," [...] "judicial control offering the best guarantees of independence, impartiality and a proper procedure." *Cf.* ECtHR, inter alia, *Klass and others v. Germany*, No. 5029/71, Judgment of September 6, 1978, para. 56; *Roman Zakharov v. Russia* [GS], No. 47143/06, Judgment of December 4, 2015, paras. 233 and 249; *Szabó and Vissy v. Hungary*, No. 37138/14, Judgment of January 12, 2016, para. 77; *Big Brother Watch and others v. United Kingdom* [GS], No. 58170/13, 62322/14 and 24960/15, Judgment of May 25, 2021, paras. 336 and 351, and *Centrum för rättvisa v. Sweden* [GS], No. 35252/08, Judgment of May 25, 2021, para. 250.

678 *Cf. Case of Pollo Rivera et al. v. Peru. Merits, Reparations and Costs.* Judgment of October 21, 2016. Series C No. 319, para. 116, and *Case of Valencia Campos et al. v. Bolivia. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 18, 2022. Series C No. 469, para. 149.

679 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46 27, Practice 22.

680 *Cf. 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. 133, and *Case of Casa Nina v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2020. Series C No. 419, para. 71.

681 *Cf.* Republic of Argentina, Ley de Inteligencia Nacional, Law No. 25.520, Article 4.1; Republic of Costa Rica, Ley General de Policía, Law No. 7410, Article 15; Republic of Panama, Executive Order No. 98 (Consejo de Seguridad Pública y Defensa Nacional), Article 2; Republic of Paraguay, Law No. 5241 (Sistema Nacional de Inteligencia), Article 5.1, and Eastern Republic of Uruguay, Law No. 19696 (Sistema Nacional de Inteligencia del Estado), Article 7.1.

682 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46 1, Practice 22.

683 See Judgment C-540/12 of July 12, 2012, of the Constitutional Court of Colombia (available in Spanish at: https://www.corteconstitucional.gov.co/relatoria/2012/c-540-12.htm):

> The [purpose of intelligence] is thus essentially to prevent threats such as terrorism and organized crime, and protect the vital interests of the nation. The result of the intelligence cycle is intended to provide input for State decisions, under the responsibility of the top executive of the intelligence agency and in the framework of a duly authorized line of operations or mission, in which the intelligence

551. Intelligence activities tend to be invasive of personal privacy and must operate under especially rigorous controls;[684] therefore, they must receive judicial authorization to use information gathering methods, such as wiretapping and electronic recording, including audiovisual media,[685] or when for various reasons they claim to need information involving data on private individuals or companies, even if they manage it or handle it within the bounds of the law.[686]

552. As in the case of interception of communications, the capture of personal data by intelligence services may be invasive and, therefore, injurious to the right to privacy. The Council of Europe Convention on Cybercrime (Budapest Convention) says that practices such as unauthorized access to computer systems and the illegal interception of data transmissions must be codified as criminal offenses by the States,[687] and this reinforces international standards on protection of privacy from invasive measures regarding personal data.

553. The Inter-American Court is aware that the right to privacy requires measures of protection from the use of new technologies, including the Internet, in the conduct of intelligence activities. This means that prior judicial authorization is also required for the use of surveillance and monitoring methods of certain individuals when they entail access to databases and non-public information systems that store and process personal information, tracking users in the network or locating electronic devices.[688]

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information generated cannot be used as evidence. Intelligence and counterintelligence operations, therefore, are not judicial activities.

684 *Cf. Case of Myrna Mack Chang v. Guatemala, supra*, para. 284, and *Case of Landaeta Mejías Brothers et al. v. Venezuela, supra*, para. 126. The European Court of Human Rights has said, "a system of secret surveillance set up to protect national security may undermine or even destroy democracy under the cloak of defending it," and therefore requires adequate and effective guarantees against abuse." *Cf.* ECtHR, inter alia, *Roman Zakharov v. Russia* [GS], No. 47143/06, Judgment of December 4, 2015, para. 232, and *Big Brother Watch and others v. United Kingdom* [GS], No. 58170/13, 62322/14 and 24960/15, Judgment of May 25, 2021, para. 339.

685 See Republic of Paraguay, Law No. 5241 (Sistema Nacional de Inteligencia), Articles 25.3 and 26, and Eastern Republic of Uruguay, Law No. 19696 (Sistema Nacional de Inteligencia del Estado), Article 20.c.

686 *Cf.* Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/23/40, para. 86; The right to privacy in the digital age, OACNUDH report, A/HRC/27/37, para. 45; Human Rights Committee, Concluding observations on the fourth periodic report of the Republic of Korea, U.N. Doc. CCPR/C/COR/CO/4, December 3, 2015, para. 43, and Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, U.N. Doc. A/HRC/35/22, March 30, 2017, paras. 19 and 78. See also, European Court of Justice, *Tele2 Sverige AB v. Post-och telestyrelsen, and Secretary of State for the Home Department v. Tom Watson and others,* No. C-203/15 and C-698/15, Judgment of December 21, 2016, para. 120.

687 *Cf.* Council of Europe, Convention on Cybercrime, Budapest, November 23, 2001, Articles 2 and 3. Available at: https://www.oas.org/juridico/english/cyb_pry_convenio.pdf.

688 *Cf.* United Nations General Assembly, Note by the Secretary-General, Promotion and protection of human rights and fundamental freedoms while countering terrorism, September 23, 2014, paras. 6, 46 and 47; U.N. Doc. A/69/397, Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, U.N. Doc. A/HRC/35/22, March 30, 2017, paras. 19 and 78; Human Rights Council, The right to privacy in the digital age, Report of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/39/29, August 3, 2018, paras. 6 and 39, and Human Rights Council, The right to privacy in the digital age, Resolution of the Human Rights Council, U.N. Doc. A/RES/48/4, October 13, 2021. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (U.N. Doc. A/69/397) has found that the States " now have the capacity to intercept and monitor calls made on a landline or mobile telephone, enabling an individual's location to be determined, his or her movements to be tracked through cell site analysis and his or her text messages to be read and recorded," also that "[t]argeted surveillance [...] enables intelligence [...] agencies to monitor the online activity of particular individuals, to penetrate databases and cloud facilities, and to capture the information stored on them." The States are also able to use certain computer programs (spyware and malware) to "infiltrate an individual's computer, mobile phone or other digital device […] to turn on the microphone or camera [...], to track the activity conducted on the device, and to access, alter or delete any information stored on the device, and thereby "have complete control of the device infiltrated." All this may "provide a mosaic of data from multiple sources that can generate valuable intelligence about particular individuals or organizations." *Cf.* Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/23/40, para. 37. Therefore, it is the opinion of the Inter-American Court that

554. Furthermore, the requirement for prior judicial authorization in these matters is based on the need to provide reinforced protection to sensitive personal data, understood as a "narrower" category of personal data (*infra* para. 572) that affects "the most intimate aspects of natural persons." Depending on the cultural, social, or political context, this "might, for example, include data related to an individual's personal health, sex life or sexual preferences, religious, philosophical or moral beliefs, trade union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, political opinions, racial or ethnic origin, financial account information, official documents, information collected from children or personal geolocation."[689] Such data are unquestionably worthy of special protection because they can be used to categorize a person and may provide material for developing personal profiles.

555. Accepted views on this subject also agree that it is imperative to limit intelligence activities regarding particular categories of persons, particularly journalists, to safeguard the confidentiality of their sources,[690] and attorneys, to protect the confidentiality of all communications between lawyers and their clients within their professional relationship.[691]

556. The Court's case law does address journalists, emphasizing that protection of sources is "a cornerstone of freedom of the press and, in general, of a democratic society," and that confidentiality of sources is "essential for the work of journalists and for their role in society as providers of information concerning matters of public interest."[692]

557. The American Convention itself addresses lawyers, and Article 8(2)(d) recognizes the right of the accused to "communicate freely and privately with his counsel;" this reveals the scope of protection for the role of these professionals, and at the same time, the limits on intelligence actions, given the importance of safeguarding client privilege. This arises not only from an interest in ensuring protection for the private life of persons, but also in effectively preserving the right to judicial guarantees and the right of defense for anyone who is represented by a legal professional.

558. The United Nations Basic Principles on the Role of Lawyers set guarantees on the

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techniques or methods for gaining access to sensitive computer metadata and system data such as email and metadata from OTT applications, data on location, IP addresses, cell phone towers, cloud-based data, GPS and Wi-Fi also require prior judicial authorization.

689 *Cf.* Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, Principle 9 and pg. 24. See *Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights).* Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 136, and Council of Europe, Convention 108 for the protection of individuals with regard to the processing of personal data, January 28, 1981, Article 6.

690 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practice 21, and Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/23/40, para. 26.

691 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practice 21; General Assembly, Note by the Secretary-General, Report of the Special Rapporteur on the independence of judges and lawyers, U.N. Doc. A/71/348, August 22, 2016, paras. 40, 45 and 106, and General Assembly, Note of by the Secretary-General, Report of the Special Rapporteur on the independence of judges and lawyers, U.N. Doc. A/64/181, July 28, 2009, para. 110.b. See United Nations, Basic Principles on the Role of Lawyers, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1, Principle 22, and Human Rights Committee, General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 34.

692 *Cf. Case of Moya Chacón et al. v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 23, 2022. Series C No. 451, para. 70. See, United Nations Educational, Scientific and Cultural Organization, Guidelines for judicial actors on privacy and data protection, Paris, France, 2022, pg. 19.

practice of the profession, including that lawyers: (i) be able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (ii) be able to travel and to consult with their clients freely both within their own country and abroad, and (iii) not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. The instrument also calls for government recognition and respect for confidentiality of all communications and consultations between lawyers and their clients within their professional relationship.[693]

559. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems stipulate that States should protect the ability of legal counsel to carry out their work effectively, freely, and independently. In particular, the States should ensure that legal aid providers (i) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (ii) are able to travel, to consult and meet with their clients freely and in full confidentiality both within their own country and abroad; (iii) to freely access prosecution and other relevant files, and (iv) do not suffer, and are not threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.[694]

560. Thus, intelligence activities by public agencies must respect the task of lawyers and hold inviolable their communications with their clients, as are inviolable their places of work, their equipment, their correspondence, and other forms of communication they use for their professional practice.[695]

561. The reinforced protection for the work of journalists,[696] as well as that of lawyers,[697] means that any intelligence operation in this area may be conducted only with prior judicial authorization, and the competent judge must rule on (i) whether evidence is available to suggest the conduct of illegal actions, and (ii) the proportionality of the measure being ordered in the specific case.[698] Any information obtained by means contrary to this must be

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693 *Cf.* United Nations, Basic Principles on the Role of Lawyers, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1, Principles 16 and 22.

694 *Cf.* United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, approved by the General Assembly under Resolution 67/187, U.N. Doc. A/RES/67/187, March 28, 2013, Principle 12.

695 *Cf.* United Nations, Basic Principles on the Role of Lawyers, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1, Principle 22; General Assembly, Note by the Secretary-General, Report of the Special Rapporteur on the independence of judges and lawyers, U.N. Doc. A/64/181, July 28, para. 110, and General Assembly, Note by the Secretary-General, Report of the Special Rapporteur on the independence of judges and lawyers, U.N. Doc. A/71/348, August 22, 2016, paras. 46, 47, 48 and 105.

696 *Cf.* Commission on Human Rights, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Abid Hussain, U.N. Doc. E/CN.4/1998/40, January 28, 1998, para. 17; Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46 Practice 21; Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 45, and Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/23/40, para. 26.

697 *Cf.* United Nations, Basic Principles on the Role of Lawyers, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1, Principles 16 and 22; Human Rights Committee, General comment No. 34: Article 14 - Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 34; General Assembly, Note by the Secretary-General, Report of the Special Rapporteur on the independence of judges and lawyers, U.N. Doc. A/64/181, July 28, para. 110.b, and General Assembly, Note by the Secretary-General, Report of the Special Rapporteur on the independence of judges and lawyers, U.N. Doc. A/71/348, August 22, 2016, paras. 40, 45, 46, 86 and 106.

698 The Court would underscore here, as an example of good practice, the content of Law 8,906 of the Federative Republic of Brazil, Code of legal practice and bylaws of the Brazilian bar association (available in Portuguese at: https://www.planalto.gov.br/ccivil_03/leis/l8906.htm), under which any search of law offices or workplaces, and any seizure of lawyers' tools, work equipment, and communications "be conducted in the presence of a representative"

dismissed out of hand by the authority responsible for conducting the investigations or procedures.

562. The Court insists that the requirement for intervention by a judicial authority in all these areas is consistent with the role of judges as guarantors of human rights in a democratic system, and because they need to be independent, they are able to ensure objective oversight, in keeping with the law, regarding the conduct of other entities of public power, in this case, the state intelligence services.[699] The judicial authority is thus responsible for considering the circumstances of the specific case, assessing compliance with pre-established requirements for the operation, and weighing whether the measure being requested meets the test of proportionality.

563. In keeping with inter-American case law, the order delivered by the judicial authority must be fully substantiated; otherwise, it would be an arbitrary decision.[700] The judicial ruling must pose rational arguments to demonstrate that all constitutional, legal, and Convention-based requirements have been weighed, along with other material that, as relevant, justifies the decision to grant or to deny the measure.[701].

a.5. Supervision of intelligence services and options for redress when actions are arbitrary

564. The legal system should provide for supervision of intelligence activities, even aside

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of the bar association (*Ordem dos Advogados do Brasil*, OAB– Article 7, § 6). The representative of the bar association should "safeguard compliance with the stated object the investigation" and prevent the seizure of "documents, media, and objects unrelated" to the purpose of the operation (Article 7, § 6, subparagraph c). It if should be impossible to separate out the documents, media or objects unrelated to the investigation, due to the nature or volume of material, "the chain of custody shall safeguard the confidentiality of the content" (Article 7, § 6, subparagraph d), and the representative of the bar association informs the competent judicial authority as to any excesses committed by public officers conducting the search or seizure (Article 7, § 6, subparagraph e). The law guarantees the legal professional "the right to be accompanied by a representative of the bar association" during the "analysis of his or her documents and information storage devices" that are "seized or intercepted" (Article 7, § 6, subparagraph f). For these purposes, the regulations state that the bar association must receive at least 24 hours' advance notice of the "date, time, and place when the seized documents and equipment will be examined, guaranteeing the right of the representative [of the bar association] to be present for all procedures" (Article 7, § 6, subparagraph f). Finally, in urgent cases duly justified by the judicial authority, the examination of seized documents and equipment may take place within a period of less than 24 hours, "ensuring that the representative of the bar association will be able to monitor all procedures." The Court would recall that bar associations play "a role of paramount importance in promoting and protecting the independence and integrity of the law profession and safeguarding the professional interests of attorneys," while protecting "the rights of their members, and in so doing, fostering the rule of law." *Cf.* General Assembly, Note by the Secretary-General, Report of the Special Rapporteur on the independence of judges and lawyers, U.N. Doc. A/71/348, August 22, 2016, paras. 82, 86 and 87. See also, United Nations, Basic Principles on the Role of Lawyers, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1, Principles 24 and 25.

699 *Cf.* Inter alia, *Case of Palamara Iribarne v. Chile, supra*, para. 145; *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 23, 2013. Series C No. 266, para. 154; *Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 5, 2015. Series C No. 302, para. 194; *Case of Ríos Avalos et al. v. Paraguay. Merits, Reparations and Costs.* Judgment of August 19, 2021. Series C No. 429, para. 89, and *Case of Aguinaga Aillón v. Ecuador. Merits, Reparations and Costs.* Judgment of January 30, 2023. Series C No. 483, para. 67. Inter-American case law has stressed the important role played by the judiciary in a democracy as the guarantor of human rights, which is why judges must be independent, especially from other branches of government, and this independence must be explicit and safeguarded; otherwise, their work could be so hindered as to render them unable to adjudge, declare and ultimately sanction the arbitrary nature of acts that could entail violations of those rights, or to order relevant redress.

700 *Cf. Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 23, 2005. Series C No. 127, para. 152, and *Case of Hendrix v. Guatemala. Merits.* Judgment of March 7, 2023. Series C No. 485, para. 96.

701 *Cf. Case of Escher et al. v. Brazil, supra*, para. 139.

from judicial control over specific measures or actions in concrete situations;[702] this calls for a civilian institution independent of both the intelligence services and the executive,[703] reporting to the legislative, administrative, or judicial authorities. In addition to having technical know-how on the subject, it should also be given the power to perform its duties, which includes full, direct access to the information and data it needs to fulfill its mission.[704] The mandate of this civil oversight body should include supervision of: (a) compliance by intelligence services with the legal provisions that govern their work and of human rights instruments; (b) efficiency and the effectiveness of intelligence activities, with their performance subject to evaluation;(c) their financial and budgetary status, and fund management, and (d) their administrative methods and practices.[705]

565. There is also international consensus on the need for mechanisms allowing anyone who feels injured by arbitrary intelligence activities to obtain effective redress, including compensation for damage.[706] It is a requirement that is fully compatible with the American Convention as interpreted in inter-American case law,[707] in the sense that such a mechanism, in keeping with Article 25 of the Convention, should provide an unappeable, simple, fast,

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[702] The European Court of Human Rights has said that, given the powers and workload of the courts, a judge "who has issued the surveillance warrant is not in a position to ensure effective oversight," and therefore, this judicial mechanism "is insufficient to ensure that surveillance powers are not being abused." *Cf*. ECtHR, *Roman Zakharov v. Russia* [GS], No. 47143/06, Judgment of December 4, 2015, para. 274, and *Ekimdzhiev and others v. Bulgaria*, No. 70078/12, Judgment of April 11, 2022, para. 337.

[703] *Cf. Case of Myrna Mack Chang v. Guatemala, supra*, para. 284, and *Case of Landaeta Mejías Brothers et al. v. Venezuela, supra*, para. 126.

[704] *Cf.* Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, U.N. Doc. A/HRC/13/37, December 28, 2009, paras. 51 and 62; United Nations General Assembly, The right to privacy in the digital age, A/RES/69/166, February 10, 2015, para. 4.d; United Nations General Assembly, The right to privacy in the digital age, U.N. Doc. A/RES/71/199, January 25, 2017, para. 5.d; Human Rights Council, Report of the Special Rapporteur on the right to privacy, U.N. Doc. A/HRC/34/60, September 6, 2017, paras. 38 and 39; Human Rights Council, The right to privacy in the digital age, Report of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/39/29, August 3, 2018, para. 35; General Assembly, Note by the Secretary-General, Report of the Special Rapporteur on the right to privacy, Joseph A. Cannataci, U.N. Doc. A/75/147, July 27, 2020, para. 43, and Resolution of the General Assembly, A/RES/75/176, para. 7.d. See, Tshwane Principles, Principles 31 and 32.

[705] *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practices 6 and 7, and The right to privacy in the digital age, Report of the OHCHR, A/HRC/27/37, paras. 37 and 38. See ECtHR, *Ekimdzhiev and others v. Bulgaria*, No. 70078/12, Judgment of April 11, 2022, paras. 334 to 345. In addition to internal controls and judicial controls for specific cases, various States of the region have also established legislative oversight bodies to supervise intelligence activities, as follows: (a) Republic of Argentina: Ley de Inteligencia Nacional, Law No. 25,520, Article 31, Bicameral congressional committee for oversight of intelligence agencies and activities; (b) Federative Republic of Brazil: Law No. 9,883 (Agência Brasileira de Inteligência), Article 6, Agency for external control of intelligence activities, made up of members of both legislative bodies; (c) Republic of Chile: Ley del Sistema de Inteligencia del Estado, Law No. 19.974, Article 37, Special committee of the Chamber of Deputies; (d) Republic of Colombia: Law 1621 of 2013 (Ley estatutaria sobre actividades de inteligencia y contrainteligencia), Article 19, National Congressional Legal committee to monitor intelligence and counterintelligence activities of the National Congress; (e) Republic of Guatemala: Ley Marco del Sistema Nacional de Seguridad, Executive Order 18-2008, Article 33, Specific committee of the National Congress on matters of national security and Intelligence; (f) United Mexican States: Ley de Seguridad Nacional, published January 31, 2005, Article 56, Specific bicameral committee of the National Congress; (g) Republic of Peru: Decreto Legislativo de Fortalecimiento y Modernización del Sistema de Inteligencia Nacional, Decree No. 1141, Article 36, Intelligence committee of the National Congress, and (h) Eastern Republic of Uruguay: Law No. 19696, Aprobación y Regulación del Sistema Nacional de Inteligencia del Estado, Article 25, Specific parliamentary bicameral committee of the General Assembly.

[706] *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practices 6 and 7; The right to privacy in the digital age, OHCHR report, A/HRC/27/37, para. 39, and General Assembly Resolution A/RES/75/176, para. 7.e.

[707] This Court has held that the protection guaranteed in Article 25 of the Convention means the real possibility of obtaining access to judicial recourse so that a competent authority, with the capacity to deliver a binding decision, can determine whether or not some right of the appellant has been violated and, if a violation is found, can order a remedy useful for restoring the person's enjoyment of the right and redressing it. *Cf*. *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8, American Convention on Human Rights).* Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 502.

effective remedy from the courts, whose decisions must be fully complied with (Article 25(2)(c)).[708]

b. Standards for the collection, management, and access to personal data in the hands of intelligence agencies: protection of personal data and the right to informational self-determination

566. Intelligence activities are critical for the compilation and analysis of information, including personal information (usually, of course, without the consent of the bearer). This is why international standards also cover questions about how such information is obtained, held, and preserved, and how access to it is managed.

567. The Court will address these standards by, first of all, recalling that the American Convention contains a universal clause on protection of human dignity, which holds individuals as the subject and end of the legal, political, and social order, and gives content to the notion of individual autonomy and to the principle that guarantees that all persons must be treated as equals. Article 11 of the Convention also recognizes the right to a private life, understood, as has already been intimated in this judgment (*supra* para. 521), as a space of freedom exempt and immune from abusive or arbitrary interference by third parties or public authorities[709]

568. Inter-American case law has also held that the protection of the right to private life is not restricted to the right to privacy, because it comprises a series of factors related to the dignity of individuals, including, for example, the capacity to develop their own personality and aspirations, determine their identity, and define their personal relationships. The concept of private life encompasses personal autonomy, personal development, and the right to establish and develop relationships with other human beings and with the external world. The effective exercise of the right to private life is decisive for the possibility of enjoying personal autonomy concerning the future course of events that determine an individual's quality of life. Furthermore, private life includes the way in which individuals see themselves and how they decide to project themselves towards others, and this is an essential condition for the free development of the personality.[710]

569. The Court has also asserted that a crucial aspect of the recognition of dignity is the possibility, accorded to all human beings, of self-determination and to freely choose the options and circumstances that give meaning to their existence based on their own preferences and convictions.[711] In this context, the principle of personal autonomy plays an

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[708] The need to ensure effective access to the remedy has led to international standards that call for persons to be notified after surveillance is completed to advise them that they have been subjected to intelligence actions. *Cf*. Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, U.N. Doc. A/HRC/13/37, December 28, 2009, para. 55; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/23/40, para. 82; The right to privacy in the digital age, OHCHR Report, A/HRC/27/37, para. 40, and Human Rights Council, The right to privacy in the digital age, Report of the United Nations High Commissioner U.N. Doc. A/HRC/39/29, August 3, 2018, paras. 41 and 54. See ECtHR, inter alia, *Roman Zakharov v. Russia* [GS], No. 47143/06, Judgment of December 4, 2015, para. 234; *Big Brother Watch et al. v. United Kingdom* [GS], No. 58170/13, 62322/14 and 24960/15, Judgment of May 25, 2021, para. 337; *Roman Zakharov v. Russia* [GS], No. 47143/06, Judgment of December 4, 2015, para. 274, and *Ekimdzhiev et al. v. Bulgaria*, No. 70078/12, Judgment of April 11, 2022, para. 349.

[709] *Cf.* Advisory opinion OC-24/17, *supra*, para. 86, and *Case of Pavez Pavez v. Chile. Merits, Reparations and Costs.* Judgment of February 4, 2022. Series C No. 449, para. 57.

[710] *Cf.* Advisory opinion OC-24/17, *supra*, para. 87, and *Case of Pavez Pavez v. Chile, supra*, para. 58.

[711] *Cf. Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs, para. 150; Case of Atala Riffo and daughters v. Chile.* Merits, Reparations and Costs, para. 136, and *Case of Pavez Pavez v. Chile, supra*, para. 59.

essential role as it prohibits any action by the State that would try to exploit or utilize the individual; in other words, any action that converts the individual into a means to an end which is alien to their choices about their own life and the full development of their personality, within the limits imposed by the Convention.[712] Thus, based on the principle of the free development of the personality or of personal autonomy, everyone is free and autonomous to live in a way that accords with their values, beliefs, convictions and interests.[713]

570. In the same context of autonomy and free development of the personality, people are also free to exercise self-determination to decide when and how much to reveal matters of their personal lives, which includes defining what type of information, including their personal data, may be known by others.[714].

b.1 The powers, constraints and controls on intelligence agencies over the gathering and management of personal information

571. Protection of personal autonomy, privacy, private life, and reputation is safeguarded by the American Convention in its recognition of the right to privacy and honor (Article 11); protection of this right requires a framework within which authorities may conduct actions for gathering and using personal data, to prevent its being obtained, used, retained, disclosed and shared in ways that are inappropriate or incompatible with these rights.[715] The standards detailed below apply to all the areas of competency of the entire edifice of public administration and private actors that lawfully collect and manage personal data,[716] but they will be discussed in this judgment for the cause of action under adjudication only with respect to the action of intelligence services.

572. The Court would clarify that this judgment uses the concept of "personal data" in keeping with the definition given in the Updated principles of the Inter-American Juridical Committee

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712 The Court's case law reinforces the idea of individual autonomy and the ability for self-determination through a broad interpretation of freedom as a value, in view of the American Convention's Article 7(1) that defines the concept of freedom in the widest sense, understood as the capacity to do or not to do whatever is legally permitted. In other words, it constitutes the right of everyone to organize, pursuant to the law, their individual and social life in accordance with their own choices and convictions. Defined as such, liberty is a basic human right, inherent in the attributes of the person, which pervades the entire Convention. *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra*, para. 52, and *Case of Pavez Pavez v. Chile, supra*, para. 60.

713 *Cf.* Advisory opinion, *supra*, para. 88, and *Case of Pavez Pavez v. Chile, supra*, para. 59. See, United Nations Educational, Scientific and Cultural Organization, Guidelines for judicial actors on privacy and data protection, Paris, France, 2022, pp. 12 and 13.

714 The Inter-American Court adjudged the case of *Manuela et al. v. El Salvador* based on the right to self-determination of persons in the specific field of health data, holding that, based on the right to privacy and the right to health, everyone has the right to the confidentiality of medical attention and the protection of their health data. The Court added that as a result of this protection, the information that physicians obtain in the exercise of their profession must not be disclosed and is protected by professional secrecy, which includes both the information shared by the patient while being treated, and also the physical evidence that the medical staff may observe while providing this treatment. The judgment went on to say that, as a general rule, medical information should be kept confidential, except when: (i) the patient gives his/her consent to its disclosure, or (ii) domestic law authorizes access by specific authorities. In the latter case, the law should establish the specific situations in which the medical record may be disclosed, clear safeguards for the protection of this information, and the way in which the information may be disclosed, requiring that this can only be done following a reasoned order issued by a competent authority, and only the necessary information for the particular case *Cf. Case of Manuela et al. v. El Salvador, supra*, paras. 206 and 227.

715 *Cf.* Human Rights Council, The right to privacy in the digital age, Report of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/39/29, August 3, 2018, paras. 28 and 29; Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, Principles 1, 4 and 6, and Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46 Practices 8 and 23. See also, African Union Convention on Cyber Security and Personal Data Protection, June 27, 2014, and Council of Europe, Convention 108 for the protection of individuals with regard to the processing of personal data, January 28, 1981.

716 *Cf.* Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, pg. 20.

on privacy and protection of personal data, meaning "information that identifies, or can be reasonably be used to identify, a natural person, whether directly or indirectly," which includes the different "factors specific to his or her physical, physiological, genetic, mental, economic, cultural or social identity […] expressed in a numerical, alphabetical, graphic, photographic, alpha-numerical, audio, electronic, visual or any other manner."[717]

b.1.1. Collection, retention, and handling of personal data

573. International standards on the protection of personal data require all compilation, storage, processing and dissemination to be permissible only with the free and informed consent of the subject of the data,[718] or alternatively, be based on a legal framework that explicitly allows public agencies to take such actions. In any case, the gathering and management of personal information may be authorized, under the terms of the American Convention, only in pursuit of legitimate purposes and by lawful means (on lawful purposes in intelligence activities, *supra* paras. 531 to 535).

574. International standards thus hold that the States should adopt policies to prohibit the processing of personal information, including storage, analysis, and disclosure, except when such actions are permitted by law, or if the person affected has given informed consent; the States must also adopt positive measures to inform people about their relevant rights (*infra* para. 585) and about the legal conditions in place for the processing of personal data, and to inform them when data has been collected, stored, processed, or disclosed.[719]

575. The Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, say that the "requirement of lawfulness in the purpose for which Personal Data is processed, is a fundamental norm, deeply rooted in basic democratic values and the rule of law."[720] In Europe, the Charter of Fundamental Rights of the European Union explicitly acknowledges the right to protection of personal data, requiring that any such data may be processed only "on the basis of the consent of the person concerned or some other legitimate basis laid down by law."[721] The European Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data holds that data may be collected only for specified, explicit and legitimate purposes, and that they may be processed only as adequate, relevant and necessary in relation to the proposed purposes; it also says that personal data in storage must be kept up to date to ensure that they are accurate, and held only for the amount of time necessary for the purposes for which they are processed.[722]

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[717] *Cf.* Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, pg. 23. See: Advisory Opinion OC-24/17, *supra*, para. 123.

[718] To grant "freely given and informed consent," the owner of the data should have "sufficient information" on the details of the data to be collected, how it is to be collected, the purpose for which it will be used, and any disclosures that may be made, leaving no doubt or ambiguity about the individual's intent. The individual should have the ability to exercise a real choice and there should be no risk of deception, intimidation, coercion or significant negative consequences to the individual from refusal to consent. *Cf.* Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, pg. 32.

[719] *Cf.* Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, Principles 1 and 2, and pg. 31, and Human Rights Council, The right to privacy in the digital age, Report of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/39/29, August 3, 2018, para. 29. See, IACHR. Standards for a Free, Open and Inclusive Internet, Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II, CIDH/RELE/INF.17/17, March 15, 2017, paras. 203, 204, 205, 208 and 209.

[720] *Cf.* Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, Principle 1 and pg. 27.

[721] *Cf.* Charter of Fundamental Rights of the European Union, Council of the European Union and the Commission, 2000/364/01, Official Journal of the European Communities , December 18, 2000, Article 8. Available at: https://www.europarl.europa.eu/charter/pdf/text_en.pdf.

[722] *Cf.* Regulation on the protection of natural persons with regard to the processing of personal data and on the

576. Similarly, the protection needed for personal data requires authorities, in cases when they can lawfully collect and store personal information, to be limited to obtaining information that is truthful, relevant, and necessary for strict compliance with their duties, based on the applicable legal framework.[723] The powers to use, retain and process data must be exercised in conformity with the purposes for which the data were collected and only for the amount of time necessary for those purposes.[724] Information must be managed so as to ensure that data are kept accurate, complete and up-to-date,[725] and, by means of appropriate, reasonable mechanisms, ensure that they are protected and safe, preventing unauthorized access, loss, destruction, damage or disclosure.[726]

577. As this judgment has already noted, the powers of intelligence services in this setting are usually exercised without the consent of the data subjects, given the very nature of the operations and objectives involved. This is why they should be governed by a law with the features outlined above—enacted by the legislative branch and accessible to the public (*supra* paras. 528 a 530)[727]—that specifically sets forth the powers of intelligence agencies to collect personal data and to implement and maintain the archives containing such data. This law, as specifically as possible, should regulate: (a) the reasons for intelligence agencies to create files with personal information; these reasons, in keeping with the normal aims of intelligence activities, should serve as a constraint on the work of authorities in this field; (b) the kinds and types of personal data that authorities are empowered to hold in their files, and (c) the parameters applicable for using, retaining, verifying, correcting, erasing, or disclosing such data,[728] all this in harmony with the standards cited above.

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free movement of such data, European Parliament and Council of Europe, (EU) 2016/679, April 27, 2016, Articles 5.1(b), 5.1(c), 5.1(d) and 5.1(e). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679.

723 *Cf.* Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, Principle 3. See, United Nations Educational, Scientific and Cultural Organization, Guidelines for judicial actors on privacy and data protection, Paris, France, 2022, pg. 18.

724 *Cf.* Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, Principle 4, and Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practice 23. The Human Rights Council says, "the amount and type of data and the retention period need to be limited," adding, "data must be accurate and anonymization and pseudonymization techniques used whenever possible." *Cf.* Human Rights Council, The right to privacy in the digital age, Report of the Office of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/39/29, August 3, 2018, para. 29.

725 *Cf.* Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, Principle 7, and Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practice 23.

726 *Cf.* Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, Principles 5 and 6 and pg. 73; Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practice 23, and Human Rights Council, The right to privacy in the digital age, Report of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/39/29, August 3, 2018, para. 29. According to the Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, the concept of "privacy by design is a form of proactive accountability and relates to the stage prior to the collection of" data, such that it is necessary to "prioritize the user's privacy and data protection," in a manner that is consistent with international standards. See, judgments by the Federal Supreme Court of Brazil, ADI 6649 and ADPF 695 (joined judgment), that ordered the observation of certain standards for transmitting personal data among different entities and bodies of the federal government of Brazil (Judgment of September 15, 2022, available in Portuguese at: https://portal.stf.jus.br/processos/detalhe.asp?incidente=6079238), and ADI 6390, holding Provisional measure No. 954/2020 as unconstitutional because it violated the right to data protection, the inviolability of privacy, private life, honor, reputation, and data confidentiality (Judgment of May 7, 2020, available in Portuguese at: https://portal.stf.jus.br/processos/detalhe.asp?incidente=5895176).

727 See, United Nations Educational, Scientific and Cultural Organization, Guidelines for judicial actors on privacy and data protection, Paris, France, 2022, pg. 7.

728 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practice 23; United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights, Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression, June 21, 2013, para. 8, and The right to privacy in the digital age, OACNUDH report, A/HRC/27/37, para. 28. See, General Comment No. 16 of the Human

578. The European Court of Human Rights examined the same subject in *Leander v. Sweden*, saying that the collection and storage of information on a person's private life in the records of state intelligence services and the use of this data without "adequate and effective guarantees against abuse," established by law, presuppose unlawful interference with the right to respect for private life.[729] The view was upheld in other cases, including *Rotaru v. Romania.*[730]

579. The Court reiterates that intelligence agencies cannot use their powers for discriminatory purposes (*supra* para. 535), and in principle, are therefore not empowered to compile information, preserve data or develop records based exclusively on considerations of race, color, sex, language, religion, political or any other opinions, national or social origin, economic status, birth, or any other social condition (Article 1(1) of the Convention), and many States of the region have explicitly written this prohibition into their domestic legislation.[731] Even if the pursuit of legitimate aims justifies intelligence activities and requires management of sensitive data (*supra* para. 554), such work must be governed by laws that set limits on the legitimate grounds for such action, the types of data that can be collected, and the appropriate criteria for processing it, in the understanding that such powers granted to intelligence agencies cover only that information that is strictly and reasonably necessary for the purposes of fulfilling their mandate.[732]

b.1.2. Regular assessment of the relevance and accuracy of personal data, and required supervision of data management and processing

580. Intelligence agencies must conduct regular assessments of the need to preserve personal data in their files, and if so, corroborate the accuracy of the information. Authorities are therefore required to update or correct the data, if it is found to contain inaccuracies, or to delete them if they are no longer relevant to their mandate. The existence and effective implementation of these concrete precautions are essential safeguards to attenuate the ongoing infringement of the right to privacy inherent in the keeping of intelligence files containing personal data.[733]

581. International consensus also emphasizes the need to identify an institution independent of the intelligence agencies to be responsible for supervising the use these authorities make of all personal information and data.[734] The supervisory institution must have access to

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Rights Committee, para. 10; Committee on the Rights of the Child, Concluding observations: France, U.N. Doc. CRC/C/FRA/CO/4, June 22, 2009, para. 55.a, and Human Rights Council, The right to privacy in the digital age, OACNUDH report, A/HRC/39/29, August 3, 2018, para. 37.

729 *Cf.* ECtHR, *Leander v. Sweden*, No. 9248/81, Judgment of March 26, 1987, para. 48.

730 *Cf.* ECtHR, *Rotaru v. Romania* [GS], No. 28341/95, Judgment of May 4, 2000, para. 43.

731 *Cf.* Ley de Inteligencia Nacional de la República Argentina, Law No. 25,520, Article 4.2; Law 1621 of 2013 of the Republic of Colombia (Law estatutaria sobre actividades de inteligencia y contrainteligencia), Article 4; Ley de Seguridad Pública y del Estado of the Republic of Ecuador, published September 28, 2009, Article 22; Ley de Seguridad Soberana of the Republic of Nicaragua, Law No. 919, Article 13.3, and Law No. 5241 of the Republic of Paraguay (Sistema Nacional de Inteligencia), Article 5.2. See Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, U.N. Doc. CCPR/C/USA/CO/4, April 23, 2014, para. 7.

732 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46 23, Practice 22. See Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, Principle 9.

733 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46 Practice 24, and General Assembly Resolution A/RES/75/176, para. 7.c.

734 This independent institution, depending on the organizational design provided under the legal framework of each State, may or may not be the same authority responsible for supervising intelligence activities per se. *Cf*. Expert opinion delivered at public hearing before this Court by Rodrigo Uprimny Yepes.

intelligence files and be empowered to order competent authorities to destroy the records or information they contain, or to disclose the content to the individuals concerned, depending on each case and aware of the legality and need for keeping the files.[735]

b.2. Access to and control of personal data: the right to informational self-determination

582. International standards also address the need to have reasonable, swift, simple, and effective means, available free of charge,[736] allowing individuals whose personal data have been collected to request access, rectification and erasure thereof, as well as the right to object to its processing and, where applicable, the right to data "portability", that is, to receive the information "in a structured, commonly used and machine-readable format," if feasible, and have the right to transmit those data without hindrance from the authority managing the files.[737] Should it be necessary to curtail the scope of these rights, the specific grounds for any such restrictions should be specified in domestic law and be in accordance with applicable international standards (*supra* para. 521).[738]

583. The European system has recognized the right of individuals to know whether their data are being processed by the authorities. If so, the person has the right to the following information: (i) the purposes of and legal basis for the processing; (ii) the categories of personal data concerned; (iii) the recipients or categories of recipients to whom the personal data have been disclosed, and (iv) the envisaged period for which the personal data will be stored, and the criteria used to determine that period. The right of access by the data subject may be restricted in the case of confidential information relative to public security, national security, or protection of human rights; the authority responsible for processing the data is required to provide justification in writing of the grounds for denial of access.[739]

584. For the purpose of the cause of action in the instant case, the document "Good practices to guarantee human rights by intelligence agencies" recognizes the right of private individuals to request access to their personal data held by government agencies empowered to conduct intelligence activities and to demand rectification of any inaccuracies in the information. Any exceptions to these general rules must be prescribed by law and proportionate and necessary for the fulfillment of the mandate of the intelligence service.[740]

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735 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practice 25, and Tshwane Principles, Principles 6 and 33. See Model Inter-American Law on Access to Public Information, Articles 42 and 63.

736 According to the Model Inter-American Law on Access to Public Information, consultation and access to information must be free of charge, "or at a cost limited to the cost of" duplication of the documents requested. *Cf*. Model Inter-American Law on Access to Public Information, Articles 3.1 g.

737 *Cf.* Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, Principle 8, and Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, European Parliament and the Council of the European Union, (UE) 2016/679, April 27, 2016, Article 20.1. See, United Nations Educational, Scientific and Cultural Organization, Guidelines for judicial actors on privacy and data protection, Paris, France, 2022, pg. 18.

738 *Cf.* Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, Principle 8.

739 *Cf.* Directive on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, European Parliament and to the Council of the European Union, (UE) 2016/680, April 27, 2016. These standards have also been adopted by several States of the region; Brazil, for example, created a legislative committee of jurists of the Chamber of Deputies to write a draft bill on data processing in the context of criminal trials, and in principle, the committee's recommendations follow international standards for data processing, especially those derived from Directive (UE) 2016/680, Articles 14, 24 and 25.

740 *Cf.* Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46 26, Practice 22.

585. To summarize, in keeping with the standards outlined herein, it is imperative for people whose data are held in public files, whose autonomy and freedom of self-determination must be guaranteed, to have a recognized right of access to and control over their information, in the following terms:

(i) the right to know what data are being kept in the records of public agencies, whether in hard copy or in magnetic, electronic, or digital format, to know where the information came from, how it was obtained, what it is being used for, how long it will be retained, whether it is shared with other entities or persons, and if so, what for, and in general, the conditions for the processing of their data;

(ii) the right to demand that their data be rectified, amended, or updated if the information is inaccurate, incomplete, or out of date;

(iii) the right to demand that the data be destroyed, erased or suppressed if it is found that the information was collected or retained illegally, or if there are no grounds to justify its being held in government files or databases, so long as this does not impinge upon other rights, a matter which must be weighed in view of the nature of the files in question and the information they contain, in accordance with applicable regulations;[741]

(iv) the right to object to the processing of the data if it is harmful to the person, in view of his or her particular situation, or in keeping with the provisions of relevant regulations, and

(v) whenever possible and in keeping with relevant legal provisions, the right to receive data in a structured, commonly used and machine-readable format and the right to request transmission of those data without hindrance from the authority managing the files.[742]

586. The Inter-American Court finds that the conjunction of these factors comprises an autonomous human right: the right to informational self-determination, recognized in various

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[741] On the scope of the right to "erasure," the Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes say:

> The right is not absolute but rather contingent and contextual, and it requires a difficult and delicate balancing of interests and principles. Exercise of the right necessarily presents fundamental issues not just about privacy, honor and dignity, but also about the rights of access to truth, freedom of information and speech, and proportionality. [T]he national legislation of each State should establish, where applicable, the existence of the right to erasure, the requirements, deadlines, terms and conditions under which data subjects may exercise their rights to erasure, as well as the causes and reasons for which the exercise of such rights may be impeded.

Cf. Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, pg. 64.

[742] *Cf.* Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes, Principle 8 and pp. 59 to 65; Good practices to guarantee human rights by intelligence agencies, A/HRC/14/46, Practice 26, and United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights, Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression, June 21, 2013, para. 12. See Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, European Parliament and Council of Europe, (EU) 2016/679, April 27, 2016, Articles, 20 and 21. The Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with notes also cover the right to "data portability," saying that in a significant number of States, when personal data are processed electronically or through automated means, the person has the "right to receive a copy" of the data "in an electronic, structured, commonly used and machine-readable format, which allows the continued use and transfer thereof to another controller without hindrance, if required."

of the region's legal systems[743] and protected by the American Convention, especially under the rights set forth in Articles 11 and 13, and as a dimension of judicial protection, a right guaranteed under Article 25.

587. The right to informational self-determination is an aspect of the protection of private life recognized in Article 11 of the Convention, which prohibits "arbitrary or abusive interference" thereof (paragraph 2) and guarantees "protection of the law against such interference" (paragraph 3). Informational self-determination is also based on the right of access to information that the Court has drawn from the content of Article 13(1) of the Convention, because this provision "protects the right […] to request access to State-held information" and therefore assigns to authorities "the positive obligation […] to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the Convention, the State is allowed to restrict access [...] in a specific case."[744]

588. In short, this is clearly an autonomous right that serves, in turn, to guarantee other rights to privacy, protection of honor, safeguarding reputation, and in general, personal dignity. Indeed this right, with certain applicable restrictions (*infra* paras. 601 to 608), covers any kind of personal data in the hands of any public institution, and is equally applicable to records or databases held by private parties, matters which will not be examined here because they are not relevant to the cause of action.[745]

589. Doctrine on this subject points to the importance of the December 15, 1983 judgment by the Federal Constitutional Court of Germany (1 *BvR* 209, 269, 362, 420, 440, 484/83, Unconstitutionality of the Population Census Act of 1983) which began giving shape to this right (the judgment specifically called it "informational self-determination"). The decision by the German court held as a "prerequisite for individual self-determination" that individuals should be free to decide "what kind of personal information is known to certain parts of their

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[743] A general look at the legal systems in the States of the region that have accepted the contentious jurisdiction of the Inter-American Court shows that some have explicitly recognized the right (to different degrees), usually without naming it specifically, as follows: (a) States that recognize the right in their Constitutional system, regardless of whether a judicial mechanism has been provided to guarantee it: (i) Constitution of Colombia, Article 15; (ii) Constitution of the Dominican Republic, Article 44.2; (iii) Constitution of the Republic of Ecuador, Article 66.19; (iv) Constitution of the Republic of Guatemala, Article 31; (v) Constitution of the United Mexican States, Article 16; (vi) Constitution of the Republic of Nicaragua, Article 26.4 (the law for the protection of personal data, Law No. 787, recognizes "the right to informational self-determination", Articles 1, 3, 5, 29 and 45); (vii) Constitution of the Republic of Panama, Article 42, and (viii) Constitution of Peru, Article 2, subparagraphs 5 and 6; (b) States whose Constitution recognizes the right and regulates the judicial mechanism to guarantee it: (i) Constitution of Argentina, Article 43; (ii) Constitution of the Plurinational State of Bolivia, Article 130; (iii) Constitution of the Federative Republic of Brazil, Article 5.LXXII; (iv) Constitution of the Republic of Honduras, Article 182, and (v) Constitution of the Republic of Paraguay, Article 135, and (c) States that recognize the right by means of ordinary law: (i) Barbados, Data Protection Act, 2019, Articles 10 to 15; (ii) Republic of Chile, Law No. 19628, protection of private life, Article 12; (iii) Republic of Costa Rica, Law No. 8968, protection of persons from processing of their personal data, Articles 1, 4 and 7 (known as the "law on informational self-determination"); (iv) Republic of El Salvador, law on access to public information, Executive Order 534, Article 31, and (v) Eastern Republic of Uruguay, law on protection of personal data, Law No. 18331, Articles 1, 2, 14 and 15 (known as "right to protection of personal data"). The Court would clarify that this list of domestic provisions in the States pertains, in general terms, to the area of protection of personal data, not limited to information held in intelligence archives.

[744] *Cf. Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs.* Judgment of September 19, 2006. Series C No. 151, para. 77, and *Case of Flores Bedregal et al. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 17, 2022. Series C No. 467, para. 132.

[745] *Cf.* General Comment No. 16 of the Human Rights Committee, para. 10; Human Rights Committee, General Comment No. 34: Article 19: Freedoms of opinion and expression, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 18; Inter-American Model Law on Document Management, Article 16, and General Assembly Resolution A/RES/75/176, para. 8.e. See, on the right of access to personal data in different arenas, ECtHR, inter alia, *Rotaru v. Romania* [GS], No. 28341/95, Judgment of May 4, 2000, para. 43; *Odièvre v. France* [GS], No. 42326/98, Judgment of February 13, 2003, paras. 28 and 29, and *K. H. et al. v. Slovakia,* No. 32881/04, Judgment of April 28, 2009, paras. 44 to 46.

social environment," because otherwise, "their freedom to make self-determined plans or decisions would be greatly impeded." The judgment added, "the free development of one's personality therefore requires that the individual be protected against the unlimited collection, storage, use and sharing of their personal data."[746]

590. The Inter-American Court would also like to highlight judicial rulings in several States of the region that recognized the existence, content and ultimate scope of the right to informational self-determination, although not always calling it by this explicit name. Several of these decisions by the superior courts in the countries are cited below, although the list is not exhaustive.

591. The Supreme Court of Argentina found that "the intent of legal protection is for affected persons to be able to control the accuracy of the information and the use made of it;" this constitutes "part of the right to private life and, along with honor and reputation, is one of the interests that constitute personhood." It adds, "the people's personal sovereignty over themselves extends to data on their habits and customs, their system of values and beliefs, their property, their family, economic, and social relationships, over all of which they have the right to informational self-determination."[747]

592. The Brazilian Supreme Court has found that "the processing and handling of personal data must respect the limits" that guarantee individual freedom, privacy, and free development of the personality. Therefore, "any sharing with a public institution of personal data held by a public utilities company must guarantee mechanisms to keep such data protected and secure." It added that the lack of mechanisms to "protect confidentiality, integrity and, if applicable, anonymity of personal data against unauthorized access, accidental leaks or improper use, whether in transmission or in processing," "is a violation of the requirements […] for effective protection of fundamental rights."[748]

593. The Constitutional Court of Chile has ruled that "protection of the private life of individuals is closely related to the protection of personal data; this has given shape to the doctrine known as the right to informational self-determination," which "translates into personal control over one's own data" and "includes the right to know about the presence of public or private catalogs or files holding personal information, the purpose of these files, and who is responsible for them."[749]

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[746] *Cf.* Judgment of December 15, 1983, Federal Constitutional Court of Germany (1 BvR 209, 269, 362, 420, 440, 484/83). Available in English at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/1983/12/rs19831215_1bvr020983en.html. The judgment went on to say, "[a] societal order, and its underlying legal order, would not be compatible with the right to informational self-determination if citizens were no longer able to tell who knows what kind of personal information about them, at what time and on which occasion." On the importance of this decision and the scope of the right to informational self-determination, see Human Rights Council, Report of the Special Rapporteur on the right to privacy, U.N. Doc. A/HRC/31/64, November 24, 2016, para. 25, and United Nations Educational, Scientific and Cultural Organization, Guidelines for judicial actors on privacy and data protection, Paris, France, 2022, pg. 16. Studies of the doctrine on this subject include Ferreira Mendes, Laura, Schertel, *Autodeterminação informativa: a história de um conceito*, *Pensar Revista de Ciências Jurídicas*, Fortaleza, Brazil, v. 25, n. 4, October/December 2020, pp. 1-18, and Bazán, Víctor, *El habeas data, su autonomía respecto del amparo y la tutela del derecho fundamental a la autodeterminación informativa, Anuario de Derecho Constitucional Latinoamericano*, Bogotá, Colombia, volume XVIII, 2012, pp. 37-76.

[747] *Cf.* Judgment of October 15, 1998, Supreme Court of Argentina (Urteaga, Facundo Raúl c/ Estado Nacional - Estado Mayor Conjunto de las FF.AA..- s/ amparo Ley 16,986). Available in Spanish at: https://www.refworld.org/pdfid/5836af194.pdf.

[748] *Cf.* Decision of May 7, 2020, Supreme Court of Brazil (ADI 6387 MC-Ref). Available in Spanish at: https://jurisprudencia.stf.jus.br/pages/search?base=acordaos&sinonimo=true&plural=true&page=1&pageSize=10&queryString=INCONSTITUCIONALIDADE%206.393%20DISTRITO%20FEDERAL&sort=_score&sortBy=desc.

[749] *Cf.* Judgment of June 21, 2011, Constitutional Court of Chile (Rol 1049-10-CDS). Available in Spanish at: https://www2.tribunalconstitucional.cl/publicaciones/jurisprudencia-constitucional/.

594. The Constitutional Court of Colombia has found that "the right to privacy precludes any computer processing of matters or information that are relevant only to the private life" of a person, and that the right to informational self-determination means that "persons whose data are circulated play an active role in the process so that the information does not spread without their knowledge and control."[750]

595. The Constitutional Chamber of the Supreme Court of Costa Rica has held that the rights to honor, privacy, and dignity "give rise to the right of access to personal information," which means "the right to know what the records held by the State or private parties are saying about the person, and the right to rectify that information," and this includes "the power to correct inaccurate data held in public or private records, concerning age, background information, personal qualities," and other matters.[751]

596. The Constitutional Court of Guatemala has also weighed in, saying that "the right to recognition of human dignity, […] because of the essential content of this right, leads to additional rights to privacy, honor and private life, all of which together guarantee the existence and enjoyment of another right: informational self-determination," which should enable persons "to update their data," "correct erroneous, incomplete or inaccurate information," "keep certain information confidential," and "erase" certain information that is "extremely sensitive for the person involved."[752]

597. The Supreme Court of Mexico has recognized that "protection of personal data is an outgrowth of the idea of privacy and private life," and is "an expression of informational self-determination," which consists of "the power of all persons to decide freely on the use and destination of their personal data, at all times having the right to gain access to, correct, remove, and legally challenge the processing of those data."[753]

598. Finally, the Supreme Court of Paraguay has upheld the right of persons to "know the use and destination of their own "information or data," and this "allows them to request updating, rectification or removal of information considered erroneous or illegally impinging on their rights."[754]

599. The Inter-American Court reiterates, in short, that the effective exercise of the right to informational self-determination requires the States to provide reasonable, swift, effective mechanisms or procedures, available free of charge, by which the authority that manages the data, or another institution competent on the subject of protection or supervision of personal data (*supra* para. 582),[755] must process and resolve requests for access to and control of such

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[750] *Cf.* Judgment C-567/97 of November 6, 1997, Constitutional Court of Colombia. Available in Spanish at: https://www.corteconstitucional.gov.co/relatoria/1997/C-567-97.htm.

[751] *Cf.* Judgment of July 16, 1997, Constitutional Chamber of the Supreme Court of Costa Rica. Available in Spanish at: https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-110870.

[752] *Cf.* Judgment of October 11, 2006 (file 1356-2006), Constitutional Court of Guatemala. Available in Spanish at: https://consultajur.cc.gob.gt/wcJur/Portal/wfTextoLibre.aspx.

[753] *Cf.* Judgment of April 26, 2022 (motion for constitutional relief 82/2021 joined to 86/2021), Supreme Court of Mexico. Available in Spanish at: https://www2.scjn.gob.mx/juridica/engroses/cerrados/Publico/Proyecto/AI82_2021y86_2021acumuladaPL.pdf.

[754] *Cf.* Agreement and Judgment No. 5 of February 1, 2007, Supreme Court of Paraguay. Available in Spanish at: https://www.pj.gov.py/ebook/libros_files/Proteccion_de_datos_personales.pdf.

[755] More details can be found on recognition of the right to informational self-determination in the field of personal data being held by intelligence services in Article 16 *quáter* of the Ley de Inteligencia Nacional of the Republic of Argentina, Law No. 25,520, and a judgment by the Supreme Court of Argentina, April 19, 2011 (Recurso de hecho, R.P, R.D. c/ Estado Nacional - Secretaría de Inteligencia del Estado). Other States have adopted provisions as well: (a) Act on Cooperation between the federal and state governments on protection of the Constitution and on the Federal Office for Protection of the Constitution (Federal Law on the Protection of the Constitution - BVerfSchG) of

data, within a reasonable, predefined term and under the responsibility of duly trained officers.[756] This requirement is derived from the duty established in Article 2 of the American Convention because it entails the enactment of regulations and the development of practices conducive to the effective observance of human rights,[757] including appropriate administrative procedures, and is an essential guarantee for giving effect to the right.

600. Finally, the Court would recall that Article 25(1) of the Convention guarantees the right to judicial protection from acts that violate fundamental rights, which, as the Court's case law has held repeatedly, "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention."[758] The States must provide for and implement a simple and rapid remedy that can be brought before the courts of justice and that offers sufficient protection of the right to informational self-determination whenever access to personal data, or any of the other matters that give content to this right, is totally or partially denied. This judicial guarantee of the right, already adopted by several legal systems in the States of the region under different guises, such as *habeas data* or others,[759] regardless of the legal designation used, must provide a remedy, action or judicial proceeding that provides effective protection of the right.[760].

b.3. Valid restrictions on the right to informational self-determination in the case of intelligence files

601. The Court cautions that under certain circumstances, the very purposes of intelligence activities could militate against total or partial access to files held by authorities. In such

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the Federal Republic of Germany (§ 15 y § 28); (b) Act for the security and intelligence system of the Republic of Croatia (Article 40); (c) Act for supervision of certain activities for crime fighting (SFS 2007:980) of the Kingdom of Sweden(§ 3); (d) Ley Federal que instituye medidas para mantener la Seguridad Nacional (LMSI) de la Confederación Suiza (artículo 18), y (e) Act on intelligence and security services, 2017, of the Netherlands (Article 76).

[756] *Cf. Mutatis mutandis*, *Case of Claude Reyes et al. v. Chile, supra*, para. 163; *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219, para. 231, and *Case of Flores Bedregal et al. v. Bolivia, supra*, para. 140.

[757] *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations and Costs.* Judgment of May 30, 1999. Series C No. 52, para. 207, and *Case of García Rodríguez et al. v. Mexico, supra*, para. 143.

[758] *Cf. Case of Castillo Páez v. Peru. Merits.* Judgment of November 3, 1997. Series C No. 34, para. 82, and *Case of the Community Garifuna of San Juan and its members v. Honduras. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 29, 2023. Series C No. 496, para. 174.

[759] A brief look at the legal provisions in the States that have accepted the contentious jurisdiction of the Inter-American Court shows that several have explicitly provided a specific judicial mechanism to guarantee protection of the right to informational self-determination, as follows: (a) States that have explicitly recognized the judicial mechanism in the Constitution: (i) Constitution of Argentina, Article 43 (*amparo*); (ii) Constitution of the Plurinational State of Bolivia, Articles 130 and 131 (action for the protection of privacy); (iii) Constitution of the Federative Republic of Brazil, Article 5.LXXII (*habeas data*); (iv) Constitution of The Dominican Republic, Article 70 (*habeas data*); (v) Constitution of the Republic of Ecuador, Article 92 (*habeas data*); (vi) Constitution of the Republic of Honduras, Article 182 (*habeas data*); (vii) Constitution of the Republic of Panama, Article 44 (*habeas data*); (viii) Constitution of the Republic of Paraguay, Article 135 (*habeas data*), and (ix) Constitution of Peru, Article 200.3 (*habeas data*), and (b) States that have explicitly recognized the judicial mechanism via ordinary laws: (i) State of Barbados, Data Protection Act, 2019, Article 91 (appeal); (ii) Republic of Chile, Law No. 19628 on protection of private life, Article 16 (*amparo*); (iii) Republic of Nicaragua, Law No. 787, Article 52 (*amparo*) on the protection of personal data, and (iv) Eastern Republic of Uruguay, Law No. 18331, Articles 37 to 45 (action for the protection of personal data or *habeas data*), on protection of personal data. The Court would clarify that this list of domestic provisions in the States pertains to the protection of personal data in general terms, not limited to information held in intelligence archives.

[760] The Inter-American Court emphasizes that, from a strictly conceptual standpoint, *habeas data* or the judicial route provided for this purpose by the domestic legal order, is a guarantee, that is, a procedural instrument to ensure effective protection of the right to informational self-determination, which is the material or substantive item whose protection is covered by this guarantee. Regardless of the legal designation or the specific procedural route used, the important point is that it constitute a judicial mechanism providing effective protection of the right in the domestic system. See Court of Justice of the European Union, *Case of Maximillian Schrems v. Data Protection Commissioner* [GS], No. C-362/14, Judgment of October 6, 2015, para. 95: "legislation not providing any possibility for an individual to pursue legal remedies in order to have access to personal data relating to him, or to obtain the rectification or erasure of such data, does not respect the essence of the fundamental right to effective judicial protection."

cases, the question of whether any particular restriction to this right is compatible with the American Convention can be addressed, when applicable, by applying the criteria already set down in inter-American jurisprudence on valid restrictions to the right of access to information. The first requirement is that any restriction to the right, as for example, designating the information held by intelligence authorities as classified, must already have been prescribed by law (a law that should possess the features identified above, *supra* paras. 528 to 530).[761]

602. It should be emphasized here that the applicable law should be clear and specific, as much as possible, detailing what type of information or documents are considered classified and what time limits apply for this classification.[762] Clearly, authorities must guarantee that personal data will not be disclosed or made available illegally to third parties, an important safeguard of the data subject's rights (*supra* para. 576); a designation that the information is classified would block access and control by the subject, and therefore must always be considered an exception.[763] Thus, the law must specifically set forth the permissible grounds for holding any particular information as classified, based on its content.[764] Moreover, the restriction must obey a legitimate aim in a democratic society (Article 13(2) of the American Convention).[765]

603. On the specific matter of classification of personal information held by intelligence agencies under the argument of protecting national security, a State cannot block access to any information simply because of a general designation that it is associated with that purpose; instead, a law must be on the books to define the specific, narrow categories that need to be withheld to protect security objectives. A decision to classify a document merely because it is in the hands of an intelligence service, regardless of its content, would therefore be incompatible with inter-American standards.[766]

604. The Court, in keeping with international standards, has identified the following concrete conditions that, responding to the objective of national security, could legitimize legal restrictions and, consequently, authorize the State's refusal to provide requested information

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761 *Cf. Case of Claude Reyes et al. v. Chile, supra*, para. 89, and *Case of Flores Bedregal et al. v. Bolivia, supra*, para. 134. See Johannesburg Principles, Principle 11, and Tshwane Principles, Principle 3.a.

762 *Cf.* Tshwane Principles, Principles 3.a and 10.

763 The Court recalls, in the general matter of access to information, that it is imperative in a democratic society for State authorities to be governed by the principle of maximum disclosure, based on the presumption that all information is accessible, subject to a limited system of exceptions. *Cf*. *Case of Claude Reyes et al. v. Chile, supra*, para. 92, and *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil, supra*, para. 199. See Johannesburg Principles, Principle 13, and Model Inter-American Law on Access to Public Information, Article 2.

764 *Cf.* Johannesburg Principles, Principle 12, and Tshwane Principles, Principle 4.b.

765 Article 13(2) of the Convention authorizes restrictions to a right, so long as they are necessary to ensure "respect for the rights or reputations of others" or "the protection of national security, public order, or public health or morals." The Court would point to its discussions on claiming such objectives for intelligence activities (*supra* para. 532), and reiterate the need for these concepts to be provided by law. *Cf. Case of Claude Reyes et al. v. Chile, supra*, para. 90, and *Case of Baraona Bray v. Chile, supra,* para. 104. See Johannesburg Principles, Principle 11, and Tshwane Principles, Principle 3.b. With respect to the aim of safeguarding "public morals," international consensus emphasizes both the exceptional character of such a claim, and that "public morality varies over time and from one culture to another." Therefore, the State making such an argument to restrict human rights "shall demonstrate that the limitation in question is essential to the maintenance of respect for fundamental values of the community," and understand that this does not authorize it to "protect understandings of morality deriving exclusively from a single social, philosophical or religious tradition," and the concept should be understood "in the light of the universality of human rights, pluralism and the principle of non-discrimination." *Cf.* Commission on Human Rights, Siracusa Principles on the limitation and derogation provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, September 28, 1984, annex, para. 17, and Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21), U.N. Doc. CCPR/C/GC/37, September 17, 2020, para. 46.

766 *Cf.* Johannesburg Principles, Principle 12, and Tshwane Principles, Principles 4.d and 5.b. See Model Inter-American Law on Access to Public Information, Article 30, and IACHR. Derecho a la información y seguridad nacional, Special Rapporteur for freedom of expression, OEA/Ser.L/V/II CIDH/RELE/INF.24, July 20, 2020, para. 25.

held by intelligence services: (a) information about current defense plans; (b) information about the capabilities or use of military weapons systems or communications systems; (c) information about specific measures to safeguard the territory of the State or national institutions from specific threats, so long as the effectiveness of the measures depends on keeping the information confidential; (d) information regarding operations, sources, and methods of intelligence services, insofar as they concern national security matters, and (e) information concerning national security matters that was supplied by a foreign state or inter-governmental body with an express expectation of confidentiality.[767] The Court finds that these conditions, limited to the purpose of protecting national security, are valid, reasonable restrictions on the right of access to personal information and data.

605. Inter-American case law demands that any restrictions must meet the requirements of suitability, necessity and proportionality in the specific circumstances of the case.[768] The decision to classify information in intelligence files must therefore meet the demands of the principle of proportionality, that is: (a) classification must be the best or most appropriate means to achieve its intended goal, that is, to deny access to the information; (b) classification must be necessary and considered absolutely essential to achieve that purpose when no other measure is found that would be less injurious to the right of access to the information and equally useful for meeting the intended goal, and (c) classification must be strictly proportional, meaning that the restriction on the right of access to the information should not appear as excessive overreach compared to the advantages of keeping the material confidential and the resulting achievement of its intended purpose (*supra* para. 536). Application of the proportionality test in specific cases can provide a means to guarantee the achievement of a legitimate purpose and yet allow at least partial access to certain files, documents, or data.[769]

606. In any case, if the request for access to and control of the data is considered inadmissible, the competent authority must deliver a well-founded decision consistent with the guarantees of due process that are binding on all State authorities that may be in a position to impinge on rights (Article 8(1) of the Convention),[770] meaning a clear, complete justification of the grounds for the denial.

607. Several other points merit attention here. First, similarly to the restrictions on intelligence activities per se (*supra* para. 535), authorities may not use classification of information in their hands as a means to protect a concealed interest in favoring or harming a particular activity or political ideology, or in any other way exercising some form of discrimination (Article 1(1) of the Convention). Second, regardless of whether or not authorities deny access to personal data, they are duty bound to manage that information correctly, preventing it from being modified, lost, transmitted, or shared without authorization,[771] so long as the reasons why it is being kept remain current (*supra* para. 576). Third, as the Court has said repeatedly, in cases of human rights violations, classification of information for reasons of public interest or national security cannot be used to justify a refusal by authorities to release information requested by judicial or administrative entities

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767 *Cf.* Tshwane Principles, Principle 9, and Model Inter-American Law on Access to Public Information, Article 34.

768 *Cf. Case of Claude Reyes et al. v. Chile, supra*, para. 91, and *Case of Baraona Bray v. Chile, supra,* para. 104. See Tshwane Principles, Principle 3.b, and Model Inter-American Law on Access to Public Information, Article 36.

769 *Cf.* Tshwane Principles, Principle 22, and Model Inter-American Law on Access to Public Information, Article 44.

770 *Cf. Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs.* Judgment of February 2, 2001. Series C No. 72, para. 124, and *Case of Mina Cuero v. Ecuador. Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 7, 2022. Series C No. 464, para. 80.

771 *Cf.* Tshwane Principles, Principle 15, and Model Inter-American Law on Access to Public Information, Article 15.

conducting investigations or on-gong judicial processes.[772] Moreover, if the investigation of a punishable offense is underway, the decision to classify the information and thus deny disclosure can never depend exclusively on a government body whose members are under suspicion for having committed the offense.[773] Finally, the classification of any particular information must never be understood as a measure of indefinite duration; instead, classification and the resulting denial of access may remain in effect only so long as strictly necessary to meet the intended purpose, and this requires regular review of the continuing need.[774]

608. Given all this, guaranteeing the right of access to information requires a legal framework that provides mechanisms for clearing and declassifying intelligence files and allowing public access to documents and data for which classification is not justified, and identifying fixed time limits for automatic declassification,[775] always safeguarding the confidentiality of sensitive data or information that, under the terms of applicable laws and regulations, cannot be disclosed without the consent of the data subject (*supra* paras. 554 and 576). The right to informational self-determination also needs to be guaranteed, as discussed above (*supra* para. 600). The legal system must provide a judicial mechanism for this purpose, allowing individuals to challenge the explanations given by administrative authorities when access to data is denied; they must be able to claim recourse to this judicial instrument, depending on the provisions of domestic regulations, to obtain a review of such a denial by administrative authorities. In any case, if judicial authorities find it necessary to deliver a decision, they must be allowed access to examine the information to which access has been refused.[776]

A.2.2. Analysis of the instant case

609. The Court will now proceed to examine how it will apply the standards reviewed above

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[772] *Cf. Case of Myrna Mack Chang v. Guatemala, supra*, para. 180, and *Case of Flores Bedregal et al. v. Bolivia, supra*, para. 138. See Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, Framework principles for securing the accountability of public officials for gross or systematic human rights violations committed in the course of States-sanctioned counter-terrorism initiatives, U.N. Doc. A/HRC/22/52, April 17, 2013, paras. 40 and 41; Tshwane Principles, Principle 10, and Model Inter-American Law on Access to Public Information, Article 27.

[773] *Cf. Case of Myrna Mack Chang v. Guatemala, supra*, para. 181, and *Case of Flores Bedregal et al. v. Bolivia, supra*, para. 139.

[774] *Cf.* Tshwane Principles, Principle 16.

[775] *Cf.* Tshwane Principles, Principle 17. Several States in the region have legislated fixed terms for declassifying information held as confidential for reasons of national security, as follows: a) Republic of Argentina: Ley de Inteligencia Nacional, Law No. 25,520, calls for a term of no less than 15 years, and the Executive can order declassification of any information and allow for total or partial access thereto (Article 16 ter); (b) Federative Republic of Brazil: Executive Order No. 7,724 of May 16, 2012, sets varying term limits, depending on the level of classification of the information: (i) extremely secret, 25 years; (ii) secret, 15 years, and (iii) confidential, five years (Article 28); (c) Republic of Colombia: Law 1621 of 2013 calls for a classification term of 30 years, but the President of the Republic can extend classification for another 15 years and can also authorize, at any time, the full or partial declassification of information (Article 33); (d) Republic of Ecuador: Ley de Seguridad Pública y del Estado, published on September 28, 2009, regulates variable terms, depending on the level of classification of the information: (i) extremely secret, 15 years, with possible reclassification; (ii) secret, 10 years, and (iii) confidential, five years (Article 19); (e) Republic of El Salvador: Ley de Acceso a la Información Pública, Executive Order No. 534, calls for a seven-year term, which can be extended for five more years, and "extensions for additional periods" (Article 20); (f) Republic of Guatemala: Ley de Acceso a la Información Pública, Executive Order 57-2008, sets a term of seven years, with extensions of up to five additional years (Articles 27 and 28); (g) United Mexican States: Ley General de Transparencia y Acceso a la Información Pública, published on May 4, 2015, calls for a period of five years, which can be extended by up to five more years (Article 101); (h) Republic of Nicaragua: Ley de Acceso a la Información Pública, Law No. 621, sets a 10-year term, which can be extended by up to five additional years (Article 17); (i) Republic of Paraguay: Ley No. 5241 (Sistema Nacional de Inteligencia) calls for a maximum term of 20 years (Article 22), and (j) Republic of Peru: Decreto Legislativo de Fortalecimiento y Modernización del Sistema de Inteligencia Nacional, Decreto No. 1141, sets a term of 20 years, which can be extended for another full term (Article 6).

[776] *Cf.* Johannesburg Principles, Principle 14; Tshwane Principles, Principles 3, 6 and 26, and Model Inter-American Law on Access to Public Information, Article 53.

to the process currently being adjudged.

(a) Right to protection of private life in connection with the intelligence activities conducted prior to enactment of Law 1621 in 2013

610. The Court will begin by emphasizing that the Colombian legal system enacted Constitutional Law 1621 in 2013,[777] which is currently in force and whose purpose, in general terms, is to regulate the activities of "agencies that conduct intelligence and counterintelligence operations" (Article 1).

611. Before the new provisions went into effect, there was no law that regulated intelligence activities in the terms required under the parameters given in the above paragraphs as part of this judgment (*supra* paras. 528 to 530). The State raised the point in its answering brief, saying that "one of the factors that made the illegal conduct of these intelligence activities possible was the lack of a clear, specific regulatory framework."[778] The three expert witnesses whose opinions were included in the body of evidence agreed.[779]

612. This means that the intelligence activities targeting the alleged victims from the 1990s until at least 2005 (*supra* para. 517) by the different government entities, including the armed forces, the National Police, and the Administrative Department of Security, were not based on any body of regulations approved by the legislature and available for public perusal, clearly and specifically authorizing the conduct of such actions.

613. The DAS itself operated under a series of executive orders that over time regulated its "structure" and "administrative organization";[780] they were enacted by the President, in violation of the principle of "*reserva de ley*" (*supra* para. 529),[781] and their content made it

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[777] Article 152 of the Constitution of Colombia states: "The Congress of the Republic may enact constitutional laws to regulate the following matters: (a) fundamental rights and duties of persons, and the procedures and remedies for protecting them; […]." See written expert testimony of Antonio Agustín Aljure Salame (evidence file, volume XXXVI, folio 46241). Before Law 1621 was enacted in 2013, the Constitutional Court had declared in Judgment C-913 of 2010 that Law 1288 of 2009 was "unconstitutional"; this law provided a means to "enact rules and regulations to strengthen the legal framework that allows intelligence and counterintelligence agencies to fulfill their constitutional and legal mission, and to order other provisions." It was found unconstitutional because it was "enacted as an ordinary law, when its content and use regulated matters narrowly associated with structural, comprehensive, essential matters of fundamental rights […] that should instead be enacted through a constitutional law subject to prior approval by the Constitutional Court." Available in Spanish at: https://www.corteconstitucional.gov.co/RELATORIA/2010/C-913-10.htm.

[778] *Cf.* The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, 974). The domestic courts have affirmed that, prior to the 2013 enactment of Law 1621, "there was no […] specific, concrete law that regulated intelligence activities by government agencies." *Cf.* Judgment by the Chamber of Criminal Cassation of the Supreme Court, April 28, 2015, file 36784 (evidence file, volume XVI, annex 27 to the answering brief, folio 31757).

[779] *Cf.* Written opinion by expert witness Antonio Agustín Aljure Salame (evidence file, volume XXXVI, folios 46287 and 46288); written opinion by expert witness Federico Andreu Guzmán (evidence file, volume XXXVII, folios 46345 to 46371), and written opinion by expert witness Rodrigo Uprimny Yepes (evidence file, volume XXXVIII, folio 46431). Expert witness Federico Andreu Guzmán said that, before 2013, "intelligence activities were governed […] by instructional manuals, orders, [and] rules developed by the Ministry of Defense, by military commandos, by the commandos of each one of the branches of the armed forces," that is, the Army, Navy and Air Force, "and [by] the national police and the Administrative Department of Security [DAS]; all these documents were classified, and common citizens had no access to them."

[780] Executive Orders 1717 of 1960, 625 of 1974, 512 of 1989, 2110 of 1992, 218 of 2000, 1272 of 2000, 1409 of 2002 and 643 of 2004 (*supra* para. 313 and footnote 334).

[781] The Constitutional Court of Colombia, in its pre-enactment review of the draft bill that gave rise to Law 1621 of 2013, pointed to the "*reserva de ley*" required by the 1991 Constitution. Its discussion examines the requirements that need to be met before a constitutional law can be enacted (Article 152 of the Constitution), and the views of the Constitutional Court are worth including for this analysis:

> This "*reserva de ley*" shapes constitutional rights and sets boundaries on them by assigning certain non-delegable powers to the legislature, and as a mechanism to prevent arbitrary action, it serves a

impossible to know or anticipate the reach of State powers in the field of intelligence, the "threats" to "domestic and foreign national security" that could trigger the use of these powers, the limitations, controls, and oversight over the officials responsible for this work, and ultimately, the safeguards that, in keeping with the standards of the American Convention, should have been in place to prevent arbitrary interference with the rights of persons affected by these activities. To understand this, it is enough to examine the broad, vague notions contained in the text of Executive Order 643 of 2004 (which finally restructured the DAS) with regard to the concepts of "intelligence" and "national security," and specifically, the absence of any regulations on actions and measures that, based on these concepts, could be ordered and conducted by DAS authorities (*supra* para. 314 and footnotes 336 to 339).[782]

614. As a further result of the intelligence operations from the 1990s and at least through 2005, government authorities gathered, retained, and recorded different kinds of information about the alleged victims, including personal data, even in the absence of a law to regulate the powers of public entities for this kind of work, the grounds to justify the existence of files with such information, and most certainly, appropriate parameters for the use, retention, verification, rectification, erasure and ultimate disclosure of the data (*supra* para. 577).

615. The Court recalls that Article 2 of the Convention requires the States Parties to adopt, in accordance with their constitutional processes and the provisions of the Convention, such legislative or other measures as may be necessary to give effect to the rights and freedoms protected by the Convention.[783] This duty entails two different kinds of action. The first is elimination of any norms and practices that in any way violate the rights enshrined in the Convention, either because they ignore those rights or liberties or because they obstruct their exercise. The second is to issue norms and develop practices that lead to the effective observance of such rights.[784]

616. As has been noted, while Constitutional Law 1621 was enacted in 2013, it was not in force and did not apply to the intelligence activities conducted from the 1990s through at least 2005 by the different government agencies.[785] During those years, the State of Colombia was in violation both of the obligation to respect rights, stipulated in Article 1(1) of the American Convention on Human Rights, and also of its duty to adopt domestic legal effects under Article 2 of the Convention. Observance of this right would have served to guarantee due protection of the private lives of the alleged victims, a right enshrined in Article 11 of the Convention, whose paragraph 3 guarantees "protection of the law" from arbitrary or abusive interference in the private lives of persons, but the absence of a legal framework permitted exactly this kind of arbitrary exercise of public power.

> dual purpose: not only do private citizens know the scope of their rights in advance, but also it prevents the government from unwarranted restriction of rights. The principle of legality is thus served in the evolution of the rule of law. It is also part of the evolution of the democratic state, because it allows restrictions on rights for reasons of certain security policies to be broadly debated in the cornerstone scenario of democracy—the Congress.

Cf. Judgment C-540/12 of July 12, 2012, Constitutional Court of Colombia.

782 As an example, Article 24 of Executive Order 643 of 2004, which regulated the powers of the assistant director of operations, made general reference to "activities needed for the gathering, classification and verification of […] information," "undercover intelligence operations" and "methods necessary for meeting the objectives." Article 45 gave a glimpse into the powers of the DAS in this field, making reference to "reports, documents, messages, recordings [and] photographs," although the DAS regulation was not designed to anticipate controls or limits, but to categorize these materials as "classified or confidential."

783 *Cf. Case of Gangaram Panday v. Suriname. Preliminary Objections*. Judgment of December 4, 1991. Series C No. 12, para. 50, and *Case of Córdoba v. Paraguay, supra*, para. 108.

784 *Cf. Case of Castillo Petruzzi et al. v. Peru, supra*, para. 207, and *Case of the Community Garifuna of San Juan and its members v. Honduras, supra*, footnote 124.

785 *Cf. Mutatis mutandis*, *Case of Villarroel Merino et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 24, 2021. Series C No. 430, para. 142, and *Case of Aroca Palma et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 8, 2022. Series C No. 471, para. 107.

617. These conditions were incompatible with the standards outlined in detail in this judgment and qualify as overreach by government authorities, and therefore, a violation of the alleged victims' right to a private life. The Court, having said this, will nonetheless proceed with an analysis of the arguments submitted by the Commission and the two representatives of the alleged victims.

618. According to the parameters established herein, the State's intelligence activities must necessarily pursue legitimate aims, meaning an objective that is "necessary in a democratic society" and consistent with the content of the Convention (*supra* para. 531). The absence of a suitable regulatory framework, relevant to this work and accessible to the public, resulted in a failure to identify a legitimate aim as defined above. Nonetheless, given the facts as established, the Court must delve into the purposes that were pursued using the intelligence activities that targeted the alleged victims, particularly those that took place as part of the operations conducted by special intelligence group 3 (G3) inside the DAS, in the years from 2003 to 2005 (*supra* para. 316).

619. Multiple court decisions were handed down over the course of judicial and administrative proceedings to investigate these actions, and they revealed how the government agency, its structure, and its functions were being used "to weaken and intimidate those who held different ideologies and convictions."[786] Their aim was to investigate "the work done by the NGOs, their members, […] and human rights defenders and associate it with armed groups operating outside the law, specifically the FARC and the ELN, seeking to discredit them"[787] "so as to counteract them"[788] and "block the legitimate exercise of defending human rights and opposition to the national government."[789] It is enlightening to consider the conclusions of the Office of the Solicitor General, which said, "the conduct of the activities […] of the […] G3 did not pursue aims of general concern, but instead obeyed interests more closely fitting a police state that persecutes those who oppose it simply because they do so."[790]

620. The DAS intelligence activities targeting the alleged victims were not intended to pursue legitimate aims necessary in a democratic society, but instead, served particular interests based on strictly political motivations, whose objective was to "undermine the credibility of CAJAR nationally and internationally"[791] and counteract and neutralize its actions (*supra* para. 322), given its critical stance regarding policies promoted and encouraged by those who, at the time, held the reins of government.

621. Such purposes are expressly prohibited by human rights standards for intelligence activities (*supra* para. 535) and inherently negate one of the cornerstones upholding the rule of law, because, as this Court has held in its case law, opposition voices are essential in a democracy; without them it is not possible to reach agreements that satisfy the different visions that prevail in society. Hence, in a democratic society States must adopt measures to

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[786] *Cf.* Order by the Prosecutor General, unit delegated to the Supreme Court, January 26, 2010, special assignment filing 12495-11 (evidence file, volume XX, annex 80 to the answering brief, folio 35874).

[787] *Cf.* Judgment by the Chamber of Criminal Cassation of the Supreme Court, September 6, 2017, filing 39931 (evidence file, volume XII, annex 48 to the CAJAR and CEJIL pleadings and motions brief, folios 27156, 27158 and 27159).

[788] *Cf.* Judgment by the Third Criminal Chamber of the Specialized non-territorial circuit, Bogotá, November 30, 2012, filing 2010-00020 (evidence file, volume XII, annex 51 to the CAJAR and CEJIL pleadings and motions brief, folio 27645.

[789] *Cf.* Judgment by the Chamber of Criminal Cassation of the Supreme Court, September 6, 2017, filing 39931 (evidence file, volume XII, annex 48 to the CAJAR and CEJIL pleadings and motions brief, folio 27166).

[790] *Cf.* Order of the Office of the Solicitor General, October 1, 2010, filing IUS 2009- 57515 (evidence file, volume XII, annex 53 to the CAJAR and CEJIL pleadings and motions brief, folios 27917 and 27918).

[791] The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1096).

guarantee the effective participation of opposition individuals, groups and organizations.[792] Public authorities therefore cannot conduct actions with the intent of neutralizing them, persecuting them, or attacking them. This is why political pluralism is so important for democracy, undergirded by Articles 13, 16 and 23 of the American Convention, which seeks to guarantee the right to dissent and to embrace, express, and defend differing opinions and ideas; it demands tolerance and a spirit of openness from government authorities and overall society.[793]

622. Furthermore, government authorities developed records and profiles on the alleged victims for no other reason than to serve political aims with an eye to discrediting and neutralizing them, including entries and personal data on themselves and some of their family members, operating in the absence of any law to authorize such a procedure and in direct breach of the purposes that should prevail in a democratic society (*supra* para. 342). The pursuit of these aims eventually landed the arbitrary intelligence activities before the bodies of the inter-American human rights system (*supra* footnotes 386 and 394).

623. There was no legal framework to regulate State intelligence activities, there was no identification of a legitimate purpose for such activities, and there were no controls or limits on them; all this led to the failure of DAS operations to meet the requirements of suitability, necessity and proportionality (*supra* paras. 536 and 537). As a result, the array of actions to gather and compile information about the alleged victims constituted manifestly arbitrary acts of interference in their right to privacy by violating the mandate of Article 11(2) of the American Convention in all the spheres it protects: private life, family life, home,[794] correspondence, and other communications of the alleged victims.

624. The Court would emphasize here that the full spectrum of actions by the DAS to intercept communications, including land line and mobile telephone calls, fax, email and postal mail, entering a home, shadowing and taking photographs of homes, workplaces and family circles of the alleged victims, demanding information from private companies to obtain personal data, and more, took place in the absence of authorization or control by any judicial authority, even though it was a judicial prerogative to examine whether the measures were proportional in the particular case and to rule on the means, times, scope and limitations to be put in place for safeguarding the rights of the persons affected. This failure of judicial authorization was incompatible with the American Convention, inter-American case law and the international standards detailed above (*supra* paras. 547, 548, 551 and 553).

625. The Court finds, accordingly, that the State of Colombia, through the intelligence activities developed by the different government agencies from the 1990s until at least 2005, violated the right to protection of privacy, enshrined in Article 11(2) and 11(3) of the American Convention, read in conjunction with Articles 1(1) and 2 thereof, in injury of the members of CAJAR and their families who were targeted by these activities.

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792 *Cf. Case of Cepeda Vargas v. Colombia, supra*, para. 173, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 331.

