

**Inter-American Court of Human Rights**  
**Case of Valle Jaramillo *et al.* v. Colombia**  
**Judgment of November 27, 2008**  
**(*Merits, Reparations, and Costs*)**

In the case of *Valle Jaramillo et al.*,

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

Cecilia Medina Quiroga, President  
Diego García Sayán, Vice President  
Sergio García Ramírez, Judge  
Manuel E. Ventura Robles, Judge  
Leonardo A. Franco, Judge  
Margarette May Macaulay, Judge, and  
Rhadys Abreu Blondet, Judge;

also present,\*

Pablo Saavedra Alessandri, Secretary

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and with Articles 29, 31, 53(2), 55, 56 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers this judgment.

**I**

**INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE**

1. On February 13, 2007, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the Court, in accordance with the provisions of Articles 50 and 61 of the American Convention, an application against the Republic of Colombia (hereinafter "the State" or "Colombia"). This application originated from petition No. 12,415, forwarded to the Secretariat of the Commission on August 2, 2001, by the *Grupo Interdisciplinario por los Derechos Humanos* [Interdisciplinary Group for Human Rights] (hereinafter "GIDH"). On February 20, 2003, the Commission approved Admissibility Report No. 5/03 and, on October 16, 2006, it approved Merits Report No. 75/06 in the terms of Article 50 of the Convention,<sup>1</sup> which contained

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\* For reasons beyond her control, the Deputy Secretary, Emilia Segares Rodríguez, did not take part in the deliberation of this judgment.

<sup>1</sup> In the Report on merits, the Commission concluded that the State was responsible for the violation of the rights to life, humane treatment, personal liberty, and judicial protection embodied in Articles 4(1), 5, 7, 8(1), and 25 of the American Convention, as well as the general obligation to respect and ensure rights found in Article 1(1) thereof, to the detriment of Jesús María Valle Jaramillo and his next of kin. The Commission also found that Colombia was responsible for the violation of Articles 5 and 7 of the American Convention, to the detriment of Nelly Valle Jaramillo. Regarding Carlos Fernando Jaramillo, the Commission concluded that the State was responsible for

various recommendations to the State. Taking into consideration the “State’s report on the implementation of the recommendations included in the Report on the merits, and the lack of substantive progress in compliance with them,” the Commission decided to submit the instant case to the jurisdiction of the Court on February 13, 2007. The Commission appointed Víctor Abramovich, Commissioner, and Santiago A. Canton, Executive Secretary, as delegates, and Ariel E. Dulitzky, Elizabeth Abi-Mershed, Juan Pablo Albán A., Verónica Gómez, Andrea Repetto, and Karin Mansel as legal advisers.

2. In its application, the Commission alleged that:

On February 27, 1998, [...] two armed men entered Jesús María Valle Jaramillo’s office in [...] Medellín [where Carlos Fernando Jaramillo Correa and] Nelly Valle [Jaramillo], Jesús María Valle’s sister, were also present [...]. [Subsequently, a woman entered and, together with two armed men, proceeded to] tie up and immobilize the hostages [...]. Jesús María Valle was murdered with two shots to his head, [and] died instantly. [...] Following the extrajudicial execution, Mrs. Valle and Mr. Jaramillo Correa were dragged to the lobby, [where] they were threatened with guns [...]. [T]he perpetrators [then] left the office. [...] Carlos Fernando Jaramillo [...] had to go into exile because of his fears owing to the threats he had received. [...] The available evidence indicates that the motive for the murder was to silence the reports of the human rights defender Jesús María Valle about the crimes perpetrated in the municipality of Ituango by members of paramilitary forces in connivance with members of the Army [...]. [A]most nine years have passed [...], three civilians have been convicted *in absentia*, and there are no judicial investigations underway to determine whether State agents bear any responsibility.

3. Based on the above, the Commission alleged that the State is responsible for:

The [alleged] extrajudicial execution of the human rights defender Jesús María Valle Jaramillo; the [alleged] detention and cruel, inhuman, and degrading treatment that preceded it, to the detriment of Mr. Valle Jaramillo, Nelly Valle Jaramillo, his sister, and Carlos Fernando Jaramillo Correa [...]; the [alleged] lack of investigation and punishment of those responsible for these acts; the [alleged] lack of adequate reparation in favor of the [presumed] victims and their next of kin; and the [alleged] forced displacement that Mr. Jaramillo Correa suffered following the facts.