793 *Cf. Case of Ríos et al. v. Venezuela, supra*, paras. 62 and 105, and *Case of Palacio Urrutia et al. v. Ecuador. Merits, Reparations and Costs.* Judgment of November 24, 2021. Series C No. 446, para. 89. Multiple domestic courts have delivered decisions emphasizing the importance of political pluralism in a democratic system, including, *inter alia*, the January 30, 2002 judgment No. SUP-JDC-128/2001 by the superior chamber of the electoral court of the judicial branch of the Federation of Mexico; judgment C-1040/05 of October 19, 2005, by the Constitutional Court of Colombia, and the August 13, 2015 judgment 1732-2014 by the Constitutional Court of Guatemala.

794 The proven facts regarding DAS activities included taking photographs of the homes of the alleged victims, following some of them to their places of residence and removing documents from the trash at the family home of Alirio Uribe Muñoz (*supra* paras. 323 to 331). The domestic courts also "inferred infiltration and/or entry of his family home." *Cf.* Judgment by the Chamber of Criminal Cassation of the Supreme Court, September 6, 2017, filing 39931 (evidence file, volume XII, annex 48 to the CAJAR and CEJIL pleadings and motions brief, folio 27162).

(b) The right to freedom of thought and expression

626. The Court, upholding relevant standards, finds that surveillance and illegal, invasive interception of communications not only constitute arbitrary interference in the right to privacy, but also, by their outcome, engender a direct or indirect restriction of the right to freedom of thought and expression, contained in Article 13(1) of the American Convention. They restrict the free expression, exchange, and circulation of opinions, ideas, and information because of the intimidating, deterrent impact on people laboring under the suspicion or certainty that their communications are not confidential because their calls, messages, correspondence and other forms of private communication do not reach their intended destinations without interference or inspection by governmental authorities.[795]

627. In the case at hand, the arbitrary interception of communications triggered an intimidating effect on the attitude of the alleged victims after the illegal actions of the G3 came to light, as they began to practice self-censorship or "greater precaution" with the use of communications media so as to avoid "being located," and as a mechanism to ward off subsequent security problems. This was evident in interviews that some of the members of the Collective gave to psycho-social experts.[796] The impact was heightened by the context in which the facts took place, given the unlawful aims of the DAS intelligence operations, designed to discredit, counteract, and neutralize the Collective and its members because of their critical stance and their willingness to file claims against government policies in an environment of intimidation and debilitation of human rights organizations and defenders (*supra* para. 488).

628. The Court therefore understands that the DAS intelligence activities, given the intimidating effect that inhibited the alleged victims from making free, lawful use of communications, violated their right to freedom of thought and expression, enshrined in Article 13(1) of the Convention, read in conjunction with Article 1(1) thereof. This intimidating effect, in the view of the Court, collectively affected all those who were targeted by the intelligence activities because of their legitimate fear that their communications could be illegally intercepted, given their status as members or family members of CAJAR, whose private lives were arbitrarily affected.

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[795] Cf. Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, U.N. Doc. A/HRC/13/37, December 28, 2009, para. 33; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, U.N. Doc. A/HRC/17/27, May 16, 2011, para. 53; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/23/40, para. 24; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Mexico, A/HRC/38/35/Add.2, November 13, 2018, para. 53, and Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/41/35, May 28, 2019, paras. 21 and 26. See also, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights, Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression, June 21, 2013, paras. 4 to 6, and written expert opinion by David Kaye, April 30, 2022 (evidence file, volume XXXIII, affidavits, folios 45690 and 45691).

[796] For example, the journalist Adriana Cuéllar Ramírez, who served as the chief of public relations in the Collective, said, in a discussion of the use of social media: "[In] the Collective when all the DAS problems happened, we no longer had any social media for that very reason, because they would be able to find us." Mónica Lorena Zuluaga Patiño said: "I have had a strange reaction to the use of email, since I knew it was being intercepted […] I knew that it contained very sensitive information. […] What was I most concerned about? As a human rights defender, you always want to protect the victims. So there was terrible anxiety knowing that it contained sensitive information." Adriana Patricia Fuentes López said: "I live with a constant awareness that everything you say on WhatsApp is being seen. I live my whole life feeling like my conversations are always being listened to." Another member of CAJAR added: "I always wondered whether we were doing a lot of self-censoring […]. That is […] there was a real assault on our freedom to say whatever we thought and or to report everything we could have reported." *Cf.* Joint written expert opinion from members of the Psychosocial Care Center (CAPS), April 29, 2022 (evidence file, volume XXXIII, affidavits, folios 45246, 45280, 45645 and 45659).

629. The Court cautions that the argument concerning infringement of the right to freedom of thought and expression was also asserted for other facts of the case; later chapters of this judgment will discuss these arguments along with the violation other rights, including the right to freedom of association (*infra* chapter VIII.4).

(c) The rights of the child

630. This judgment has clearly shown that DAS intelligence activities indiscriminately included children and adolescents, the sons, daughters or other relatives of CAJAR members (Luisa Fernanda and David Alirio Uribe Laverde; Paula Camila Romero Gutiérrez, Leandro Jurado Arias and Jheyson Andrés Arias Zambrano, *supra* paras. 326, 329, 330 and 343), and government authorities failed to take into consideration that they were minors and or to exercise greater precaution to avoid arbitrary, unnecessary breach of their rights.

631. The Court has held in the past that children have the same rights as all human beings, and also enjoy special rights derived from their condition, and these are accompanied by specific duties of the family, society, and the State.[797] This Court has repeatedly emphasized the presence of a "very comprehensive international *corpus juris* for the protection of the child" that it must use as a source of law to determine "the content and scope" of the obligations the States have acquired under Article 19 of the American Convention regarding children, particularly because the article stipulates "measures of protection."[798] The Court has emphasized that protection of the rights of the child and adoption of measures to bring about that protection should adhere to the following four guiding principles of the Convention on the Rights of the Child, cutting across the entire system and inspiring the implementation of comprehensive protection: (i) the principle of non-discrimination, (ii) the principle of the overriding interest of the child, (iii) the principle of respect for the right to life, survival and development, and (iv) the principle of respect of children's opinions in all procedures affecting them, so as to guarantee their participation.[799]

632. Furthermore, their condition demands special protection that must be understood as an additional right, complementary to the other rights that the American Convention recognizes to every individual. The primacy of the best interests of the child must be understood as the need to observe all the rights of children, which are binding for the State and have an impact on the interpretation of all the other rights of the Convention when a case relates to minors.[800] Hence the best interests of the child are a priority that applies for purposes of interpretation and in situations of a clash among several different rights.[801]

633. The Court has understood that, pursuant to Article 19 of the American Convention, the State is obliged to promote special measures of protection in keeping with the principle of the best interests of the child,[802] assuming its position as guarantor with increased care and

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797 *Cf. Juridical Condition and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 54, and *Case of María et al. v. Argentina. Merits, Reparations and Costs.* Judgment of August 22, 2023. Series C No. 494, para. 83.

798 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, paras. 192 to 194, and *Case of María et al. v. Argentina, supra,* para. 82.

799 *Cf. Differentiated approaches with respect to certain groups of persons in detention (Interpretation and scope of Articles 1(1), 4(1), 5, 11(2), 12, 13, 17(1), 19, 24 and 26 of the American Convention on Human Rights and other human rights instruments).* Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, para. 54, and *Case of María et al. v. Argentina, supra,* para. 83.

800 *Cf. Case of the Río Negro Massacres v. Guatemala, supra*, para. 120, and *Case of María et al. v. Argentina, supra,* para. 84.

801 *Cf.* Advisory opinion OC-29/22, *supra*, para. 192.

802 *Cf. Case of Vera Rojas et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 1, 2021. Series C No. 439, para. 104, and *Case of María et al. v. Argentina, supra,* para. 85.

responsibility, given children's special condition of vulnerability. The concept of the best interests of the child is based on the very dignity of the human being, on the characteristics of children themselves, and on the need to foster their development.[803] Article 3 of the Convention on the Rights of the Child holds that in all actions concerning children undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. The Committee on the Rights of the Child has addressed this principle, saying, "Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children's rights and interests are or will be affected by their decisions and actions—by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children."[804]

634. International standards call on the States to adopt, both in legislation and in practice, mechanisms for special protection to prevent any arbitrary or unlawful interference with the privacy of minors (see Article 16 of the Convention on the Rights of the Child),[805] for several reasons. The first is that the full set of human rights is universal in nature, which means that children, as holders of the rights enshrined in the American Convention,[806] should also be protected from any attack or undue restriction on their privacy. The second is that the right to private life is essential to ensure the effective exercise of the other rights to which children are similarly entitled, such as freedom of thought and expression, personal identity or bodily and mental integrity. The third is that privacy in the specific case of minors is a critical determinant for the full development of their personality, because their future life, whether intellectually, emotionally, or in other ways, develops in childhood and adolescence, aided by the conditions of a private life.[807]

635. The Court therefore finds that the DAS intelligence operations violated the right to a private life for the children targeted by its activities, and the State failed to honor the rights accruing to their particular status as recognized in Article 19 of the American Convention. This violation, as in the case of the adult victims, entailed infringement of the duty to respect (Article 1(1) of the Convention) and the duty to adopt domestic legal effects (Article 2), given that the lack of suitable regulations compatible with Convention-based standards facilitated the illegal State actions. Moreover, in the particular case of the children, the legal framework should have provided specific safeguards as special measures of protection for certain categories of persons, activities attributed to them, and defined levels of suspicion sufficient to allow for the use of legal, rational methods of obtaining information (*supra* paras. 534 and 538). None of this occurred in the instant case, as this judgment has found, and as a result, the State of Colombia incurred international liability.

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803 *Cf.* Advisory opinion OC-17/02, *supra*, para. 56, and *Case of María et al. v. Argentina, supra,* para. 85.

804 *Cf.* Committee on the Rights of the Child. General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), CRC/GC/2003/5, of November 27, 2003, para. 12; Advisory opinion OC-17/02, *supra*, para. 56, and *Case of María et al. v. Argentina, supra*, para. 85.

805 *Cf.* Committee on the Rights of the Child, Concluding observations: United Kingdom of Great Britain and Northern Ireland, U.N. Doc. CRC/C/GBR/CO/4, October 20, 2008, para. 37.a, and General Comment No. 25 (2021) on children's rights in relation to the digital environment, U.N. Doc. CRC/C/GC/25, March 2, 2021, paras. 67, 70 and 75.

806 *Cf. Case of García Ibarra et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 17, 2015. Series C No. 306, para. 117, and *Case of María et al. v. Argentina, supra,* para. 83.

807 *Cf.* Human Rights Council, Artificial intelligence and privacy, and children's privacy, Report of the Special Rapporteur on the right to privacy, Joseph A. Cannataci, U.N. Doc. A/HRC/46/37, January 25, 2021, paras. 67 to 76, and Committee on the Rights of the Child, General comment No. 25 (2021) on children's rights in relation to the digital environment, U.N. Doc. CRC/C/GC/25, March 2, 2021, para. 67. See also, Committee on the Rights of the Child, General comment No. 7 (2005), Implementing child rights in early childhood, U.N. Doc. CRC/C/GC/7/Rev.1, September 20, 2006.

(d) Right to informational self-determination with regard to the intelligence files

636. CAJAR and CEJIL said that the Collective had made multiple requests for explanations about the inclusion of information on the alleged victims in the intelligence files held by public institutions, access to this information, and the clearing and declassification of the files.

637. The representatives gave a list of these actions: (a) communications addressed to the President on September 7, 2000,[808] May 8, 2009,[809] January 20, 2012,[810] February 23, 2015,[811] February 16, 2016,[812] and May 13, 2020,[813] and to the Vice President on November 22, 2002,[814] and to the President's Human Rights Advisory Council on May 26, 2015;[815] (b) communications addressed to the Inter-American Commission on April 30, August 31, and October 27, 2010; January 18, February 7, March 12, and April 11, 2012; March 18, 2015; June 8, 2016; September 25, 2018, February 20 and May 13, 2020, asking the Commission to order the State to initiate these actions,[816] and (c) requests submitted in the framework of follow-up and consensus-building meetings on the precautionary measures granted by the Commission, on February 9, 2017, May 21, 2020, April 23, 2021, and August 5, 2022, between the Collective and representatives of the Ministry of Foreign Affairs and other government offices.[817]

638. The Court, having seen all this, takes note that the Collective, representing its members, has submitted multiple requests to a variety of authorities, including the President of Colombia

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808 *Cf.* Open letter from CAJAR to the President of Colombia, September 7, 2020, (evidence file, volume I, annex to the Report on the Merits, folios 2607 to 2609). In the letter, the Collective demanded "an immediate explanation of the reasons why its members were included arbitrarily and illegally in the different military intelligence reports" (*supra* para. 310).

809 *Cf.* Letter addressed to the President of Colombia on May 8, 2009 by the "Human Rights and Peace Platforms" (evidence file, volume XLIV, annex to the CAJAR and CEJIL brief of May 26, 2023, folios 48362 to 48365). The letter requested "copies of all the information [...] on espionage actions by [...] DAS against human rights defenders."

810 *Cf.* Letter of February 16, 2016, from CAJAR to the President of Colombia, annex to the petitioners' June 8, 2016 brief to the Commission (evidence file, volume V, electronic file on precautionary measures before the Commission, folios 12742 and 12743). The letter reported a possible "attack" by "military intelligence" against the lawyer Yessika Hoyos Morales.

811 *Cf.* Communication from CAJAR to the President of Colombia, February 23, 2015, (evidence file, volume III, annex to the Report on the Merits, folios 6771 to 6776). The letter reported that the Collective and its members continued "to be victims of systematic, widespread persecution [and] attacks by authorities and intelligence agencies" (*supra* para. 356).

812 *Cf.* Letter of January 20, 2012, from CAJAR to the President of Colombia, annex to the petitioners' February 7, 2012 brief (evidence file, volume V, electronic file on precautionary measures before the Commission, folios 16137 to 12201). The letter reported that lawyer Reinaldo Villalba Vargas was being followed.

813 *Cf.* Communication from CAJAR to the President of Colombia, May 13, 2020, (evidence file, volume XLIV, annex to the CAJAR and CEJIL brief of May 26, 2023, folios 48670 to 48674).

814 *Cf.* Communication from CAJAR to the Vice President of Colombia, November 22, 2002 (evidence file, volume I, annex to the Report on the Merits, folios 2882 to 2885). CAJAR in this communication asked for an explanation as to "why the members" of the organization "were included in intelligence reports and to correct this information," and to "proceed to declassify the intelligence reports naming members of the Collective […] and of human rights organizations" (*supra* para. 312).

815 *Cf.* Letter of May 26, 2015, from CAJAR to the president's Human Rights Advisory Council (evidence file, volume XLIV, annex to the CAJAR and CEJIL brief of May 26, 2023, folios 48367 and 48368). The letter set out issues to be discussed with the "military commanders," including "intelligence activities against members" of the Collective, and "declassification and clearing of intelligence files."

816 *Cf.* Communications from the petitioners to the Commission on April 30, August 31, and October 27, 2010; January 18, February 7, March 12, and April 11, 2012; March 18, 2015; June 8, 2016; September 25, 2018, February 20, and May 13, 2020 (evidence file, volume V, electronic file on precautionary measures before the Commission, folios 10069, 10169, 10180, 12178, 12192, 12215, 12293, 12581, 12731, 12819, 12838 and 12870).

817 *Cf.* Documents entitled "Aide-mémoire on meetings for follow-up and consensus-building on the precautionary measures for the José Alvear Restrepo Lawyers Collective," February 9, 2017, May 21, 2020, April 23, 2021, and August 5, 2022, written by the Ministry of Foreign Affairs (evidence file, volume XLIV, annex to the CAJAR and CEJIL brief of May 26, 2023, folios 48402 to 48440).

(commander in chief of the armed forces and maximum authority over the DAS, according to Executive Order 643 of 2004), asking for access to the information on the alleged victims that was contained in the intelligence files held by public offices; it also asked for these files to be cleared and declassified (both tasks are essential to guarantee access to the information contained in the files, *infra* paras. 642 and 644). Despite these multiple requests, some of them prior to the elimination of the DAS and the subsequent transfer of custody of the archives (Executive Order 4057 of 2011) and prior to the creation of the National Directorate of Intelligence (Executive Order 4179 of 2011), there has been no satisfactory outcome or even response. Multiple meetings took place as follow-up to the precautionary measures ordered by the Inter-American Commission, attended by a variety of institutions including the Office of the Solicitor General and the Ministry of Defense, in which the Collective made specific requests for declassification of the intelligence files; the authorities responded with commitments, but so far there has been no guarantee of full access to the records.[818]

639. The information submitted to the international proceedings leads the Court to understand that the alleged victims' access to the intelligence files has been been limited to (i) the content of the May 7, 1999 report by the Office of the Solicitor General,[819] following review of files held by the DAS, National Police, and the Army (*supra* paras. 305 to 309), and (ii) the Prosecutor General's investigation as part of the criminal proceedings to shed light on the actions taken by the G3 from 2003 to 2005[820] (*supra* paras. 422 to 446).

640. The Court recalls that it sent the State a request for further helpful evidence on April 14, 2023, asking Colombia to submit copies of the intelligence files developed from the operations of the different governmental offices and institutions; the State responded that it had transmitted the request to the Ministry of Defense, which reported that, "given the corpus of facts of the case, it did not have information on the intelligence operations regarding the alleged victims (*supra* footnote 26).[821] This was despite the content of the May 7, 1999, report by the Office of the Solicitor General.

641. With specific reference to the activities of the DAS from 2003 to 2005, there is no certainty that the documentation to which the alleged victims had access as part of the Prosecutor's investigation comprised the full collection of information on them that the DAS had compiled and registered.[822] Moreover, the State replied to the Court's request for further

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818 *Cf.* Documents entitled "Aide-mémoire on the meeting for follow-up and consensus-building on the precautionary measures for the José Alvear Restrepo Lawyers Collective," February 9, 2017, written by the Ministry of Foreign Affairs (evidence file, volume XLIV, annex to the CAJAR and CEJIL brief of May 26, 2023, folios 48402 to 48406). The Vice President of Colombia committed in 2001 to "declassify the 'Miscellaneous' intelligence report." *Cf.* July 26, 2001 note signed by the director of the President's program for human rights and international humanitarian law (evidence file, volume XLIV, annex to the CAJAR and CEJIL brief, May 26, 2023, folio 48677).

819 *Cf.* Report from the Office of the Solicitor General, May 7, 1999 (evidence file, volume III, annex to the Report on the Merits, folio 8269).

820 The Court draws this conclusion based on material submitted by CAJAR and CEJIL in their pleadings and motions brief (evidence file, volume I, folios 428 and 429), corroborated by the State in its answering brief (file on the merits, volume II, folio 1281).

821 *Cf.* State brief, May 2, 2023, submitted in the process before this Court (file on the merits, volume IX, folio 3772).

822 Colombia said that the alleged victims "have had access to" the information on themselves in the intelligence files "as the State has been acquiring better knowledge about the scope of the files through its internal actions to investigate, prosecute, and sanction conducts that exceeded the powers of the relevant authorities." *Cf.* The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1281). Soraya Gutiérrez Argüello said that the DAS documents to which the alleged victims had access "made mention of video and photographic files attached thereto, but they had never obtained this information, […] much of it must exist, but it was never shown to them or released to them." *Cf.* Statement at public hearing before this Court by Soraya Gutiérrez Argüello. As an example, the documents found during the prosecutor's investigation into the DAS activities included intelligence reports dated August 10 and September 3, 2004, containing notes that several documents were attached, including a "film video," but this material is not in fact included with the reports (evidence file, volume I, annexes to the Report on the Merits, folios 3932, 3939 and 3940).

helpful evidence, suggesting that it was materially impossible to identify the information on the alleged victims in the records of the former government agency, given the physical deterioration of the archives (*supra* footnote 27). This reveals the very limited progress made in clearing the DAS intelligence archives, selecting and sorting the documentation, and defining and applying "standards for continued retention or removal" of files, as well as the "destination" of those that "are removed," as required under Article 30 of Law 1621 of 2013. This law created the Advisory Commission for clearing intelligence and counterintelligence data and files, which delivered a report in July, 2016, that, as stipulated in Article 30, included specific recommendations for carrying out this task.[823]

642. The Court underscores the importance of clearing the intelligence files because by this means, after identifying, classifying, and taking inventory of the various documents, it is possible to examine the legality of the gathering and retention of the information they contain (this requires observing the standards set forth in this judgment); it is also a means to safeguard the sensitive personal data on the individuals affected (under Article 30 of Law 1621 of 2013, it is obligatory to uphold "the fundamental rights of citizens to a good reputation, honor, and due process" in the operation of data clearance), and ultimately, it provides access by these persons to their own information.[824] The very limited progress made in clearing the DAS intelligence files made it impossible, in the context of this international process, and despite the willingness of the JEP (*supra* footnote 27), for the alleged victims to gain access to their own information contained in the files.[825]

643. It should also be recalled that the applicable regulations have consistently had the effect of limiting access to intelligence information: (a) Executive Order 4057 of 2011, eliminating the DAS, said in Article 24, "access to and review of documentation in the intelligence archives […] will be subject to non-delegable legislative powers," such that "information will be provided only to administrative and judicial authorities and those institutions that, for reasons of security and national defense and in the performance of their competencies and duties may request it or need it" (*supra* para. 353); (b) Law 1621 of 2013 contains Article 33, calling for "non-delegable legislative powers" on "documents, information, and technical material" from intelligence and counterintelligence agencies for a period of 30 years, which can be extended for an additional 15 years (*infra* para. 682); (c) Executive Order 1303 of 2014, approved upon finalization of the process of eliminating the DAS, says in Article 1 that "access to and

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[823] *Cf.* Report of recommendations on retention, removal, and destination of intelligence and counterintelligence files, Advisory Commission for clearing intelligence and counterintelligence data and files (evidence file, volume XVII, annex 42 to the answering brief, folios 32524 to 32554). In any case, the information supplied by the State shows no evidence that the National system for clearing intelligence and counter-intelligence data and files, created under Executive Order 2149 of 2017 (which regulates Article 30 of Law 1621), has made any progress on this task. *Cf.* Final report of the National system for clearing intelligence and counter-intelligence data and files for 2018-2022 (evidence file, volume XLIII, annex 15 to the State's May 22, 2023 brief, folios 47959 to 47962).

[824] In its report of recommendations, the Advisory Commission for clearing intelligence and counterintelligence data and files defined the task of clearing intelligence data and archives, from the perspective of a "routine filing process," as "the orderly series of systematic operations to select and remove data and files and subsequently proceed with their disposition, which could be either to hold them permanently or to eliminate them." It added that, from a human rights perspective, the task "may be understood as purging or cleansing the data and files, and in this sense, it would generally depend on the legality of the data and information collected." The Advisory Commission set standards that should guide the tasks of clearing intelligence and counterintelligence files, including the "legality and historical value" of the files and of the information they contain, protection of sensitive personal data on individuals whose information is contained in files that may be marked for removal, as well as the identity of "the agents and sources of intelligence." *Cf.* Report of recommendations on retention, removal, and destination of intelligence and counterintelligence files, Advisory Commission for clearing intelligence and counterintelligence data and files (evidence file, volume XVII, annex 42 to the answering brief, folios 32524 to 32554).

[825] The Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition did not make any specific recommendations on the subject. *Cf*. Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, final report, *Hay futuro si hay verdad: hallazgos y recomendaciones*, ("there is a future if there is truth: findings and recommendations"), Bogotá, June 28, 2022, pp. 395 and 396 (evidence file, volume XLII, annex to the brief of CAJAR and CEJIL, April 10, 2023, folios 47649 and 47650).

consultation of documentation in the intelligence archives shall be subject to non-delegable legislative powers," and therefore "information may be supplied only to judicial authorities who, as part of a judicial proceeding, may request it, or oversight institutions that request or order it" (*supra* para. 354), and (d) Executive Order 2149 of 2017, providing for the creation of the National system for clearing intelligence and counter-intelligence data and files, again stipulates that "access to and review of documents in the intelligence and counterintelligence archives […] of the former [DAS] shall be held under non-delegable legislative powers," and "access will be given, or review of the information will be allowed, only to judicial authorities who may request it as part of judicial proceedings or oversight institutions that may request it" (Article 2.2.3.12.5.7, *supra* footnote 425).

644. Clearly, these executive orders, combined with the decision to classify all the information in the intelligence archives as confidential, provided no mechanisms and set no timetables for declassifying the intelligence archives (that is, mechanisms or time limits for lifting the "confidential" or "reserved" status of the documents), and this blocked all access to the information by data subjects. Law 1621 of 2013 includes a general classification of confidentiality, or non-delegable legislative powers, that is incompatible with Convention-based standards (*infra* para. 603). Furthermore, the State of Colombia continues to adhere to a restrictive standard, arguing that "the content of the information held in the archives of the [former] Administrative Department of Security is highly sensitive, which implies that not just anyone can have access to it."[826]

645. Further analysis will take place in subsequent sections of this judgment (*infra* paras. 668 to 694); nonetheless, the Court cannot ignore that both Law 1621 of 2013 and the Executive Orders, especially Order 2149 of 2017, still in force, upholding the general confidentiality classification of the intelligence archives, completely fails to create any sort of procedure or mechanism recognizing or guaranteeing access and control by affected individuals to the data contained on them in the files, which unquestionably has stood as a barrier for the alleged victims to exercise their rights in this matter.

646. The very little knowledge available to the alleged victims about the information on themselves in the intelligence archives has precluded them from any real possibility of demanding that the information be updated, rectified or changed or, if legally possible, erased (*supra* para. 585). All this reveals that the rights of the alleged victims to informational self-determination were violated, both with respect to the files developed from intelligence activities conducted in the 1990s, and from the G3 operations from 2003 to 2005.

647. States are also required to provide a swift, simple remedy before the courts to ensure suitable protection of the right to informational self-determination (*supra* paras. 600 and 608); the Court notes the State's argument that the motion for constitutional relief was useful and effective "as a final recourse to request access to the information in the [intelligence] files," with specific reference to the files developed from the actions of the former DAS.[827] The Court also values the diversity of expert opinions contained in the body of evidence of this proceeding; the experts Luis Guillermo Guerrero Pérez and Antonio Aljure Salame first assured that the motion for constitutional relief was effective for this purpose;[828] expert witness Rodrigo Uprimny Yepes, in turn, questioned the effectiveness of the remedy for these

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826 *Cf.* The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1281).

827 *Cf.* The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1284).

828 *Cf.* Written expert opinion by Luis Guillermo Guerrero Pérez, May 20, 2022 (evidence file, volume XXXVI, folios 46338 and 46339), and written expert opinion by Antonio Agustín Aljure Salame (evidence file, volume XXXVI, folio 46294).

purposes.[829] The State also cited the the Constitutional Court's 2008 judgment T-1037 as a useful precedent to demonstrate the effectiveness of the remedy,[830] and the same judgment was mentioned by expert witness Aljure Salame in his statement. Expert witness Uprimny Yepes, however, said in his opinion that this precedent was not applicable in view of the opinions given by the Constitutional Court in the specific case and because it predated Law 1621 of 2013.[831] Ms. Arias provided information to the effect that the then director of the DAS had been charged with "contempt" when he failed to comply with the terms of the judgment by allowing "access" to information concerning the person who brought the constitutional motion, when the data in question were in DAS hands.[832]

648. The Inter-American Court notes the breadth of the domestic constitutional framework regarding the viability of the motion for constitutional relief for "immediate protection of fundamental constitutional rights" in cases of "action or omission by any public authority" that injures them or threatens them, defining this judicial action as a "preferential, summary procedure" (Article 86 of the Constitution). The 2008 judgment T-1037 notes the broad scope of constitutional jurisprudence that had already recognized the right of "access" to "private, intimate or classified data" in the hands of public agencies, based on the text of Article 15 of the Constitution (*supra* footnote 743). Thus, with the material brought before this international procedure, the Court is unable to determine whether, in practice, the motion for constitutional relief is an effective judicial mechanism to safeguard the right to informational self-determination for intelligence files (in the terms required under Article 25(1) of the Convention).

649. The Court finds it relevant, nonetheless, to recall its settled case law holding that when a State has ratified an international treaty such as the American Convention, all its institutions and bodies, including judges, are bound to it, and this means they must ensure that the effects of the Convention's provisions are not undermined by the application of standards contrary to its object and purpose. The judges and bodies attached to each of the many levels of the administration of justice must proceed on their own motion to review for consistency between domestic provisions and the American Convention, clearly in the framework of their particular jurisdictions and applicable procedural rules, and in so doing, they must consider not only the text itself, but also the interpretations thereof as delivered by the Inter-American Court as the final arbiter of the Convention.[833] The process of review against the Convention

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829 *Cf.* Written expert opinion by Rodrigo Uprimny Yepes (evidence file, volume XXXVIII, folios 46433 and 46435). This expert witness said that Law 1581 of 2012, "setting general provisions for the protection of personal data," does not apply to information held in intelligence archives, as specifically established in Article 2, subparagraph c. He added that Law 1712 of 2014, "creating legislation on transparency and the right of access to national public information and setting other provisions," "reiterated a generic process for classification of intelligence files that bars these files from the new law's mechanisms of access to information," while Article 19 "addresses temporary classification in matters of defense, national security, and public safety."

830 *Cf.* The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1284).

831 The Constitutional Court found in 2008 judgment T-1037: "So long as no constitutional law is enacted to regulate additional exceptions to the right to habeas data, the Court must guarantee protection of the fundamental right enshrined in Article 15 of the Constitution […]", and it therefore ordered the DAS "to allow the [complainant] access to information on her that is currently held by the department, with the sole exception of any information that may be part of an investigation whose case files are classified under the rules of judicial investigation, as complainants have no legal right to access in cases of this kind." Available in Spanish at: https://www.corteconstitucional.gov.co/relatoria/2008/T-1037-08.htm.

832 *Cf.* Brief by Ms. Arias, September 3, 2021, at: http://www.derechos.org/nizkor/colombia/doc/desacato.html, including the order of August 13, 2009, delivered by the Administrative Disputes Court of Cundinamarca, case No. 25000 2315000-2007-02160 (merits file, volume III, folio 1568).

833 *Cf.* Inter alia, *Case of Almonacid Arellano et al. v. Chile, supra*, para. 124; *Case of Urrutia Laubreaux v. Chile. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 27, 2020. Series C No. 409, para. 93; *Case of Ríos Avalos et al. v. Paraguay*, *supra*, para. 198; *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras*. Judgment of August 31, 2021. Series C No. 432, para. 45, and *Case of García Rodríguez et al. v. Mexico, supra*, para. 177.

requires a joint interpretation of domestic law and international law in order to prioritize whichever is most favorable to the protection of rights.[834]

650. This means that, if domestic judicial authorities should hear and adjudge motions for constitutional relief for informational self-determination regarding personal data contained in intelligence files, they must necessarily provide maximum protection of the right, and accordingly, must take into account the content of the American Convention, the interpretations of the Convention by the Inter-American Court in its full body of case law, and particularly, the standards set forth in this judgment.

651. Based on these considerations, the Court concludes that the State of Colombia breached the right to informational self-determination of the alleged victims regarding the intelligence files held by public agencies, which constitutes a violation of Articles 11(2) and 13(1) of the Convention, read in conjunction with Article 1(1) thereof. The Court, however, finds insufficient grounds to hold violation of Article 25(1) of the Convention in this regard.

(e) Right to know the truth

652. The Court will apply the principle of *iura novit curia*[835] and hold that the facts of the case call for an analysis of explicitly claimed violations of the right to know the truth.

653. This Court's case law has also established the autonomy and broad nature of the right to know the truth, which is not established explicitly in the American Convention but is linked to several of its provisions. Depending on the context and circumstances of the case, the violation of this right can be related to other rights found in the Convention.[836]

654. Inter-American case law has declared violation of the right to know the truth in cases of gross human rights violations,[837] including forced disappearance[838] and extrajudicial execution,[839] as well as a case in which the whereabouts of a person over whom the State was guarantor was never discovered, due to the failure of authorities to provide satisfactory, convincing explanations, combined with the failure to conduct an investigation with due diligence.[840] The Court found, in all these cases, that the actions and omissions of the State had blocked efforts to discover what had happened and, when relevant, to identify those responsible for human rights violations; the violation therefore entailed the right to judicial guarantees and the right to judicial protection (Articles 8 and 25 of the American Convention).[841] In addition, the Court has adjudged several cases calling attention to the

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834 *Cf. Case of Julien Grisonas family v. Argentina, supra*, para. 193.

835 *Cf. Inter alia*, *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 163, and *Case of Meza v. Ecuador. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 14, 2023. Series C No. 493, para. 54.

836 *Cf. Inter alia*, *Case of Peasant Community of Santa Barbara v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 1, 2015. Series C No. 299, para. 265; *Case of Tabares Toro et al. v. Colombia. Merits, Reparations and Costs.* Judgment of May 23, 2023. Series C No. 491, para. 87, and *Case of Casierra Quiñonez et al. Colombia, supra*, para. 92.

837 *See: Case of Barrios Altos v. Peru. Merits.* Judgment of March 14, 2001. Series C No. 75, para. 41.

838 *Cf. Inter alia*, *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil, supra*, para. 211; *Case of Julien Grisonas family v. Argentina, supra, para. 223*; *Case of Flores Bedregal et al. v. Bolivia, supra*, para. 123, and *Case of Tabares Toro et al. v. Colombia, supra*, para. 93.

839 *Cf. Inter alia*, *Case of the Village of Los Josefinos Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 3, 2021. Series C No. 442, paras. 114 and 116; *Case of Maidanik et al. v. Uruguay*, *supra*, para. 180, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 478.

840 *Cf. Case of Guachalá Chimbo et al. v. Ecuador. Merits, Reparations and Costs.* Judgment of March 26, 2021. Series C No. 423, paras. 164, 204 and 214.

841 *Cf. Inter alia*, *Case of Guachalá Chimbo et al. v. Ecuador, supra*, para. 215; *Case of Julien Grisonas family v. Argentina, supra*, para. 223; *Case of the Village of Los Josefinos Massacre v. Guatemala, supra*, paras. 114 and 116; *Case of Maidanik et al. v. Uruguay, supra*, para. 180; *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 168;

refusal of authorities to provide information on the facts, so that it also found violation of the right of access to information (Article 13).[842]

655. The United Nations High Commissioner for Human Rights has found, in this regard, that the right to the truth "implies knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the [human rights] violations took place, as well as the reasons for them."[843]

656. In the case at hand, it has been established that the alleged victims have not had access to the full set of documents and data contained in the government's intelligence archives, and this has prevented them from knowing the full and complete truth about the scope of arbitrary intelligence activities conducted against them by the authorities. The lack of access to this information not only violated their right to informational self-determination (*supra* paras. 646 and 651), but also prevented the alleged victims from knowing the full extent of interference that the State illegally perpetrated against their privacy and private life (among other violations), for themselves and their families, and for their professional, social and labor activities both in Colombia and abroad. Judicial actions have been lodged to establish the responsibility for these facts (as will be discussed below in chapter VIII.3), but it is clear that the documents submitted in the criminal trials do not reflect the total amount of information on the alleged victims that is held in the intelligence files, and even the Inter-American Court was refused access to this information during the international proceedings (*supra* para. 641).

657. The Court would also emphasize that the right to know the truth was violated not only to the victims considered individually, but also to overall society, which "has both a right to know and a responsibility to remember."[844] Incidents such as those in the instant case, because of their seriousness and scope, must be known generally, allowing Colombian society to ponder them and thus prevent them from recurring.

658. The Court therefore finds that this case injured the alleged victims, who were targeted by the State's arbitrary intelligence activities, with violation of the right to know the truth, read in conjunction with the right of access to information, enshrined in Article 13(1) of the American Convention (this right is the basis for the right to informational self-determination, *supra* para. 587), which led to a breach of the duties established under Article 1(1) thereof.

(f) Right to protection of private life with regard to the intelligence activities conducted while Law 1621 of 2013 was in force

659. This judgment has already found that the Colombian Congress passed Constitutional Law 1621 in 2013 (hereinafter "Law 1621" or "Law"), containing regulations designed to "strengthen the legal framework that allows agencies conducting intelligence and counterintelligence activities to fulfill their constitutional and legal mandate" (Article 1). The regulatory provisions are mandatory for "all agencies conducting [intelligence and counterintelligence] activities" (Article 3).

Case of Members and Militants of the Patriotic Union v. Colombia, supra, para. 478 and operative paragraph 19, and *Case of Guzmán Medina et al. v. Colombia, supra,* para. 90.

842 *Cf. Inter alia*, *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil, supra*, para. 211 and operative paragraph 6; *Case of Flores Bedregal et al. v. Bolivia, supra*, paras. 122 and 155; *Case of Tabares Toro et al. v. Colombia, supra*, paras. 92 and 94, and *Case of Guzmán Medina et al. v. Colombia, supra,* para. 93.

843 *Cf.* Commission on Human Rights, Report of the Office of the United Nations High Commissioner for Human Rights, *Study on the right to the truth,* U.N. Doc. E/CN.4/2006/91, January 9, 2006, para. 59.

844 *Cf.* Commission on Human Rights, Report of the Office of the High Commissioner for Human Rights, *Right to the truth,* U.N. Doc. A/HRC/12/19, August 21, 2009, para. 5.

660. The alleged victims have claimed actions by the DAS and other agencies since the 1990s and until at least 2005, and have also reported incidents that occurred after Law 1621 went into force, causing them to suspect that they continued to be targeted by the intelligence activities of various public agencies (*supra* paras. 200, 213, 223, 240 and 290). They notified the President of Colombia concerning this matter in a letter on February 23, 2015, listing the communications that had been intervened, the taking of photographs, and the shadowing and surveillance activities against several of the alleged victims (*supra* para. 356); they repeated this more recently, on May 13, 2020.[845]

661. In the end, the intelligence operations against members of the Collective during the time Law 1621 was in force were confirmed by the Prosecutor General's investigation launched in 2020 (filing 110016000102202000007, *supra* para. 360). The Office of the Solicitor General pointed to the same facts when it developed a "document of charges" against various members of the Army for having collected information on several individuals, including members of CAJAR, "ignoring constitutional and legal rights and guarantees," by means of the profiling activities performed by the cyber-intelligence battalion "in 2019." Finally, on September 22, 2022, the Office of the Solicitor General ordered that two professionals from the Collective be recognized as "victims" in the disciplinary proceedings, including Reinaldo Villalba Vargas (*supra* para. 365).

662. CAJAR and CEJIL argued that the State of Colombia continued its surveillance and other illegal intelligence activities against he alleged victims, as "there was no necessary, reasonable, or proportional means for a democratic society to justify the inappropriate, illegal restrictions on the right to privacy for the members" of the Collective.[846] The Court would recall, in this regard, its request to the State to submit further helpful evidence in the form of "information on the beginning, development, and progress" of the prosecutor's investigations, and, where relevant, copies of the case files; Colombia did not comply with this request, and instead transcribed the reply from the prosecutor, saying that it was not feasible "to deliver copies of the proceedings" requested by the Court because the information was "classified" (*supra* para. 363).

663. The Court would respond by pointing to its settled case law according to which, in cases of police reports on human rights violations, State authorities cannot shield themselves behind State secrecy, classification of documents, or confidentiality to deny access to information summoned by judicial authorities.[847] In any case, if the State should submit classified information to the international process, it would need to clearly explain this situation and the need, appropriateness, or relevance of retaining the classification, and the Court itself would carefully evaluate its explanations in each situation and decide whether or not to add the material to the body of evidence in the case based on the need to guarantee the adversarial proceedings.[848] The State's refusal to submit the requested information in the framework of

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[845] *Cf.* Communication from CAJAR to the President of Colombia, May 13, 2020, (evidence file, volume XLIV, annex to the CAJAR and CEJIL brief of May 26, 2023, folios 48670 to 48674). The letter was signed by Collective president Reinaldo Villalva Vargas, who said, "all the state intelligence agencies had conducted illegal operations against organizations and persons who are disliked by the administration," and that since 2019, "public opinion had been learning through investigative news reporting […] about the illegal military intelligence activities against human rights organizations, journalists, and the political opposition," specifically describing actions by members of "army battalions headquartered in Facatativá." He then asked the President to intervene "to prevent a recurrence of these crimes."

[846] *Cf.* The CAJAR and CEJIL pleadings and motions brief before this Court, November 9, 2020 (merits file, volume I, folios 623 and 626).

[847] *Cf. Case of Myrna Mack Chang v. Guatemala, supra*, para. 180, and *Case of Flores Bedregal et al. v. Bolivia, supra*, para. 138.

[848] *Cf. Case of González et al. ("Cotton Field") v. Mexico. Request to expand the number of alleged victims and refusal to submit documentary evidence.* Order of the Inter-American Court of Human Rights, January 19, 2009, whereas clause 61.

the inter-American Court's powers and competencies is therefore unacceptable.

664. As this Court has also found, the State's refusal to submit certain information and documentation cannot be held against the alleged victims and can be considered detrimental only to itself. Therefore, allegations that can be verified only through evidence that the State refuses to submit will be taken as true.[849]

665. The representatives have claimed that the intelligence activities conducted during the time Law 1621 was in force, and specifically in 2019, were illegal and disproportionate, and to demonstrate the truth of this claim it would be necessary to have access to files held by the Prosecutor. Given the State's refusal to provide the information as requested, the Court finds that these activities were clearly arbitrary, a position that is further bolstered by the decision of the Solicitor General's office to classify the information, considering that these activities by the Army were developed while "ignoring" fundamental rights (*supra* para. 364). The alleged victims themselves, it should be noted, have lacked any access to the files of the prosecution, which refused to make them available (*supra* para. 361), and this also leads to the conclusion that the only State is able to supply this evidence for the international proceedings.

666. As a corollary, Colombia is also responsible for violating the right to protection of private life, set forth in Article 11(2) of the American Convention, read in conjunction with Article 1(1) thereof, for intelligence activities conducted while Law 1621 of 2013 was in force.

667. This, in turn, lays the groundwork for examining the arguments by the Commission and the representatives concerning this constitutional law, given its continued force and resulting application to the incidents that occurred in 2019; this is why the content of the law must be examined specifically in the discussion of this case, and not merely in the abstract, as the State would suggest. The analysis will be conducted in the order the arguments were submitted during this process.

(g) Law 1621 of 2013

668. The ***Commission*** said that Law 1621 conferred discretionary information-gathering powers on certain authorities, without suitable controls; moreover, Article 17 regulated monitoring of the radioelectric spectrum, anticipating interception of communications that should have been contingent on prior approval from an independent body. Article 33, in turn, provided a generic form of 30-year classification for all information held by intelligence agencies, which is contrary to international standards.

669. ***CAJAR and CEJIL*** noted that the regulatory framework provided under this law "is not sufficient to protect the right to privacy" and does not meet international standards, for the following reasons: (a) the law sets as its objectives certain concepts involving "national security," "internal or external threats," or "national defense," but offers no definition of what these terms mean, and this leaves a broad margin of discretion for conducting intelligence activities; (b) the legal framework calls for "information to remain classified for a term of 30 years and sets no procedure for gaining access to it"; therefore, "this law combines with the laws on protection of personal data [2012 Law 15812012[850]] and on access to information

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[849] *Cf. Case of González et al. ("Cotton Field") v. Mexico. Request to expand the number of alleged victims and refusal to submit documentary evidence.* Order of the Inter-American Court of Human Rights, January 19, 2009, whereas clause 59 and operative paragraph 4. See ECtHR, *Case of Imakayeva v. Russia*, No. 7615/02, judgment of November 9, 2006, paras. 122 and 123.

[850] Law 1581 of 2012, "setting general provisions for the protection of personal data." Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1684507.

[2014 Law 1712[851]] to reinforce state-sponsored secrecy" and "allows authorities to deny access to information"; (c) the law's Article 17 authorizes "monitoring of the electromagnetic spectrum," stipulating that "no judicial authorization is required," meaning that intelligence activities may be conducted, "collecting massive amounts of metadata without judicial authorization," and (d) the law's control systems called for "internal mechanisms in every agency or organization that must submit classified reports," keeping them exempt from "public scrutiny," and created a congressional legal committee to monitor intelligence and counterintelligence activities, which "has been essentially inoperative" since 2013.

670. The ***State***, in turn, argued that the Constitutional Court had examined Law 1621 to determine whether it was consistent with the Constitution, and in 2012, delivered judgment C-540, contrasting it with a variety of international standards.

671. The Court will begin its analysis by noting that Law 1621 does not identify the different types of measures and actions that are authorized for obtaining and compiling information for intelligence purposes (with the exception of Articles 17 and 42, *infra* paras. 674 and 676), and this leaves a wide margin of discretion for competent authorities. The enabling regulations should stipulate: (i) the permissible objectives for these measures; (ii) the categories of persons and activities on which information may be collected and compiled, always depending on the identification of threats to the legitimate aims established beforehand; (iii) the threshold of suspicion to justify the use of information collection and compilation measures; (iv) time limits on the use of these measures and strategies, and (v) useful procedures for authorizing, overseeing, and reviewing the measures and actions for collecting and compiling information.

672. These gaps in the legislative framework, which are incompatible with the standards set herein (*supra* para. 538), make it difficult to set specific *ex ante* limits on the actions of intelligence agencies to prevent overreach and abuse of their power. As it happens, everything that occurred in the instant case demonstrates the need to set such limits.

673. The laws and regulations must also stipulate a sequence of specific processes by which intelligence activities should be formalized, including a careful record of every stage and a log of records of access to computer systems when applicable. These processes must be included in regular reports sent to the different oversight bodies. When intelligence agencies process personal data, safeguards must be in place, and responsible authorities must keep a record that includes (i) the identification of the people responsible for data processing; (ii) the purposes of processing the information compiled, indicating the origin and category of the data; (iii) the legal basis for the operations; (iv) how long the material will be kept, and (v) data processing methods used. Operations with personal data compiled by intelligence agencies must also be reported in chronological records of access, modification, queries, erasure, or sharing of the data and the names of all persons who gained access to them (*supra* para. 540).

674. While the law clearly sets requirements of suitability, necessity and proportionality (Article 5), the enabling regulations do not require judicial oversight for the use of invasive measures to compile information (*supra* paras. 542 and 551), even though they do allow public and private entities, at the request of intelligence services, to provide different types of information, including material "protected by legally allowed confidentiality," understood

[851] Law 1712 of 2014, "creating the law on transparency and right of access to national public information and setting other provisions." Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1687091.

as secret or confidential information[852] (Article 42)[853] and also provides for operators of telecommunications services to deliver information (Article 44),[854] which could include sensitive personal data. In any case, obtaining information held by public and private entities and possibly signing inter-institutional agreements for this purpose should be contingent on achieving a legitimate, legally provided aim, on the definition of persons responsible, and on the setting of clear time frames during which the operations are valid (*supra* paras. 539, 573 and 576).

675. Judicial authorization is also required for the use of surveillance methods or actions targeting certain persons if necessary for gaining access to non-public data bases and information systems that store and process personal data (*supra* para. 553).

676. Article 17 of the law authorizes "activities to monitor the electromagnetic spectrum," without specifying the nature or scope of such operations. Moreover, it distinguishes these activities from interception of communications, offering very little explanation, and then uses this distinction as a basis for exempting such "monitoring activities" from the requirement to obtain judicial authorization.[855] In the view of the Court, the regulations are grievously vague, which facilitates discretionary use of State powers for deciding what might lead to "monitoring of the electromagnetic spectrum" and what this involves.[856] The legal framework must be clear and specific concerning the powers of authorities to practice intelligence operations, and this serves as a safeguard from arbitrary actions. As this judgment has already found, the use of methods for surveillance of communications, whether selective or at a large scale, must always take place under judicial oversight (*supra* paras. 538 and 547), and this includes monitoring of the electromagnetic spectrum (in this regard, the Court recalls that arbitrary intelligence activities were conducted in 2019 by the army's cyber-intelligence battalion, *supra* paras. 360 and 665).

677. The Court holds that, in situations of demonstrated urgency and need, intelligence services may monitor the spectrum immediately, but must submit the protocol for the

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852 *Cf.* Judgment C-540/12 of July 12, 2012, Constitutional Court of Colombia.

853 Article 42 of Law 1621:
Cooperation of Public and Private Entities. Intelligence agencies may request the cooperation of public and private entities for meeting the goals established herein. If the information requested by the intelligence agency is classified and thus legally protected, these agencies and the public and private entities may enter into inter-institutional agreements by mutual consent. In any event, the provision of such information may not occur in violation of legally protected confidentiality, as this principle will continue apply and is binding on public officers in the intelligence and counterintelligence agencies under the terms of this law.

854 Article 44 of Law 1621:
Cooperation with Operators of Telecommunications Services. Telecommunications operators shall be required to provide intelligence and counterintelligence agencies, upon submission of a prior request and in the furtherance of an authorized operation, and so long as it is technically feasible, the past record of communications by subscribers to the associated telephone services, technical data for identification of subscribers targeted by the operation, the location of the cells where the terminals are located, and any other information that will assist in locating them. […].

855 Article 17 of Law 1621:
Monitoring the Electromagnetic Spectrum and Interception of Private Communications. Intelligence and counterintelligence operations include activities to monitor the electromagnetic spectrum, so long as they are duly included in the working orders or task mission. Any information collected in an electromagnetic spectrum monitoring operation as part of intelligence and counterintelligence activities that is not useful for meeting the aims set forth in this law must be destroyed and may not be stored in the intelligence and counterintelligence data bases. Monitoring is not the equivalent of interception of communications. Interception of private telephone conversations, whether by landline or mobile, and private communications or data communications must be aligned with the requirements set forth in Article 15 of the Constitution and the Criminal Code and may be conducted only as part of judicial proceedings.

856 See: written expert opinion by Rodrigo Uprimny Yepes (evidence file, volume XXXVIII, folio 46432).

operation to be examined by the corresponding court of justice within 24 hours of the beginning of implementation, to guarantee judicial oversight of the matter. If the judicial authority deems the surveillance to be illegal, all the information and data obtained must be destroyed.

678. Law 1621 also addressed the need for an independent civilian supervisory body, and for this purpose created the "National Congressional Legal committee to monitor intelligence and counterintelligence activities," made up of members of the National Congress (representatives and senators, Articles 19 to 21), empowered to issue opinions, monitor, and oversee the work of agencies responsible for intelligence; this includes, *inter alia*, intelligence activities per se, control measures ordered by law, and expenditures; the commission is empowered to request information and receive access to it (Article 22).[857] In general terms the Court notes that the legal provision, with the creation of a congressional monitoring body unrelated to the executive, is compatible with the standards given in the Convention (*supra*, para. 564).

679. Expert witness Rodrigo Uprimny Yepes discussed the operations of this Legal committee, saying that "it lacks legal standing" to perform supervisory duties effectively."[858] Expert witness Federico Andreu Guzmán explained that in practice, this body "has not been effective."[859] The Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition issued a final report with recommendations to "[g]uarantee the timeliness and effectiveness of political oversight by Congress of the institutions responsible for security and defense," emphasized the need for "improved technical and logistics capabilities," including for the "Legal committee for monitoring intelligence and counterintelligence activities."[860]

680. The Court holds, on this basis, that the following rules must be in place to guarantee that this legal committee can effectively fulfill its duties of supervision:(a) the reports required of the authorities must include the basic information essential for performing oversight duties (*supra* paras. 564 and 673), and (b) if any anomalies or irregularities are detected, the legal

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857 Article 22 of Law 1621:
Duties and powers of the Legal committee to monitor intelligence and counterintelligence activities. Additional Article 61G to 1992 Law 5 [issuing the by-laws of the Congress, the Senate, and the Chamber of Representatives], to read as follows: "Article 61G. Duties. The Legal committee to monitor intelligence and counterintelligence activities has the following duties and powers: a. to produce an annual confidential report for the President of the Republic on the compliance with control measures set forth in this law and making recommendations to improve the performance of intelligence and counterintelligence activities, taking into account the need to safeguard information that may affect national security and defense; b. issue opinions and considerations on any draft bill on this subject; c. issue an opinion on the audit report on nondisclosed expenditures, prepared by the office of the Comptroller General; d. request an annual report from the Joint Intelligence Board on general use of nondisclosed expenditures, giving an account of compliance with the objectives of the National Intelligence Plan; e. follow up on recommendations given in the annual report required under clause a of this article, [and] f. propose a motion of observation concerning the directors of the intelligence services for matters involving tasks proper to the position or for failing to respond to requests and summonses by the Committee, or a motion of censure for cabinet ministers in this field[.] Paragraph 1. The Committee, to verify compliance with the control mechanisms set forth in this law in specific cases of interest to it, may: (a) hold meetings with the JIC [Joint Board of Intelligence]; (b) request additional reports from the inspectors (including ad hoc inspectors designated by the intelligence agencies), internal oversight offices, or anyone performing these tasks; (c) issue a summons to the executives and directors of the intelligence agencies; (d) be informed of the national intelligence objectives set forth in the National Intelligence Plan, and (e) see the inspectors' annual reports submitted under the terms of Article 18 of this law. None of this will impede the confidentiality necessary to guarantee the safety of the operations, sources, media, and methods. […].

858 *Cf.* Written expert opinion by Rodrigo Uprimny Yepes (evidence file, volume XXXVIII, folio 46434).

859 *Cf.* Written expert opinion by Antonio Agustín Aljure Salame (evidence file, volume XXXVI, folio 46377).

860 *Cf.* Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, final report, *Hay futuro si hay verdad: hallazgos and recomendaciones*, ("there is a future if there is truth: findings and recommendations"), Bogotá, June 28, 2022, p. 693 (evidence file, volume XLII, annex to the brief of CAJAR and CEJIL, April 10, 2023, folio 47644).

committee must duly inform the Prosecutor General and the Office of the Solicitor General, as relevant.

681. The law also created the Joint Board of Intelligence to coordinate and cooperate in intelligence activities (Article 12).[861] This board is assigned the following duties and powers (Article 13): "[c]oordinate the distribution of intelligence collection tasks among the [intelligence] agencies" (clause c) and "[e]stablish […] protocols for the exchange of intelligence and counterintelligence to ensure that information is secure and kept confidential" (clause d).[862] The regulation does not set standards or parameters on the scope of the board's broad powers, including the conditions and purposes that would actuate the exchange of information, or the specific safeguards applicable for guaranteeing the security of data (*supra* paras. 539 and 576), and this opens the door for the exercise of discretion with sensitive information.

682. Law 1621 applies a general rating based exclusively on the "nature of the duties performed by the intelligence agencies," to legally classify "their documents, information, and technical components" for an initial term of 30 years as of the time the information was collected; this can be extended by executive order for 15 more years (one of the longest such terms in the region, by comparison with the regulations in other States, *supra* footnote 775) if the President of Colombia deems that "the release of this material would entail a serious internal or external threat against national security or defense" (Article 33).[863] Because the law does not define "national security and defense" (*supra* para. 532), the generic classification provision it contains is not compatible with the considerations set forth herein. Indeed, the law should use the definition of these legitimate aims as a basis to define specific categories of information. The need to meet these defined objectives would then guide the

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861 Article 12 of Law 1621:
Joint Board of Intelligence (JIC). The Joint Board of Intelligence shall meet at least once a month to develop intelligence and counterintelligence estimates for the national government. It will ensure cooperation by the several intelligence and counterintelligence agencies for this purpose. This Board shall be made up of: a. the Minister of National Defense; b. the top national security advisor, or the staff officer holding at least the level of advisor delegated for this purpose by the President; c. the Vice-Minister of National Defense; d. the chief of joint intelligence, on behalf of the commander general of the armed forces; e. the chief of intelligence of the National Army, representing the Army commander; f. the Navy chief of intelligence; g. the Air Force chief of intelligence, representing the Air Force commander; h. the director of police intelligence, representing the director general of the national police; i. the director of the financial information and analysis unit (UIAF) or a person he or she delegates for this purpose, and j. the director of any other intelligence and counterintelligence agency empowered by the law to conduct such activities. […].

862 Article 13 of Law 1621:
Duties of the Joint Board of Intelligence.The Joint Board of Intelligence will have the following duties: […] c. coordinating the distribution of information collection tasks among the agencies, so as to complete the JIC's assigned evaluation and analysis processes; d. establishing, within a maximum term of one (1) year as of the date this law enters into force, the protocols for information exchange among the intelligence and counterintelligence agencies to ensure the security and confidentiality of information and oversee compliance with these protocols. […].

863 Article 33 of Law 1621:
Classification. Because of the nature of the tasks of intelligence and counterintelligence agencies, their documents, information and technical material will be protected by legal confidentiality for up to thirty (30) years as of the time the information is collected and will be considered classified. In specific exceptional cases, at the recommendation of any agency that conducts intelligence and counterintelligence activities, the President of the Republic may accept the recommendation to extend classification for an additional fifteen (15) years, if the release of the material would pose a serious internal or external threat to national security or defense, if it would jeopardize international relations, if it is associated with armed groups operating outside the law, or if it is a threat to the personal integrity of the agents or sources. […] Paragraph 2. An intelligence agency that decides to claim the protection of legal confidentiality in order not to release classified information must submit its application in writing, through its director, who will give a written explanation to justify the reasonableness and proportionality of the decision and base it on this law. Legal and constitutional remedies may be claimed against such decisions. […].

competent authority in each concrete case to decide whether access to the information should be denied, applying the principles of suitability, necessity and proportionality, and declare whether or not any particular information will held as classified (*supra* paras. 601 to 606).[864] The law orders the authority (the director of each intelligence agency) to provide a written justification for holding information confidential, but the same regulations, in an apparent contradiction, stipulate a general classification scheme and set a mandatory term for classification that can be extended, thus empowering authorities to use the same general classification system to deny access to information. This is why the law is not consistent with the parameters set forth herein.

683. There is also a self-evident case of contradiction between the 30-year term for classification of information, that can be extended for another 15 years, according to Law 1621 (Article 33) and the provisions of the 2014 Constitutional Law 1712, law on transparency and the right of access to national public information, which calls for a maximum term of 15 years (Article 22).[865] This inconsistency produces a lack of clarity and precision concerning the legally stipulated time limit on classification (*supra* paras. 607 and 608). When Law 1621 orders a lengthier term for classification, it adopts a more restrictive provision than the principle of maximum access called for in the Law 1712 of 2014. Expert witnesses Uprimny Yepes and Andreu Guzmán explained that the conflict in laws could favor the imposition of excessively long periods of classification.[866] This contradiction in the Colombian legal system must be cleared up to lend legal certainty and transparency concerning the length of time the information held by intelligence services can be kept confidential, giving priority to the term that is least restrictive for the right of access to information, in light of the principles of maximum dissemination and reasonableness (*supra* para. 607, and footnote 763).

684. Law 1621 does not call for an independent oversight body for management and storage of personal information and data in the hands of intelligence agencies, as required in the general standards compiled in this judgment (*supra* para. 581); instead, it delegates the task to internal bodies reporting to the same authorities that perform intelligence activities, making them responsible for guaranteeing compliance with constitutional and legal guidelines for the work of gathering, storage, production and dissemination (intelligence and counterintelligence data protection centers, Articles 28 and 29), and the correction, updating, and removal of such information (committees for updating, correcting and removing intelligence data and files, Article 31).[867]

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[864] See written expert opinion by Federico Andreu Guzmán (evidence file, volume XXXVII, folio 46380), and written expert opinion by Rodrigo Uprimny Yepes (evidence file, volume XXXVIII, folios 46432, 46434 and 46436). Expert witness Uprimny Yepes added that Law 1621 did not stipulate the degrees of classification of information; this was covered in the enabling regulations under Executive Order 857 of 2014 (available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1179281); Article 10 reiterates the "legal confidentiality" protection of "documents, information and technical materials of intelligence and counterintelligence agencies." The Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition included in its recommendations the need to "create conditions for classifying documents if they are important for intelligence or for reasons of national security such that refusal to grant access should be evaluated on a case by case basis, clear grounds should be presented, and specific reasons should be adduced, consistent with international standards." *Cf.* Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, final report, *Hay futuro si hay verdad: hallazgos and recomendaciones* ("there is a future if there is truth: findings and recommendations), Bogotá, June 28, 2022, pg. 698 (evidence file, volume XLII, annex to the CAJAR and CEJIL brief of April 10, 2023, folio 47649).

[865] Article 22 of 2014 Law 1712: "*Time extensions.* The time limit for information classification based on Article 19 may not exceed fifteen (15) years."

[866] *Cf.* Written expert opinion by Rodrigo Uprimny Yepes (evidence file, volume XXXVIII, folio 46435), and written expert opinion by Federico Andreu Guzmán (evidence file, volume XXXVII, folio 46380).

[867] The Court advises that the data protection authority provided under Law 1581 of 2012 lacks jurisdiction over intelligence files, as the text itself excludes from its "protection system" the "data bases and files whose purpose is national security and defense" (Article 2.c, *infra* footnote 870).

685. The analysis of Law 1621 corroborates violation of Convention Article 2, read in conjunction with Articles 11(2) and 13(1) thereof.[868]

686. Finally, the Court has heard arguments by CAJAR and CEJIL on violation of the alleged victims' right to personal autonomy when government authorities launched intelligence activities as an "attempt" to have them abandon their human rights defense work; it will address this argument in the final chapter of the analysis of the merits (chapter VIII.4), as the matter is closely related to the alleged violation of the right to defend human rights.

(h) Executive Order 2149 of 2017

687. It has already been shown that Executive Order 2149 of 2017 created the national system for clearing intelligence and counter-intelligence data and files. The order is still in effect and says that "documentation in the intelligence and counterintelligence archives […] of the former [DAS] is held as classified information for the purposes of access and review," and therefore, "access or review of this information shall be available only to requesting judicial authorities as part of a judicial process or to requesting oversight entities" (Article 2.2.3.12.5.7, *supra* footnote 425).

688. This provision is applicable to the archives of the former DAS and restricts access to the files by the alleged victims, and it runs counter to Convention-based standards (*supra* para. 603) because it constitutes a general, automatic measure for holding information as classified; it fails to consider the particular content of the documents, by which the competent authority in each case would analyze whether the claim of access could be granted, evaluating the applicability of the limitations set by law and performing a judgment of proportionality to issue

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[868] The Court deems that Constitutional Law 1621 of 2013 could be amended to bring it into alignment with Convention-based standards; this would require: (a) identification of the different types of authorized measures and actions for obtaining and compiling intelligence information; the goals sought with the use of these measures; the types of individuals and activities on which information may be gathered and compiled, depending on the identification of threats to the pursuit of the legitimate aims identified; the degree of suspicion necessary to justify gathering and compiling of information; time limits on use of these measures and strategies, and useful methods for updating, overseeing and examining the measures and actions used to gather and compile information; (b) the need for prior judicial oversight when certain individuals are assigned to practice surveillance methods and actions via access to non-public data bases and information systems that store or process personal data, and for performing invasive measures to collect information; (c) the use of a sequence of processes to formalize intelligence activities with the full recording of each stage, included in the logbook on access to electronic systems; (d) in the case of processing personal data, keeping a record to identify those responsible for processing; the purposes for processing information compiled, indicating the source and category of the data; the legal basis for the operations; term limits for keeping the data, and techniques used for processing it; also, chronological records of access, modification, consultation, erasure or dissemination of personal information, and identification of anyone who gains access to the data; (e) provisions to ensure that the obtaining of information held by public and private entities and the possibility of signing inter-institutional agreements for these purposes are subject to the pursuit of a legitimate purpose defined by law, the definition of those who will be responsible, and the setting of time limits for validity; (f) adaptation of regulations on "monitoring the electromagnetic spectrum," providing a definition of permissible activities, the type of information that can be collected and the prior judicial oversight required for monitoring and for methods of communications surveillance, whether selectively or at large scale, including surveillance of the electromagnetic spectrum—with the possible exceptions indicated in para. 677; (g) the reports that relevant authorities must submit to the Legal committee to monitor intelligence and counterintelligence activities should include the material needed to facilitate tasks of oversight, and if any anomalies or irregularities are detected, the committee should report to the Prosecutor General and the Office or the Solicitor General, whichever applies; (h) the regulations concerning the Joint Board of Intelligence should clearly state the conditions and purposes that may justify an exchange of information and applicable safeguards to ensure that the information is kept safe; (i) limits must be set on the application of "legal confidentiality" of "documents, information and technical material" held by intelligence agencies, to specify the categories of information that can be marked as classified and allow for compliance with the demands of the principles of proportionality in each specific case; (j) when setting time limits on "legal confidentiality," or how long information can be considered classified, the regulations should opt for a maximum of 15 years, with no extensions, in keeping with Law 1712 of 2014, and (k) a requirement for an independent supervisory institution to be assigned to verify matters concerning the management and storage of personal information and data held by intelligence agencies.

a well-founded decision to grant or deny the request.

689. As was already intimated (*supra* para. 645), Executive Order 2149 of 2017, that regulates custody of the archives of the former DAS and provides for "access and review," makes no mention whatsoever of a procedure or mechanism to recognize and guarantee access to and control of personal data held in the archives. This omission is clearly evident given the reiteration of the confidential classification applied to any document or information concerning intelligence agencies,[869] and given the fact that the rules on protection of personal data explicitly exempt any files or data bases in the hands of these authorities, removing them from its "protection system."[870]

690. This situation is incompatible with the standards already cited in this judgment and with the duty derived from Article 2 of the American Convention. The domestic legal system must provide reasonable mechanisms or procedures that are streamlined, simple, free of charge, and effective and are designed to provide an effective guarantee of the right to informational self-determination by allowing people to have access to and control over intelligence files containing data on them (*supra* para. 599).

691. The Court also takes note of the content of the report released in July, 2016 by the Advisory Commission for clearing intelligence and counterintelligence data and files, according to Article 30 of Law 1621.[871] The report contained, *inter alia*, specific recommendations on (i) the creation of a "civilian, autonomous, independent" entity to be responsible for developing the process of clearing intelligence and counterintelligence files, both those held by the agencies that Law 1621 of 2013 empowered for this task (in coordination with them), and those of the former DAS (available to the JEP and in the custody of the National General Archive[872]), and (ii) criteria useful for advancing the task of clearing the files by deciding on retention, removal, or final disposition. The Advisory Commission outlined these criteria, covering the legality of the files and the data they contain, and their administrative, fiscal, legal, accounting or historical value, emphasizing the protection of personal or sensitive data.[873]

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869 See Article 33 of Law 1621. Expert witness Rodrigo Uprimny Yepes said that the Law 1712 of 2014, "creating the law on transparency and right of access to national public information and setting forth other provisions," "reiterated a generic confidentiality classification for intelligence files, and as a result, its mechanisms for access to the information do not apply to these files," while Article 19 "covers the temporary classification of material in matters of defense, national security, and public safety." *Cf.* Written expert opinion by Rodrigo Uprimny Yepes (evidence file, volume XXXVIII, folios 46433 and 46435).

870 Article 2 of Law 1581, enacted in 2012, "setting general provisions for the protection of personal data, says: Field of application: The principles and stipulations contained herein shall apply to personal data recorded in any data base that may expose them to processing by public or private entities. […] The protection system for personal data established herein shall not apply: […] (c) To data bases if their purpose and content are intended for intelligence and counterintelligence; […].

871 Article 30 of Law 1621 of 2013:
The Advisory Commission for clearing intelligence and counterintelligence data and files is hereby created and will be presided over by the Solicitor General. […] This commission will serve for a term of two (2) years after it is installed. Its purpose will be to produce a report with recommendations to the national government on criteria for retention or removal of intelligence and counterintelligence data and files and criteria for the final destination in cases of removal. The Commission will consider the following: (a) national security; (b) the fundamental rights of citizens to reputation, honor, and due process; (c) the duty to safeguard the preservation of the country's historical memory; (d) protection of information on government officers who perform intelligence and counterintelligence activities, and their sources, means, and methods; (e) the law on archives; […] and (g) international practices for clearing intelligence information and files. […] The national government will have one year after the commission delivers its report to implement a system for clearing intelligence and counterintelligence data and files, following the guidance of the commission's report and recommendations. […].

872 *Cf.* Judicial Order 001, March 12, 2018, by the Executive Secretariat of the Special Jurisdiction for Peace (evidence file, volume XVII, annex 43 to the answering brief, folios 32561, 32563 and 32565).

873 *Cf.* Report of recommendations on retention, removal, and destination of intelligence and counterintelligence

692. Contrary to the provisions given in this Article 30 of Law 1621, the report of the Advisory Commission was not addressed in the text or regulations of Executive Order 2149 of 2017, which created the National system for clearing intelligence and counter-intelligence data and files (SND), whose responsibilities include: (i) unifying and issuing policies to advance the process of clearing intelligence and counterintelligence data and files, (ii) setting "parameters for appropriate processing" of files from the former DAS, and (ii) setting up mechanisms for the delivery, receipt, custody, levels, and access protocols for "intelligence and counterintelligence files that are removed."

693. Information submitted to the Court shows that a challenge to nullify Executive Order 2149 of 2017 was brought before the Council of State (*supra* footnote 557),[874] combined with the fact that, in its final report, the Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition recommended that it be repealed followed by the creation of a "civilian, autonomous, independent entity for clearance."[875] The Court cautions that the body created under this Executive Order 2149 of 2017, that is, the National system for clearing intelligence and counter-intelligence data and files (SND) is not independent, as required by the standards outlined in this judgment (*supra* para. 581), as a body that would oversee the use of all the personal information and data in the hands of intelligence services. The State, in the end, did not demonstrate that this national system had made any progress in clearing intelligence archives.

694. The text of Executive Order 2149 of 2017 therefore infringes the obligation set forth in Article 2 of the American Convention, read in conjunction with Articles 11(2) and 13(1) thereof.

B. Right to privacy and the official statements by public authorities

B.1. Arguments of the parties and observations of the Commission

695. The ***Commission*** said, "the statements by high-level officials and certain government entities amounted to a violation of the right to privacy, injuring the honor and dignity of the members of CAJAR."

696. ***CAJAR and CEJIL*** argued that the Collective, its members, and their families "have suffered unrelenting defamation and smear campaigns because of their human rights defense work, especially starting in the 2000s." They attributed this to statements made, mostly by government authorities, followed by public communiqués "with threats from the paramilitary," news items and programs, blog entries, pamphlets and public statements that "have reiterated and cemented the idea […] [that] CAJAR is working with the FARC," and that its members are "enemies of the state," "terrorists," "members of the guerrilla forces," traitors of our nation," the "legal arm of the ELN," "human rights traffickers," and "an association that works against the interests of Colombia, involved with 'dark money powered by the guerrillas,'" and other similar statements.

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files, Advisory Commission for clearing intelligence and counterintelligence data and files (evidence file, volume XVII, annex 42 to the answering brief, folios 32524 to 32554).

874 *Cf.* Brief of April, 2019, in which the Colombian Commission of Jurists appealed to the Council of State for nullification of 2017 Executive Order 2149 (evidence file, volume XLVI, annex to the brief of CAJAR and CEJIL, June 6, 2023 folios 48774 to 48802).

875 *Cf.* Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, final report, *Hay futuro si hay verdad: hallazgos and recomendaciones*, ("there is a future if there is truth: findings and recommendations"), Bogotá, June 28, 2022, Recommendation 43, p. 699 (evidence file, volume XLII, annex to the brief of CAJAR and CEJIL, April 10, 2023, folio 47649).

697. They said that the injury to honor and dignity also affected the families of Collective members, as in the case of Rafael Barrios Mendivil's son Juan Pablo Barrios Romero. They added, "as a result of the defamation he experienced," Eduardo Carreño Wilches and Luis Guillermo Pérez Casas had to face "a disciplinary investigation," which was later dropped. Rafael Barrios Mendivil, Eduardo Carreño Wilches and Jomary Ortegón Osorio underwent a tax investigation, which was also dismissed. These investigations, in their view, constitute violations of the right to honor.

698. ***Ms. Arias*** recalled statements fingering them as "instigators, the legal branch of organizations operating outside the law, serving as intermediaries for their finances, […] and these were excuses to distort the work being done by [the alleged victims], neglect their legitimate demands, […] and portray them as targets who deserved to be neutralized or even physically exterminated." She added that the lawyer Pedro Julio Mahecha Ávila, "from the moment he was selected as a judge in the Special Jurisdiction for Peace, has been and continues to be accused of harboring questionable associations and is defamed by high-level public officials."

699. The ***State*** argued that "none of the statements described" by the alleged victims "is a violation of their right to honor and dignity." It also made reference to the statements by former President Álvaro Uribe Vélez, saying that "they were examined by the Constitutional Court," and as a result, "the arguments by the representatives of the [alleged] victims were settled in the domestic jurisdiction and are therefore outside the bounds of the [Inter-American] Court." It added that the disciplinary and tax investigations of various members of CAJAR "were based on proper factual and legal grounds" and therefore cannot be held as violations of the right to privacy, or honor and dignity.

B.2. Considerations of the Court

700. The Court will examine the arguments on human rights violations resulting from statements by public officials.

B.2.1. General considerations on statements by government authorities and respect for the right to honor

701. The Court has held that the provisions of Article 11 of the American Convention enshrine everyone's right to protection of honor and recognition of dignity. Its case law has emphasized that the right to privacy means that all people have the right for their honor to be respected, prohibits any illegal attack against honor or reputation, and charges the States with the duty to provide legal protection from such attacks. In broad terms, the Court has found that the right to have honor respected relates to self-esteem and self-worth, whereas reputation refers to the opinion other persons have about someone.[876] The Court has declared this right violated in cases in which it was proven that authorities had subjected individuals or groups to hatred, stigmatization, public scorn, persecution, or discrimination through public statements by government officials.[877]

702. The Court recalls its case law saying that in a democratic society, it is not only legitimate,

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[876] *Cf. Case of Tristán Donoso v. Panama, supra*, para. 57, and *Case of Tabares Toro et al. v. Colombia, supra*, para. 111.

[877] *Cf. Inter alia*, *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs.* Judgment of July 8, 2004. Series C No. 110, para. 182; *Case of Cepeda Vargas v. Colombia, supra*, paras. 208 and 210; *Case of Villamizar Durán et al. v. Colombia, supra*, para. 156; *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, paras. 409 to 417; *Case of Valencia Campos et al. v. Bolivia, supra*, para. 257, and *Case of Tabares Toro et al. v. Colombia, supra*, para. 111.

but on occasions even a duty, of state authorities to issue statements with regard to matters of public interest. However, in making such statements, the authorities are subject to certain restrictions such as having to verify in a reasonable manner, although perhaps not exhaustively, the truth of the facts on which their opinions are based, and the conduct of this verification should be subject to a higher standard than that used by private parties, given their high position and the broad scope and potential effects that their words could have on certain sectors of the population, and with a view to keeping citizens and other parties from receiving a distorted version of the facts. Additionally, they must take into consideration that as public officials they have a position as guarantors of the fundamental rights of people and, therefore, their statements cannot ignore those rights or constitute forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute to public discourse through the expression and dissemination of their ideas.[878] This duty of special care is especially intensified in situations of greater social conflict, disturbances of public order or social or political polarization, precisely because of the set of risks they may imply for certain people or groups at a given time.[879]

703. The Inter-American Court, considering the cause of action in the instant case, attaches particular importance to the view of the Colombian Constitutional Court concerning the public statements by government officials, especially their reference to assertions by the President of the Republic, saying that he is "not absolutely free" to speak; in cases of "setting policy positions […] or responding to criticism by the opposition, [his] words must stand on the basis of a minimum level of true, factual justification and standards of reasonableness," and his statements should seek to "contribute to the defense of the fundamental rights of persons, particularly those who merit special protection" (judgments T-1191/04 of November 25, 2004 and T-1062/05 of October 20, 2005, *supra* para. 458)[880].

B.2.2. Analysis of the instant case

704. The Court will now proceed to examine the alleged violations of the right to privacy based on public statements by State authorities. The Commission and the representatives pointed to various incidents involving statements by public officials and describing them as defamation or disparaging remarks against the alleged victims.

705. The Court recalls finding in its case law that the State may incur international responsibility by a failure in its duty of respect, set forth in Article 1(1) of the American Convention, whether because the human rights violation is committed by its own agents, or when the offense was committed with the participation, support, or tolerance of agents.[881] Moreover, international responsibility may derive from failure of the duty to guarantee, also contained in Article 1(1) of the Convention, which requires the State to prevent, investigate, and punish any human rights violation, even if it is ascribed to private parties, and seek, as much as possible, to redress the abridged right and repair the damage caused by the violation.[882]

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878 *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra*, para. 131; *Case of Ríos et al. v. Venezuela, supra*, para. 139, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 406.

879 *Cf. Case of Ríos et al. v. Venezuela, supra*, para. 139, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 406.

880 See also, Constitutional Court judgment T-1037/08, October 23, 2008. Available in Spanish at: https://www.corteconstitucional.gov.co/relatoria/2008/T-1037-08.htm.

881 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra,* para. 165; *Case of Pavez Pavez v. Chile, supra*, para. 109, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 260.

882 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 166, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 261.

706. The arguments on violation of the right to privacy in the instant case are based on the alleged "stigmatizing, defamation and smear campaigns because of the [alleged victims'] human rights defense work" as a result of statements by government authorities, "followed by public communiqués with threats from paramilitary forces […], news items and programs, blog entries, pamphlets, [and] public expressions," that "reiterated and cemented the idea [that] CAJAR is working with the FARC," and that the alleged victims are "enemies of the State," "terrorists," "members of the guerrillas," "traitors of the nation," "the legal branch of the ELNL," "traffickers in human rights," "an association that works against the interests of Colombia," "involved with dark money powered by the guerrillas," and so on.

707. The Court understands, in this framework, that the human rights violations specifically point to public statements by authorities, that is, a violation of the duty to respect, as certain actions attributed directly to agents of the State are claimed to be injurious to Convention-based rights. No concrete arguments were given concerning tolerance or support by agents of the State for statements and opinions by private parties, journalists, or former public officials, or by groups operating outside the law, or failure of the State to uphold its duty to guarantee the right to protection of honor (which was in fact argued for other rights, *infra* chapter VIII.4). In the view of the Court, the references to these public expressions and opinions attributed to persons who did not hold public office serve only to illustrate the injurious effect of defamation and disparagement in public statements by government authorities against the alleged victims, as this kind of finger-pointing and name-calling would have been taken up and repeated by non-state actors. Therefore, statements attributed to private parties, journalists and former public officials will be examined, as relevant, in this context only, without ignoring the fact that certain specific opinions expressed by such parties would reflect the climate of polarization present in the setting of the armed conflict in Colombia.[883]

708. The Court's analysis of the merits will specifically address the speech given by the President on September 8, 2003, at the commissioning ceremony for the commander of the Air Force (*supra* para. 368). The matter had been brought before the Constitutional Court of Colombia which, in a ruling on October 20, 2005 (T-1062/05) in response to a motion lodged by the Collective, dismissed the complaint, finding that "insufficient evidence was produced to justify a claim that the accusations by the […] President specifically targeted" CAJAR and its members (*supra* para. 457). The Constitutional Court agreed that the speech was in fact given, and aware of the context and content of the message, found no grounds for concluding that it was an express reference to the Collective.

709. Nonetheless, this Court finds that certain clarifications are in order concerning the content of the speech, the status of the speaker, and the occasion on which it was given on September 8, 2003, which also led the Constitutional Court of Colombia to deliver certain specific views about the public intervention by the then President (*supra* para. 458).

710. The Inter-American Court therefore notes that the then President on that occasion pointed to the existence of "political hacks who ultimately are at the service of terrorism and shield themselves like cowards by wrapping themselves in the flag of human rights," in reference to certain persons and organizations working to defend human rights, along with other disparaging remarks (his statements also alluded, *inter alia*, to "lawyers collectives […] mouthpieces for terrorism," *supra* para. 368). Such statements, in a speech of a clearly political bent, included extremely serious claims that should have been marked by civility and

[883] For example, CAJAR and CEJIL, in their pleadings and motions brief, made mention of the appearance of editorials and social media messages between 2012 and 2019, attributed to private parties, journalists, and anonymous persons, suggesting the existence of links or support between the Collective and armed groups operating outside the law (merits file, volume I, folios 544 to 548).

composure from the head of state and head of government, based first on the objectiveness that should surround statements made from the highest office in the land, because he is under obligation to give a reasonable explanation of the grounds for his opinions, and second, on his position as guarantor of the rights of everyone living in Colombia, as his position requires.[884] This is compounded by the setting in which these words were spoken: a public ceremony to commission an officer to a high post in the armed forces. Such a context could suggest that the claims made by the supreme commander of the Air Force and of the public security forces overall[885] were intended to legitimize actions of reproof or censure against anyone who could be labeled as a "trafficker in human rights" and a "mouthpiece of terrorism," which was exactly the sense of the closing words of the speech: […] General […]: you are taking command [...] for the purpose of defeating terrorism. The human rights traffickers must not stop you; […] may the entire Colombian Air Force provide this great nation with the service of helping us be free of this nightmare once and for all![886]

711. It could not be inferred from the words of the speech itself that explicit reference was being made to CAJAR and its members, but this Court cannot ignore the fact that there were reactions to the President's words.

712. The Inter-American Court similarly emphasizes the notice published on September 29, 2003, signed by "commandos of paramilitary groups", and the reference to the "allied farmer self-defense forces," the "Bolívar central block" and "Conquerors of Arauca" (*supra* para. 172), which, because of its significance and content, is transcribed below:

> There cannot be the slightest doubt about the deep-seated sense of democratic authority that our country is currently feeling, when we hear the Chief of State speaking out such harsh, real truths, things that our country had not heard for so many decades […]. Groups of lawyers are at work in Colombia, defending "political prisoners" and bearing such suggestive, emblematic names as that of José Al[v]ear Restrepo […]. Using more familiar speech, that is, the language of those who, like us, are stuck in the very scene of the conflict, the NGOs that stir up controversy about the armed conflict must be described in terms of their goal […] of defending human rights, in these terms: [i]f the goal is to play along with the communist guerrillas, then we can see that this is the group of nongovernmental organizations, defenders of the rights of certain humans or defenders of the "rights" of those who are inhuman. Here they gather together, the organizations that howl against the exercise of authority, and the well-paid detractors of the policy for democratic security […]. These organizations, heavily funded by communist terrorism, invest their millions in aggressive publicity campaigns against democratic governments and societies, as occurred recently with the glossy publication "the authoritarian bewitchment" […].[887]

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884 The Inter-American Commission in its 2003 annual report addressed the situation of human rights defenders in Colombia, saying that they "not only continue to be the target [of] threats and attempts against their life and physical integrity, but find the value of their work questioned in the media by officials, including the President." *Cf.* IACHR. Annual Report 2003, OEA/Ser.L/V/II.118, Doc. 5 rev. 2, December 29, 2003, chapter IV, para. 11. The final report of the Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, said:

> During the policy of democratic security from 2002 to 2010, talk of terrorist enemies or narcoterrorism gathered strength at the hands of the President. At that time, defamation was intensified against journalists, opposition politicians voicing complaints before the Congress, human rights defenders, high-court judges (such as the justices on the Constitutional Court and the Supreme Court), and members of the human rights agencies of the Organization of American States and the United Nations. […].

Cf. Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, final report, *Hay futuro si hay verdad: hallazgos y recomendaciones*, ("there is a future if there is truth: findings and recommendations"), Bogotá, June 28, 2022, pp. 395 and 396 (evidence file, volume XLII, annex to the brief of CAJAR and CEJIL, April 10, 2023, folios 47346).

885 *Cf.* Constitution of Colombia, Article 189, item 3.

886 See written expert testimony of Susan Benesch, April 28, 2022 (evidence file, volume XXXIII, affidavits, folios 45732 and 45733).

887 *Cf.* Communication from the petitioners to the Commission, December 20, 2013 (evidence file, volume VI, Commission case file, folios 13123 and 13122), and document *Por qué ladran los perros?* ("why do dogs bark?") (evidence file, volume I, annex to the Report on the Merits, folios 2914 to 2918). The State, in its answering brief, said, "[i]t is true that the communiqué included statements apparently spoken by" the United Self-Defense Forces of

713. The communiqué demonstrated explicit support for the sentiments of the President and reiterated his own words, directly and openly discrediting the work of the Collective as one of the organizations "barricaded in the trenches of human rights doctrine" that served "in defense of the interests of communist terrorism," "played into the hands of the communist guerrillas," and were "financed by communist terrorism." This fact, in the view of the Court, reflects the impact on the alleged victims of the widely cast defamation emanating in public statements from the very top of the executive branch.

714. Expert witness Susan Benesch explained that a "stigmatizing act" can be understood as "a statement or suggestion that a person or persons should be feared and considered a serious threat to an in-group."[888] Expert witnesses Lourdes Castro García and Leonardo Díaz Morales said that stigmatizing is a reference to "behaviors intended to discredit and trigger a negative social reaction against certain persons or social groups, seeking, among other things, "social delegitimizing" by means of "discrediting," which "builds a climate of ignorance, mistrust and disparagement of the activities" of those persons or groups.[889]

715. The stigmatizing effect as described, enmeshed in an environment of clear political and social polarization caused by the armed conflict (*supra* paras. 146 and 493),[890] was closely related to the status of the alleged victims as human rights defenders and with the activities they performed as part of that work; the writers of the communiqué had understood that the President's speech directly alluded to and branded the Collective and its members (note that the communiqué dated September 9, 2003 was included in the analysis by the Constitutional Court).

716. Moreover, the President's speech became a key exhibit for describing the context noted in this judgment (*supra* paras. 488 and 489), revealing the intent to silence or weaken the actions of those who were working to defend human rights, in view of their critical stance toward the administration. It should be recalled that this was the framework in which the G3 launched its activities (*supra* paras. 316 and 491), one of whose objectives was specifically "to link the activities performed by NGOs, their members, […] and human rights defenders with those of armed groups operating outside the law."[891] This was the reason why the DAS, using illegal means, collected information on the members of the Collective and some of their family members, which was used to develop records and profiles containing different types of entries, including some that identified links and support for or proximity to guerrilla groups. The Court cannot doubt that the alleged victims were targeted by acts of defamation.

717. The Court must also consider the fact that from 2001 through 2003, the website of the

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Colombia (merits file, volume II, folio 1068).

888 *Cf.* See written expert testimony of Susan Benesch, April 28, 2022 (evidence file, volume XXXIII, affidavits, folios 45725).

889 *Cf.* Joint written expert opinion by Lourdes Castro García and Leonardo Díaz Morales, April 25, 2022 (evidence file, volume XXXIII, affidavits, folio 45062).

890 Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, final report, *Hay futuro si hay verdad: hallazgos and recomendaciones*, ("there is a future if there is truth: findings and recommendations"), Bogotá, June 28, 2022, p. 110 (evidence file, volume XLII, annex to the brief of CAJAR and CEJIL, April 10, 2023, folio 47061):

> [A]n effective mechanism of propaganda adopted by the government [2002-2010] of giving speeches about the entire left wing and democratic sectors and linking them to the insurgency created a scenario of polarization, anger and intolerance such as had not been seen since the days of the violence. This symbolic representation served as a mechanism to rationalize arbitrary arrests, defamation, and in many cases, [human rights] violations.

891 *Cf.* Judgment by the Chamber of Criminal Cassation of the Supreme Court, September 6, 2017, filing 39931 (evidence file, volume XII, annex 48 to the CAJAR and CEJIL pleadings and motions brief, folios 27156, 27158 and 27159).

National Narcotics Control Bureau, which operates under the Ministry of Justice, carried a text describing the Collective and its members as "long-time defenders of the FARC" (*supra* para. 367). It notes in this regard that the existence of this posting was made has not been challenged.[892] Constitutional Court judgment T-1062/05 of October 20, 2005, said that the Ministry of Justice had ordered the posting to be removed, but that court did not address the claimed violation of the rights of the alleged victims (this was stated clearly in the text of the judgment[893]), beyond the warrant issued to the National Narcotics Control Bureau to refrain from posting any information about the Collective "so long as there is no decision by any competent judicial authority allowing such publications to be made." This, combined with the lack of a concrete decision, convinces the Court that the claimed violation of the rights of the alleged victims has not been redressed domestically, which opens the door to a judgment in the inter-American jurisdiction.

718. The Court cautions, similarly, that the text of the publication contained a message deeply threatening to the alleged victims, as members of CAJAR, when it described them as "traditional," that is, habitual or customary "defenders," protectors or encouragers, of an armed group operating outside the law. The text was posted by the Bureau in reaction to the filing of judicial actions "against the program for eradication of illegal crops using the herbicide glyphosate,"[894] a context that revealed that there was no objective, reasonable basis for these accusations. It is impossible to identify the person or persons who wrote the publication, but this analysis can proceed nonetheless, because there is no question that the text was posted on the official website of a government department responsible for the "development and implementation of government polices on narcotics control, prevention, and law enforcement,"[895] and therefore, the action under complaint can be attributed directly to the State of Colombia (*infra* para. 705). An official publication of this kind, produced in the highly polarized setting examined above, also contributed to discrediting CAJAR and, therefore, its members.[896]

719. In any case, the defamation against the Collective continued its reach over time, as the following facts reveal: (a) the demonstrations on September 1 and October 1, 2010, organized by the "Nationalist Movements and Active Reserve of Colombia," and "the Colombian Association of Retired Military Officers" (ACORE), when signs and posters against CAJAR were displayed, calling its members "terrorists", "guerrillas", and "traitors of the nation", with particular mention of the lawyer Rafael Barrios Mendivil (*supra* para. 181);[897] (b) opinions expressed by journalists and private persons in the media, calling the Collective an organization "whose extreme left-wing ideological profile has transformed it into a weapon

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892 The Court recalls that the State admitted that the fact was "true." *Cf*. The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1065).

893 The judgment read: "This chamber of review notes that the decision adopted herein makes no assertion whatsoever about any connection between the Lawyers Collective and the activities proper to the jurisdiction of the National Narcotics Control Bureau." *Cf.* Constitutional Court Judgment T-1062/05, October 20, 2005.

894 The petitioners claimed in their communication to the Commission on October 28, 2004, that the text of the publication read as follow:

> Significant legal matters. Popular action against the program for the illicit crop eradication using the herbicide glyphosate. These people, with the help of, among others, […] Representative Gustavo Petro and the José Alvear Restrepo Lawyers Collective (traditional defenders of the FARC), headed by their president Alirio Uribe, lodged a popular action in the Administrative Court of Cundinamarca on January 22, 2001, against the Ministry of Environment, the Colombian Agricultural Institute (ICA), and the National Narcotics Control Bureau.

Cf. Communication from the petitioners to the Commission, October 28, 2004 (evidence file, volume III, annex to the Report on the Merits, folio 8006).

895 *Cf.* Executive Order 2159 of 1992, Article 5.2. Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/30020210.

896 *Cf. Mutatis mutandis*, *Case of Villamizar Durán et al. v. Colombia, supra*, para. 156.

897 *Cf.* The State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1129).

more deadly than FARC rifles" (November, 2013),[898] or pointing to some of its members as favoring the guerrillas or attacking democracy (November, 2017)[899] (*supra* para. 377), and (c) several threats against the Collective beginning in the 2000s and continuing until recently, allegedly signed by paramilitary organizations (this will be discussed in more depth below, in chapter VIII.4), with constant name-calling that associated the organization and its members with guerrilla groups.

720. Given this analysis, the Court finds it unnecessary to examine other public statements attributed to government authorities.

721. The Court understands that the defamation collectively touched everyone who has been part of CAJAR, from lawyers and legal aides, to technical and administrative staff. The Court therefore agrees with the Commission and the representatives that the State of Colombia is responsible for violating the right to honor as enshrined in Article 11(1) the Convention, read in conjunction with with Article 1(1) thereof, in injury to the alleged victims, members of the Collective.

a) Other pleadings

722. The Court is also cognizant of the statements made by governmental authorities, private persons, and former public officials surrounding the trial for the Mapiripán massacre, and it notes that the statements spread widely in the news media alluded to a concrete procedural situation that needed to be explained (*supra* para. 378). It will not hold that agents of the State are justified in making any type of statement, although such officials are inherently expected to exercise discretion and objectivity in their public appearances, but it does not find that this specific situation was intended to stigmatize or attract public scorn on the alleged victims, and therefore it does not find that their right to honor has been violated.

723. The Court will also address the disciplinary and fiscal cases brought against Eduardo Carreño Wilches, Luis Guillermo Pérez Casas y Rafael Barrios Mendivil, and Jomary Ortegón Osorio, for matters associated with this same trial and that were later dismissed. It recalls that judicial proceedings per se did not illegally impugn the honor or dignity of these persons, as the purpose was to settle a dispute, which was the grounds for which they were initiated (this is consistent with the procedural situation that needed to be solved, as stated in the prior paragraph), although it could have indirectly and almost inevitably caused discomfort for those found to be subject to the proceedings and the decision.[900]

724. As for the statements made by a member of the Colombian Senate during its May 18, 2020 session, making certain accusations against Pedro Julio Mahecha Ávila (*supra* para. 386), the Court notes that the alleged victim, at that time, was already serving as a judge in the Special Jurisdiction for Peace, and the senator's statement addressed his performance in that role. Even though she was pointing to Mr. Mahecha Ávila's prior status as a member of the Collective, her statement was intended specifically to question his performance as a member of the JEP and his impartiality on the bench. The Court therefore understands that, far from impugning his honor, the statement was made in the context of controls that need

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[898] According to CAJAR and CEJIL, this expression was given in an opinion piece that ran on November 21, 2013, in the *El Tiempo* newspaper (merits file, volume II, folio 545). The State said that the fact "is true" (merits file, volume II, folio 1132).

[899] CAJAR and CEJIL reported on the comments made against Alirio Uribe Muñoz when he appeared on a November 29, 2017 television program and one of the speakers said that he had been a member of the guerrillas and had attacked democracy (merits file, volume II, folio 546). The State said in its answering brief on May 17, 2022, that the incident "did occur" (merits file, volume II, folio 1130).

[900] *Cf. Case of Cesti Hurtado v. Peru. Merits.* Judgment of September 29, 1999. Series C No. 56, para. 177, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra,* para. 440.

to exist between the branches of government, which is essential to a democratic system; in this case, it was the control that one political body exercised over other similarly political mechanisms.[901] Thus, there is no evident violation of the right in this specific situation.

725. Similarly, an analysis of the events surrounding a television program on February 12, 2020, in which one of the participants made certain comments about the Collective (*supra* para. 385), has not convinced the Court that the remarks by this person on the program were made in her capacity as a government officer, taking advantage of her official role or exercising her authority.[902] It could be inferred that she spoke as a member of a political party, and therefore, in defense of a particular ideological line and political position, and ultimately, the moderators identified this as the basis for her comments and, in general, for the debate which was the purpose of the program. Therefore, this incident is not found to have violated the right to honor.

726. Finally, the Court did not receive evidence of a violation of the right to honor for family members of CAJAR members, and therefore will not rule thereon.

C. General conclusion

727. Based on the discussion in this chapter, the Court concludes that the State of Colombia is internationally responsible for violating the right to privacy, enshrined in Articles 11(2) and 11(3) of the American Convention, read in conjunction with Articles 1(1) and 2 thereof, and the right to freedom of thought and expression, enshrined in Article 13(1) of the Convention, read in conjunction with Article 1(1) thereof, in injury of the members of CAJAR and their family members who were targeted by arbitrary intelligence activities, namely: Rafael Barrios Mendivil and his wife Kimberly Ann Stanton; Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, his children Luisa Fernanda Uribe Laverde, Miguel Ángel Uribe Laverde and David Alirio Uribe Laverde; Soraya Gutiérrez Argüello and her daughter Paula Camila Romero Gutiérrez; Reinaldo Villalba Vargas and Jheyson Andrés Arias Zambrano, son of his sister's common-law husband; Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, Diana Teresa Sierra Gómez, Javier Alejandro Acevedo Guerrero, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo and her son Leandro Jurado Arias; and Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, Pedro Julio Mahecha Ávila, Adriana Patricia Fuentes López, Efraín Cruz Gutiérrez, Adriana Cuéllar Ramírez, Nubia Liliana Romero Bernal, Sandra Yalin Ariza, Olga Lilia Silva López, Camilo Andrés Galindo Marín, Chennyer Jairt Piñeros Fuquen, Carlos Lozano Acosta, Andrés Rivera Acevedo, Mónica Lorena Zuluaga Patiño, Adriana Lizeth López Rojas, Lyda Natalia Hernández García, Andrea del Rocío Torres Bobadilla, Olga Marcela Cruz López, Olga Hernández Villalba, Ingrid Osnay Fernández Rengifo, Martha Eugenia Rodríguez Orozco, and Fernando Lemus Rodríguez.

728. The State also violated the same alleged victims' right to informational self-determination, enshrined in Articles 11(2) and 13(1) of the Convention, read in conjunction with Articles 1(1) and 2 thereof.

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[901] The Court has understood that the members of other branches of the State, based on the nature of their political task, may issue criticism or opinions on judicial decisions, a matter that, to the extent that it is not a hidden mechanism of external pressure and does not determine the removal of judicial authorities, does not constitute an attack on the latter's inherent independence. *Cf*. *Case of Ríos Avalos et al. v. Paraguay, supra*, para. 114.

[902] The Court has found in its case law that, to determine the State's international responsibility, any act by a public body or a person or entity empowered to exercise areas of public power will be held as an act of the State. There is only one exception to this rule, which applies when the entity or person is not acting in this capacity, that is, when the person is acting within his or her capacity as a private individual. *Cf. Case of Villamizar Durán et al. v. Colombia*, *supra*, paras. 75 and 139, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 256.

729. The violation of the right to private life (Articles 11(2) and 11(3) of the Convention) in the specific cases of Luisa Fernanda Uribe Laverde, David Alirio Uribe Laverde, Paula Camila Romero Gutiérrez, Leandro Jurado Arias, and Jheyson Andrés Arias Zambrano, entailed breach of the duties to respect and adopt domestic legal effects (Articles 1(1) and 2) and violation of the rights of the child, enshrined in Article 19 of the American Convention.

730. The State violated an additional right of the alleged victims named in paragraph 727: the right to know the truth, inherent in the right of access to information, which violates Article 13(1) of the American Convention, read in conjunction with Article 1(1) thereof.

731. The State is similarly responsible for violating the right to honor, upheld in Article 11(1) of the Convention, read in conjunction with Article 1(1) thereof, in injury of the alleged victims who were members of the Collective, to wit: Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Soraya Gutiérrez Argüello, Reinaldo Villalba Vargas, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, Diana Teresa Sierra Gómez, Javier Alejandro Acevedo Guerrero, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, Pedro Julio Mahecha Ávila, Adriana Patricia Fuentes López, Efraín Cruz Gutiérrez, Adriana Cuéllar Ramírez, Nubia Liliana Romero Bernal, Sandra Yalin Ariza, Olga Lilia Silva López, Camilo Andrés Galindo Marín, Chennyer Jairt Piñeros Fuquen, Carlos Lozano Acosta, Andrés Rivera Acevedo, Mónica Lorena Zuluaga Patiño, Adriana Lizeth López Rojas, Lyda Natalia Hernández García, Andrea del Rocío Torres Bobadilla, Olga Marcela Cruz López, Olga Hernández Villalba, Ingrid Osnay Fernández Rengifo, Martha Eugenia Rodríguez Orozco, and Fernando Lemus Rodríguez.

VIII.3
RIGHT TO JUDICIAL GUARANTEES AND RIGHT TO JUDICIAL PROTECTION, READ IN CONJUNCTION WITH THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS[903] WITH REGARD TO PROCESSES UNDERTAKEN TO INVESTIGATE THE FACTS THAT HARMED THE ALLEGED VICTIMS

732. The Court will use this chapter to discuss the alleged violations of the right to judicial guarantees and the right to judicial protection in reference to (i) the investigations undertaken domestically to shed light on the acts of violence, threats, intimidation, and harassment against the alleged victims, and (ii) the investigations and judicial processes undertaken to find the truth about the intelligence activities conducted by agents of the State. Finally, the Court will examine the Colombian State's argument concerning application of the principle of subsidiarity in the instant case (*supra* para. 26).

A. The investigations undertaken to shed light on the acts of violence, threats, intimidation, and harassment against the alleged victims

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

733. The ***Commission*** said that the members of CAJAR had filed several complaints about the acts of aggression, threats, and harassment by private persons and agents of the State. "To date," they noted, "none of the investigations has managed to clear up the facts," nor "have they identified or sanctioned the guilty parties." It added that "over half of these investigations are currently on hold or dismissed for a variety of reasons—the statute of limitations has run out, failure to find criminal conduct, impossibility of identifying the guilty parties," while other investigations "are still in the preliminary stages."

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[903] Articles 8 and 25 of the American Convention on Human Rights, read in conjunction with Article 1(1) thereof.

734. While two disciplinary investigations were launched, it added, the fact is that "the disciplinary jurisdiction is not a suitable means to adjudge, sanction, and redress the consequences of human rights violations." It closed by asserting that the State has not undertaken a conscientious, thorough investigation to learn the truth, to identify the perpetrators, and to evaluate the sources of peril faced at that time by the members of the Collective.

735. ***CAJAR and CEJIL*** argued that the State "has failed in its duty to proceed impartially, diligently, and within a reasonable period, to investigate and sanction the perpetrators and masterminds of all the acts of persecution systematically and continuously unleashed for three decades against" the members of the Collective and their families. They noted, "it is extremely serious that, even though around 100 incidents of threats and harassment were committed against" the members of CAJAR from 1990 to 2019, which were reported at the time, "so far not a single guilty party has been identified, prosecuted, or sanctioned for the violations against the lives and integrity" of the alleged victims. Even though some of the acts of aggression came from parties of uncertain origin, they argued, "the judicial authorities did not trace useful associations between the human rights defense work" of the Collective "and the threats and other acts of aggression, which frequently occurred at the same time as the on-going" judicial proceedings involving CAJAR or with its other work of high impact.

736. They pointed out that the investigations that did begin had adopted "a restricted definition of the crime of 'threats'"; moreover, they failed to collect certain solid evidence, they did not investigate the context, and they did not trace patterns, ignoring the fact that the injured parties were human rights defenders. They added that the failure to uphold the duty of due diligence was compounded by the passage of time, thus creating a violation of the guarantee of a reasonable period, which in turn, unduly hindered the possibility of obtaining and submitting relevant evidence as needed to establish the facts. To this must be added the "loss of evidence" and the failure to investigate certain facts.

737. ***Ms. Arias*** argued that the complaints lodged by the alleged victims "[were] treated as autonomous facts, since judicial authorities failed to observe the overall situation of persecution of members of CAJAR." She added that the alleged victims were not provided with information on the progress of the different cases, so that, as had occurred with the lawyers Murcia Riaño and Mahecha Ávila, "there is insufficient information as to whether the State took measures or conducted exhaustive investigations" of the incidents against them. She concluded, therefore, that "impunity has been a constant thread running through these cases."

738. The ***State*** argued that the Prosecutor General "has kept open" several of the investigations for the acts of aggression, threats, or harassment against members of CAJAR, "but others have been dismissed under the terms of current laws"; moreover, "the periods of inactivity can be explained by the complexity of the matter under investigation because of the nature of the crime and context in which it occurred." It noted that the investigations had been conducted within a reasonable time, and it should be understood that the particular crime of threats "possesses certain specific qualities that make investigation more complex," unlike the other crimes.

739. The decisions to dismiss, it added, were made in keeping with domestic legislation, as Law 600 of 2000 "allows the prosecution to issue a decision not to investigate" if it "finds that the conduct did not exist or is noncriminal, that the criminal process cannot be undertaken or pursued, or if grounds are discovered for release of liability." The same law "calls for the investigation to be suspended if, after 180 days, the identity of the guilty party remains

uncertain. Similar stipulations are given in Law 904 of 2004. It closed by showing that, contrary to the claims of the Commission and the representatives, and in view of the efforts undertaken, the events of the instant case "do not reveal a pattern of impunity."

A.2. Considerations of the Court

740. The Court's case law has repeatedly held that, under the American Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8 (1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1(1))"[904]

741. The Court recalls that the right of access to justice in cases of human rights violations demands that everything necessary be done to learn the truth about what happened.[905] Moreover, the duty to investigate is an obligation of means, not results, that must be assumed by the State as its proper legal duty and not as a mere formality preordained to be ineffective, or a step taken by private interests that depends upon the initiative of the victims or their families or the provision of evidence by private parties.[906] Thus the Court has stated that if an investigation is to be considered effective in the terms of the Convention, due diligence requires the investigating body to carry out all processes and inquiries necessary to obtain the required result.[907] An effective investigation must avoid any omissions in collecting evidence or in following up on logical lines of investigation.[908]

742. The Court reiterates the importance of human rights defenders in a democratic system and emphasizes that their task can be exercised freely only when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment;[909] therefore the State holds, not only a heightened duty of protection if their lives or safety should be at risk, but also a stricter obligation to investigate violations of their rights.[910] The latter means an even greater need for due diligence to investigate and shed light on facts affecting human rights defenders, not only in cases of attacks on their lives,[911] but also in situations of threats or other types of aggression or harassment against them.[912]

743. Accordingly, the Court has held that the States have the duty to conduct conscientious, effective investigations of violations against human rights defenders, thus preventing

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904 *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections, supra*, para. 91, and *Case of Rodríguez Pacheco and et al. v. Venezuela, supra,* para. 96.

905 *Cf. Case of Bulacio v. Argentina. Merits, Reparations and Costs.* Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of Leguizamón Zaván et al. v. Paraguay. Merits, Reparations and Costs.* Judgment of November 15, 2022. Series C No. 473, para. 68.

906 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case of the Community Garifuna of San Juan and its members v. Honduras, supra*, para. 112.

907 *Cf. Case of the Serrano Cruz Sisters v. El Salvador. Merits, Reparations and Costs.* Judgment of March 1, 2005. Series C No. 120, para. 83, and *Case of the Community Garifuna of San Juan and its members v. Honduras.*

908 *Cf. Case of the Serrano Cruz Sisters v. El Salvador, supra*, paras. 88 and 105, and *Case of Guerrero, Molina et al. v. Venezuela. Merits, Reparations and Costs.* Judgment of June 3, 2021. Series C No. 424, para. 136.

909 *Cf. Case of Fleury et al. v. Haiti*, *supra*, para. 81, and *Case of Bedoya Lima et al. v. Colombia, supra*, para. 152.

910 *Cf. Case of Human Rights Defender et al. v. Guatemala, supra*, para. 142, and *Case of Bedoya Lima et al. v. Colombia, supra*, para. 152.

911 *Cf. Case of Digna Ochoa et al. v. Mexico, supra*, para. 104, and *Case of Sales Pimenta v. Brazil, supra*, para. 87.

912 See United Nations General Declaration, Article 9. *Cf*. United Nations General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, U.N. Doc. A/RES/53/144, March 8, 1999.

impunity,[913] and to ensure impartial, prompt, and authoritative justice, and that this entails an exhaustive search for all the information in order to design and carry out an investigation that involves the proper analysis of the different hypotheses of responsibility, by act or omission, at different levels, exploring all the pertinent lines of investigation to clear up what happened.[914] Consequently, when confronted with indications or allegations that a specific act against a human rights defender could be based precisely on their work defending and promoting human rights, the investigating authorities should take into account the context of the facts and their activities to identify the interests that could have been affected by those activities, in order to establish and exhaust the lines of investigation that take into account their work, determine the reason for the crime, and identify the perpetrators.[915] The States have an even greater obligation to conduct investigations with due diligence in the case of women[916] human rights defenders.[917]

744. Finally, the Court would underscore that violence against human rights defenders has a chilling effect,[918] especially when the crimes go unpunished. The Court's case law has emphasized that threats and attacks on the safety and life of human rights defenders and the impunity of those responsible for such actions are particularly grave because they have an impact that is not only individual, but also collective. When such things happen, society is prevented from learning the truth about whether the rights of persons are being respected or violated under the jurisdiction of a given State.[919]

A.2.1. Analysis of the instant case

745. The Court will now examine the pleadings on violation of the right to judicial guarantees and the right to judicial protection during the proceedings in the domestic jurisdiction to investigate the acts of violence, threats, intimidation, and harassment perpetrated against the alleged victims. The analysis will take place in the following order: (a) due diligence; (b) reasonable time, and (c) impunity in the instant case.

(a) Due diligence

746. In principle, the Court recalls that it is not responsible for replacing national authorities by ordering concrete methods or forms for investigating a specific case in order to obtain a

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913 *Cf. Case of Nogueira de Carvalho et al. v. Brazil, supra*, para. 77, and *Case of Sales Pimenta v. Brazil, supra*, para. 86.

914 *Cf. Case of Escaleras Mejía et al. v. Honduras*, *supra*, para. 47, and *Case of Sales Pimenta v. Brazil, supra*, para. 86.

915 *Cf. Case of Human Rights Defender et al. v. Guatemala, supra*, paras. 131, 216 and 219, and *Case of Sales Pimenta v. Brazil, supra*, para. 86.

916 The Court's case law has emphasized that, in cases of violence against women, the general obligations enshrined in Articles 8 and 25 of the American Convention are supplemented and reinforced with the obligations arising from the Convention of Belém do Pará, Article 7(b) of which requires the Sates Parties to "apply due diligence to prevent, investigate and impose penalties for violence against women." As the Court has held repeatedly, when an act of violence against a woman occurs, it is particularly important that the authorities in charge of the investigation conduct it in a determined and effective manner, taking into account society's obligation to reject violence against women and the State's obligation to eliminate it and to ensure that victims have confidence in the State institutions for their protection. *Cf. Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 16, 2009. Series C No. 205, para. 258; *Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 30, 2010. Series C No. 215, para. 193; *Case of Maidanik et al. v. Uruguay, supra*, para. 156; *Case of Digna Ochoa et al. v. Mexico, supra*, para. 104; *Case of Valencia Campos et al. v. Bolivia, supra*, para. 269, and *Case of Bedoya Lima et al. v. Colombia, supra*, para. 126.

917 *Cf. Case of Digna Ochoa et al. v. Mexico, supra*, para. 104.

918 *Cf. Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 96, and *Case of Baraona Bray v. Chile*, supra, para. 127.

919 *Cf. Case of Nogueira de Carvalho et al. v. Brazil, supra*, para. 76, and *Case of Sales Pimenta v. Brazil, supra*, para. 89.

better or more effective outcome; instead, its role is to find whether or not, in the steps actually taken domestically, the State's international obligations embodied in Articles 8 and 25 of the American Convention have been violated.[920]

747. It would also reiterate that the obligation to investigate is one "of means, not results" (*supra* para. 741), and the State will not necessarily be found "in breach merely because the investigation does not produce a satisfactory result";[921] the task before this Court is therefore to determine whether State authorities have shouldered this obligation as their proper legal duty, that is, conducting all the actions and procedures that are necessary and reasonable to bring about this result, and do so conscientiously and objectively. This is the meaning of practicing the duty of due diligence and, as in the instant case, observing the greater obligations in this specific sphere.

748. An examination of the judicial records shows that, drawing on the information and documentation submitted by the Commission and the parties, as well as the material discussed in a statement[922] and an expert opinion which were both added as evidence,[923] information is available on 27 investigations initiated by the Prosecutor General concerning a variety of actions described as threats, harassment, and aggression committed against the Collective, its members, and a family member of one of them (information on each investigation was summarized in the chapter on the facts, *supra* paras. 394 through 421). Ten of the investigations are still active (nine in preliminary inquiries, that is, prior to the filing of formal charges against a person as perpetrator or participant in the actions, and another in which charges have been filed), and 17 are inactive for a variety of reasons (because the conduct reported is noncriminal, because the statute of limitations on the criminal action has run out, or because the investigation was suspended when it proved impossible to identify the individual perpetrator). The Court will proceed to examine the actions taken in these investigations.

749. The Court will begin by noting that many of the investigations involve threats against the Collective as an organization or against its individual members, allegedly perpetrated in a variety of formats, including leaflets, emails, telephone calls, and text messages, which, given the content of the threats, can be presumed to have come from armed groups operating outside the law, specifically, paramilitary organizations.[924]

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920 *Cf. Case of Nogueira de Carvalho et al. v. Brazil, supra*, para. 80, and *Case of Digna Ochoa et al. v. Mexico, supra*, para. 102.

921 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs.* Judgment of February 8, 2018. Series C No. 348, para. 202.

922 *Cf.* Statement before a public attestor by Deicy Jaramillo Rivera, May 2, 2022 (evidence file, volume XXXIV, affidavits, folio 45966 to 46007). The declarant pointed to 25 investigations currently before the prosecution; because these cases had not been the challenged by the Commission or the representatives of the alleged victims, they will be considered for analysis, with the exception of three, that do not fit into the body of facts of the instant case: (a) filing 110016008776201400053, on an email threat sent on March 12, 2014, against Alirio Uribe Muñoz, in his capacity as candidate to the Chamber of Representatives, and others; (b) filing 110016099084201800705, on a digital leaflet circulated on July 14, 2008 via *WhatsApp*, bearing the logo of the "Black Eagles," and (c) filing 110016000004900910039, on actions committed against a person who is not an alleged victim in this process.

923 *Cf.* Written expert testimony of Ángela María Buitrago Ruiz, May 2, 2022 (evidence file, volume XXXIII, affidavits, folios 44862 to 44990).

924 See: Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, final report, *Hay futuro si hay verdad: hallazgos and recomendaciones*, ("there is a future if there is truth: findings and recommendations"), Bogotá, June 28, 2022, p. 273 (evidence file, volume XLII, annex to the brief of CAJAR and CEJIL, April 10, 2023, folio 47224):

> In the words of several leaders of the then AUC [Self-Defense Forces of Colombia], spoken in a meeting with the Commission: "The AUC disappeared, but the paramilitary movement continues." Several organizations arose after the demobilization of the AUC, bearing names such as Los Rastrojos, Los Pachenca, Los Caparrapos or Caparros and and the Golfo Clan (calling itself the AGC), and the Black Eagles and its cells and factions; they continue to be part of the central problem that plagues the rebuilding of peaceful coexistence in Colombia.

750. This is the situation of the following eight dossiers (all of them still active): (a) filing 110016000027200500148, on email threats received from May 8 to 24, 2006, signed "United Self-defense Forces of Colombia," "Colombia free of the left forever," and "Eastern Command" (*supra* para. 400); (b) filing 110016000049200604272, on threatening emails, leaflets and text messages on May 29, 2006 (*supra* para. 396); (c) filing 110016000099200800003, on threats against Eduardo Carreño Wilches and others in 2008, using electronic media and signed by the "Rearmed Central Command of the Black Eagles" and the "Black Eagles metropolitan bloc of Bogotá" (*supra* para. 398); (d) filing 110016000049201111020, on threatening leaflets, emails, and telephone calls attributed to "Los Rastrojos - urban commandos" and "Black Eagles capital bloc" (*supra* para. 407); (e) filing 11006000099201400015, on threats against Soraya Gutiérrez Argüello and others on March 28, 2012, in leaflets signed by "Los Rastrojos urban commandos" and "Black Eagles capital bloc" (*supra* para. 408); (f) filing 110016099066201400021, on threatening emails and leaflets signed by "Los Rastrojos," "Los Rastrojos northern command," "Black Eagles high command," "Black Eagles capital bloc," and "Gaitán Self-defense Forces of Colombia," received from April, 2013 through February, 2015 (*supra* para. 404); (g) filing 110016000049201407683, on an email threat on February 14, 2014, signed by the "Black Eagles capital bloc" (*supra* para. 397), and (h) filing 110016000013202000401, on a leaflet circulated on January 18, 2020, signed by "Black Eagles capital bloc" (*supra* para. 405).

751. Six of these investigations concern threats against CAJAR, meaning they collectively targeted anyone who was part of the organization at that time. The work of the prosecution has failed to clear up the repeated threats in nearly all these cases; charges were filed in only one case, against an individual person.

752. The Court cannot overlook the high degree of complexity facing an investigation of threats made via a printed text distributed widely and signed by a group whose membership is unclear, knowing how difficult it is to track those who wrote the text or may have taken part in distributing it. It is similarly complex to trace threats sent by email, telephone calls, or text messages, given the many ways technology can be used to block inquiry into the sources of the communication for the purpose of identifying the guilty parties.[925] For these reasons, due diligence in the investigation must entail the use of appropriate methodological tools to achieve a felicitous outcome.

753. A useful tool for pursuing the investigation, especially in the case of actions repeated over time against a person or group of persons, is to draw links among the cases to discover systematic patterns,[926] that is, instead of a case-by-case analysis, associate the facts involved in the several investigations, note the common context, and thus be able to detect systematic patterns of behavior.[927]

754. Moreover, the investigations cannot overlook the specific role of the victim of the threat as a human rights defender. Due diligence in this type of investigation must begin with an initial hypothesis that the cause or motive of the criminal act could have been the victim's line of work, specifically, defending and promoting human rights. This requires careful consideration of the social, political, cultural, and economic environment, among other things,

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925 *Cf.* Statement before a public attestor by Deicy Jaramillo Rivera, May 2, 2022, (evidence file, volume XXXIV, affidavits, folios 45974 and 45975), and statement before a public attestor by Hugo Alexander Tovar Pérez, May 2, 2022 (evidence file, volume XXXIV, affidavits, folios 46035 and 46036).

926 *Cf. Mutatis mutandis*, *Case of Digna Ochoa et al. v. Mexico, supra*, para. 104, and *Case of Sales Pimenta v. Brazil, supra*, para. 87.

927 See: Joint written expert opinion by Lourdes Castro García and Leonardo Díaz Morales, April 25, 2022 (evidence file, volume XXXIII, affidavits, folio 45066).

to identify the persons, groups, or sectors who realistically or apparently may have felt attacked or threatened by the work of the human rights defender.[928]

755. The Court cautions that these two factors—joining of cases and top-priority awareness of the work of the alleged threat victim as a human rights defender—are essential for identifying lines of investigation and are set forth in the Prosecutor General's Order 002 of November 30, 2017 (*supra* para. 163 and footnote 160). Based on the information submitted to this international process, however, there is no evidence that this order was applied in the investigations listed above, all of them inquiring into the threats against the alleged victims over the course of several years. No effort can be seen to identify patterns by associating the reported facts in the different case files, nor is there evidence that the status of the alleged victims as human rights defenders was initially taken into account in developing the hypotheses for investigation.[929] If these factors had been weighed, the prosecution could have observed, as part of the lines of investigation, that the threats against CAJAR and its members "were a constant thread over time," as was finally considered in later case files (filings 110016000049200501798 and 11001600002720050014 8, *infra* para. 759), and this could have produced different outcomes in the full set of investigations, identifying specific risk factors that the Collective and its members have encountered over the years and that could have been the source or origin of some of the actions perpetrated against them.[930]

756. Similarly, the failure to consider the alleged victims' work to promote and protect human rights and, at the same time, their status as members of an organization known for such work, could have influenced some of the prosecution's determinations that certain of the behaviors being reported were noncriminal. This can be seen in the following dossiers: (a) filing 28126 (reassigned as filing 420211), on threats against Reinaldo Villalba Vargas and another person by means of a letter of condolence (*supra* para. 414);[931] (b) filing 562699 on a complaint of threats against Alirio Uribe Muñoz, Reinaldo Villalba Vargas, Luis Guillermo Pérez Casas, and Maret Cecilia García Alfonso (*supra* para. 410);[932] (c) filing 1577 on an intimidating email received by Diana Milena Murcia Riaño on November 14, 2002, and

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928 See, *inter alia*, *Case of Human Rights Defender et al. v. Guatemala, supra*, paras. 131, 216 and 219, and *Case of Sales Pimenta v. Brazil, supra*, para. 86.

929 Deicy Jaramillo Rivera said that the work of the "National Working Group on threats against human rights defenders" "produced definitions of […] situations in Colombia of population groups holding high priority to be studied in context, so as to verify the universe of current investigations of threats […] against members of these populations, review them, and accordingly draw whatever lines of connection may appear." The same declarant also said that this working methodology went into use in 2020 and 2021, and her statement therefore provided no concrete information useful for corroborating the use of this strategy in the investigations that make up the corpus of facts of the instant case (the investigation of filing 110016099084201800705, according to information provided by the declarant, is not included in the cause of action of this international process.) *Cf.* Statement before a public attestor by Deicy Jaramillo Rivera, May 2, 2022 (evidence file, volume XXXIV, affidavits, folio 46003). The Court finds that, in any event, other incidents allegedly perpetrated against the Collective and its members could well have been included in the effort to interconnect the cases for identification of systematic patterns. This applies to the following dossiers: (a) filing 912, facts that included (i) tailing of Alirio Uribe Muñoz, (ii) the complaint filed by the Workers Central on a document delivered in late 1999, making reference to an "extermination plan" against certain persons, (iii) the leaflet circulated on May 5, 2000, including Mr. Uribe Muñoz as the target of a paramilitary offensive, and (iv) the discovery of a photograph of him during a raid for the attack on a union leader; (b) filing 8699, on the complaint filed for threats against several organizations, including CAJAR, on May 23, 2006, and (c) filing 562699, for the complaint filed on June 5, 2001, regarding threats against Mr. Uribe Muñoz and Reinaldo Villalba Vargas.

930 See: Joint written expert opinion by Lourdes Castro García and Leonardo Díaz Morales, April 25, 2022 (evidence file, volume XXXIII, affidavits, folio 45066).

931 The prosecution said on August 12, 1999, that the matter "was limited to the letter of condolence received by the lawyer, as it [was] impossible to say whether there [was] a plurality of unambiguous, on-going, persistent criminal acts." *Cf*. Filing 420211 (evidence file, volume XIX, annex 66 to the answering brief, folio 35031).

932 The prosecution announced on July 16, 2002, that the facts "appear[ed] to be nothing more than annoying words of intimidation delivered using the old-school well-known ploy of improper use of the telephone by idle people trying to upset their targets." *Cf*. Filing 562699 (evidence file, volume XIX, annex 52 to the answering brief, folios 34360, 34387 and 34399).

surveillance of Javier Alejandro Acevedo Guerrero on November 19, 2002 (*supra* para. 403);[933] (d) filing 789107 that Efraín Cruz Gutiérrez was being followed on October 1, 2004 (*supra* para. 412),[934] and (e) filing 8426 on a complaint filed for acts of "systematic surveillance" against the Collective by officials of the DAS and other intelligence agencies (*supra* para. 421).[935]

757. These many case files on different incidents led to the conclusion that the reports did not point to any crimes deserving of action by the Prosecutor General. The Court believes that, by overlooking the status of the alleged victims as human rights defenders, the prosecution failed to consider correctly that their work exposed them to considerable vulnerability and could trigger actions to intimidate them or frighten them, sometimes in ways that were subtle or hidden, intended to interfere with or neutralize their work; all this should be considered, as part of due diligence, in uncovering facts reputed to be injurious to the activities of human rights defenders[936] (the reasons given by the Prosecutor General for having dismissed some of the cases did not appear to be tenable either in fact or in law, even if the people affected had not been human rights defenders). Furthermore, in the case of Ms. Murcia Riaño, the prosecution failed to consider her dual status as both a woman and a human right defender when it considered whether such an email, containing such a text and being delivered under such circumstances, was capable of arousing "alarm or terror" in the alleged victim, especially because it revealed that the sender had information about her and appeared to have control over her communications, and finally, the consequences that could accrue from the clear warning contained in the email.[937]

758. It must not be forgotten that at the time some of the incidents were committed (from 2001 to 2009), they were enmeshed in a specific context, as described in this judgment, in which certain governmental parties were interested in counteracting and debilitating the work of the Collective and its members (*supra* para. 488). This context was ignored or minimized by the Prosecutor General and therefore was not considered in the lines of investigation developed for the different case files.

759. In any event, the prosecution was not unaware of the context described above and its probable role in the commission of the crimes against the alleged victims, given their status

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933 The prosecution stated on July 28, 2006, that the email received by Ms. Murcia Riaño "d[id] not contain the subjective component necessary to be classified as a crime, that is, if it causes alarm or terror," and as for the surveillance operations on Mr. Acevedo Guerrero, it found that the people responsible "did not perform any action that c[ould] constitute threats." *Cf*. Order by the Office of the Prosecutor General, National Unit for human rights and international humanitarian law, July 28, 2006, filing 1577 (evidence file, volume II, annex to the Report on the Merits, folios 4522 to 4532), and filing 1577 (evidence file, volume XVIII, annex 48 to the answering brief, folios 34291 to 34305).

934 The prosecution said on March 3, 2006, concerning the complaint about surveillance of Mr. Cruz Gutiérrez, that the incident "was merely a short-lived circumstance involving the presence of cars […] with darkened windows […], but […] there was no action or expression by which to infer that they were following him […] or planned to hurt him in any way." *Cf*. Filing 789107 (evidence file, volume XLIII, annex to the State's brief, May 22, 2023, folios 47871 to 47895).

935 The prosecution said on August 30, 2013, that "there [we]re no motives or fact-based circumstances by which the [incidents] could be classified as a crime." *Cf*. Filing 8426 (evidence file, volume XIX, annex 57 to the answering brief, folios 34487 and 34488).

936 See: written expert testimony of Ángela María Buitrago Ruiz, May 2, 2022 (evidence file, volume XXXIII, affidavits, folio 44926). The requirement to consider the status of the person affected by the incident as a human rights defender led to an amendment of the criminal code in 2018, to codify the crime of "threats against human rights defenders" (*supra* para. 166).

937 The alleged victim said in her statement:

> I was terrified [by the content of the email], […] the prosecutor did not think about the context, […] I mean, he ignored the fact the person who received that message is a woman human rights defender from one of the best-known organizations in the country, […] so all he had to say was: "[the] threat is trivial, it is insignificant and has no connection to anything else."

Cf. Statement by Diana Milena Murcia Riaño at public hearing before this Court.

as human rights defenders, as is evident in the investigations into several related incidents, specifically involving lawyer Soraya Gutiérrez Argüello. The Prosecutor General (at the behest of CAJAR), in its investigation of certain other incidents, did in fact consider their possible ties to the operations of the G3 inside the DAS from 2003 to 2005, in the following dossiers: (a) filing 110016000049200501798 (preliminary inquiry), on the incident of May 13, 2005, when Ms. Gutiérrez Argüello received a doll with a threatening note (*supra* para. 399),[938] and (b) filing 11001600027200500148 (preliminary inquiry) on, among other things, the publications that ran in May, 2005, in a widely circulated newspaper, indicating that job openings were available at CAJAR (*supra* para. 400) and again, the package received on May 13, 2005. In the latter investigation, the prosecution also considered that the facts being investigated would have been "intended to create alarm or fear among the members of the institution represented by" Ms. Gutiérrez Argüello.[939]

760. Additionally, in filing 11001606606420030008698 (in preliminary inquiry) concerning (i) the alleged attack on Ms. Gutiérrez Argüello on February 14, 2003, (ii) the threatening telephone calls she allegedly received on her home phone in February of the same year, (iii) the surveillance allegedly conducted on her daughter and domestic worker, and (iv) the request for personal information allegedly made on March 3, 2003 by unknown persons at the entrance of her housing complex (*supra* para. 401), the prosecution identified among its lines of investigation that these incidents "could have come about as a consequence of the complainant's activities to defend human rights," making particular reference to her fact-finding participation in the investigation of "massacre."[940]

761. Nonetheless, the Court must make the following points: (a) the failure to consider these factors in the overall framework of the several investigations, which unquestionably affected due diligence (*supra* paras. 755 to 758); (b) the duplication or even plurality of investigations into a single incident, which reveals multiple fruitless efforts or, worse yet, contradictory outcomes, among all the different processes, as occurred with the attack on February 14, 2003 (filing 11001606606420030008698—still in preliminary inquiries—, filing 701328, and filing 678599—both now dismissed due to the inability to identify the perpetrators, and the package received on May 13, 2005 (filing 110016000049200501798 and filing 11001600027200500148), and (c) that despite the effort to investigate certain facts in the broader general context of G3 operations, the actions taken consisted merely of (i) compiling judicial decisions and statements by former DAS employees and alleged victims as part of the criminal proceedings undertaken to elucidate these incidents, and (ii) analysis of these documents and others involving the former DAS; no information is available on whether these explorations were actually conducted, and consequently, on any significant progress in finding out what happened.

762. Although the two representatives of the alleged victims pointed to certain facts that, they argued, had not been investigated by the prosecution, the Court cautions that no material was submitted to this international process to demonstrate that the relevant complaints had been filed at the time, or whether the competent authority had known about the incidents and thus could have ordered the investigations.

763. Nor will the Court deliver an opinion on the alleged omissions or failures of due diligence

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938 The dossier shows that the prosecutorial unit in charge of the case maintained that "information should be examined to learn the outcome of other complaints under investigation, especially […] in the process known as 'the DAS wiretaps' where the guilty parties were identified, to ascertain whether they are connected with this investigation." *Cf*. Filing 110016000049200501798 (evidence file, volume XIX, annex 59 to the answering brief, folio 34556).

939 *Cf.* Filing 11001600027200500148 (evidence file, volume XIX, annex 63 to the answering brief, folio 34700).

940 *Cf.* Filing 8698 (evidence file, volume XVIII, annex 50 to the answering brief, folio 34315).

in particular investigations (such as filing 110016000013201202284), because the evidence submitted to this process is insufficient to allow the Court to address other matters beyond those examined in this chapter or those that will be taken up in the next chapter, regarding the guarantee of a reasonable time.

764. In view of the State's arguments, it should be noted that, although the domestic legislative framework on criminal procedures makes it possible, given certain conditions, to order suspension or dismissal of proceedings undertaken in response to a particular complaint of alleged criminal conduct (see Law 600 of 2000 and Law 906 of 2004, *supra* footnote 485), such a decision can be made by the Office of the Prosecutor General only after it has conducted a conscientious, objective, exhaustive investigation, thus exercising the due diligence called for in Articles 8 and 25 of the American Convention.

765. Based on this discussion, the Court concludes that the State failed to uphold the heightened degree of due diligence needed in certain of its investigations into the acts of violence, threats, intimidation and harassment perpetrated against the alleged victims. It therefore declares violation of Articles 8(1) and 25(1) of the Convention, read in conjunction with Article 1(1) thereof, in injury of the alleged victims who were members of CAJAR, based, as stated, on several of the threats made against them collectively (*supra* para. 751).

(b) Reasonable time

766. This Court has repeatedly held that, according to Article 8(1) of the Convention and as part of the right to justice, processes must be carried out within a reasonable time,[941] because, in view of the need to guarantee the rights of the persons affected, a prolonged delay in itself can constitute a violation of the right to a fair trial.[942] The reasonableness of the period must be examined specifically in each case, depending on the total duration of the particular process or procedure involved.[943]

767. Thus, inter-American case law has availed itself of four elements to determine whether the guarantee of reasonable time was met, namely: (a) the complexity of the matter;[944] (b) procedural activity by the interested parties;[945] (iii) the conduct of judicial authorities,[946] and (d) the impact on the legal situation of the alleged victim.[947] The Court recalls that it is up to the State to demonstrate, based on these criteria, the reasons for the amount of time that has passed, and if it cannot, the Court has broad powers to draw its own conclusions.[948]

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941 *Cf. Case of Genie Lacayo v. Nicaragua. Merits, Reparations and Costs.* Judgment of January 29, 1997. Series C No. 30, para. 77, and *Case of Julien Grisonas family v. Argentina, supra,* para. 176.

942 *Cf. Cfr. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs.* Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of Meza v. Ecuador, supra*, para. 61.

943 *Cf. Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, para. 71, and *Case of Meza v. Ecuador, supra*, para. 62.

944 The Court has assessed the complexity of the matter by considering, among other factors, the complexity of the evidence, the number of procedural subjects or victims, the characteristics of the legal remedy offered by domestic law, and the context in which the violation occurred. *Cf*. *Case of Genie Lacayo v. Nicaragua*. *Merits, Reparations and Costs.* Judgment of January 29, 1995. Series C No. 21, para. 78, and *Case of Meza v. Ecuador, supra*, para. 62.

945 The Court has considered whether the party's procedural conduct to obtain justice somehow helped unduly prolong the process. *Cf*. *Case of Cantos v. Argentina. Merits, Reparations and Costs.* Judgment of November 28, 2002. Series C No. 97, para. 57, and *Case of Meza v. Ecuador, supra*, para. 62.

946 The Court has understood that judicial authorities, as directors of the process, have the duty to manage and develop the judicial proceedings such as to avoid sacrificing justice and due process in favor of formalities. *Cf*. *Case of Myrna Mack Chang v. Guatemala, supra*, para. 211, and *Case of Meza v. Ecuador, supra*, para. 62.

947 The Court has understood that if the passage of time has a relevant impact on the legal situation of the individual, the proceedings should be carried out more expeditiously so that the case is decided as soon as possible. *Cf*. Case of Valle Jaramillo et al. v. Colombia, supra, para. 155, and *Case of Meza v. Ecuador, supra*, para. 62.

948 *Cf. Case of Anzualdo Castro v. Peru*, *supra*, para. 156, and *Case of Meza v. Ecuador, supra*, para. 62.

768. The arguments in the instant case concerning violation of the guarantee to a reasonable period were given in general terms, pointing to the amount of time that had passed from the start of the investigations, which in any case had produced no results in clearing up the facts. The Commission and the representatives did not cite specific investigations that had breached the guarantee of a reasonable period, which would have entailed periods of inactivity or outright passivity, pointing to obvious unjustified delay in the work.

769. The Court would reiterate that the assessment of whether an amount of time is reasonable requires analysis of the circumstances of each specific case. It notes, prima facie, that the information and evidence submitted on the many investigations undertaken by the prosecution, with the exception of those that will be examined below, show continuous actions and procedures that could justify the amount of time that was taken, some on-going until the present, while others are now suspended or dismissed, depending on each different case. To this should be added the very complexity of the facts under investigation. In any case, regarding the failure to clear up the facts, see the Court's discussion below of the overarching situation of impunity (*infra* paras. 777 to 781).

770. Three of the many investigations contained in the body of the case reveal clear periods of inactivity during the time they were underway, as seen below.

771. The first is the analysis of actions on filing 590 (the report of incidents against Alirio Uribe Muñoz, *supra* para. 395) as follows: (a) after the October 4, 2002 Order was enacted and the prosecution discontinued the investigation of the facts for several reasons, including that the conduct was noncriminal, the representative of the complainant, lawyer Reinaldo Villalba Vargas, filed an appeal, which was "granted" on December 24, 2002; (b) according to an official note dated "March, 2003," the file was forwarded to a higher court to hear the appeal; (c) on September 19, 2005 a "record" was made indicating that the files had yet to be received back from the higher court, so the office in charge of the investigation looked into the matter and found that the case file was not even present in the higher court or in the office that had allegedly forwarded it there; (d) the "original binders" were forwarded on February 22, 2006, to resolve the appeal that had been lodged in 2002; (e) the next day, February 23, notice was received that the file had been discovered "bound, with the cover note by which it was forwarded still attached, on the floor beside the rolling file cabinets," and (f) on August 15, 2006, the appeal was granted via an order that read, "bearing in mind that […] it took nearly three years […] for the case to be submitted, due to apparently unjustified causes," it would be necessary to inform the prosecution's consumer protection office and ask it to look into the matter.[949]

772. This narrative describes an unwarranted delay, perhaps due to negligence, in the simple act of forwarding a file from one office to another, followed by over three years of inactivity in the investigation procedures (from the time the appeal was admitted, in December, 2002, until the files were forwarded for decision, in February, 2006). Such a state of affairs can be attributed entirely to the authorities of the State and culminated in a violation of the guarantee of a reasonable period. The fact that the matter was reported to the prosecution's in-house oversight office does not void the violation of the right, as there is no information as to the disciplinary or other types of consequences resulting from the procedure, combined with the fact that the people affected apparently received no redress internally.

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[949] *Cf.* Filing 590 (evidence file, volume XVII and XVIII, annex 47 to the answering brief, folios 33572 to 34275). Finally, the investigation was once again dismissed on May 11, 2017, because the conduct was found to be noncriminal.

773. The second case, filing 22342 (reassigned as 421312, involving threats against Rafael Barrios Mendivil, *supra* para. 415), was first reported to the authorities on September 28, 1993, according to documentation submitted to this process. A look at the investigation record shows that it was only in December, 1997, that an order was issued to conduct investigative actions, that is, to "widen the complaint" by the alleged victim and other members of the Collective, and to "obtain documentation on the legal papers" of CAJAR, which suggests that the process was just beginning. Deicy Jaramillo Rivera, a State witness, gave no details on actions prior to 1998.[950] In this case, the time of inactivity from 1993, when the complaint was lodged, until 1997, which the State has not explained, cannot be attributed to the complexity of the matter or lack of action by the person involved, but instead reflects the neglect or disinterest of competent authorities, which translated into violation of the guarantee to a reasonable time. Finally, on December 1, 1999, the criminal action was declared closed because the statute of limitations had run out, a decision that came about because of procedural inactivity, and this further cemented the violation of the alleged victim's rights.[951]

774. Finally, in the third filing, 110016000013201202284 (involving the detention of Diana María Barrios Sabogal, daughter of Rafael Barrios Mendivil, *supra* para. 420), the documentation submitted to this international process shows that the complaint was lodged on February 1, 2012, followed by the initiation of several investigative procedures that same year and in the first four months of 2013. Over three years of inactivity ensued, as the next procedure was recorded in June 2017, and after two more years of inactivity, the complainant received a request in June, 2019, for "additional information"; the investigation was finally ordered dismissed on June 10, 2019, because of "inability to locate […] the active subject."[952] The information and evidence before this Court show that the halt in the investigation, which the State has not explained, can be attributed only to the State itself.[953]

775. The Court would like to clarify that this discussion should not be interpreted to mean that investigations must be kept open by following strictly formal routines that would appear to indicate that the competent authorities are addressing a complaint. Instead, the reasonable period guaranteed in Article 8(1) of the American Convention has clearly not been respected when, after evident spells of inactivity, the prosecution decides to dismiss the matter under the statute of limitations or because it is unable to identify the perpetrators, when there is no sign that the necessary procedures were followed promptly to avoid having to close an unsolved investigation.

776. The Court therefore concludes that the State of Colombia violated the guarantee of a reasonable time enshrined in Article 8(1) of the Convention, read in conjunction with Article 1(1) thereof, in injury of the complainants, allegedly harmed by certain incidents whose investigation by the prosecution had repeatedly fallen inactive.

(c) Impunity in the instant case

777. The Commission and the two representatives of the alleged victims argued that the ineffectiveness of the investigations into the incidents that affected CAJAR and its members reveals a situation of impunity in this case. The State pointed to "the efforts undertaken" by the prosecution, and maintained that "there [wa]s no pattern of impunity."

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950 *Cf.* Statement before a public attestor by Deicy Jaramillo Rivera, May 2, 2022 (evidence file, volume XXXIV, affidavits, folio 45995).

951 *Cf.* Filing 421312 (evidence file, volume XIX, annex 67 to the answering brief, folios 35036 to 35071).

952 *Cf.* Prosecutor General, report of the complaint lodged by Diana Barrios Sabogal, February 1, 2012 (evidence file, volume XI, annex 5 to the CAJAR and CEJIL pleadings and motions brief, folios 26382 to 26387).

953 The Court emphasizes that Deicy Jaramillo Rivera made no mention of this investigation in her statement.

778. The Court sees the large number of investigations that have been conducted for violence, threats, intimidation, and harassment and notes that none has been able to shed light on the events that were reportedly injurious to the rights of the alleged victims. The lack of concrete results is compounded by (i) the noticeable failures to apply enhanced due diligence, (ii) the conspicuous passage of time with no sign of effective investigations, which could have contributed to the fact that new offenses were committed against the alleged victims (*infra* para. 781), and that (iii) approximately two-thirds of the total complaints on file (17 of 27 case files) were dismissed without being solved.

779. The Courts notes, in this regard, that the Constitutional Court of Colombia had the opportunity to speak specifically on the paucity of results achieved in the domestic system from investigations into acts committed against human rights defenders. Specifically, it said in 2020 (judgment T-469/20) that the inquiries into threats against human rights defenders "offer a disturbing […] statement about cases being brought to trial," even more so than other incidents such as homicide, as "the 'progress in finding answers' totaled only 1.26%" of the total number of complaints lodged, leading "to a mere 0.18% conviction rate, an accurate reflection of investigative effectiveness," which as the justices noted, meant "impunity in up to 99%" of the cases.[954]

780. Even this "accurate reflection of investigative effectiveness" cited by the Constitutional Court exceeds the success rate of the cases currently before the Inter-American Court, none of whose investigations has shed light on the facts, nor were responsibilities ascribed in any of them.

781. The Court therefore finds a situation of impunity concerning investigations into the acts of violence, threats, intimidation and harassment against the alleged victims as human rights defenders, understanding this impunity to mean failure of domestic authorities to provide an effective response, which includes discovering what happened, identifying the guilty parties, and ordering sanctions. If such results had been achieved, it would have unquestionably helped mitigate the risk factors that have faced the Collective and its members for years. The result was a violation of the right to a fair trial and the right to judicial protection in injury of the members of CAJAR.

B. Investigations and judicial processes undertaken to examine intelligence activities by agents of the State

B.1. Arguments of the parties and observations of the Commission

782. The ***Commission*** stressed that "at least seven dossiers had been opened on the intelligence activities […] of the DAS," but "there is no detailed information about all [these] investigations, including what procedures were conducted." It noted that "the masterminds" had not been identified. It added that the intelligence activities targeting the alleged victims "were carried out not only by the DAS, but also by military and police units," to which can be added recent facts regarding "new intelligence activities, surveillance, and tailing by military and cyber-intelligence entities," none of which has been successfully investigated.

783. ***CAJAR and CEJIL*** argued that although a few investigations into intelligence actions against the alleged victims had been opened, they had not been pursued exhaustively or with due diligence, and the facts in one of the processes had been "artificially subdivided," undermining the comprehensive approach and participation by the alleged victims. The

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954 *Cf.* Judgment T-469/20 of November 3, 2020.

authorities had denied the Collective's request to introduce "crimes against humanity" as a hypothesis to be considered in developing the case.

784. They also said that the investigations into former DAS agents had failed to consider the threats and attacks being made against CAJAR members during the same period. The authorities therefore concluded that the intelligence operations were "simple shadowing and wiretapping because their only purpose was to infiltrate and disturb privacy," overlooking the whole picture and the variety of acts of aggression committed for purposes more complex and harmful. They said there had been an "investigative failure that facilitated the lapse of the statute of limitations on certain incidents." The former director of the DAS, Jorge Aurelio Noguera Cotes, had been convicted, but the acts of "psychological torture" against Soraya Gutiérrez Argüello were never investigated, nor was any progress made in finding responsibility at higher levels.

785. ***Ms. Arias*** said that the instant case "reveals a structural impunity by which […] the State's intelligence operations and the structures behind them are still continuing and have not been taken down, […] as can be seen in the new profiles that continue to be illegally compiled in Colombia" against individuals and organizations, including CAJAR.

786. The ***State*** said that the alleged victims "were able to participate as parties in each and every one of the criminal trials held for" the intelligence operations of the DAS. They also "were able to request evidence and arguments as grounds for establishing the responsibility of the" accused, and "they filed appeals against some of the procedural decisions and against the verdicts in a number of cases." Finally, "every one of the arguments brought by the members of CAJAR was taken under advisement by […] the different authorities who heard the evidence, and the decisions were well-founded. This demonstrates, it added, that the State is not internationally liable regarding the right to a fair trial and the right to judicial protection.

B.2. Considerations of the Court

787. The Court can confirm that six criminal procedures were developed and adjudicated to shed light on the activities that the DAS had conducted arbitrarily against the members of CAJAR and some of their families from 2003 to 2005, for which former employees of this now-defunct administrative department were convicted for a variety of crimes (*supra* paras. 422 to 446).

B.2.1. Right to judicial guarantees and right to judicial protection with respect to actions by authorities to investigate arbitrary intelligence activities and bring them to trial

788. A first argument by the Commission and the two representatives of the alleged victims concerns the alleged failure to ascribe "higher-level responsibilities" for the DAS activities and, more exactly, to identify the authority who may have ordered the activities and ultimately could have benefited from them, explicitly pointing to the person who, at the time, was the President of Colombia. The Court has also taken note of the procedure by the congressional Committee on investigations and charges and its decisions, especially in April, 2022, endorsed by the full Chamber of Representatives in June of that same year, declaring that the statue of limitations barred any criminal action against the former President for certain crimes, but ordering that others should continue under investigation (*supra* paras. 447 and 448). The Court has learned that the domestic authorities, in keeping with the applicable constitutional and legal framework, have indeed proceeded with investigations culminating in judicial decisions that they consider well-founded. No pleadings have been

adduced concerning the duty of due diligence in this arena, nor has the discussion centered on whether the Constitution's procedures and competencies are consistent with the Convention in the case of crimes allegedly committed by former State officials holding the highest rank at the time they were in office. The arguments in this regard are therefore dismissed.

789. Also under discussion are the judicial verdicts against former members of the DAS, including claims that the cases had been "artificially subdivided," impeding a "comprehensive approach" to the facts and participation by the alleged victims. The Court recalls that the judicial authorities issued an order to "sever procedural unity" based on the date when each different incident occurred (those committed before January 1, 2005, versus those committed afterward, *supra* para. 423). This was in response to the requirements of new procedural laws that, at the same time the crimes were being committed, underwent a reform process culminating in enactment of Law 906, the 2004 Criminal Code; the enabling regulations required this distinction because the events fell under two different procedural systems depending on the date (Article 533[955]). This situation should not, in principle, have had a negative impact on the rights of the persons affected by the crimes, as they would have been able to participate in the judicial procedures on the facts involving them, in keeping with whichever procedural rules applied.

790. The information before the Court suggests that in addition to the six criminal trials indicated above, concerning DAS actions against journalists, human rights defenders, and others who were identified as targets, judicial authorities also adjudicated at least one other case on the actions of a former director of the DAS and a former employee in the office of the President, for actions injurious to other parties including justices on the high courts, members of Congress, and others. The representatives did not identify this criminal action, and the Court therefore deduces that it was filing 36784, assigned to the Chamber of Criminal Cassation, which concluded in a verdict handed down on April 28, 2015 (*supra* footnote 521).[956] The alleged victims were unable to take part in that trial because they were not involved in the facts under consideration. The Court infers, nonetheless, that the opening of an additional criminal process would have been determined by the date when the acts were committed (2007 to 2008) and, quite definitely, by the methodology chosen by the competent authorities to better explain the facts and weigh the evidence; it is not the task of the Inter-American Court to consider whether these facts are relevant to the case at hand, especially because no pleadings were made concerning direct harm separate from the inability to take part in judicial proceedings unrelated to the facts that did directly affect the alleged victims. This argument is therefore dismissed.

791. As for the claim that investigative failures had led the statute of limitations to run out, neither the Commission nor the parties have identified or proven periods of procedural inactivity causing the criminal proceedings to lapse due to the passage of time, and the argument is therefore unsubstantiated.

792. Arguments were also made concerning a failure to classify the facts as "crimes against humanity," but the Court notes that the matter was discussed, examined, and settled, more than once, in the domestic courts. This is evident in several decisions by prosecutorial and judicial authorities delivered as the investigations and trial proceeded, as follows: (a) order on November 9, 2009, when the Prosecutor General, having heard the challenge by CAJAR, found that "there is no evidence of the necessary connection that must exist between the

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955 Article 533 of Law 906 of 2004: "This code shall apply for crimes committed after January 1, 2005."

956 *Cf.* Judgment by the Sixth Chamber of Criminal Cassation of the Supreme Court, April 28, 2015, filing 36784 (evidence file, volume XVI, annex 27 to the answering brief, folios 31680 to 31956).

alleged surveillance [in reference to the DAS operations] and other actions or crimes relevant to the jurisdiction of the International Criminal Court based on Article 7 of the Rome Statute";[957] (b) order on March 2, 2010, by the Assistant Prosecutor General, responding to the request by the Collective for this charge to be admitted, and finding that although "DAS officers did collude for a systematic attack on several different persons or organizations, […] there is no clear connection between these conducts and those set forth in the Rome Statute (genocide, murder, enforced disappearance, etc.)," and therefore "the factors that constitute a crime against humanity were not present" in the case at hand;[958] (c) order on January 26, 2010, in which the Prosecutor General reiterated that "there is no evidence to prove the necessary connection between the surveillance of the human rights defenders […] and a crime that could be considered as against humanity under Article 7 of the Rome Statute";[959] (d) order on September 22, 2015, in which the Assistant Prosecutor General again said that "despite the clearly serious nature of" the facts under investigation, their perpetration "was not connected to the commission of any of the crimes established in Article 7 of the Rome Statute";[960] (e) judgment on March 7, 2014, delivered by the Criminal Chamber of the Superior Court of the Judicial District of Bogotá, saying that the matter had been "considered and adjudged" in earlier stages and that "of the offenses on trial, only conspiracy could […] qualify as a crime against humanity, according to the Supreme Court, but it would be limited to the aims of the paramilitary movement that, of course, is not before the bench here," and therefore "it is not possible […] to find crimes against humanity on the merits,[961] and (f) judgment on November 18, 2016, also by the Superior Court of the Judicial District of Bogotá, reiterating the findings of the earlier decision.[962] The Court therefore finds that judicial authorities have dismissed the charges of a crime against humanity and have explained their grounds for doing so, in keeping with the obligations enshrined in Articles 8 and 25 of the American Convention.

793. The Court recalls, with respect to the alleged failure to investigate acts of psychological torture against Soraya Gutiérrez Argüello, that the Supreme Court, in its handling of one of the cases to elucidate facts attributed to the former director of the DAS, Jorge Aurelio Noguera Cotes, ordered on October, 2013 for copies to be made of the proceedings so that the prosecution could open the relevant investigation. The office in charge of criminal prosecution issued an order not to investigate on November 20, 2017, holding that "the many activities

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957 *Cf.* Office of the Prosecutor General, Order of November 9, 2009 filing reassigned as 12495-11 (evidence file, volume XIV, annex 9 to the answering brief, folio 29089). Article 7 of the Rome Statute of the International Criminal Court reads:

> Crime against humanity. 1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

958 *Cf.* Office of the Prosecutor General, Order of March 2, 2010, filing reassigned on appeal as 0087 (evidence file, volume XV, annex 13 to the answering brief, folios 30149 and 30150).

959 *Cf.* Office of the Prosecutor General, Order of January 26, 2010, filing reassigned as 12495-11 (evidence file, volume XIV, annex 9 to the answering brief, folios 29134 and 29134).

960 *Cf.* Office of the Prosecutor General, Order of September 22, 2015, filing 13153-11 (evidence file, volume XIV, annex 9 to the answering brief, folios 29218 and 29219).

961 *Cf.* Ruling by the Superior Court of the Judicial District of Bogotá, Criminal Chamber, March 7, 2014 (evidence file, volume XI, annex 46 to the CAJAR and CEJIL pleadings and motions brief, folios 27018 to 27020).

962 *Cf.* Ruling by the Superior Court of the Judicial District of Bogotá, Criminal Chamber, November 18, 2016 (evidence file, volume XVI, annex 19 to the answering brief, folio 31113 and 31114).

pursued through the prior investigation […] did not find […] any evidence that the accused had conceived of, taken part in, intervened in, or instigated others to commit acts of torture" such as those on May 13, 2005, as "described by Soraya Gutiérrez Argüello" (*supra* para. 442).[963]

794. The decision by the prosecution suggests that the claimed crime of torture was a reference to the incident that Ms. Gutiérrez Argüello experience on May 13, 2005. The Court recalls that one of the hypotheses to be considered in the investigation currently underway to shed light on this incident is the possible connection with the DAS intelligence activities (filing 110016000049200501798, *supra* para. 759). The dossier on the case shows that part of this inquiry by the prosecution included an examination of the possibility of torture against the alleged victim, which calls for an investigation of the perpetrators and a psychological assessment of the complainant. The incident occurred in 2005, but it was not until 2017 that the prosecution identified the possible commission of torture of the alleged victim as one of the lines of investigation.[964] The Court therefore finds that the State violated the guarantee of a reasonable time, set forth in Article 8(1) of the American Convention, read in conjunction with Article 1(1) thereof, in injury of this alleged victim. The question as to the whether the various components of this offense can be construed to constitute additional crimes was also brought before this Court and will be examined in the next chapter (*infra* paras. 897 to 906).

795. CAJAR and CEJIL argued that the investigations against former employees of the DAS did not include the acts of violence, threats, intimidation and harassment that the alleged victims were experiencing at that time. The Court understands that this argument targets the failure of the prosecution in its inquiries to consider the prevailing context and link it to the criminal conduct, but this was covered in the analysis of due diligence in investigating these actions, which as already noted, is being considered with respect to the incidents against Ms. Gutiérrez Argüello (*supra* paras. 758 and 759).

796. Nevertheless, the Inter-American Court recalls that the actions attributed to the employees of the former DAS from 2003 to 2005, as part of the G3 operations, were not the only instances of intelligence activities against the alleged victims. Indeed, the Office of the Solicitor General found in 1999 that the DAS, the National Police, and the Army all had intelligence records containing personal information about some of the members of the Collective (Eduardo Carreño Wilches, Reinaldo Villalba Vargas, Alirio Uribe Muñoz, Pedro Julio Mahecha Ávila, and Rafael Barrios Mendivil), as well as entries that, among other things, link them with political or civil organizations. In any case, as this judgment has already found, the intelligence actions took place outside of any legal framework to define the powers of the authorities in this area, set limits on their conduct, and at the same time, create safeguards to prevent arbitrary infringement of human rights (*supra* paras. 610 to 625).

797. In short, the information submitted to this international process reveals no investigation, past or on-going, by the prosecution or even the Office of the Solicitor General, in the exercise of its disciplinary powers, seeking to shed light on the reasons why these authorities had collected information on certain persons, the methods they used for doing so, the purposes for which they would allegedly use the information, and clearly, whether or not their actions were legal as they gathered and held data on the alleged victims. This was despite the fact that the Solicitor General issued a report revealing the existence of the files, and despite the explicit appeal by the Collective to the President of the Republic because of what it considered to be arbitrary, illegal acts. Such an appeal deserved a reply from the President's program for

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963 *Cf.* Order by the Prosecutor General, fifth prosecutor delegated to the Supreme Court, November 20, 2017, filing 13351-5 (evidence file, volume XII, annex 52 to the CAJAR and CEJIL pleadings and motions brief, folio 27865).

964 *Cf.* Filing 110016000049200501798 (evidence file, volume XIX, annex 59 to the answering brief, folios 34548 and 34556).

human rights and international humanitarian law, an office tasked to monitor and declassify documents,[965] but which failed to activate the very institutions whose mission was to investigate what had happened, find out who was responsible, and in such cases, redress the damage.

798. The Court has also seen that in the two investigations that were opened in response to the complaint involving the appearance of the name of Alirio Uribe Muñoz in the document entitled "Miscellaneous" (described as an "intelligence report" by the Presidential program), the prosecution, far from investigating the authority of the military to collect and hold personal information on the alleged victim and, as stated, on the legality and purposes of recording this information, merely accommodated the actions described in the complaint to fit the crime of "threats," and thus concluded that there were no grounds to call for an investigation (cases 590 and 912, *supra* paras. 395 and 402).

799. The failures by the national institutions to investigate and clear up the facts outlined above constitute violation of the right to judicial guarantees and the right to judicial protection, in injury of the alleged victims whose information was contained in the archives of the civilian and military authorities identified above.

B.2.2. Access to the case files of the Prosecutor General

800. It has been shown that the prosecution received an application to review its dossier on the intelligence activities conducted in 2019, and denied the request for "procedural reasons and to ensure the integrity of the preliminary investigation," because "the file contains classified information." Reinaldo Villalba Vargas and another member of the organization wished to be shown the evidence on themselves contained in a file that the prosecution said "names them as targets of cyber-surveillance" (*supra* paras. 360 and 361).

801. Given the prosecution's refusal to release the dossier, they filed a motion for constitutional relief, which was denied initially and on appeal.[966] The same explanation was given when the State received a request from the international jurisdiction to submit information and copies of the dossiers as further helpful evidence (*supra* para. 363).

802. The Court recalls that one of the requirements of due process is for victims to take part in procedural activity, and this necessarily means access to the case file. It is true that on certain occasions, some of the stages in the preliminary criminal investigation can be held confidential to guarantee effective administration of justice, but in no case can this same confidentiality be claimed as a way to block victims from having access to the file on a criminal case.[967] The same applies to claims of confidentiality based on national security or similar arguments concerning information in the files; to protect victims' rights, prosecutorial or judicial authorities must still guarantee them access to the dossier, but may adopt whatever measures are necessary to prevent material in the files from being divulged.

803. The prosecution, by denying access to the files, infringed the State's duty to guarantee the right to take part in the process, thus violating Article 8(1) of the American Convention,

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965 *Cf.* July 26, 2001 note signed by the director of the President's program for human rights and international humanitarian law (evidence file, volume XLIV, annex 32 to the CAJAR and CEJIL brief, May 26, 2023, folio 48677).

966 *Cf.* Judgment of February 25, 2021, by the Superior Court of the Judicial District of Bogotá, Labor Chamber, and judgment of April 14, 2021, by the Supreme Court, Chamber of Cassation for Labor Affairs (evidence file, volume XLIII, annex 9 to the State's brief of May 22, 2023, folios 47838 to 47869).

967 *Cf. Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 252, and *Case of Brewer Carías v. Venezuela. Preliminary objections.* Judgment of May 26, 2014. Series C No. 278, para. 86.

read in conjunction with Article 1(1) thereof, in injury of Reinaldo Villalba Vargas.

C. Application of the principle of subsidiarity in the instant case

804. The Court, having completed its analysis of the violations of the right to a fair trial and the right to judicial protection, will now examine the State's argument concerning application of the principle of subsidiarity (*supra* paras. 26 and 732).

805. The Court recalls that the Inter-American system for the protection of human rights shares with the domestic systems the power to guarantee the rights and freedoms enshrined in the American Convention, and if a particular case is not resolved domestically, the Convention provides an international jurisdiction whose lead bodies are the Commission and the Court.[968] This subsidiary nature of the international jurisdiction means that the system of protection established by the American Convention is not a substitute for the national jurisdictions, but rather it complements them.[969] The State is thus the principal guarantor of the human rights of persons, and if a violation of these rights occurs, it is the State that must resolve the matter domestically, and if necessary, redress the damage, before having to appear before international bodies.[970]

806. In the case at hand, the Court has found violation of Articles 8(1) and 25(1) of the American Convention, read in conjunction with Article 1(1) thereof, because of the failure of authorities to investigate and elucidate the facts concerning intelligence activities against the alleged victims in the 1990s (*supra* paras. 796 to 799).

807. Moreover, the information submitted to this international process reveals that, to date, the alleged victims have not received redress for the damage caused by the intelligence activities of the G3 (2003-2005) and other agencies of the State. Colombia argued that it had adopted "measures of nonrepetition" by eliminating the administrative department involved and adopting a legal framework for intelligence and counterintelligence activities, but there is no evidence that the people targeted by actions that were later found by the courts to have been crimes, and who were identified as alleged victims in the instant case, have received individual measures of redress for the violation of their rights. The Court would recall that the State is not limited to just the investigation and sanction of perpetrators of human rights violations, but is also required to "if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation."[971] Inter-American case law has repeatedly found that comprehensive redress for a case of human rights violations is a legal obligation of the State.[972]

808. The Court also found that, although the DAS was eliminated, intelligence activities continued under the terms of Law 1621 of 2013, which was also found to violate Article 2 of the American Convention, read in conjunction with Articles 11(2) and 13(1) thereof (*supra*

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968 *Cf. Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs.* Judgment of December 1, 2016. Series C No. 330, para. 92, and *Case of the Community Garifuna of San Juan and its members v. Honduras, supra,* para. 149.

969 *Cf. Case of Tarazona Arrieta et al. v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 15, 2014. Series C No. 286, para. 137, and *Case of the Community Garifuna of San Juan and its members v. Honduras, supra,* para. 149.

970 *Cf. Case of Acevedo Jaramillo et al. v. Peru. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2006. Series C No. 157, para. 66, and *Case of Benites Cabrera et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of October 4, 2022. Series C No. 465, para. 104.

971 *Cf. Inter alia, Case of Velásquez Rodríguez Vs. Honduras. Merits, supra*, para. 166, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 261.

972 *Cf. Case of the Ituango Massacres v. Colombia, supra*, para. 340, and *Case of García Ibarra et al. v. Ecuador, supra*, para. 188.

paras. 671 to 686).

809. The State's claim to apply the principle of subsidiarity to the instant case is therefore denied.

D. General conclusion

810. The Court, following the lines of reasoning set forth in this chapter, concludes that the State of Colombia is internationally responsible for violating the right to judicial guarantees and the right to judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention, read in conjunction with Article 1(1) thereof, in injury of the alleged victims who were members of the Collective during the periods of time for which they reported acts of violence, threats, intimidation and harassment, namely: Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Soraya Gutiérrez Argüello, Reinaldo Villalba Vargas, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, Diana Teresa Sierra Gómez, Javier Alejandro Acevedo Guerrero, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, Pedro Julio Mahecha Ávila, Adriana Patricia Fuentes López, Efraín Cruz Gutiérrez, Adriana Cuéllar Ramírez, Nubia Liliana Romero Bernal, Sandra Yalin Ariza, Olga Lilia Silva López, Camilo Andrés Galindo Marín, Chennyer Jairt Piñeros Fuquen, Carlos Lozano Acosta, Andrés Rivera Acevedo, Mónica Lorena Zuluaga Patiño, Adriana Lizeth López Rojas, Lyda Natalia Hernández García, Andrea del Rocío Torres Bobadilla, Olga Marcela Cruz López, Olga Hernández Villalba, Ingrid Osnay Fernández Rengifo, Martha Eugenia Rodríguez Orozco, and Fernando Lemus Rodríguez.

811. The State is also responsible for violating the guarantee of a reasonable time, enshrined in Article 8(1) of the Convention, read in conjunction with Article 1(1) thereof, in injury of Alirio Uribe Muñoz, Rafael Barrios Mendivil, Soraya Gutiérrez Argüello, and Diana María Barrios Sabogal.

812. The State is responsible for violating the right to participate in judicial proceedings, which is a component of the right to a fair trial, enshrined in Article 8(1) of the Convention, read in conjunction with Article 1(1) thereof, in injury of Reinaldo Villalba Vargas, because of the prosecution's refusal to allow him access to its dossier on his case.

813. Finally, Colombia is responsible for violating the right to judicial guarantees and the right to judicial protection, enshrined in Articles 8(1) and 25(1) of the Convention, read in conjunction with Article 1(1) thereof, in injury of Eduardo Carreño Wilches, Reinaldo Villalba Vargas, Alirio Uribe Muñoz, Pedro Julio Mahecha Ávila, and Rafael Barrios Mendivil, because of the failure to investigate and explain the inclusion of their personal information in civilian and military intelligence files.

VIII.4
RIGHT TO LIFE, RIGHT TO PERSONAL INTEGRITY, RIGHT TO FREEDOM OF THOUGHT AND EXPRESSION, RIGHT TO FREEDOM OF ASSOCIATION, RIGHTS OF THE CHILD, RIGHT TO PROTECTION OF THE FAMILY, AND RIGHT TO FREEDOM OF MOVEMENT AND RESIDENCE, READ IN CONJUNCTION WITH THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS AND REFRAIN FROM ANY ACTION OR PRACTICE OF VIOLENCE AGAINST WOMEN,[973] WITH REFERENCE TO THE ACTS OF VIOLENCE, THREATS, INTIMIDATION, AND HARASSMENT

[973] Articles 4, 5, 13, 16, 17, 19 and 22 of the American Convention on Human Rights, read in conjunction with Article 1.1 thereof.

814. The Court will now examine the arguments concerning human rights violations due to the acts of violence, threats, intimidation, and harassment against the alleged victims. It will analyze the violations of these rights in the following order: (a) the right to life and right to personal integrity, the obligation of the State to refrain from any action or practice of violence against women, and the rights of the child; (b) the right to freedom of movement and residence, the right to protection of the family, and the rights of the child; (c) freedom of thought and expression and freedom of association, and (d) the right to defend human rights.

A. The right to life and the right to personal integrity, the obligation of the State to refrain from any action or practice of violence against women, and the rights of the child

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

815. The ***Commission*** said, regarding the alleged acts of violence, threats, and harassment of the members of CAJAR, that it had "identified three groups of facts": (a) facts backed by "certain evidentiary assurance" that they had occurred; (b) facts that had been "reported to domestic authorities," and (c) facts "that were described by the petitioners in their communications" during the process before the Commission. It said that, by their very nature, the facts being argued involved "evidence constraints" and therefore needed to be examined in combination with all the available information," rather than weighing evidence separately for each fact in isolation."

816. It pointed out that there was "similarity between the acts of violence, threats, and harassment" of the members of the Collective and "similarity between these incidents and the specific context of CAJAR," that can be placed within "the general environment of [...] human rights defenders [...] in Colombia." This was compounded by "the fact that many of the alleged incidents had been reported to the justice system" but had not been investigated with due diligence. The Commission concluded that, if the "numerous facts were examined in conjunction with one another […] in light of the more general context that [...] has been under watch since the 1990s, […] combined with the failure of the State to investigate effectively," "it can be safely said that over the past decades, the members of CAJAR suffered multiple acts of violence, harassment, and threats that, by their nature and in connection with their human rights defense work […], qualify as violation" of their personal integrity.

817. It granted that "many of the facts […] were committed by […] people whose identity has not been determined"; however, others "originated directly with the State" including "intelligence operations and public statements by high-level personages." These facts "are key [for the] analysis of who was responsible for the threats, harassment, and surveillance, regardless of whether their connection with the State can be established, because "they did contribute to the conduct of the incidents, or could be understood as a means of instigating or at least tolerating such actions." The "duties to respect and to guarantee are therefore intertwined in this case."

818. It said that many of the "arguments on threats, harassment, surveillance, raids, and other acts of violence" against the alleged victims "were reported to governmental authorities," but to date, the perpetrators have been neither identified nor punished. Therefore, "[c]onsidering the number of complaints lodged […], the amount of time that has passed, […] and the failure […] to identify a single perpetrator," it can be said that "the investigation mechanisms have proven to be ineffective as a useful means to identify the sources of peril and design measures to […] dismantle the risk and […] provide real protection for the members" of the Collective and thus prevent the actions against them from taking

place or continuing. The "lack of an effective response involving the investigations was in itself a violation of the duty to guarantee in both senses."

819. It added that "the State actively adopted measures that worsened the dangerous conditions facing" the alleged victims, including "public statements by government authorities concerning the work of the members" of the Collective, which "necessarily intensified their conditions of risk." It is therefore "extremely worrisome […] that high-level governmental officials should make public statements connecting the members of CAJAR with the guerrilla forces in an armed conflict," which, "in the Colombian context, transformed them into a target for actions by police forces and paramilitary groups alike." The intelligence operations of the DAS also "contributed to a heightened risk situation" for the alleged victims. These intelligence operations served an illegitimate aim running counter to the terms of the Convention, that included providing "paramilitary groups" with information collected on the members of the Collective, which was "not only a gross failure to uphold the duty to protect, but was in fact openly contrary to this duty, and necessarily undermined the State's ability to determine responsibility for the acts of violence, threats, and harassment."

820. It added that "the material measures of protection that were implemented" must be considered alongside "the failure to investigate and clear up […] the incidents that were reported, the arbitrary intelligence activities, and the surveillance by governmental authorities"; all of this grievously endangered the alleged victims, which, combined with "disparaging statements by high-level public officials" that had a similar effect, "manifestly demonstrate that the State as a whole failed in its duty to protect." The State also "failed in its duty to respect because, through concrete actions by the authorities, it became a party to the dangers faced by CAJAR, even as it tolerated and turned a blind eye to the actions taken against them."

821. ***CAJAR and CEJIL*** argued that the State "created a situation of endangerment" by transforming the members of the Collective into enemies of the State and fingering them as a "military target," especially those who sat on the general council of members, placing them in a "situation of extreme vulnerability, fostering and legitimizing attacks on their lives and safety." They said that "the constant presence of threats, acts of harassment, surveillance, and defamation […] also produced violations" of these rights. The State "failed to take effective structural measures to protect the lives and safety" of the alleged victims, "despite its awareness of the situation of risk and the threats and attacks received […] and despite the fact that restraining orders were in place to protect them," and in addition, "failed to deactivate the structural risk" because "it did not implement effective investigations and sanctions for the acts reported."

822. They noted that the intelligence activities conducted on the alleged victims heightened the danger they were facing. All this "fostered and legitimized the attacks […] on the lives of members of CAJAR," "in view of the proven links between the intelligence activities […] and the paramilitary groups." They added that the constant stigmatizing of the alleged victims coming from "top tiers of government and the police force," including being labeled as the "political arm" or "legal arm" of insurgent groups, seriously endangered the lives and safety of themselves and their families. They said that the intelligence operations and the name-calling of CAJAR "are directly linked to the attacks and threats" against the alleged victims, "perpetrated by members of the police and by others, including paramilitary groups."