4. The Commission asked the Court to declare the international responsibility of the State for the violation of:

(a) Articles 4 (Right to Life), 5 (Right to Humane Treatment) and 7 (Right to Personal Liberty) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Jesús María Valle Jaramillo;

(b) Articles 5 (Right to Humane Treatment) and 7 (Right to Personal Liberty) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Nelly Valle Jaramillo Jaramillo (hereinafter “María Nelly Valle Jaramillo” or “Nelly Valle Jaramillo”) and Carlos Fernando Jaramillo Correa;

(c) Article 22 (Freedom of Movement and Residence) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Carlos Fernando Jaramillo Correa “and his next of kin”; and

(d) Articles 8(1) (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Nelly Valle Jaramillo, Carlos Fernando Jaramillo Correa, and “the next of kin” of Jesús María Valle Jaramillo.

Finally, the Commission asked the Court to order the State to adopt various measures of pecuniary and non-pecuniary reparation.

5. On May 9, 2007, the GIDH, represented by María Victoria Fallon Morales, Patricia Fuenmayor Gómez, and John Arturo Cárdenas Mesa, and the *Comisión Colombiana de Juristas* [Colombian Commission of Jurists] (hereinafter "CCJ"), represented by Gustavo Gallón Giraldo and Luz Marina Monzón Cifuentes, as representatives of the alleged victims and their next of kin (hereinafter "the representatives"), presented their brief with pleadings, motions, and evidence (hereinafter "brief with pleadings and motions" or "the representatives' brief"), in the terms of Article 23 of the Rules of Procedure. The representatives asked the Court to declare that the State had violated the same rights as those alleged by the Commission and, in addition, they alleged that the State was responsible for the violation of:

- (a) Article 5(1) (Right to Humane Treatment) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of "the next of kin of Jesús María Valle Jaramillo and Nelly Valle Jaramillo";
- (b) Article 13 (Freedom of Thought and Expression) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Jesús María Valle Jaramillo;
- (c) Article 22 (1) (Freedom of Movement and Residence) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of the following next of kin of Carlos Fernando Jaramillo Correa: Gloria Lucía Correa García, Carlos Enrique Jaramillo Correa, Carolina Jaramillo Correa, and María Lucía Jaramillo Correa;
- (d) Articles 8(1) (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of "all the [alleged] victims and their next of kin";
- (e) Article 11(1) and (2) (Right to Privacy) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Jesús María Valle Jaramillo, Carlos Fernando Jaramillo Correa, "and their/his next of kin";
- (f) Articles 5(1) (Right to Humane Treatment), 13 (Freedom of Thought and Expression), and 16 (Freedom of Association) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of "the indirect victims, [namely,] the human rights defenders"; and
- (g) Article 17 (Rights of the Family) of the Convention, to the detriment of "the next of kin of the victims."

Additionally, the representatives requested the adoption of certain measures of reparation and the reimbursement of the expenses incurred during the proceedings before the Court.

6. On July 9, 2007, the State, represented by Jorge Aníbal Gómez Gallego, Agent, and Pedro E. Díaz Romero, Deputy Agent, presented its brief in answer to the application and with observations on the representatives' brief (hereinafter "answer to the application"), in which it "partially acknowledged its international responsibility" for the violation of specific articles of the Convention as alleged by the Commission and the representatives, denied its

responsibility with regard to other alleged violations, and indicated that the State had not fostered an environment of harassment or persecution against human rights defenders (*infra* paras. 20 to 25 and 30 to 33).

## II PROCEEDINGS BEFORE THE COURT

7. On March 7, 2007, the Commission's application was notified to the State<sup>2</sup> and to the representatives. During the proceedings before the Court, the State, the Commission, and the representatives presented their principal briefs on the merits (*supra* paras. 1 to 6), and on August 10 and 14, 2007, respectively, the Commission and the representatives presented their observations on the State's acknowledgement of responsibility (*supra* para. 6 and *infra* paras. 26 and 27). On September 6, 2007, the State asked the Court not to take into account the allegations presented by the representatives in their observations of August 14, 2007, that were not relevant to the State's partial acquiescence (*supra* para. 6).

8. In an order of November 30, 2007, the Court required the presentation of nine testimonies and two informative statements proposed by the Commission, the representatives, and the State, all sworn before a notary public (affidavits), and granted the parties the opportunity to submit their respective observations. Additionally, in this order, modified by the note of the Secretariat of the Court of January 22, 2008, the Inter-American Commission, the representatives, and the State were convened to a public hearing so that the Court could receive the testimony of three witnesses, two expert witnesses, and one informative deponent, as well as the final oral arguments on the merits and possible reparations and costs.<sup>3</sup> The public hearing was held on February 6 and 7, 2008, during the Court's seventy-eighth regular session.<sup>4</sup> During this hearing, the State submitted various documents as evidence.

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<sup>2</sup> When the application was notified to the State, the Court asked for its opinion regarding the appointment of a judge *ad hoc* to participate in this case. On April 2, 2007, the State advised that it "waived its right to appoint a judge *ad hoc*" to hear the case.

<sup>3</sup> Order issued by the Inter-American Court of Human Rights on November 30, 2007, and note of the Secretariat of the Inter-American Court of January 22, 2008.

<sup>4</sup> The following persons attended the public hearing: (a) for the Inter-American Commission: Víctor Abramovich and Santiago A. Canton, Delegates, and Juan Pablo Albán, Karin Mansel, and Lilly Ching Soto, advisers; (b) for the representatives: María Victoria Fallon Morales, Patricia Fuenmayor Gómez, Luz Adriana Valle Noreña, John Arturo Cárdenas Mesa and Jael Quiroga Carrillo of the GIDH, and Gustavo Gallón Giraldo and Luz Marina Monzón Cifuentes of the *Comisión Colombiana de Juristas*; and (c) for the State: Jorge Anibal Gómez and Pedro Elías Díaz Romero, Agents, and Luis Guillermo Fernández, Colombian Ambassador to Costa Rica; (c) for the State: Jorge Anibal Gómez and Pedro Elías Díaz Romero, as Agents, and Luis Guillermo Fernández, Colombian Ambassador to Costa Rica; Clara Inés Vargas Silva, Director of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs; Mónica Barrera Romero, Director of National Judicial Defense of the Ministry of the Interior and Justice; Alex de Jesús Salgado, Director of Legal Affairs, Ministry of Defense; Juan Carlos Gómez Ramírez, Director of Human Rights of the Ministry of Defense; Francisco Javier Echeverri Lara, Director of the International Affairs Office of the Prosecutor General's Office; Carlos Franco, Director of the Human Rights and International Humanitarian Law Program of the Presidency of the Republic; Margarita Rey, Second Secretary of the Permanent Mission of Colombia to the Organization of American States; Héctor Adolfo Sintura, Adviser to the Legal Secretariat of the Presidency of the Republic; Paula Lizano Van Der Latt, Adviser to the Human Rights and International Humanitarian Law Directorate of the Ministry of Foreign Affairs; Isabella Mariño, Adviser to the Human Rights Directorate of the Minister's Office of the Ministry of Foreign Affairs; María Constanza Alonzo, Adviser to the National Judicial Defense Directorate of the Ministry of the Interior and Justice; Edith Claudia Hernández Aguilar, Coordinator for Defense before International Organizations of the Ministry of Defense; Sonia Uribe, Coordinator of the Litigation Group of the Ministry of Defense; Liliana Romero, Adviser to the International Affairs Office of the Office of the Prosecutor General; Amparo Cerón, Special Prosecutor of the Human Rights Unit of the Office of the Prosecutor General; and Alexandra Montenegro, Adviser to the Legal Secretariat of the Presidency of the Republic.

9. On March 10, 2008, the parties forwarded their respective briefs with final arguments. As requested by the Court, the State transmitted with this brief, *inter alia*, a transcript and recording of statements made by Salvatore Mancuso on January 15 and May 15, 2007, "in relation to General Alfonso Manosalva," as well as a copy of a payment authorization dated February 14, 2008, issued by the Ministry of the Interior and Justice, relating to the settlement agreement signed by the State and some of the alleged victims on April 26, 2007, and approved on September 28, 2007.