823. The participation by agents of the State in acts of threats, attacks, harassment, defamation, and illegal intelligence activities," combined with a tendency of "acquiescence toward […] the paramilitary forces" and the ineffectiveness of criminal investigations "severely injured the right to personal integrity" of the alleged victims, and if "considered as a whole

and taking into account the State's failure to conduct specific investigations, could be held as acts of torture." In this sense, the actions taken against the alleged victims "created a climate of intimidation and fear in their work life," because of "the ever-present sensation that at any moment they could be victims of an attack against their lives and personal integrity, or of prosecution that could culminate in unjust detention or other forms of aggression." Some of the alleged victims found that the only solution available was to "leave it all behind and go into exile," while others "gave up their privacy and family lives, choosing to remain in Colombia and live in constant danger."

824. They cited Soraya Gutiérrez Argüello, who had claimed that the actions perpetrated against her had severely damaged the conditions of her emotional, professional, and family life because of "the constant sense that she or her daughter could be victims at any moment of an execution or forced disappearance." Her particular case was compounded by the "differentiated risk" she faced, as the threats against her "contained a gender-based slant, intimidating her not only as a human rights defender, but also a a woman and a mother." The "objective and subjective" factors in her case converged into a pattern of torture.

825. They added that the State had "a reinforced duty to prevent violation" of the rights of Diana María Barrios Sabogal and Adriana Cuéllar Ramírez, given their status as women and "because their work put them into close contact with the defense of human rights" in a context of threats, murder, and aggression against human rights defenders. Ms. Barrios Sabogal, they noted, had been detained "mainly to intimidate the family because of" her father's work, while Ms. Cuéllar Ramírez, after experiencing acts of harassment and threats, was subjected to stalking and experienced other acts of violence, including detention.

826. CAJAR and CEJIL asked that the State be found internationally responsible for violating the following provisions: (a) Articles 4(1), 5(1) and 5(2) of the American Convention, read in conjunction with Article 1(1) thereof, and Articles 1, 6 and 8 of the IACPPT, against the members of the Collective; (b) Article 7 of the Convention of Belém do Pará, in injury of Ms. Gutiérrez Argüello and her daughter Paula Camila Romero Gutiérrez, and (c) Article 7 of the American Convention, read in conjunction with Article 1(1) thereof, in injury of Ms. Barrios Sabogal and Ms. Cuéllar Ramírez.

827. ***Ms. Arias*** said that, given the situation of risk faced by members of CAJAR, the safety measures provided by State authorities were limited to "material forms of protection," consisting of telephones, bullet-proof vests, bullet-proof cars with drivers, which mostly "heightened the danger," because equipment used in the protection program, such as telephones and Avantel radio communication devices, were used to facilitate the tailing and arbitrary wiretapping operations. The illegally obtained information "could have gotten into the hands of other parties interested in the activities of the human rights defenders," such that "all the information collected, which still has not been found, stands as a constant threat to the safety" of the human rights defenders.

828. The ***State*** argued that under the Inter-American Court's case law, "the creation of a situation of risk […] has not been considered sufficient cause to ascribe international responsibility, but is instead a factor […] for evaluating whether the particular risk is foreseeable or preventable," that is, "the legal consequence of the State's creation of a risk is only to strengthen its special duties of prevention and protection," but not to find international responsibility.

829. It responded to the arguments about "threats allegedly made by members of paramilitary groups with support from agents of the State, or directly by State security agencies," asserting that "no evidence whatsoever has been adduced to demonstrate the

alleged responsibility of agents of the State," and moreover, the reports were not lodged in time, which means that it was "materially impossible and above all, groundless, to attribute responsibility to the State."

830. It said that "Colombia cannot be held responsible merely because there was a context of threats and intimidation" against human rights defenders. As for holding the State responsible for violations committed by third parties, "the Commission and the representatives of the alleged victims must demonstrate that a real risk was present, […] that the State was aware of it and in a position to prevent it, and that the State did not respond diligently." This must be proven in every one of the specific cases.

831. It added that "in none of the cases brought before the Court […] did the representatives argue violation of the State's duty to prevent," nor did they make "reference to the existence of a real and imminent risk that [the authorities] were in a reasonable position to prevent or avert." Moreover, when "precautionary measures were adopted by the Commission, State authorities studied, recognized the risk, and extended measures of protection that were considered effective for each case involving both the individual members of CAJAR and the organization per se."

832. It then addressed the pleadings on acts of torture, saying, "the intelligence operations involving surveillance and tailing of certain members of CAJAR were not conducted with the deliberate intention of causing severe physical or mental suffering to the alleged victims," but "served the purpose of damaging their public image and […] weakening their activities to defend human rights." The alleged victims "were not aware of the surveillance and monitoring activities," learning about them only after they had been completed, and therefore there was no convergence of factors such as the case law has identified for classifying an action as torture—"it is impossible to suffer from something you are unaware of." It asked that the State be held "not internationally responsible for violating [Article] 5 of the American Convention and Articles 1, 6, and 8 of the IACPPT.

A.2. Considerations of the Court

833. The pleadings of the parties and the observations of the Commission about the right to life and the right to personal integrity are broad and complex; the Court will first analyze the implications of its case law for ascribing international responsibility to a State, and then delve into the circumstances of this specific case and consider their implications for the other rights alleged to have been violated.

A.2.1. Conditions for imputing State responsibility

834. The Inter-American Court has said, ever since its first judgment, that Article 1(1) of the American Convention is essential in determining whether a violation of the human rights recognized therein can be imputed to a State Party. That article charges the States with the fundamental duty to respect and guarantee, such that any impairment of the rights found in the Convention which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which incurs responsibility in the terms provided by the Convention.[974]

835. As for the content of the obligation to respect, established in Article 1(1) of the Convention, this Court has held that any exercise of public power that violates the rights

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[974] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 164, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 255.

recognized by the Convention is illegal. Thus, whenever a State organ, official, or public entity unduly violates one of those rights, this constitutes a failure of the duty of respect.[975] A violation of the rights protected by the Convention may entail the international responsibility of a State for breach of the duty to respect, either because the violation is perpetrated by its own agents, or when the unlawful act was committed with the participation, support or acquiescence of State agents.[976]

836. The Court has held that the obligation to guarantee, also set forth in Article 1(1) of the Convention, implies the duty of the States to organize the edifice of government and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate, and punish any violation of the rights recognized by the Convention and if possible, attempt to restore the right violated and provide compensation as warranted for damage resulting from the violation.[977]

837. The Court has also judged the scope of the duty to prevent, holding that certain conditions apply to the State's duty to adopt measures of prevention and protection: (i) whether it was or should have been aware of a situation of risk, (ii) whether the risk was real and imminent, and (iii) whether it adopted the usual or reasonable measures to prevent materialization of the risk.[978]

838. Moreover, the Court has repeatedly held that the State has the legal duty to (i) take reasonable steps to prevent human rights violations, (ii) use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, (iii) exact the appropriate punishment, and (iv) ensure the victim adequate compensation.[979]

839. The obligation to respect the right to life and the right to personal integrity, set forth in Articles 4 and 5 of the American Convention, therefore presupposes the duty of States to refrain from actions that would violate these rights, whether by direct intervention of its own agents, or via collaboration, support, or acquiescence, thus allowing others to commit actions that violate rights. Moreover, the obligation to guarantee these two rights encompasses the State's duty to prevent any such actions from occurring and to ensure that if any of these rights should be infringed, the case would be effectively examined and handled as an illegal action that could entail punishment for the guilty, in addition to the obligation to redress victims for the harm suffered. The Court reiterates, for the specific case of human rights defenders, that their important work can be performed freely only if they are not victims of attacks on their lives or of threats, of physical, psychological, or moral aggression, or other acts of harassment, all of which warrants a special duty of protection by the authorities (*supra* paras. 471, 477 and 478).

A.2.2. Imputation of responsibility to the State in the instant case for violation of the right to life and the right to personal integrity

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975 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 169, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 258.

976 *Cf. Case of Pavez Pavez v. Chile*, *supra*, para. 108, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 260.

977 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 166, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 260.

978 *Cf. Case of González et al. ("Cotton Field") v. Mexico, supra*, para. 284, and *Case of the Community Garifuna of San Juan and its members v. Honduras supra,* para. 155.

979 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 174, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 264.

840. The Commission and the representatives argued that the State of Colombia was responsible for violating the right to life and the right to personal integrity as a result of the acts of violence, threats, intimidation, and harassment against the alleged victims, and in summary, maintained that: (a) many acts of violence, mutually interconnected and enmeshed in a specific context of violence against human rights defenders, could be ascribed to the State because of its direct participation or its official acquiescence of them; (b) the State, through disparaging public statements by the authorities and through illegal intelligence operations, created dangerous conditions for the alleged victims by making them enemies of the State and setting them up as military targets; (c) these actions contributed to the materialization of the acts of violence, potentially serving to instigate, provoke, or at least tolerate or legitimize them; (d) the statements by public authorities, associating the alleged victims with guerrilla groups, placed them in a situation of greater danger, because in the context of the armed conflict, this made them a "target" for action by the police and paramilitary groups; (e) the intelligence operations also fostered this situation of heightened risk because they delivered information to paramilitary groups; (f) reports to the authorities about the acts of violence were not properly investigated, which demonstrated ineffectiveness at disabling the risk factors and providing the alleged victims with real protection, and (g) the State's measures of protection, examined in light of this context, were patently inadequate, and the protection programs were riddled with irregularities and shortcomings.

841. The State challenged the arguments in the following terms: (a) the creation of a situation of risk does not constitute imputation of responsibility, but entails only the special duty to protect and prevent; (b) agents of the State were not shown to have taken part in committing the acts of violence, and in many cases, the official complaints were lodged only after considerable delay; (c) the mere existence of a context of threats and intimidation against human rights defenders is not enough to hold a State internationally responsible; (d) in the case of actions by private parties, it would have been necessary to demonstrate that the danger was present and the State knew about it and could have prevented it, but did not do so, and evidence would need to be submitted to corroborate each one of the alleged cases, and (e) the authorities studied and acknowledged the risk facing the alleged victims and ordered measures of protection for the Collective and its members.

842. The Court recalls that this judgment has already identified specific facts involving threats, intimidation, and harassment reportedly committed against the alleged victims (*supra* paras. 488 to 501); the actions may reveal certain common threads, but it seems relevant to view them separately to facilitate a thorough analysis of the different arguments being made, especially given the evidentiary constraints caused by the very nature of the violations claimed and the passage of time in this case.

843. This judgment first found that there was a pattern of attacks and defamation of human rights defenders in Colombia from 2003 to 2009, with clear implications for CAJAR and its members, based on their work to promote and defend human rights and their critical stance toward the authorities at the time. The Court therefore held that certain facts had been proven and fit this pattern (*supra* paras. 489 to 495).

844. The Court then emphasized the constant threats, dating back at least to the 2000s, that paramilitary groups unleashed against the alleged victims, associating them with subversive groups, declaring them as "military targets," and warning them that they would face consequences such as extermination or annihilation (*supra* para. 499).

845. Finally, the Court also found that the lawyers working for the Collective, as human rights defenders taking part in judicial proceedings to investigate human rights violations, have experienced threats and harassment in retaliation for their work, or attempts to interfere with

the normal progress of investigations or on-going procedural work (*supra* para. 498).

846. The Court will use this background as a basis for its examination of the arguments brought by the parties and the Commission's observations on violation of the right to life and the right to personal integrity, in injury of the alleged victims.

(a) The State's responsibility for the participation of its agents in acts of threats, intimidation, and harassment

847. The Court has examined the pleadings and finds it must reiterate what it said earlier. The State may be found internationally responsible for violating the human rights enshrined in the American Convention, especially the duty to respect (Article 1(1)), only if there is evidence of some conduct imputable to an institution or employee of the public power, or if the violation of the right took place with the support or acquiescence of the State authority. Colombia challenged this first point, and therefore it needs to be analyzed in more depth, based on the circumstances of the case and the body of evidence submitted to this proceeding.

848. The Court recalls, as it has also said in its settled case law, that in order to confirm State responsibility for infringing the duty to respect, whether by the actions of its own agents or by third parties, it is not enough merely to demonstrate the presence of a general state of human rights violations against a particular group of persons; instead, it must be shown, in the details and circumstances of the specific case, that whether by action or by omission, there was acquiescence or collaboration by the State.[980]

849. The Court has also held that circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts.[981] This is why the different components of the observed context may not necessarily coincide exactly with the facts of the case in order to be examined in the analysis of the specific matter. Rather, the analysis calls for a case-by-case assessment of these patterns or contexts to determine whether they are useful as indicia, presumptions or circumstantial evidence together with the rest of the body of evidence.[982]

850. This Court has also held that the standards of proof for an international court are less formal that those of domestic legal systems, and international jurisprudence has recognized the power of the courts to weigh the evidence freely, although it has always avoided a rigid rule regarding the amount of proof necessary to support the judgment.[983]

851. It is of note that the work of the Inter-American Court differs from that of domestic criminal courts that adjudge the criminal liability of individual persons.[984] Thus, under the terms of Article 1(1) of the Convention, in contrast to the workings of domestic criminal law, it is not necessary to prove the State's responsibility beyond all reasonable doubt, to identify

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980 *Cf. Case of Yarce et al. v. Colombia, supra*, para. 180; *Case of Vereda La Esperanza v. Colombia. Preliminary objections, Merits, Reparations and Costs*. Judgment of August 31, 2017. Series C No. 341, para. 152; *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, Merits, Reparations and Costs*. Judgment of November 19, 2019. Series C No. 392, para. 67; *Case of Bedoya Lima et al. v. Colombia, supra*, para. 88, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 270.

981 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 130, and *Case of Núñez Naranjo et al. v. Ecuador. Merits, Reparations and Costs.* Judgment of May 23, 2023. Series C No. 492, para. 85.

982 *Cf. Case of Díaz Loreto et al. v. Venezuela, supra*, para. 68, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 271.

983 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 127, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 271.

984 *Cf. Case of Suárez Rosero v. Ecuador, supra*, para. 37, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 271.

individually all the State agents suspected of illegal acts, or to adjudge the perpetrators' culpability or intentionality in order to establish that the rights enshrined in the Convention have been violated.[985] This Court needs to be convinced that actions or omissions attributable to the State were committed, and that the State holds an international obligation that it has failed to uphold.[986]

852. The Court will proceed to study whether any of the alleged instances of threats, intimidation or harassment can be ascribed to the State through the action of its agents. For this purpose, it will look more deeply into the acts identified as part of the pattern of attacks on human rights defenders that had a particular impact on the Collective and its members, as was noticeable from 2003 to 2009.

853. The body of evidence and information submitted by the Commission and the parties is large, and in examining and weighing all this material, the Court has found specific factors concerning one event in particular. On May 13, 2005, Soraya Gutiérrez Argüello received a package delivered to her home that contained "a doll that had been beheaded and dismembered, partially burned, its whole body stained with red nail polish," "a cross drawn on its torso," and a hand-written note saying: "You have a beautiful family take care of it and do not sacrifice it" (*supra* para. 233). The Court can infer from the evidence that this was done, or at least conceived of or planned, by agents of the State, specifically by then-employees of the now defunct Administrative Department of Security (DAS).

854. The Court has drawn this conclusion based on the following: (a) As this judgment has already said, the documentation compiled by the prosecution through its investigation into the G3 operations included an intelligence report dated May 23, 2005, making reference to information obtained from a "reliable human source with direct access," to the effect that Ms. Gutiérrez Argüello "arrived at her house on the evening of Sunday, May 22, 2005, [...] having not returned home since Friday, May 13, 2005, because of a threat against her"[987] (*supra* para. 328). The document confirms that the DAS agents conducted on-going shadowing and monitoring operations against the alleged victim and her family at the very time of these facts and were also watching her home, where the package with the threatening material was received. All this happened as part of "Operation *Transmilenio*" (*supra* para. 320), which shows a clear interest in the affairs of CAJAR, and was particularly because of the alleged victim's work as president of the Collective at the time. (b) As Ms. Gutiérrez Argüello declared in the public hearing before this Court, the return address on the package pertained to her childhood home[988] (that is, the address of a property in the municipality of Sogamoso, departament of Boyacá[989]). This shows that the perpetrator or perpetrators of the act had specific information about the alleged victim's childhood, that is, information that was not

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985 *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala.* Merits, *supra*, para. 91, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 272.

986 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 173, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 271.

987 *Cf.* Document entitled *Acciones desarrolladas contra el CAJAR and sus integrantes* ("actions against CAJAR and its members") (evidence file, volume I, annex to the Report on the Merits, folio 4205).

988 *Cf.* Statement at public hearing before this Court by Soraya Gutiérrez Argüello. The alleged victim said, when interviewed by psycho-social expert witnesses:

> "[T]he return address on the package was the address of a rental house where we had lived and had spent much of our childhood and teenage years. […] [W]hen my father died in 1986, my mother had managed to buy a modest house, […] so I did not understand, I couldn't understand why the package bore the address of that house we had moved out of, 17 years earlier […]."

Cf. Joint written expert opinion from members of the Psychosocial Care Center (CAPS), April 29, 2022 (evidence file, volume XXXIII, affidavits, folio 45304).

989 *Cf.* Document entitled *Acciones contra la abogada Soraya Gutiérrez Argüello* ("actions against attorney Soraya Gutiérrez Argüello"), containing a photograph of the package and its content (evidence file, volume I, annex to the Report on the Merits, folios 4209 to 4211).

public knowledge and the discovery of which would have required meticulous search and tracing activities, as was proper to such an intelligence agency. In fact, the address was eventually found on the profile sheet on Ms. Gutiérrez Argüello, held in the records that the DAS had compiled from its intelligence operations[990] (*supra* para. 343). The obvious deduction is that only a person familiar with this information could have used it to perpetrate the acts (the Court will later address possible reasons why this address might have been used on the package, *infra* para. 891), and (c) During the trial for the actions by a former director of the DAS (Carlos Alberto Arzayús Guerrero, *supra* para. 433), one of the witnesses (Jorge Alberto Lagos León, who had also served as director of the department starting in November, 2005 and was tried for crimes committed in that capacity) stated that, as part of a "trustworthiness process," interviews had been held with employees of the intelligence agency, from which "it was possible to confirm the existence of several irregular activities [as part of the institution's work,] such as stigmatizing NGOs [...], sending letter of condolence to NGO groups [and] dolls streaked with blood."[991] This statement by a witness who had knowledge of what had happened inside the agency clearly reveals that one of the established strategies for meeting the unlawful aims pursued by the intelligence service was to plan and carry out the sending of strange objects intended to intimidate, such as those contained in the package received by Ms. Gutiérrez Argüello on May 13, 2005.

855. These facts are fully proven, according to trial documents, and taken as a whole, they provide grounds to safely assume, following clear lines of reasoning, that the package with the threatening material was sent to the alleged victim on the date claimed as part of a plan that necessarily required participation by agents of the former DAS. The documentation supplied to the Court on the records and data compiled from the intelligence actions conducted under G3 operations contains no written confirmation that the action took place, and this can be explained by the undercover and certainly unlawful nature of the incident; nor is there any written record of the names of the people considered "reliable sources with direct access" who provided voluminous detailed information to the government agents in their tasks of surveillance and monitoring.

856. In any case, it cannot be ignored that the nature and scope of the incident match the objectives defined for "Operation *Transmilenio*," planned and conducted by the DAS; specifically, in addition to actions of surveillance, spying, interception of communications, and other arbitrary intelligence operations, the effort was made to "sabotage," "pressure," and "threaten" the identified "targets," with the intent of "neutralizing" them.[992] The intelligence agency's particular interest in the Collective and its members, engaged as they were in defending human rights and filing complaints (which turned them into "targets" of G3 operations) was to counteract their work and, quite definitely, attack the organization's very existence; this is why it made sense to intimidate the organization's leader, representative, and spokesperson, Ms. Gutiérrez Argüello, then president of CAJAR (2004-2005, *supra* para. 229). To this must be added the intent to intimidate the alleged victim personally, based on her position as a human rights defender and the activities she performed in that role. Moreover, so-called "Operation *Transmilenio*" was a cornerstone in the pattern of attack and

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990 *Cf.* Document entitled *Hojas de vida, perfiles biográficos e información personal de integrantes del CCAJAR* ("personal profiles, biographic summaries, and personal information on members of CAJAR) (evidence file, volume I, annex to the Report on the Merits, folio 3640).

991 *Cf.* Statement by Jorge Alberto Lagos León, quoted in the judgment by the Sixth Specialized Criminal Circuit Court of Bogotá, March 19, 2014, filing 1269-6 (evidence file, volume XII, annex 49 to the CAJAR and CEJIL pleadings and motions brief, folios 27275.

992 *Cf.* State's answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1096); Prosecutor General, report 498742 of November 10, 2009 by the technical investigations unit (evidence file, volume XXI, annex 89 to the answering brief, folios 36792 and 36793), and Order by the Prosecutor General, Unit delegated to the Supreme Court, July 11, 2012, filing 12490-7 (evidence file, volume IX, annex 1.7.8. to Ms. Arias' pleadings and motions brief, folios 24418 and 24419).

defamation against human rights defenders and other critics of current government policies during that period (*supra* para. 489).

857. Finally, the Court recalls that the prosecution itself had posed the theory that the same incident was related to the actions of the DAS, when it conducted an investigation of the case (*supra* para. 759), although the person or persons responsible have not yet been identified.

858. The Court has no doubt that the sending of a decapitated doll with one of its extremities torn from the body, burns on its eyes (presumably from cigarettes), dyed red (simulating blood) on specific parts of the body, including the genitals, and with a cross painted in red on its chest, together with a message pointing to the alleged victim's family and making reference to their "sacrifice" (not overlooking the express and implicit meanings that such an object could imply, *infra* para. 889), is clearly threatening and intimidating. Ultimately, the deed affected not only the alleged victim, but also, as the perpetrators intended, served as intimidation for the other members of the Collective as well, as can be seen in the statements contained in the body of evidence of the case, which point to the atmosphere of fear and alarm that the incident triggered in the organization.[993]

859. This action, given the presence of "Operation *Transmilenio*" in the general environment of attacks and smears against human rights defenders from 2003 to 2009, suggests to this Court that other acts involving threats and harassment, occurring at the same time and serving a clear purpose of intimidation, were performed with the participation of governmental authorities, whether by omission or by acquiescence. These acts included classified advertisements that ran in a widely circulated newspaper on May 27, 2005, announcing job openings at the Collective, interpreted at the time by the alleged victims as a "veiled threat" against the organization (collectively) and against its individual members, suggesting that the organization would soon have job openings (*supra* para. 176).[994]

860. The acts of stalking and taking photographs of some members of CAJAR can be understood as part of the framework of arbitrary DAS intelligence operations; furthermore, the perpetrators deliberately made themselves visible to the alleged victims, not caring whether they were in public places, which compounded their actions by a clear intent to intimidate. These actions included: (a) stalking the daughter of Ms. Gutiérrez Argüello on March 3, 2003, and of her domestic worker who was waiting in the street for the school bus

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[993] *Cf.* Statements before a public attestor by Adriana Lizeth López Rojas, Carlos Lozano Acosta, Chennyer Jairt Piñeros Fuquen, Yessika Johanna Hoyos Morales, Olga Lilia Silva López, Reinaldo Villalba Vargas, and Olga Marcela Cruz López (evidence file, volume XI, annexes 29, 31, 32, 37 and 39 to the CAJAR and CEJIL pleadings and motions brief, folios 26593, 26606, 26616, 26644, 26660, and volume XXXIII, affidavits, folios 44598 and 44800). Diana Milena Murcia Riaño said in her statement:

> [T]he matter of the doll sent to Soraya happened suddenly, and I think that was when all of us women, after we had already been learning about these things happening and seeing them, that was when we understood that something really could happen to us because of being women working for the Collective […] and that very big act that was unusual in the sense that it was the worst yet, when they went to a lot more trouble to express their violence, it was a way to maximize those acts of aggression against us women […].

Cf. Statement by Diana Milena Murcia Riaño at public hearing before this Court.

[994] Lawyer Yessika Hoyos Morales said the following in this regard:

> I remember that I went to the office very early one Saturday morning to help out with logistics, and I entered the building [where the CAJAR offices were located], and there was a very long line of people, and I couldn't believe that so many victims [of State violence] had come in, and I was stunned. When I asked the people what the line was for, it turns out that they were not victims, but instead they wanted to submit their resumés to the Collective because they had seen a classified ad in the *El Tiempo* newspaper that we were hiring lawyers, but it was all a lie. It frightened us because it was a veiled message that some of us would be gone and this was why they needed to replace us.

Cf. Statement before a public attestor by Yessika Johanna Hoyos Morales, November 3, 2020 (evidence file, volume XI, annex 37 to the CAJAR and CEJIL pleadings and motions brief, folio 26644).

to arrive (*supra* para. 231); (b) unknown persons took pictures of Diana Teresa Sierra Gómez and Adriana Cuéllar Ramírez on October 24, 2003, outside the building where the Collective had its offices (*supra* para. 253); (c) Javier Alejandro Acevedo Guerrero was stalked on November 19, 2002, by a motorcycle with no license plates and a blue van as he traveled to a university campus in Bogotá (*supra* para. 256), and (d) Efraín Cruz Gutiérrez was followed on October 1, 2004, by a van from the time he left the offices of the prosecutors in downtown Bogotá until he arrived at the CAJAR offices (*supra* para. 283).

861. The Court would emphasize that all the actions described in the preceding two paragraphs were promptly reported to the competent authorities, but to date, the incidents have not been explained. While most of the acts under discussion, with the exception of the classified ads, targeted particular members of CAJAR, it should be understood that their status as members of an organization that defended human rights was the cause; while the threat was leveled against the person directly targeted, it also entailed an implicit collective threat against everyone who was part of the organization.

862. The Court unquestionably understands that these actions hold implications for the failure to comply with the duty to respect human rights (Article 1(1) of the Convention), since the actions arose from conduct directly imputed to agents of the State. The threats and intimidation described above, committed with the clear purpose and intent of intimidation and producing distress, alarm, and fear, therefore constitute a violation of the right to psychological or moral integrity, as enshrined in Article 5(1) of the American Convention, and comprise an egregious breach of the special duty of protection that the State owes to the work of human rights defenders (*supra* para. 471 and *infra* para. 979). Following these lines of reasoning, the Court therefore declares violation of the right to personal integrity in injury of the alleged victims who have been members of CAJAR (*infra* para. 984).

(b) The State's responsibility for the threats by paramilitary organizations

863. The Court recalls that, as part of the pattern of attacks and defamation against human rights defenders that took place from 2003 to 2009, evidence has been adduced to show the stigmatizing effects experienced by the alleged victims from the President's speech on September 8, 2003, and a publication by the National Narcotics Control Bureau. This judgment has particularly highlighted the repercussions of the speech, which was seen to approve of or legitimize the actions of reproof, censure and more against the alleged victims. The message was taken up in the communiqué released on September 29 of the same year and signed by the "commandos of paramilitary groups," making reference to some of these groups, that backed the words of the President by discrediting the work of the Collective and linking it explicitly to "the communist guerrillas," along with other offensive language (*supra* paras. 708 to 718). On a related front, other intelligence operations took place in the framework of DAS activities, at the same time and for the same purposes, and the project inside DAS known as "Operation *Transmilenio*" pursued such aims as weakening and smearing certain identified "targets" (including the Collective and its members) and tracing possible links between them and the armed groups operating outside the law, specifically the guerrilla groups.

864. All these facts, seen in the climate of polarization that reigned during the armed conflict in which they occurred, portray the situation of vulnerability affecting the alleged victims because of actions by State authorities. To this must be added an further consideration.

865. Specific investigations launched domestically have revealed the existence of links between former DAS agents and the paramilitary organizations, which among other things, included supplying them with information collected by the government agency through its

intelligence activities. This transfer of information consisted of data on the members of guerrilla groups and other persons associated with them; it served the purpose of enabling paramilitary organizations to conduct "operations" against them, which included a variety of acts of violence against their lives and personal safety.[995] This Court has already had occasion, in earlier cases, to demonstrate the existence of such linkages between the paramilitary forces and Colombian State security agencies, in the form of collaboration, tolerance, and acquiescence or support.[996] The Court has also seen specific links between these armed factions and DAS agents.[997]

866. Turning to the alleged victims of the instant case, a former paramilitary commander (Salvatore Mancuso), in a recent statement before the Special Jurisdiction for Peace, told how a former director of the DAS (José Miguel Narváez Martínez, later convicted for unlawful acts against the Collective and its members, *supra* para. 430 to 432), provided them with "lists of names" so they could "label them as military targets," and these names included the "José Alvear Restrepo Lawyers Collective." The declarant added that "on many occasions," the threats against people named on the lists came from the DAS itself, adding that the orders to kill them came from the top leaders of the paramilitary organization, in this case, the United Self-defense Forces of Colombia.[998]

867. The scene described above clearly reveals the particular conditions of vulnerability that State authorities created for the alleged victims. The defamation of the Collective and its members by portraying them publicly as supporters of guerrilla groups was added to the illegal intelligence operations targeting professionals, legal aides, and administrative staff of CAJAR and their families. The organization's work was held up as part of a "political and legal war"[999] against the government, and paramilitary groups were supplied with information to have them identified as "military targets" (and everything that entails). All this reveals the undeniable dangers to the life and personal safety of the alleged victims, caused by actions of the State. It is therefore evident that the State was responsible for these actions and for collaborating with armed groups operating outside the law in injury of the rights of the alleged victims, members of CAJAR.

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995 *Cf.* Judgment by the Sixth Specialized Criminal Circuit Court of Bogotá, March 30, 2011, filing 080013107001 2008-00027-00 (evidence file, volume VI, Commission case file, folio 15238), and judgment by the Supreme Court, Chamber of Criminal Cassation, September 14, 2011, filing 32000 (evidence file, volume VI, Commission case file, folios 15302 and 15342). A former paramilitary commander (Salvatore Mancuso), making a statement in a trial against a former director of DAS, said, "it would have been impossible for the self-defense forces to have grown the way they did without the joint participation of the State, because all these actions and the growth of the paramilitary movement were an official, government, social policy"; and "he claimed to have received information from the DAS, as a member of the AUC, to carry out operations against certain members of the ELN and FARC guerrillas." *Cf.* Statement by Salvatore Mancuso, quoted in the judgment by the Sixth Specialized Criminal Circuit Court of Bogotá, March 19, 2014, filing 1269-6 (evidence file, volume XII, annex 49 to the CAJAR and CEJIL pleadings and motions brief, folios 27278 and 27279.

996 *Cf. Inter alia*, *Case of the Mapiripán Massacre v. Colombia, supra*, para. 96.19, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 193.

997 *Cf. Case of Omeara Carrascal et al. v. Colombia. Merits, Reparations and Costs.* Judgment of November 21, 2018. Series C No. 368, para. 240.

998 *Cf.* Special Jurisdiction for Peace, single hearing to contribute to the truth, Salvatore Mancuso, session 1, May 10, 2023. Available in Spanish at: https://www.youtube.com/watch?v=WwACv-j5_9g&ab_channel=JEPColombia.

999 The Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition said the following in its report:

> The intelligence agencies on several occasions have claimed that the reports of human rights violations are part of an alleged "legal war," and this is their pretext to discredit such reports and challenge investigative work as if it were a drive by those opposing the war to make use of the criminal justice system.

Cf. Commission for Clarification of the Truth, Peaceful Coexistence, and Nonrepetition, final report, *Hay futuro si hay verdad: hallazgos and recomendaciones*, ("there is a future if there is truth: findings and recommendations"), Bogotá, June 28, 2022, p. 465 (evidence file, volume XLII, annex to the brief of CAJAR and CEJIL, April 10, 2023, folio 47416).

868. It is worth repeating that these facts took place in the setting of armed conflict, clashes, and a rising tide of violence at the time (*supra* paras. 485 and 486), which explains the serious risk faced by the alleged victims.

869. This risk became palpable with the threats signed by paramilitary organizations and addressed to the Collective and its members at that time, using a variety of channels, including printed texts and email. Using different expressions, these threats discredited their work, associated them with guerrilla groups, declared them "military targets," and warned them by announcing consequences including their death or destruction. The chapter on the facts of the case, based on information from the Commission and the representatives, details the different threats that followed this pattern (chapter VII). Several of these threats were reported to the Prosecutor General, but to date, no concrete results have shed light on them.

870. The State was under obligation, as part of its duty for protection, to adopt effective measures to safeguard the Collective and its members. Its obligation was clear for many reasons: because the State of Colombia was aware of the special situation of danger facing the alleged victims, because of the police reports duly lodged, because of the precautionary measures granted earlier by the Inter-American Commission (2000 and 2002, *supra* para. 2), and finally, because it was State authorities themselves who created the situation at a time when the real, imminent danger was obvious.[1000] The special situation of danger faced by the alleged victims, of which the State was aware, had begun much earlier, in the 1990s, as has already been noted in this judgment (*supra* para. 501) and will be examined in the discussion of the right to freedom of movement and residence (*infra* paras. 922 to 948).

871. This Court has already adjudged cases concerning the actions of paramilitary groups and found that such organizations have been "responsible for numerous [...] murders" and "for a major part of the human rights violations in general" committed in Colombia, and this corroborates the intense, imminent nature of the danger facing the alleged victims,[1001] who, in a climate of fear and alarm, sensed how extremely vulnerable they were with the constant threats they were receiving.[1002]

872. The chapter on the facts (*supra* paras. 387 and 388) has already shown that, starting in 2001, the State of Colombia, in response to the precautionary measures, granted protection to the Collective and its members, consisting of (i) "hard measures" that included armored vehicles, escorts, and communications systems, (ii) shielding installed on their residences and the offices of the organization, and (iii) communication systems provided individually to certain of the alleged victims. The State has argued that it thereby had complied with its duty to prevent and to protect, as part of the obligations that derive from the American Convention.

1000 *Cf. Case of González et al. ("Cotton Field") v. Mexico, supra*, para. 284, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 263.

1001 *Cf. Case of the Mapiripán Massacre v. Colombia, supra*, para. 96.18; *Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140, para. 95.27; *Case of the Ituango Massacres v. Colombia, supra*, para. 125.23; *Case of the Rochela Massacre v. Colombia, supra*, para. 83; *Case of Valle Jaramillo et al. v. Colombia, supra*, para. 76, and *Case of Cepeda Vargas v. Colombia, supra*, para. 78. See also, *Case of Carvajal Carvajal et al. v. Colombia. Merits, Reparations and Costs.* Judgment of March 13, 2018. Series C No. 352, para. 29; *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 64, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 187.

1002 *Cf.* Statements before a public attestor by Adriana Lizeth López Rojas, Camilo Andrés Galindo Marín, Carlos Lozano Acosta, Chennyer Jairt Piñeros Fuquen, Adriana Patricia Fuentes López, Mónica Lorena Zuluaga Patiño, Lyda Natalia Hernández García, Efraín Cruz Gutiérrez, Yessika Johanna Hoyos Morales, Javier Alejandro Acevedo Guerrero, and Jomary Liz Ortegón Osorio (evidence file, volume XI, annexes 29, 30, 31, 32, 33, 34, 35, 36, 37 and 43 to the CAJAR and CEJIL pleadings and motions brief, folios 26593, 26599, 26605, 26616, 26622, 26628, 26632, 26638, 26643 and 26687, and volume XXIII, affidavits, folio 44646).

873. Nonetheless, the Court cannot ignore a factor that brings the State's position into question. These measures of protection were adopted on orders from the Ministry of Internal Affairs and Justice, but the public agency responsible for implementing them, and thus for ensuring in practice that they were an effective response to the State's duties to prevent and protect, was none other than the Administrative Department of Security (DAS) (earlier, until the National Protection Unit was created in 2011 under Executive Order 4065, *supra* para. 159 and footnote 151).[1003]

874. For the specific case of the alleged victims, the DAS was the public agency that managed and supplied the armored vehicles, communication devices, and escorts included in the "protection programs" (until they were returned by the alleged victims in 2011, *infra* para. 389).[1004] This situation, examined in light of the arbitrary intelligence actions being performed by the same agency, the participation of its agents in the threats, intimidation, and harassment (see the previous section of this chapter, *supra* paras. 852 to 862), and the provision of information to paramilitary groups, all in direct prejudice to the very persons who were beneficiaries of the measures of protection, raises legitimate questions about the effectiveness of the measures, and furthermore, whether they may not have been undertaken for the purpose of increasing and heightening the very risks already faced by the alleged victims.

875. It is enough in this regard to recall that the members of the Collective suspected that the protection programs had been infiltrated through the participating escorts.[1005] Their suspicions were not unreasonable, given the multiple references in the intelligence reports on the surveillance and monitoring operations of the alleged victims, as part of the G3 operations, to the effect that "reliable sources with direct access to the targets" had supplied different kinds of information on them (*supra* paras. 322 and 328).[1006] Ultimately, this situation of mistrust led the alleged victims in 2011 to return the armored vehicles and release to the authorities the escorts taking part in the protection programs (*supra* para. 389), regardless of repercussions for their personal safety and that of their families (the alleged victims later received new protection measures managed by Colombian authorities, starting in 2020, *supra* para. 393).

[1003] The "whereas clause" in Order 4065 of 2011, "to create the National Protection Unit (UNP) and define its purpose and structure," read as follows: "That with the purpose of coordinating, inter-connecting, and implementing the lending of the service and to guarantee that measures of protection are timely, effective, and appropriate, a specialized entity must be created to assume the duties formerly performed by the Ministry of Internal Affairs and Justice and the Administrative Department of Security (DAS) on this subject."

[1004] The then director of the DAS, in an official note on April 8, 2011, given the decision by the Collective to return the vehicles and release the escorts, informed the Prosecutor General as follows: "[T]he DAS has been supporting the protection program assigned [to the Collective] since 2001. The program consists of escorts proposed by the Collective and hired by the DAS as contractors; they have no employer-employee relationship with the agency, and their activities are limited to the stated purpose, that is, protection." *Cf.* Note signed by the director of the DAS, April 8, 2011 (evidence file, volume III, annex to the Report on the Merits, folios 7517 and 7518). See also the official note signed by the head of the DAS Office of Special Protection, April 7, 2011, reporting that "the four (4) vehicles and the six (6) contractors" assigned for the safety of CAJAR members "are managed by the Administrative Department of Security." *Cf.* Note signed by the head of the legal advisory office of the National Protection Unit, April 07, 2011 (evidence file, volume III, annex to the Report on the Merits, folio 7522).

[1005] Lawyer Alirio Uribe Muñoz told the Court at public hearing: "[W]e returned […] the programs and the protection we had because we realized that the DAS was using the protection measures to follow us and collect illegal intelligence […], and later we accepted it again some years or some time after that." *Cf.* Statement at public hearing before this Court by Alirio Uribe Muñoz.

[1006] The person appointed in November, 2005 as Director of the DAS talked about the personal protection programs that DAS managed, stating that "much of it" was assigned to members of the political opposition, union leaders, and leaders of non-governmental organizations, and added that "[t]he protectees very often suspected that these protection programs could have been used to collect information about their private lives." *Cf.* Procedure for an initial statement by AMP to the Prosecutor General, Unit delegated to the Supreme Court, July 1, 2009 (evidence file, volume I, annex to the Report on the Merits, folios 3847 and 3862).

876. The Court acknowledges the array of public policy instruments that the State of Colombia has implemented over the years to facilitate the free, safe exercise of activities to defend and promote human rights (*supra* paras. 158 to 162), with a primary focus on planning and adopting protection measures in benefit of human rights defenders; however, in the instant case, it does not see that these instruments have kept the alleged victims safe from the risk conditions or the scenario of vulnerability they were facing, or even less, mitigated the factors contributing to their situation. In fact, most of these conditions, as has been seen, originated with the State itself, and particularly, with the public agency responsible for managing the protection measures developed by these programs.

877. The situation of extreme vulnerability facing the alleged victims could not be resolved simply by providing armored vehicles or escorts; instead, it was necessary to address the risk factors created by the conduct of State authorities themselves, and this called for a change in the lines of action of certain government agencies, along with a conscientious, objective, exhaustive investigation to elucidate the facts of the case and assign responsibilities. The Court recalls the situation of impunity revealed by the efforts to bring about investigation of the different acts of violence, threats, intimidation and harassment that affected the alleged victims as human rights defenders, which made it impossible to identify, ameliorate, and, if relevant, eliminate the risk factors facing the Collective and its members (*supra* para. 777 to 781).

878. Unquestionably, given the conditions as described, it cannot be said that effective measures were provided to protect the alleged victims from these real dangers.

879. State authorities, in view of their direct actions and of their collaboration with paramilitary organizations, deliberately created a situation of palpable risk to the lives and personal safety of the alleged victims, and far from relieving this danger, they helped make it worse; this violated the duty of respect for these two rights in the instant case (*supra* para. 835). Under the particular circumstances of the proven facts, Colombian authorities did not fulfill their duty to provide effective means of protection and prevention for the alleged victims, which in combination with the previously described environment of impunity, also breached the duty to guarantee the two rights (*supra* paras. 836 to 838). The Court therefore finds that the State of Colombia conspicuously infringed its special duty of protection for the alleged victims' work to defend and promote human rights; as this judgment has already held, it permitted a climate of risk for them and failed to protect them from threats being made, which would have put a stop to the attacks against their lives and personal integrity, it turned a blind eye to the hindrances being set up to stop them from doing their work, and it failed to conduct conscientious, effective investigations into the the violations committed against them, which would have counteracted impunity (*supra* para. 471 and *infra* para. 979).

880. The Court therefore concludes that Colombia violated Articles 4(1) and 5(1) of the American Convention, read in conjunction with Article 1(1) thereof, in injury of the alleged victims.

(c) The differential situation of women human rights defenders, the impact of violence on the lives of their children, and the ways this situation was manifested in the instant case

881. Several international organizations have emphasized the particular situation of vulnerability facing women human rights defenders in Colombia, especially those who have done their work in the setting of the armed conflict, because of the work they do and because they are women.

882. The situation facing women human rights defenders has caused them to be rated as one of the groups "most at risk of harassment and persecution" inside Colombia, underscoring the "gender-based dimension of the attacks, threats, insults and humiliating practices" against them. "Because of their family responsibilities," it has been further shown that "women defenders face greater difficulties in relocating to safer places" when their lives and safety are at risk.[1007]

883. The Special Rapporteur on the situation of human rights defenders issued his 2019 report on the situation of human rights defenders, following a visit to Colombia, and expressed concern about the rising numbers of murders of women defenders, stressing that "[t]he prevailing patriarchal culture in Colombian society and family and the gap in the enjoyment of rights between men and women" contribute to the increase in attacks on women and "shape the risks faced by women defenders." The Special Rapporteur added that women defenders, "in order to take on public roles and/or defend women's rights, [...] have to overcome multiple barriers within their families and communities: from having their legitimacy undermined and attacks on their identity, to being labeled "bad mothers" and "women of dubious reputation, to threats and gender-based violence" of which they are victims.[1008]

884. Multiple reports have also shown that the threats "often have a strong sexist and sexual content."[1009] Moreover, the threats tend to target the families of women defenders, especially, if they are mothers, against their children.[1010] These factors heighten the situation of danger faced by women defenders in the performance of their work to promote and protect human rights.

885. These paragraphs show the presence of a differentiated situation of risk faced by women human rights defenders, by comparison with their male colleagues, for specifically gender-based reasons; for those who are mothers, the danger also extends to their children and other members of their families.

886. The Court would point to the arguments brought by the two representatives of the alleged victims about women human rights defenders who serve as lawyers, outreach workers, activists, or in other relevant roles, and how, despite the clear importance of their work, they face multiple adversities, many of them associated with the stereotype that this is an eminently male domain. As a result, the specific gender-based risks these women encounter are overlooked, ignored or, worse yet, worsened by public policies, justice systems, or justice workers who lack an appropriate perspective for addressing and effectively alleviating them.

887. The Court has previously found that in the case of attacks against women human rights defenders, all the measures designed to mitigate the risks they run should be adopted with a gender perspective and with an inter-sectional approach. These women can thus be provided with comprehensive protection that considers, understands, and highlights the complexities

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1007 *Cf.* Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, mission to Colombia, U.N. Doc. A/HRC/13/22/Add.3, March 1, 2010, para. 31. See also, Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of Colombia, U.N. Doc. CEDAW/C/COL/CO/7-8, October 29, 2013, para. 23, and Concluding observations on the ninth periodic report of Colombia, U.N. Doc. CEDAW/C/COL/CO/9, March 14, 2019, para. 17.

1008 *Cf.* Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, mission to Colombia, Michel Forst, U.N. Doc. A/HRC/43/51/Add.1, December 26, 2019, paras. 44 and 45.

1009 *Cf.* Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, mission to Colombia, Michel Forst, U.N. Doc. A/HRC/43/51/Add.1, December 26, 2019, para. 46.

1010 *Cf.* Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Colombia, U.N. Doc. CRC/C/COL/CO/4-5, March 6, 2015, para. 15.

of the differentiated forms of violence that women defenders face due to their profession and their gender,[1011] and this entails a reinforced duty of the State to protect and prevent.[1012] The complexities requiring special attention, in the view of the Court, include political, social, economic, environmental and systemic factors, including patriarchal attitudes and practices which produce and reproduce violence against women human rights defenders. This approach also means that it should be the women defenders themselves who define their priorities and needs for protection and, in this regard, are supported based on a rationale of respect for their wishes.[1013]

888. In the instant case, the gender dimension of violence against women human rights defenders was evident in the May 13, 2005 incident against the lawyer Soraya Gutiérrez Argüello. As was detailed above, the package she received contained a doll whose head and one of whose extremities had been removed from the body, the eyes burned (presumably with cigarettes), specific parts of the body painted red (simulating blood), including the genitals, and a cross drawn on the chest, using the same dye, and with a handwritten message saying: "You have a beautiful family, take care of it and do not sacrifice it" (*supra* para. 233).

889. Considering the nature and specificities of this object, the Court believes that such an item would not have been sent to a man, but instead was intended as a woman-specific message to this lawyer, given her status as a woman and mother. The cross painted on the doll's chest, the ink resembling blood, the cigarette burns, and the removal of the head and an extremity, all constitute symbols threatening acts of violence, including death. The marks on the genitals of the doll's body reveal a sexist and sexual content that, in the context of the threat, combined with the written message, pointed to possible sexual violence against the lawyer or her daughter.

890. The written message itself deliberately revealed the writers' knowledge of the alleged victim's family life, including a clear warning that made special use of the word "sacrifice," revealing the deadly consequences that could arise from Ms. Gutiérrez Argüello's work at the head of the Collective.

891. Another relevant point is the fact that the perpetrator of the incident gave the name of the human rights defender's father as the sender of the package, using as the return address, as was already said, the alleged victim's childhood family home (*supra* para. 854). This reveals the intent to show the recipient that the perpetrators knew about Mrs. Gutiérrez Argüello's family circumstances and, in general, about her private life, emphasizing the repercussions that the threat could eventually have for the members of her family.

892. The Court would recall that, in addition to the protection granted under Article 5 of the American Convention, Article 7(a) of the Convention of Belém do Pará also says explicitly that the States must ensure that authorities and agents of the State must refrain from any action or practice of violence against women.[1014] The Convention of Belém do Pará was adopted in view of the need to provide reinforced protection of women's right to a life free of violence and to eliminate all situations of violence that could affect them in both the public and private

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1011 *Cf. Case of Bedoya Lima et al. v. Colombia, supra*, para. 95, and *Case of Digna Ochoa et al. v. Mexico, supra*, para. 101.

1012 *Cf. Mutatis mutandis*, *Case of Bedoya Lima et al. v. Colombia, supra*, para. 91.

1013 *Cf. Case of Digna Ochoa et al. v. Mexico, supra*, para. 101.

1014 Article 7 of the Convention of Belém do Pará, adopted in 1994 in the Brazilian city of Pará, reads: Duties of the States. […] The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation; […].

spheres. The preamble is clear that violence against women "constitutes a violation of their human rights and fundamental freedoms" and "an offense against human dignity."[1015]

893. Accordingly, having seen that the incident was committed with the participation of public agents (*supra* para. 855), and given the situation of differentiated violence faced by Gutiérrez Argüello due to her status as a woman and mother, the Court concludes that Colombia is in breach of the obligation established in Article 7(a) of the Convention of Belém do Pará. The violation is also found in injury of Paula Camila Romero Gutiérrez, daughter of the alleged victim, given the scope of the threats made.

894. The Court, in this regard, reiterates the particular duty drawn from Article 19 of the American Convention, under which the States are obliged to promote special measures of protection in keeping with the principle of the best interests of the child,[1016] assuming their position as guarantor with increased care and responsibility,[1017] based on children's special condition of vulnerability.

895. The Court cannot deny that a threat was made, as described above, with the intervention of public officials, specifically the agents of a security service, and because this threat included a child, in contempt of her special condition, it constituted absolute infringement of the State's duty to protect children. The violation of the rights of Paula Camila Romero Gutiérrez was a breach not only of the obligations discussed above, but also of Article 19 of the American Convention.

896. The two representatives of the alleged victims raised arguments about additional facts concerning threats or acts of aggression against women defenders of human rights or the families of members of the Collective, specifically women. The Court is sensitive to the differentiated situation of women defenders (*supra* paras. 882 to 887), but it respects the right of defense that must prevail in this international proceeding, and therefore it cannot adjudge instances that are not part of the corpus of facts of the case, particularly the alleged violation of personal liberty in injury of Adriana Cuéllar Ramírez, and various other facts contained in Ms. Arias' pleadings and motions brief. Moreover, with respect to the alleged violation of Article 7 of the American Convention in injury of Diana María Barrios Sabogal, the Court finds that it cannot reasonably find State responsibility beyond its prior considerations about the investigation to elucidate the facts (*supra* para. 774).

(d) Connotations of the injury to psychological integrity in the instant case

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[1015] The preamble of the Convention of Belém do Pará reads:
THE STATES PARTIES TO THIS CONVENTION, […] AFFIRMING that violence against women constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms; CONCERNED that violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men; RECALLING the Declaration on the Elimination of Violence against Women, adopted by the Twenty-fifth Assembly of Delegates of the Inter-American Commission of Women, and affirming that violence against women pervades every sector of society regardless of class, race or ethnic group, income, culture, level of education, age or religion and strikes at its very foundations; CONVINCED that the elimination of violence against women is essential for their individual and social development and their full and equal participation in all walks of life, and CONVINCED that the adoption of a convention on the prevention, punishment and eradication of all forms of violence against women within the framework of the Organization of American States is a positive contribution to protecting the rights of women and eliminating violence against them, […].

[1016] *Cf.* Advisory opinion OC-17/02, *supra*, para. 226, and *Case of María et al. v. Argentina, supra,* para. 85.

[1017] *Cf. Case of Juvenile Reeducation Institute v. Paraguay. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 2, 2004. Series C No. 112, para. 160, and *Case of María et al. v. Argentina, supra,* para. 85.

897. The Inter-American Court's case law has held that while Article 5(1) of the American Convention enshrines in general terms the right to personal integrity, meaning physical, mental, and moral, Article 5(2) more specifically sets an absolute prohibition on subjecting a person to torture or to cruel, inhuman or degrading punishment or treatment. The Court has held that violation of the right to physical and psychological integrity of persons has several gradations ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment, the intensity of whose physical and psychological repercussions may vary due to endogenous and exogenous factors (how long the treatment continues, age, sex, health, context, vulnerability, and the like) which must be proven in each specific situation.[1018]

898. In the analysis of the instant case, the Court must ask whether the May 13, 2005 incident against Soraya Gutiérrez Argüello can qualify as a violation of Article 5(2) of the American Convention.

899. It acknowledges that agents of the State acted deliberately to commit the offense, in alignment with the nature of their strategy to threaten and intimidate anyone considered a "target" of their operations.

900. It is also undeniable that the content of the package and its explicit and implicit messages triggered deep fear in the recipient of the package and clear uncertainty as to what might happen to her and to her family. Moreover, it can be safely assumed that the characteristics of the object in the package could potentially have caused her, as a mother, to perceive greater danger to her daughter than to herself, arousing severe alarm and anguish.

901. Similarly, as the arguments and evidence in this proceeding have shown, as a result of the incident, the alleged victim, reacting to the profound fear she felt and her desire to keep herself and her daughter safe, was forced to move away, as demonstrated in the May 23, 2005, intelligence report in which DAS agents said that Ms. Gutiérrez Argüello had left her home that same day (Friday, May 13, 2005) and had returned on May 22 to "remove clothing and other necessities" and then leave again (*supra* para. 328).[1019]

902. Finally, the Court attaches weight to the statements in the public hearing by the alleged victim herself, who gave details about the incident and explained how she had felt, as follows: "[T]hat was when I said my life was over. To feel that threat against my daughter who was only six years old […]." In her interview with psycho-social expert witnesses, who emphasized the psychological impact the incident had caused for the alleged victim, Ms. Gutiérrez Argüello said:

> [T]he way the threats against me happened, they were intended to make me feel guilty of being a woman, of being a mother, of being a human rights defender, and for me to understand, as a type of punishment for the decision to take on this role in my life, it had consequences for my daughter's safety, for my family's safety, […] it was my fault, it was my responsibility, and this is enough to break anyone […] because this was how I so often felt.[1020]

903. The Court infers from all this that, even beyond the intimidating effect the incident could have had for the members of the Collective, including Ms. Gutiérrez Argüello, for her it produced real terror because of what could happen to her personally, to her daughter, and to

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1018 *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 57, and *Case of María et al. v. Argentina, supra,* para. 112.

1019 *Cf.* Document entitled *Acciones desarrolladas contra el CAJAR and sus integrantes* ("actions against CAJAR and its members") (evidence file, volume I, annex to the Report on the Merits, folio 4205).

1020 *Cf.* Joint written expert opinion from members of the Psychosocial Care Center (CAPS), April 29, 2022 (evidence file, volume XXXIII, affidavits, folio 45310).

her family. This is enough to demonstrate the severity of the mental suffering the incident caused for the alleged victim.

904. Along the same lines, the evidence submitted to the proceeding reveals that the intent of the perpetrators, in keeping with the objectives pursued as part of the G3 actions and, more specifically, "Operation *Transmilenio*," was to intimidate the alleged victim and the organization she represented, thwart their work to defend human rights, and neutralize their activities, based on the concepts of "political warfare" and "legal warfare" that undergirded the work of the DAS at the time. In addition to all this was the intent to "punish," as described by Ms. Gutiérrez Argüello, in the understanding that her position as a woman at the helm of the Collective lent a gender dimension to the threat, as was seen above (*supra* paras. 888 and 889).

905. The Court finds, on this basis, that the incident under examination, given its characteristics and effects, comprised a violation of Article 5(2) of the American Convention that prohibits all forms of torture and cruel, inhuman or degrading punishment or treatment, and this violation should be read in conjunction with the duty to respect human rights as enshrined in Article 1(1) thereof, and with the obligations arising from Article 7(a) of the Convention of Belém do Pará.

906. The representatives also asked for the acts of threats, intimidation, and harassment that affected all the members to the Collective to be held as torture. The Court finds, in this regard, that it cannot proceed with such an analysis because, unlike the incident that directly affected Ms. Gutiérrez Argüello, the case file does not provide sufficient evidence regarding the other facts and their impact on each of the alleged victims or the severity and intensity of the suffering they may have experienced. It will therefore refrain from such a finding.

(e) Damage to the psychological integrity of the families of CAJAR members

907. The Court has repeatedly held that the next of kin of the victims of human rights violations may be victims in their own right.[1021] The Court has understood that the right to mental and moral integrity of the victims' "next of kin" and of other persons with close personal ties to the victims is violated owing to the additional suffering they have undergone as a result of the particular circumstances of the violations perpetrated against their loved ones and owing to the subsequent actions or omissions of State authorities in relation to those violations,[1022] taking into account, *inter alia*, the steps taken to obtain justice and the existence of close family ties.[1023]

908. The Court recalls in the instant case the particular circumstances in which the members of the Collective conducted their work to defend and promote human rights, which, as already seen, created a situation of ever-present danger over the course of the years, conditioned by a variety of factors (*supra* para. 842 to 845). The threats against members of CAJAR, both as part of the G3 operations from 2003 to 2005, and those directed by paramilitary organizations, caused nervousness, anxiety and alarm among the people working for the organization, and it would be reasonable to assume that this also extended to their families, certainly worried and fearful about what could happen to their loved ones.

1021 *Cf. Case of Castillo Páez v. Peru. Merits, supra*, operative paragraph four, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra,* para. 145.

1022 *Cf. Case of Blake v. Guatemala. Merits.* Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra,* para. 145.

1023 *Cf. Case of Bámaca Velásquez v. Guatemala. Merits.* Judgment of November 25, 2000. Series C No. 70, para. 163, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra,* para. 145.

909. This can be clearly seen in the statements rendered by several family members of the human rights defenders, who when talking about the events of the case, described how they had been affected by the dangers facing their loved ones, using such terms as "horror," "panic," "fear," "instability," "constant intimidation," "insecurity," and "state of alert," to describe what they had experienced for several years.[1024]

910. The situation is even more evident in the case of the family of Soraya Gutiérrez Argüello, after the threats on May 13, 2005. Her daughter's father, Álvaro Enrique Romero Jaimes, has not been able to overcome the fear and anguish he had to experience because of the danger that could have come to his daughter, her mother, and himself.[1025] The threat also brought unquestionable fear and anxiety to the lawyer's mother, sister, and brother. This can be inferred by the very nature and type of the threat, the imminent risk it meant for her loved ones and especially for her daughter, Paula Camila Romero Gutiérrez, because of her tender age, and the failure of the State to respond by offering protection and safety to the people affected, and certainly the widespread atmosphere of mistrust engendered by the actions of authorities. Ms. Gutiérrez Argüello's sister-in-law, Astrid del Pilar Sánchez Martínez, in her statement before a public attestor, described the impact on her husband's close-knit family because of the fear and anguish of the situation (he was the brother of Ms. Gutiérrez Argüello).[1026]

911. The Court therefore concludes that the actions of the State constitute infringement of

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[1024] *Cf.* Statement before a public attestor by Paula Camila Romero Gutiérrez, November 5, 2020 (evidence file, volume XI, annex 42 to the CAJAR and CEJIL pleadings and motions brief, folio 26684); statement before a public attestor by Álvaro Enrique Romero Jaimes, November 5, 2020, (evidence file, volume XI, annex 41 to the CAJAR and CEJIL pleadings and motions brief, folios 26673 to 26678); statement before a public attestor byKimberly Ann Stanton, October 31, 2020 (evidence file, volume XI, annex 19 to the CAJAR and CEJIL pleadings and motions brief, folios 26522 to 26531); statement before a public attestor by Juan Pablo Barrios Romero, October 29, 2020 (evidence file, volume XI, annex 40 to the CAJAR and CEJIL pleadings and motions brief, folios 26666 to 26670); statement before a public attestor by Diana María Barrios Sabogal, October 26, 2020 (evidence file, volume XI, annex 20 to the CAJAR and CEJIL pleadings and motions brief, folios 26534 to 26536); statement before a public attestor by Katia Karina Niño, April 26, 2022 (evidence file, volume XXXIII, affidavits, folios 44774 to 44789); statement before a public attestor by Elizabeth Zunilda Santander Durán, October 9, 2020 (evidence file, volume XI, annex 21 to the CAJAR and CEJIL pleadings and motions brief, folios 26539 to 26544); statement before a public attestor by Diana Jimena Escobar Santander, October 9, 2020 (evidence file, volume XI, annex 22 to the CAJAR and CEJIL pleadings and motions brief, folio 26549); statement before a public attestor by Miguel Ernesto Santander, October 13, 2020 (evidence file, volume XI, annex 24 to the CAJAR and CEJIL pleadings and motions brief, folio 26558); statement before a public attestor by Carolina Puerto Santander, October 13, 2020 (evidence file, volume XI, annex 23 to the CAJAR and CEJIL pleadings and motions brief, folio 26554), and statement before a public attestor by Leandro Jurado Arias, November 5, 2020 (evidence file, volume X, annex 4.2.2. to Ms. Arias' pleadings and motions brief, folios 25200 to 25201). Moreover, the psycho-social expert witnesses from CAPS gave an opinion verifying the descriptions taken from the following alleged victims concerning the impact of the facts of the case: Paula Camila Romero Gutiérrez, Kimberly Ann Stanton, Diana María Barrios Sabogal, Rafael Barrios Sabogal, Laura Camila Barrios Sabogal, Katia Karina Niño, Heidy Andrea Pérez Buitrago, Camilo Ernesto Pérez Niño, Elizabeth Santander Durán, Diana Escobar Santander, Miguel Ernesto Puerto Santander, and Carolina Elizabeth Puerto Santander. *Cf.* Joint written expert opinion from members of the Psychosocial Care Center (CAPS), April 29, 2022 (evidence file, volume XXXIII, affidavits, folio 45139 to 45678).

[1025] Ms. Romero Jaimes, in her statement before a public attestor concerning the May 13, 2005, incident, said: "[I]t hit us very hard, it was a severe threat directly against the entire family, against Paula [her daughter] and against all of us," and added: "By then we were living in a state of utter panic. Leaving the house became an act of courage because you never knew what might happen." *Cf.* Statement before a public attestor by Álvaro Enrique Romero Jaimes, November 5, 2020 (evidence file, volume XI, annex 41 to the CAJAR and CEJIL pleadings and motions brief, folio 26675).

[1026] Astrid del Pilar Sánchez Martínez, in her statement, described the close ties she shared with her sister-in-law and the rest of the family, and discussed the May 13, 2005 incident, saying: "This is still causing fear and alarm because we do not know what could happen in the future. It affected us very much. […] We are still living in fear. […] It was very hard for everyone, for me, my mother-in-law, my husband. It hit us very hard." *Cf.* Statement before a public attestor by Astrid del Pilar Sánchez Martínez, November 3, 2020 (evidence file, volume XI, annex 38 to the CAJAR and CEJIL pleadings and motions brief, folio 26650 to 26654).

the right to psychological integrity for the families of the members of the Collective, whose names are given in the appropriate section of the general conclusions to this chapter (*infra* para. 987). Colombia is therefore responsible for violating Article 5(1) of the American Convention, read in conjunction with Article 1(1) thereof, in injury of those family members.

912. Finally, with respect to the alleged violation of the right to personal integrity in injury of other family members of the CAJAR employees, the Court finds that it is unable to infer State responsibility involving persons who were not recognized as alleged victims in the instant case (*supra* para. 96).

B. The right to freedom of movement and residence, the right to protection of the family, and the rights of the child

B.1. Arguments of the parties and observations of the Commission

913. The ***Commission*** argued that Soraya Gutiérrez, Rafael Barrios, Luis Pérez, and Miguel Puerto, together with their families, "had to leave the country because of the acts of violence, threats, and harassment." It said that the failure to investigate and the lack of effective measures of protection "has a sufficiently robust cause-and-effect relationship with their emigration to impute responsibility to the State for the fact that these people were forced to leave Colombia."

914. It noted that all this had caused them "great insecurity and a well-founded fear" that their lives and safety would be in danger if they remained in the country, "and this pushed them into exile." The Commission therefore concluded that the State was responsible for violating the right of movement and residence, enshrined in Article 22(1) of the American Convention, read in conjunction with Article 1(1) thereof, in injury of these four persons. It added, "some of their family members were children at the time of the facts," and it therefore concluded that the State had also "violated its duty of special protection of children" enshrined in Article 19 of the American Convention, read in conjunction with Article 1(1) thereof, in injury of "Camilo Pérez, Karina Pérez, and Paula Romero."

915. ***CAJAR and CEJIL*** said that, as a consequence of the attacks, harassment, stalking, threats, and intelligence operations "systematically" conducted against the alleged victims, they had been forced into internal and external displacement and needed 'to modify their routines and family life," and this had a differential impact on their young children, producing "severe, profound suffering and psychological consequences."

916. They noted that exile for some families had meant separation, including for the minors, and this had seriously injured their affective and psychological needs. They added that the State had not conducted the relevant investigations to elucidate the facts that had forced the alleged victims into exile; instead, its agents "participated directly in designing and carrying out the intelligence operations, actions of sabotage, and intimidation that culminated in restricting the right to movement."

917. The "family members" of CAJAR employees, they noted, "experienced profound suffering because of the violations of the rights of their loved ones, and also experienced feelings of helplessness and uncertainty because they themselves were direct victims of the threats, harassment, tailing, and intelligence actions." They asked that the State be held responsible for violating Articles 11, 17(1), 19 and 5(1) of the American Convention, read in conjunction with Article 1(1) thereof, in injury of of "the members" of CAJAR and their families, and for violating Article 22 in injury of the members of the Collective and their families who "were forced to take measures by […] limiting their own movements inside and outside of

Colombia."

918. ***Ms. Arias*** argued that the incidents affecting the victims led Diana Milena Murcia Riaño and Maret Cecilia García Alfonso to go into exile to protect their lives and those of their families, and during those times they experienced different kinds of harm and were deprived of the ability to enjoy family life. She added that the actions committed against Pedro Julio Mahecha Ávila had severely affected the daily dynamics of his family, culminating in "forced displacement from the family circle." She asked for the State to be found internationally liable for violating Articles 17, 19 and 22 of the American Convention, in injury of the alleged victims.

919. The ***State*** argued that, with respect to the claims of violation of Article 22 of the American Convention in injury of Soraya Gutiérrez, Rafael Barrios, Luis Pérez, and Miguel Puerto, "both the Commission and the representatives […] have committed serious errors, as their narration does not indicate who made the threats that they claim led" these people "into exile." Accordingly, "their direct and indirect imputation of responsibility to the State […] is utterly groundless." Nor was any mention made "of actions taken to advise the authorities of [these] facts."

920. It pointed out that the Commission's imputation of responsibility for violating Articles 19 and 22 of the American Convention was a consequence of "the acts of violence, threats, and harassment," and therefore "it is not a question […] of individualized responsibility for particular incidents, but rather an overall responsibility that […] fits the standards and theories of responsibility for the primary conduct." The Commission therefore "claims that the facts under consideration, consisting of threats and harassment whose perpetrators were never identified, be examined through a general and contextual lens, rather than individually and specifically," such that the analysis would "include those facts for which insufficient information is available to determine State responsibility […] with the intent of having Colombia found responsible for all of them."

921. It said that the arguments on alleged violation of Article 17 of the American Convention were based on facts not included in the Report on the Merits. It pointed to the arguments on alleged psychological damage to all the family members of CAJAR staff for having been victims of the alleged threats, harassment, and spying, and emphasized a "failure to identify specific facts that may have led to the […] abridgment of the right" to personal integrity.

B.2. Considerations of the Court

922. The Commission and the representatives argued that five members of the Collective—Soraya Gutiérrez Argüello, Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, Lincoln Miguel Puerto Barrera, and Maret Cecilia García Alfonso—were forced to move house or to leave Colombia because of the acts of violence, threats, or harassment they experienced. This allegedly occurred because they had no effective measures of protection and no investigation had been conducted to identify the perpetrators. It added that this situation had affected their families, including children, for whom the State had failed in its special duty to protect.

B.2.1. General considerations on the right to freedom of movement and residence

923. Inter-American case law has held that the the right to freedom of movement is an indispensable condition for the free development of a person.[1027] The Court has agreed with

[1027] *Cf. Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs.* Judgment of August 31, 2004. Series

the Human Rights Committee that the right to freedom of movement and residence consists of several components, including (i) the right of everyone lawfully within the territory of a State to move freely and to choose his or her place of residence within that territory, and (ii) a person's right to enter his or her own country and to remain there. The enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in a given place.[1028]

924. The Court has also held that the right to freedom of movement and residence may be violated either formally or through de facto restrictions when the State has not created the conditions or provided the means for exercising it.[1029] De facto breaches of this kind may occur if a person is the victim of threats or harassment and the State does not provide the guarantees necessary for moving about and residing freely in the territory in question, even when the threats and harassment come from non-State actors.[1030]

925. On the basis of this right, persons are protected from being forcibly displaced within a State and from being forced to leave the territory where they are legally present.[1031] The Court has held that the failure to conduct an effective investigation of acts of violence may foster or perpetuate exile or forced displacement.[1032]

926. The Court will now examine the arguments given, with the proviso that Ms. Arias' allegations concerning similar situations involving Diana Milena Murcia Riaño and Pedro Julio Mahecha Ávila do not pertain to the corpus of facts of the case, and that the family members of Maret Cecilia García Alfonso were not included as alleged victims in this international process (*supra* para. 96).

B.2.2. Analysis of the particular case: internal displacement of Soraya Gutiérrez Argüello and her daughter Paula Camila Romero Gutiérrez

927. It was established above that Soraya Gutiérrez Argüello, after the incident on May 13, 2005, was forced to leave her family home, together with her daughter, because of the fear it engendered and her need to find safety, and the DAS intelligence report of May 23 gives grounds for this claim in reporting the surveillance and monitoring activities against her (*supra* para. 328). As she herself stated in her interview with the psycho-social expert witnesses, after this incident she left Colombia in search of safety, taking her daughter and her daughter's father with her, and on her return, she decided not to move back into the same house.[1033]

C No. 111, para. 115, and *Case of Baptiste et al. v. Haiti, supra,* para. 61.

1028 *Cf. Case of Ricardo Canese v. Paraguay, supra*, para. 115, and *Case of Baptiste et al. v. Haiti, supra,* para. 61. See: Human Rights Committee. General Comment No. 27,: Freedom of movement (Article 12), U.N. Doc. CCPR/C/21/Rev.1/Add.9, 1 November, 1999, paras. 1, 4, 5 and 19.

1029 *Cf. Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 15, 2005. Series C No. 124, paras. 119 and 120, and *Case of Baptiste et al. v. Haiti, supra,* para. 62.

1030 *Cf. Case of Valle Jaramillo et al. v. Colombia, supra*, para. 139; *Case of Human Rights Defender et al. v. Guatemala, supra*, para. 166, and *Case of Baptiste et al. v. Haiti, supra,* para. 62.

1031 *Cf. Case of the Mapiripán Massacre v. Colombia, supra*, para. 188, and *Case of Baptiste et al. v. Haiti, supra,* para. 61.

1032 *Cf. Case of the Moiwana Community v. Suriname, supra*, paras. 119 and 120, and *Case of Baptiste et al. v. Haiti, supra,* para. 62.

1033 *Cf.* Joint written expert opinion from members of the Psychosocial Care Center (CAPS), April 29, 2022 (evidence file, volume XXXIII, affidavits, folio 45304 to 45306). Álvaro Enrique Romero Jaimes, in a statement to a public attestor, said that, because of the incident on May 13, 2005, Ms. Gutiérrez Argüello "removed her things from the house," "which stood vacant for several months," "until it could be sold." *Cf.* Statement before a public attestor by Álvaro Enrique Romero Jaimes, November 5, 2020 (evidence file, volume XI, annex 41 to the CAJAR and CEJIL pleadings and motions brief, folio 26676).

928. Given the magnitude of the impact the incident had on the alleged victim and her concern for protecting herself and her daughter, she decided, under force of circumstances, to move away when it became clear that the perpetrators knew where she lived. The measures of protection that Ms. Gutiérrez Argüello was already receiving had not stopped the threat against her, which was perpetrated with the participation of DAS agents (*supra* para. 855); this compounded the mistrust she already felt and the sense that the existing protection program was being implemented against her, so that the ineffectiveness of the measures contributed to her decision to move. Worse yet, the incident has not been investigated, and even today, it is still in the stage of preliminary inquiries by the prosecution.

929. Thus, the threat was made with the direct participation of agents of the State, and effective protection measures were not in place; the Court therefore finds that the State can be held responsible for violation the right to freedom of movement and residence of the alleged victim and her daughter, Paula Camila Romero Gutiérrez.

B.2.3. International displacement of other members of CAJAR

930. The representatives argued that the same right had been violated in injury of other members of the Collective—Rafael Barrios Mendivil, Luis Guillermo Guerrero Pérez, and Lincoln Miguel Puerto Barrera—and the Court notes that the State has not challenged the allegation that they left the country on several occasions. Colombia did not, however, agree that these alleged victims had been forced into exile because of the threats and the dangers they were facing. The State also objected that these professionals had not lodged complaints of incidents that may have pushed them into displacement abroad.

931. The Court would recall its finding in an earlier section of this judgment that the lawyers working for CAJAR had been targeted by threats and harassment because of their participation in judicial investigations and trials involving human rights violations, some them ascribed to law enforcement officers. The alleged motive for these threats was to interfere with the justice process or to retaliate against the alleged victims for their work (*supra* para. 845). This is the context of the allegations concerning the situation of these professionals and the lawyer Maret Cecilia García Alfonso.

932. As a first point, the Court notes that the argument underlying the allegation of violation of the right involves a claimed "sufficiently robust cause-and-effect relationship" between these persons' departure from Colombia and the threats against them. The Court finds that an analysis is required to determine, for each individual case and its particular circumstances, whether the decision of the alleged victims to leave the country was conditioned by the threats and harassment now being alleged, and that these incidents had created a perceived risk; it will therefore be necessary to evaluate what the authorities should have done under the circumstances, and thus determine whether its actions or omissions contributed to the displacement of the persons affected (*supra* para. 924).

(a) Displacement of Rafael Barrios Mendivil

933. Mr. Barrios Mendivil argues that he was forced to leave Colombia on two different occasions. The first was in 1993, when he had received telephone threats and was being followed by "Army" vehicles. The lawyer also claims that he was involved at the time in litigating the "Caloto" and "Los Uvos" massacres, and that in the latter case, "one of the soldiers who took part" in the incidents and had testified against his fellows "retracted his testimony […] and accused [Mr. Barrios Mendivil] […] of having offered him money and international travel if he spoke out against his commanding officers." The alleged victim was absent from the country for six months on that occasion. It was also claimed that he had

received threats in 1999, after the Constitutional Court had admitted a judicial action against certain provisions of the Armed Forces regulations, which had caused "great discontent" in the military. It was alleged that Mr. Barrios Mendivil's son, Juan Pablo Barrios Romero, had also been tailed and had been the victim of harassment in their home, so that the human rights defender was obliged to leave the country on August 5, 1999, and take his son with him, not returning until 2005.

934. It is clear that the 1993 incident fits the pattern of threats against legal professionals taking part in trials for human rights violations (*supra* para. 931), in this case, imputed to law enforcement officers. The information included in this international proceeding shows that in September, 1993, Mr. Barrios Mendivil lodged a complaint with the Prosecutor General, stating that he was receiving "death threats," and would be forced to "leave the country" (filing 421312, initially tagged as 22342).[1034] The investigation was set aside in 1999 when the statute of limitations ran out on the criminal action (*supra* para. 415).

935. Thus, the situation was in fact reported promptly to State authorities, but they did not take action to provide measures of protection for the alleged victim or conduct an effective investigation of the facts; the Court therefore finds that he was facing clear danger,[1035] especially in view of the additional fact that the other lawyer who had been working with him on the "Caloto massacre" case had been murdered in 1992 (*supra* para. 197). The present danger and the failure of the State to respond forced Mr. Barrios Mendivil out of the country to protect his life and personal safety. The State was therefore responsible for failing to provide the necessary guarantees for the alleged victim to continue performing his work and living without fear in Colombia. The submissions also claimed that Mr. Barrios Mendivil and his son had been displaced in 1999, but the Court finds that it has insufficient information to adjudge the matter.

(b) Displacement of Luis Guillermo Pérez Casas and Maret Cecilia García Alfonso

936. The cases of Luis Guillermo Pérez Casas and Maret Cecilia García Alfonso will be examined together because the facts of their cases share similar time frames, certain incidents, and processes by the Prosecutor General.

937. The representatives said that in 1994, lawyer Pérez Casas was subjected to threats and surveillance, as was his wife, "allegedly" by State security corps. They therefore moved to Ibagué, in the department of Tolima, with their young son. The harassment continued in their new location, so the family was forced to leave Colombia from 1995 to 1999. They returned in 2001, and one day while Mr. Pérez Casas was on a visit to the headquarters of military battalion 13 in Bogotá to interview an officer as part of the case of the Mapiripán massacre, the tires of his vehicle were punctured. On a second visit, the director of the facility ordered him to leave due to complaints by several law enforcement personnel who were being held there in custody. It was argued that at the time, it was known that an order had been given by a paramilitary group "to execute certain prosecutors […] and members of […] human rights organizations," including the lawyers Mr. Pérez Casas and Alirio Uribe Muñoz. The alleged victim therefore found it necessary "to go into exile for the second time."

1034 *Cf.* Filing 421312 (evidence file, volume XIX, annex 67 to the answering brief, folio 35069).

1035 The risk situation was highlighted by the Special Rapporteur on the independence of judges and lawyers, who sent an urgent appeal to the Government of Colombia on November 17, 1997, saying: "Rafael Barrios Mendivil, legal representative of the families and survivors of the Caloto massacre, had been reportedly subjected to constant tailing, harassment and threats." *Cf.* Commission on Human Rights, Report of the Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, U.N. Doc. E/CN.4/1998/39, February 12, 1998, para. 51.

938. In the case of the lawyer Maret Cecilia García Alfonso, it was alleged that in 2001, in a case being litigated by the Collective, a witness had said in a statement that he had heard members "of a paramilitary group" talking about their plans to kill her, Mr. Uribe Muñoz, and Mr. Pérez Casas. In response, CAJAR arranged for the family of Ms. García Alfonso to leave the country, which they did in August of that same year.

939. Furthermore, the information brought to this proceeding indicates that, under filing 912, reports had been lodged about threats and harassment against Mr. Pérez Casas in 2001.[1036] The alleged victim made a statement to the prosecution on June 26, 2001, saying the following, *inter alia*: (a) he had served as a civil party in several criminal trials, including the case of the Mapiripán massacre, which had led to the conviction of high-level officers by the military courts, and other proceedings were also being conducted against several people including a paramilitary commander; (b) he had noticed that he was being followed in the vicinity of his apartment and on his way to the office where he worked; (c) he had gone to the headquarters of military battalion 13 to visit an officer being held in custody, who had previously reported his commanding officer as having been responsible for the massacre, and at that time, military personnel punctured the tires of his vehicle, which he described as "an act of aggression" and "a threat"; (d) on his next visit to the battalion, the director of the facility treated him "very aggressively" and forced him to leave; (e) he had received information that his visits with the officer being held in the facility "had created great discontent among top military brass" and that "orders had been given to tail him," and (f) he made reference to information obtained concerning a plan by "an alleged paramilitary group" to launch attacks on his life and on two other lawyers, Ms. García Alfonso and Alirio Uribe Muñoz.[1037]

940. Moreover, the military officer who was in custody at the headquarters of Battalion 13 made reference in a statement during the investigation to the incident that took place there on June 1, 2001, when the air was let out of Mr. Pérez Casas' tires.[1038]

941. This shows that the facts that reportedly affected Mr. Pérez Casas in 2001 were known to the prosecution, which in 2006 ordered the case file to be dismissed, apparently because the statute of limitations had run out on the criminal action, and this decision was upheld the following year (filing 912, *supra* para. 402); as a result, the incidents were never explained, and no guilty parties were identified.

942. Certain of the incidents that had allegedly affected Ms. García Alfonso also involved Mr. Pérez Casas, and the case files show that the Prosecutor General. learned of these matters during the course of two investigations: (a) filing No. 912 (*supra* para. 402), and (b) filing No. 562699 (*supra* para. 410). Ms. García Alfonso made a statement to this effect on May 21, 2001, telling the prosecution that she had received information that members of an alleged paramilitary group "had orders to kill her" and also her colleagues Mr. Pérez Casas and Mr. Uribe Muñoz. This information had been received from a person who had served as a witness in a case litigated by the Collective, with the participation of these three lawyers, and had ended in a guilty verdict for a DAS director (head of the operations unit) for his participation in the death of a union leader. Ms. García Alfonso said that the witness had received visits from DAS agents, who had "relentlessly insisted" that he declare in another case for the attack

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1036 CAJAR and CEJIL also reported that the prosecution was aware of the incident at the headquarters of military battalion 13, which was reported under filing 15558753-01, and this was corroborated by the State (*supra* para. 453).

1037 *Cf.* Statement by Luis Guillermo Pérez Casas before the Office of the Prosecutor General, June 26, 2001 (evidence file, volume I, annex to the Report on the Merits, folio 2722 to 2729).

1038 *Cf.* Statement by HOC to the Prosecutor General, October 18, 2001 (evidence file, volume VI, Commission case file, folios 19514 to 19519).

on another union leader. The alleged victim added that "threatening phone calls" had been received at the offices of the Collective, and this had been reported to the office of the Vice President of the Republic and the Ministry of Internal Affairs.[1039]

943. The person who had spoken out as an informant concerning the apparent plan to kill the three members of CAJAR identified above made statements to the prosecution on four different occasions. According to the statements, this witness had learned about the plan when three individuals had come into to the shop where he worked, with a photograph of Mr. Uribe Muñoz, and he heard them commenting to each other that they had orders "to kill" the three lawyers, and that they had information on their daily routines and locations. The witness added that DAS agents had driven him to the offices of the prosecution to make a statement in the case of a union leader who had been attacked.[1040]

944. During the course of the inquiries, the lawyer Reinaldo Villalba Vargas also gave a statement; he was then president of CAJAR and made reference to the situation of Mr. Pérez Casas and Ms. García Alfonso.[1041] Additionally, the prosecution's case files show statements by Alirio Uribe Muñoz, saying that Ms. García Alfonso and Mr. Pérez Casas were away from Colombia during the year 2001.[1042]

945. The prosecution eventually decided to dismiss the two cases because the statute of limitations on the criminal case had run out (filings 912 and 562699, although in the latter case, an earlier decision had held that the conduct was noncriminal because the prosecutor for the case did not perceive a threat that was "sufficiently forceful or serious to disturb their peace of mind and make them […] believe that their lives were in danger," *supra* paras. 402 and 410). The actions by the authorities therefore made it impossible to determine what had happened.

946. At the time of the facts, according to information submitted by the State, no measures of protection were in place for Ms. García Alfonso or Mr. Pérez Casas.[1043] All this must be considered together with the joint "urgent appeal" issued to the Government of Colombia by the United Nations Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Representative of the Secretary General on the situation of human rights defenders specifically in response to the facts as described concerning these lawyers.[1044] The Court can infer that the alleged victims returned to Colombia when they believed that conditions were favorable.

947. This shows, first, the situation of risk facing Mr. Pérez Casas and Ms. García Alfonso for their participation in trials against agents of State security forces, including DAS personnel,

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[1039] *Cf.* Statement by Maret Cecilia García Alfonso before the Office of the Prosecutor General, May 21, 2001 (evidence file, volume II, annex to the Report on the Merits, folios 2960 to 5963).

[1040] *Cf.* Statements by HCG to the Prosecutor General, May 10 and 25 and July 30, 2001, and July 15, 2002 (evidence file, volumes I, II and VI, annexes to the Report on the Merits and the Commission case file, folios 2689, 6694,19144 and 19192).

[1041] *Cf.* Statement by Reinaldo Villalba Vargas to the Prosecutor General, June 26, 2001 (evidence file, volume VI, Commission case file, folios 19286 to 19294).

[1042] *Cf.* May 15, 2002 report by the technical investigations unit, and Order of July 16, 2002 by the Prosecutor General, filing 562699 (evidence file, volume XIX, annex 52 to the answering brief, folios 34381 and 34384).

[1043] *Cf.* The State's answering brief, May 17, 2022, submitted in the process before this Court (file on the merits, volume II, folios 1235 and 1236).

[1044] The joint "urgent appeal," July 12, 2001, included "Alirio Uribe Muñoz, Luis Guillermo Pérez Casas, and Maret Cecilia García, […] who were reportedly subjected to death threats from a paramilitary group." It also stated that lawyer Pérez Casas "had been the subject of continuous harassment, and that he had frequently been followed since he started working on the Mapiripán massacre in 1997." *Cf.* Commission on Human Rights, Report of the Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, U.N. Doc. E/CN.4/2002/72, February 11, 2002, annex, para. 29.

and reveals the alleged victims' fear for their lives and personal safety because of the perceived threats implicit in the incidents. Second, the investigations into the facts were unquestionably ineffective, and measures of protection were not granted, which shows the absence of government actions to guarantee the exercise of the right to freedom of movement and residence inside Colombia. The Court therefore finds that inaction by the authorities produced the displacement of the two alleged victims, who were forced to leave Colombia because of the dangers they faced, and this is a violation of Article 22(1) of the American Convention, read in conjunction with Article 1(1) thereof.