10. On April 23, 2008, the representatives forwarded two statements made by Francisco Enrique Villalba Hernández in February and March 2008, which contained information allegedly related to the case and, therefore, asked the Court to accept these statements as supervening evidence under Article 44(3) of the Court's Rules of Procedure. The State and the Commission were asked to submit any observations they deemed pertinent by May 26, 2008, at the latest. Also, in this communication, the representatives asked the Court "to reiterate its request that the State of Colombia forward the entire tape recording and typed transcript of the statement (*versión libre*) made by the paramilitary leader Salvatore Mancuso without editing and without altering the sequence."

11. On May 23, 2008, the Court informed the State that it was considering the request made by the representatives in the abovementioned communication of April 23, 2008 (*supra* para. 10). The Court also asked the State to forward the complete recording and transcript referred to in that communication by June 23, 2008, at the latest.

12. On June 3, 2008, the State presented observations on the statements made by Francisco Enrique Villalba Hernández that were remitted by the representatives on April 23, 2008 (*supra* para. 10), and reiterated that "it was neither appropriate nor necessary to send Mr. Mancuso's entire statement, which, in addition to being extensive, was not related to the facts of the instant case and was confidential." Nevertheless, on January 16, 2007, the State forwarded to the Court the "transcript of parts of the statement made by Salvatore Mancuso Gómez in the context of Law 975 of 2005," which had not been forwarded previously, (*supra* para. 9), but it did not provide the corresponding tape recording. Consequently, the State was requested to forward this recording by June 27, 2008, at the latest.

13. On June 6, 2008, the State presented "new information on progress made in relation to ensuring justice in the case." In this regard, on the instructions of the President of the Court, the Commission and the representatives were granted until June 27, 2008, to submit any observations they deemed pertinent.

14. On June 27, 2008, the Commission submitted observations on the "new information on progress made in relation to ensuring justice in the case" offered by the State on June 6, 2008 (*supra* para. 13). The same day, the representatives presented their observations on the briefs of the State of June 3 and 6, 2008 (*supra* paras. 12 and 13).

15. On July 7, 2008, the State sent two copies of the tape recording of the parts of the statement made by Salvatore Mancuso Gómez that it had already forwarded to the Court (*supra* paras. 9 and 12).

16. On July 31, 2008, the State asked, first, that the Court "not take into account the new allegations presented by the representatives [in the brief of June 27, 2008, (*supra* para. 14)] in violation of the [Court's] Rules of Procedure"; second, "that, should it decide to take into account the observations of the petitioners, it consider and include in the case file [...] the supplementary observations that the Colombian State [...] submitted in this brief

[requesting the Court] not to admit the statement made by Francisco Villalba [*supra* para. 10] in case number UNDH 2100 as part of the body of evidence in the instant case"; and third, that the Court find that "the State has complied with its obligation of forwarding [to the Court] the statement made by Salvatore Mancuso under the Justice and Peace Law."

17. With regard to the first two matters mentioned in the preceding paragraph, the parties were advised on August 25, 2008, that, when delivering its judgment in the instant case, the Court would assess the evidence submitted and decide on its admissibility together with that of the respective arguments and observations of the parties; which the Court will proceed to do *infra*. The third request indicated above (*supra* para. 16) was made to the Court during its eightieth regular session. In that regard, after evaluating the State's opinion, the Court decided to reiterate its previous position (*supra* paras. 11 and 12) and ask the State to forward the recording and the transcript of the complete statement made by Salvatore Mancuso under the Justice and Peace Law without editing it or altering the sequence. The Court advised the State that it would respect the confidentiality of this information and evaluate the pertinence of incorporating into the body of evidence aspects relevant to the case of Valle Jaramillo *et al.*, and that it would respect, as necessary, the right of the parties to contest the evidence against them.

18. On September 22, 2008, the State sent a brief, as well as a copy "of the recordings of all the occasions between 2006 and 2008 on which [Salvatore] Mancuso was brought before prosecutors" under the Justice and Peace Law. In this regard, the Court informed the State that, respecting the confidentiality of the information received, it had only forwarded to the Commission and the representatives a copy of the State's brief and its attachment. Moreover, the Court reiterated to the State that it would reserved for itself the review of the video recordings in order to evaluate the pertinence of incorporating the relevant parts concerning the instant case into the body of evidence.

### III JURISDICTION

19. The Court is competent to hear this case in the terms of Article 62(3) of the American Convention, because Colombia has been a State Party to the Convention since July 31, 1973, and accepted the compulsory jurisdiction of the Court on June 21, 1985.

### IV PARTIAL ACKNOWLEDGEMENT OF RESPONSIBILITY BY THE STATE

20. The State acknowledged its responsibility in its brief answering the application as follows:

- (a) It "acknowledged its international responsibility by omission, since it failed to comply with its obligation to guarantee the rights embodied in Articles:
- i. 4(1), 5 and 7(1), and 7(2) [of the Convention], with regard to Jesús María Valle Jaramillo;
  - ii. 5 and 7(1), and 7(2) [of the Convention], with regard to Nelly Valle Jaramillo[;]
  - iii. 5, 7(1) and 7(2), and 22 of the American Convention, with regard to Carlos Fernando Jaramillo Correa, all in relation to Article 1(1) thereof;

- iv. "22 of the Convention, [in relation to Article 1(1) thereof,] with regard to the direct nuclear family of Carlos Jaramillo Correa"; and
- v. "5 of the Convention, [in relation to Article 1(1) thereof], with regard to the direct nuclear family of the victims."

(b) It "partially acknowledged its responsibility for the violation of the right to judicial guarantees and protection embodied in Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) thereof, with regard to Jesús María Valle Jaramillo, Nelly Valle Jaramillo, Carlos Fernando Jaramillo Correa, and their respective direct nuclear families, [...] considering that judicial proceedings to sanction all the masterminds and perpetrators, discover the truth of what happened, and make reparation to some of the victims who are parties to the administrative proceedings are still underway";

(c) It indicated that "it had not violated the rights to privacy, freedom of expression and thought, and freedom of association referred to in Articles 11, 13, and 16, respectively, of the American Convention, in relation to Article 1(1) thereof, as the representatives of the alleged victims [alleged]," and

(d) It denied that "the State had fostered an environment of harassment, persecution, or violation of the rights of the human rights defenders or their organizations."

21. Furthermore, in its answer to the application, the State acknowledged "the facts that took place on February 27, 1998, with regard to Jesús María Valle Jaramillo, Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa [...]." In addition, the State specified whether or not it accepted as true each paragraph of the chapter on the facts in the application.

22. Regarding reparations, the State affirmed that:

It had found significant discrepancies between the claims in the application and those in the brief with pleadings, motions, and evidence [...]. Nevertheless, the State indicated that, in good faith, it had carried out several acts of reparation at the domestic level and that it intended to provide satisfaction and compensate the alleged victims and their next of kin in order to repair the damage caused and to guarantee the non-repetition of acts of such significance and impact on society. In this regard, [it] outline[d] other complementary measures of reparation, consistent with the case law of the inter-American system, that could be implemented by the State, should the Court deem them pertinent and order them.

23. During the public hearing held in this case (*supra* para. 8), and also in its brief with final arguments, the State reiterated its "acknowledgement of international responsibility," "in the terms of the brief answering the application."

24. In addition, the State indicated that:

There are discrepancies between the scope of the Report prepared by the Inter-American Commission under Article 50 of the American Convention and the scope of the application lodged before the Court. Nevertheless, the State, in good faith, acknowledge[d] its international responsibility in the abovementioned terms for [the violation] of several rights regarding which there is inconsistency between the proceedings before the Commission and the application. [...] The State [also indicated] that the acknowledgement of responsibility by omission with regard to Jesús María, Nelly Valle Jaramillo, and Carlos Fernando Jaramillo Correa's next of kin [...] was made in good faith and in observance of the Court's jurisprudence despite that the victims'

representatives only alleged the violation of the right to humane treatment embodied in Article 5 of the Convention in relation to Jesús María Valle's next of kin.