948. The Court also notes that it lacks sufficient information to issue a finding on State responsibility for the facts described by CAJAR and CEJIL regarding the displacement of Mr. Pérez Casas from 1995 to 1999 and Lincoln Miguel Puerto Barrera in 2000.

B.2.4. Right to protection of the family, and the rights of the child

949. One of the rights that can be breached in situations of forced displacement involves protection of the family, covered in Article 17 of the American Convention, as are the rights of the child, under Article 19. Article 17 recognizes the family as the natural and fundamental group unit of society, entitled to protection by society and the State. The Court has held that the State is under obligation to favor the development and strengthening of the family unit.[1045] The Court also reiterates the scope of Article 19, pursuant to which the State is obliged to promote special measures of protection in keeping with the principle of the best interests of the child,[1046] and authorities must stand as guarantors with increased care and responsibility,[1047] based on children's special condition of vulnerability.

950. The Court has found in such cases that forced displacement, because it entails the separation or fragmentation of the family unit, may result in the State's responsibility for the violation of Article 17 of the Convention and also, if applicable, of its Article 19 in relation to the children affected by this situation.[1048]

951. This judgment has already found violation of the right to freedom of movement and residence in injury of several of the alleged victims, including Rafael Barrios Mendivil and Luis Guillermo Pérez Casas, adding that their families were also injured. The Court finds that when these two lawyers were forced to leave Colombia, one in 1993 and the other in 2001, because of the situation of risk they were facing and the failure of the authorities to take action to guarantee their safety, the right to protection of the family was also violated as a result of the separation of loved ones and the resulting disturbance of relationships and bonds among the members of the family when they were forced to leave their own county to protect their lives and safety.[1049]

952. The Court has embraced a broad or extended concept of the family for this purpose, which because of their characteristics and existing relationships, includes spouses, children,

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[1045] *Cf.* Advisory opinion OC-17/02, *supra*, para. 66, and *Case of Tabares Toro et al. v. Colombia, supra,* para. 113.

[1046] *Cf.* Advisory opinion OC-17/02, *supra*, para. 226, and *Case of María et al. v. Argentina, supra,* para. 85.

[1047] *Cf. Case of the "Juvenile Reeducation Institute v. Paraguay, supra*, para. 160, and *Case of María et al. v. Argentina, supra,* para. 85.

[1048] *Cf. Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 25, 2010. Series C No. 212, para. 163, and *Case of the Village of Los Josefinos Massacre v. Guatemala, supra*, para. 84.

[1049] The disturbance of the family environment is evident in statements given by some of the alleged victims. *Cf*. Statement before a public attestor by Diana Barrios Sabogal, October 26, 2020, (evidence file, volume XI, annex 20 to the CAJAR and CEJIL pleadings and motions brief, folios 26534 to 26536), and statement before a public attestor by Katia Karina Niño, April 26, 2022 (evidence file, volume XXXIII, affidavits, folios 44774 to 44789).

parents, siblings, and other close family members. The Court therefore declares violation of Article 17(1) of the American Convention, read in conjunction with Article 1(1) thereof, in injury of the two alleged victims and the members of their families who were affected by forced displacement, as identified in the pertinent paragraph and general conclusion of this chapter (*infra* para. 989).

953. It would add, in the case of Soraya Gutiérrez Argüello, that the context of the facts does not merit declaration of violation of Article 17 of the Convention because her displacement was inside Colombia, and in her desire for protection, she took shelter in the homes of her relatives.[1050]

954. The Court also notes that the family members affected by the displacement of the alleged victims included children, the sons and daughters of the members of the Collective, whose rights were also violated as guaranteed under Article 19 of the American Convention, read in conjunction with Article 1(1) thereof. The State is therefore responsible for violating the rights of the child in injury of those who were children or teenagers at the time their fathers and mother were displaced (1993, 2001 and 2005, depending on the case), to wit: (a) son and daughters of Rafael Barrios Mendivil:[1051] Juan Pablo Barrios Romero,[1052] Marta Carolina Barrios Romero,[1053] Diana María Barrios Sabogal,[1054] and Laura Camila Barrios Sabogal;[1055] (b) son and daughter of Luis Guillermo Pérez Casas: Camilo Ernesto Pérez Niño and Katia Karina de la Libertad Pérez Niño (*supra* footnotes 209 and 210), and (c) daughter of Soraya Gutiérrez Argüello: Paula Camila Romero Gutiérrez (*supra* footnote 239).

C. Freedom of thought and expression and freedom of association

C.1. Arguments of the parties and observations of the Commission

955. The ***Commission*** said that the full array of acts of violence, threats, and harassment against the members of CAJAR constituted violation of their right to freedom of expression and right to freedom of association, upheld in Articles 13(1) and 16(1) of the American Convention, read in conjunction with Article 1(1) thereof.

956. ***CAJAR and CEJIL*** alleged that freedom of thought and expression had been violated because the members of CAJAR were hindered from "participation in the public square, which [had] been part of their work to report human rights violations and provide legal counsel to the victims of such violations," due to the constant threats "for this reason," which were never duly investigated. They said that the alleged victims had found that their right to freedom of association "was curtailed" because they did not have "adequate, appropriate guarantees as needed to do their work of defending human rights" when all the actions taken against them had hindered the "ability of the members of the general council of [the Collective] to perform

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[1050] Soraya Gutiérrez Argüello said in her interview with the psycho-social expert witnesses that when she returned to Colombia after the incident on May 13, 2005, she sought protection in her sister's home. *Cf*. Joint written expert opinion from members of the Psycho-social Care Center (CAPS), April 29, 2022 (evidence file, volume XXXIII, affidavits, folios 45304 to 45305).

[1051] Rafael David Barrios Sabogal, born on August 2, 1999, had not yet been born at the time of the facts (1993). *Cf*. Birth certificate (evidence file, volume XIII, annex 85 to the CAJAR and CEJIL pleadings and motions brief, folio 28770).

[1052] Juan Pablo Barrios Romero was born on July 18, 1979. *Cf*. Birth certificate (evidence file, volume XIII, annex 85 to the CAJAR and CEJIL pleadings and motions brief, folio 28765).

[1053] Marta Carolina Barrios Romero was born on December 29, 1980. *Cf*. Baptismal certificate (evidence file, volume XIII, annex 85 to the CAJAR and CEJIL pleadings and motions brief, folio 28767).

[1054] Diana María Barrios Sabogal was born on November 4, 1982. *Cf*. Birth certificate (evidence file, volume XIII, annex 85 to the CAJAR and CEJIL pleadings and motions brief, folio 28769).

[1055] Laura Camila Barrios Sabogal was born on June 20, 1991. *Cf*. Birth certificate (evidence file, volume XIII, annex 85 to the CAJAR and CEJIL pleadings and motions brief, folio 28771).

their work freely and fearlessly."

957. ***Ms. Arias*** said that the "burden of illegal persecution" hampered the work of CAJAR and directly violated the members' right to associate freely. She pointed out that "the name attached to an operation targeting a collective, in this case 'Operation *Transmilenio*', reveals that the focal point of the criminal strategy against the Collective was to destroy the organization overall." She argued that "the acts of harassment […] were intended to rein in […] the freedom of expression" of the alleged victims and prevent them from reporting "administrative policies and practices that violated human rights." She added that "the restriction on the freedom of expression of members of CAJAR was meant to cover up the violations […] that they were reporting." She asked for the State to be found liable of violating Articles 13, 15 and 16 of the American Convention in injury of the alleged victims named above.

958. The ***State*** said that "the arguments of fact and of law are not correct" regarding the alleged violation of the right to freedom of expression and the right to freedom of association and asked the Court to decide against declaring international responsibility on this count.

C.2. Considerations of the Court

959. The Commission and the representatives argued that the full set of government actions undermined "the regular activities" of the Collective, and this produced "an intimidating effect" on the alleged victims, constraining their freedom of thought and expression and their freedom of association.

960. With respect to freedom of association, the Court has held that Article 16(1) of the American Convention enshrines the right and freedom to constitute a group freely for the pursuit of a lawful goal, without pressure or interference that may alter or denature its objective.[1056] Freedom of association includes the right of individuals to set up and participate freely in non-governmental organizations, associations or groups involved in human rights monitoring, reporting and promotion.[1057] It also places a positive obligation on the States to create the legal and factual conditions for the exercise of this right,[1058] which when applicable, would include the duties to prevent strikes against freedom of association, protect those who exercise this freedom, and investigate any violations of it.[1059] The Court has also found that freedom of association can only be exercised in conditions in which human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed.[1060]

961. The Court recalls that this judgment has already found a pattern of attacks and defamation against human rights defenders in Colombia between 2003 and 2009, with a particular impact on the Collective and its members (*supra* para. 488 and 491). On a closely related front, the case has confirmed that arbitrary actions were taken by the DAS against the alleged victims under the so-called "Operation *Transmilenio*," intended to neutralize, weaken and discredit its intended "targets" because of their work to protect human rights and

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1056 *Cf. Case of Baena Ricardo et al. v. Panama, supra*, para. 156, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra,* para. 316.

1057 *Cf. Case of Nogueira de Carvalho et al. v. Brazil, supra*, para. 74, and *Case of Yarce et al. v. Colombia, supra*, para. 271.

1058 *Cf. Case of Kawas Fernández v. Honduras, supra*, para. 146, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra,* para. 316.

1059 *Cf. Case of Huilca Tecse v. Peru, supra*, para. 76, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra,* para. 316.

1060 *Cf. Case of Huilca Tecse v. Peru, supra*, para. 75, and *Case of Escaleras Mejía et al. v. Honduras, supra*, para. 63.

their critical stance toward the policies of the governmental authorities at the time (*supra* paras. 489 and 490).

962. The Court has also found that the State violated the right to life and the right to personal integrity in the array of threats, intimidation, and harassment against the alleged victims (*supra* paras. 862 and 879). Combined with this is the situation of impunity surrounding the efforts to bring about investigation of the different acts of violence, threats, intimidation, and harassment that affected the members of the Collective as human rights defenders, which made it impossible to identify, ameliorate, and, if relevant, eliminate the risk factors that they have faced for years (*supra* para. 777 to 877).

963. The Court finds that the climate of actions committed against CAJAR, as described in the preceding two paragraphs, undercut the normal activities of the organization, as a non-governmental entity devoted to defending human rights (*supra* paras. 167 and 168). This is most evident, for example, in the amount of time and effort invested in coping with the situation of insecurity in which its members were living, as expressed in statements by some of the alleged victims, especially the need to think constantly about safety measures they must adopt, given the real danger they faced as part of the Collective.[1061]

964. The full set of proven facts and their consequences paint a picture of violation of the freedom of association as a right that includes the power to create and take part in an organization such as CAJAR, free of pressure or interference of any kind, when it is legally constituted and focused on promoting human rights, reporting violations, and coming alongside victims to provide them with counsel. The mere mention of the unlawful aims defined for "Operation *Transmilenio*" inside the DAS reveals the true intent of State authorities, which took shape in multiple specific actions to counteract, neutralize, and weaken the work of the Collective as an organization, that is, to limit the right of its individual members to associate freely. This is compounded by the other proven facts, including stigmatizing them and leveling threats and intimidation against them.

965. Without denying the more general context of attacking and discrediting human rights defenders, the Court also finds that, in keeping with these stated purposes, the alleged victims' freedom of expression was infringed in their work to promote, defend, and file grievances in the field of human rights. The many actions committed against the members of the Collective, by which State authorities pursued defined purposes using illegal actions, were intended to intimidate them in their work as human rights defenders, limiting their participation in public debate and restricting their activities to report abuses as part of their defense and protection of human rights. This intimidating effect was clearly articulated by one of the alleged victims when she was interviewed by the psycho-social expert witnesses, as she emphasized that the many actions taken against them triggered a response of "self-censorship" among the members of CAJAR.[1062]

966. The Court, based on all this, finds violation of Articles 13(1) and 16(1) of the American Convention, read in conjunction with Article 1(1) thereof, in injury of those sitting on the

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[1061] *Cf.* Statements before a public attestor by Adriana Lizeth López Rojas, Camilo Andrés Galindo Marín, Carlos Lozano Acosta, Chennyer Jairt Piñeros Fuquen, Adriana Patricia Fuentes López, Mónica Lorena Zuluaga Patiño, Lyda Natalia Hernández García, Efraín Cruz Gutiérrez, Yessika Johanna Hoyos Morales, Javier Alejandro Acevedo Guerrero, and Jomary Liz Ortegón Osorio (evidence file, volume XI, annexes 29, 30, 31, 32, 33, 34, 35, 36, 37 and 43 to the CAJAR and CEJIL pleadings and motions brief, folios 26593, 26599, 26605, 26616, 26622, 26628, 26632, 26638, 26643 and 26687, and volume XXIII, affidavits, folio 44646).

[1062] One of the members of CAJAR said in the interview: "I always wondered whether we were doing a lot of self-censoring […]. That is […] there was a real assault on our freedom to say whatever we thought and or to report everything we could have reported." *Cf.* Joint written expert opinion from members of the Psycho-social Care Center (CAPS), April 29, 2022 (evidence file, volume XXXIII, affidavits, folio 45659).

general council of members of the Collective; this is consistent with the explicit request of the representatives and with the nature of the infringement of freedom of expression and freedom of association in the instant case, because it is the members of the general council who, in the exercise of these rights, guarantee that the organization can exist and operate.

967. Finally, the Court finds that it cannot examine alleged violation of the right of assembly because it was not specifically plead concerning the facts that have been established in this judgment.

D. The right to defend human rights as an autonomous right

D.1. Observations of the parties

968. ***CAJAR and CEJIL*** argued that while the Court has recognized "the right to defend human rights," it has not found the need to "take the extra step of declaring autonomous violation" of this right. They pointed out that in the instant case, "placing the full array of violations under the umbrella of the right to defend human rights reveals the ultimate meaning of the violations committed" against the members of the Collective; while grounds can be given for each one of these violations "separately," in this specific situation, "recognition of the violation against the composite right to defend rights and against the existence of an enabling environment for defending rights […] in democracy can provide a better understanding of the facts, the law, and the appropriate reparations." The nature of the serious violations of the rights of CAJAR members "is the result of their work to defend human rights […], and therefore, the facts should be examined in light of this right."

969. They said that the State had the obligation to provide conditions in which the alleged victims could conduct their activities free from violence and danger, and added that "effective investigation and punishment for everyone responsible for the acts committed [was] essential." They believed that, just as the Court had done in the past to find violation of rights not expressly articulated in the American Convention, "it should not escape notice […] that the instant case exists in a context […] characterized by smear tactics, attacks, and threats against human rights defenders" and "in a context in which persecution of these people went unpunished." They asked that the State be found responsible "for violating the right to defend rights," protected under Articles 4(1), 5(1), 8(1), 11(1), 11(2), 11(3), 13(1), 13(2), 16(1), 22(1) and 25(1) of the Convention, read in conjunction with Article 1(1) thereof, in injury of the members of the Collective.

970. The ***State*** argued that "the right to defend human rights does not exist autonomously in the framework of the inter-American system, […] but rather in relation to the general obligations originated by other rights in the American Convention," on the basis of which the Court "has recognized its protection under Articles 4, 5, 13(1), 15, 16(1) and 23(1) of the Convention." Therefore, "the analysis of the State's responsibility [should] be based on violation of the right to personal integrity, the right to freedom of expression, and the right to freedom of association."

D.2. Considerations of the Court

971. CAJAR and CEJIL asked for a finding that the right to defend human rights had been violated. The State challenged the concept that this was an autonomous right.

972. As was noted in chapter VIII.1 of this judgment (*supra* paras. 471 to 478), the Court reiterates that the defense of human rights can be exercised freely only when those engaged in it are not victims of threats or any kind of physical, mental or moral violence, or other acts

of harassment,[1063] and all this justifies a special duty of protection by the State.[1064] As part of this special duty of protection, the Court again emphasizes the obligation of domestic authorities to provide the resources necessary for human rights defenders to perform their tasks, and this includes protecting them when they are subject to threats, refraining from setting up hindrances that might make their work more difficult, and conducting conscientious, effective investigations of violations against them.[1065]

973. The Court would underscore the important role played by human rights defenders in a democratic society[1066] and reiterates that respect for human rights under the rule of law depends largely on whether they have effective, appropriate guarantees to perform their activities freely.[1067] Thus, their activities of monitoring, denunciation, and education make an essential contribution to respect for human rights, because they act as guarantors against impunity, and in turn, they supplement the role of the States and the inter-American system overall.[1068]

974. The Inter-American Court in previous cases has refrained from finding autonomous violation, but nonetheless has explicitly pointed to the "right to defend human rights."[1069] Similarly, in keeping with its own case law and specifically citing the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, the Court, in *Escaleras Mejía et al. v. Honduras*, made reference to the content and scope of this right.

975. The Court said in the case that this right and the ensuing duty of the States to protect are connected with the enjoyment of several of the rights guaranteed by the American Convention, including life, personal integrity, freedom of expression, freedom of association, judicial guarantees, and judicial protection, and all these rights together provide the vehicle specifically for the right to defend human rights.[1070] The Court found similarly in *Digna Ochoa et al. v. Mexico* that it did have jurisdiction to analyze the content and scope of this set of rights clearly associated with the right to defend human rights.[1071]

976. The Court also decided in *Acosta et al. v. Nicaragua* not to declare the autonomous violation of the right because in that particular context, the case was proven only for violation of the rights to judicial guarantees and judicial protection, but not to the other rights and freedoms that underlie the right to defend human rights.[1072]

977. The Court refers back to the purpose and scope of this particular right and highlights its autonomous nature, in keeping with international standards and in view of the content of the

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[1063] *Cf. Case of Fleury et al. v. Haiti*, *supra*, para. 81, and *Case of Escaleras Mejía et al. v. Honduras*, *supra*, para. 54.

[1064] *Cf. Case of Nogueira de Carvalho et al. v. Brazil*, *supra*, para. 77, and *Case of Baraona Bray v. Chile*, *supra*, para. 79.

[1065] *Case of Nogueira de Carvalho et al. v. Brazil*, *supra*, para. 77, and *Case of Sales Pimenta v. Brazil, supra*, para. 86.

[1066] *Cf. Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 87, and *Case of Baraona Bray v. Chile*, *supra*, para. 78.

[1067] *Cf. Case of Nogueira de Carvalho et al. v. Brazil*, *supra*, para. 74, and *Case of Sales Pimenta v. Brazil*, *supra*, para. 88.

[1068] *Cf. Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 88, and *Case of Sales Pimenta v. Brazil*, *supra*, para. 88.

[1069] *Cf. Case of Valle Jaramillo et al. v. Colombia, supra*, para. 96, *Case of Acosta et al. v. Nicaragua*, *supra*, para. 207, and *Case of Bedoya Lima et al. v. Colombia, supra,* paras. 116 and 154.

[1070] *Cf. Case of Escaleras Mejía et al. v. Honduras, supra*, para. 60.

[1071] *Cf. Case of Digna Ochoa et al. v. Mexico, supra*, para. 34.

[1072] *Cf. Case of Acosta et al. v. Nicaragua, supra*, para. 208.

American Convention, recalling that an evolutive interpretation of its provisions provides a reasonable avenue[1073] to derive recognition of a right to protect human rights per se.[1074] This autonomous right can be clearly violated even beyond the particular combination of other specific rights, such as the rights to life, personal integrity, freedom of expression, freedom of assembly, freedom of association, judicial guarantees, and judicial protection (to which should be added the right to freedom of movement and residence), even when not all of these are necessarily found to have been violated in a specific case.

978. The content of the right therefore includes the real possibility of exercising a variety of activities and tasks, freely and without constraints or risks of any kind, for the purpose of promoting, monitoring, encouraging, disseminating, teaching, defending, claiming or protecting the universally recognized human rights and fundamental freedoms. Accordingly, unlawful constraints or barriers placed on the free, safe development of such activities by human rights defenders merely because they are human rights defenders and on the work they do may entail violation of the right. Moreover, as the Court has already noted (*supra* paras. 468 and 469), the status as human rights defender is defined by the very nature of the activities they conduct, regardless of whether they do so occasionally or on a full-time basis, in the public or private arena, jointly or individually, locally, nationally, or internationally, or whether their focus is on specific civil, political, economic, social, cultural, or environmental rights, or widens to cover all of them.

979. The Court's examination of inter-American case law, whose standards have already been extensively cited in this judgment (chapter VIII.1, *supra* paras. 471 to 478), emphasizes that respect for and guarantee of the right to defend human rights places certain obligations on the State, which translate into "a special duty of protection"[1075] for human rights defenders; this includes:

(i) the duty to recognize, promote, and guarantee the rights of human rights defenders, asserting the importance of their role in a democratic society and ensuring that they have the resources they need to perform their role effectively. It entails the need to refrain from imposing any hindrances on human rights defenders that would interfere with the effective conduct of their activities, stigmatize them or cast doubt on the legitimacy of their work, harass them, or by any means encourage, tolerate, or consent to stigmatizing, persecuting or harassing them;

(ii) the duty to guarantee a safe, enabling environment where human rights defenders can work freely, without threats, restrictions or risks to their lives, safety, or the work they do. This includes the reinforced obligation to prevent attacks, aggression or intimidation against them, to ameliorate existing risks, and to adopt and provide suitable, effective measures of protection from such risk situations,[1076] and

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[1073] Moreover, the Court has stated in its case law that human rights treaties are living instruments whose interpretation must consider changes over time and present-day conditions. This evolutive interpretation is consistent with the general rules of interpretation set forth in Article 29 of the American Convention and in the Vienna Convention. *Cf. The Right to Information on Consular Assistance in the Framework of the Guarantees of the due Process of Law.* Advisory Opinion OC-16/99 of October 1, 1999. Series C No. 16, para. 114, and *Case of the Former Employees of the Judiciary v. Guatemala. Preliminary Objections, Merits and Reparations.* Judgment of November 17, 2021. Series C No. 445, para. 103.

[1074] On the "content" of the right to defend human rights and the rights that "are an essential part" thereof, see the statement before a public attestor by Juan Carlos Botero Ospina, May 2, 2022 (evidence file, volume XXXIV, affidavits, folios 46077 to 46095).

[1075] *Cf. Case of Nogueira de Carvalho et al. v. Brazil*, *supra*, para. 77, and *Case of Baraona Bray v. Chile*, *supra*, para. 79.

[1076] The Court has held that the measures of protection adopted for human rights defenders should be appropriate, in the sense of addressing the specific situation of risk, and effective, meaning they should be able to produce the

(iii) the duty to investigate and, if warranted, punish attacks, threats, or intimidation against human rights defenders in the exercise of their work, and accordingly, redress any damage they may have suffered. This translates into a reinforced duty of due diligence in investigating and elucidating the facts affecting them, which in the case of women defenders, entails a doubly reinforced obligation to conduct investigations with due diligence that considers their dual situation as both women and human rights defenders.

980. In sum, this special duty of protection places on State authorities the obligation to refrain from imposing unlawful limits or restrictions on the work of human rights defenders and a reinforced obligation to develop and implement suitable public policy instruments and to adopt provisions of domestic law and relevant practices to ensure the free, safe practice of the activities of human rights defenders.

981. Having said this, the Court recalls that this judgment has already found violations of a variety of rights in injury of the members of CAJAR because of their work to promote and defend human rights. Accordingly, the Court has emphasized that the State infringed its special duty of protection for the alleged victims, given their status as human rights defenders, by intervening directly, via its agents, in such acts as threats, intimidation and harassment of them, creating a situation of danger to their lives and personal integrity, and failing to provide effective measures of protection, by contributing to the smear campaigns and carrying out arbitrary intelligence operations against them, and finally, by failing to conduct effective investigations into the multiple acts of violence, threats, aggression, and harassment targeting them (*supra* paras. 862 and 879). In any event, the various actions and omissions ascribed to State authorities meant that the alleged victims were affected specifically in terms of their right to defend, promote, and foster fundamental rights and freedoms.

982. The Inter-American Court therefore adjudges autonomous violation of the right to defend human rights based, in the instant case, on violation of Articles 4(1), 5(1), 8(1), 13(1), 16(1) and 25(1) of the Convention, read in conjunction with Article 1(1) thereof, in injury of the alleged victims, members of the Collective, who have been recognized as human rights defenders (*supra* para. 470).

983. Finally, the Court finds that the analysis and conclusions given above constitute a sufficient response to the argument concerning breach of the right to personal autonomy of the alleged victims, in relation to the impact on their personal decisions to devote themselves to defending human rights (*supra* para. 686); it is therefore unnecessary to offer any additional decisions in this regard.

E. General conclusion

results for which they were conceived. The Court has also said that, in the case of human rights defenders, in order to meet the requirement of appropriateness, the special measures of protection must: (a) be consistent with the functions performed by human rights defenders; (b) begin with an assessment of the level of risk so as to adopt measures and monitor those that are in force, and (c) be amenable to modification commensurate with changes in the intensity of risk. The type of protective measures offered must be decided in consultation with the human rights defenders in order to ensure timely, specialized intervention, proportionate to the danger that they may face. Furthermore, particular attention should be paid to a gender-based approach within the risk-assessment procedure, and on the implementation of protection measures. To ensure that the measures are effective, the following elements are essential: (a) an immediate response by the State as soon as it becomes aware of the existence of the danger, to ensure that the measures are timely; (b) the people involved in the protection of defenders must have the necessary training to perform their functions and understand the importance of their actions, and (c) the measures must be kept in effect for as long as the victims of violence or threats require them. *Cf. Inter alia*, *Case of Nogueira de Carvalho et al. v. Brazil, supra*, para. 77, and *Case of Human Rights Defender et al. v. Guatemala, supra*, para. 157.

984. Based on these considerations, the Court concludes that the State of Colombia is internationally responsible for violation of the right to life and the right to personal integrity, enshrined in Articles 4(1) and 5(1) of the American Convention, read in conjunction with the obligations to respect and guarantee the rights set forth in Article 1(1) thereof, in injury of the following alleged victims, members of the Collective: Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Soraya Gutiérrez Argüello, Reinaldo Villalba Vargas, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, Diana Teresa Sierra Gómez, Javier Alejandro Acevedo Guerrero, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, Pedro Julio Mahecha Ávila, Adriana Patricia Fuentes López, Efraín Cruz Gutiérrez, Adriana Cuéllar Ramírez, Nubia Liliana Romero Bernal, Sandra Yalin Ariza, Olga Lilia Silva López, Camilo Andrés Galindo Marín, Chennyer Jairt Piñeros Fuquen, Carlos Lozano Acosta, Andrés Rivera Acevedo, Mónica Lorena Zuluaga Patiño, Adriana Lizeth López Rojas, Lyda Natalia Hernández García, Andrea del Rocío Torres Bobadilla, Olga Marcela Cruz López, Olga Hernández Villalba, Ingrid Osnay Fernández Rengifo, Martha Eugenia Rodríguez Orozco, and Fernando Lemus Rodríguez.

985. It also finds violation of Article 5(2) of the American Convention in injury of Soraya Gutiérrez Argüello, with reference to the obligations to respect and guarantee rights and to refrain from any action or practice of violence against women derived from Article 1(1) of the Convention and Article 7.a of the Convention of Belém do Pará.

986. The Court finds violation of the right to personal integrity, enshrined in Article 5(1) of the American Convention, read in conjunction with Article 1(1) thereof, and Article 7.a of the Convention of Belém do Pará, in injury of Paula Camila Romero Gutiérrez, daughter of Ms. Gutiérrez Argüello.

987. The State is similarly responsible for violating the right to mental integrity, upheld in Article 5(1) of the Convention, read in conjunction with Article 1(1) thereof, in injury of the family members of the members of the Collective, to wit: (a) family members of Soraya Gutiérrez Argüello: Paula Camila Romero Gutiérrez, Álvaro Enrique Romero Jaimes, María Irma Argüello Marino, Irma Helena Gutiérrez Argüello, Omar Gutiérrez Argüello, and Astrid del Pilar Sánchez Martínez; (b) family members of Rafael Barrios Mendivil: Kimberly Ann Stanton, Ana Mendivil de Barrios, Rafael Barrios Zapata, Juan Pablo Barrios Romero, Marta Carolina Barrios Romero, Diana María Barrios Sabogal, Rafael David Barrios Sabogal, Laura Camila Barrios Sabogal, Antonio Rafael Barrios, Nubia Barrios de Noguera, Carlos José Barrios Mendivil, Elsye del Socorro Barrios Mendivil, and Ana Barrios Mendivil; (c) family members of Luis Guillermo Pérez Casas: Katia Karina Niño, Camilo Ernesto Pérez Niño, Katia Karina de la Libertad Pérez Niño, Olivia Casas, and Heidy Andrea Pérez Buitrago; (d) family members of Lincoln Miguel Puerto Barrera: Elizabeth Santander Durán, Diana Escobar Santander, Miguel Ernesto Puerto Santander, and Carolina Elizabeth Puerto Santander; (e) family members of Alirio Uribe Muñoz: Luisa Fernanda Uribe Laverde, David Alirio Uribe Laverde, and Miguel Ángel Uribe Laverde; (f) family member of Reinaldo Villalba Vargas: Juan David Villalba, and (iv) family member of Dora Lucy Arias Giraldo: Leandro Jurado Arias.

988. Violation of the right to freedom of movement and residence, enshrined in Article 22(1) of the American Convention, read in conjunction with Article 1(1) thereof, is found in injury of Rafael Barrios Mendivil, Soraya Gutiérrez Argüello, Paula Camila Romero Gutiérrez, Luis Guillermo Pérez Casas, and Maret Cecilia García Alfonso.

989. The State is responsible for violating the right to protection of the family, recognized in Article 17(1) of the American Convention, read in conjunction with Article 1(1) thereof, in

injury of Rafael Barrios Mendivil, Ana Mendivil de Barrios, Rafael Barrios Zapata, Juan Pablo Barrios Romero, Marta Carolina Barrios Romero, Diana María Barrios Sabogal, Laura Camila Barrios Sabogal, Antonio Rafael Barrios, Nubia Barrios de Noguera, Carlos José Barrios Mendivil, Elsye del Socorro Barrios Mendivil, Ana Barrios Mendivil, Luis Guillermo Pérez Casas, Katia Karina Niño, Camilo Ernesto Pérez Niño, Katia Karina de la Libertad Pérez Niño, Olivia Casas, and Heidy Andrea Pérez Buitrago.

990. The Court also finds violation of the rights of the child, upheld in Article 19 of the American Convention, read in conjunction with Article 1(1) thereof, in the cases of Juan Pablo Barrios Romero, Marta Carolina Barrios Romero, Diana María Barrios Sabogal, Laura Camila Barrios Sabogal, Camilo Ernesto Pérez Niño, Katia Karina de la Libertad Pérez Niño, and Paula Camila Romero Gutiérrez.

991. The State is responsible for violating the freedom of thought and expression and the freedom of association, enshrined in Articles 13(1) and 16(1) of the American Convention, read in conjunction with Article 1(1) thereof, in injury of the members of the Collective who sat on the general council of members, to wit: Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Soraya Gutiérrez Argüello, Reinaldo Villalba Vargas, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, and Pedro Julio Mahecha Ávila.

992. The State is responsible for violating the right to defend human rights, enshrined in Articles 4(1), 5(1), 8(1), 13(1), 16(1) and 25(1) of the Convention, read in conjunction with Article 1(1) thereof, in injury of the following members of the Collective in their capacity as human rights defenders: Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Soraya Gutiérrez Argüello, Reinaldo Villalba Vargas, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, Diana Teresa Sierra Gómez, Javier Alejandro Acevedo Guerrero, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, Pedro Julio Mahecha Ávila, Adriana Patricia Fuentes López, Efraín Cruz Gutiérrez, Adriana Cuéllar Ramírez, Nubia Liliana Romero Bernal, Sandra Yalin Ariza, Olga Lilia Silva López, Camilo Andrés Galindo Marín, Chennyer Jairt Piñeros Fuquen, Carlos Lozano Acosta, Andrés Rivera Acevedo, Mónica Lorena Zuluaga Patiño, Adriana Lizeth López Rojas, Lyda Natalia Hernández García, Andrea del Rocío Torres Bobadilla, Olga Marcela Cruz López, Olga Hernández Villalba, Ingrid Osnay Fernández Rengifo, Martha Eugenia Rodríguez Orozco, and Fernando Lemus Rodríguez.

IX
REPARATIONS

993. Pursuant to the provisions of Article 63(1) of the American Convention, the Court has held that every violation of an international obligation which results in harm creates a duty to make adequate reparation, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[1077]

994. Reparation of harm brought about by the violation of an international obligation means full restitution (*restitutio in integrum*) whenever possible, which includes the restoration of the prior situation. If this is not possible, the Court will order measures to guarantee the rights

[1077] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs.* Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Córdoba v. Paraguay, supra*, para. 115.

that have been violated and to redress the consequences of the violations.[1078] It has seen the need to award different measures of reparation in order to provide comprehensive redress for the harm; thus, in addition to pecuniary compensation, the measures of restitution, rehabilitation and satisfaction, as well as guarantees of non-repetition, are particularly relevant to the harm caused.[1079] This Court has also established that reparations must have a causal nexus with the facts of the case, the declared violations, the proven damage, as well as the measures requested to repair the resulting damage.[1080]

995. Therefore, based on the violations declared in this judgment, the Court will now examine the claims brought by the Commission and the two representatives of the victims, as well as the State's arguments.

A. Injured Party

996. The Court, under the terms of article 63(1) of the Convention, holds as an injured party anyone who has been declared in this judgment to be the victim of violation of a right.

997. The Court therefore holds the following persons as "injured parties" who will be considered beneficiaries of the reparations ordered herein: Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Soraya Gutiérrez Argüello, Reinaldo Villalba Vargas, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, Diana Teresa Sierra Gómez, Javier Alejandro Acevedo Guerrero, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, Pedro Julio Mahecha Ávila, Adriana Patricia Fuentes López, Efraín Cruz Gutiérrez, Adriana Cuéllar Ramírez, Nubia Liliana Romero Bernal, Sandra Yalin Ariza, Olga Lilia Silva López, Camilo Andrés Galindo Marín, Chennyer Jairt Piñeros Fuquen, Carlos Lozano Acosta, Andrés Rivera Acevedo, Mónica Lorena Zuluaga Patiño, Adriana Lizeth López Rojas, Lyda Natalia Hernández García, Andrea del Rocío Torres Bobadilla, Olga Marcela Cruz López, Olga Hernández Villalba, Ingrid Osnay Fernández Rengifo, Martha Eugenia Rodríguez Orozco, Fernando Lemus Rodríguez, Kimberly Ann Stanton, Ana Mendivil de Barrios, Rafael Barrios Zapata, Juan Pablo Barrios Romero, Marta Carolina Barrios Romero, Diana María Barrios Sabogal, Rafael David Barrios Sabogal, Laura Camila Barrios Sabogal, Antonio Rafael Barrios, Nubia Barrios de Noguera, Carlos José Barrios Mendivil, Elsye del Socorro Barrios Mendivil, Ana Barrios Mendivil, Paula Camila Romero Gutiérrez, Álvaro Enrique Romero Jaimes, María Irma Argüello Marino, Irma Helena Gutiérrez Argüello, Omar Gutiérrez Argüello, Astrid del Pilar Sánchez Martínez, Leandro Jurado Arias, Katia Karina Niño, Camilo Ernesto Pérez Niño, Katia Karina de la Libertad Pérez Niño, Olivia Casas, Heidy Andrea Pérez Buitrago, Elizabeth Santander Durán, Diana Escobar Santander, Miguel Ernesto Puerto Santander, Carolina Elizabeth Puerto Santander, Luisa Fernanda Uribe Laverde, Miguel Ángel Uribe Laverde, David Alirio Uribe Laverde, Juan David Villalba, and Jheyson Andrés Arias Zambrano.

998. ***CAJAR and CEJIL*** asked for the "José Alvear Restrepo" Lawyers Collective to be held as a "collective victim" because the proven violations "were directed not only against the individual victims separately, but because of their membership" in the Collective, and because several of the threats, smear campaigns, wiretapping, and other illegal activities targeted CAJAR as an organization. The ***State*** offered no arguments on this matter.

[1078] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra*, para. 65, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra,* para. 152.

[1079] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra*, paras. 25 and 26; *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Córdoba v. Paraguay, supra*, para. 115.

[1080] *Cf. Case of Ticona Estrada v. Bolivia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 191, and *Case of Córdoba v. Paraguay, supra*, para. 115.

999. The Court finds that it cannot grant this request, recalling that Article 1(2) of the American Convention states that the rights recognized therein pertain to human beings (*supra* para. 97), such that, in keeping with Article 63(1) of the text,[1081] the injured parties shall be considered those who were declared victims of the violation of one of the rights discussed in the chapter on the merits (chapter VIII), and this applies only to the persons identified beforehand (*supra* para. 997). The decision not to hold CAJAR as an injured party does not mean that, in the examination of certain requested measures of redress, it may not be included, depending on the case, as an organization dedicated to the defense of human rights.

1000. As was already determined (*supra* para. 95), the Court believes that, in the instant case, the application of the exception provided in Article 35(2) of the Rules of Procedure can be justified to include other persons as victims, regardless of whether they were previously named and singled out by the Inter-American Commission. For this purpose, as will be specifically detailed in this judgment (*infra* para. 1012), The State, by means of the competent authorities, will need to clear the intelligence archives and guarantee access to the data contained therein. Other members of the Collective and their family members are also referenced in the archives and are considered victims of the DAS arbitrary intelligence activities during the time the G3 was in operation (2003-2005). The breach of their rights included protection of privacy, freedom of thought and expression, and the rights of the child (depending on each different case, as seen in chapter VIII.2 of this judgment, *supra* paras. 610 to 635), and therefore they may also claim access to the individual reparations ordered by the Court (*infra* para. 1099). This does not rule out the possibility that access to the DAS archives could turn up other victims who were members of CAJAR or their family members. When the State reports back concerning compliance with the measures ordered, under the terms of operative paragraph 39 of this judgment, it must designate a competent authority to whom the victims can submit their claims for reparations. These victims will have a term of six months, as of the date they receive access to the information contained in the DAS archives, to submit their claims for reparations. Once their claim has been submitted, the State will have one year to complete the reparations, following the means of compliance ordered by the Court (*infra* paras. 1121 to 1126).

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

1001. The ***Commission*** requested that the State "conduct and complete the judicial, administrative, and disciplinary investigations impartially, effectively, and expeditiously, to determine responsibilities for the violations committed."

1002. ***CAJAR and CEJIL*** asked that the State be ordered "to investigate diligently the source of all the threats leveled against the [Collective], as well as "all the human rights violations committed." They stressed that the authorities should have enough human, financial, logistical, and scientific resources to perform this task. The case is complex, and the facts were committed with the participation of State agents and members of paramilitary groups, and therefore it is essential to "investigate the broadest possible platform for commission of the acts, to investigate coordination between state and para-state actors, apply context-based methods of criminal investigation to connect the investigations, break down criminal

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[1081] Article 63.1 of the Convention reads:
If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party

structures, and develop specialized investigation protocols." They added that the State must guarantee "participation by the victims," observing their right "to have access to all information, request evidence, file remedies, and obtain redress."

1003. The ***State*** argued that "it has introduced legislative measures starting with the President's Executive Order 07 of 1999 to urge judicial officers to priority-rank and expedite criminal and disciplinary investigations for violations of the rights" of members of human rights organizations.

1004. The Court points to chapter VIII.3 of this judgment, in which it declared violation of the right to judicial guarantees and the right to judicial protection with reference to particular investigations into the acts of violence, threats, intimidation, and harassment against the victims in the instant case (*supra* paras. 746 to 765). The Court therefore orders the State to promote, direct, pursue, and conclude the investigations into these facts, within a reasonable period and with due diligence, to include the commission of acts of torture or cruel, inhuman and degrading treatment and forced displacement, to elucidate what happened and determine the corresponding criminal liabilities. The investigations must also probe and identify actions coordinated between State and para-state actors. For this purpose, the competent authorities must consider methodological tools appropriate for due diligence, as discussed in this judgment, specifically interconnecting the cases to identify systematic patterns, and give overriding consideration to the role of the victims as human rights defenders to identify lines of investigation and, when relevant, the gender perspective (*supra* paras. 753 to 760).

1005. With regard to intelligence activities conducted on the victims by various public agencies in the 1990s, given that, as this judgment has found, there is no information about official procedures to explain them and ultimately determine responsibilities (*supra* paras. 796 to 799), the Court orders the State to proceed, by means of the competent authorities and making use of their legal powers, to subpoena whatever information it considers necessary from the armed forces, the National Police, and other intelligence services, for use in conducting the investigations and relevant procedures.

1006. Accordingly, the Court reiterates the State's obligation to guarantee the victims full access to the proceedings and the capacity to act in all stages of the investigations, pursuant to domestic law and the provisions of the American Convention (*supra* paras. 802 and 803).[1082] Due diligence in the investigation signifies that all pertinent State authorities are obliged to collaborate in the collection of evidence and must therefore provide the judges, prosecutors or other competent authorities with all the information requested and refrain from acts that could obstruct the investigative procedure,[1083] prohibiting the use of arguments of confidentiality for any type of information[1084] (*supra* para. 663).

C. Measure of Restitution: clearing and giving access to the intelligence archives

1007. The ***Commission*** said that "the victims must be ensured access to their own data in the intelligence files and, if they so wish, request that the information be corrected, updated, or if applicable, cleared from the intelligence archives.

1082 *Cf. Case of the Caracazo v. Venezuela. Reparations and Costs.* Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of Baptiste et al. v. Haiti, supra*, para. 99.

1083 *Cf. Case of García Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 168, para. 121, and *Case of Baptiste et al. v. Haiti, supra*, para. 98.

1084 *Cf. Case of Myrna Mack Chang v. Guatemala, supra*, para. 180, and *Case of Flores Bedregal et al. v. Bolivia, supra*, para. 138.

1008. ***CAJAR and CEJIL*** asked the Court to order the State to "[guarantee] full and total access to all data and intelligence archives collected illegally on the members of CAJAR and their families," and to conduct "a process of clearing and correcting the data with full participation by the victims." They asked the Court to order "the creation of an independent group of experts, whose members should be selected in agreement with the representatives," to "guide and oversee the process of releasing and clearing the government's intelligence files containing information on the members of CAJAR." The release of information may not include sensitive data on the victims.

1009. ***Ms. Arias*** asked for the State to be ordered to "declassify all the intelligence reports that were developed illegally," "using the most appropriate means that guarantee both the right to know and the right to honor and privacy." She noted that the measure "means ordering the agencies and entities that built the intelligence data […] to remove and eliminate what they had developed.

1010. The ***State*** pointed out that "the representatives [of the victims] themselves have recognized that they have had access to the information." It noted out that Colombia "has mechanisms created under constitutional law 1621 of 2014 [law on transparency and right of access to national public information] by which the alleged victims can request access to the information"; however, "the reason it is not presently possible to see the information requested is that it is in the custody of the JEP."

1011. The Court recalls that this judgment has already declared violation of the right to informational self-determination in injury of the victims who were targeted by arbitrary intelligence activities, as they have not been guaranteed access to data on themselves that are contained in the files of the intelligence agencies. Moreover, this access has been frustrated by the negligible progress made in clearing the archives of the former DAS (*supra* paras. 636 to 651).

1012. The Court therefore orders the State, by means of the competent authorities, to proceed within a reasonable period to clear the archives of the former Administrative Department of Security (whose inventory and classification were ordered earlier by the JEP, *supra* footnote 27). With respect to Eduardo Carreño Wilches, Reinaldo Villalba Vargas, Alirio Uribe Muñoz, Pedro Julio Mahecha Ávila, and Rafael Barrios Mendivil, in view of the facts confirmed in this judgment, it must also clear the archives of the National Police, the school of artillery of the National Army, and the army's military intelligence headquarters (*supra* paras. 303 to 309), to guarantee real access to anyone requesting information and data on themselves held in these archives. This clearing process should begin with the identification, classification and inventory of the different documents. In the process, the State should guarantee the rights of the victims, preferably pursuant to domestic regulatory provisions and always in keeping with the recommendations of the Advisory Commission for clearing intelligence and counterintelligence data and files (*supra* para. 641), to have the data in the archives corrected, canceled, or removed, as appropriate.

1013. The authorities, in completing this task, first of all should consider the standards set forth in this judgment and, as applicable, the recommendations of the Advisory Commission for clearing intelligence and counterintelligence data and files, and second, should safeguard any sensitive data contained in archives ultimately cleared for public access. In complying with these orders, the State should also adopt all necessary measures to guarantee preservation of human rights files or those that have historical value.

1014. For these purposes, the competent authorities must develop a plan of action setting a timetable of activities so that the task is completed within a reasonable period, including the

mechanisms necessary to guarantee access to the files and, where applicable, correction and destruction or removal thereof. The State should inform this Court of its plan of action and the timetable when it submits its report on compliance with the measures of reparation as ordered, pursuant to operative paragraph 39 of this judgment.

D. Measure of rehabilitation: psychological, psychiatric, and/or psycho-social care

1015. ***CAJAR and CEJIL*** said that, as a result of the actions perpetrated against them, the members of the Collective had seen their families exposed to attacks, threats, humiliating public accusations, family separation, and arbitrary interference in their private lives. They asked the Court to order "a form of redress that would allow the different family groupings that are victims of the instant case to regain their life plans in the family circle."

1016. ***Ms. Arias*** asked the Court to "order the State [to provide] psycho-social care" by means of a program in which the victims could "have access to a group of professionals such as allopathic and homeopathic physicians, psychologists, psychiatrists, and/or therapists" selected by themselves and paid for by the State, "for as long as necessary for them to recover the highest possible level of physical and emotional health." She noted in her final written arguments that "it makes no sense, there is no trust, and it would not serve as redress if [the victims] had to rely on the very executive branch that violated them in order to recover their lost physical and mental health."

1017. The ***State*** argued that one of the national institutions is the "Program for psycho-social and comprehensive health of victims (PAPSIVI) where victims" can receive "inter-disciplinary health-care procedures" and "receive medical and psychological care with both individual treatment and a collective approach to family and community." It asked the Court to "weigh the efforts the country has made to guarantee mechanisms of redress through health services for victims in Colombia, and affirm the current plan as acceptable for the CAJAR victims."

1018. The **Court** has declared violations and damage to the victims in the instant case and now finds it necessary to order measures of rehabilitation that will provide the victims of violations declared herein with comprehensive care for the psychological and psycho-social suffering they have experienced. It finds no need, in view of the facts of the case, to grant the request for medical treatment.

1019. It therefore orders the State to provide services free of charge (at no cost whatsoever), through specialized public health institutions or specialized health personnel, proceeding immediately and with top priority to order appropriate, effective psychological, psychiatric and/or psycho-social care to any victims so requesting, subject to informed consent, including free supply of any medications they may need in response to their particular symptoms. If the State should lack any such services, it must turn to specialized private or civil society institutions. Moreover, the treatment must be provided for as long as necessary and, as much as possible, in facilities located closest to the homes of the victims of the case and, in any case, in places that are accessible to them. In providing the treatment, consideration must also be given to the particular circumstances and needs of each victim so they can receive group, family and individual counseling, depending on the needs of each one and following an individual assessment by a health-care professional.[1085]

[1085] *Cf. Case of the 19 Tradesmen v. Colombia. Merits, Reparations and Costs.* Judgment of July 5, 2004. Series C No. 109, para. 278, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra,* para. 574.

1020. The Court has already recognized and valued Colombia's achievements as it offers ever-more access to health-care services for the victims of different cases. It therefore finds, as it has done in previous cases,[1086] that the State may provide the treatment through the PAPSIVI, to the degree it meets the terms of the measure ordered. If Colombia should choose to use this program, it must make sure that all the conditions set forth by this Court are met in lending this measure of redress to the victims (*supra* para. 1019), to avert off any objections during the stage of monitoring compliance such as has occurred in earlier cases, or complaints about obstacles of any kind.[1087]

1021. Victims requesting this measure of redress, or their legal representatives, have one year from the date of service of this judgment to inform the State of their intention to receive the care.[1088] The Court emphasizes the need for the State and the representatives to make every effort to cooperate with each other in providing the victims with all the information they need to receive their psychological, psychiatric, and/or psycho-social treatment.[1089]

E. Measures of satisfaction

1022. The ***Commission*** stressed how important it was for "the actions to vindicate the work of [CAJAR and its members] and provide redress to consider not only the injuries they had suffered collectively, but also their individual situations."

1023. ***CAJAR and CEJIL*** asked that the State be ordered "to offer the members of CAJAR and their families a public apology and at the same time to take on the commitment that incidents such as those in the case must never happen again." For this purpose, the State "through its apology […] should indicate that CAJAR has practiced and continues to practice the defense of human rights in Colombia; that the acts of persecution, threats, harassment and illegal intelligence" against them did in fact occur, and that "the State conducted no acceptable investigation of the facts and had not declassified the illegally obtained personal information on the victims." It should also "recognize the importance of human rights defenders in a democratic society and specifically highlight the work of the Collective." As for the disparaging statements made about the work of CAJAR, they said that the State must "clearly declare that it retracts" them and undertake not to repeat them, along with a commitment to carry out all the measures of reparation ordered by the Court.

1024. They noted that the State must ensure that the victims be present in the public ceremony, "cover any expenses they may incur, and invite them far enough in advance." They asked that "the State should organize the ceremony by […] consensus with the victims or their representatives concerning the logistics," including place, date, and form, and that the ceremony should be covered "in the news media, including television and radio, on a prime-time schedule of peak viewership." Finally, as a means of redress for CAJAR, they requested "a documentary showing the persecution against the organization over the course of four decades."

1086 *Cf. Case of Yarce et al. v. Colombia*, *supra*, para. 340, and *Case of Guzmán Medina et al. v. Colombia, supra,* para. 133.

1087 See, *Case of the Santo Domingo Massacre v. Colombia. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights, November 22, 2018; *Case of Yarce et al. v. Colombia. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights, November 22, 2019, and *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights, March 21, 2023.

1088 *Cf. Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 31, 2010. Series C No. 216, para. 253, and *Case of Guzmán Medina et al. v. Colombia, supra,* para. 134.

1089 *Cf. Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia, supra*, para. 568, and *Case of Guzmán Medina et al. v. Colombia, supra,* para. 134.

1025. ***Ms. Arias*** asked for the State to be ordered to "publish the judgment and give it the widest possible dissemination," along with the "life stories contained in the facts […], making sure to coordinate with each of the writers on the form of publication, any additions, and the format of the stories."

1026. She also asked that the State be required to hold a public ceremony by agreement with the victims, to "recognize publicly its responsibility for the violations […] committed," "tell about the impacts caused, and restore the reputation of the victims and their profession as lawyers defending human rights."

1027. The ***State*** said that its domestic jurisprudence, with particular mention of the views of the Council of State, has "established measures of satisfaction as moral imperatives that are symbolic and collective in nature, that cover nonpecuniary damage, and that include public recognition of responsibility, commemorative acts, monuments, renaming of public roadways," and more. It asked for the Court to "be mindful of national practices when it orders measures of satisfaction" in the instant case.

E.1. Recognition of responsibility and public apologies

1028. The **Court**, taking into consideration the requests by the two representatives of the victims and the violations declared in this judgment, will now order measures to redress the damage caused to the victims and prevent similar acts from occurring again. It orders the State to hold in Colombia an act of recognition of international responsibility and public apologies for the sum total of facts in this case, and it must emphasize the importance of the work of human rights defenders in a democratic system. The act should make express reference to the human rights violations articulated in this judgment.

1029. It should take the form of a public ceremony in the presence of high-level government officials and the victims of the case, if they so desire. The State should agree with both representatives of the victims concerning the details of the public ceremony, as well as any particulars they may request, such as the date and place it is held, and must provide the resources necessary to enable the victims to attend the ceremony, as relevant. The ceremony should be publicized over the news media, and the State has one year to hold it, as of the date of service of this judgment.

E.2. Publication and dissemination of the judgment

1030. The Court orders, as it has in other cases,[1090] that the State must publish the following material within six months of the date of notification of judgment, using suitable, legible typeface: (a) the official summary of the judgment, to be prepared by the Court and run one time only in the official gazette and a widely circulated national news outlet, and (b) the full judgment on an official website, to be available for one year. The State should report to this Court as soon as it has proceeded with each of the publications ordered, regardless of the one-year term to submit its first report as ordered in operative paragraph 39 of the instant judgment.

1031. The State will also have six months as of the date of service of the judgment to post the Court's judgment on the social media accounts of the Office of the President of Colombia, the Ministry of National Defense, and the Office of the Prosecutor General. The post must say that the Inter-American Court delivered the judgment on the instant case and declared

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[1090] *Cf. Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 7, 2003. Series C No. 99, para. 120, and *Case of Córdoba v. Paraguay, supra*, para. 128.

Colombia's international responsibility, and include a link providing direct access to the full text. In order to maximize the scope and reach, the post should include tags to the social media accounts of CAJAR and Ms. Arias, as relevant and if they have the information, and allow the publication to be shared.[1091] This publication should be run at least five times over the subsequent month by each institution, during working hours, and should also be posted to their social media profiles. The State should report to this Court as soon as it has proceeded with each of the publications ordered, regardless of the one-year term to submit its first report as ordered in operative paragraph 39 of the instant judgment.

1032. The Court also finds it appropriate, as it has in other cases,[1092] that the State broadcast the official summary of the judgment on a television channel with national coverage, at prime time, once, within six months of notification of this judgment. The State must inform the representatives, with at least two weeks' notice, of the date, time, and television channel on which this broadcast will be made.

E.3. Audiovisual documentary on the importance of the work of human rights defenders and the facts of the case

1033. In view of the circumstances of this case and the request submitted, and with an eye to redressing the violations experienced by the victims, the Court also orders the State to prepare an audiovisual documentary on (i) the importance of the work of human rights defenders, (ii) the violence and defamation of which they have been victims in Colombia, (iii) the work done by the "José Alvear Restrepo" Lawyers Collective, and (iv) the human rights violations experienced by its members, with special mention of (v) the specific acts verified in this judgment; it must also include (vi) the gender perspective on the differentiated impact that violence holds for women human rights defenders, and if they are mothers, for their children. The Court believes that measures of this kind, in addition to their clear contribution to restoring personal dignity, are significant for preserving the memory of victims and providing them with satisfaction.[1093]

1034. The opinions of the two representatives of the victims must be taken into account when the audiovisual documentary is prepared and produced, and for this purpose, the State must proceed, within four months of the date of service of the judgment, to appoint a spokesperson who will coordinate with them. The State must also cover all the expenses of producing, projecting, and distributing the documentary. It must be broadcast on a television channel with nationwide coverage, during prime time hours of peak viewership, one time only, and both representatives of the victims must be advised of the scheduled broadcast at least two weeks in advance. It should also be posted on an official government website that is relevant for such material. The documentary should be shown in training courses for public officers involved in intelligence activities, as ordered in this judgment (*infra* para. 1053). The State must also provide each representative of the victims with 25 copies of the documentary so they can distribute it among some of the victims, other civil society organizations, and universities in Colombia to be promoted and projected later, for the ultimate objective of informing Colombian society about the facts of the case. The State has a period of two years to produce the documentary, project it, and distribute it, figured as of the date of service of this judgment, and it must submit a progress report to the Count on compliance with this measure of reparation within one year of notification of the judgment, pursuant to operative paragraph 39.

1091 *Cf. Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 581.

1092 *Cf. Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia, supra,* para. 573, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra,* para. 582.

1093 *Cf. Case of Cepeda Vargas v. Colombia, supra*, para. 228, and *Case of Guzmán Medina et al. v. Colombia, supra,* para. 138.

F. Guarantees of non-recurrence

1035. The ***Commission*** said that the State should "adopt legislative, institutional, and judicial measures to lessen the risk exposure of human rights defenders." For this purpose, it added, the following specific measures should be ordered: (a) "build up institutional capacity to fight the pattern of impunity for cases involving threats and death" for human rights defenders "by developing protocols for investigation that, bearing in mind the inherent danger of defending human rights, will permit exhaustive development of the investigation under this hypothesis," and (b) "refrain from conducting intelligence activities that place arbitrary constraints on the right to privacy and freedom of expression." To this end, domestic regulations "must avoid granting powers that are excessively vague, provide a clear definition of national security, require independent judicial authorization and oversight, and in general, be built on the principles of exceptionality and transparency."

1036. ***CAJAR and CEJIL*** said that "the institutions of the State do not have their own statistical data on aggressions against human rights defenders, and information on the progress of investigations is not public." It asked the Court to order the State to "compile and publish information on threats and attacks against human rights defenders," so as to "design and implement public policies that will facilitate expeditious, effective investigations and sanction the perpetrators of human rights violations such as those in the instant case." This information must be published in such a way as to provide "sufficient safeguards of the right to privacy and protection of personal data, as well as other rights," and "guarantee that the methods for compiling, storing, using, publishing, and publicizing data meet human rights standards on the subject," including "a clear regulatory framework" and "a robust system of oversight to monitor collection, storage, release, and access to the information."

1037. They pointed out that "as part of the measures of protection it offers," the State should "include a fund for relocation of human rights defenders and their families in cases of danger to them," and "provide support for mental and psycho-social health, as well as resources to pay for legal representation in court proceedings."

1038. They asked for the State to be ordered to introduce reforms to Law 1621 of 2013, in keeping with international standards on access to information and restrictions on intelligence activities. "A serious policy for sitting a high priority on the investigation of crimes against human rights defenders" should be implemented, as well as "a nationwide public information campaign on human rights defenders, in which the the State highlights the role they play."

1039. They made reference to "national human rights day," which is observed on September 9, under Law 95 of 1985, suggesting that it be renamed "national day for human rights and human rights defenders," such that every year, "official tribute would be paid to work being done for the full guarantee of fundamental freedoms, social justice, and the building of peace in Colombia."

1040. Finally, they said that it was urgent, in the framework of a democratic society, "to know the scope of application of the doctrine of the internal enemy and its role in the illegal wiretapping that occurred in the past and is still happening today," and that this doctrine "must be dismantled," along with the notion of "legal warfare" that had been pursued "mainly from within the military." They asked the Court to require the State to: (a) release to the public the "military, police, and intelligence manuals that include the doctrine of the internal enemy and the concept of legal warfare"; (b) release to the public the military, police, and intelligence orders and manuals by which the illegal wiretapping, tailing, profiling, threats and other actions against CAJAR were committed; (c) remove all military manuals, orders, or

other instruments that make it possible to apply "the doctrine of the internal enemy [and] that reaffirm the notion of legal warfare"; (d) publish new manuals "that apply the principle of transparency, to be implemented with the concept of public oversight, and (e) "issue explicit orders to all military, police, and intelligence forces to cease all application of the doctrine of the internal enemy and the notion of legal warfare," and to "cease all illegal activities against human rights defenders, rescind all orders or regulations contrary to this, and report all officers who give orders, produce regulations, or act in ways that are contrary to this provision." This order "must be issued publicly so that society can know what it says and oversee compliance with it."

1041. ***Ms. Arias*** asked for the State to be ordered to "prevent attacks on human rights defenders" by "creating a culture of human rights and recognizing the work of human rights defenders," and "training and preparing public officials." This would be done "guaranteeing the active participation of human rights defenders in policies or legislative measures affecting their rights."

1042. The ***State*** said that "it has progressed in creating policies on illegal wiretapping and protection of the rights of human rights defenders" and "reforming legislative measures to protect the rights of defenders."

1043. It also pointed to Law 1621 of 2013, drafted in keeping with international standards on the subject, by which Colombia "bound intelligence and counterintelligence activities to compliance with requirements of legality and authorization by a judicial authority, […] and placed them under a control and oversight mechanism." Therefore, "the country now has a regulatory framework for intelligence operations that contains specific obligations to respect human rights." It asked the Court to "take cognizance of progress the country has made to comply with the State's international obligations."

F.1. National public information and awareness-raising campaign on violence, persecution, and defamation of human rights defenders

1044. In view of the human rights violations verified in this judgment and, specifically, the damage to the work of human rights defenders, the Court finds it appropriate, as a measure to prevent such events from recurring in the future, to order the State to conduct a nationwide public information campaign using public media. The purpose will be to raise awareness in Colombian society concerning the violence, persecution, and defamation that have victimized human rights defenders and on the value of pluralism in a democratic system. This guarantee of non-recurrence will seek transformation and will help dismantle the popular images and stigmas that led to the violence against the human rights defenders and will also open channels for greater democratic opening to prevent such things from happening in the future. The State will have a maximum of three years to implement this campaign, as of the date of service of this judgment.[1094]

F.2. Campaign to publicize and inform concerning Presidential Executive Order No. 7 of 1999

1045. The Court recalls that Executive Order 7 of 1999, highlighting the importance of organizations that work to defend human rights, ordered all civil servants to avoid: (a) challenging the legitimacy of these organizations and their members; (b) making statements that could discredit them, harass them, or incite others to harass them, and (c) making public

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[1094] *Cf. Case of Servellón García et al. v. Honduras*. Judgment of September 21, 2006. Series C No. 152, para. 201, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra,* para. 597.

or private statements that stigmatize their work. The Court notes that this order remains in force, and given its content and scope, it is an exceedingly important tool for preventing the recurrence of situations such as the ones in this case.

1046. The Court therefore orders the State to launch a public information campaign about the content of this executive order among the officials and employees of the Colombian civil service, to raise their awareness concerning the respect that human rights defenders deserve and the duties incumbent on public servants for guaranteeing this respect. The State will have a maximum of three years to carry out this measure in its entirety, figured as of the date of service of this judgment.

F.3. System for compilation of data and figures on cases of violence against human rights defenders

1047. The Court holds that it would be useful to compile comprehensive information on the violence affecting human rights defenders to gauge the true dimensions of this phenomenon in Colombia and, on this basis, to design strategies for preventing and eradicating new acts of violence.[1095] Because this request was brought before the Court, and given the lack of information from Colombia, the State is ordered to proceed over the course of one year to have the relevant public agency design and implement a system to compile data and figures on cases of violence against human rights defenders in order to facilitate an accurate, consistent assessment of the kinds, prevalence, trends, and patterns of violence against them. The information should be broken down in enough detail to identify the regions or places where the incidents occurred and the victims' sphere of action in defending and promoting human rights, and should include a differentiated approach to violence against women human rights defenders, as well as other indicators that may prove relevant for this purpose. It should also specify how many cases were brought to trial, identifying the number of charges, convictions, and acquittals, and the nature of the facts being prosecuted. The State must publish this information annually in the relevant report and guarantee that the entire population have access to it, while also protecting private information on victims of violence.[1096]

1048. The State must provide the Court with annual reports for three years as of the date of implementation of the data collection system, describing the actions taken for that purpose.

F.4. Commemoration of the day of human rights defenders

1049. The Court, aware of the human rights violations verified in the instant case and the impact they have had, notes the request of CAJAR and CEJIL and orders the State to provide for designation of an official day to commemorate human rights defenders nationwide. It orders the State, in meeting this requirement, to give full consideration to the proposal that the activity be held on September 9 of every year, which is "Colombian human rights day,"[1097] as a joint commemoration. The Court also requests that Colombia include activities to publicize this national day in public schools. The State has one year to meet this requirement, figured as of the date of service of this judgment. The Court will monitor its compliance for

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[1095] The Court has emphasized the importance of States maintaining current and verifiable information, data and statistics on the realities of people as a basis for designing, adopting and implementing decisions, public policies and measures aimed the effective exercise of rights. It has also held that such data must be based on appropriate methodologies that reflect these realities so as to best meet the specific needs of the individuals and population groups involved. *Cf. Mutatis mutandis*, Advisory Opinion OC-29/22, *supra*, para. 345.

[1096] *Cf. Mutatis mutandis, Case of López Soto et al. v. Venezuela. Merits, Reparations and Costs.* Judgment of September 26, 2018. Series C No. 362, para. 349, and *Case of Angulo Losada v. Bolivia, supra*, para. 218.

[1097] *Cf.* Law 95 of 1985 (Article 2). Available in Spanish at: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1634085.

the first two years of implementation.[1098]

F.5. Creation of a fund for prevention, protection, and assistance for human rights defenders in risk situations

1050. The Court, in view of the human rights violations declared in this judgment and, mainly, given the ongoing risk conditions facing human rights defenders in Colombia (*supra* paras. 482 and 483), will grant the request of the representatives and order the State to create a fund allocated to finance programs aimed at the prevention, protection, and support of human rights defenders who are at special risk due to their activities to defend, protect, and promote human rights, and to adopt effective measures of protection to keep them safe. This fund shall be in addition to any other currently existing plan or program run by State entities intended for protection, support, and reparation of human rights defenders.

1051. The Court sets an amount in equity of USD 500,000 (five hundred thousand United States dollars) for creating the fund. At the beginning of each year, the State must reimburse the amounts expended during the previous year to bring the balance back up to USD 500,000. The State shall designate an entity to administer the fund. Decisions on programs to be supported by the fund and on the allocation of resources must be made with the participation of two representatives of the State, through the authority or authorities designated for this purpose, and one representative for each of the following human rights platforms: (a) *Coordinación Colombia-Europa-Estados Unidos* (CCEEU); (b) *Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo*; (c) *Alianza de Organizaciones Sociales y Afines por una Cooperación Internacional para la Paz y la Democracia en Colombia*, and (d) the *Somos Defensores* program.

1052. The State must create and launch the fund within a period not to exceed one year, figured as of the date of service of this judgment. The State must provide the Court with annual detailed reports on the status of the fund and the actions charged to it for five years figured as of the date that the report indicated in operative paragraph 39 of this judgment is released and submitted to the Court.[1099]

F.6. Training for public servants

1053. The Court, in view of the human rights violations committed under the arbitrary intelligence operations conducted by several public agencies, orders the State to design and implement, over the course of two years, a permanent, mandatory training plan on human rights standards concerning (i) the powers, limits, and controls on authorities for conducting intelligence activities, and (ii) the compilation, management, and access to personal data held by intelligence agencies. The training should be given to public officers involved in intelligence activities in Colombia, specifically to include those who work in the relevant departments of the armed forces, the National Police, and the National Directorate of Intelligence. The training plan should cover the standards discussed in this judgment (*supra* paras. 520 to 608).

1054. The Court also recalls that the Prosecutor General issued Order 002 on November 30, 2017, "setting general guidelines for the investigation of crimes committed against human rights defenders in Colombia" (*supra* para. 163 and footnote 157). The Court finds that this prosecutorial order must first be analyzed to determine whether it is compatible with the parameters established in this judgment and, if necessary, updated accordingly; subsequently, all employees of the Office of the Prosecutor General who take part in the

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1098 *Cf. Case of Members and Militants of the Patriotic Union v. Colombia, supra,* para. 588.

1099 *Cf. Mutatis mutandis*, *Case of Bedoya Lima et al. v. Colombia, supra*, paras. 194 and 196.

investigation of acts of violence against human rights defenders should be versed in the content of this order and consequently, should apply methodological tools that are consistent with it. The State must therefore design and implement, within two years, a training plan on the content and correct application of the prosecutorial order. The training plan must include the standards set forth in this judgment on due diligence in the investigation of acts of violence against human rights defenders (*supra* paras. 740 to 744, 753 and 754).

F.7. Regulatory revision of Constitutional Law 1621 of 2013 and Executive Order 2149 of 2017

1055. The Court recalls that this judgment found the content of Constitutional Law 1621 of 2013 and Executive Order 2149 of 2017 to be in violation of the obligations derived from Article 2 of the American Convention, read in conjunction with Articles 11(2) and 13(1) thereof (*supra* paras. 685 and 694).

1056. The Court therefore orders the State of Colombia to amend these two regulatory instruments and make them compatible with the standards of the Convention specified in this judgment (*supra* paras. 671 to 694 and footnote 868). In the case of Executive Order 2149 of 2017, the Court reiterates the State's duty to make regulatory and institutional changes in the system for clearing intelligence and counterintelligence files, also ensuring the protection of sensitive information contained in documents cleared for public access.

1057. The State must complete these regulatory revisions within two years, figured as of the date of service of this judgment.

1058. The Court recalls that a motion is currently pending before the Council of State to have Executive Order 2149 of 2017 declared null and void (*supra* para. 693). The Court, pursuant to the findings of this judgment, reiterates that all domestic authorities, including the courts of justice, are under obligation to exercise *ex officio* review against the Convention as part of their duties and in the framework of relevant procedural regulations. To this end, as was stated above, the courts of justice must apply the provisions of the American Convention and its sources, including the case law of the Inter-American Court, its final arbiter (*supra* para. 649).

F.8. Approval of regulatory provisions needed to implement appropriate mechanisms that will guarantee the exercise of the right to informational self-determination with reference to intelligence files

1059. The Court found in this judgment that the regulations applicable to intelligence files do not currently provide mechanisms or procedures to guarantee the right to informational self-determination of persons whose data are contained therein (*supra* para. 645). It therefore orders the State to enact regulatory provisions as necessary to implement such mechanisms or procedures. Standards dictate that these mechanisms must be reasonable, expeditious, simple, free of charge, and effective, making it possible to gain access to and control over personal data, in keeping with the scope of this right, as established above (*supra* paras. 582 to 600). This applies regardless of any currently existing judicial mechanisms for the protection of the right to informational self-determination.

1060. Pursuant to the obligations that arise from the American Convention, as soon as these regulatory provisions are enacted, the competent authorities must apply the parameters set in this judgment whenever they receive a request for access to and monitoring of personal data contained in intelligence files. The Court reiterates that it is the duty of all State entities and bodies to review consistency with the Convention and apply the provisions of the

Convention and its sources, including the case law of the Inter-American Court, and must also perform a joint interpretation of domestic law and international law to prioritize whichever is most favorable for the protection of rights.[1100]. The practice of performing a review against the Convention also means that, when no specific regulations are on the books to give effective exercise to particular rights, as required in Article 2 of the Convention, authorities must ensure that these rights are respected and guaranteed by means of observing and applying the applicable standards of the Convention and must never deny the enjoyment and exercise of such rights under the rationalization that no specific regulatory provisions are available.

F.9. Revision of intelligence manuals

1061. The Court recalls that this judgment has found that several of the arbitrary intelligence activities were conducted under the notion of "political warfare," "political-psychological warfare," and "legal warfare" (*supra* para. 490). Expert witness Federico Andreu Guzmán said that such terms appeared in documents of the State's security forces, including agencies empowered to conduct intelligence operations.[1101]

1062. The Court also notes that Constitutional Law 1621 of 2013 orders a "review of the intelligence and counterintelligence doctrine" that guides the work of the different public agencies empowered to perform such activities, aiming to "bring it into alignment with the law and remove any provisions that are contrary to the Constitution and Law [1621 of 2013]." The law gives each agency one year to "develop the procedures needed to review the inclusion of provisions of human rights and international humanitarian law in intelligence and counterintelligence manuals." Finally, this law requires the submission of progress reports on the regulatory review to the Legal committee to monitor intelligence and counterintelligence activities of the National Congress (Article 16).[1102]

1063. The Court attaches the utmost priority to the review required under Law 1621 of 2013, to prevent any recurrence of situations such as those of the instant case. The information submitted to this international process, however, gives no account of progress made in this task, nor was it mentioned in the report duly submitted by the Legal committee to monitor intelligence and counterintelligence activities of the National Congress.[1103]

1064. Accordingly, the Court orders the State to proceed with the revision of the intelligence and counterintelligence manuals of the different agencies empowered to conduct such activities. Once the manuals have been revised, the report called for in Law 1621 of 2013 must be submitted, as noted above, to the congressional committee, which, in the exercise

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[1100] *Cf. Inter alia*, *Case of Almonacid Arellano et al. v. Chile, supra,* para. 124; *Case of Urrutia Laubreaux v. Chile, supra*, para. 93; *Case of Ríos Avalos et al. v. Paraguay*, *supra*, para. 198; *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras, supra,* para. 45; *Case of Julien Grisonas family v. Argentina, supra,* para. 193, and *Case of Álvarez v. Argentina, supra,* footnote 110.

[1101] *Cf.* Written expert opinion by Federico Andreu Guzmán (evidence file, volume XXXVII, folios 46345 to 46397).

[1102] Article 16 of Law 1621 of 2013:
The directors and heads of intelligence and counterintelligence agencies shall review intelligence and counterintelligence doctrine bringing it into line with the law and removing any provisions that are contrary to the Constitution and this law, within one (1) year of the date of enactment of this law. Each intelligence agency shall set up whatever procedures it needs in order to review the inclusion of standards on human rights and international humanitarian law in its intelligence and counterintelligence manuals. At the end of this term, the national Government shall present a report on the revision of the manuals to the Legal committee to monitor intelligence and counterintelligence activities of the National Congress.

[1103] *Cf.* Note of May 25, 2023, signed by the Secretary General of the Legal committee to monitor intelligence and counterintelligence activities (evidence file, volume XLV, annex to the State's brief of June 5, 2023, folios 48760 to 48771).

of its duties, must confirm whether the revision was performed effectively.[1104] If any manuals contain stigmatizing language or are openly contrary to international standards, the authority must order them to be rescinded.

1065. The State must complete this measure within two years, figured as of the date of service of this judgment. The Court will monitor compliance with these orders based on the report to be issued by the legal committee for this purpose.

1066. The request has been made to give public access to the intelligence and counterintelligence manuals, but the Court denies this request because, in view of the content of these documents, it is the task of the competent authorities to determine in each case, in light of the standards set forth in this judgment (*supra* paras. 601 to 606), whether they should be classified or, if feasible, to authorize total or partial access to them. The Court will not monitor the decisions made concerning public access to these manuals.

G. Other measures requested

1067. The ***Commission*** asked for the State to be ordered to "guarantee the effective participation of the victims in all processes of adoption, implementation, monitoring, and removal of special measures of protection." It said more specifically that the State should "ensure that the personnel taking part in victim protection programs be designated with the participation and consent of the beneficiaries as as to inspire their trust." It also asked Court to order Colombia to "develop appropriate, expeditious institutional response measures that will make it possible to protect" human rights defenders; more particularly, to "adopt measures to ensure effective implementation of the special measures of protection ordered by the bodies of the inter-American system."

1068. ***CAJAR and CEJIL*** asked the Court to order a "measure to restore the right of CAJAR to defend human rights," extensive enough to "take into account the impacts of the acts of aggression on the organization's reputation, its social legitimacy, and its financial sustainability," and to include the following: (a) "a permanent slot in a public communication outlet to publicize its activities to defend human rights," and (b) "measures to foster the medium- and long-term operation of the Collective."

1069. They asked that the State be ordered to implement "a serious policy for purging State entities and protecting human rights defenders in Colombia," with the intent of "removing people connected with any activity involving illegal intelligence, persecution, harassment, threats, or the like against members of the Collective and any other human rights defender."

1070. They noted that at present, the members of CAJAR are beneficiaries of material measures of protection provided by the National Protection Unit. Therefore, they asked the Court to order the State to "ensure that the security measures are kept in place until such time as the government's efforts to investigate the facts and determine responsibilities makes it possible to dissipate the persistent risk felt by the beneficiaries." They asked for the measures of protection to be extended, in consultation with the beneficiaries, "to the members of the organization and their family members who are not currently receiving protection."

[1104] Article 20 of Law 1621 of 2013 orders:
Purpose of the Legal committee to monitor intelligence and counterintelligence activities. […] This committee, in addition to any other powers granted by the National Congress under the Constitution and laws, will perform duties of political oversight and monitoring, verifying the efficient use of resources, respect for constitutional guarantees, and compliance with the principles, limits, and purposes established in the constitutional law that regulates intelligence and counterintelligence activities […].

1071. ***Ms. Arias*** asked for the State to be ordered to adopt several guarantees of nonrepetition. She noted that the work of human rights defenders "becomes a high-risk activity" and requested "the creation of a special social security mechanism for human rights defenders, to be designed with the broad participation of the stakeholders." She also asked for the State to be ordered "to set up effective mechanisms of access to labor justice for human rights defenders," that is, to "guarantee that no statute of limitations may apply to their worker's rights," and to "take into account the exposure to such matters as […] inequality and structural discrimination against women defenders."

1072. She added requests to: (a) "open up channels and mechanisms that will promote the work of defending human rights," to include "opening public information outlets such as a specialized television program to report on subjects of importance for [defenders] with the active participation of the victims in this case"; (b) "incorporate into the rules on internships for law students […] the duty to support activities for defending human rights," and (c) have human rights defenders "take part in curriculum development" for training public officials.

1073. Finally, she asked for the following "individual" measures of satisfaction: (a) for the lawyer Diana Milena Murcia Riaño to be offered "a scholarship or financing for doctoral studies"; (b) for the lawyer Dora Lucy Arias Giraldo to be granted "resources to create a blended public-private, lay, systematic psycho-social counseling program to work with the victims […] and their families" and allocating funds "to a cultural entity so it can tell the story of the violation of the rights of human rights defenders, and to develop a permanent art installation on the historical memory on these facts, located on the former site of the DAS," and (c) for the lawyers Maret Cecilia García and Pedro Julio Mahecha Ávila to be given scholarships for their children.

1074. The ***State*** said that "there is a real need to protect the financial health of the national social security system and the right to equality by which all […] Colombians have access to a retirement pension program," and therefore "it cannot accept" the requirement to make "legislative changes for creating a special social security system for human rights defenders."

1075. The **Court** holds that the different measures being requested are lacking in merit. As for the measures of restitution, rehabilitation, satisfaction, and guarantees of nonrepetition, the Court finds that this judgment and the reparations ordered in the various paragraphs are sufficient and adequate to remedy the violations suffered by the victims, and finds no need to order additional measures.

1076. With respect to the guarantees of nonrepetition requested by Ms. Arias, involving implementation of a special social security program for human rights defenders and access to labor justice, the Court finds no causal nexus with the facts of the case and the violations declared. Nor does it see a causal nexus with the scholarships or the allocation of resources for specific activities, and would add that the persons for whom these particular measures are requested were not included as victims in this process.

1077. The Court would also reply to the request for protection and security by noting that the Inter-American Commission reported during this proceeding that it has been monitoring the precautionary measures it ordered earlier.[1105] In the domestic sphere, these measures are provided by the National Protection Unit.[1106] The Court needs not grant these requests, in

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[1105] *Cf.* Communication from the Commission, June 13, 2023 (evidence file, volume X, folio 3985).

[1106] The State has said that the measures managed by the National Protection Unit are "implemented for each individual case […] in accordance with the vulnerabilities identified during the process of assessing the risk, and considering the agreements reached between the risk analyst and the person being assessed." *Cf*. The State's

view of the above discussion and because no provisional measures have been requested.

H. Compensatory damages

1078. The Commission and the representatives submitted requests for compensation for pecuniary and nonpecuniary damage caused by the violations in the instant case. The Court in this section will reply to their requests for the victims recognized herein. As for the arguments of the representatives to determine "open-ended compensation" for potential new victims, the Court would point to the earlier discussion about the application of the exception allowed under Article 35(2) of the Rules of Procedure in this case (*supra* para. 1000).

H.1. Pecuniary damages

1079. ***CAJAR and CEJIL*** said that the Collective, its members, and their families "have been incurring expenses for over 30 years because of the human rights violations." These expenditures resulted from the "search for justice, both domestically and internationally."

1080. They stated that, in the case of Luis Guillermo Pérez Casas, who was forced into exile, "it can be inferred that there were expenses for food, airfare, purchase of household goods, inputs," and the like. Other victims "who were forced to move out of their homes" because of the threats leveled against them, including "the family circle" of Soraya Gutiérrez Argüello, "can be assumed to have faced moving expenses," combined with the fact that "their home sat empty for several years."

1081. Luis Guillermo Pérez Casas "was forced to leave the country when threats were made against him," and this "undermined his career plans and prevented him from making payments into the retirement system." They asked the Court to "order compensation in equity in the amount of USD 20,000" (twenty thousand United States dollars) for him.

1082. They added that the other outlays "were for treatment of the health impacts they had experienced," including looking for psycho-social care, which also required the purchase of medications.

1083. They therefore requested "the following amounts in equity": (a) "for pecuniary damage because of exile, […] USD 10,000" (ten thousand United States dollars); (b) "for pecuniary damage because of internal displacement, […] USD 5,000" (five thousand United States dollars); (c) "for damage to property (theft of equipment and breaking and entering homes), […] USD 2,000" (two thousand United States dollars); (d) "for pecuniary damage caused by the actions of police and judicial forces, […] USD 2,000" (two thousand United States dollars), and (e) "for pecuniary damage due to expenditures for medical, psychological, and psycho-social care, […] USD 2,000" (two thousand United States dollars).

1084. The ***State*** argued that the claims on "damage to property" and "pecuniary damage […] due to expenditures for medical, psychological, and psycho-social care," were not based on duly proven evidence. It added that "any expenditure related to measures taken domestically by the alleged victims and their representatives to obtain justice should be considered by the Court under the heading of costs and expenses."

1085. This **Court** has developed the concept of pecuniary damages in its case law, holding

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answering brief, May 17, 2022, submitted in the proceedings before this Court (merits file, volume II, folio 1234). See also, *Cf.* Statement before a public attestor by Alfonso Rafael Campo Martínez, May 2, 2022 (evidence file, volume XXXIV, affidavits, folio 45757 and 45758).

that it covers covers loss or detriment to the victims' income, expenses incurred as a result of the facts of the case, and the monetary consequences that have a causal nexus with the facts.[1107] Case law has asserted repeatedly that damages serve a clearly compensatory purpose, and the nature and amount depend on the injury caused; thus, they may not entail either enrichment or impoverishment for the victims or their successors.[1108]

1086. For the purposes of determining pecuniary damage, the facts verified in this judgment involving arbitrary intelligence activities and threats, harassment, and aggression against the victims show that they initiated multiple procedures with the office of the prosecution, as well as several trials in which CAJAR represented the victims. No expense vouchers were submitted under this heading, but the Court understands that expenditures must have been incurred. For the purposes of quantifying the amount of redress that would be appropriate under this heading, and in response to the express request of the State, the Court will decide accordingly when it discusses the claims for costs and expenses (*infra* paras. 1118 and 1119).

1087. As for expenditures resulting from the forced displacement of the victims, the Court recalls that it declared violation of the right to freedom of movement and residence for Soraya Gutiérrez Argüello and her daughter Paula Camila Romero Gutiérrez, Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, and Maret Cecilia García Alfonso (*supra* paras. 927 to 947), but requests involving other persons will be dismissed. Despite the lack of concrete evidence, the Court presumes, as it has done in previous cases, that the victims named did incur expenses due to their displacement, both internally and outside of Colombia.[1109] Therefore, the Court sets the following amounts in equity: (a) USD 3,000 (three thousand United States dollars) for Soraya Gutiérrez Argüello, as she had to cover the costs of her displacement within Colombian territory, and (b) USD 6,000 (six thousand United States dollars) each for Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, and Maret Cecilia García Alfonso, for expenses incurred when they were displaced abroad. These amounts must be disbursed to the individuals named.

1088. The Court lacks documentation to set compensation for lost earnings because of the displacement of the victims. With respect to the alleged outlays for psycho-social care incurred by some of the victims because of damage triggered by the violation of their rights, no documentary evidence was submitted as grounds for the amount requested, nor were the dates and frequency of care specified,[1110] and the Court therefore cannot grant this petition.

1089. Finally, the Court holds that, based on the proven facts and the declared violations, it lacks evidence to grant compensation for the claims of pecuniary compensation for "damage to property" caused by the "theft of equipment and the breaking and entering homes."

H.2. Nonpecuniary damages

1090. ***CAJAR and CEJIL*** said that "violations experienced by the victims included suffering of different kinds: physical, psychological, family, in their personal relationships, their working environment, and more." They noted that "the victims describe fear, broken family relationships, difficulties with personal relationships because of fear of illegal wiretapping, dropping or changing activities, […] and other […] situations that have a clear impact on

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[1107] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Córdoba v. Paraguay, supra*, para. 115.

[1108] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs.* Judgment of May 25, 2001. Series C No. 76, para. 79, and *Case of Meza v. Ecuador, supra*, para. 77.