25. Referring to its acknowledgement of responsibility in its brief with final arguments, the State indicated that:

Colombia understands that its obligation to investigate [...] persists, [and thus,] because the State continues trying to identify those responsible, in keeping with this obligation it has acknowledged its responsibility for partial omission [...]. However, in the course of the investigations conducted to date, no evidence has been provided to prove the responsibility of any State agent and, consequently, [the State] has acknowledged [its] international responsibility [only] by omission in relation to the reprehensible facts that occurred on February 27, 1998, and to the processing of the criminal investigations and consequent violations.

[...]

In this case, the State of Colombia has indicated that the deplorable facts of the murder of Jesús María Valle Jaramillo, the deprivation of his liberty and that of Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa, the violation of the right to humane treatment of all of these, and the consequences of the situation of displacement on Carlos Fernando Jaramillo and his nuclear family, and on the next of kin of the other victims, occurred because the State failed to comply with the obligation to guarantee rights. Furthermore, the consequences of some shortcomings on the investigations and judicial proceedings, opened in compliance with the State's obligation to investigate, which corresponds to the right of the victims and their next of kin to know what happened, also occurred due to omissions in complying with its duty to guarantee rights.

[...]

[During the public hearing,] the State expressed its willingness to apologize to the victims and their next of kin [...]; this derives from its acknowledgement of the deplorable facts of the case. Since this was not possible, at this time the State wishes to indicate the following:

Nelly Valle Jaramillo, Carlos Fernando Jaramillo Correa, and members of your direct nuclear families: the State of Colombia apologizes to you [...] because you were the victims of the reprehensible events [of February 27, 1998,] that severely harmed your life and your personal development and had a significant impact on your possibility of enjoying optimal living conditions. Consequently, the State [...] expresses its solidarity and indicates that, even though all the harm you suffered cannot be eliminated entirely, it will do everything within its power to assist you and do whatever, as a State, it should do to make integral reparation for the omissions of State agents and for the harm caused to you by the facts of this case [...].

The State of Colombia regrets profoundly the violation of the rights of Jesús María Valle Jaramillo to personal liberty, humane treatment, life, and judicial guarantees and protection, in relation to the general obligation to guarantee the rights established in the American Convention [...], due to the omission of some of its agents and acknowledges to you, the next of kin, the responsibility that it bears for omission in relation to the above facts. Similarly, it deeply regrets what happened to Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa due to the violation of their personal liberty and personal integrity and, regarding the latter and his direct family, for the violation of their right to freedom of movement and residence.

[In addition,] the State acknowledges the violation of the rights of Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa, and their respective direct nuclear families, to humane treatment and to judicial guarantees and protection, and apologizes for this also. The State of Colombia hopes that this apology will help mitigate the vacuum left and the pain caused to the victims and their next of kin by the tragic loss of Jesús María Valle Jaramillo and the violation of the said rights, and sincerely undertakes to maintain the measures it has been adopting and those decided by the Court in order to avoid a recurrence of such painful events [...].

Evidently, the apology made by the State in this brief in no way precludes carrying out a public act of acknowledgement with the participation of the corresponding authorities, [...] if the Court so decides [...].

26. In its observations on the State's partial acknowledgment of responsibility, as well as during the public hearing and in its brief with final arguments, the Commission took "note of



the partial acknowledgement of the facts” and indicated that it “regarded this decision by the State as a measure that contributes to resolving the case.” However, it considered that:

The State’s acknowledgement of international responsibility arises from an interpretation of the facts that differs from the one described in the Commission’s application brief and in the brief with pleadings, motions, and evidence. In this regard, [...] neither the juridical implications of those facts nor the pertinence of the reparations requested by the parties have been totally accepted by the State.

Specifically, the Commission indicated that:

According to the State, its omission to comply with the obligation to guarantee rights by failing to protect an individual who was known to be in danger is the only source of its responsibility; however, [according to the Commission], in addition to this, the State’s responsibility arises from the acts and omissions of its officials in the investigations into the facts and from the acts of members of the paramilitary group, inasmuch as the State itself contributed to the legal and factual structure on which its existence was based.