[1109] *Cf. Case of Human Rights Defender et al. v. Guatemala, supra*, para. 271, and *Case of Yarce et al. v. Colombia, supra*, para. 364.

[1110] *Cf. Case of Human Rights Defender et al. v. Guatemala, supra*, para. 272.

family ties." They also said that "the constant tailing and public discrediting of CAJAR caused profound damage" to the rights to honor and dignity and the right to associate freely, and one of the "most severe consequences" was "that of victims who decided to discontinue their work out of fear and the pain of what had happened."

1091. They added that "other injuries suffered are the physical repercussions caused by feelings of anxiety triggered by the facts of the case," as well as other "family impacts" that the victims describe. They said that "today" the victims "continue to be troubled by not knowing what personal information the State is holding," as they are still unable to have it declassified. Finally, those who "went into internal displacement or exile" experienced "pain and suffering."

1092. "In view of the facts" of the case, "the violations committed, the suffering caused, and the other nonpecuniary consequences to the victims," they asked that the State be ordered to pay the following amounts: (a) "for violating the right to defend rights" associated with "the different illegal intelligence operations, the threats, tailing, defamation, torture and other […] cruel, inhuman and degrading acts," the amount of USD 50,000 (fifty thousand United States dollars); (b) "for the anguish and suffering caused when there was no investigation or justice for the attacks, illegal intelligence operations, illegal retention, threats, harassment, and other reported acts," the amount of USD 30,000" (thirty thousand United States dollars) for "each of the victims of the case and their family members"; (c) "for the tailing, profiling, developing biographical data, breaking and entering homes, and other intelligence activities that constituted grave intrusions into private life," the amount of USD 50,000 (fifty thousand United States dollars); (d) "for illegal interception of their personal and professional communications," the amount of USD 10,000" (ten thousand United States dollars); (e) "for damage experienced because of exile, uprooting, the cultural impact, and family separation," the amount of USD 15,000" (fifteen thousand United States dollars), and (f) "for damage due to internal displacement, including uprooting and the impact on families," the amount of USD 10,000 (ten thousand United States dollars).

1093. They said that the amounts ordered should be "appropriate and significant," in keeping with the "severity of the damage and based on the evidence" submitted. Finally, they asked "the Court to grant a suitable amount based on the multiple violations" confirmed, "for all the family members of the members of CAJAR."

1094. The ***State*** said that domestic jurisprudence "has set damages for pain and suffering from [eighty] to [one hundred fifty] legal, current monthly minimum wages to the direct victims and their family members," which is equivalent to a range of USD 19,500 (nineteen thousand five hundred United States dollars) to USD 38,855 (thirty-eight thousand eight hundred fifty-five United States dollars). It asked the Court to "weigh domestic parameters when determining nonpecuniary damages for the victims."

1095. The **Court** has developed the concept of nonpecuniary damage in its case law and has established that this can encompass pain and suffering caused to the direct victims and their loved ones, harm to values of great importance to the individuals, and changes of a nonpecuniary nature in the living conditions of the victims or their relatives.[1111]

1096. In view of the circumstances of the instant case and the proven facts, as well as the magnitude, nature, and seriousness of the human rights violations committed, the Court finds that the victims of the case, depending on the particular circumstances affecting each one,

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[1111] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs.* Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra,* para. 186.

have been afflicted with pain and suffering and psychological harm, as they have been forced to experience different kinds of suffering, anguish, fear, and distress because of the violation of their rights. This can be corroborated by reviewing the psycho-social expert opinions[1112] submitted by the representatives of the victims as evidence in the case.

1097. The joint opinion submitted by CAJAR and CEJIL and prepared by professionals from the Psycho-social Care Center (CAPS) concluded that the victims of the case, "because of the multiplicity of human rights violations," have suffered both "collective damage" and "individual damage." They explained that "the threats, tailing, and illegal intelligence" produced multiple forms of impairment to the victims. They added that the members of CAJAR, particularly the attorneys, display various types of "psychological damage," expressed as "recurring, involuntary, and distressing memories of the traumatic incidents, traumatic memories, nightmares, a sensation of impending danger, a sensation of vulnerability, fear, difficulty concentrating, difficulty falling asleep or excessive sleeping, thoughts and perceptions about the traumatic events." Based on other "symptoms of significant psychological distress," the expert witnesses found "deterioration in the quality of individual and family life" of the victims, who maintained a "state of hypervigilance, avoidance of traumatic events, avoidance of settings and conversations regarding their professional work, psychosomatic ailments, weariness or fatigue, mood swings, and significant changes in their daily living habits."[1113]

1098. Ms. Arias also submitted a joint opinion by expert witnesses Laura Angélica Espinosa Gómez, Clemencia Correa González, Rodrigo Morales Romero, and Sofía Angélica Silva Gracia, who identified the "level of psycho-social impairment, the type of damage caused, and […] the systematic nature […] of the incidents" the victims had experienced, whose "most significant and recurring impacts" are expressed as "silencing, self-isolation, fear, state of constant vigilance, generalized mistrust in inter-personal relationships and toward the State and its mechanisms for the administration of justice, sleep disturbances, and psychosomatic symptoms."[1114]

1099. The Court therefore sets the following amounts in equity for nonpecuniary damage:

a) USD 25,000 (twenty-five thousand United States dollars) for the different violations

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[1112] The "collective psycho-social damage," according to expert witnesses from CAPS, consists of "an array of damages to communities or social groups identified as collective subjects who share social, professional, or political activities," which could include "widespread sensations such as defamation, mistrust, fear, uprootedness, despair and apathy." *Cf*. Joint written expert opinion from members of the Psychosocial Care Center (CAPS), April 29, 2022 (evidence file, volume XXXIII, affidavits, folio 45143). The expert opinion submitted by Ms. Arias explains that the concept of "psycho-social damage" refers, "first, to a subjective quality of the persons (psycho) and second, to those persons as part of an environment to which they are attached and from which they derive a sense of belonging and identity; this is because violence suddenly ruptures their daily lives and causes their sense of dignity to become more vulnerable." *Cf.* Joint written expert opinion by Laura Angélica Espinosa Gómez, Clemencia Correa González, Rodrigo Morales Romero, and Sofía Angélica Silva Gracia, April 26, 2022 (evidence file, volume XXX, folio 44363).

[1113] The expert witnesses in their opinion presented conclusions about "collective damage" suffered by the victims and also included "individual reports of the damage" affecting: Javier Alejandro Acevedo Guerrero, Rafael María Barrios Mendivil, Diana María Barrios Sabogal, Eduardo Carreño Wilches, Olga Marcela Cruz López, Adriana Elena Cuéllar Ramírez, Ingrid Osnay Fernández Rengifo, Adriana Patricia Fuentes López, Camilo Andrés Galindo Marín, Soraya Gutiérrez Argüello, Lyda Natalia Hernández García, Yessika Johanna Hoyos Morales, Adriana Lizeth López Rojas, Carlos Hernando Lozano Acosta, Jomary Ortegón Osorio, Luis Guillermo Pérez Casas, Chennyer Jairt Piñeros Fuquen, Lincoln Miguel Puerto Barrera, Andrés Rivera Acevedo, Martha Eugenia Rodríguez Orozco, Paula Camila Romero Gutiérrez, Diana Teresa Sierra, María del Pilar Silva Garay, Olga Lilia Silva López, Kimberly Stanton, Alirio Uribe Muñoz, Reinaldo Villalba Vargas, and Mónica Lorena Zuluaga Patiño. The opinion included reports on other persons whose rights were not declared violated in this judgment. *Cf.* Joint written expert opinion from members of the Psycho-social Care Center (CAPS), April 29, 2022 (evidence file, volume XXXIII, affidavits, folio 45139 to 45678).

[1114] The expert witness opinion assessed the "psycho-social impacts on Maret Cecilia García Alfonso, Diana Milena Murcia Riaño, Dora Lucy Arias Giraldo, and Pedro Julio Mahecha Ávila. *Cf*. Joint written expert opinion by Laura Angélica Espinosa Gómez, Clemencia Correa González, Rodrigo Morales Romero, and Sofía Angélica Silva Gracia, April 26, 2022 (evidence file, volume XXX, folios 44294 to 44376).

declared in this judgment, for each of the following persons who were members of the Collective: Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Soraya Gutiérrez Argüello, Reinaldo Villalba Vargas, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, Diana Teresa Sierra Gómez, Javier Alejandro Acevedo Guerrero, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, Pedro Julio Mahecha Ávila, Adriana Patricia Fuentes López, Efraín Cruz Gutiérrez, Adriana Cuéllar Ramírez, Nubia Liliana Romero Bernal, Sandra Yalin Ariza, Olga Lilia Silva López, Camilo Andrés Galindo Marín, Chennyer Jairt Piñeros Fuquen, Carlos Lozano Acosta, Andrés Rivera Acevedo, Mónica Lorena Zuluaga Patiño, Adriana Lizeth López Rojas, Lyda Natalia Hernández García, Andrea del Rocío Torres Bobadilla, Olga Marcela Cruz López, Olga Hernández Villalba, Ingrid Osnay Fernández Rengifo, Martha Eugenia Rodríguez Orozco, and Fernando Lemus Rodríguez;

b) an additional US 5,000 (five thousand United States dollars) to those who sat on the general council of members of CAJAR, for the violation of their freedom of thought and expression and freedom of association: Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Soraya Gutiérrez Argüello, Reinaldo Villalba Vargas, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, and Pedro Julio Mahecha Ávila;

c) an additional USD 15,000 (fifteen thousand United States dollars) to Soraya Gutiérrez Argüello, for the perpetration against her of actions in violation of Article 5(2) of the American Convention on Human Rights and the failure to comply with the obligation contained in Article 7.a of the Convention of Belém do Pará;

d) An additional USD 5,000 (five thousand United States dollars) for Paula Camila Romero Gutiérrez, for damage resulting from the threat against her in breach of the obligation contained in Article 7.a of the Convention of Belém do Pará;

e) USD 5,000 (five thousand United States dollars) for violation of the right to psychological integrity for the following family members of people from the Collective: Paula Camila Romero Gutiérrez, Álvaro Enrique Romero Jaimes, María Irma Argüello Marino, Irma Helena Gutiérrez Argüello, Omar Gutiérrez Argüello, Astrid del Pilar Sánchez Martínez, Kimberly Ann Stanton, Ana Mendivil de Barrios, Rafael Barrios Zapata, Juan Pablo Barrios Romero, Marta Carolina Barrios Romero, Diana María Barrios Sabogal, Rafael David Barrios Sabogal, Laura Camila Barrios Sabogal, Antonio Rafael Barrios, Nubia Barrios de Noguera, Carlos José Barrios Mendivil, Elsye del Socorro Barrios Mendivil, Ana Barrios Mendivil, Katia Karina Niño, Camilo Ernesto Pérez Niño, Katia Karina de la Libertad Pérez Niño, Olivia Casas, Heidy Andrea Pérez Buitrago, Elizabeth Santander Durán, Diana Escobar Santander, Miguel Ernesto Puerto Santander, Luisa Fernanda, Uribe Laverde, David Alirio Uribe Laverde, Miguel Ángel Uribe Laverde, Juan David Villalba, and Leandro Jurado Arias;

f) An additional USD 5,000 (five thousand United States dollars) for each of the following family members of people from CAJAR, who were victims of the arbitrary intelligence activities: Kimberly Ann Stanton, Luisa Fernanda Uribe Laverde, Miguel Ángel Uribe Laverde, David Alirio Uribe Laverde, Paula Camila Romero Gutiérrez, Jheyson Andrés Arias Zambrano, and Leandro Jurado Arias;

g) An additional USD 5,000 (five thousand United States dollars) for violation of the rights of the child, for each of the following: Luisa Fernanda Uribe Laverde, David Alirio Uribe

Laverde, Paula Camila Romero Gutiérrez, Jheyson Andrés Arias Zambrano, Leandro Jurado Arias, Juan Pablo Barrios Romero, Marta Carolina Barrios Romero, Diana María Barrios Sabogal, Laura Camila Barrios Sabogal, Camilo Ernesto Pérez Niño, and Katia Karina de la Libertad Pérez Niño;

h) USD 3000 (three thousand United States dollars) for Alirio Uribe Muñoz, Rafael Barrios Mendivil, Soraya Gutiérrez Argüello, Diana María Barrios Sabogal, and Reinaldo Villalba Vargas for violation of the guarantee of a reasonable period and the right to have access to case files held by the prosecution;

i) An additional USD 5,000 (five thousand United States dollars) each for Eduardo Carreño Wilches, Reinaldo Villalba Vargas, Alirio Uribe Muñoz, Pedro Julio Mahecha Ávila, and Rafael Barrios Mendivil, for violation of the right to judicial guarantees and the right to judicial protection resulting from the failure to investigate and solve the inclusion of personal information in the intelligence files of civilian and military authorities in the 1990s;

j) An additional USD 5,000 (five thousand United States dollars) for the following people for violation of the right to protection of the family: Rafael Barrios Mendivil, Ana Mendivil de Barrios, Rafael Barrios Zapata, Juan Pablo Barrios Romero, Marta Carolina Barrios Romero, Diana María Barrios Sabogal, Laura Camila Barrios Sabogal, Antonio Rafael Barrios, Nubia Barrios de Noguera, Carlos José Barrios Mendivil, Elsye del Socorro Barrios Mendivil, Ana Barrios Mendivil, Luis Guillermo Pérez Casas, Katia Karina Niño, Camilo Ernesto Pérez Niño, Katia Karina de la Libertad Pérez Niño, Olivia Casas, and Heidy Andrea Pérez Buitrago;

k) An additional USD 5,000 (five thousand United States dollars) each for Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, and Maret Cecilia García Alfonso, for damage caused by displacement abroad, and

l) An additional USD 3,000 (three thousand United States dollars) each for Soraya Gutiérrez Argüello and Paula Camila Romero Gutiérrez for damage caused by internal displacement.

1100. The different amounts should be summed for cumulative disbursement to the victims awarded two or more amounts. The Court stands informed that Olga Hernández Villalba passed away in May, 2018. In her case or that of any other victim who may have died, as indicated in this judgment, the pertinent amounts must be disbursed to their successors, pursuant to domestic inheritance laws (*infra* para. 1122).

I. Costs and expenses

1101. ***CAJAR and CEJIL*** said that the Collective "has served as its own representative in the different domestic proceedings since the late" 1990s, in the international process since 2000, and in "the process for precautionary measures" before the Commission. In the course of this representation, it "has incurred expenditures for travel, interviews with the victims, and legal work," including investigation, compilation and presentation of evidence, and preparation of submissions. CAJAR has also incurred expenditures "to respond effectively to several of the violations described." They said they had submitted "documentation to demonstrate and itemize" these expenditures.

1102. They noted that over the 20 years since the case before the inter-American system began, Jomary Ortegón Osorio and Rafael Barrios Mendivil "have worked constantly to move

the process along," and "some years they received the support of" two other lawyers for this purpose. Moreover, "at least two lawyers worked part-time from 2000 to 2020 to push forward the criminal investigations on the case," with "the support of legal aides." In the domestic proceedings, Luis Guillermo Pérez Casas and Reinaldo Villalba Vargas "performed a variety of tasks for criminal litigation." They explained that, "as a whole, the work of legal representation has consumed many hours for collecting information, writing briefs, reading material, and discussing the different submissions." Additionally, "the Collective […] incurred expenditures for services, management, financial arrangements, office supplies, photocopies, and telephone calls."

1103. They emphasized that the Collective's work had not been limited just to its activities "before the courts," but "has also required responses to the acts of defamation and stigmatizing." They noted that this "work reflected at least five percent of the salary of the presidents of CAJAR." They added that the Collective needed to hire an "image consultant" and "decided to produce a book and a documentary film, both entitled '*Gotas que Agrietan la Roca*' (drops of water that crack the rock), a compilation of the work of CAJAR and its members."

1104. They said that "the actions taken against CAJAR for the cases of the El Coloto and Mapiripán massacre required additional expenditures" because the "COVERJURE social fund" had to be used to hire "legal professionals to represent the members of the" Collective before the Superior Council of the Judiciary, the Comptroller General, and the Prosecutor General, "for the disciplinary and criminal investigations" they were conducting.

1105. They asked the Court to order payment of the following "cumulative" amounts: (a) "consolidated salary expenditures: USD 222,005" (two hundred twenty-two thousand five United States dollars); (b) "consolidated expenditures incurred by the COVERJURE Social Fund: USD 41,290" (forty-one thousand two hundred ninety United States dollars); (c) "consolidated total travel expenditures to the Commission hearing: USD 616" (six hundred sixteen United States dollars), and (d) "estimate for monitoring the MC-128-00 precautionary measures: USD 2,000" (two thousand United States dollars). This adds up to a total of "USD 265,911" (two hundred sixty-five thousand nine hundred eleven United States dollars).

1106. They also said that CEJIL "has served as the representative of the victims in the international process since the time the initial petition was submitted," and "in the process for precautionary measures," for which "it has incurred expenditures including travel, victim interviews, and legal work for carrying the specific case, including investigation, compilation, and submission of evidence." They added that they had attached "an itemized list of these costs and expenses" which, in their estimate, total "USD 56,000" (fifty-six thousand United States dollars).

1107. Finally, in their final written arguments, they said that, after they had submitted the pleadings and motions brief, they had faced other expenses and therefore, in addition to the amounts already indicated, they also requested: (a) "USD 21,710" (twenty-one thousand seven hundred ten United States dollars) for CAJAR, and (b) "USD 95,209.53" (ninety-five thousand two hundred nine United States dollars and fifty-three cents) for CEJIL.

1108. ***Ms. Arias*** said that she had incurred "expenses produced or caused in the preparation of the pleadings and motions brief […] for the legal tasks of investigation, coordination, collection of evidence, preparation of documents, and professional support by an attorney and a legal aide." She said she had incurred "administrative and communication expenses including office supplies, copies, printing, Internet, telephone communications, and the like." She therefore asked the Court to order the State to pay USD 7,000 (seven thousand United

States dollars).

1109. She said in her final written arguments that she had covered other expenses to enable the representative and the rest of the delegation to attend the public hearing and for the expenses of psychological care, legal and administrative expenses, and communications. She asked for the procedural costs of the legal work to be assessed in equity.

1110. The ***State*** said that the Court "should remove from the costs and expenses […] all disbursements involving activities […] associated with the procedure for precautionary measures currently in force with the Commission." It asked for "the costs and expenses to be limited to the amounts proven by the representatives of the […] victims, so long as they are strictly related to procedures followed as part of the instant case and that the amount is reasonable."

1111. The **Court** recalls that, pursuant to its case law, costs and expenses are part of the body of reparations because the activities undertaken by the victims to obtain justice both nationally and internationally require outlays that should be covered when the Court judges the State to be internationally responsible. With respect to reimbursement for these costs and expenses, it is the Court's responsibility to prudently assess their scope, which includes expenses incurred before domestic legal authorities, as well as those incurred in the course of the proceedings before the inter-American system, keeping in mind the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment can be done on the basis of the principle of equity and taking into consideration the expenses declared by the parties, provided the amounts are reasonable.[1115]

1112. The Court also has said that it is not enough to merely remit probative documents; rather the parties must develop the reasoning linking the evidence to the fact under consideration and, in the case of alleged financial outlays, the items of expenditure and their justification must be described clearly.[1116]

1113. When CAJAR and CEJIL made their claims for costs and expenses, they pointed to several different items and specified the amounts requested. The Court recalls that it will detail in this section of the judgment its decision as to the amounts the Collective spent in domestic processes to seek justice (*supra* para. 1086).

1114. With respect to the amounts requested specifically for the Collective, the itemized list of expenditures was duly submitted in the annexes to the pleadings and motions brief, together with certain items for which the request cannot be granted. Specifically, the Court recalls that no violation was declared concerning the disciplinary and fiscal procedures that various members of CAJAR underwent for matters associated with the trial for the Mapiripán massacre (*supra* para. 723). Similarly, the category of costs and expenses does not include outlays for measures to "respond to the acts of defamation and stigmatizing" which included hiring an "image consultant," publishing a book, producing a documentary film, and the like.

1115. CEJIL requested certain amounts for itself in the documents attached to the pleadings and motions brief, but it failed to include the itemized list that would be needed to justify the claims, and among other things, this should have included the names of the people whose participation in the process had incurred financial outlays, and the dates and purposes of their

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[1115] *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs.* Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of Córdoba v. Paraguay, supra*, para. 155.

[1116] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 277, and *Case of Córdoba v. Paraguay, supra,* para. 156.

participation.[1117]

1116. Both organizations, when they submitted their final written arguments, said they were itemizing the outlays they had made in processing the case after they had submitted their pleadings and motions briefs. The vouchers show reasonable evidence of outlays by CAJAR of USD 4,183.65 (four thousand one hundred eighty-three United States dollars and sixty-five cents).[1118] The CEJIL submission indicates documented outlays of USD 1,088.41 (one thousand eighty-eight United States dollars and forty-one cents).[1119]

1117. Ms. Arias submitted with her final written arguments an itemization of expenditures and receipts as evidence of her outlays of USD 1,207.66 (one thousand two hundred seven United States dollars and sixty-six cents).[1120]

1118. The Court, considering the vouchers submitted, sets an amount in equity for costs and expenses and recalls that the Collective faced expenditures both domestically, for the legal processes to investigate and, if appropriate, try the facts of the instant case, and in the international process. CEJIL was involved from the time the first petition was submitted to the inter-American system. Both organizations have undertaken a number of efforts to represent the largest possible number of victims. Ms. Arias represented four victims in the case before this Court.

1119. The Court therefore orders payment in equity of the following amounts for costs and expenses: (a) USD 70,000 (seventy thousand United States dollars) for CAJAR; (b) USD 35,000 (thirty-five thousand United States dollars for CEJIL, and (c) USD 10,000 (ten thousand United States dollars) for Dora Arias.

1120. It should be added that the Court may order the State to reimburse the victims or their representatives for reasonable outlays incurred during the stage of monitoring compliance with this judgment.[1121]

J. Method of compliance with the payments ordered

1121. The State must release payment of the compensation ordered for pecuniary and nonpecuniary damages and reimbursement of legal fees and expenses established herein directly to the individuals and organizations as specified, within one year of the date of service

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[1117] *Cf.* Document entitled "Itemized expenditures incurred by the Center for Justice and International Law CEJIL" (evidence file, volume XIII, annex 72 to the CAJAR and CEJIL pleadings and motions brief, folios 28419 to 28605).

[1118] The expenditures covered (i) airfare for the people accredited to take part in the public hearing on behalf of the Collective and those summoned to declare, (ii) outlays for one of the expert opinions, and (iii) transcription of the testimonies rendered in the hearing. The Court was unable to verify whether certain other items bore a reasonable connection with the amounts that had reportedly been spent. *Cf.* Document entitled "Statement of costs and expenses and supporting outlays by CAJAR" (evidence file, volume XL, annex 5 to the CAJAR and CEJIL final written arguments, folios 46600 to 46718). The exchange rate published by the Banco de la República de Colombia was used for this purpose. Available in Spanish at: https://banrep.gov.co/es.

[1119] These expenditures correspond to (i) statements made before a public attestor, and (ii) airfare for two people accredited to speak at the public hearing on behalf of CEJIL. The Court was unable to verify whether certain other items bore a reasonable connection with the amounts that had reportedly been spent. *Cf.* Document entitled "Vouchers of CEJIL expenses" (evidence file, volume XL, annex to the CAJAR and CEJIL final written arguments, folios 46721 to 46790).

[1120] The expenditures correspond to (i) airfare for three people accredited to speak at the public hearing, and (ii) lodging for one of these people. The Court was unable to verify whether certain other items bore a reasonable connection with the amounts that had reportedly been spent. *Cf.* Document entitled "Calculation of procedural costs and expenses" (evidence file, volume XIL, annexes to Ms. Arias' final written arguments, folio 46471). The exchange rate published by the Banco de la República de Colombia was used for this purpose.

[1121] *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs.* Judgment of September 1, 2010. Series C No. 217, para. 29, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra,* para. 186.

of the judgment.

1122. If beneficiaries should pass away prior to the payment of their due compensation, the money shall be disbursed directly to their successors under the terms of applicable domestic legislation.

1123. The State must fulfill all its monetary obligations by means of payment in United States dollars or the equivalent in Colombian currency, calculated according to the exchange rate on the market as published or calculated by a qualified banking or financial authority on the day nearest to the date of payment.

1124. If for causes attributable to the beneficiaries of the compensation or their heirs it should prove impossible to pay the amounts established within the required term, the State shall deposit the amounts in their names into an account or certificate of deposit in a sound Colombian financial institution, in United States dollars, under the most favorable financial conditions allowed by law and by banking practice. If the compensation has not been claimed after ten years, the money shall revert to the State with interest.

1125. The amounts allocated under this judgment as compensation for pecuniary and nonpecuniary damage and for reimbursement of costs and expenses shall be disbursed in their entirety to the assigned individuals and organizations, as ordered in this judgment, with no deductions for possible fiscal fees.

1126. If the State should fall behind on payments, it must pay interest on the amounts owed, based on overdue interest rates in effect for banks in the Republic of Colombia.

X
OPERATIVE PARAGRAPHS

1127. Therefore,

THE COURT

DECIDES,

unanimously:

1. To disallow the preliminary objection on application of the principle of subsidiarity when human rights violations stem from intelligence activities involving surveillance and monitoring, pursuant to paragraphs 25 to 27 of this judgment.

unanimously:

2. To disallow the preliminary objection on a claimed failure to exhaust domestic remedies for the alleged violation of the right to freedom of thought and expression, pursuant to paragraphs 36 to 42 of this judgment.

unanimously:

3. To disallow the request for legal review on the alleged unequal treatment by the Commission in processing the case, with respect to application of rules-based time limits, pursuant to paragraphs 50 to 60 of this judgment.

unanimously:

4. To disallow the request for legal review on the alleged inconsistency in the cause of action as cited by the Commission in its Admissibility Report and Report on the Merits, and the submission brief, pursuant to paragraphs 65 to 71 of this judgment.

DECLARES,

unanimously, that:

5. The State is internationally responsible for violating the right to life and the right to personal integrity, set forth in Articles 4(1) and 5(1) of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee the rights as enshrined in Article 1(1) thereof, in injury of Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Soraya Gutiérrez Argüello, Reinaldo Villalba Vargas, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, Diana Teresa Sierra Gómez, Javier Alejandro Acevedo Guerrero, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, Pedro Julio Mahecha Ávila, Adriana Patricia Fuentes López, Efraín Cruz Gutiérrez, Adriana Cuéllar Ramírez, Nubia Liliana Romero Bernal, Sandra Yalin Ariza, Olga Lilia Silva López, Camilo Andrés Galindo Marín, Chennyer Jairt Piñeros Fuquen, Carlos Lozano Acosta, Andrés Rivera Acevedo, Mónica Lorena Zuluaga Patiño, Adriana Lizeth López Rojas, Lyda Natalia Hernández García, Andrea del Rocío Torres Bobadilla, Olga Marcela Cruz López, Olga Hernández Villalba, Ingrid Osnay Fernández Rengifo, Martha Eugenia Rodríguez Orozco, and Fernando Lemus Rodríguez, pursuant to paragraphs 833 to 880 and 984 of this judgment.

unanimously, that:

6. The State is internationally responsible for violating the right to personal integrity, enshrined in Article 5(2) of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee rights and refrain from any action or practice of violence against women as enshrined in Articles 1(1) thereof and Article 7(a) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, in injury of Soraya Gutiérrez Argüello, pursuant to paragraphs 881 to 894, 897 to 905, and 985 of this judgment.

unanimously, that:

7. The State is internationally responsible for violating the right to personal integrity and the rights of the child, enshrined in Articles 5(1) and 19 of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee rights and to refrain from any action or practice of violence against women, as enshrined in Articles 1(1) thereof and Article 7(a) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, in injury of Paula Camila Romero Gutiérrez, pursuant to paragraphs 630 to 635, 729, 893 to 895, 954, 986, and 990 of this judgment.

unanimously, that:

8. The State is internationally responsible for violating the right to personal integrity, enshrined in Article 5(1) of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee rights as enshrined in Article 1(1) thereof, in injury of Álvaro Enrique Romero Jaimes, María Irma Argüello Marino, Irma Helena Gutiérrez

Argüello, Omar Gutiérrez Argüello, Astrid del Pilar Sánchez Martínez, Kimberly Ann Stanton, Ana Mendivil de Barrios, Rafael Barrios Zapata, Juan Pablo Barrios Romero, Marta Carolina Barrios Romero, Diana María Barrios Sabogal, Rafael David Barrios Sabogal, Laura Camila Barrios Sabogal, Antonio Rafael Barrios, Nubia Barrios de Noguera, Carlos José Barrios Mendivil, Elsye del Socorro Barrios Mendivil, Ana Barrios Mendivil, Katia Karina Niño, Camilo Ernesto Pérez Niño, Katia Karina de la Libertad Pérez Niño, Olivia Casas, Heidy Andrea Pérez Buitrago, Elizabeth Santander Durán, Diana Escobar Santander, Miguel Ernesto Puerto Santander, Carolina Elizabeth Puerto Santander, Luisa Fernanda, Uribe Laverde, David Alirio Uribe Laverde, Miguel Ángel Uribe Laverde, Juan David Villalba, and Leandro Jurado Arias, pursuant to paragraphs 907 to 911 and 987 of this judgment.

unanimously, that:

9. The State is internationally responsible for violating the right to judicial guarantees and the right to judicial protection, enshrined in Articles 8(1) and 25(1) of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee rights as enshrined in Article 1(1) thereof, in injury of Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Soraya Gutiérrez Argüello, Reinaldo Villalba Vargas, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, Diana Teresa Sierra Gómez, Javier Alejandro Acevedo Guerrero, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, Pedro Julio Mahecha Ávila, Adriana Patricia Fuentes López, Efraín Cruz Gutiérrez, Adriana Cuéllar Ramírez, Nubia Liliana Romero Bernal, Sandra Yalin Ariza, Olga Lilia Silva López, Camilo Andrés Galindo Marín, Chennyer Jairt Piñeros Fuquen, Carlos Lozano Acosta, Andrés Rivera Acevedo, Mónica Lorena Zuluaga Patiño, Adriana Lizeth López Rojas, Lyda Natalia Hernández García, Andrea del Rocío Torres Bobadilla, Olga Marcela Cruz López, Olga Hernández Villalba, Ingrid Osnay Fernández Rengifo, Martha Eugenia Rodríguez Orozco, and Fernando Lemus Rodríguez, pursuant to paragraphs 740 to 773, 775 to 781, 787 to 803, and 810 to 813 of this judgment.

unanimously, that:

10. The State is internationally responsible for violating the right to judicial guarantees, enshrined in Article 8(1) of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee rights as enshrined in Article 1(1) thereof, in injury of Diana María Barrios Sabogal, pursuant to paragraphs 766 to 770, 774 to 776, and 811 of this judgment.

by four votes in favor and one opposed, that:

11. The State is internationally responsible for violating the right to privacy, enshrined in Articles 11(2) and 11(3) of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee rights and to adopt domestic legal effects as enshrined in Articles 1(1) and 2 thereof, in injury of Rafael Barrios Mendivil, Kimberly Ann Stanton, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Luisa Fernanda Uribe Laverde, Miguel Ángel Uribe Laverde, David Alirio Uribe Laverde, Soraya Gutiérrez Argüello, Paula Camila Romero Gutiérrez, Reinaldo Villalba Vargas, Jheyson Andrés Arias Zambrano, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, Diana Teresa Sierra Gómez, Javier Alejandro Acevedo Guerrero, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Leandro Jurado Arias, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, Pedro Julio Mahecha Ávila, Adriana Patricia Fuentes López, Efraín Cruz Gutiérrez, Adriana Cuéllar Ramírez, Nubia Liliana Romero Bernal, Sandra Yalin Ariza, Olga Lilia Silva López, Camilo Andrés Galindo Marín, Chennyer Jairt Piñeros Fuquen, Carlos Lozano

Acosta, Andrés Rivera Acevedo, Mónica Lorena Zuluaga Patiño, Adriana Lizeth López Rojas, Lyda Natalia Hernández García, Andrea del Rocío Torres Bobadilla, Olga Marcela Cruz López, Olga Hernández Villalba, Ingrid Osnay Fernández Rengifo, Martha Eugenia Rodríguez Orozco, and Fernando Lemus Rodríguez, pursuant to paragraphs 516 to 581, 609 to 625, 659 to 685, and 727 of this judgment.

Partial dissent by Judge Patricia Pérez Goldberg for the finding on violation of Article 2 of the American Convention on Human Rights.

unanimously, that:

12. The State is internationally responsible for violating the right to freedom of thought and expression, enshrined in Article 13(1) of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee rights as enshrined in Article 1(1) thereof, in injury of Rafael Barrios Mendivil, Kimberly Ann Stanton, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Luisa Fernanda Uribe Laverde, Miguel Ángel Uribe Laverde, David Alirio Uribe Laverde, Soraya Gutiérrez Argüello, Paula Camila Romero Gutiérrez, Reinaldo Villalba Vargas, Jheyson Andrés Arias Zambrano, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, Diana Teresa Sierra Gómez, Javier Alejandro Acevedo Guerrero, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Leandro Jurado Arias, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, Pedro Julio Mahecha Ávila, Adriana Patricia Fuentes López, Efraín Cruz Gutiérrez, Adriana Cuéllar Ramírez, Nubia Liliana Romero Bernal, Sandra Yalin Ariza, Olga Lilia Silva López, Camilo Andrés Galindo Marín, Chennyer Jairt Piñeros Fuquen, Carlos Lozano Acosta, Andrés Rivera Acevedo, Mónica Lorena Zuluaga Patiño, Adriana Lizeth López Rojas, Lyda Natalia Hernández García, Andrea del Rocío Torres Bobadilla, Olga Marcela Cruz López, Olga Hernández Villalba, Ingrid Osnay Fernández Rengifo, Martha Eugenia Rodríguez Orozco, and Fernando Lemus Rodríguez, pursuant to paragraphs 626 to 629 and 727 of this judgment.

by four votes in favor and one opposed, that:

13. The State is internationally responsible for violating the right to informational self-determination, enshrined in Articles 11(2) and 13(1) of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee rights and to adopt domestic legal effects as enshrined in Articles 1(1) and 2 thereof, in injury of Rafael Barrios Mendivil, Kimberly Ann Stanton, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Luisa Fernanda Uribe Laverde, Miguel Ángel Uribe Laverde, David Alirio Uribe Laverde, Soraya Gutiérrez Argüello, Paula Camila Romero Gutiérrez, Reinaldo Villalba Vargas, Jheyson Andrés Arias Zambrano, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, Diana Teresa Sierra Gómez, Javier Alejandro Acevedo Guerrero, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Leandro Jurado Arias, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, Pedro Julio Mahecha Ávila, Adriana Patricia Fuentes López, Efraín Cruz Gutiérrez, Adriana Cuéllar Ramírez, Nubia Liliana Romero Bernal, Sandra Yalin Ariza, Olga Lilia Silva López, Camilo Andrés Galindo Marín, Chennyer Jairt Piñeros Fuquen, Carlos Lozano Acosta, Andrés Rivera Acevedo, Mónica Lorena Zuluaga Patiño, Adriana Lizeth López Rojas, Lyda Natalia Hernández García, Andrea del Rocío Torres Bobadilla, Olga Marcela Cruz López, Olga Hernández Villalba, Ingrid Osnay Fernández Rengifo, Martha Eugenia Rodríguez Orozco, and Fernando Lemus Rodríguez, pursuant to paragraphs 582 to 608, 636 to 651, 687 to 694, and 728 of this judgment.

Partial dissent by Judge Patricia Pérez Goldberg for the finding on violation of Article 2 of the American Convention on Human Rights.

unanimously, that:

14. The State is internationally responsible for violating the right to know the truth, read in conjunction with the right of access to information, enshrined in Article 13(1) of the American Convention on Human Rights, further read in conjunction with the obligations to respect and guarantee rights as enshrined in Article 1(1) thereof, in injury of Rafael Barrios Mendivil, Kimberly Ann Stanton, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Luisa Fernanda Uribe Laverde, Miguel Ángel Uribe Laverde, David Alirio Uribe Laverde, Soraya Gutiérrez Argüello, Paula Camila Romero Gutiérrez, Reinaldo Villalba Vargas, Jheyson Andrés Arias Zambrano, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, Diana Teresa Sierra Gómez, Javier Alejandro Acevedo Guerrero, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Leandro Jurado Arias, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, Pedro Julio Mahecha Ávila, Adriana Patricia Fuentes López, Efraín Cruz Gutiérrez, Adriana Cuéllar Ramírez, Nubia Liliana Romero Bernal, Sandra Yalin Ariza, Olga Lilia Silva López, Camilo Andrés Galindo Marín, Chennyer Jairt Piñeros Fuquen, Carlos Lozano Acosta, Andrés Rivera Acevedo, Mónica Lorena Zuluaga Patiño, Adriana Lizeth López Rojas, Lyda Natalia Hernández García, Andrea del Rocío Torres Bobadilla, Olga Marcela Cruz López, Olga Hernández Villalba, Ingrid Osnay Fernández Rengifo, Martha Eugenia Rodríguez Orozco, and Fernando Lemus Rodríguez, pursuant to paragraphs 652 to 658 and 730 of this judgment.

unanimously, that:

15. The State is internationally responsible for violating the right to honor, enshrined in Article 11(1) of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee rights as enshrined in Article 1(1) thereof, in injury of Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Soraya Gutiérrez Argüello, Reinaldo Villalba Vargas, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, Diana Teresa Sierra Gómez, Javier Alejandro Acevedo Guerrero, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, Pedro Julio Mahecha Ávila, Adriana Patricia Fuentes López, Efraín Cruz Gutiérrez, Adriana Cuéllar Ramírez, Nubia Liliana Romero Bernal, Sandra Yalin Ariza, Olga Lilia Silva López, Camilo Andrés Galindo Marín, Chennyer Jairt Piñeros Fuquen, Carlos Lozano Acosta, Andrés Rivera Acevedo, Mónica Lorena Zuluaga Patiño, Adriana Lizeth López Rojas, Lyda Natalia Hernández García, Andrea del Rocío Torres Bobadilla, Olga Marcela Cruz López, Olga Hernández Villalba, Ingrid Osnay Fernández Rengifo, Martha Eugenia Rodríguez Orozco, and Fernando Lemus Rodríguez, pursuant to paragraphs 700 to 721 and 731 of this judgment.

unanimously, that:

16. The State is internationally responsible for violating the rights of the child enshrined in Article 19 of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee rights as enshrined in Article 1(1) thereof, in injury of Luisa Fernanda Uribe Laverde, David Alirio Uribe Laverde, Leandro Jurado Arias, Jheyson Andrés Arias Zambrano, Juan Pablo Barrios Romero, Marta Carolina Barrios Romero, Diana María Barrios Sabogal, Laura Camila Barrios Sabogal, Camilo Ernesto Pérez Niño, and Katia Karina de la Libertad Pérez Niño, pursuant to paragraphs 630 to 635, 729, 954 and 990 of this judgment.

unanimously, that:

17. The State is internationally responsible for violating the right to freedom of thought and expression and the right to freedom of association set forth in Articles 13(1) and 16(1) of the

American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee rights as enshrined in Article 1(1) thereof, in injury of Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Soraya Gutiérrez Argüello, Reinaldo Villalba Vargas, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, and Pedro Julio Mahecha Ávila, pursuant to paragraphs 959 to 967 and 991 of this judgment.

unanimously, that:

18. The State is internationally responsible for violating the right to freedom of movement and residence, set forth in Article 22(1) of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee rights as enshrined in Article 1(1) thereof, in injury of Rafael Barrios Mendivil, Soraya Gutiérrez Argüello, Paula Camila Romero Gutiérrez, Luis Guillermo Pérez Casas, and Maret Cecilia García Alfonso, pursuant to paragraphs 922 to 948 and 988 of this judgment.

unanimously, that:

19. The State is internationally responsible for violating the rights of the family, set forth in Article 17(1) of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee rights as enshrined in Article 1(1) thereof, in injury of Rafael Barrios Mendivil, Ana Mendivil de Barrios, Rafael Barrios Zapata, Juan Pablo Barrios Romero, Marta Carolina Barrios Romero, Diana María Barrios Sabogal, Laura Camila Barrios Sabogal, Antonio Rafael Barrios, Nubia Barrios de Noguera, Carlos José Barrios Mendivil, Elsye del Socorro Barrios Mendivil, Ana Barrios Mendivil, Luis Guillermo Pérez Casas, Katia Karina Niño, Camilo Ernesto Pérez Niño, Katia Karina de la Libertad Pérez Niño, Olivia Casas, and Heidy Andrea Pérez Buitrago, pursuant to paragraphs 949 to 953 and 989 of this judgment.

unanimously, that:

20. The State is internationally responsible for violating the right to defend human rights, set forth in Articles 4(1), 5(1), 8(1), 13(1), 16(1), and 25(1) of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee rights as enshrined in Article 1(1) thereof, in injury of Rafael Barrios Mendivil, Luis Guillermo Pérez Casas, Alirio Uribe Muñoz, Soraya Gutiérrez Argüello, Reinaldo Villalba Vargas, Lincoln Miguel Puerto Barrera, Diana Milena Murcia Riaño, Diana Teresa Sierra Gómez, Javier Alejandro Acevedo Guerrero, María del Pilar Silva Garay, Jomary Ortegón Osorio, Dora Lucy Arias Giraldo, Eduardo Carreño Wilches, Yessika Hoyos Morales, Maret Cecilia García Alfonso, Pedro Julio Mahecha Ávila, Adriana Patricia Fuentes López, Efraín Cruz Gutiérrez, Adriana Cuéllar Ramírez, Nubia Liliana Romero Bernal, Sandra Yalin Ariza, Olga Lilia Silva López, Camilo Andrés Galindo Marín, Chennyer Jairt Piñeros Fuquen, Carlos Lozano Acosta, Andrés Rivera Acevedo, Mónica Lorena Zuluaga Patiño, Adriana Lizeth López Rojas, Lyda Natalia Hernández García, Andrea del Rocío Torres Bobadilla, Olga Marcela Cruz López, Olga Hernández Villalba, Ingrid Osnay Fernández Rengifo, Martha Eugenia Rodríguez Orozco, and Fernando Lemus Rodríguez, pursuant to paragraphs 971 to 982 and 992 of this judgment.

AND ORDERS:

unanimously, that:

21. This judgment constitutes per se a form of reparation.

unanimously, that:

22. The State shall promote, direct, pursue, and complete, within a reasonable time and in observance of due diligence, the investigations to elucidate the acts of violence, threats, intimidation, and harassment against the victims, as well as the intelligence activities conducted by various public agencies in the 1990s and, if relevant, bring to trial and ultimately sanction the perpetrators, pursuant to paragraphs 1004 to 1006 of this judgment.

unanimously, that:

23. The State shall proceed to clear the intelligence archives and thus guarantee the right to informational self-determination of the victims with respect to the data on themselves contained in the files, pursuant to paragraphs 1011 to 1014 of this judgment.

by four votes in favor and one opposed, that:

24. The State shall designate a competent authority before which, after the intelligence archives have been cleared, other members of the "José Alvear Restrepo" Lawyers Collective and the members of their families, in their capacity as victims, can apply for access to the individual reparations ordered by the Court, and shall proceed to issue the reparations, pursuant to paragraph 1000 of this judgment.

Dissent by Judge Patricia Pérez Goldberg.

unanimously, that:

25. The State shall provide psychological, psychiatric, and/or psycho-social care as needed by the victims, pursuant to the provisions of paragraphs 1018 to 1021 of this judgment.

unanimously, that:

26. The State shall hold a ceremony to recognize international responsibility and extend public apologies for the facts of this case, pursuant to paragraphs 1028 and 1029 of this judgment.

unanimously, that:

27. The State shall issue the publications outlined in paragraphs 1030 to 1032 of this judgment.

by four votes in favor and one opposed, that:

28. The State shall prepare and release an audiovisual documentary on the importance of the work of human rights defenders and the facts of the case, pursuant to paragraphs 1033 and 1034 of this judgment.

Dissent by Judge Patricia Pérez Goldberg.

unanimously, that:

29. The State shall conduct a national information and awareness-raising campaign on violence, persecution, and defamation of human rights defenders, pursuant to paragraph 1044 of this judgment.

unanimously, that:

30. The State shall conduct a public information campaign concerning Presidential Executive Order No. 7 of 1999, pursuant to paragraphs 1045 and 1046 of this judgment.

unanimously, that:

31. The State shall design and implement a system for compilation of data and figures on cases of violence against human rights defenders, pursuant to paragraphs 1047 and 1048 of this judgment.

by four votes in favor and one opposed, that:

32. The State shall proceed to designate an official day to commemorate human rights defenders, pursuant to paragraph 1049 of this judgment.

Dissent by Judge Patricia Pérez Goldberg.

unanimously, that:

33. The State shall proceed to create a fund for prevention, protection, and assistance for human rights defenders in risk situations, pursuant to paragraphs 1050 to 1052 of this judgment.

unanimously, that:

34. The State shall design and implement training plans as indicated in paragraphs 1053 and 1054 of this judgment.

by four votes in favor and one opposed, that:

35. The State shall proceed with a regulatory review of Constitutional Law 1621 of 2013 and Executive Order 2149 of 2017, pursuant to paragraphs 1055 to 1058 of this judgment.

Dissent by Judge Patricia Pérez Goldberg.

unanimously, that:

36. The State shall proceed to enact whatever regulatory provisions may be necessary to implement reasonable, expeditious, simple, free, effective mechanisms or procedures for providing individuals with access to and control over data on themselves held in intelligence files, consistent with the scope of the right to informational self-determination, pursuant to paragraphs 1059 and 1060 of this judgment.

unanimously, that:

37. The State shall proceed to revise intelligence manuals pursuant to paragraphs 1061 to 1065 of this judgment.

unanimously, that:

38. The State shall pay the amounts set in paragraphs 1087, 1099 and 1119 of this

judgment as compensation for pecuniary and nonpecuniary damage and costs and expenses, pursuant to paragraphs 1121 to 1126 of this judgment.

unanimously, that:

39. The State shall, within one year of the date of service of this judgment, submit to the Court a report on the measures adopted to comply therewith, notwithstanding the provisions of paragraphs 1030 and 1031 of this judgment.

unanimously, that:

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

Judge Nancy Hernández informed the Court of her individual concurring opinion. Judge Patricia Pérez Goldberg informed the Court of her individual partially dissenting opinion. Judge Rodrigo Mudrovitsch informed the Court of his individual concurring opinion.

Done in Spanish in the city of San Jose, Costa Rica, October 18, 2023.

I/A Court HR. Case of *Members of "José Alvear Restrepo Lawyers' Collective" v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of October 18, 2023.

Ricardo C. Pérez Manrique
President

Eduardo Ferrer Mac-Gregor Poisot

Nancy Hernández López

Patricia Pérez Goldberg

Rodrigo Mudrovitsch

Pablo Saavedra Alessandri
Registrar

So ordered,

Ricardo C. Pérez Manrique
President

Pablo Saavedra Alessandri
Registrar

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF MEMBERS OF THE "JOSÉ ALVEAR RESTREPO" LAWYERS COLLECTIVE *v.* COLOMBIA

Judgment of Preliminary Objections, Merits, Reparations and Costs

Concurring separate opinion by Judge Nancy Hernández López

1. This reasoned opinion expresses my concurrence with the decision adopted by the full Inter-American Court of Human Rights (hereinafter also "Inter-American Court" or "Court) in its Judgment of *Preliminary Objections, Merits, Reparations and Costs* in the *Case of Members of the "José Alvear Restrepo" Lawyers Collective v. Colombia* (hereinafter "judgment"). The purpose of this separate opinion is to explain my position on the scope of application of the exception provided under Article 35(2) of the Court's Rules of Procedure (hereinafter also "Rules of Procedure") in the case at hand.

2. I am in agreement with the use of the exception set forth in Article 35(2) of the Court's Rules of Procedure[1] in the instant case, applicable to those other individuals who were members of the "José Alvear Restrepo" Lawyers Collective (CAJAR) or the members of their families who, blocked from access to the intelligence files developed under the operations of the special intelligence group 3 (G3) inside the Administrative Department of Security (DAS), have been unable even today to determine whether or not they were victims of the arbitrary intelligence activities (paras. 95 to 641).

3. As the judgment says (para. 1000), the application of the exception given in Article 35(2) of the Rules of Procedure justifies any claim to the reparations ordered in the judgment for those who, after access to the intelligence files has been granted, are held as victims of the violation of their rights to protection of privacy, freedom of thought and expression, and the rights of the child, in keeping with the judgment's analysis of the merits, if it is found that these persons are named in the files and have yet to be identified because they were unable to see the files, given the State's deliberate interference to block their access.

4. As the judgment itself states, these other individuals may acquire status as victims if it is shown that that the DAS had conducted arbitrary intelligence activities against them during the time the G3 was in operation, that is, from 2003 to 2005 (para. 316).

5. The judgment itself adds that the status as victims, under Article 35(2) of the Rules of Procedure, was not limited to this time period, in view of the following sentence: "This does not rule out the possibility that access to the DAS archives could turn up other victims who were members of CAJAR or their family members."

6. Given the inclusion of this sentence, the universe of victims may be expanded to include persons who turn out to have been targeted by the intelligence activities of this government agency regardless of when it happened. Thus, facts that occurred before 2003 or after 2005 can be included. This would mean admitting claims by people who were the victims of intelligence activities during periods when the G3 was not in operation, even though the G3 activities were one of the key points in the corpus of facts of the case that justified the application of Article 35(2) of the Rules of Procedure.

[1] Art. 35(2) of the Rules of Procedure of the Court: "When it has not been possible to identify one or more of the alleged victims who figure in the facts of the case because it concerns massive or collective violations, the Tribunal shall decide whether to consider those individuals as victims."

7. Taking into account that the DAS was in operation from 1960 through 2011 (paras. 313 and 351), the inclusion of this phrase in the judgment could point, without reasonable justification, to an extremely broad span of time that would not only lie outside the corpus of facts of the case, but would also include periods not included in the Court's analysis of the merits. This means that individuals could have access to reparations if they were targeted by DAS activities outside the scope of G3 operations, who were unrelated to the Court's legal analysis and not affected by those G3 activities that ultimately were the grounds for holding the State of Colombia internationally responsible in the case at hand.

8. I believe that there is no basis and no justification for widening the universe of victims such as could be derived from the inclusion of this phrase, and therefore, as I said in the deliberations, I do not agree that they should be included in the judgment, as this is not consistent with the reasons given for application of Article 35(2) of the Rules of Procedure, and quite clearly, would distort the scope of application of this exception for the instant case.

San Jose, Costa Rica, November, 2023

Nancy Hernández
Judge

Pablo Saavedra Alessandri
Registrar

PARTIALLY DISSENTING OPINION
BY JUDGE PATRICIA PÉREZ GOLDBERG

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF MEMBERS OF THE "JOSÉ ALVEAR RESTREPO"

LAWYERS COLLECTIVE v. COLOMBIA

JUDGMENT OF OCTOBER 18, 2023

***(Preliminary Objections, Merits, Reparations and Costs*)**

1. As is my usual practice, I fully respect the majority decision of the Inter-American Court of Human Rights (hereinafter "Inter-American Court" or "Court"), and with that in mind, I submit this separate reasoned opinion[1] to expound on the reasons for my disagreement with several points analyzed and settled in the *Judgment on Preliminary Objections, Merits, Reparations and Costs* delivered in the case of *Members of the José Alvear Restrepo Lawyers Collective v. Colombia* (hereinafter "judgment").

2. I concur with the majority opinion about the need to set certain standards for the conduct of intelligence activities by the States. Nonetheless, in this setting we should remember that the European Court of Human Rights has been saying for decades that "[d]emocratic societies nowadays find themselves threatened by highly sophisticated forms of espionage and by terrorism, with the result that the State[s] must be able, in order effectively to counter such threats, to undertake the secret surveillance of subversive elements operating within [their] jurisdiction."[2] ... "The existence of some legislation granting powers of secret surveillance over the mail, post and telecommunications is, under exceptional conditions, necessary in a democratic society..."[3] The European Court has thus said that intelligence services "may legitimately exist in a democratic society," but "it reiterates that powers of secret surveillance of citizens are tolerable [...] only in so far as strictly necessary for safeguarding the democratic institutions."[4]

3. I will develop the grounds for my partial dissent in the following sequence:

A) Article 35(2) of the Rules of Procedure of the Court is not applicable 2

B) The written opinion by expert witness Federico Andreu Guzmán is inadmissible 4

C) The conduct of a Convention-based review of Law 1621 of 2013 and Executive Order 2149 of 2017 is unwarranted 5

[1] Article 65(2) of the Rules of Procedure of the Court states: "Any Judge who has taken part in the consideration of a case is entitled to append a separate reasoned opinion to the judgment, concurring or dissenting. These opinions shall be submitted within a time limit to be fixed by the Presidency so that the other Judges may take cognizance thereof before notice of the judgment is served. Said opinions shall only refer to the issues covered in the judgment." I am grateful for the research assistance I received from Esteban Oyarzún and Nayib Campos.

[2] European Court of Human Rights. *Klass and others v. Germany,* No. 5029/71, Judgment of September 6, 1978, para. 48.

[3] European Court of Human Rights. *Klass and others v. Germany,* No. 5029/71, Judgment of September 6, 1978, para. 48.

[4] European Court of Human Rights. *Rotaru v. Romania*, No. 28341/95, judgment of May 4, 2000, para. 47.

D) The measure of redress to prepare and disseminate an audiovisual documentary is inappropriate 7

E) The measure of redress to officially designate of a day of commemoration for human rights defenders is inappropriate 8

A) Article 35(2) of the Rules of Procedure of the Court is not applicable

4. The judgment, in consideration of the request submitted by the representatives and reiterated by the Commission, ordered that the objection provided in Article 35(2) of the Court's Rules of Procedure (hereinafter "Rules of Procedure") be applied, arguing that, because the intelligence files of the Administrative Department of Security (hereinafter "DAS") were inaccessible, it would have been impossible to identify all the individuals who had allegedly been victims of the State's arbitrary intelligence activities, "combined with the collective nature of the case," and therefore it would be necessary to consider the time elapsed since the incidents occurred and "the undercover environment in which intelligence activities are conducted" (para. 95).

5. As I said during deliberations, I disagree with this position, as in my view, the facts of this case are not amenable to application of Article 35(2) of the Rules of Procedure. Article 35(2) reads as follows: "When it has not been possible to identify one or more of the alleged victims who figure in the facts of the case because it concerns massive or collective violations, the Tribunal shall decide whether to consider those individuals as victims." This text as quoted offers the possibility of widening the universe of alleged victims of the case, regardless of the content of the Report on the Merits approved by the Inter-American Commission on Human Rights (hereinafter "Commission" or "Inter-American Commission");[5] such a decision must be based on the difficulty or impossibility of identifying the victims because of the collective or massive nature of the human rights violation or violations that took place and, accordingly, the particular details of the incidents that would make it impossible to identify fully all the persons injured.

6. This interpretation is consistent with the Court's case law cited in the judgment;[6] in all these precedent cases, the Court stressed that the number of individuals affected had been impossible to identify fully, and that the specific circumstances surrounding the facts that led to the determination of international State responsibility, due to their mass nature, had made it impossible to identify all the victims accurately.[7]

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[5] Article 35(1) of the Rules of Procedure of the Court states: "Filing of the case by the Commission. 1. The case shall be presented to the Court through the submission of the report to which article 50 of the Convention refers, which must establish all the facts that allegedly give rise to a violation and identify the alleged victims. […]."

[6] The judgment cites the following precedent cases: *Case of the Río Negro Massacres v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 4, 2012. Series C No. 250; *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs.* Judgment of October 24, 2012. Series C No. 251; *Case of the Massacres of El Mozote and surrounding areas v. El Salvador. Merits, Reparations and Costs.* Judgment of October 25, 2012. Series C No. 252, para. 252; *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2013. Series C No. 270; *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 20, 2016. Series C No. 318; *Case of Favela Nova Brasília v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 16, 2017. Series C No. 333, and *Case of Members and Militants of the Patriotic Union v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 27, 2022. Series C No. 455.

[7] In the *Río Negro Massacres v. Guatemala* case, the Court justified use of the Article 35(2) provision of the Rules of Procedure "since this case deals with five massacres, and taking into account its magnitude, the nature of the facts, and the time that has passed," and it was therefore reasonable to conclude that "the identification and individualization of each presumed victims is complex." *Case of the Río Negro Massacres v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 4, 2012. Series C No. 250, para. 51. In *Nadege*

7. The instant case similarly involves multiple victims identified in advance by the Commission, but it was not the collective or mass nature of the violations or the resulting particulars of the case that allegedly made it impossible to identify other people who may have been affected as a consequence of State actions; there are no solid grounds for claiming that such persons even exist and now deserve to be held as victims.

8. I do not challenge the claim that the conduct of the authorities resulted in violation of multiple rights of the victims identified by the Commission, including the right to informational self-determination (paras. 636 to 651) and the right to know the truth (paras. 652 to 658), as found in the judgment, when they were blocked from effective access to the State's intelligence records. Nevertheless, this does not justify the application of the objection set forth in Article 35(2) of the Rules of Procedure; not only do the provisions contained in the rule fail to fit the case, but the application of the rule presupposes the eventual identification of additional persons as victims, even lacking an in-depth analysis by which to conclude that their rights were in fact violated.

9. The judgment grants such broad scope to the application of Article 35(2) of the Rules of Procedure that any mere reference in DAS intelligence files to people other than those declared as victims in the Court's decision would enable them to lay claim to the reparations ordered in the judgment (para. 1000), even lacking any specific confirmation that they may have been injured by the actions of the authorities.

10. Furthermore, the judgment sets no time limit on incidents or facts that could have led to the finding of additional victims, and this opens a very lengthy period, even outside the

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Dorzema et al. v. Dominican Republic, the Court held that "the facts of the case relate[d] to presumed collective violations and [...] that the migratory condition of the presumed victims allegedly expelled and their situation of vulnerability and marginalization" could "make their effective identification and determination more complex." *Cf*. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs.* Judgment of October 24, 2012. Series C No. 251, para. 30. The Court also found in *Massacres of El Mozote and surrounding areas v. El Salvador* that it was "difficult to identify and individualize each presumed victim owing to the scale of this case […] which relate[d] to massacres perpetrated in seven different places, to the nature of the events and the circumstances surrounding them, and to the time that has passed." *Cf*. *Case of the Massacres of El Mozote and surrounding areas v. El Salvador. Merits, Reparations and Costs.* Judgment of October 25, 2012. Series C No. 252, para. 51. Moreover, in *Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, the Court held that "the case refer[red] to events involving several hundred persons who were forced to displace to different places that took place around 15 years ago, in an area of difficult access and with the presence of illegal armed groups." *Cf. Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2013. Series C No. 270, para. 41. In *The Hacienda Brasil Verde Workers v. Brazil*, the Court found that the application of Article 35(2) of the Rules of Procedure was justified by "the 20 years that ha[d] passed," "the difficulty to contact the presumed victims owing to their situation of exclusion and vulnerability," and "registration omissions that can be attributed to the State." *Cf. Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 20, 2016. Series C No. 318, para. 48. In *Favela Nova Brasilia v. Brazil*, the Court pointed to "problems in [...] the identification of the presumed family members of some of the victims" owing to: (i) the context of the case; (ii) the collective nature of the human rights violations; (iii) the lack of identity documents; (iv) the 22 years that ha[d] passed since the first raid, and (v) some registration omissions that can be attributed to the State. *Cf. Case of Favela Nova Brasília v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 16, 2017. Series C No. 333, para. 38. Finally, the Court held in *Members and Militants of the Patriotic Union v. Colombia* that it was a case of "multiple alleged human rights violations," combined with the "context of the case associated with a non-international armed conflict that lasted several decades and hindered the collection of information," "the extremely high number of alleged victims," "the amount of time during which the alleged human rights violations took place (23 years)," "the expanse of territory where the alleged violations took place, which covered nearly the entire country of Colombia," and "the difficult of contacting alleged victims or their families because of the very nature of the alleged facts and their alleged situation of displacement." *Cf. Case of Members and Militants of the Patriotic Union v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 27, 2022. Series C No. 455, para. 135.

corpus of facts established in the Report on the Merits, within which other persons could conceivably be found to have been victims.

11. I therefore reiterate my disagreement with the use in this case of Article 35(2) of the Court's Rules of Procedure.

B) The written opinion by expert witness Federico Andreu Guzmán is inadmissible

12. I do not share the decision to admit the written opinion of expert witness Federico Andreu Guzmán, because, as the State of Colombia argued within established time limits (para. 135), the document was already time-barred when it was adduced.

13. The expert witness was given a term of ten days at the public hearing to submit his written opinion, and that term lapsed on May 23, 2022, but the document was sent on May 26. It was therefore submitted outside the period granted, making it inadmissible.

14. My dissent entails more than the mere time limit and the date of submission of the written opinion; I also question the application of Article 58(a) of the Rules of Procedure of the Court,[8] by which the document was admitted based on the view that it was useful and necessary to resolve the case. It is not at all clear that this piece of evidence, admitted, recorded, and requiring careful consideration, is in fact the same statement that the expert witness delivered in the public hearing.[9] As was clearly established in the President's order to convene the public hearing, the expert witness would be allowed to submit the written version of his statement if he believed that such a submission would be "useful," so long as it occurred prior to the actual hearing.[10]

15. This means that the request for a written version of the expert opinion prior to the holding of the public hearing makes sense if such a document would help the parties—and possibly the Commission—to conduct their questioning effectively, because it would allow them to know in advance the content and scope of the expert opinion. In short, the submission of the written version of an expert opinion derives from the fact that the debate should enrich the entire international proceeding, but it neither replaces nor obviates the presentation of the item of evidence per se, to wit, the oral statement delivered by the expert witness at public hearing.[11]

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[8] Article 58(a) of the Rules of Procedure of the Court states: "The Court may, at any stage of the proceedings: a. Obtain, on its own motion, any evidence it considers helpful and necessary. In particular, it may hear, as an alleged victim, witness, expert witness, or in any other capacity, any person whose statement, testimony, or opinion it deems to be relevant. […]."

[9] See: Articles 46(1), 51, 52, and 58 of the Rules of Procedure of the Court.

[10] *Cf. Case of Members of José Alvear Restrepo Lawyers Collective (CAJAR) v. Colombia. Call to a public hearing*. Order of the President of the Inter-American Court of Human Rights, April 5, 2022. Operative paragraph 2 of this order reads: "The President of the Inter-American Court of Human Rights […] resolves: […] To order the persons convened to give expert opinions during the hearing, if it is found opportune, to submit a written version of their opinions by May 2, 2022 at the latest."

[11] Similarly, the Supreme Court of Chile has emphasized the importance of the oral expert statement in public hearing. For example, when it admitted an appeal to vacate lodged by a defendant's counsel, it reproved the lower court for failing to consider the statement made by the expert witness in the hearing and instead limiting itself to considering the written version, stating, "[…] as a result, the judges absolutely ignored the *'statements'* that the experts had delivered at trial, which constitutes the **evidentiary essence**, and therefore, in the hypothetical case that the expert reports are sufficient, the court does not in any sense explain how it came to scientifically resolve the contradictions in their conclusions." Decision to vacate, record 964-03 of May 12, 2003. Emphasis added.

16. It should be added that expert opinions ordered via statements rendered before a public attestor (affidavit) are subpeonaed for submission prior to the date announced for the public hearing,[12] in the understanding that the parties will learn of their content during the hearing and, with this knowledge, will be in a position to debate as relevant before the Court, always respecting the principle of an adversarial proceeding.

17. Therefore, the submission of the written version of the expert opinion after completion of the public hearing negates the principle of an adversarial proceeding; as a result, it is not particularly useful, and the Court should handle it with extra caution. Because the expert witness was given a specific date for submitting the document, and because he did not meet this deadline, I find no justification whatsoever for admitting it in the instant case.

C) The conduct of a Convention-based review of Law 1621 of 2013 and Executive Order 2149 of 2017 is unwarranted

18. I disagree with the judgment's analysis of whether Constitutional Law 1621 of 2013 and Executive Order 2149 of 2017 are compatible with the rights enshrined in the American Convention on Human Rights (hereinafter "Convention" or "American Convention"). My disagreement stems from my view, as I explained in the deliberations on the judgment, that the analysis was held in the abstract, that is, without evidence as to whether these two regulatory texts had been applied to the proven facts. I therefore disagree with the decision to find violation of Article 2 of the American Convention on the argument that the two bodies of law are incompatible with the Convention in this specific case.

19. I must emphasize, in explaining my position, that the judgment distinguishes between the facts involving reported arbitrary intelligence activities that took place prior to the adoption of Constitutional Law 1621 of 2013 and those that occurred after this law had gone into force. In the former case of incidents that occurred prior to the adoption of Law 1621 of 2013, I do agree with the basic analysis as developed and the conclusion concerning violation of certain rights in conjunction with the obligation to adopt domestic legal effects as established in Article 2 of the Convention (paras. 610 to 658).

20. My dissent involves the second group of facts, the relevant analysis of the merits, and the conclusion that the Convention-based rights guaranteed in Article 2 were violated based on the provisions of Law 1621 of 2013 and Executive Order 2149 of 2017 (paras. 659 to694).

21. The judgment examines the alleged violations of rights following enactment of Law 1621 of 2013 and, accordingly, performs a review of this body of legislation and Executive Order 2149 of 2017 against the Convention. It states that, in addition to actions by the DAS and other intelligence agencies "since the 1990s and until at least 2005," the victims claimed "that they continued to be targeted by the intelligence activities" after Law 1621 of 2013 went into force, and this was confirmed by the Prosecutor General's "investigation launched in 2020" and by the Office of the Solicitor General (paras. 660 and 661). The Court, in conducting the international proceeding, therefore issued a request for further helpful evidence, specifically, more information about what had happened and "copies of the case files," but the State of Colombia did not comply with this request, arguing that "the information was 'classified'" (para. 662). The judgment also says that the victims lacked any access to the case files after the authorities refused to make them available (para. 665).

[12] *Cf. Case of Members of José Alvear Restrepo Lawyers Collective (CAJAR) v. Colombia. Call to a public hearing, supra*, operative paragraph 6.

22. Given the State's decision not to submit the information requested as part of the proceedings, the judgment finds that "the State's refusal to submit certain information and documentation cannot be held against the alleged victims and can be considered detrimental only to itself." It is therefor reasonable to hold that "allegations that can be verified only through evidence that the State refuses to submit will be taken as true," (para. 664) and finds "that the activities" conducted after Law 1621 of 2013 went into force "were clearly arbitrary" (para. 665). Based on an assumption, the judgment therefore lays out an analysis of the content of this Law 1621 of 2013 and Executive Order 2149 of 2013 and whether they are consistent with the Convention.

23. Notably, then, all that can be held with certainty is that the competent authorities did not assent to the victims' request for access to case files being held by the prosecution, which replied that the information was "classified." However, there are no solid grounds for concluding and taking as proven that, after Law 1621 of 2013 went into force, the intelligence activities against them continued, that this law and Executive Order 2149 of 2017 had in fact been enforced in the framework of these intelligence activities, and that these activities had been conducted arbitrarily in violation of the rights that the American Convention requires the State to respect and guarantee.

24. Thus, it cannot be concluded that these two bodies of law were in fact enforced in the instant case or which of their specific precepts may have been enforced, and as a result, the Inter-American Court cannot properly conduct a comprehensive assessment of the two texts and, on that basis, order the State to introduce specific, quantitatively significant amendments, because ultimately, this would suggest that the review against the Convention had been performed in the abstract, just as the State of Colombia argued during the proceedings (para. 667).

25. Inter-American case law has been clear on this subject, finding that the Court's contentious jurisdiction does not include conducting an analysis as to whether legal provisions that were not applied to facts brought before the Court are consistent with the Convention, as this would be tantamount to conducting an analysis "in the abstract" of the laws under discussion. The Court drew this conclusion starting with Advisory opinion 14/94, when it said:

> The contentious jurisdiction of the Court is intended to protect the rights and freedoms of specific individuals, not to resolve abstract questions. There is no provision in the Convention authorizing the Court, under its contentious jurisdiction, to determine whether a law that has not yet affected the guaranteed rights and freedoms of specific individuals is in violation of the Convention.[13]

26. The Court has reiterated this position in a variety of cases,[14] confirming that it is not the task of the Inter-American Court's contentious jurisdiction to perform a review against the

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[13] *Cfr. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 49.

[14] *Cfr. Inter alia, Case of Genie Lacayo v. Nicaragua. Preliminary Objections*. Judgment of January 27, 1995. Series C No. 21, para. 50; *Case of Genie Lacayo v. Nicaragua. Merits, Reparations and Costs.* Judgment of January 29, 1997. Series C No. 30, para. 91; *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 30, 2009. Series C No. 197, para. 130; *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 207, para. 154; *Case of Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No. 213, para. 51; *Case of Vélez Loor v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2010. Series C No. 218, para. 285, and *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 26, 2010. Series C No. 220, para. 207; *Case of Contreras et al. v. El Salvador. Merits, Reparations and Costs.* Judgment of August 31, 2011. Series C No. 232, para. 172; Case of *Mohamed v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 23, 2012. Series C No. 255, para. 162, and *Case of J. v. Peru. Preliminary Objection, Merits, Reparations*

Convention in the abstract concerning any given domestic laws or regulations of a State; in order for the Court to examine whether a specific legal provision is compatible with the rights contained in the American Convention, that provision needs to have been invoked in a specific case and, as a result and by virtue of that enforcement, human rights are found to have been violated.

27. It is for these reason that I disagree with the Convention-based review of the content of Law 1621 of 2013 and Executive Order 2149 of 2013, and accordingly, with the finding on violation of the obligation enshrined in Article 2 of the American Convention based on the provisions of these two legal texts (paras. 685 and 694 and operative paragraphs 11 and 13).

28. For the same reasons I take exception to the measures of reparation ordered in the judgment as guarantees of non-recurrence by ordering the State to amend Law 1621 of 2013 and Executive Order 2149 of 2017 (paras. 1055 to 1058 and operative paragraph 35).

D) The measure of redress to prepare and disseminate an audiovisual documentary is inappropriate

29. The judgment ordered the State, at the request of the representatives, to provide a measure of satisfaction that involves preparing an audiovisual documentary to cover several different aspects of the case, making express mention of the facts upheld in the Court's decision (paras. 1033 and 1034 and operative paragraph 28). In my view, this measure is not appropriate to the instant case, for the reasons discussed hereinbelow.

30. First, I in no way question that the victims' rights have been violated, that the climate in which human rights defenders have done their work in Colombia is unfavorable, or that this affected the victims of the case as the judgment shows; I have no disagreement whatsoever on these matters.

31. My dissent stems from an examination of the Court's tendency in its case law to consider the nature of the human rights violations in cases when it has ordered measures to prepare and disseminate audiovisual documentaries, or in other cases, to broadcast documentaries

and Costs. Judgment of November 27, 2013. Series C No. 275, para. 213; *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 14, 2014. Series C No. 287, para. 64; *Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 5, 2015. Series C No. 302, para. 307; *Case of the Xucuru Indigenous People and its members v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 05, 2018. Series C No. 346, para. 165; *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2019. Series C No. 394, para. 203; *Case of Azul Rojas Marín et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 12, 2020. Series C No. 402; *Case of Fernández Prieto and Tumbeiro v. Argentina. Merits and Reparations*. Judgment of September 1, 2020. Series C No. 411, para. 123; *Case of Mota Abarullo et al. v. Venezuela. Merits, Reparations and Costs.* Judgment of November 18, 2020. Series C No. 417, para. 158, and *Case of Julien Grisonas family v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 23, 2021. Series C No. 437, para. 248.

prepared in advance; specifically, this measure has been limited to matters involving massacres,[15] forced disappearances,[16] and extrajudicial executions.[17]

32. The Court has also ordered this measure in processes involving failure of the State to investigate deaths or disappearances that occurred in an environment of gross human rights violations.[18]

33. The measure was similarly ordered in a case concerning the irregular adoption of two children in a setting of multiple institutional weaknesses that encouraged the creation of criminal networks and structures devoted specifically to the business of irregular adoptions,[19] and in another case on the death of a trans woman in an environment of particular danger for members of the LGBTI community.[20] I should add that the measure can also be found in judgments in which the Court has recognized friendly settlement agreements between parties, with the State explicitly pledging to take such action.[21]

34. This is why, considering the nature and particular seriousness of the facts under analysis in these precedent cases, and in keeping with the Court's case law, the measure is not appropriate in the instant case.

35. I believe that the publication of the judgment and the official summary, combined with the order to hold a ceremony to recognize international responsibility and offer a public apology, are the most appropriate measures of satisfaction, in alignment with the facts of the case, and are sufficient to honor the victims.

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[15] *Cf*. *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 24, 2009. Series C No. 211, para. 263; *Case of the Massacres of El Mozote and surrounding areas v. El Salvador. Merits, Reparations and Costs.* Judgment of October 25, 2012. Series C No. 252, para. 365, and *Case of the Village of Los Josefinos Massacre v. Guatemala*. *Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 3, 2021. Series C No. 442, para. 163.

[16] *Cf. Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 356; *Case of Contreras et al. v. El Salvador. Merits, Reparations and Costs.* Judgment of August 31, 2011. Series C No. 232, para. 210; *Case of González Medina and family v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 27, 2012. Series C No. 240, paras. 302 and 303; *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, Reparations and Costs.* Judgment of November 20, 2012. Series C No. 253, paras. 345 and 346; *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 14, 2014. Series C No. 287, para. 579; *Case of Julien Grisonas family v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 23, 2021. Series C No. 437, para. 282; *Case of Members and Militants of the Patriotic Union v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 27, 2022. Series C No. 455, paras. 594 and 595; *Case of Tabares Toro et al. v. Colombia. Merits, Reparations and Costs.* Judgment of May 23, 2023. Series C No. 491, para. 154, and *Case of Guzmán Medina et al. v. Colombia. Merits, Reparations and Costs.* Judgment of August 23, 2023. Series C No. 495, para. 138.

[17] *Cf*. *Case of Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No. 213, paras. 228 and 229, and *Case of Members and Militants of the Patriotic Union v. Colombia*. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 27, 2022. Series C No. 455, paras. 594 and 595. The *Case of Members and Militants of the Patriotic Union v. Colombia,* because it involved acts of "systematic extermination" of members and militants of a political organization, also included incidents that qualified as forced disappearance.

[18] *Case of García Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 168, para. 187, and *Case of the Serrano Cruz Sisters v. El Salvador. Merits, Reparations and Costs.* Judgment of March 1, 2005. Series C No. 120, para. 163.

[19]*Cf*. *Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparations and Costs.* Judgment of March 9, 2018. Series C No. 351, para. 401.

[20] *Cf*. *Case of Vicky Hernández et al. v. Honduras. Merits, Reparations and Costs.* Judgment of March 26, 2021. Series C No. 422, para. 163.

[21] *Cf. Case of Escaleras Mejía et al. v. Honduras*. Judgment of September 26, 2018. Series C No. 361, paras. 92 and 93, and *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras*. Judgment of August 31, 2021. Series C No. 432, para. 120.

E) The measure of redress to officially designate of a day of commemoration for human rights defenders is inappropriate

36. I find a similar situation to that described above regarding the judgment's order to designate a national day to commemorate human rights defenders in Colombia (para. 1049 and operative paragraph 32).

37. The Court explained the nature of this type of measure when it adjudged *Members and Militants of the Patriotic Union v. Colombia*, saying:

> Taking into account the overwhelming nature and scale of the human rights violations found in the instant case and their impact on Colombian society, as well as the statement by expert witness Clara Sandoval concerning the importance of "considering the establishment of a national day for victims of the Patriotic Union," the State is ordered to guarantee the official designation of a national day to commemorate the victims from the Patriotic Union.[22]

38. The Court's case law has indeed emphasized measures of this kind, of such scope as to have an impact even beyond the circumstances and victims of the particular case; it has ordered such measures in cases involving an environment of gross human rights violations and has found that it would be appropriate and necessary to preserve and honor the memory of the victims because of the specific circumstances of vulnerability and danger they encountered.

39. The Court made this decision in two cases concerning the armed conflict in El Salvador, and ordered the designation of a "day to commemorate the victims of death squads" in one case,[23] and in the other, "a day to commemorate the missing children."[24]

40. The Court also ordered the State, in the case quoted above, to designate "a national day to commemorate the victims of the Patriotic Union," in the framework of the extermination operation against them inside Colombia.[25].

41. Even aside from processes concerning gross human rights violations, the Court ordered a similar measure in *Guzmán Albarracín et al. v. Ecuador*, based on the special situation of vulnerability of children faced with the phenomenon of sexual violence against them in the schools; the Court therefore ordered the State to designate "an official day to fight sexual violence in the classroom."[26]

42. The *Huilca Tecse v. Peru* case is also significant; in response to an explicit commitment by the State, the Court ordered it to include "in the official May 1 (labor day) celebration a remembrance and praise for the work of Pedro Huilca Tecse on behalf of the labor union movement in Peru."[27] Finally, in *Gutiérrez and family v. Argentina*, the Court took note that the parties had concluded an "agreement on reparations" in which the State had pledged to establish a "national day for the fight against drug trafficking," and the judgment expressly stated that the Court would not monitor the implementation of this measure.[28]

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[22] *Cf*. *Case of Members and Militants of the Patriotic Union v. Colombia*, *supra*, para. 588.
[23] *Cf*. *Case of García Prieto et al. v. El Salvador*, *supra*, para. 187.
[24] *Cf*. *Case of the Serrano Cruz Sisters v. El Salvador*, *supra*, para. 196.
[25] *Cf*. *Case of Members and Militants of the Patriotic Union v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 27, 2022. Series C No. 455, para. 588.
[26] *Cf*. *Case of Guzmán Albarracín et al. v. Ecuador. Merits, Reparations and Costs.* Judgment of June 24, 2020. Series C No. 405, para. 234.
[27] *Cf*. *Case of Huilca Tecse v. Peru. Merits, Reparations and Costs.* Judgment of March 3, 2005. Series C No. 121, para. 114.
[28] *Cf*. *Case of Gutiérrez and family v. Argentina. Merits, Reparations and Costs.* Judgment of November 25, 2013. Series C No. 271, para. 164.

43. This is unquestionably a measure that, because of its nature and scope, has been considered an exception in Inter-American case law. It has been ordered in certain cases not only because of the very serious nature of the facts brought before the Court's jurisdiction and the "overwhelming nature and scale of the human rights violations" as proven, but also because of the special state of vulnerability and risk that was created for the victims, which, in the view of the Court, has called for a specific effort by State authorities to raise the profile, to give honor, and ultimately, to preserve the memory and collective awareness, thus preventing recurrence of human rights violations in specific settings of violence.

44. In the particular arena of human rights defenders in Colombia, this is not the first case to come before the Court; prior cases have involved extrajudicial execution[29] or a failure to prevent acts of violence that led to death and arbitrary confinement of defenders.[30] It should be emphasized that the Court did not order such a measure in any of those cases, despite having noted the presence of specific contexts in which "danger created by the State aggravated the situation of vulnerability of human rights defenders"[31] and "of violence against women defenders, which led to a state of danger for them."[32]

45. Therefore, as this separate reasoned opinion has already explained, I believe that the measures of satisfaction ordered by the Court to publish the judgment and its official summary and to hold a ceremony acknowledging international responsibility and offering public apologies are appropriate and sufficient for the case at hand.

46. Additionally, the diverse and numerous guarantees of nonrepetition ordered in the judgment, including the information and awareness-raising campaign (paras. 1044 to 1046 and operative paragraphs 29 and 30), the training for public officers (paras. 1053 and 1054 and operative paragraph 34), the compilation of statistical data (paras. 1047 and 1048 and operative paragraph 31), the creation of a fund for protection and assistance for human rights defenders (paras. 1050 to 1052 and operative paragraph 33), and regulatory amendments concerning matters on which I have expressed no disagreement (paras. 1059 to 1066 and operative paragraphs 36 and 37) are consistent with the nature of the facts of the case and the human rights violations declared in the judgment, and are clearly, prima facie, well suited for preventing the recurrence of such violations in the future.

Patricia Pérez Goldberg
Judge

Pablo Saavedra Alessandri
Registrar

[29] *Cf. Case of Valle Jaramillo et al. v. Colombia*. *Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 192.
[30] *Cf*. *Case of Yarce et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 22, 2016. Series C No. 325.
[31] *Cf. Case of Valle Jaramillo et al. v. Colombia, supra*, para. 81.
[32] *Cf. Case of Yarce et al. v. Colombia, supra*, para. 99.

CONCURRING SEPARATE OPINION BY JUDGE RODRIGO MUDROVITSCH

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF MEMBERS OF THE "JOSÉ ALVEAR RESTREPO" LAWYERS' COLLECTIVE v. COLOMBIA

JUDGMENT OF OCTOBER 18, 2023

(PRELIMINARY OBJECTIONS, MERITS, REPARATIONS AND COSTS)

I. Introduction

1. In *Members of the "José Alvear Restrepo" Lawyers Collective v. Colombia* the Court discussed the State's international responsibility under the American Convention on Human Rights ("Convention") for acts of surveillance, stalking, violence, harassment, and threats against several members of the "José Alvear Restrepo" Lawyers Collective ("CAJAR" or "Collective") that occurred from the 1990s until the present, in connection with their work as human rights defenders.[1]

2. The judgment by the Inter-American Court of Human Rights ("IACtHR" or "Court") stands out for its sound reasoning based on the extensive body of evidence and the broad time span involved, and for the complexity of the facts brought before it. This is a high-impact case involving human rights violations of structural dimensions and a potentially unknown number of victims.

3. The case bears the name of CAJAR, a non-governmental organization located in Bogotá, legally established in the 1980s and registered as a non-profit organization. Over the past 40 years, the Collective has been lending legal counsel to the victims of human rights violations and fighting impunity for crimes committed by agents of the State of Colombia or third parties operating under the tolerance and acquiescence of the State. They have represented these victims before Colombian courts and before the inter-American human rights system. CAJAR has represented countless applicants in cases before the IACtHR, especially associated with the country's domestic conflict.

4. Most of its members are attorneys who represented the family members of people who had gone missing or had been murdered at the hands of the Sate or paramilitary forces, as well as members of groups considered subversive or involved in the political opposition, as well as victims of many forms of violence perpetrated by agents of the State or third parties acting in collusion with the State. They were unquestionably defending people considered "enemies" in the eyes of the powers of State, who were therefore targeted for persecution and sometimes elimination. This scenario made the Collective a focal point of the violations brought before the IACtHR in this case. Under such conditions, defending the rights of persons who were being arbitrarily harassed and targeted outside the bounds of law became an activity that was unacceptable to the State. By doing so and publicly reporting violations, CAJAR became an obstacle to the authorities' designs for fighting dissent, and this unleashed

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[1] IACtHR. *Case of Members of The "José Alvear Restrepo" Lawyers Collective (CAJAR) v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 18, 2023. Series C No. 506, hereinafter "judgment."

a program of constant surveillance and threats against the members of the Collective and their loved ones, as detailed in the judgment.

5. The epicenter of the case lies in the clandestine intelligence activities conducted by the State of Colombia, often combined with practices of intimidation, that as a whole reveal the aim of inhibiting the victims from performing their work to defend human rights. This is not the first time the IACtHR has been asked to adjudge the scope of a State's power of surveillance as read in conjunction with the right to privacy.[2] The particular profile of this case, however, opened the way for the Court to write a new, significant chapter in its body of legal precedents. It is an innovative judgment because of the specific, in-depth view it takes of the Convention-based limits on intelligence services, recognizing for the first time the autonomous right to informational self-determination and the right to defend human rights. It introduces new standards on the rights that should be protected by States to guarantee the professional practice of law and journalism.

6. The body of facts in the instant case consists of multiple episodes over the past decades, involving dozens of victims, all interconnected by their ties to CAJAR. This is a unique feature, marking a difference from other cases usually examined by the Court, as it does not lend itself to a linear reconstruction of the multiplicity of facts that led the IACtHR to hold the State of Colombia liable. Nonetheless, several incidents stand out clearly to reveal the level of violence experienced by the victims.

7. One victim in particular, because she was a lawyer and a human rights defender, not only received constant death threats over the telephone, but also was followed and approached by a vehicle containing men with machine guns who fired shots in her direction. As if that were not enough, she received a package delivery to her home containing a mutilated doll, bloody and with a cross drawn on its torso. With it was a note reading: "You have a beautiful family, take care of it and do not sacrifice it." The people tailing her knew that she had a daughter, a mere child, and used the information as an instrument of terror.[3]

8. This modus operandi of attacks on members of the Collective and their families recurred countless times. The daughter of one of CAJAR member was approached by armed men who assaulted her and took her away to an unknown place. His son was followed by men on a motorcycle who attacked his car and pretended to fire at him. His sisters' telephones were tapped and they received suspicious calls asking for him. This environment of fear was worsened by the state of utter insecurity surrounding them, which was intensified in 2011 when the victim's wife reported a telephone call playing back the recording of a conversation she had had with her husband in the vehicle that the Colombian Government had assigned as a measure of protection. The message was clear: not even in supposedly safe places were they safe from improper interference.[4]

9. Alongside the threats was the stalking by State intelligence service, especially through the Administrative Department of Security ("DAS"), the agency responsible for intelligence activities until it was dissolved in 2011. The variety of methods used was equaled only by the lack of constraints on interference in the victims' private lives. The DAS, for example, rented an apartment across from the home of one of the leaders of the Collective, where it set up a fixed observation post. The agents used it to track his daily life step by step, including

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[2] IACtHR. *Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 6, 2009. Series C No. 200.

[3] Judgment, paragraphs 229-241.

[4] Judgment, paragraphs 196-203.

everything from the time he woke up to his children's daily routines; they ransacked his garbage and took pictures of him and his family.[5]

10. The telephone tapping and the interception of email became habitual practices, affecting most of the victims.[6] Conversations with counsel are considered inviolate (I will return to his later), but this prohibition was handled as a disposable formality, since the internal communications among the member of the Collective and the documents on cases the organization was representing were intercepted and placed in the hands of the intelligence agencies.

11. When some of the DAS files were opened, the public learned about documents such as an activities report containing the CAJAR organizational chart, photographs of its members, their job descriptions, and notes with information compiled through intelligence operations. The document bore the title "Legal and political-psychological support arm of the FARC,"[7] and it revealed the State's view and handling of the Collective and its members. Personal information generally protected as highly confidential, including banking information, was freely available and collected by the secret service and consisted of financial statements, records of bank transfers, certificates of deposit, salaries, and payments into the social security system, unencumbered by any type of judicial authorization.[8]

12. Such situations are but a sampling of the much broader universe of violations committed and repeated to a greater or lesser extent against the other victims. They are examples pointing to certain patterns of State conduct and can be used to classify the facts of the *CAJAR v. Colombia* case into three broad categories of human rights violations.

13. The first category entails the threats and stalking of the victims with the intent of intimidating them into abandoning their professional work. Over the past 30 years, the members of CAJAR have lived under relentless violence and fear at the hands of paramilitary forces, agents of the State, and other groups to which the State acquiesced or turned a blind eye. The threats were brutal and sadistic and were leveled equally against the members of the Collective, their children, their spouses, and other loved ones. All this was heightened by impunity in the form of lax, ineffective investigations, most of which never progressed beyond preliminary procedures.[9]

14. The second category concerns the State's illegal, clandestine, arbitrary intelligence activities. Colombian security forces, through the DAS, conducted daily surveillance of the victims and their families, using all kinds of methods including telephone taps, stalking, compilation of personal information, taking photographs, and more. The activities peaked during the period from 2003 to 2005, during the time of the "Special intelligence group 3" (G3), but the operations had been underway since the 1990s and continued even after the DAS was dissolved. There is evidence—and this demonstrates the seriousness of the facts examined herein—that the activities persisted even after the case had been brought before the inter-American system. Surveillance was not limited just to the members of the Collective. As the judgment documents, the DAS had information on the Court and the Commission,

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5 Judgment, paras. 325-327.

6 Judgment, paras. 333-334.

7 Judgment, para. 345.

8 Judgment, para. 347.

9 Judgment, para. 394.

which it regarded as battlefields in the "*international legal war against Colombia*," and even suggested the deployment of a secret agent in Costa Rica.[10]

15. The third category involves stigmatizing tactics and declarations by high-level government officials against the victims. The members of CAJAR were not only subject to a daily stream of threats and surveillance, but were also targeted by an intense smear campaign by military and governmental authorities, publicly branding them as the "legal arm" of guerrilla groups and calling them terrorists, traitors, and other such disparaging names.

16. These three categories contain an array of behaviors that cannot be seen as isolated instances. They form a body of facts converging in the systematic, unrelenting persecution of the members of CAJAR in response to their work to fight impunity and obtain reparations for the victims of human rights violations committed by the State in its clashes with individuals and groups that it viewed as internal enemies.

17. The preeminence of this judgment can be seen by understanding clearly the full universe of effects on the victims in their simultaneous roles as human rights defenders and attorneys. The Court was armed with this understanding when it definitively consolidated its stance on the enforceability of the right to defend human rights, and when, for the first time, it set *specific standards* for protection of the professional practice of law.

18. The initial premise of the judgment is that lawyers perform an essential role for the exercise of the fundamental guarantees enshrined in Article 8(2) of the Convention, and on this basis, it asserted State obligations concerning the inviolability of attorney/client communications. Although it began by articulating individual safeguards for lawyers, it went much further and established a new direction for institutional protection of the judicial system itself, consistent with its long history of jealously guarding the functional independence of judges, prosecutors, and other pillars of the justice system.

19. This case posed considerable challenges for the Court. The first was the difficulty of determining the number of victims, since the State's conduct made it impossible to learn the real scope of violations. The intelligence operations were confidential and often clandestine. Moreover, the archives of the intelligence organizations were inaccessible and initially held as secret, and are only now going through the clearing process. This has made it impossible to develop a clearly defined universe of persons affected by the human rights violations. The Court responded by applying Article 35(2) of its Rules of Procedure, which set up a useful mechanism for adding new victims a posteriori.

20. This use of the rule marked a departure from the Court's traditional practice in its case law, which had invoked the Article 35(2) rule in cases of mass violations,[11] such as massacres and expulsions, based on the premise that the whereabouts of the victims was unknown, and it was not even certain whether they were still alive. The solution adopted in this judgment sets an important precedent on the applicability of this rules-based exception in cases of collective violations, opening new paths for future interpretation of Article 35(2). The Court's solution must be read broadly, so that, as the work of clearing the State's archives advances, any member of CAJAR or his or her family members revealed to have been affected by the

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[10] Judgment, para. 336 and footnote 386.

[11] IACtHR. *Case of the Río Negro Massacres v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 04, 2012. Series C No. 250; *Case of the Massacres of El Mozote and surrounding areas v. El Salvador. Merits, Reparations and Costs.* Judgment of October 25, 2012. Series C No. 252.

clandestine intelligence activities must also qualify as a victim and gain access to the individual reparations ordered in the judgment.

21. As will be seen in the first part of this separate opinion, the Court also faced the dilemma of deciding whether to examine Law 1621 of 2013, which regulates intelligence activities ("Intelligence Law"), for consistency with the Convention. The State objected to this compatibility test of the law, arguing that, by so doing, the Court would be performing a Convention-based review in the abstract. These arguments were properly refuted in the judgment along two lines of reasoning.

22. First, as has been widely documented, the violations continued even after the 2011 dissolution of the DAS, the agency responsible for intelligence operations, and after Law 1621 went into force in 2013. Neither measure was enough to put a stop to the surveillance and clandestine stalking of the members of CAJAR, and this confirms the failure to protect human rights under the existing legal framework and justifies the remedies proposed for revising this law in light of the obligations rooted in Article 2 of the Convention. Second, it was not even necessary to ask if the violations had continued, since the Court's jurisdiction to perform a review against the Convention is not tied to whether or not the body of law that could prove to be incompatible with the Convention is being enforced, but instead reflects the Convention's mandate to promote comprehensive redress for the victims.

23. The second part of this opinion will focus on the innovative recognition of the right to informational self-determination, which laid out parameters for the Court to review the intelligence law against the Convention. This is a fundamental step forward and displaces the prior focus of protection that rested on the right to privacy, instead moving toward a much broader concept of protection for individuals and their data. My analysis in this second section will leave for future debate the relevance of recognizing the fundamental right to integrity of systems, resulting from the evolving interpretation of the right to self-determination in keeping with the needs derived from today's technological advances.

24. The uniqueness of the judgment also lies in its unprecedented consolidation of the enforceability of the right to defend human rights. This guarantee has long been present in the Court's case law, but now for the first time, it has been recognized as an autonomous right that creates duties for the States, and it will be discussed in the third part of this opinion.

25. The fourth and final section will examine the other fundamental contribution of the judgment, that is, recognition of the right to special protection for attorneys and journalists. The peculiarities of the case provided very fertile ground; because the victims practiced these professions, the Court was able to give its views on the minimum guarantees that should protect their activities, opening a significant path for future development of inter-American case law on the subject. As I will explain in further detail, the inclusion of these standards in the judgment fits into a long-standing tradition of guaranteeing the independence of the judicial system and the activities of those who work for the administration of justice, including judges, prosecutors, officers of the judicial branch, and now, lawyers.

II. Review against the Convention and guarantees of nonrepetition in *CAJAR v. Colombia*

26. The importance of the judgment in *CAJAR v. Colombia* lies not only in the sensitivity of the substantive issue or the recognition of autonomous rights. It stands out because of the Court's resounding decision to perform its duty, enshrined in Article 63(1) of the Convention,

to provide full restitution for the violation committed: it granted guarantees of non-recurrence whose purpose was to correct a state of affairs that constituted a structural violation of the most treasured principles in the Convention.

27. This is the background of the order given in operative paragraph 35, calling for Colombia's Intelligence Law 1621 of 2013 to be amended following the guidelines specified in paragraphs 671 to 683. The most important emphasis in this section will be to determine whether the provisions for organization and procedures are suitable for this purpose; it is equally important to stress that the judgment closes with a shining example of a legally correct understanding of the duty to adopt domestic legal effects (Article 2 of the Convention) to address practices and omissions that run contrary to the Convention.

28. When the States ratify the Convention, they "(…) undertake to respect the rights and freedoms recognized [t]herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms."[12] Along with this "obligation to respect the rights" they agree to adopt "domestic legal effects" as provided in Article 2: "(...) the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of the Convention, such legislative or other measures as may be necessary to give effect to the rights and freedoms protected by the Convention."

29. This is the duty to align the national legal system with inter-American principles, including laws, administrative decisions and standards, judicial decisions, and the constitution.[13] The Court has witnessed examples of laws, regulations, and situations involving State practices that contradict Convention-based rights; in such cases, when it has granted reparations intended to redress declared violations, the Court has recognized that such measures can be considered part of the material environment of protection for a right defined in the Convention, in combination with legal provisions as stated in Article 2.[14]

30. A State that wishes to adapt domestic legal effects to fit into the framework of the Convention must repeal provisions that are incompatible with the Convention and also avoid introducing any laws or regulatory provisions that run contrary to human rights, or allowing such rules to remain in force. One such example could be a domestic law that mandates automatic capital punishment for first-degree murder.[15] The Court has typically addressed such situations via its contentious jurisdiction when it has examined violations under the right to judicial protection and the right to judicial guarantees (Articles 25 and 8), usually leading

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[12] Article 1 of the American Convention on Human Rights. Obligation to Respect Rights. 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

[13] IACtHR. *Case of Tzompaxtle Tecpile et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 7, 2022. Series C No. 470; IACtHR. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs.* Judgment of February 5, 2001. Series C No. 73.

[14] IACtHR. *Case of Córdoba v. Paraguay. Merits, Reparations and Costs*. Judgment of September 5, 2023. Series C No. 505. Separate opinions by Judge Ricardo C. Pérez Manrique, Judge Eduardo Ferrer Mac-Gregor Poisot, and Judge Rodrigo Mudrovitsch, paras. 15 and 16.

[15] *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs.* Judgment of June 21, 2002. Series C No. 94, para. 116.

to an assessment of the role played by a particular domestic law in the context of judicial proceedings.[16]

31. This is why, in the interest of economy of meaning, the Court in such cases has generally chosen to examine the circumstances in which the relevant provision was "applied." This has never meant, however, that the occurrence of a rules-based outcome ("application") is a prerequisite for the Court to exercise its contentious jurisdiction.[17]

32. This line of reasoning was perpetuated by the unconsidered repetition of explanations in *Genie Lacayo vs. Nicaragua*. The Court examined clearly defined facts in this judgment: Jean Paul Genie Lacayo, 16 years old, was on his way home when he met a convoy of military vehicles; when he caught up with them, they opened fire on him and then left him beside the highway; in the end, he died of hypovolemic shock as his bullet wounds hemorrhaged.

33. The case was submitted to the Court on the grounds of failure of State institutions to investigate and sanction the perpetrators (violation of Articles 8, 24, and 25), and the submissions also argued that the existence of a military justice system was a violation of the Convention. This thesis, in turn, was used as a basis for asking the Court to declare that Executive Orders 591 and 600 on military justice in Nicaragua were incompatible with the Convention, based on Article 2.[18]

34. The State objected to the Commission's request to find Executive Orders 591 and 600 incompatible with the object and purpose of the Convention, under which the Court's contentious jurisdiction cannot deliver what amounts to an advisory opinion; under the terms of Article 64(2), the advisory jurisdiction is activated exclusively at the initiative of the Government.[19]

35. The Court admitted the objection, although for other reasons, as follows: "The purpose of the Court's contentious jurisdiction is not to review national legislations in their abstract conception. Contentious jurisdiction is intended to resolve specific cases where it may be

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[16] *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 26, 2010. Series C No. 220, para. 207.

[17] The concurring opinion submitted in *Córdoba v. Paraguay* read: "Ultimately, case law on Article 2 violations involving the enforcement of laws that are incompatible with the American Convention does not allow for lines of reasoning that act in isolation to reduce the State's action to the application of a rule or law in a single case during judicial proceedings. Because many of the judgments contained in this class of jurisprudence were delivered following examination of violations of the right to judicial guarantees and the right to due process, it is understandable that the Count, in many such cases, did not find the need to examine violation of Article 2 when the domestic law applied to the case was no longer in effect. But cause should never be confused with effect. The truly decisive standard is whether or not damage has been caused by the State's conduct (action or omission) and the need for appropriate, comprehensive redress (whether by putting a stop to an excess or removing ineffective protections). This is very much in line with the traditional stance that reparations must have a causal nexus with the facts of the case, the declared violations, the proven damage, as well as the measures requested to repair the damage." IACtHR. *Case of Córdoba v. Paraguay. Merits, Reparations and Costs.* Judgment of September 5, 2023. Series C No. 505. Separate opinion by Judge Ricardo C. Pérez Manrique, Judge Eduardo Ferrer Mac-Gregor Poisot, and Judge Rodrigo Mudrovitsch, para. 14.

[18] IACtHR. *Case of Genie Lacayo v. Nicaragua. Merits, Reparations and Costs. Judgment of January 29, 1997. Series C No. 30*, para. 51.

[19] IACtHR. *Case of Genie Lacayo v. Nicaragua. Preliminary Objections*. Judgment of January 27, 1995. Series C No. 21, para. 47.

alleged that an act of a State carried out against certain individuals is contrary to the Convention."[20] It then discussed the extent to which this objection could be accepted:[21]

In accordance with the preceding, this objection presented by the Government is admissible only with respect to the Commission's request on the abstract compatibility of Decrees 591 and 600 and the Convention. As far as the other aspects of the application are concerned, the jurisdiction of the Court remains unalterable due to the fact that this matter is independent of the Commission's remaining requests. However, this Court reserves the power to examine in the merits of the case the effects of the application of the cited decrees in relationship to the human rights recognized by the Convention and involved in this case.

36. As the Court promised at the end of this quotation, it reserved a section in its discussion of the "merits of the case" to weigh "the effects of the application of the cited decrees in relationship to the human rights recognized by the Convention" in this particular case:[22]

With regard to the Government's failure to comply with Article 2 of the American Convention with the application of Decrees 591 and 600, this Court found that the military courts did not per se violate the Convention (...), and regarding the alleged application of some of the provisions of those decrees that could contravene the Convention, it has already been determined that they were not enforced in the instant Case(…). Consequently, the Court does not express an opinion on the compatibility of these articles with the Convention; to act otherwise would be to make an abstract analysis, which lies outside the purview of this Court.

37. To clarify, the Court's judgment in *Genie Lacayo v. Nicaragua* never said that it could examine violations of Article 2 of the Convention if (and only if) a domestic provision had been applied in a specific case brought before it; and that otherwise, it would be a matter of abstract review. This was in no wise what happened.

38. A full reading of the case shows that the Court refused to review the content of the executive orders against the Convention for the simple reason that these orders were unrelated to the violation under consideration (summary execution of a 16-year-old youth by the Nicaraguan army and the State's demonstrated failures to investigate, identify the guilty parties, and ultimately punish them). When the Court said that Executive Orders 591 and 600 had not been "applied to the instant case," it meant that this point raised by the Commission lay outside the bounds of the process as it was not related to the human rights violation under study.

39. The *Genie Lacayo v. Nicaragua* judgment was published in 1995 and became an oft-cited cornerstone: "the Court does not express an opinion on the compatibility of these articles with the Convention; to act otherwise would be to make an abstract analysis, which lies outside the purview of this Court" (paragraph 91). This thesis is relevant to all cases where the claim of a human rights violation does not include unequivocal evidence that the State had been applying a particular legal provision.

40. The Court quickly understood that, if fragments of paragraphs 50 and 91 of *Genie Lacayo v. Nicaragua* were cited out of context, they would lead to serious misunderstandings.

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[20] IACtHR. *Case of Genie Lacayo v. Nicaragua. Preliminary Objections*. Judgment of January 27, 1995. Series C No. 21, para. 50.

[21] IACtHR. *Case of Genie Lacayo v. Nicaragua. Preliminary Objections*. Judgment of January 27, 1995. Series C No. 21, para. 51.

[22] IACtHR. *Case of Genie Lacayo v. Nicaragua. Merits, Reparations and Costs.* Judgment of January 29, 1997. Series C No. 30, para. 91.

Already in 1997, in *Suárez Rosero v. Ecuador*, the Court faced a criminal law that barred any release on probation for people being held in pre-trial detention for drug trafficking, and it needed to assert itself resoundingly: "this law violates per se Article 2 of the American Convention, whether or not it was enforced in the instant case."[23] When the Court introduced the idea of a "violation per se," it clearly exposed itself to foreseeable later criticism, because this analysis opens the door to a review against the Convention in the abstract. A good-faith perspective, however, must necessarily show that the formula adopted by the Court in *Suárez Rosero v. Ecuador* is a counterpoint to the thesis that originated in a misreading of *Genie Lacayo v. Nicaragua*, suggesting that Article 2 of the Convention could serve as a parameter of review useful for inspiring suitable measures of reparation only if it was preceded by "application."

41. A thorough reading of *Genie Lacayo v. Nicaragua*, with full consideration of the context and duly avoiding partial interpretation of isolated fragments of the judgment, reveals that enforcement (in the ordinary sense of legal practice) is not a prerequisite for the Court to address Convention-based review within its jurisdiction.

42. A correct interpretation of *Genie Lacayo v. Nicaragua* is only one indication of why it would be a mistake to consider the application of domestic law as a prerequisite for the Court to find that a legal provision is inconsistent with the Convention. Such a thesis contains contradictions in its very premises: if it were the case, the Court could never recognize a violation based on the State's *omission*.

43. Accordingly, the Court has held in its settled case law that failure to comply with the duty to realign the domestic legal system is also demonstrated by the absence or inadequacy of enabling regulations, whether legislative[24] or administrative.[25] When the Court examined Peru's anti-terrorism legislation in 1999, it already understood that the content of Article 2 cannot require specifically the **elimination** of State laws or practices that are contrary to the Convention, but rather the **adoption of** rules or practices:

"The general duty under Article 2 of the American Convention implies the adoption of measures of **two kinds**: on the one hand, **elimination** of any norms and practices that in any way violate the guarantees provided under the Convention; on the other hand, the **promulgation** of norms and the development of practices conducive to effective observance of those guarantees."[26]

44. When the Court, in this extract from *Castillo Petruzzi et al. v. Peru,* pointed to the fact that Article 2 of the Convention can demand the *elimination* or *adoption* of norms and practices, its case law shifted somewhat within a conceptual framework that shares clear similarities with the general theory of fundamental rights. This general theory, under the influence of German constitutional dogma, starts with the premise that fundamental rights

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[23] IACtHR. *Case of Suárez Rosero v. Ecuador*. Merits. Judgment of November 12, 1997. Series C No. 35, para. 98.

[24] Such as omissions resulting from inadequate legal definitions for punishing acts of torture: *Case of Azul Rojas Marín et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 12, 2020. Series C No. 402, paras. 207ff.

[25] An example of this is the lack of a government structure or public policies that would provide the institutions involved with the necessary means to guarantee the rights of the missing children. *Cf. Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 16, 2009. Series C No. 205, para. 410.

[26] IACtHR. *Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations and Costs.* Judgment of May 30, 1999. Series C No. 52, para. 207.

possess a subjective dimension that highlights the notion of the freedom of citizens vis-à-vis the State, and an objective dimension rooted in the understanding that such norms embody standards and values not available to the State.[27] The former, that is, the subjective dimension, has been known since the time of liberal constitutionalism and is based on the State's claim to refrain in favor individuals and protect them from *interventions* in the form of *actions*. By contrast, the latter, that is, the objective dimension, guides the action of all the public powers and provides the tools they need so that, in certain situations, it can be claimed that the state has failed to protect a right (regardless of whether there is a subjectively identifiable holder of that right); in such a case, it can move quickly to support the adoption of positive measures that will meet the requirement to remove causes of insufficient protection.[28] The objective dimension, which is multi-functional, also reflects a recognition that fundamental rights can be violated by omission and provides the means to fight this.[29]

45. The concept of the *objective* dimension is rooted in the context of doctrinal developments following the Second World War, inspired by the challenge of creating a conceptual framework able to overcome the relativism of values that can be found in nationalistic movements; it draws on the notion of an objective set of values, irrevocable and predating the State because it is based on humanity.[30] For this reason alone, and because of its source, an idea of the objective dimension of human rights cannot be ignored by international law; moreover, the transnational nature of humankind would be nothing more than a tangible framework for a new kind of relationship between the national and international regulatory settings, which since 1945 has been characterized by mutual opening.[31] Multiple conceptual references from international law reflect an objective imposition,[32] such as provisions from *ius cogens,* which give tangible form to the existence of an "*international* order of values" (*internationalen Wertordnung)* that is at least partially independent from the will of States.[33] This is also true for human rights treaties, as articulated in the unimpeachable treatise by Cançado Trindade: "*essentially objective obligations* may lapse and therefore must be guaranteed or enforced collectively, and certain considerations of general interest or *ordre public* prevail because they transcend the individual interests of the States Parties."[34]

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[27] JARASS, Hans D. "Grundrechte als Wertentscheidungen bsw. objektivrechtliche Prinzipien in der Rechtsprechung des Bundesverfassungsgerichts." *Archiv des öffentlichen Rechts*. Vol. 110, no. 3. Tübingen: Mohr Siebeck, 1985, pp. 363-365.

[28] GRIMM, Dieter. "Rückkehr zum liberalen Grundrechtsverständnis?" In: *Die Zukunft der Verfassung*. 2nd ed. Frankfurt: Suhrkamp, 1994, p. 221.

[29] PIEROTH, Bodo; SCHLINK, Bernhard. *Direitos Fundamentais*. 2nd ed. São Paulo: Saraiva, 2019, p. 121.

[30] DÜRIG, Günter. "Der Grundrechtssatz von der Menschenwürde." *Archiv des öffentlichen Rechts*. Vol. 81, no. 2. Tübingen: Mohr Siebeck, 1956, pp. 117-120.

[31] PETERS, Anne. "Rechtsordnungen und Konstitutionalisierung: Zur Neubestimmung der Verhältnisse." *Zeitschrift für öffentliches Recht*. Vol. 65. Cham: Springer Verlag, 2010, p. 22, discussing the current state of the relationship between national and international bodies of law, in which "current doctrine emphasizes mutual opening and the *interweaving* and *interaction* of the international legal system with domestic legal systems" (*Die heutige Lehre stellt die gegenseitige Öffnung sowie die Verzahnung und Interaktion der Völkerrechtsordnung mit den nationalen Rechtsordnungen in den Vordergrund*).

[32] The question of whether this is due to identical reasons, parallel reasons, or different reasons, exceeds the limits (and efforts) of this concurring opinion.

[33] KNAUFF, Matthias. "Konstitutionalisierung im inner- und überstaatlichen Recht - Konvergenz oder Divergenz?" *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*. Vol. 68, no. 2. Heidelberg: Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2008, p. 466.

[34] CANÇADO TRINDADE, Antônio Augusto. *Tratado de Direito Internacional dos Direitos Humanos*. Vol. II. Porto Alegre: Sergio Fabris Editor, 1999, pp. 30-31. Translation by this author.

46. It is helpful to recall the objective nature of human rights treaties in order to understand why the Court has always been naturally inclined to understand that the general obligation of a State to bring its domestic legislation into alignment with the provisions of the Convention, as provided in Article 2, can trigger the adoption of measures of redress requiring the State either **not to do** (*refrain from*) or **to do** (*order*); the choice of which depends only on whether the violations of the Convention arose from **actions** or **omissions**.[35] Unquestionably, the regulatory anatomy of Article 2 suggests that there is an intrinsic relationship between the *violation* (intervention) of the human rights provision and appropriate *measures of reparation* that will lead to *restitutio in integro* (Article 63(1)).

47. Note that declaring State responsibility for a specific violation would be nothing more than a rhetorical exercise if it did not include practical obligations to redress the violations. The States can be held responsible for the damage they cause to individuals; any unjust injury engenders the obligation to redress. Accordingly, the obligation to redress is part of the very content of international responsibility.[36]

48. The felicitous evolution of international law has made it possible to develop a broad understanding of reparation that includes not only measures intended strictly to restore the victim's status *ex ante* the international crime, but also measures reflecting the premise that comprehensive reparation requires the States to adopt appropriate measures to prevent the damage from recurring. This broad articulation of the principle of *restitutio in integrum* has been accepted by the Court dating back at least to *Garrido Baigorria v. Argentina*, when it emphasized that "*reparation may also be in the form of measures intended to prevent a recurrence of the offending acts."*[37] The Court's judgment on reparations for the *Loayza Tamayo v. Peru* case reads:[38]

85. Reparations is a generic term that covers the various ways a State may make amends for the international responsibility it has incurred (*restitutio in integrum*, payment of compensation, satisfaction, guarantees of non-repetitions among others).

49. *Measures of nonrepetition* may seem strange by comparison with other forms of redress, but a legal basis can be found for holding them as a point where three of the general State obligations enshrined in the Convention converge: (i) the general duty to repair, drawn from Article 63(1); (ii) the duty to align domestic legal effects, found in Article 2; and (iii) the duty to guarantee, as reflected in the duty to prevent, drawn from Article 1(1).

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[35] IACtHR. *Case of Colindres Schonenberg v. El Salvador. Merits, Reparations and Costs.* Judgment of February 4, 2019. Series C No. 373: "129. This Court has indicated that all the authorities of a State Party to the Convention have the obligation to exercise a 'control of conventionality' between the **acts or omissions** and the internal norms and the American Convention, in such a way that the interpretation and application of the national law is consistent with the State's international human rights obligations. This control of conventionality must be carried out within the framework of their respective competences and the corresponding procedural regulations and in this task, taking into account not only the treaty, but also the interpretation thereof made by the Inter-American Court, which is the ultimate interpreter of the American Convention" (emphasis added).

[36] D'ARGENT, Pierre. *Reparation, cessation, assurances and guarantees of non-repetition.* In: NOLLKAEMPER, André; PLAKOKEFALOS, Ilias. Principles of Shared Responsibility in International Law An Appraisal of the State of the Art. Cambridge: Cambridge University Press, 2014. p. 208.

[37] IACtHR. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs.* Judgment of August 27, 1998. Series C No. 39, para. 41.

[38] IACtHR. *Case of Loayza Tamayo v. Peru. Reparations and Costs.* Judgment of November 27, 1998. Series C No. 42.

50. This line of thought lay behind the concurring separate opinion I wrote with Judge Ricardo C. Pérez Manrique and Judge Eduardo Ferrer Mac-Gregor Poisot in the *Córdoba v. Paraguay* case;[39] our intent was to clarify the complementarity between Article 2 and Article 63(1) of the Convention by explaining why the Court's case law could—and in fact did in that case—adopt as a measure of nonrepetition the order for the State to enact its own legislative framework designed to remedy the violation examined in the case:[40]

> 12. In such situations, the Court has held that violation of Article 2 of the Convention should necessarily mean a rule was enforced in the specific case or its impact was experienced by the party who turned to the inter-American jurisdiction, and this is exactly the situation that empowers the Court to deliver a decision on the matter.
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> 13. This view is not absolute and should be carefully combined with the provisions of Article 63(1) of the American Convention, which itself is nothing more than an expression of international customary provisions according to which any violation of an international obligation that has caused collective injury creates the duty to provide appropriate redress. This is why the Court, wishing to ensure appropriate redress for the violated rights, has exercised flexibility regarding the need for a rule or law to have been applied in the specific case in order to find consequences based on Article 2. In *Gorigoitía v. Argentina* and *Fernández Prieto and Tumbeiro v. Argentina*, the Court addressed the matter of several different legal provisions that, at the time the cases were being adjudged, were no longer in force. Thus, at the time the judgment was delivered, the regulatory framework had not been applied to the facts brought before the Court. Even so, the Court found that the problems of incompatibility with the Convention persisted with the laws that had replaced those in effect at the time of the facts. It therefore delivered a judgment on the regulatory content of the provisions in force based on problems involving alignment with the Convention. The same position was taken in more recent cases on rules and regulations that authorized arbitrary arrest or descriptions contained in the codification of crimes of sexual violation.
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> 14. Ultimately, case law on Article 2 violations involving the enforcement of laws that are incompatible with the American Convention does not allow for lines of reasoning that act in isolation to reduce the State's action to the application of a rule or law in a single case during judicial proceedings. Because many of the judgments contained in this class of jurisprudence were delivered following examination of violations of the right to judicial guarantees and the right to due process, it is understandable that the Count, in many such cases, did not find the need to examine violation of Article 2 when the domestic law applied to the case was no longer in effect. But cause should never be confused with effect. The truly decisive standard is whether or not damage has been caused by the State's conduct (action or omission) and the need for appropriate, comprehensive redress (whether by putting a stop to an excess or removing ineffective protections). This is very much in line with the traditional stance that reparations must have a causal nexus with the facts of the case, the declared violations, the proven damage, as well as the measures requested to repair the damage. If this were not so, the repeal of a regulation or law or a declaration by a national court that it is unconstitutional would be sufficient cause to prevent the inter-American system from examining a violation of international law.

51. This has been the settled case law of the Inter-American Court. As Judge Cançado Trindade and Judge Abreu Burelli said in their separate concurring opinion on *Loayza Tamayo v. Peru*, the broad terms of Article 63(1) "*disclose to the Inter-American Court of Human Rights quite a wide horizon in the matter of reparations.*"[41] By empowering the Court to order the State to repair "the consequences of the measure or situation that violated such rights," the wording of the Convention sidesteps the classical, strict terms of international law, guided

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[39] IACtHR. *Case of Córdoba v. Paraguay. Merits, Reparations and Costs.* Judgment of September 5, 2023. Series C No. 505. Separate opinion by Judge Ricardo C. Pérez Manrique, Judge Eduardo Ferrer Mac-Gregor Poisot, and Judge Rodrigo Mudrovitsch.

[40] IACtHR. *Case of Córdoba v. Paraguay. Merits, Reparations and Costs.* Judgment of September 5, 2023. Series C No. 505. Separate opinion by Judge Ricardo C. Pérez Manrique, Judge Eduardo Ferrer Mac-Gregor Poisot, and Judge Rodrigo Mudrovitsch, paras. 12-14.

[41] IACtHR. *Case of Loayza Tamayo v. Peru. Reparations and Costs.* Judgment of November 27, 1998. Series C No. 42, separate opinion by Judge Cançado Trindade and Judge Abreu Burelli, para. 5.

by the idea of redress for the *damage* caused by an illegal act. This lends a broader conception ("situation") and a forward-looking stance ("consequences") to the scope of State obligations and allows the Court, when ordering reparations, to reflect on the future projection of conditions that led to the human rights violation.

52. It was also the wise vision of Judge Cançado Trindade that placed the spirit and foundation of the guarantees of non-recurrence under the principle of prevention, regardless of whether the underlying legal provision is applied to the specific case at hand.[42] He held that this is the very foundation of the States' objective responsibility, obliging them to remove anything that would pose a threat to human rights in the domestic legal system, "*without the need to wait for the subsequent application of that law, generating an additional damage.*"[43]

53. The guarantees of non-recurrence are thus an expression of the State's duty to prevent, taking concrete shape as the obligation to repair. These guarantees derive from the assumption that the primary duty of prevention has failed and the violation has already occurred; but their purpose is to prevent such things from recurring, and this reflects their eminently preventive dimension.

54. Ultimately, it is a matter of providing an optimal guarantee that laws will give preeminence to human dignity. It was for this purpose that the international community of nations decided to create bodies for oversight and supervision.[44] María Carmelina Londoño Lázaro was absolutely right when she said that the Convention's guarantees of non-recurrence are founded on the convergence of the duties to prevent and to redress, and also sustain the principles of *pro homine* and *effet utile*.[45] These principles give rise to the obligation to create the best possible conditions for protecting human rights, which in turn entails a commitment to adopt an interpretation that will ensure the Convention's maximum effectiveness.

55. Convention-based review is an inherent factor in this line of thought. The ability of the Court to conduct such a review is no mere declarative power. The Court's standard practice when it examines whether laws and regulatory provisions are compatible with the Convention in contentious cases brought before it is to develop a set of measures targeting comprehensive redress, exactly as required by the *pro homine* principle, which shapes the relationship between domestic law and international law under the notion of *primacy*.[46]

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[42] IACtHR. *Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 124.

[43] IACtHR. *Case of El Amparo v. Venezuela. Interpretation of the judgment on reparations and costs*. Order of the Inter-American Court of Human Rights, April 16, 1997. Series C No. 46, Separate opinion of Judge Cançado Trindade, para. 22.

[44] FERRER MAC-GREGOR, Eduardo. "El control difuso de convencionalidad en el Estado Constitucional." In: FIX-ZAMUDIO, Héctor; VALADÉS, Diego (eds.). *Formación y Perspectivas del Estado en México*. Mexico City: UNAM; El Colegio Nacional, 2010, p. 159.

[45] LÁZARO, María C. Londoño. *Las Garantías de no repetición en la jurisprudencia interamericana: Derecho internacional y cambios estructurales del Estado.* Mexico City: Tirant lo Blanch, 2014, pp. 71 and 141.

[46] CANÇADO TRINDADE, Antônio Augusto. "As sete décadas de projeção da Declaração Universal dos Direitos Humanos (1948-2018)." In: *Revista da Faculdade de Direito da UFMG*. Belo Horizonte, no. 73, Jul./Dec., 2018, p. 115: "Setting aside the bonds of classical doctrine, primacy was given to whichever rule, whether of international or domestic derivation, would best protect human rights, whichever standard was most favorable for the alleged victims."

56. The Court, seeking to guarantee this primacy of provisions most favorable to human subjects, uses the technique of "review against the Convention," so named for the first time in a separate opinion by Judge Sergio García Ramírez[47] in the *Myrna Mack Chang v. Guatemala* case (2003).[48] In the subsequent case of *Tibi v. Ecuador (2004*),[49] Judge García Ramírez delimited the contours of the concept as follows:

> In other words, if constitutional courts oversee "constitutionality," the international human rights court decides on the "conventionality" of those acts. By controlling constitutionality, the domestic bodies seek to ensure that activities of the public authorities—and, perhaps, of other social agents—are in accordance with the order that is inherent to the Rule of Law in a democratic society. The inter-American Court, in turn, seeks to ensure that this activity is in accordance with the international order set forth in the convention that founded the inter-American jurisdiction and was accepted by the States Party exercising their sovereignty.

57. The terminology was consolidated in the landmark *Almonacid Arellano v. Chile* case (2006),[50] when the Court asserted that the exercise of Convention-based review must be performed first and foremost by the States themselves, correctly understood as the "guarantors of the inter-American human rights system."[51] The States are the first line of defense of human rights, and it is their duty to guarantee the primacy of the whatever provision is most favorable to the victims; this may certainly require application of the Convention over and above domestic regulatory instruments that may be less protective.

58. It is a duty of the State overall and, therefore, of each one of the branches and bodies of government. The Court has recognized on several occasions that judges and all the tiers of the judicial system are empowered to perform on their own motion a review against the Convention.[52] Indeed, all the powers of State must be committed to comprehensive protection of human rights.[53] In any case, the essential point to remember is that "*domestic legal provisions must harmonize with the standards of the Convention, and not the reverse*,"[54] as Judge Cançado Trindade so correctly stated.

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[47] I would first like to express my profound sorrow for the death of Judge Sergio García Ramírez, who passed away on January 10, 2024. Judge García left a significant legacy from his time on the Court and became a mandatory expositor and a cornerstone of the inter-American system of human rights. The separate opinions cited herein are but a small sample of his essential contributions to the protection of human rights and are given as an illustration of the role he played in developing inter-American doctrine on the primacy of the American Convention.

[48] IACtHR. *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs.* Judgment of November 25, 2003. Series C No. 101. Separate concurring opinion of Judge García Ramírez, para. 27.

[49] IACtHR. *Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 7, 2004. Series C No. 114. Separate concurring opinion of Judge García Ramírez, para. 3.

[50] IACtHR. *Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 124.

[51] "(...) We must insist that the States themselves, guarantors of the inter-American human rights system, are at the same time essential components of this system, in which they participate through a political and juridical will that is the best guaranty of the true effectiveness of the international system for protection of human rights, based on the effectiveness of the domestic system for protection of those rights." Cf. IACtHR. *Case of Tibi v. Ecuador.* Preliminary Objections, Merits, Reparations and Costs. Judgment of September 07, 2004. Series C No. 114. Separate concurring opinion of Judge García Ramírez, para. 5.

[52] IACtHR. *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 26, 2010. Series C No. 220, para. 225.

[53] IACtHR. *Case of Gelman v. Uruguay. Merits and Reparations*. Judgment of February 24, 2011. Series C No. 221, para. 239.

[54] "The American Convention, as well as other human rights treaties, seek, *a contrario sensu*, to have, in the domestic law of the States Parties, the effect of improving it, in order to maximize the protection of the recognized rights, bringing about, to that end, whenever necessary, the revision or revocation of national laws—particularly

59. Therefore the term "review" in this context refers, first, to the *"obligation of all domestic judges (as part of the State) to perform such a review on their own motion, within the sphere of their own jurisdiction and in keeping with applicable procedural rules."*[55] Second, it holds the Court hallowed as the authentic and final authority responsible for interpreting and monitoring the application of the Convention. In keeping with the principle of subsidiarity of the international jurisdiction, this responsibility is activated only when domestic review of compatibility with the Convention has not been performed or is fragile. It then falls to the Court to compare the situation in the country with the standards of the Convention.[56] When the Court gauges the seriousness of a violation (if the State has failed to uphold its duty to guarantee the Convention), it also takes on the responsibility of ordering measures of redress that seek comprehensive repair for the victims, especially through the measures of nonrepetition.

60. The Court took a view that proved to be surprisingly prescient, in tune with modern legal methodology, that deliberately moves away from the hierarchical mentality typical of domestic constitutional law and instead embraces a *polycentric* mindset when it brings domestic legal systems into line with international standards.[57] From this standpoint, the doctrine on sources of law does not uphold a rigid insistence on the impact of provisions drawn from one particular body of law, but instead considers the "reciprocal effects" that already exist among different types of laws or regulations, which, among other things, means developing conceptual tools that will foster integration between domestic law and international public law.[58] The principle of *effet utile* is one such tool.

61. Human rights treaties "are not interpreted in light of reciprocal concessions, as are classic treaties, but rather, by pursuing the ultimate goal of protecting the fundamental rights of the human person."[59] The achievement of this end—activation of the *pro homine* principle—calls for a methodological stance when interpreting or adjudging human rights that favors maximum protective effectiveness. The principle of *effet utile* meets exactly this need as a means to guarantee the primacy of the *pro homine* clause; its usefulness is tied intrinsically to a robust ability to identify practical and operational road bocks to the full enjoyment of

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those of exception—which do not conform to its standards of protection." Cf. IACtHR. *Case of El Amparo v. Venezuela.* Interpretation of the Judgment of Reparations and Costs. Order of the Inter-American Court of Human Rights, April 16, 1997. Series C No. 46. Dissenting Opinion of Judge Cançado Trindade, para. 14.

55 MAC-GREGOR, Eduardo Ferrer. "Interpretación conforme y control difuso de convencionalidad: El nuevo paradigma para el juez mexicano." *Estudios constitucionales,* v. 9, n. 2, 2011, p. 535.

56 "The Inter-American Court, which is responsible for performing 'control of compliance' based on the confrontation of the facts at stake and the provisions of the American Convention, cannot and does not intend—indeed, it never did—to become a new and last resort to hear a controversy originated in the domestic jurisdiction. Cf. IACtHR. Case of Vargas Areco v. Paraguay. Judgment of September 26, 2006. Series C No. 155. Separate opinion of Judge García Ramírez, para. 6.

57 TEUBNER, Gunter; FISHER-LESCANO, Andreas. "Regime-Collisions: The vain search for legal unity in the fragmentation of global law." In: Michigan Journal of International Law. Vol. 25, N. 4, 2004, p. 1,033.

58 RUFFERT, Matthias. "Rechtsquellen und Rechtsschichten des Verwaltungsrechts." In: HOFFMANN-RIEM, Wolfgang; SCHMIDT-AβMANN, Eberhard; VOβKUHLE, Andreas (eds.). *Grundlagen des Verwaltungsrechts*. Vol. 1. Munich: C.H. Beck, 2006, Rn. 8.

59 CANÇADO TRINDADE, Antônio Augusto. *Tratado de Direito Internacional dos Direitos Humanos*. Vol. II. Porto Alegre: Sergio Fabris Editor, 1999, p. 30. Translation by this author.

human rights.[60] The underlying issue must be diagnosed accurately as a prerequisite for adopting measures of nonrepetition that are consistent with the Convention.

62. This is exactly what happened in the judgment on the case at hand. The Court, ever faithful to the *pro homine* principle, identified a structure that systematically produced violations of Convention-based rights, whose victims were the members of CAJAR. As I explained at the beginning, the irregular use of intelligence activities targeting the members of CAJAR began in the 1990s, has lasted over 30 years, and is still making its effects felt today. For most of these three decades, the State of Colombia has been incapable of creating a legislative framework able to set effective restrictions on the activities of its intelligence agencies. The enactment of Law 1621 of 2013 was an attempt to fill this vacuum.

63. It embodies several different kinds of provisions, the most significant of which confer powers on State agents. It has several different kinds of articles; some provide definitions, objectives, and general principles (Articles 1 to 5); others prescribe plans and procedures, such as the *National Intelligence Plan* (Article 8); some create oversight and management bodies (Articles 12 and 13), create the Joint Board of Intelligence and regulate the work of the *Legal committee to monitor intelligence and counterintelligence activities* (Articles 20 to 26); it has articles concerning management of intelligence information (Articles 28 to 31) and on non-delegable legislative powers over intelligence documents (Articles 33 to 39).

64. It can therefore be said that most of these provisions are not intended to create, amend, or restrict rights, nor do they stipulate conduct or duties for civilians. Instead they set out the institutional position on how the intelligence service should operate. In the specific case at hand, the law's effects on individual rights cannot be duly understood in terms of "applying" the rules to individual persons. Legislation such as this intelligence law requires careful analysis based on the limits that should be set on State power to interfere in citizen rights and guarantees. The first question to ask is whether the law offers sufficient guarantees for protecting rights that could be breached by the regulated activity; the second is whether it contains gaps or omissions in this sense.

65. If this premise is valid for regulating the usual services provided by the public administration, it is even more critical for an area of activity that, by its very nature, entails acute intervention into the personal sphere of private individuals, as occurs with intelligence services. These tasks, by their very essence and usual modus operandi, entail obtaining data or information without the authorization or knowledge of the interested party. If there are no clear legal limits on such activities, it falls to the individual judgment of government agents to define the scope of their powers to interfere in the private lives of others. Indeed, this case saw an abundance of proof that such limits were non-existent in terms of their practical effects.

66. The scenario thus reveals a structural violation shot through with legislative omissions, regulatory defects, a high degree of informality in intelligence activities, and negligible institutional control. Restitution of this state of affairs would require structural measures, just as the violations were structural. The Court took a close look at the *effet utile* of the

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[60] RUFFERT, Matthias. "Rechtsquellen und Rechtsschichten des Verwaltungsrechts." In: HOFFMANN-RIEM, Wolfgang; SCHMIDT-AβMANN, Eberhard; VOβKUHLE, Andreas (eds.). *Grundlagen des Verwaltungsrechts*. Vol. 1. Munich: C.H. Beck, 2006, Rn. 105.

Convention, and this became the filter that led it to adopt the guarantees of non-recurrence, which stand out for their emphasis on investing in rules for organization and procedures.

67. It is worth repeating: the precepts that led to the need for full, detailed scrutiny of Colombia's intelligence law were never an end in themselves, but their essential purpose was to provide comprehensive redress and propose effective means to guarantee that the violation would not recur. Using this perspective, when the Court examined the regulations governing the Colombian intelligence services during the time of the events in this case, it found that the institutional deficiencies fostered an environment of absolute freedom in which the agents were able to exercise the broadest discretion over the victims. Given the lacunae of protection in the laws on human rights safeguards, the Court could not imagine a useful set of reparations under the premise of nonrepetition without taking a careful look at the intelligence law.

68. The causal nexus between the unconstitutional law and the damage caused, which created the obligation to redress, therefore lay primarily in the persistence of violations. I agree with the judgment; it records numerous episodes showing that the enactment of Law 1621 of 2013 was not enough to rein in the modus operandi that committed systematic violation of human rights as part of the intelligence activities. It is difficult to see any attenuation of surveillance of CAJAR members during the 2010s, but if there was in fact a slight lessening in the espionage, it seems to be attributable more to the dissolution of the DAS in 2011 than to the enactment of the new law that, beyond vague guidelines, did little to protect human rights.

69. In 2015, two years after the intelligence law was activated, the president of CAJAR sent a letter to the President of Colombia requesting effective measures that would stop the intelligence agencies from pursuing their activities against the members of the Collective. The letter lists a variety of acts of harassment, stalking, interception of communications, and taking of photographs by agents of the police and armed forces associated with the intelligence services. It says, for example:

> Several of us, as members of the Lawyers Collective, have again noticed that our telephones are being tapped and our lines of communication are being monitored, and we have also seen irregularities with communication such as interference in calls, or text messages on our telephones that we did not send.[61]

70. This shows how, in the conduct of their normal professional activities, the members of CAJAR, even in 2015, were living with the constant presence of intelligence agents following them and watching them. The judgment also points to a number of press reports that ran in 2020, detailing the constant espionage surrounding CAJAR lawyers. The reports said that authorities were receiving reports, recordings, photographs, and videos collected by secret agents using irregular methods,[62] that would be used to develop profiles of persons labeled as suspicious.

71. It has been shown that surveillance methods are now becoming even more sophisticated as they move into a digital environment. A clear example of the inadequacy of existing legal mechanisms to rein in these arbitrary operations can be found in the so-called *Cyber-intelligence battalions of the National Army of Colombia*. As the judgment shows, in 2020, the *Office of the Solicitor General* gained access to files being held in military facilities

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[61] Communication of February 23, 2015, to the President of the Republic (evidence file, folios 6771 to 6776).

[62] Judgment, para. 357.

that recorded information collected on members of the Collective.[63] It found in its investigations, for example, that the attorney Sebastián Uribe had been targeted through "electronic surveillance" by the army.[64] In other words, even after Law 1621 of 2013 went into in force, the State of Colombia had organized a new structure to capture data, track and profile journalists, attorneys and human rights defenders indiscriminately, and even adopt new methods, especially involving digital surveillance.

72. Clearly, the intelligence activities were not limited to members of the Collective. The representatives of the victims provided two examples that cast light on the dimensions of operations conducted in the 2010s: the first was known as *Operation Andromeda*, whose purpose was to monitor the peace talks between the State of Colombia and the FARC guerrillas; the second was to compile over 500 email messages belonging to journalists, diplomatic personnel, and members of international organizations, holding them in the army's military intelligence center. Both cases took place in 2014.[65] These incidents lie outside the scope of this case, but they illustrate the nature and magnitude of activities that have persisted under the laws that are still in force today.

73. These were not isolated episodes, they were not one-time events, and they were not exceptional situations that somehow escaped institutional control. There is no question that they obeyed a deliberate protocol for irregular actions that reveals, not only specific gaps in the law, but even more, a worrisome scenario of structural deficiencies in human rights protection in both the law and the institutions of the State of Colombia.

74. The Court has unquestionably encountered a context of systematic violations recurring indefinitely for over three decades and demanding effective, decisive responses that give primacy to human rights. Law 1621, as written, proved to be an obstacle to the guarantee of non-recurrence. In other words, the principle of comprehensive redress, a centerpiece of the Court's contentious jurisdiction, could not have been fully upheld if the Court had left this law unaddressed, because the institutional framework that allowed the violations to continue would have remained intact.

75. The judgment therefore orders the State to adopt 11 key measures for amending the intelligence law. The operative section does not explicitly spell out the parameters that must guide this legislative reform process, but they are described clearly and specifically in paragraphs 671 through 694 of the judgment and summarized as follows in footnote 868:

The Court deems that Constitutional Law 1621 of 2013 could be amended to bring it into alignment with Convention-based standards; this would require:

(a) identification of the different types of authorized measures and actions for obtaining and compiling intelligence information; the goals sought with the use of these measures; the types of individuals and activities on which information may be gathered and compiled, depending on the identification of threats to the pursuit of the legitimate aims identified; the degree of suspicion necessary to justify gathering and compiling of information; time limits on use of these measures and strategies, and useful methods for updating, overseeing and examining the measures and actions used to gather and compile information;

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63 Judgment, para. 365.

64 Filing 20201600017221 of the Office of the Prosecutor General (evidence file, folio 27989).

65 Brief with pleadings, motions and evidence, CAJAR/CEJIL, para. 136.

(b) the need for prior judicial oversight when certain individuals are assigned to practice surveillance methods and actions via access to non-public data bases and information systems that store or process personal data, and for performing invasive measures to collect information;

(c) the use of a sequence of processes to formalize intelligence activities with the full recording of each stage, included in the logbook on access to electronic systems;

(d) in the case of processing personal data, keeping a record to identify those responsible for processing; the purposes for processing information compiled, indicating the source and category of the data; the legal basis for the operations; term limits for keeping the data, and techniques used for processing it; also, chronological records of access, modification, consultation, erasure or dissemination of personal information, and identification of anyone who gains access to the data;

(e) provisions to ensure that the obtaining of information held by public and private entities and the possibility of signing inter-institutional agreements for these purposes are subject to the pursuit of a legitimate purpose defined by law, the definition of those who will be responsible, and the setting of time limits for validity;

(f) adaptation of regulations on "monitoring the electromagnetic spectrum," providing a definition of permissible activities, the type of information that can be collected and the prior judicial oversight required for monitoring and for methods of communications surveillance, whether selectively or at large scale, including surveillance of the electromagnetic spectrum—with the possible exceptions indicated in para. 677;

(g) the reports that relevant authorities must submit to the Legal committee to monitor intelligence and counterintelligence activities should include the material needed to facilitate tasks of oversight, and if any anomalies or irregularities are detected, the committee should report to the Prosecutor General and the Office or the Solicitor General, whichever applies;

(h) the regulations concerning the Joint Board of Intelligence should clearly state the conditions and purposes that may justify an exchange of information and applicable safeguards to ensure that the information is kept safe;

(i) limits must be set on the application of "legal confidentiality" of "documents, information and technical material" held by intelligence agencies, to specify the categories of information that can be marked as classified and allow for compliance with the demands of the principles of proportionality in each specific case;

(j) when setting time limits on "legal confidentiality," or how long information can be considered classified, the regulations should opt for a maximum of 15 years, with no extensions, in keeping with Law 1712 of 2014, and

(k) a requirement for an independent supervisory institution to be assigned to verify matters concerning the management and storage of personal information and data held by intelligence agencies.

76. I believe that these guarantees of nonrepetition reflect what is perhaps one of the judgment's greatest legacies in terms of methodology: it canonizes the organizational and procedural dimension for redressing the State's structurally sanctioned administrative practices and legislative omissions. In doing so, the Court has once again held that the contours of the States' obligation to adopt domestic legal effects (Article 2 of the Convention) are intrinsically correlated to the reparations that the Court must order when a human rights violation is brought before it (Article 63(1)).

77. Finally, it should be said that these measures, in terms of both content and inspiration, arise from recognition of the right to informational self-determination upheld in the judgment, out of which flowed the guidelines for application of the proposed reform of the law that governs intelligence activities in Colombia. This will be the topic of my next section.

III. Basis and dimensions of the right to informational self-determination

78. The Court has recognized the right to informational self-determination in the CAJAR case, a decision whose deep roots lie in the landmark 1983 decision by the German Constitutional Court, where the concept was first coined.[66] This is not a mere jurisprudential edict that found a perfect foothold in the instant case for bringing inter-American vocabulary up to date with jargon that had already been in use for a long time. The recognition of this right is the result of a comprehensive, systematic, evolutive reading of the fundamental precepts enshrined in the Convention.

79. It is true that the matter of data protection has become increasingly important, especially in recent decades, with the appearance of new technologies and the globalization of communication networks. Fact-based considerations such as these are useful for identifying the mechanisms needed to protect people in even the most diverse social environments,[67] and the methods for interpreting human rights treaties must always take account of this evolution. Thus, it can be said that the significant role of informational self-determination is particularly visible in modern societies that expose this right to ever greater risk because of the widespread use of instruments that are highly efficient at collecting, sharing, and spreading information about the masses.

80. Classifying a right as a "human right" is, however, no simple reflexive action driven by particular social circumstances, such as new technological developments in a given society. Human rights protect essential human interests that transcend specific forms of social organization.

81. The significance of informational self-determination per se is therefore associated with fundamental interests beyond some particular existing technology. It is woven into the perennial fabric of human rights and is not a mere reflection of fortuitous technological changes. The CAJAR case is a clear demonstration of this, given the violations experienced by the victims even before the spread of platforms and devices such as social media and smartphones, but the features of these new devices intensify the perils and now stand at the center of debates on data protection. These technologies did not yet exist at the time the facts began, but this detracts nothing from ability to demand enforcement of this right or from the seriousness of the damage caused.

82. The CAJAR judgment is built on the premise developed by the German Constitutional Court that informational self-determination is an extension of the protection of human dignity.[68] The link between dignity and informational self-determination is shaped by the idea that all individuals must have the power to define and pursue their choice of a valuable life plan. It is a concept very familiar to the Court's case law, and it consists of "the complete realization of the person concerned based on their vocation, aptitudes, circumstances, potential and aspirations that allow them to establish certain reasonable expectations and

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66 Federal Constitutional Court of Germany, BVerfGE 65, 1-71 (Volkszählungsgesetz) (1983). Available at: https://www.bverfg.de/e/rs19831215_1bvr020983.html.

67 See GRIFFIN, James. *On human rights*. Oxford: Oxford University Press, 2009. p. 38.

68 Judgment, paras. 568-570.

achieve them."[69] The concept of life plans plays an essential role in the inter-American system, underlying many of the Court-ordered measures of reparation and serving as an integral part of the very concept of human dignity. In the words of Judge Cançado Trindade, "within the framework of a transient life, people have the right to make the options they feel are best [...] in order to achieve their ideals," and "endeavors to achieve a life project [...] have great existential value, and the potential to give meaning to each person's life."[70]

83. Having dignity therefore means in particular that people have control over themselves, and at the very least, can select, and when they wish, to revise what they consider to be a life worth living and then respond accordingly. This is why we speak of the value of "agency," "autonomy," or "self-determination"[71] as an essential part of the dignity of the human person. When a person's power to choose or exercise his or her life plan is unjustly or arbitrarily hampered, as occurs when human rights are breached, this capacity for self-determination is grievously undermined. Such cases deprive people of the means for administering their own desired life plans, trampling on their dignity.[72]

84. The ability of all persons to control their own personal data is a necessary condition if they are to choose and pursue their own life plans. Information on personal aspirations, likes and dislikes, preferences, opinions, relationships, contacts, places most frequented, and more, is crucial for these people to contemplate what they want for their lives and take action to actually fulfill their plans.

85. The incidents experienced by the CAJAR members give a perfect illustration of how important personal data are for life plans. An essential part of their lives indisputably revolved around defending human rights. It was an activity that suffused their lives with meaning. These people would find that it was impossible to reaffirm and pursue their life plans when, day after day for entire decades, a plethora of data on their homes, families, clients, and

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[69] IACtHR. *Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations.* Judgment of May 14, 2013. Series C No. 260, para. 314. Se also, IACtHR. *Case of Loayza Tamayo v. Peru. Reparations and Costs.* Judgment of November 27, 1998. Series C No. 42, paras. 147-148; IACtHR. *Case of Furlán and family v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2012. Series C No. 246, para. 285.

[70] Separate opinion of Judge A. A. Cançado Trindade in *Gutiérrez Soler v. Colombia*, para. 3. See also the separate opinion of Judge Eduardo Ferrer Mac-Gregor Poisot and Judge Nancy Hernández López in the *Álvarez v. Argentina* case, para. 7: "Over the years, the Court has held that a decent life, a life that is worth living, requires not just the protection of physical life, but also the right to live with dignity, including the ability to carry out life projects with a sense of independence, the wholeness of life, and purpose in existence."

[71] See GRIFFIN, James. *Op. cit.*, chap. 8.

[72] A. A. Cançado Trindade also shows, in his opinion on the judgment of *La Cantuta v. Peru,* that the notion of individual "personhood" is connected, first, to human dignity, and second, to the concept of a life plan. The concept in international law of the human person as a rights-holder, according to this renowned judge, is built on the principle of respect for human dignity (paragraph 30). This principle upholds the *fundamental status of the human person* in international law, without which it is impossible to understand the human rights attributed to the person. Moreover, the notion of the human person, as a subject of rights endowed with personhood, already contains within itself the germ of self-determination to choose and pursue life plans. According to Cançado Trindade, "[t]he condition of *subject* affirms the autonomy of each human being, that goes on to relate with others and their social environment guided by their conscience. In the latter, each human subject finds their self-affirmation and builds their life project, seeking to fulfill their aspirations during their lifetime" (para. 22). (IACtHR. *Case of La Cantuta v. Peru.* Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 173, Separate opinion of Judge Cançado Trindade.) I believe that these ideas mark the first outlines for incorporating into the inter-American vocabulary the notion of free development of personhood put forward by the German Constitutional Court.

professional activities was collected, stored, and processed by the DAS intelligence services for the specific purpose of sabotaging their work for human rights.

86. When people lose control of information on themselves, their capacity to truly lead the lives they have chosen becomes uncertain, especially if that information goes into other people's hands using shady methods and seeking questionable purposes. As a result, the subjects may encounter difficulties pursuing their own life plans, inhibited by the possible negative judgments of those who are in possession of information that reveals their existential leanings. In extreme cases, even beyond inhibiting them, any incorrect use of people's data by third parties may culminate in actual manipulation of the subjects, having a significant impact on, or even altering, their opinions, likes and dislikes, preferences, and aspirations even without their realizing it, or if they do, finding themselves unable to make any other choice.

87. One of the most important conditions for the emergence of the right to informational self-determination, as it was shaped in the 1983 decision by the German Constitutional Court, was the evolutive process of setting this right apart from the right to privacy, and the roots of this development lie in that 1983 decision.

88. The core assumption for judicial protection of the *right* to privacy has traditionally been the right to be *in peace, or the right to be let alone*, cited for the first time in the article *The right to privacy,* by Samuel Warren and Louis Brandeis, published in 1890 in the Harvard Law Review, that created the individual prerogative to be free from outside interference. The traditional view was that the right to privacy was individualistic in nature and associated with the formal construct of a negative right to non-intervention, and it was the dichotomy between the public and private arenas that shaped the content of this right. Such was the context for the pioneering judgment by the German Constitutional Court, when it recognized that the social, political, economic, and technological transformations that had taken place at the time forced a reinvention of the concept of privacy. It thus became possible to consolidate the right to informational self-determination, whose sphere of protection does not perfectly overlap with the private or public nature of data, but instead with the risks attributed to management of these data by third parties.

89. The recognition by the German Constitutional Court of the constitutional guarantee of informational self-determination thus consolidated the concept of personal control over one's own data, reinforced by the duties of data clarification, information, minimization, and suppression. The concept of privacy acquired increasingly significant contours, moving beyond the traditional power of exclusion, and it became even more significant to understand the sequence "person-information-circulation-control," displacing the earlier formula of "person-information-secret" that oriented the debate in the past.[73]

90. Both rights arise from the Convention—the right to privacy and the right to informational self-determination—and the judgment in the CAJAR case reaffirms that the State of Colombia violated them egregiously. Even though the two are interdependent, there

[73] RODOTÀ, Stefano. *A vida na sociedade da vigilância – a privacidade hoje*. Rio de Janeiro: Renovar, 2008, p. 93.

are three critical differences[74] by which they can be seen in the Convention as two autonomous rights. First, the sphere for protection of informational self-determination resides with the agent; it covers the power of individuals to have control over their own personal data. It places greater stress on the autonomy of the human person, rather than considering the sphere, private or otherwise, where the person's data properly belong.[75] The power that people have to control their own personal data is expressed both as **(i)** their power to make decisions on how the information will be handled, as for example, with or without their consent; and **(ii)** their control over their own information, which means transparency about the different aspects of how it is handled, that help calibrate their legitimate expectations on the informational flow of their data. Informational self-determination is therefore also guaranteed when, even if individuals do not directly agree with how their data are handled because it is not a question of hypothetically obtaining consent, they nevertheless have access to information on how their data are being handled. This moves beyond the notion of privacy as a strictly negative freedom, so the idea of informational self-determination is thus adopted as a positive right that grants subjects a leading role in decisions on the flow of data, requires their active participation, and grants them the right to develop their personhood freely.

91. The right to privacy does not directly point to the person's capacity for self-determination, but to the inviolable limits of life within which certain interferences are inadmissible. Its spatial, corporal, and psychological dimensions may not be identical to what every individual determines freely, although they are often addressed in data protection rules (under the heading of confidentiality for private data). This does not mean that the right to privacy is more limited than the protection granted under informational self-determination; it is enough to recall that, in inter-American case law, the interpretation of the concept of private life is not restrictive, instead extending to cover protection of honor, reputation, sex life, sexual orientation, identity, family life, domicile, correspondence in the broadest sense, professional life, and more.[76] The first significant difference therefore is not a question of scope, but of the distinct nature of the spheres of protection.

92. This leads to a second difference between the two rights. Even though it is impossible to define in advance exactly what uses can be made of an individual's personal data in a given

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[74] MENDES, Laura Schertel Ferreira. Autodeterminação informativa: a história de um conceito. *Pensar: Revista de Ciências Jurídicas*, v. 25, no. 4, pp. 1–18, 2020. p. 12. This list of differences is not exhaustive. The relationship between privacy and informational self-determination merits a much more in-depth analysis than the limits of this opinion allow. See, similarly, DONEDA, Danilo. *Da privacidade à proteção de dados pessoais*. Nova Edição. São Paulo,: Revista dos Tribunais, 2019; SARLET, Ingo Wolfgang. Fundamentos constitucionais: o direito fundamental à proteção de dados. In: MENDES, Laura Schertel Ferreira; DONEDA, Danilo; SARLET, Ingo Wolfgang; et al (Orgs.). *Tratado de proteção de dados pessoais*. Rio de Janeiro: Forense, 2020, pp. 21–59. pp. 32-33.

[75] ALBERS, Marion. A complexidade da proteção de dados. *Revista Brasileira de Direitos Fundamentais & Justiça*, v. 10, no. 35, pp. 19–45, 2016. pp. 25-26.

[76] See, for example, IACtHR, *Advisory opinion O C-24/17* of November 24, 2017. Series A No. 24, paras. 86-87 and 92; *Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*. paras. 149-152; *Case of Ituango Massacres v. Colombia.* Judgment of July 1, 2006. Series C No. 148, para. 194; *Case of Escher et al. v. Brazil. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 208, para. 114; and *Case of Fernández Prieto and Tumbeiro v. Argentina. Merits and Reparations*. Judgment of September 1, 2020. Series C No. 411, para. 102. The broad scope of the right to privacy under the American Convention unquestionably demonstrates its interrelationship with the right to informational self-determination, even though the one right cannot diminish the other. Furthermore, as I held in my separate opinion on the *Valencia Campos et al. v. Bolivia* case, paras. 15-16, even the most private expressions of private life are inseparable from social life.

situation under the terms of the right to informational self-determination, the right to privacy does set limits that are easier to identify a priori, that is, even prior to the will of the individual affected.

93. The boundaries of privacy therefore vary less from one person to another, since they do not necessarily depend on the person's exercise of self-determination. As an example, the inviolability of the home, from the standpoint of privacy, is inflexible. It applies regardless of the person's will concerning the allowable uses of data about that area. Informational self-determination is more flexible. People may or may not consent to the handling of important data on themselves.

94. This suggests a third distinction, involving the concept of personal data. It does not necessarily mean "private data," much less, intimate secrets. The claim can be made that certain data pertain to personal intimacy; this may be relevant to the issue of protecting privacy, but does not play a significant role in determining informational self-determination, that can extend much farther, offering protection even for non-private data.[77] It is therefore clear that this alters the center of gravity of protection. While the right to privacy includes protection of secrecy, confidentiality, or information on private life, the right to informational self-determination is based on the idea that no information is useless or irrelevant, and even public data may reveal details on the personhood of individuals when they are seen in the aggregate with other data; thus, the way they are used becomes more important than the nature of the data themselves, as to whether they are public or private.[78]

95. As the judgment says, the right to informational self-determination applies to any personal information in the hands of public agencies, as well as private data bases, and the State is under obligation to provide whatever means and resources are necessary and effective for responding to requests for access, rectification, or erasure of information being held by third parties.[79] In this context, the concept of "personal data" must be understood broadly, as "information that identifies, or can be reasonably used to identify, a natural person, whether directly or indirectly."[80] "Sensitive personal data" are part of a specific subset in this category, consisting of those data that refer to the most private and distinguishing qualities of individuals. This is why such information is especially susceptible to being used for discriminatory purposes, making it possible to exclude, segregate, and stigmatize, and as such, the handling of such data could have a negative impact on the very dignity of the data subjects, damaging their personal identity and often their privacy. Examples include data on political opinions, religion, sexual orientation, health, banking and financial information, genetic and biometric data, and the like.[81]

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[77] MENDES, Laura Schertel Ferreira. Autodeterminação informativa: a história de um conceito. *Pensar: Revista de Ciências Jurídicas*, v. 25, no. 4, pp. 1–18, 2020. p. 11.

[78] NISSENBAUM, Helen. Privacy in context: technology, policy, and the integrity of social life. Palo Alto: Stanford University Press, 2010.

[79] Judgment, para. 582.

[80] Judgment, para. 572, based on the Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data (2021), p. 23.

[81] The list is highly illustrative. In this regard, see the judgment, para. 554, that also takes the definition from the Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data (2021), p. 24: "Depending on the cultural, social, or political context, this 'might, for example, include data related to an individual's personal health, sex life or sexual preferences, religious, philosophical or moral beliefs, trade union

96. In other words, unlike mere census data, this information can be used to classify a person and identify key features of his or her personhood, which also requires more stringent protection.[82] These are the kinds of data that have often been examined by Colombian intelligence agencies and aggregated into profiles of the victims.[83] The most intimate details of the individual lives of the members of CAJAR and their families, such as their conduct, personal habits, psychological characteristics, emotional qualities, and political views, were condensed under clandestine conditions into profiles that would provide tools for government agents to tailor their invasive methods to each individual target. It should be emphasized here that they not only compiled personal data on the members of CAJAR, but also collected information on their loved ones, especially their sons and daughters, most of whom were children and adolescents, that is, people who were especially vulnerable. The right to informational self-determination was even more difficult to exercise for these people, especially considering that such subjects are easier to manipulate in terms of their likes and dislikes, preferences, and habits.

97. The right to informational self-determination has a complex structure in terms of its legal position in the inter-American *corpus iuris*. Its subjective dimension, under Article 1 of the Convention, entails the obligation of respect (the State's duty not to undermine people's control over their personal data) and the obligations to guarantee (the State's duty to organize the institutional machinery and the structures of public power such as to ensure that people have informational self-determination).

98. Under the Convention, a broad range of rights derives from the general mandate in Article 1(1): (i) the right of access to information being held under government control, guaranteed in Article 13(1) of the Convention, which comprises the material foundation for individual claims to obtain personal data in the hands of third parties, especially the State, and to intervene with respect to such data; (ii) protection of the right to privacy, provided in Article 11 of the Convention, which reflects the objective limits on the State's ability to intervene in the privacy of individuals; (iii) prohibition of any laws or provisions that facilitate arbitrary or abusive interference in private life, under the terms of Article 2 of the Convention, which is an essential dimension for the effective exercise of informational self-determination because it creates an obligation shared by the entire domestic legal/institutional apparatus to control for compliance with the Convention in laws or regulations that could prove incompatible with the State's duties in this sphere; and (iv) the guarantee of effective remedies against such interference, in keeping with Article 25 of the Convention, which constitutes the procedural dimension of this right.

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membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, political opinions, racial or ethnic origin, financial account information, official documents, information collected from children or personal geolocation.'"

[82] This distinction, as well as the right to protection of data per se, is not based on the relative importance of the information itself, but on protection of the dignity of the person. Marion Albers correctly said, "the objective of data protection is not to protect data, but to protect the people referenced in the data" (ALBERS, Marion. A complexidade da proteção de dados. *Revista Brasileira de Direitos Fundamentais & Justiça*, v. 10, no. 35, pp. 19–45, 2016). p. 29.

[83] Judgment, paras. 343 and 364, for example.

99. Informational self-determination derives from the systematic combination of all these articles; furthermore, it has arisen as a region-wide consensus because it is a right that has already been recognized by several of the domestic legal systems. The inter-American system has seen it enshrined in the constitutions of Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Panama, and others.[84] Some countries have established it through the courts of justice. In Brazil, for example, the Federal Supreme Court has held that respect for privacy and informational self-determination is rooted in the right to personhood itself.[85] Latin America in recent years has witnessed other examples of legislative action on the protection of personal data.[86] All this reflects a growing commitment to assert the right to informational self-determination and align with international standards on data protection.

100. As the CAJAR judgment says,[87] this right is not absolute, but is subject to restrictions that must be compatible with the principle of proportionality that is used to verify whether any given action to process personal data is suitable, necessary and proportionate to meet a legitimate end clearly provided by law. This requires an analysis as to whether the effective exercise of other human rights can justify a restriction on the right to informational self-determination. The test of proportionality, however, must not destroy what is described as an "absolutely protected core" of this right: no proportionate restriction on the right to informational self-determination must ever give rise to a situation exposing a person to unlimited collection, treatment, and circulation of personal date.[88]

101. The discussion of limits on the enjoyment of this right becomes particularly critical when State obligations in this sphere come up against activities such as those of intelligence agencies that, by their very nature, clash with individual rights and freedoms. There is no room to question the particularities of whichever legal system should govern intelligence services, which is different from the system that applies to overall protection of civil data. As

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[84] Specific constitutional provisions on data protection in the different States are listed in footnote 743 of the judgment.

[85] Federal Supreme Court of Brazil, Restraining Order in ADI No. 6390, rapporteur Min. Rosa Weber, delivered on May 7, 2020. Similarly, Federal Supreme Court of Brazil, RE No. 673.707/MG, rapporteur Min. Luiz Fux, delivered on June 17, 2017. In this case, the court found a substantive right to informational self-determination inherent to the guarantee of habeas data. For further details on this interpretation, see the pertinent separate opinion my Min. Gilmar Mendes.

[86] Brazil has a general law on the protection of personal data (LGPD), Law No. 13,709, published on August 14, 2018, that went into force on August 15, 2021 with several amendments. Ecuador followed suit when it enacted the organic law on the protection of personal data on May 26, 2021. Panama published its Law No. 81, protection of personal data, on March 26, 2019, and it went into force on March 29, 2021; the enabling regulations were adopted as Executive Order 285 on May 28, 2021. Uruguay is a pioneer in the region, having updated its legislation on February 21, 2020 by means of Executive Order 64/020 that sets the enabling regulations for Law 19,670 of October 15, 2018; it also acceded to Council of Europe Convention 108 and approved the Convention's amending protocol under Law 19,948 on April 16, 2021. A comparative analysis of these recent laws can be found in AMOROSO, Yarina; GUERRERO, Jacqueline. El panorama legislativo de la protección de datos en América Latina en el período 2018-2022. *Desafios Jurídicos*, v. 3, no. 4, 2023.

[87] Judgment, paras. 601 to 608.

[88] MENDES, Laura Schertel Ferreira. Habeas data e autodeterminação informativa: os dois lados de uma mesma moeda. *Revista Brasileira de Direitos Fundamentais & Justiça*, v. 12, no. 39, pp. 185-216, 2018. pp. 26. The term "absolutely protected core" (*absolut geschützten Kernbereich privater Lebensgestaltung*) was used in association with data protection by the German Constitutional Court in the case BVerfGE 120, 274-350 (*Online-Durchsuchungen*) (2008). Available at: <https://www.bverfg.de/e/rs20080227_1bvr037007.html>. Consulted on: November 28, 2023. para. 270.

we have seen, the imperatives of informational self-determination must fit the context of the specific relationships being affected, and civil relations are certainly different from those that exist between citizens and government intelligence services.

102. Nonetheless, it is essential to recognize that these services may not operate outside the bounds of laws and procedures that guarantee respect for the right to informational self-determination. This principle is especially crucial for undertaking intelligence operations and processing the data collected by these agencies. The adoption of international human rights standards on this subject will not only safeguard the fundamental rights of persons, but will also legitimize intelligence activities in the framework of a democratic State under the rule of law, guaranteeing that national security aims are met while still respecting human dignity and the free development of personhood.

103. It is therefore essential for intelligence services to be subject to democratic, republican mechanisms of control. This is because, in the words of José Manuel Ugarte, such activities are characterized by particular traits that must be regulated:

> [T]his is not a common government activity, even if it is a permanent fixture. This is an activity characterized by *secrecy*, it protects its *sources, methods, identities, and operations*, and may find it necessary to use, to an extent that varies by country, a special system of accountability designed to protect its *secrecy*, using sophisticated tools to penetrate the intimacy of private individuals. In several ways, this activity contradicts one of the fundamental principles of a republican system, that is, *public information on government actions*. The need to control intelligence activities is even more evident in countries that are undergoing transition to a fully effective democratic system, as in the countries of Latin America, that often still lack the special protection of democracy provided by the existence of a public opinion that is active, vigilant, and aware of its rights, and an independent press.[89]

104. Here lies the key to some of the essential contributions of the judgment in the *Case of CAJAR v. Colombia.* The Court went beyond merely recognizing the autonomy of the right to informational self-determination, and worked out specific standards that the States must observe, especially through procedural guarantees on how these services are conducted. The judgment thus reflects the perception that, even in matters of security and intelligence, there is an expectation of compliance with the basic principles on data protection, and this reflects a necessary commitment to fundamental guarantees and an understanding of the risks inherent to the information society. The judgment reinforces the notion that the application of basic principles for protection of personal data and the minimum human rights standards stand apart from discussions on the specific rules that may govern the use of data en intelligence activities under the terms of domestic law. It thereby reasserts the premise that,

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[89] UGARTE, José Manuel. El control público de las actividades de inteligencia: generalidades y características en América Latina. In: REGUEIRA, Enrique Alonso (Org.) *El Control de la Actividad Estatal II*: Procesos Especiales, Responsabilidad y Otros Supuestos. Buenos Aires: Asociación de Docentes de la Facultad de Derecho, 2016, pp. 729-752. Pp. 730-731. Emphasis added. This unique nature of State intelligence activities in a democratic system under the rule of law must be taken seriously, and more so in the domestic sphere, and it stands in contrast to police work. According to Ugarte, "in several countries of Latin America, certain confusion surrounds the difference between intelligence work and police work […]. The aim of intelligence work is to provide national authorities with information for developing and implementing policies on State security and the democratic system, while police work focuses on the crime prevention and investigation, and the valid collection of evidence for criminal trials. Certain features of intelligence work, especially the secrecy to protect sources and methods, are not compatible with the open debate and defense processes used in criminal trials. The use of intelligence activities for criminal proceedings jeopardizes the transparency of the proceedings and the rights of the accused, and also imperils intelligence sources and methods, as the judge can require full disclosure in order to protect these rights." UGARTE, José Manuel. Actividad de inteligencia en América Latina: características, fortalezas, debilidades, perspectivas de futuro. Revista Política y Estrategia, No. 127, pp. 37-74, 2017. p. 50.

regardless of the sphere of State actions, there is a minimum level of dignity that must be preserved.

105. It is worthwhile in this regard to recall that the principles that now make up the essential core of data protection laws all over the world originated with the Fair Information Practice Principles (FIPPs)[90] proposed in the 1970s by the United States Department of Health, Education and Welfare following an analysis of the impact of technological development on privacy and the massive use of data in surveillance activities conducted by government agencies; the conclusion is that such principles must be observed even and especially in the case of intelligence and monitoring activities.

106. Technological development has had a significant impact on intelligence services.[91] The introduction and improvement of integrated data bases and the use of artificial intelligence are clear examples of this transformation, as they make it possible to analyze enormous amounts of data. Tools such as facial recognition, automatic card readers, genetic data bases, and the use of GPS for remote monitoring of persons are redefining the methodologies of investigation and providing the means for continuous collection and use of data covering a vast spectrum of persons.

107. Even more worrisome is the continuing use by intelligence services of data capture software and surveillance of devices, which facilitates practices such as mass monitoring of individuals. Such monitoring is often clandestine and may violate the right to informational self-determination, as the subjects are unaware that they are being watched and do not know how their personal information, once collected, will be used by the intelligence services. This leads to arbitrary and abusive interference in private life without any legitimate grounds.

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[90] The eight FIPPs are: transparency (people must be notified about the collection, use, dissemination, and maintenance their personal information), individual participation (people should be involved in the process of using their personal information and as much as possible, be allowed to give individual consent), purpose specification (clarity about the purposes for which the collection and use of personal information is authorized), data minimization (collection of only that information that is relevant and necessary for the stated purpose), use limitation (use of personal data only for the purposes specified in the notice, to be shared only for compatible purposes), data quality and integrity (use of personal information that is accurate, relevant, timely, and complete), security (protection of personal information by means of appropriate security safeguards against risks such as loss, unauthorized access or use, destruction, modification, or unintended or inappropriate disclosure), and accountability and auditing (responsibility for compliance with these principles, providing training to all employees, and frequent audits to demonstrate that the agency is in compliance). This became the cornerstone of the 1995 Data Protection Directive of the European Union (Directive 95/46/EC), which in turn inspired the final text of the European Union General Data Protection Regulation (Regulation 2016/679) and, in subsequent decades, of many other international agreements and national laws on privacy and data protection the world over. U.S. DEPARTMENT OF HOMELAND SECURITY. The Fair Information Practice Principles at Work. The Privacy Office, Washington, 2011.

[91] Several examples of personal information treatment operations in the realm of public security are given in ABREU, Jacqueline de Souza. Tratamento de dados pessoais para a segurança pública: contornos do regime jurídico pós-LGPD. In: MENDES, Laura Schertel Ferreira; DONEDA, Danilo; SARLET, Ingo Wolfgang; *et al* (Orgs.). *Tratado de proteção de dados pessoais*. Rio de Janeiro: Forense, 2020, pp. 590-593. The author identifies growing interest in techniques of *police and dragnet surveillance based on big data*. She explains that the term "*big data policing*" refers to the use of large volumes of data taken from a variety of sources and processed quickly to extract trends, patterns, and information that can be used in surveillance for both prevention and enforcement. *Dragnet surveillance* describes investigation techniques that compile data and information on large numbers of people, many of them innocent, instead of focusing only on individuals suspected of participation in criminal activities. This includes installing surveillance cameras and using drones in public spaces, as well as requests to breach secrecy and collect data on large numbers of individuals in hopes of finding useful evidence.

108. Intelligence services, because they are part of the legal system, must observe and demonstrate the presence of some public interest for their activities, including monitoring and collecting personal information, to prevent any possibility that they might be used for personal or private purposes or be conducted without clear objectives, justification, or restrictions. The use of intelligence software must be regulated by laws that set the conditions and restrictions on its use, based on human rights standards. Such uses must also be subject to constant review of their necessity, reasonableness, and proportionality, as well as prior judicial oversight, to (i) anticipate and mitigate possible hazards to the fundamental rights of the people affected, (ii) discourage potential unmerited, abusive, or unlawful uses, and (iii) demand greater accountability by intelligence services.

109. However, the use of these new methods, despite the great effectiveness of data capture software and surveillance of personal devices to identify new lines of investigation, holds serious potential for abuse in the handling of personal data.[92] When intelligence and public security agencies lack parameters for protecting informational self-determination, they may be open to serious human rights abuses.

a. Oversight of intelligence activities—procedural and organizational standards

110. The Court judgment in the CAJAR case is part of this regulatory movement toward progressive introduction of data protection standards for intelligence services.[93] The judgment says that, with regard specifically to intelligence activities, the right to informational self-determination entails certain organizational and procedural guarantees that the States must uphold. The Court set them out clearly in the measures of nonrepetition via the obligation to amend Law 1621 of 2013, as I explained above.

111. These obligations include placing material, procedural, and teleological boundaries on the collection, storage, or maintenance of personal data by intelligence agencies, and these limits must be formally prescribed by law. In the following paragraphs I will expound my views on some of the judgment's major contributions to the field of reparations, in the form of concrete measures to address the most significant gaps for protecting human rights in the field of intelligence operations. These measures of reparation reflect the Court's concern with giving material form to the principles contained in the right to informational self-determination; the idea is to provide a comprehensive legal framework for intelligence activities, to formalize them and systematize them, strengthen judicial oversight, and create mechanisms for granting access to information collected by these agencies.

112. Before going into the measures ordered by the Court, it is important to understand that they are not explicitly spelled out in the operative paragraphs. The text reads, "[t]he State shall proceed with a regulatory review of Constitutional Law 1621 of 2013 and Executive Order 2149 of 2017, pursuant to paragraphs 1055 to 1058 of this judgment." The paragraphs

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92 MENDES, Laura Schertel; ABREU, Jacqueline. Carta das Editoras: Dossiê Temático "Privacidade e Proteção de Dados Pessoais na Segurança Pública e no Processo Penal." *Direito Público*, v. 18, no. 100, pp. 1–18, 2021.

93 Judgment, see generally, paras. 601-608.

in the operational section make reference to *standards* derived from the Court's specific analysis of the intelligence law in the chapter on the merits.

113. Any interpretation that is based on the formal option given in the judgment but attempts to downplay the obligation to incorporate *all* the parameters of the Convention developed in the text must be dismissed out of hand. Instead, this exercise in alignment reflects the dual dimension of the measures listed in the previous chapter, to be examined below in more detail. First, the measures must be conceived as concrete actions to prevent recurrence, aimed specifically at the State of Colombia, upheld as international res judicata, and as such, subject to the Court's monitoring of compliance. Second, alongside the introduction of specific amendments to Law 1621, these measures function as general precepts with the status of *res interpretata* and must be upheld by all the States of the region for regulating intelligence activities.

114. The Court's first concern with the intelligence law is the matter of **legality**. The Court's judgment affirms the duty to create a legal framework that is clear, descriptive, and as much as possible, exhaustive for activities that might be performed in the sphere of intelligence services. It therefore found that Law 1621 "*does not identify the different types of measures and actions that are authorized for obtaining and compiling information for intelligence purposes (with the exception of Articles 17 and 42 […])*". Based on this assessment, it ordered the State to reform the law to stipulate:

(i) the permissible objectives for these measures; (ii) the categories of persons and activities on which information may be collected and compiled, always depending on the identification of threats to the legitimate aims established beforehand; (iii) the threshold of suspicion to justify the use of information collection and compilation measures; (iv) time limits on the use of these measures and strategies, and (v) useful procedures for authorizing, overseeing, and reviewing the measures and actions for collecting and compiling information.

115. Like any type of government interference in the personal sphere, intelligence activities entail a certain degree (greater or lesser, depending on the specific activity) of restriction of rights, especially the right to privacy and the right to informational self-determination.

116. The consolidation of the international system for the protection of human rights has put an end to the times when it was acceptable for the government to hold up excuses such as protection of national security and public order to legitimize its intervention, at is own discretion, in citizen rights and guarantees. The circumstances that may authorize restrictions on the exercise of a right must be clearly prescribed by law, in keeping with Article 30 of the Convention.

117. However, *pro forma* respect for legality is not enough. The Court said this in the *Escher v. Brazil* case, for example, when it found that legally permissible interference in private lives must be specific and clear, stating the scope and limits on State power, and this includes the circumstances in which the intervention can be made, the persons authorized to do it, and the procedures to be followed.[94] In other cases, the Court has made every effort to define the minimum content of these restrictive rules:

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[94] IACtHR. *Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 6, 2009. Series C No. 200, para. 131.

Yet, when the restriction is established by law, its regulation should lack any ambiguity so that it does not create doubts in those charged with applying the restriction, or the opportunity for them to act arbitrarily and discretionally, interpreting the restriction broadly. This is particularly undesirable in the case of measures that severely affect fundamental attributes, such as freedom.[95]

118. The decision on surveillance measures therefore cannot rest exclusively on the subjective opinion of the agents assigned to deploy them. The past history of abuses, especially the practice of methods to conduct espionage of the target and truly weaponize fear, demand clear limits on the techniques that intelligence services may use. Regardless of how important the State may believe intelligence operations to be, it does not enjoy unlimited freedom to conduct them. The measures ordered in the judgment reinforce the burden of justification incumbent on intelligence services: they must identify the threats that led to the development of a particular operation and assess the degree of suspicion that legitimizes such actions.

119. The Court also warns against the disproportionate use of overly invasive surveillance methods, calling for a correlation between the level of threat and the degree of interference by the chosen method. The requirement to set time limits is also crucial to prevent regular operations from becoming unreasonable surveillance of indefinite duration.

120. The new amendments would first provide necessary guidelines for conducting intelligence activities, and second, serve an essential purpose by allowing for ex post review of operations, whether judicial, administrative, or disciplinary. Clearly defined purposes, timetables, permissible methods, and criteria for implementation provide the oversight agency with a reference point for examining the legality of the operation and also give it specific milestones to calibrate the proportionality of the measures.

121. In **procedural** terms, the conduct of operations that are compatible with the right to informational self-determination requires intelligence activities to be formalized. *"The laws and regulations must also stipulate a sequence of specific processes by which intelligence activities should be formalized, including a careful record of every stage and a log of records of access to computer systems when applicable."*[96]

122. The first point here is that the stipulation of procedures for the conduct of operations, and the obligation to record and file all actions conducted by intelligence agencies, are essential conditions for exercising democratic control over the work of these agencies. In the absence of such bureaucratic requirements, the operations are conducted in a gray zone beyond the supervisory reach of the institutions responsible, gutting the effectiveness of independent supervisory mechanisms.

123. The data collection log is valuable if abuses are found to have been committed, as it can be used to identify the agents in charge of the operation, the purposes set for it, and the methods authorized. With this information, an investigation can be conducted to identify possible irregularities and establish disciplinary or even criminal liability. This measure is particularly important in view of the specific details of the instant case, marked as it is by profound difficulties for prosecuting and sanctioning the people involved in the offenses against members of CAJAR. This was what led the Court to recognize that the failures of the

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95 IACtHR. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs.* Judgment of August 31, 2004. Series C No. 111, para. 125.

96 Judgment, para. 673.

investigative and prosecutorial bodies to address crimes committed by intelligence agents culminated in the declaration of the State's international responsibility for violating the right to judicial guarantees and the right to judicial protection.[97]

124. My second point merits special emphasis: the processing, storage, and handling of personal information collected by intelligence agencies. The judgment reads:

> safeguards must be in place, and responsible authorities must keep a record that includes (i) the identification of the people responsible for data processing; (ii) the purposes of processing the information compiled, indicating the origin and category of the data; (iii) the legal basis for the operations; (iv) how long the material will be kept, and (v) data processing methods used. Operations with personal data compiled by intelligence agencies must also be reported in chronological records of access, modification, queries, erasure, or sharing of the data and the names of all persons who gained access to them.[98]

125. This measure is crucial for reining in the improper use of personal data collected in intelligence operations. It cements the right to informational self-determination because it guarantees that even in cases where people do not have full control over the collection of their personal information (because it is not a case of consent-based information gathering), transparency is safeguarded. This is essential because transparency allows people at least a minimum awareness that their data are being processed and provides them the knowledge required if they are to avail themselves of all the rights associated with informational self-determination, including the right to data access, correction, erasure, challenge, and portability, as detailed in the judgment. Such a measure also provides the means for prosecuting and sanctioning the agents responsible for irregular actions to obtain, use, process, or share the information. This obligation is consistent with Directive 2016/680 of the European Parliament and of the Council concerning protection of data for the purposes of prevention, investigation, detection or prosecution of criminal offenses. Even if intelligence services are not involved, the directive sets standards for recording data processing activities.

126. Article 24, for example, stipulates that the agencies responsible for processing personal data must maintain a record of all categories of processing activities under their responsibility, including the names of the responsible agents, the purposes of the processing, the categories of the data subjects, the legal basis for the processing operation, and more.[99] Article 25 gives requirements for the chronological logs of all operations involving consultation and disclosure of the data.[100]

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97 Judgment, paras. 788 to 799.

98 Judgment, para. 673.

99 Directive 2016/680 of the European Parliament and of the Council. Article 24. Records of processing activities. 1. Member States shall provide for controllers to maintain a record of all categories of processing activities under their responsibility. That record shall contain all of the following information: (a) the name and contact details of the controller and, where applicable, the joint controller and the data protection officer; (b) the purposes of the processing; (c) the categories of recipients to whom the personal data have been or will be disclosed including recipients in third countries or international organisations; (d) a description of the categories of data subject and of the categories of personal data; (e) where applicable, the use of profiling; (f) where applicable, the categories of transfers of personal data to a third country or an international organisation; (g) an indication of the legal basis for the processing operation, including transfers, for which the personal data are intended; (h) where possible, the envisaged time limits for erasure of the different categories of personal data; (i) where possible, a general description of the technical and organisational security measures referred to in Article 29(1).

100 Directive 2016/680 of the European Parliament and of the Council. Article 25. Logging. 1. Member States shall provide for logs to be kept for at least the following processing operations in automated processing systems: collection, alteration, consultation, disclosure including transfers, combination and erasure. The logs of consultation

127. The lack of clear procedures and the fact that there was no obligation to keep records or files on all the procedures conducted by the intelligence agencies to process, store, and handle personal information opened the way for indiscriminate use of the personal data of members of the CAJAR Collective, which had been gathered illegally. It is important to bear in mind that the undercover surveillance operations entailed, among other things, the mass taking of photographs and the development of profiles on the targets.[101] As I explained above, these practices continued and increased with the use of new technologies for digital surveillance, even after Law 1621 went into force, through the Cyber-intelligence Battalions of the Colombian Army.

128. Another especially critical feature of the measures of reparation regarding Law 1621 calls for expanded **ex ante judicial oversight of intelligence operations**. The law as currently worded requires prior judicial authorization only for telephone interception, set forth in Articles 17[102] and 44.[103]

129. Of course, the Court does not wish to see the State moving toward a system of universal requirements for prior control over all types of activities conducted by intelligence services. Such a suggestion would leave these services toothless, and their regular operations would be rendered ineffective. Aware of this need for precaution, the Court identified the most interventionist methods that should come under the system of prior control and, at the same time, required measures that would permit ex post oversight of other activities, such as the obligations for formalization illustrated above.

130. The requirement for prior judicial oversight consists of two measures. The first addresses access to the databases and information systems where personal data are stored and processed. The second is control over the electromagnetic spectrum. I will first address the former.

131. In a society that is massively integrated into digital networks, access to personal data may reveal much more about a person than the mere tapping of telephone conversations, as I noted above. Such tools as metadata, data from applications, the cloud, and other such sources can provide detailed access to the most private details of an individual's personal life: likes and dislikes, personal preferences, political opinions, favorite places, network of contacts, religious beliefs, sexual orientation, and more.

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and disclosure shall make it possible to establish the justification, date and time of such operations and, as far as possible, the identification of the person who consulted or disclosed personal data, and the identity of the recipients of such personal data. 2. The logs shall be used solely for verification of the lawfulness of processing, self-monitoring, ensuring the integrity and security of the personal data, and for criminal proceedings. 3. The controller and the processor shall make the logs available to the supervisory authority on request.

101 Judgment, paras. 343 and 554.

102 Law 1621 of 2013. Art. 17. (...) Monitoring is not the equivalent of interception of communications. Interception of private telephone conversations, whether by landline or mobile, and private communications or data communications must be aligned with the requirements set forth in Article 15 of the Constitution and the Criminal Code and may be conducted only as part of judicial proceedings.

103 Law 1621 of 2013. Art. 44. (...) In any case, interception of private communications shall be subject to the procedures provided in Article Article 15 Constitution and the Criminal Code and may be conducted only as part of judicial proceedings.

132. Data hold a central position in today's dynamics of social interaction, and they are inextricably linked to privacy; thus, it is inadmissible for decisions on access to databases and systems that hold data to rely exclusively on the discretion of intelligence authorities. The notion of a right to informational self-determination would be little more than rhetorical in a scenario where agents of the State could roam freely among personal databases with no kind of control or pre- or post-scrutiny. Given the profound degree of intrusion into private lives, the only suitable response was to demand ex ante judicial oversight. The Court ordered:

> Judicial authorization is also required for the use of surveillance methods or actions targeting certain persons if necessary for gaining access to non-public data bases and information systems that store and process personal data.[104]

133. As the judgment says, judicial authorization for access to personal databases is justified specifically because of the distinction between handling sensitive data versus handling non-sensitive data, and this has been repeatedly accepted by data protection laws and international instruments on the subject.[105] The requirement to obtain prior judicial oversight for gaining access to databases is no idiosyncrasy of the judgment in the instant case. Such restrictions are very common in the laws that regulate intelligence services in the member countries of the inter-American system of human rights, including Argentina,[106] Chile,[107] Uruguay,[108] and Paraguay.[109]

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104 Judgment, para. 675.

105 Judgment, paras. 579 and 674.

106 Argentina - Law 25,550. ARTICLE 5 - Telephone, postal, telegraph, fax, or any other means of communication for sending objects or transmitting images, voices, or data packages, and any type of information, files, records and/or private documents or access or reading that is unauthorized or inaccessible to the public are inviolable throughout the Republic of Argentina, unless a judicial warrant or exception provides otherwise.

107 Chile - Law 19,974/2004. Art. 24.- For the purposes of this law, special procedures to obtain information should be understood as those that provide access to important background information contained in closed sources or taken from such sources, that supply background information needed for conducting the specific mission of each operations agency. This consists of the following procedures: (a) intervention of telephone, electronic, radio and postal communications in any form; (b) intervention of computer systems and networks; (c) systems for listening and electronic recording, including audiovisual, and (d) any intervention of any other technological system intended for transmission, storage, or processing of communications or information. Article 25.- Directors or heads of intelligence agencies must request judicial authorization, either themselves personally or by means of staff members reporting to them and explicitly empowered for this purpose, to use the procedures indicated under letters (a) through (d) of the above article.

108 Uruguay - Law 19696/2018. Article 20. (Authorization by the judicial branch).- Any information-gathering operation to be conducted by any body of the State Strategic Intelligence System, involving special procedures that could undermine the freedom and privacy of citizens, must receive judicial authorization. This action is under the jurisdiction of the criminal courts of first instance specialized in organized crime. The operations shall be confidential. Persons who become aware of such operations shall be subject to the provisions of Articles 32 and 33 of this law. The enabling regulations of this law shall specifically define the special procedures and the hypotheses under which the law can be used. Special procedures for obtaining information shall be understood to mean operations that provide access to important background information contained in closed sources or taken from such sources, that provide the background information necessary for conducting the specific operational mission of every intelligence agency, such as the following: (a) intervention of telephone, digital, radio and postal communications in any form; (b) intervention of computer systems and networks; (c) systems for listening and electronic recording, including audiovisual, and (d) any intervention of any other technological system intended for transmission, storage, or processing of communications or information.

109 Paraguay - Law 5421/2014. Article 25.- Classification. The procedures indicated in the above article are: 1. Intervention of telephone, electronic, radio, and postal communication in any form. 2. Intervention of computer systems and networks; 3. Listening and electronic audiovisual recording. 4. Intervention of any other technological system intended for transmission, storage, or processing of communications or information. Article 26.- Judicial

134. In these cases, lawmakers chose not to limit the procedure just to interception of communications, instead also requiring prior authorization for gaining access to any system that transmits images, voice, or data, as well as information and records subject to restricted public access. The laws of Chile, Uruguay, and Paraguay are very similar, requiring judicial authorization for "*intervention of digital systems and networks*" and for "*intervention of any other technological system intended for transmission, storage, or processing of communications or information*," thus reflecting a shared concern for setting limits, safeguards, and criteria for oversight on access to sources where personal data are being stored. The measure of redress proposed in the judgment is therefore a corollary for adapting the principles that should guide the operation of intelligence services in the current technological environment, including, for example, protection of the confidentiality and integrity of IT systems where data are stored.

135. The region's constitutional courts have also developed restrictive interpretations of the standards governing intelligence services, in the interest of guaranteeing prior or subsequent judicial oversight on intrusive measures. An example of this is the decision by Brazil's Federal Supreme Court in the case Direct Constitutional Motion No. 6529, that examines the legal provisions on sharing data among agencies of the Brazilian intelligence system.

136. This, Brazil's highest court, first reaffirmed that the judiciary holds exclusive jurisdiction to issue a warrant to violate telephone or data secrecy, and thus held that the sharing of data among the system's agencies requires a demonstration of public interest in the measure, duly reasoned and formalized, for later judicial review of legality, with the exception of data subject to prior judicial authorization.[110]

137. The second measure calls for prior judicial review of intelligence activities that include monitoring of the electromagnetic spectrum. The current wording of Article 17 of Law 1621 confirms that spectrum monitoring is a permissible intelligence activity if it is conducted in the framework of operating orders or task missions, but distinguishes it from the interception of communications. The latter, according to the lawmakers, is subject to the requirements of the Constitution and the Criminal Procedural Code and may be used only in the course of a judicial proceeding.

138. It does not define the meaning of "technical testing of the spectrum," but the law does imply that these techniques do not require judicial authorization and may be conducted autonomously and at the discretion of the intelligence agencies. When the Constitutional Court held that the provision given in Article 17 of Law 1621 was permissible under the Constitution, it defined it as "*the accessory capture of communications that makes it possible to prevent attacks and to control risks to national defense and security*."[111] The different handling is

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authorization The National Secretary of Intelligence shall have the authority to request judicial authorization for the use of the procedures indicated in the above article. The request must be brought before the criminal court of due process on duty in the jurisdiction where the procedure will be employed. The judge may grant or deny, by means of a reasoned order subject to nullity, the use of the procedures indicated in the above article, within 24 (twenty-four) hours, with no further requirements to be met. The order to grant use of the procedures must specify the means to be employed, identify the persons to whom the measures will apply and the time period for which the order is given, which may not exceed 90 (ninety) days, subject to a one-time 90-day extension.

110 BRAZIL, Federal Supreme Court. Direct Constitutional Motion no. 6529, Rapporteur Judge Cármen Lúcia, Plenary, done on October 11, 2021.

111 Constitutional Court of the Republic of Colombia. Judgment C-540/2012, p. 278.

justified by the argument that this monitoring is random and indiscriminate, unlike telephone interceptions, which are selective:

> The activity of monitoring the electromagnetic spectrum may not entail individual monitoring. It does not practice selective or intentional tracking of specifically identified subjects. With the use of this measure, the monitoring of the electromagnetic spectrum as an impersonal, abstract activity cannot be confused with the actions proper to a criminal investigation that is personal and concrete, that arises from a *notitia criminis* (as part of a preliminary inquiry), that collects evidence to identify the perpetrators of a punishable act, and that will be conducted in the framework of criminal proceedings, within a legal framework defined under the criminal code and the criminal procedural code.[112]

139. The operational and teleological differences between the two types of surveillance, however, must not overshadow the fact that both spectrum monitoring and interception, although they use two different mechanisms, provide the means to capture and identify private communications. Therefore, there is no reasonable justification, from the standpoint of protecting human rights, to provide two different legal avenues for handling them.

140. The judgment is clear when it says that "*the use of selective or large-scale methods of communications surveillance, especially given today's new technologies*," always calls for oversight by a judicial authority to set limits on the nature, scope, and duration of the proposed measure.[113]

141. As an example, the Colombian Constitutional Court itself has heard cases demonstrating the potential for electromagnetic spectrum monitoring to be used illegally to capture individual communications. Its judgment T-708-2008 was delivered on a motion for constitutional relief by a private citizen who reported violation of the right to privacy when his telephone conversations were intercepted with the use of passive spectrum monitoring. The spectrum was scanned in search of illegal transmissions in the region where the complainant lived, and his conversations were recorded, transcribed, stored, individualized, and disclosed, even though he was not the target of the operations. In the end, the Colombian court concluded for these reasons that his right to privacy had been violated.[114]

142. The case demonstrates that, although spectrum monitoring is unlike telephone taps, it can be similarly invasive of private life because it provides a means not only for gaining access to the content of private communications, but also for identifying the people involved, albeit in a way that was not selective or intentional.

143. A glance at these intelligence laws is enough to show that they do not distinguish among types of surveillance of communications, and they use broad terminology to achieve the greatest possible scope for the obligation to bring surveillance under judicial oversight,

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112 Constitutional Court of the Republic of Colombia. Judgment C-540/2012, p. 279.

113 Judgment, para. 547.

114 Constitutional Court of the Republic of Colombia. Judgment T-708-08. Case file T-1771946. Done on July 14, 2008. "This chamber, in view of the fact that this material is classified, can only certify that documentation added to the case file included, for example, the transcription of three conversations in which the plaintiff is named or appears as a participant,[48] as a result of the activities to monitor the electromagnetic spectrum. These activities, considering that they were intended for monitoring and surveillance and were conducted to ensure national security, could not be subject to disclosure in full or in part, especially because they could be used to identify a particular person publicly, either through the listings or any other form of identification. In view of such conditions, the chamber can conclude that the facts proven in this judicial action violated the complainant's right to privacy, and in keeping with this analysis, the motion for constitutional protection is admissible as the most appropriate judicial action to provide protection and to sanction and prevent any new leaks in order to guarantee the confidentiality of any data collected as a result of intelligence operations and that have not yet been publicly disclosed."

applicable to "*[a]ny intervention of any other technological system intended for transmission, storage, or processing of communications or information" and* "[i]*ntervention of any other technological system intended for transmission, storage, or processing of communications or information,*[115] which demonstrates that the proposed changes are consistent with the region's most advanced laws.

144. The Court, sensitive to the possibility of emergency situations, has proposed an escape valve for cases where prior judicial oversight may jeopardize the useful outcome of the operation. In such cases, ex ante authorization may be replaced with ex post oversight, which must occur immediately after the surveillance begins, and if any irregularity comes to light, the information obtained must not be used.[116] This is a protection from situations in which delays in the evaluation by the competent court could hinder emergency interventions, while still providing safeguards against the use of information obtained illegally in injury of the surveillance targets.

145. Another concern entails mechanisms of **access to information**. The right to informational self-determination in its many dimensions cannot be respected and protected unless the State adopts positive action, and more specifically, specific procedures to guarantee that it is more than a mere nominal prerogative. The very notion of self-determination contains a procedural dimension;[117] it is dynamic, as can be seen by comparing it with the right to privacy. The idea of individuals in control of their own data is not merely "spatial," like the "private sphere," but instead must be understood over time. The important point for informational self-determination is that the person's will be properly incorporated throughout all phases of data processing.

146. In the words of Marion Albers, "people need not only defensive rights, but also the right to know, the right to obtain information, the right to participate, and the right to exercise influence,"[118] without which there can be no effective self-determination. It is therefore the obligation of the State to provide effective, expeditious mechanisms for providing access to people's personal data being held by governmental and non-governmental bodies, for requesting the rectification or erasure of such data, filing objections to the processing of data or, if necessary, demanding portability.[119]

147. One of the best mechanisms for domestic protection of this right, for example, is *habeas data*. This is a "common phenomenon in the development of protection for personal information in Latin America,"[120] which began to spread in the 1990s as a symbol of the move

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[115] Cf. Art. 24, "d" of Chilean Law 19,974; Art. 20 of Uruguayan Law 19,696 and Art. 25.4 of Paraguayan Law 5421/2014, transcribed above.

[116] Judgment, para. 677.

[117] MENDES, Laura Schertel Ferreira. Autodeterminação informativa: a história de um conceito. *Pensar: Revista de Ciências Jurídicas*, v. 25, no. 4, pp. 1–18, 2020. p. 16; MENDES, Laura Schertel Ferreira. Habeas data e autodeterminação informativa: os dois lados de uma mesma moeda. *Revista Brasileira de Direitos Fundamentais & Justiça*, v. 12, no. 39, pp. 185–216, 2018. pp. 207-211.

[118] ALBERS, Marion. A complexidade da proteção de dados. *Revista Brasileira de Direitos Fundamentais & Justiça*, v. 10, no. 35, pp. 19–45, 2016. p. 34. Translation by this author.

[119] Judgment, para. 582.

[120] DONEDA, Danilo. *Da privacidade à proteção de dados pessoais*. Nova Edição. São Paulo: Revista dos Tribunais, 2019. Section 4.1.4.

by the countries in the region to break free of dictatorial regimes and the resulting need to open up the files from that period.[121] It is a fundamentally important precept for the protection and development of informational self-determination in several countries of Latin America, especially Brazil, Colombia, Paraguay, Peru, Argentina, Ecuador, and Venezuela, and also reveals the region's solid consensus on the subject.[122]

148. However, a careful look at the regulatory system that governs intelligence activities in Colombia revealed to the Court that there was no effective instrument allowing citizens to apply for access to information in the hands of the intelligence agencies. It found that "*the regulations applicable to intelligence files do not currently provide mechanisms or procedures to guarantee the right to informational self-determination of persons whose data are contained therein"*[123] and ordered the State to amend its laws to implement an appeals process by which people may file for access to their personal information being held by intelligence services and to have it corrected and erased.[124] Special attention should be paid to the clause on interpretation in the subsequent paragraph (paragraph 1060), in which the Court cautions that the mere creation of a pro forma remedy is not enough. Competent authorities must examine the standards drawn from this judgment and overall inter-American case law.

b. The right to integrity of information systems

149. The above examples illustrate that one of the greatest contributions of *CAJAR v. Colombia*, beyond its recognition of the right to informational self-determination as part of the reservoir of inter-American legal resources, was to acknowledge the expression of this right in the form of procedural guarantees to be observed by intelligence agencies in general, and more specifically, codified by the State in Law 1621 of 2013. Looking ahead, this significant step forward also opens a horizon of possibilities for protecting human rights that could be further explored in the near future.

150. The fast-moving development of technology and of new methods for capturing and sharing personal data has brought with it new challenges for protecting human rights in the realm of intelligence services. This type of advance can be seen clearly in *CAJAR v. Colombia.* The intelligence activities that came under challenge were initially conducted with the use of traditional methods such as personal tailing and telephone taps. More recently, new agencies were created, specialized in cyber-intelligence, for the purpose of obtaining information on its targets using, for example, access to their digital systems.

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[121] See MENDES, Gilmar; BRANCO, Paulo. Curso de Direito Constitucional. 2. ed. São Paulo: Saraiva, 2008, p. 543; DONEDA,. *Da privacidade à proteção de dados pessoais*. Nova Edição. São Paulo: Revista dos Tribunais, 2019. Section 4.1.4.

[122] For a classification of the different kinds of *habeas data* and the handling of this precept in various legal systems of Latin America, see PUCCINELLI, Oscar Raúl. Evolución histórica y análisis de las diversas especies, subespecies, tipos y subtipos de habeas data en América Latina. *Vniversitas*, v. 107, pp. 471–501, 2004.

[123] Judgment, para. 1059.

[124] Judgment, para. 1059 and operative paragraph 36: "The State shall proceed to enact whatever regulatory provisions may be necessary to implement reasonable, expeditious, simple, free, effective mechanisms or procedures for providing individuals with access to and control over data on themselves held in intelligence files, consistent with the scope of the right to informational self-determination, pursuant to paragraphs 1059 and 1060 of this judgment."

151. The legal problems derived from these new stages of technological change exceeded the sphere of consent for data processing and began more and more to require control of third-party access to the devices, databases, and systems containing data. This in turn created the need to recognize that people had a right not only to self-determination over the information concerning themselves, but also the right to integrity and confidentiality of the information systems holding their data, as a logical outgrowth of the right to informational self-determination. It is imperative that people must not experience undue invasion or handling of their personal devices (computers, mobile telephones, etc.) to capture and process their personal data. The idea of informational self-determination thus becomes broader, to include the importance of safeguarding subjects' control over the systems for collecting and storing data, and not only over their own information in isolation.[125] This is because improper access to these systems per se (for example, the hard disk of a smart phone or a person's account in a cloud-based service) is particularly intrusive to individual autonomy, as it can introduce a threat and even significant damage to their fundamental rights and freedoms. Another example along these same lines is that data leaks, especially of data under government protection (such as data held in centralized databases of significant size and diversity) can entail risks of digital identity theft, financial fraud, scams, harassment, intimidation, and moral, material, and reputational damage, as well as other violations of people's human rights.

152. These systems encapsulate a full profile of a person's life trajectory: family memories, professional activities, romantic relationships, consumer preferences, and intellectual and political affinities. it is reasonable to say that such information can now be found more easily by probing digital devices than by physically inspecting a person's home. Therefore, when the confidentiality and integrity of such systems is violated, the life plans of the persons who own the data found there are also violated.

153. In the sphere of domestic law, again the German Federal Constitutional Court, in a judgment handed down in 2008, took a pioneering stance by recognizing this guarantee, based on Article 2, §1º (right to the free development of personhood), in combination with Article 1, §1º (principle of human dignity) of the 1949 Constitution of the Federal Republic of Germany.[126]

154. In that case, the German court examined the constitutionality of a law authorizing the state police of Nordheim-Wesfalen to perform secret, remote searches of personal computers and to monitor the Internet activities of people considered suspects. The decision very subtly detected a lacuna in the jurisprudence on informational self-determination that had been developed up until that time, to wit, that the violation of these systems introduces special

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[125] MENKE, Fabiano. A proteção de dados e o novo direito fundamental à garantia da confidencialidade e da integridade dos sistemas técnico-informacionais no direito alemão. In: MENDES, Gilmar Ferreira; SARLET, Ingo Wolfgang; COELHO, Alexandre Zavaglia P. (Orgs.). *Direito, inovação e tecnologia*. São Paulo: Editora Saraiva, 2021. p. 219. See also HOFFMANN-RIEM, Wolfgang. A Proteção Jurídica Fundamental da Confidencialidade e da Integridade dos Sistemas Técnicos de Informação de Uso Próprio. *Direito Público*, v. 18, n. 100, pp. 457–499, 2021. pp. 473-486.

[126] Federal Constitutional Court of Germany, BVerfGE 120, 274-350 (*Online-Durchsuchungen*) (2008).

risks. It even found that total, remote access exceeds the reach of mere protection of the inviolability of the home and correspondence.[127]

155. The Constitutional Court explicitly extended this protection not only to devices installed on fixed sites (personal computers, servers, etc.), but also to mobile devices (mobile telephones, laptop computers, etc.), and not only to systems used for personal purposes, but also those intended for professional use.[128] It noted that any restrictions on this right, if they allow for monitoring digital systems, must be limited to exceptional situations and be subject very strict conditions.[129]

156. This right, espoused by the German Federal Court, has two main thrusts. The first is that it protects the interest of individuals by guaranteeing the confidentiality of data created, processed, and stored in their devices and digital systems. The second is that it seeks to ensure that the integrity of these devices is not compromised through unauthorized access and use by third parties.[130]

157. It is therefore a right that, while related to and naturally deriving from the right to informational self-determination, has its own sphere of protection and its own scope, which give it dogmatic autonomy centered on the duty for care and diligence by those responsible for processing information found within their sphere of protection. If the ultimate purpose of informational self-determination is to protect the collection and processing of personal data, under the premise of safeguarding the control and, as much as possible, the consent of the persons involved, the right to integrity of the system should protect access to the digital system itself. In other words, while informational self-determination guarantees that people have access to their data, system integrity guarantees that no one may access them without authorization. This right unquestionably extends protection beyond the sphere of data control by the holder (which includes several procedural guarantees, including the right of access to data) and actually bars unauthorized third parties from violating data integrity even from the storage infrastructure itself.[131] At the same time, the right to system integrity is a guarantee that lends greater density to the right to informational self-determination in the sense that it seeks to safeguard the integrity of the information, meaning that people's data must be preserved just as it was collected, preventing any unlawful alterations that do not derive from the requests by data owners specifically exercising their right to informational self-determination.

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127 Federal Constitutional Court of Germany, BVerfGE 120, 274-350 (*Online-Durchsuchungen*) (2008), paras. 183-188, 191-195.

128 Federal Constitutional Court of Germany, BVerfGE 120, 274-350 (*Online-Durchsuchungen*) (2008), para. 203.

129 Federal Constitutional Court of Germany, BVerfGE 120, 274-350 (*Online-Durchsuchungen*) (2008), para. 132: "As a qualified means of constitutional protection, [secret] access [to IT systems using technical methods] requires special procedural safeguards. [...]. Because such access is analogous to measures for home searches and surveillance, consideration must be given to the possibility of making it conditional on authorization by a judge. In principle, there must be an obligation to notify. Moreover, "online records" must be subject to stringent requirements of proportionality. A measure of this kind may be used only as the *ultima ratio* of a constitutional protection authority, in view of its intrusive character." Translation by the author.

130 Constitutional Court of Germany, BVerfGE 120, 274-350 (*Online-Durchsuchungen*) (2008), para. 204.

131 HOFFMANN-RIEM, Wolfgang. A Proteção Jurídica Fundamental da Confidencialidade e da Integridade dos Sistemas Técnicos de Informação de Uso Próprio. *Direito Público*, v. 18, no. 100, pp. 457–499, 202, 476.

158. The *CAJAR v. Colombia* judgment, even without pointing explicitly to this right, is nevertheless consistent with its main lines of protection. It does this by defining as a standard, and later as a guarantee of nonrepetition, the requirement for prior judicial authorization on any type of surveillance that entails access to databases and non-public information systems that store and process personal data.[132]

159. The recognition of the autonomous nature of the right to informational self-determination in the judgment, as well as the creation of standards for constraining the state's power to interfere with access to the sites where personal data are stored, open a broad horizon of possibilities for future acceptance of the right to integrity of information systems in the framework of inter-American jurisprudence.

160. This step forward paves the way for major progress with the precepts already developed in *CAJAR v. Colombia*, as well as the specific construction of the meaning and scope of protection that the States must extend over the integrity and confidentiality of information infrastructure.

IV. Consolidation of the right to defend human rights

161. The victims in this case are human rights defenders and simultaneously, lawyers and journalists, and this obliged the Court to meditate carefully on the specific safeguards of protection that should be extended to these categories of persons if they are to perform freely these tasks that are so essential for democratic societies.

162. The systematic, repeated persecution of the members of the Collective over the course of more than 30 years led to the conclusion that the violations were not mere one-time events, but instead revealed a true structural feature and were part of the State's modus operandi for handling members of the political opposition. After three decades of losing their rights, the members of CAJAR, and human rights defenders in Colombia overall,[133] have seen their work undermined by the ever-present shadow of threats, harassment, and other forms of violence and intimidation.

163. As I was able to show at the beginning of this separate opinion, the practice of defending human rights, which was the main purpose of the CAJAR mission, was unacceptable for the State, as it ran counter to its military objectives in the country's armed conflict.[134] The guiding principle that inspired the conduct of the government and the paramilitary groups supporting it was ultimately to dehumanize anyone taking part in activities considered subversive, reducing them to the status of "enemies."[135] This line of thinking sanctioned the use of the most sordid methods—extrajudicial execution, massacre, forced disappearance, torture, mass displacement—under the promise of protecting order and security, and giving

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132 Judgment, para. 553.

133 Judgment, paras. 479-487.

134 IACtHR. *Case of Members and Militants of the Patriotic Union v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 27, 2022. Series C No. 455, para. 186.

135 IACtHR. *Case of Members and Militants of the Patriotic Union v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 27, 2022. Series C No. 455, para. 186.

way to brutal human rights violations that have been widely documented in the annals of the Inter-American Court of Human Rights.[136]

164. Organizations such as CAJAR, by recognizing that the people under attack by the State *have rights*, and by being bold enough to defend them, stood as an obstacle to the repressive designs that had contaminated the State edifice. The defenders thereby became enemies themselves. Repeated statements by the highest public authorities, labeling the members of the Collective as "guerrillas," "terrorists," "traitors of the homeland," and the "legal arm" of the armed struggle stand as unassailable proof of the position to which they were relegated in the eyes of the government because of the role they played.[137]

165. Their work to defend human rights was equated with the very activities that were considered subversive and attracted the State's persecution tendencies, albeit using methods different from those practiced in direct confrontation with the armed groups. The backbone of the military plan in this case was to sow *fear* in the form of death threats, intimidation, and constant surveillance.

166. Because the chief objective was to terrorize the members of the Collective, the threats grew beyond mere personal attacks and pulled in the families as well. The espionage and invasion of privacy became common practices, inspired not only by the intent to track all the targets' movements, but also to obtain access to CAJAR's litigation strategies involving cases before the domestic courts and the inter-American system, thus providing the State's legal defense institutions with information gathered illegally.

167. This is a crystal-clear demonstration of the scope of the hedge that the State's intelligence forces had built up around the victims. The attempts to block their professional practice ranged from the attempt to dissuade them by using terror to bringing a combative spirit into the legal/procedural arena.

168. The use of espionage as a State policy has produced effects even beyond the lives of CAJAR members and their families, eventually affecting the entire universe of people who work to defend human rights in society. In collective terms, the recurring use of intelligence activities against groups tagged as opposition has created an undeniable chilling effect,[138] deterring many from fully performing their work, which is so essential for democratic societies.

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136 As an example, see IACtHR. *Case of Las Palmeras v. Colombia. Merits.* Judgment of December 6, 2001. Series C No. 90; IACtHR. *Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134; IACtHR. *Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140; IACtHR. *Case of Ituango Massacres v. Colombia.* Judgment of July 1, 2006. Series C No. 148; IACtHR. *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 192; IACtHR. *Case of Vélez Restrepo and family v. Colombia. Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 3, 2012. Series C No. 248; IACtHR. *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 14, 2014. Series C No. 287; IACtHR. *Case of Vereda La Esperanza v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2017. Series C No. 341; IACtHR. *Case of Members and Militants of the Patriotic Union v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 27, 2022. Series C No. 455.

137 Judgment, para. 696.

138 *Cf*. IACtHR. *Case of Valle Jaramillo et al. v. Colombia*. *Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 192, p. 96; IACtHR. *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs.* Judgment of April 3, 2009. Series C No. 196, p. 153.

169. The same understanding of the individual and collective proportions of the restriction on human rights defense has appeared repeatedly in inter-American jurisprudence since the *Nogueira de Carvalho et al. v. Brazil* case in 2006,[139] when the Court held for the first time that the State must provide the means and refrain from setting obstacles to the free exercise of activities to defend human rights, and must protect the lives and physical integrity of defenders and conduct conscientious investigations in cases of reports that the lives of these people were in danger.

170. The practices of the State of Colombia in this case exceeded the scope of obligations established in the Inter-American Court's precedents. The stories collected in the judgment are far from exhaustive and are merely a sampling of the great depth of violations. The victims' traumatic experiences forced the Court to lend particular attention to measures of nonrepetition. The contribution of the *CAJAR v. Colombia* case, however, goes even beyond the carefully crafted measures of redress, and are also clear in the innovative decision to give autonomous recognition to this right to defend human rights.

171. The violations identified in this case, while forming an integral part of the context of Colombia's armed conflict, must not be seen as a problem unique to the State of Colombia. Inter-American jurisprudence clearly shows that attacks against people defending human rights can be found repeatedly in settings of systematic violation of rights.

172. The Court has adjudged countless such cases, ranging from violent deaths of people protecting rural property[140] and indigenous territories,[141] to wiretaps,[142] hostilities,[143] and even the most serious cases of structural impunity[144] for violations of the right to life, the right to personal integrity, the right to honor, to privacy, and to political participation. States find that these actors must be silenced as a necessary step to carry out any program that calls for mass suppression of human rights. Disdain for the right to defend rights is therefore the epitome of denial of human rights.

173. This is the very reason why the right to defend rights must be elevated to the class of autonomous rights. It is an important recognition and clarifies that persecution of defenders is not a matter of occasional or isolated attacks against them for chance reasons, but an intrinsic part of broader movements to violate rights. It calls for specific, reinforced protection under the Convention to guarantee that these agents will be free to practice their profession and to hold them up as essential in a democratic society.

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139 *Cfr*. IACtHR. *Case of Nogueira de Carvalho et al. v. Brazil*. Preliminary Objections and judgment. Judgment of November 28, 2006. Series C No. 161, para. 76.

140 *Cf*. IACtHR. *Case of Sales Pimenta v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 30, 2022. Series C No. 454.

141 *Cf*. IACtHR. *Case of the Xucuru Indigenous People and its members v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 5, 2018. Series C No. 346.

142 *Cf*. IACtHR*. Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 6, 2009. Series C No. 200.

143 *Cf. IACtHR. Case of Escaleras Mejía et al. v. Honduras*. Judgment of September 26, 2018. Series C No. 361.

144 *Cf*. IACtHR. Cf. *Case of Sales Pimenta v. Brazil.* Preliminary Objections, Merits, Reparations and Costs. Judgment of June 30, 2022. Series C No. 454, para. 145.

174. This is why the Court was justified in establishing the defense of human rights as an autonomous right. It had already signaled this view in the *Digna Ochoa v. Mexico* case, when it held itself competent to order direct enforcement of this right.[145] The Court's case law is characterized as *res interpretata,*[146] which is why the criteria set in this judgment can spread throughout the region to strengthen the sphere of protection for activities to defend human rights in Latin America, becoming a true standard for Convention-based review by domestic courts.

175. The obligations to protect human rights defenders began to take shape in inter-American jurisprudence in 2006, but only in 2008 did the expression "right to defend human rights" become a fixture in the Court's vocabulary in the case *Valle Jaramillo et al. v. Colombia,* which involved failures in the process of investigating and prosecuting the murderers of human rights defender Jesús María Valle Jaramillo in Medellín.[147] In that case, the Court acknowledged that the duty to create the conditions necessary for the effective exercise of the rights enshrined in the Convention entailed protecting and recognizing the important role played by people doing this work.

176. From the time it first began to adopt the term "right to defend human rights," the Court has been marking out the scope of standards for the protection of human rights defenders in multiple judgments, including *Kawas Fernández v. Honduras* (2009),[148] *Escher et al. v. Brazil* (2009),[149] and *Fleury et al. v. Haiti* (2011).[150] It has fashioned a lengthy chain of precedents on the subject, and by so doing, has fully enshrined the States' duty of prevention in cases of "structural risk" for human rights protection, as in the case of *Castillo González et al. v. Venezuela (2012).*[151]

177. In the latter case, the Court dismissed the petition to recognize a structural risk to the lives of human rights defenders alleged by the Commission and the representatives, but it did clarify that such a risk occurs when "*the authorities knew or should have known that a real and imminent danger existed to the life of a certain individual or group of individuals, and that it did not adopt the necessary measures within the scope of its authority which could be*

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145 IACtHR. *Case of Digna Ochoa et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 25, 2021. Series C No. 447, para. 34.

146 On *res interpretata,* see: MAC-GREGOR, Eduardo Ferrer. Eficacia de la sentencia interamericana y la cosa juzgada internacional: vinculación directa hacia las partes (res judicata) e indirecta hacia los Estados parte de la Convención Americana (res interpretata) (sobre el cumplimiento del caso Gelman vs. Uruguay). *Estudios constitucionales*, v. 11, n. 2, pp. 641-693, 2013.

147 Cf. IACtHR. *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 192, para. 96.

148 Cf. IACtHR. *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs.* Judgment of April 3, 2009. Series C No. 196.

149 Cf. IACtHR. *Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 6, 2009. Series C No. 200.

150 Cf. IACtHR. *Case of Fleury et al. v. Haiti. Merits and Reparations*. Judgment of November 23, 2011. Series C No. 236.

151 Cf. IACtHR. *Case of Castillo González et al. v. Venezuela*. *Merits.* Judgment of November 27, 2012. Series C No. 256, para. 127.

reasonably expected to prevent or avoid that risk."[152] A similar situation can be seen in the instant case.

178. In short, although the State of Colombia adopted measures of protection, they were insufficient to safeguard the personal integrity of the members of the Collective. The CAJAR case offers incontrovertible proof of a widespread, systematic practice of human rights violations, consisting of undercover intelligence activities running counter to international human rights standards, at the hands of the highest police and military authorities in the country.

179. The existence of flagrant risk conditions culminated in the State's obligation to adopt special measures of protection for the victims similar to those ordered by the Court in *Castillo González et al. v. Venezuela (2012).*[153] By contrast, the *CAJAR vs. Colombia* case is symptomatic in that it reveals exactly the opposite behavior by the State. The State showed itself incapable of carrying out appropriate, adequate measures to ensure the safety of members of the Collective, as a consequence not only of negligence, but also the deliberate practice of hostile, violent, invasive actions through the institutional national security edifice.

180. The *Luna López v. Honduras (2013)* judgment said that in addition to the duty to prevent in cases of "structural risk," the State is also under obligation to prevent violations of the right to life and the right to personal integrity for human rights defenders in cases of "real and imminent risk." It set two criteria to verify the existence of such conditions, to wit: (i) at the time of the incidents, the authorities knew or should have known about the risks to the life and safety of the human rights defenders, and (ii) the measures necessary to prevent or deter the risk were not adopted.[154]

181. At first glance, it could perhaps be argued that the State of Colombia has complied with its obligations to grant safety measures to the members of the CAJAR Collective,[155] but the Court held emphatically that the protection program adopted must follow objective criteria of suitability and necessity when it is established. Therefore, "*the State should have maximized its efforts and used all its available and relevant resources to save his life, inter alia, through the provision of security measures and personal protection to enable him to continue with his work, as well as taking the necessary steps to investigate immediately and effectively all other threats received.*"[156]

182. The protection program adopted by the State, in order to be appropriate and effective, must be specific, as the Court found in *Human Rights Defender et al. v. Guatemala (2014)*

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[152] Cf. IACtHR. *Case of Castillo González et al. v. Venezuela*. *Merits.* Judgment of November 27, 2012. Series C No. 256, para. 128.

[153] Cf. IACtHR. *Case of Castillo González et al. v. Venezuela*. *Merits.* Judgment of November 27, 2012. Series C No. 256, para. 131.

[154] Cf. IACtHR. Case of *Luna López v. Honduras*. *Merits, Reparations and Costs.* Judgment of October 10, 2013. Series C No. 269, para. 124.

[155] Judgment, paras. 158-162.

[156] Cf. IACtHR. *Case of Luna López v. Honduras. Merits, Reparations and Costs.* Judgment of October 10, 2013. Series C No. 269, para. 137.

and *Yarce et al. v. Colombia (2016).*[157] In both cases, the Court set objective criteria for assessing the appropriateness and effectiveness of measures of protection granted by the State, in the following terms:[158]

(a) in keeping with the functions performed by the defenders; (b) the level of risk must be assessed in order to adopt measures and monitor those that are in force; and (c) it must be possible to modify such measures in accordance with changes in the level of danger. Thus, the type of protective measures offered must be decided in consultation with the human rights defenders in order to ensure timely and focused intervention, proportionate to the danger that the defender could face. Furthermore, particular attention should be paid to a gender-based approach within the risk-assessment procedure, because it could reveal a differentiated level of danger, and could have an impact on the implementation of measures of protection. To ensure that the measures are effective, the following elements are essential: (a) an immediate response by the State as soon as it becomes aware of the existence of the danger, to ensure that the measures are timely; (b) the people involved in the protection of defenders must have the necessary training to perform their functions and understand the importance of their actions, and (c) the measures must be kept in effect for as long as the victims of violence or threats require them.

183. The Court has a solid body of precedents on protection of the individual rights of human rights defenders that recognizes violations of the right to life, the right to personal integrity, the rights to honor and privacy, to freedom of association, political participation, and other rights that may be expressed in many ways. This wealth of jurisprudence has been built over the course of 15 years of interpretation (2006-2022), usually taking the approach of declaring multiple violations of the rights listed above, which occur separately or simultaneously, but never converge and are not interconnected by a single thread.

184. By holding the right to defend human rights as an autonomous right, the Court has now enshrined the point of departure that must be adopted in order to understand the true dimensions of the State's international responsibility to protect defenders, that is, to recognize these obligations in the context of a structural, systematic environment of impunity and failures to investigate that has a terrifying effect on society and puts a brake on the practice of oversight and reporting to defend human rights in this hemisphere.[159]

185. Specific violations of the right to life, the right to personal integrity, and the right to honor, privacy, or political participation therefore acquire a broader meaning when they are brought together under the umbrella of protection of the right to defend human rights, understood as the product of structural risk inherent to human rights defense in Latin America. Speaking practically, this systematic, comprehensive understanding allows the Court to focus on the critical essence of the mission of protection, pointing to obligations designed specifically to guarantee the protection and free practice of people doing this work.

186. The landmark *Sales Pimenta v. Brazil* (2022) case, for example, recognizes "*structural impunity with respect to violence against human rights defenders of rural workers."*[160] The

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[157] Cf. IACtHR. *Case of Yarce et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 22, 2016. Series C No. 325, para. 193.

[158] IACtHR. *Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 28, 2014. Series C No. 283, para. 157.

[159] Cf. IACtHR. *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 192, para. 88.

[160] *Cf.* IACtHR. *Case of Sales Pimenta v. Brazil.* Preliminary Objections, Merits, Reparations and Costs. Judgment of June 30, 2022. Series C No. 454, para. 145.

Court found that not only had the State violated Mr. Sales Pimenta's right to life when he was murdered in the midst of an agrarian dispute, but it must also protect the lives of other human rights defenders by creating a working group tasked to develop public policies for identifying and eradicating the causes and consequences of structural impunity.

187. The Brazilian cases *Sales Pimenta v. Brazil* (2023) and *Escher et al. v. Brazil* (2009) bring into focus another phenomenon that is clearly seen in the experiences of the CAJAR members and other human rights defenders in Latin America, that is, the criminalization of their work.[161]

188. Under this lens, activities such as telephone interception, shadowing, and other forms of surveillance are tolerated and even conducted by the State under the rationale that the work being done by the defenders is "dangerous." In the case of the CAJAR collective, the victims had no access to effective mechanisms for reporting situations of threat or risk, nor were the conditions in place for eradicating the violations, because the State was intrinsically involved in the crimes against them.[162]

189. In practical terms, the recognition of the right to defend human rights introduces a new field of possibilities for interpreting the Convention because it recognizes that Latin America is a hemisphere with a broad repertoire of persecution, threats, and hostilities against human rights defenders, to the point that violations become systematic. Broadening the horizon of interpretation also entails consideration of measures of nonrepetition that seek to identify causes, consequences, effects, and public policies to eradicate structural violence.

V. The Convention's protections for lawyers and journalists

190. The judgment in the instant case, in addition to the jurisprudential developments discussed above in this separate opinion, also set standards for reinforced protection of certain categories of professionals particularly affected by the conduct of intelligence agents, especially lawyers and journalists. The two following sections will take a more in-depth look at State obligations and at the most appropriate interpretation of the judgment concerning guarantees for (a) lawyers and (b) journalists.

a. Measures of protection for the practice of law

191. The status of CAJAR members as human rights defenders, fully demonstrated in the judgment, was the beacon that attracted the arbitrary attention of intelligence services toward the private lives of the victims for 30 years, as well as the unceasing acts of hostility with the intent of deterring their professional work and rendering it impossible. As we have seen, it was this constellation of factors that led the Court to declare, for the first time, the autonomous violation of a *right to defend rights.*

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[161] On this point, see: IACHR. *Criminalization of the Work of Human Rights Defenders*, 2015. Available at https://www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf.

[162] *Cf*. IACtHR. *Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 28, 2014. Series C No. 283, p. 142.

192. The designation "human rights defender" is a common label shared by a myriad of functional categories, highlighting the many ways that peoples' rights can be protected. In the instant case, the members of CAJAR pursued the mission of defending human rights through the practice of law. As its acronym suggests, the organization was, first and foremost, a *collective of lawyers.*

193. This quality is not an afterthought, but the key to understanding and the basis for interpreting and applying the procedural guarantees that derive from the right to defend rights and the right to informational self-determination. The fact that they were lawyers introduces a specific system of prerogatives that transcends the general standards established in the judgment for the protection of human rights defenders. Above all, the measures of protection for lawyers, in the context of the Convention, are inseparable from the very principle of judicial independence.

194. This special core of protection is drawn from the Convention itself, which in Article 8(2)(d) enshrines the essential role of lawyers in safeguarding the human rights it contains. The Convention also recognizes that the accused have the right to be assisted by legal counsel of their own choosing, to communicate freely and privately with their counsel, and to have adequate time and means for the preparation of their defense.

195. The *CAJAR v. Colombia* judgment marked the first time that these Convention-based principles took the form of specific obligations that must be upheld by the States to protect the prerogatives attaching to the professional practice of law. More than an elucidation drawn from a specific case, these standards comprise a chapter in a much broader tradition of inter-American jurisprudence that is working to forge guarantees of independence in the justice system.

196. This tradition can be seen in the process of progressive broadening of the sphere of protection for the functional independence originally granted to judges under the concept of judicial independence, which has been recognized since the *Constitutional Court v. Peru (2001)* case.[163] Starting with *Reverón Trujillo v. Venezuela (2009)*,[164] the primary avenue for protection has been seen from the standpoint of safeguarding tenure in public office from arbitrary attempts at removal, based on the evolutive interpretation of Article 23(1)(c) of the Convention, which was taken up later in the *Chocrón Chocrón v. Venezuela (2011),*[165] *Constitutional Court v. Ecuador (2013)*,[166] and *López Lone v. Honduras (2015)*[167] cases.

197. The Court developed the idea that the legal content of the guarantees of judicial independence is expressed in two dimensions. The first is subjective protection of judges from

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[163] IACtHR. *Case of the Constitutional Court v. Peru. Merits, Reparations and Costs.* Judgment of January 31, 2001. Series C No. 71, para. 73.

[164] IACtHR. *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 30, 2009. Series C No. 197, paras. 138-139.

[165] IACtHR. *Case of Chocrón Chocrón v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of July 1, 2011. Series C No. 227.

[166] IACtHR. *Case of the Constitutional Court (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 28, 2013. Series C No. 268.

[167] IACtHR. *Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 5, 2015. Series C No. 302.

outside pressures. The second is the institutional side, meaning that the judicial branch, comprising the justice system, is autonomous.[168] I was able to examine the latter point in more depth in a set of separate opinions that I wrote in conjunction with Judge Eduardo Ferrer MacGregor Poisot; we said in one of these opinions that "*protection of judges is instrumental as a building block of democracy, as it is the judicial branch that stands as a guarantor to shield human rights from abuses of power. This is why safeguarding the independence of the judiciary is also a way to guarantee protection of individual human rights.*"[169]

198. This understanding of systemic protection allowed the Court to extend the reach of protection originally situated under the principle of judicial independence even beyond the realm of the judiciary. The judicial branch, while it is operated by judges, does not operate in isolation. It is surrounded by a true ecosystem of professionals from the public and private sector alike, dedicated to the administration of justice and the protection of the rights of citizens.

199. For example, in the 2020 judgments *Martínez Esquivia v. Colombia*[170] and *Casa Nina v. Peru*,[171] the Court recognized that the protection given in Article 23 was not limited to judges alone, but also extended to prosecutors. These officers need to be protected from threats of arbitrary dismissal, as they hold the power of criminal prosecution and of initiating trials, which they cannot do unless they are able to work independently and objectively.[172] Specifically, the Court found as follows:

> Based on the above, the Court considers that the guarantees of an adequate appointment process, irremovability, and protection against external pressure also protects the work of prosecutors. To the contrary, this would jeopardize the independence and objectivity that their functions require, as principles aimed at ensuring that the investigations conducted and the claims made before the judicial authorities are addressed exclusively at achieving justice in the specific case pursuant to Article 8 of the Convention. In this regard, it should be added that the Court has specified that the failure to guarantee the irremovability of prosecutors, which makes them vulnerable to reprisals for their decisions, would result in a violation of the independence guaranteed, precisely, by Article 8(1) of the Convention.[173]

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168 IACtHR. *Case of Apitz Barbera et al. ("First Court of Administrative disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 5, 2008. Series C No. 182, para. 55.

169 IACtHR. *Case of Aguinaga Aillón v. Ecuador. Merits, Reparations and Costs.* Judgment of January 30, 2023. Series C No. 483. Separate opinion by Judge Judge Eduardo Ferrer Mac-Gregor Poisot and Judge Rodrigo Mudrovitsch, para. 16. See our similar separate opinions in the following cases: IACtHR. *Case of Benites Cabrera et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 4, 2022. Series C No. 465, and IACtHR. *Case of Cajahuanca Vásquez v. Peru. Preliminary objections and Judgment*. Judgment of November 27, 2023. Series C No. 509.

170 IACtHR. *Case of Martínez Esquivia v. Colombia*. *Preliminary Objections, Merits and Reparations.* Judgment of October 6, 2020. Series C No. 412, paras. 86-88.

171 IACtHR. *Case of Casa Nina v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2020. Series C No. 419.

172 IACtHR. *Case of Martínez Esquivia v. Colombia*. *Preliminary Objections, Merits and Reparations.* Judgment of October 6, 2020. Series C No. 412, para. 87.

173 IACtHR. *Case of Martínez Esquivia v. Colombia*. *Preliminary Objections, Merits and Reparations.* Judgment of October 6, 2020. Series C No. 412, para. 88.

200. Also under the umbrella of political rights protected by Article 23, the Court has held the State responsible for the arbitrary removal of an administrative officer of the judicial branch in the *Moya Solís v. Peru (2021)* case and emphasized that, although she was neither a judge nor a prosecutor, her responsibilities for conducting tasks essential to the administration of justice provided sufficient rationale for protection under the Convention. The Court, finding that the right to continue performing a public duty had been violated, said:

> 110. In addition, equal opportunities of access and secure tenure in the position of judicial officer, as in the case of Mrs. Moya Solís, guarantees freedom from any interference or pressure. This is particularly relevant when taking into account that those who held the position of Judicial Clerks in Peru, on the date of the events, were in charge of presenting the appeals and briefs submitted by the parties to the judge, authorizing the procedural steps issued by the judge, notifying the decisions of the court, and keeping and protecting the files under their charge, among other relevant responsibilities for the correct administration of justice.[174]

201. This latter case confirms the shift of the focus of protection from the subjective position of judge toward a broader panorama of the overall judicial system, that is, the *administration* of justice per se, and of the parts that are essential for its smooth operation. *CAJAR v. Colombia* solidifies this process, even without saying so explicitly, by adding lawyers to this chain of precedents that has been gradually taking shape in inter-American case law.

202. The standards set in the judgment, which I will discuss in further detail below, reflect the premises that inspired the Court's understanding of judicial independence, intended to guarantee that attorneys can represent and defend their clients autonomously and free from any interference that could jeopardize their work, which is essential for due legal process. It is therefore not a question of mere individual safeguards pointed subjectively at particular lawyers; instead, these are measures that target the institutional side of the guarantee of judicial independence. They are intended to protect an essential aspect of the administration of justice.

203. This component of the judgment bears repetition because it is essential for understanding the concept's scope and function in the chain of precedents to which it has been joined: Convention-based protection for lawyers is not based exclusively on the subjective right they claim, or their status as defenders of rights, but on the essential role they play in the justice system.

204. From this critical angle, protection of the prerogatives and rights of lawyers is a corollary of judicial independence itself, which, once extended to other participants in the justice system, must also include lawyers, as numerous signatory states to the Convention have recognized in their constitutions.

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[174] IACtHR. *Case of Moya Solís v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 3, 2021. Series C No. 425, para. 110.

205. Indeed, several of the constitutional systems in the region hold the right to professional legal counsel as one of the fundamental rights of citizens, including Colombia,[175] Costa Rica,[176] Ecuador,[177] Paraguay,[178] Uruguay.[179] Some constitutions go even further, as in the case of Brazil, where the lawyer is described as "*an indispensable agent of the administration of justice."* This understanding of the *institutional* nature of the role played by lawyers has progressed under *CAJAR v. Colombia,* now achieving full inclusion into the Court's case law through the prerogatives established in the judgment.

206. The guarantee of independence for the tasks of the judicial system, therefore, does not attach exclusively to protection of public officers (judges, prosecutors, employees of the judiciary), but also includes safeguards for the independent professional practice of lawyers, without whom it would be impossible to conceive of defending human rights before the courts.

207. However, the Convention's call to protect lawyers cannot be achieved by guaranteeing stable tenure in public office, but instead by safeguarding the prerogatives that have been designed to create the conditions essential for free representation of their clients. This includes confidentiality of communications, which does not require application of the evolutive interpretation of Article 23 of the Convention in order to deduce the States' obligations to protect, such as those the Court has identified for judges, prosecutors, and other public officers, which are protected by a literal reading of Article 8(2).

208. The primary target of those guarantees is the *accused*, but they give rise to a mandate for protection that exceeds this single person's sphere of subjective rights. The Convention would be nothing but a dead letter if the States and their justice systems were incapable of guaranteeing the independence and free professional practice of the defenders mentioned in Article 8.

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[175] Constitution of Colombia, Art. 29: Every person shall be presumed innocent until judicially found guilty. **All persons accused have the right to defense and assistance by legal counsel of their own choosing or provided officially, during investigation and trial**; to public due process without unwarranted delay; to submit evidence and challenge any evidence submitted against them; to challenge a conviction, and not to be tried twice for the same facts.

[176] Constitution of the Republic of Costa Rica, Art. 39. No one shall be punished except for a crime, quasi-crime or offense, sanctioned under a pre-existing law and by virtue of a final judgment handed down by a competent authority, and **having been granted the opportunity to exercise his or her defense** and following the necessary demonstration of guilt.

[177] Constitution of Ecuador, Art. 76.7.g. In judicial proceedings, being assisted by counsel of his or her choosing or by a public defender; no restrictions shall be placed on access to counsel or free, private communication with same.

[178] Constitution of Paraguay, Art. 17: In the criminal process or any other that could produce a sentence or sanction, all persons are entitled to: 5. defend themselves or receive the assistance of counsel of their own choosing; 6. for the State to provide counsel free of charge if they do not have the economic wherewithal to do so; 7. prior, detailed communication concerning the charges and access to copies, means, and the time necessary to prepare their defense in free communication.

[179] Constitution of the Eastern Republic of Uruguay, Art. 16. In any of the cases detailed above, the judge, exercising all due conscientiousness, shall take a statement from the accused within twenty-four hours of detention and begin the investigation within forty-eight hours. **The statement by the accused must be taken in the presence of his or her defense attorney. He or she shall also be entitled to attend all the criminal proceedings.**

209. Lawyers are in the trenches at the front lines of the defense of human rights, because victims generally turn to them first when they are harmed by arbitrary State actions. This was the very spirit adopted by the Court in the *Cortez Espinosa vs. Ecuador (2002)* case when it said that, by preventing the accused from having access to counsel in the central stages of the proceedings, the State had severely restricted the right to defense and created a situation of procedural imbalance, leaving the person unshielded from the exercise of punitive power.[180]

210. The United Nations shares these principles, recognizing that access to independent legal counsel is an essential condition for "adequate protection of the human rights and fundamental freedoms to which all persons are entitled." The principles define the right to legal counsel as a corollary to the primacy of the law and foundational for the enjoyment of other rights, such as the right to a fair trial.[181]

211. The judgment at hand did not ignore these parameters. The case revolves around activities systematically implemented by intelligence agencies for the purpose not only of spying on, but also deterring the professional activities of the CAJAR lawyers in defense of their clients. They used methods such as intercepting communications and personal shadowing, and even studied the Collective's litigation strategies for its cases before the Inter-American Court, using clandestine means to obtain information and supply it to the State's legal team as support in its arguments and to challenge the victims' defense.[182]

212. Faced with the State's repeated attempts to undermine any conditions for the independent practice of law, the CAJAR judgment singled out general principles for the protection of human rights defenders as specific procedural guarantees on the professional work of lawyers during intelligence operations. It recognized that these activities must respect inviolable communications between attorney and client, a guarantee that applies equally to the workplace and work equipment, correspondence, and any other form of communication used for the regular practice of the profession.[183]

213. The judgment also found that any intelligence operation against lawyers may be conducted only with a judicial warrant, holding the judge responsible to verify that evidence of illegal actions is present and demonstrate that the measure is proportionate in the specific case.[184] The Court also underscored that any information obtained using irregular methods in the course of the operations must be dismissed ex officio by investigative authorities.

214. The presence of these standards in the CAJAR judgment marks an essential step forward in inter-American jurisprudence and reveals the convergence of two fundamental vectors of the decision: first, it solidifies the obligations of the States to uphold the right to

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180 IACtHR. *Case of Cortez Espinoza v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 18, 2022. Series C No. 468, para. 95.

181 United Nations, Basic Principles on the Role of Lawyers, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1.

182 Judgment, para. 337.

183 Judgment, para. 560.

184 Judgment, para. 561.

defend human rights, and second, it sets objective limits on the penetration of public powers into the private sphere, which is shielded by the right to informational self-determination.

215. The judgment sets the conditions under which government surveillance of lawyers may be permissible under the Convention, and I believe it is relevant to offer several comments about the interpretation of the standards set in the text. In my view, the correct hermeneutics of the judgment's guidelines is to recognize that intelligence activities, including those in criminal investigation, generally have no need to target the practice of law. Quite the contrary, such a line of attack must be an absolute exception, and in some cases, is prohibited outright.

216. This is the sense in which to understand the guarantee of attorney-client privilege: inviolability here is *absolute*. In other words, communications between attorney and client, when regarding the technical defense of the client, must never, even with judicial authorization, be targeted for scrutiny by police intelligence agencies. The word "communication" should be read in the broadest sense. It includes not only written or spoken communication, but also the lawyer's workplace and residence, and it covers all documents and every kind of information about clients and the platforms and devices where this information is held.[185]

217. Such a conception of the scope of these standards is not unknown to the Court's case law. The Court found in the *Tristán Donoso v. Panama* case, when a telephone conversation between the victim, who was a lawyer, and his client was disclosed, that this type of communication should be afforded greater protection in the interest of professional secrecy.[186] This "greater degree of protection" can be understood only as an inviolable limit on probing by the public powers.

218. In other words, any type of private contact between private parties is considered confidential, and this means that access to its content can be obtained only through a judicial decision authorizing it under circumstances allowed by law and by the Convention.[187] If a lawyer's professional communication is subject to the reinforced safeguard of professional secrecy, prior judicial oversight alone cannot be considered enough to justify disclosure. If this were so, it would fall under the general rule of confidentiality, instead of being sheltered by the mantle of professional secrecy.

219. The judgment holds that "any intelligence operation in this area may be conducted only with prior judicial authorization, and the competent judge must rule on (i) whether evidence is available to suggest the conduct of illegal actions, and (ii) the proportionality of the measure being ordered in the specific case."[188] According to these terms, the postulate should be understood as limited to cases where there is a well-founded suspicion of illegal

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185 Report of the United Nations Special Rapporteur on the independence of judges and lawyers, (Doc. ONU/71/348, August 22, 2016, para. 48).

186 IACtHR. *Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs.* Judgment of January 27, 2009. Series C No. 193, para. 75.

187 IACtHR. *Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 6, 2009. Series C No. 200, paras. 158-160.

188 Judgment, para. 561.

acts by the professional, and not a granting of broad leeway for intelligence services to conduct surveillance of lawyers, even if they have been approved by a judge.

220. Surveillance activities must be limited only and exclusively to the investigation of possible unlawful conduct by the lawyer and must never invade the protected sphere of a lawyer's professional activism to defend clients and his or her communications with them. Such measures must never serve as a shortcut by which the State can exercise surveillance and tailing of clients through their lawyers.

221. This is the time-honored rule that lawyers must never be confused with their clients or their clients' cases as a consequence of their professional practice.[189] Accordingly, the investigative agency and the responsible judicial authority face the task of distinguishing between the allegedly unlawful conduct of the lawyers, and by contrast, their actions in normal representation of their clients' interests. Only in the former case is investigative intervention legitimate. The fact that a person can legally represent another person before the courts, regardless of the magnitude or nature of the crimes being heard, does not authorize the representative to come under the gaze of the State's watchful eye.

222. The United Nations Basic Principles on the Role of Lawyers provide significant interpretative support for these rules when they assert that governments recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.[190] This guarantee is broadly recognized in national and international legal systems.[191] In Brazil, for example, the Federal Supreme Court has held that "*professional immunity is indispensable for lawyers to be able to practice their public duties fully and honorably"* and that *"inviolability of the office or workplace is a consequence of the inviolability guaranteed to lawyers in the practice of their profession."*[192]

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189 United Nations, Basic Principles on the Role of Lawyers, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990, U.N. ONU. A/CONF.144/28/Rev.1, para. 18.

190 United Nations, Basic Principles on the Role of Lawyers, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990, U.N. ONU. A/CONF.144/28/Rev.1, para. 22.

191 "G. Independence of Lawyers. […]. (b) States shall ensure that lawyers: 1. are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; 2. are able to travel and to consult with their clients freely both within their own country and abroad; 3. shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. (c) States shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential. (d) It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time." African Commission on Human and Peoples' Rights. Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted on May 29, 2003; "Principle I - General principles on the freedom of exercise of the profession of lawyer. 6. All necessary measures should be taken to ensure the respect of the confidentiality of the lawyer-client relationship. Exceptions to this principle should be allowed only if compatible with the Rule of Law." Committee of Ministers of the Council of Europe. Resolution (2000) 21, adopted on October 25, 2000.

192 Federal Supreme Court of Brazil. Direct Constitutional Remedy No. 1127. Rapporteur Minister Ricardo Lewandowski. Done on May 17, 2006.

223. The highest court in Brazil, in keeping with these precepts of the Convention, has come to the conclusion that measures for searching and seizing in the professional setting are justified only in very exceptional cases when the lawyer is under investigation.[193] It is not enough, however, for the lawyer to be the focus of the investigation or the proceedings and for the courts to authorize the operation. The prerogative of professional privilege also stands against any generic order for seizure or interception that does not clearly set forth the limits to the search warrant.

224. Under these premises, a majority opinion of the Federal Supreme Court found that, although possible limits on the principle of privacy protection and the inviolability of communications may appear to be defensible because of the duty to protect public safety, "[t*]he same cannot be said of guarantees on the practice of the [legal] profession. The failure to specify the target of the search and the object of the seizure, when the target of investigation is not the lawyer, but a particular client, is an offense to the constitutional guarantee that allows the free practice of the legal profession.*"[194]

225. Under these circumstances, together with material guarantees intended to safeguard the confidentiality of lawyers' communications and documents, there are measures designed to put a stop to abuses committed during operations of any kind conducted within the lawyer's professional realm. National laws to regulate the prerogatives of lawyers have therefore included clauses that require the presence of representatives of the lawyer's professional association, preferably the bar, during procedures such as search and seizure.

226. This is why the judgment gives an example of good practices, citing the bylaws of the Brazilian Bar Association (Law 8,906 of 1994).[195] These rules detail a long list of the rights of lawyers and clearly defines the circumstances in which search and arrest warrants against lawyers may be executed; the warrants must be "specific and detailed" and may be issued only in the presence of evidence that the crime was materially perpetrated, based on a reasoned judicial decision.

227. Such an operation also requires the presence of a representative of the Brazilian Bar Association, who must be duly respected by the agents conducting the search. The law expressly empowers this person to prevent any documents unrelated to the investigation from being "analyzed, photographed, filmed, removed or seized," especially documents on clients unrelated to the object of the warrant.[196] The bar association must also oversee not only the execution of the judicial warrant, but also the entire process of analyzing the seized documents and equipment, to make sure the inspection does not overstep the bounds set by the judicial authority and, above all, the inviolable hedge of professional secrecy.[197]

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193 Federal Supreme Court of Brazil. Habeas Corpus No. 91,610, Rapporteur Judge Gilmar Mendes. 2nd chamber. Done on June 8, 2010; Federal Supreme Court of Brazil. Habeas Corpus No. 91,867, Rapporteur Judge Gilmar Mendes. 2nd chamber. Done on April 24, 2012; Federal Supreme Court of Brazil. Claim No. 57, 996. Rapporteur Judge Alexandre de Moraes. Done on April 3, 2023.

194 Federal Supreme Court of Brazil. Habeas Corpus No. 91,610, Rapporteur Judge Gilmar Mendes. 2nd chamber. Done on June 8, 2010, separate opinion of Judge Gilmar Mendes.

195 Judgment, note 698.

196 Brazil. Law 8,906/1994, Art. 7, §6-C.

197 Brazil. Law 8,906/1994, Art. 7, §6-F. The representative of the bar association and the professional under investigation are guaranteed the right to be present during the analysis of the lawyer's documents and information

228. Similar rules can also be found in the laws of other countries. For example, Argentina's Law 23,187 of 1985 stipulates that it is the duty of the judge to notify the bar association if a lawyer's office is to be searched, allowing the party under investigation the right to request that a member of the board of directors of the bar be on site to oversee the operation.[198]

229. This requirement has also been taken up by international human rights law, specifically by the European Court of Human Rights in *André and Other v. France* (2008). The ECtHR recognized in this case that where credible evidence is found of the participation of a lawyer in an offense, lawyers may be subject to searches, and a representative of the bar association must be present at the time.[199]

230. Finally, the obligation to disqualify any evidence gathered using irregular means—that is, without observing the standards set forth in the case—as found in paragraph 561 of the instant judgment, is a direct, necessary consequence of (i) the mandate of inviolability of attorney-client communication, and (ii) the limits on surveillance and investigation of lawyers, to grant them maximum protection. In other words, in the very exceptional case that an invasive activity against a lawyer should be authorized, if the authority comes into contact with any form of communication between the lawyer and his or her client, or obtains any information outside the strict limits allowed, that material must be destroyed immediately. Without such a guarantee, the prerogative of professional secrecy is rendered null and void.

b. Measures of protection for the work of journalism

231. The case in question focuses essentially on violations against a lawyers collective, but the judgment also sets specific limits on the conduct of intelligence activities against journalists. The CAJAR payroll included journalists and press advisers who were similarly targeted by hostilities and intelligence activities. By way of illustration, one of the victims, a journalist and the press chief of the Collective, received telephone death threats, her home was raided, and documents were stolen from her.[200] This example reveals the scope of the violence committed against the victims, not limited only to the people directly involved in litigation work, and at the same time bears witness to the importance of granting greater protection to people working in public communication and the press.

232. Under this premise, the Court has wisely asserted that, "*it is imperative to limit intelligence activities regarding particular categories of persons, particularly journalists, to safeguard the confidentiality of their sources*."[201] It is a statement fully consistent with the

storage devices that were apprehended or intercepted, in all actions, to ensure compliance with subparagraph II of the chapeau of this article.

198 Argentina. Law 23,187 of June 25, 1985, Art. 7 "e". Lawyers shall have the following specific rights, notwithstanding any that may be granted under other legal provisions: (...) (e) Inviolability of their professional premises, to protect the constitutional guarantee of defense at trial. In cases of raids or searches, the competent authority that ordered the measure must notify the Bar Association at the time of the action, and the lawyer may request the presence of a member of the board of directors during the procedure, but this shall not entail suspension of the operation.

199 ECtHR, *André and Another v. France*, no. 18603/03, judgment of July 24, 2008, paras. 42 and 43.

200 Judgment, paras. 253, 285 and 286.

201 Judgment, para. 555.

tradition of inter-American jurisprudence, that recognizes the essential role of journalism in the preservation of democracy.

233. Already in its very early days, the Court, in advisory opinion 05 of 1985, identified journalism as the primary and principal manifestation of freedom of expression, leading to the duty of the State to guarantee freedom and independence for those who practice it.[202] Since that time, the Court has built a robust chain of precedents on the subject, producing requirements that the States must meet to guarantee the free and independent practice of journalism, along with specific safeguards that must be observed when any restriction is placed on this work. I had the opportunity to expand on this subject in separate opinions for the cases of *Moya Chacón et al. v. Costa Rica* (2022)[203] and *Baraona Bray v. Chile* (2022).[204]

234. The case now at hand, *CAJAR v. Colombia*, offers fertile ground for a better hermeutic on the protections granted under Article 13 of the Convention. One issue, which I examined above, is the right of access to information and the procedural guarantees for making this right actionable under the terms of informational self-determination. As I suggested, however, here I will focus on standards especially involving protection of the practice of journalism. From that perspective, there are two points that need to be emphasized.

235. The first is the reinforced duty of protection derived from the recognition of the right to defend human rights. Of course, there is no automatic equivalence between the work of a journalist and the role of a human rights defender. In an overall setting of persecution of anyone who publicly reports human rights violations, however, the protection systems for the two categories are interconnected. Recognition of the central role of human rights defenders in the debate on matters of public interest, as the Inter-American Court of Human Rights has held for a long time now,[205] also acknowledges the heavy burden of expounding the most inconvenient facts to the centers of power. This was the position I took in my separate opinion for the case of *Moya Chacón v. Costa Rica:*

> 63. In this regard, it should be taken into account that the legal protection granted to journalists not only should not be less, but rather should be more, owing to the collective (and instrumental) importance of their work in a democratic society. And it is the professional activities of the press that counteract the selective suppression of the circulation of information considered embarrassing for the State by introducing critical discourse on the exercise of public functions that are potentially aberrant.[206]

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[202] IACtHR. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 of the American Convention on Human Rights).* Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paras. 71 and 34.

[203] IACtHR. *Case of Moya Chacón et al. v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 23, 2022. Series C No. 451, separate opinion of Judge Rodrigo Mudrovitsch.

[204] IACtHR. *Case of Baraona Bray v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2022. Series C No. 481, separate opinion of Judge Pérez Manrique, Judge Ferrer Mac-Gregor Poisot, and Judge Rodrigo Mudrovitsch.

[205] In its contentious jurisdiction, the inseparable relationship between journalism and the promotion of debate on matters of public interest has been present at least since the *Ivcher Bronstein v. Peru* case. IACtHR. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs.* Judgment of February 6, 2001. Series C No. 74, para. 153.

[206] IACtHR. *Case of Moya Chacón et al. v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 23, 2022. Series C No. 451, separate opinion of Judge Rodrigo Mudrovitsch, para. 63.

236. The clear overlap between the role of journalist and that of defender is evident in the statement that the activities by defenders "of monitoring, denunciation, and education make an essential contribution to respect for human rights, because they act as guarantors against impunity, and in turn, they supplement the role of the States and the inter-American system overall."[207] If press professionals enjoy no guarantees when they report inconvenient truths, the result is a chilling effect, or fear of persecution, that serves as a true gag on public communication.[208]

237. In this same regard, the Court's tradition of protecting the right to freedom of expression is based on the peaceful understanding that impairment of this right will never stop at mere acts of prior censorship or the imposition of disproportionate penalties for alleged abuse.

238. This brings to mind the judgment in the case of *Vélez Restrepo v. Colombia*, concerning the State's responsibility for aggressions against a journalist who had taken pictures of acts of repression by the Colombian army against grass-roots protests. The Court did not hesitate to find that Article 13 of the Convention had been violated because the violence against the victim had prevented her from continuing to record the facts that were taking place, thus producing "a negative impact on other journalists who had to cover events of this type and would fear similar acts of violence."[209]

239. This is the same rationale that inspired the Court to find that violation of the right to defend human rights also includes the State's responsibility to safeguard the freedoms enshrined in Article 13 of the Convention.[210]

240. The second point addresses the objective limits that must be placed on the scope of State surveillance over journalistic work. It is clear from the judgment in this case that limits on intrusion by intelligence activities into the sphere of the professional practice of lawyers also applies to the press. In other words, free and independent journalism presupposes professional secrecy. This is how the standards put forth in the judgment need to be understood when they hold that intelligence operations in the area of journalism can be allowed only with prior judicial authorization.[211]

241. The interpretation of these guidelines must never lead to the conclusion that judicial oversight alone is enough to allow for unrestricted scrutiny of the professional work of journalists. There are inviolable limits that, because of the preeminent social role of the

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207 Judgment, para. 973.

208 On this point, see IACtHR. *Case of Baraona Bray v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2022. Series C No. 481, separate opinion of Judge Pérez Manrique, Judge Ferrer Mac-Gregor Poisot, and Judge Rodrigo Mudrovitsch, para. 36; IACtHR. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107; IACtHR. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs.* Judgment of November 22, 2005. Series C No. 135; IACtHR. *Case of Palacio Urrutia et al. v. Ecuador. Merits, Reparations and Costs.* Judgment of November 24, 2021. Series C No. 446.

209 IACtHR. *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.

210 Judgment, para. 982.

211 Judgment, para. 561.

profession, constrain the scope allowable to judicial decision. This is true for communication between lawyer and client and must be equally true for the information sources used by news media.

242. In other words, the journalistic source must always be considered untouchable. There is no room for judgment calls on proportionality or case-by-case analysis; instead, this in an unassailable category of information.

243. If a journalist is suspected of being involved in illegal activities, competent judicial authorities, meeting the requirements listed in the judgment, may authorize a program of surveillance activities, so long as any decision made is duly reasoned.

244. I would reiterate that these measures must never lead the oversight entity to uncover the identity of sources serving the person who is under surveillance or who is the target of the search and seizure operation. The judgment made it very clear that the grounds for the warrant authorizing such operations must be doubly solid, and the deciding judge must demonstrate the presence of clear evidence of unlawful acts by the subject and must ensure that the measure is proportionate.[212] Moreover, the objectives of the operation and the information being sought must be clearly established,[213] all of it in strict compliance with the guidelines set by the Convention and the Court's case law.

245. These precepts reaffirm the important standards on protection for the work of journalists, set forth in the recent *Moya Chacón v. Costa Rica (2022)* case. The Court explicitly said at that time that protection for journalistic sources is fundamental in a democratic society, as it allows the public to benefit from investigative journalism in the quest to strengthen governance and the rule of law.[214]

246. The guarantee of source confidentiality in Latin America tends to be enshrined in positive constitutional law. Examples include Argentina,[215] Brazil,[216] Ecuador,[217] and Paraguay.[218] It is a tenet that has also been widely accepted by the countries' high courts. For example, while it is not cited literally in the Constitution of Colombia, the country's

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212 Judgment, para. 561.

213 United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/70/361. September 8, 2015. Para. 62.

214 IACtHR. *Case of Moya Chacón et al. v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 23, 2022. Series C No. 451, para. 70.

215 Constitution of Argentina, Art. 43 (…) All persons may lodge this motion to discover what information is being held on themselves, and for what purpose, in public records or databases or in private repositories and that will be used to develop reports, and in case of untruths or discrimination, may demand that the data be erased, corrected, classified, or brought up to date. The confidentiality of journalistic sources of information shall not be broken.

216 Constitution of the Federative Republic of Brazil, Art. 5, XIV. - access to information and the protection of source confidentiality when necessary for professional practice.

217 Constitution of Ecuador, Art. 20 - The State shall guarantee the clause of conscience for all persons, and professional secrecy and source confidentiality for reporters, those who publish opinions through the media or other means of communication, or work in any communication activity.

218 Constitution of Paraguay, Art. 29: The practice of journalism in any form is free and is not subject to prior authorization. Journalists for the mass news media, in performing their duties, shall not be forced to act contrary to the dictates of their conscience or to reveal their sources of information.

constitutional court held that source confidentiality was a fundamental right "necessary to protect the independence of journalists, so they can practice their profession and uphold the right to information." The Colombian court found that this right reaches far beyond the mere identity of journalists' human sources, also protecting "their power to refuse, in general, to disclose all the documents that served as material for their work."[219]

247. The matter came under discussion in Brazil in the Motion on Breach of Fundamental Precept no. 130, with the argument that "the prerogative on source confidentiality, far from being a mere personal or private privilege, is in fact an essential means for the effective exercise of the constitutional right to provide information and thus can stand up against any body or authority of public power, regardless of the sphere of institutional action by agents of the State who may be involved."[220]

248. Under European *jus commune*, source confidentiality has been upheld as a fundamental building block for public access to information and a right that, in practice, boosts the transparency of decision-making processes and strengthens democracy.[221] Similarly, the Council of Europe adopted a recommendation in 2000, holding that communication interception, surveillance, and judicial searches should not be applied if their purpose is to circumvent the right of journalists not to reveal their sources, thus protecting their conversations, correspondence, belongings, and personal information related to their work. If such information is obtained illegally by police and judicial authorities, it may not be used subsequently.[222]

249. Just as safeguarding independent journalism entails clear limits on criminal prosecution, in line with the evolution of the Court's case law on freedom of expression, State interference of other kinds, as for example the use of intelligence activities, must also be restrained. Herein lies the significance of the progress marked by the *CAJAR v. Colombia* judgment.

V. Conclusion

250. The case of *CAJAR v. Colombia* opens unprecedented new avenues for protection of the rights recognized in this judgment and deepens important understandings of the Convention's norms of protection that have been consolidated over the past few decades in the Court's case law. Thus, the case recognizes the right to informational self-determination and the right to defend human rights as autonomous rights, directly enforceable. The Court

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[219] Constitutional Court of Colombia. Judgment T-594/ 17. Case file T- 6150833. Judgment of September 25, 2017.

[220] Federal Supreme Court of Brazil. Motion on Breach of Fundamental Precept no. 130/DF, Rapporteur Judge Carlos Britto. Done on April 30, 2009. Separate opinion by Judge Celso de Mello.

[221] European Parliament. Resolution on confidentiality for journalists' sources and the right of civil servants to disclose information, doc. A3-0434/93.

[222] Council of Europe. Recommendation. No. R (2000) 7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information.

has also opened new paths by setting standards of reinforced protection for the conditions of professional practice by lawyers and journalists, bolstering its understanding of the guarantee of independence in systems for the administration of justice. Equally important was the decision to leave the list of victims open ended, allowing for the innovative application of Article 35(2) of the Court's Rules of Procedure in view of the collective nature of the violations. This decision cleared a significant horizon of possibilities for future hermeneutical developments.

251. Even more, the case demonstrated its importance by discussing the tensions that technological development and the broad circulation of data bring to the world of human rights protection, creating spaces where episodes such as those described in the judgment could become recurrent in the countries in the region. This is why it is so important for the Inter-American Court, in the near future, to turn its attention toward new horizons of protection, such as the right to integrity of systems.

252. Finally, the ambitious and necessary set of reparations ordered in the judgment must be highlighted. The measures granted by the Court, especially those concerning reform of Law 1621 of 2013, are a point of convergence between the standards derived from the right to informational self-determination and the assertion that the violations coming before the Court are not isolated events limited to specific moments of history, but reveal a structural, systemic dimension. The judgment, by advocating for a detailed perusal of the legal framework regulating intelligence activities in Colombia, consolidated a historic understanding of the Court's tenets of review against the Convention, reaffirming the idea that the scope of its jurisdiction is defined, above all, by the principle of comprehensive redress.

Rodrigo Mudrovitsch
Judge

Pablo Saavedra Alessandri
Registrar