Consequently, the Commission asked the Court that:

It accept as proven those facts that have been accepted unconditionally and without reservations as totally true by the State; in keeping with its powers, make its own determination of the facts that remain in dispute; and rule on the matters that remain in dispute relating to the assessment and juridical consequences of both the facts acknowledged by the State and those proved by the evidence.

27. In its brief with observations on the partial acknowledgement of responsibility made by the State, as well as during the said public hearing, the representatives asked the Court “not to accept the acknowledgement of responsibility based on omission proposed by the State.” They considered that:

The State’s acknowledgement of responsibility in this particular case has no real content and constitutes only a legal formula that not only attempts to hide the gravity of the State crime committed against Jesús María Valle, but is also used [by the State] as a mechanism to present itself as respectful of the international human rights obligations and commitments it has assumed. [...] [The representatives added] that the State’s intention that the Court declare its responsibility exclusively with regard to omission of the obligation to guarantee rights gravely affects the exercise of the rights to the truth, justice, and adequate and integral reparation for the victims. [...] Colombia [...] should guarantee that its acknowledgement of responsibility will allow the impunity of the State agents involved in the human rights violations to be overcome, rather than serve to cloak impunity. [The representatives’] rejection of the meaning and scope of the State’s acknowledgement of responsibility does not arise merely from the fact that it is a partial acknowledgement, but from the fact that an acknowledgement of responsibility by omission excludes the participation of State agents as co-authors, accomplices, or instigators in the alleged violations and has the effect of restricting the expectations of truth and justice of the victims and their next of kin[. A]lso, it has a direct impact on the determination of the measures of reparation designed to prevent a repetition of facts of this nature [...].

28. According to Articles 53(2) and 55 of the Rules of Procedure, in the exercise of its inherent powers of international judicial protection of human rights, the Court can determine whether an acknowledgement of international responsibility made by a defendant State offers sufficient grounds, according to the American Convention, to continue hearing the merits and deciding the possible reparations and costs. To this end, the Court examines the circumstances of each specific case.<sup>5</sup> Consequently, it will proceed to define the meaning and scope of the partial acknowledgement of responsibility made by the State and the extent of the subsisting dispute.

<sup>5</sup> Cf. *Myrna Mack-Chang v. Guatemala*. Merits, reparations and costs. Judgment of November 25, 2003. Series C No. 101, para. 105; *Albán Cornejo et al. v. Ecuador*. Merits, reparations and costs. Judgment of November 22, 2007. Series C No. 171, para. 14; and *Chaparro Alvarez and Lapo Iñiguez v. Ecuador*. Preliminary objection, merits, reparations and costs. Judgment of November 21, 2007. Series C No. 170, para. 27.

29. Bearing in mind the information provided by the parties (*supra* paras. 20 to 27) and based on its own case law, the Court decides to accept the State's partial acknowledgement of responsibility and consider it a partial acceptance of the facts and a partial acquiescence to the legal claims and the claims for reparation contained in the Commission's application, as well as a partial acceptance of the claims made by the representatives.

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30. The Court finds that the dispute has ceased in relation to those facts described in paragraphs 34, 35, 37 to 43, 45 to 49, and 51 to 62 of the application, with the exception of the following clarifications mentioned by the State, which remain in dispute:

(a) Regarding paragraph 38,<sup>6</sup> the State acknowledged that on "July 10, 1997, Jesús María Valle [Jaramillo] denounced in the media the joint action of troops attached to the Fourth Brigade and paramilitary groups [and that, in] response, an action for defamation and slander was filed at the request of members of the Army." However, it "question[ed] the testimony of Carlos Fernando Jaramillo Correa [...] affirming that 'the Governor of Antioquia at the time had stated publicly that 'Dr. Valle would appear to be an enemy of the Armed Forces,' because this is not corroborated by any other evidence attached to the application";

(b) Regarding paragraph 53,<sup>7</sup> the State indicated that, although it had "acknowledged its responsibility in the proceedings before the Court [in the *case of the Ituango Massacres*,] it has not been proved [in the instant case] that State agents took part in the grave facts of the extrajudicial execution of Jesús María Valle Jaramillo or the other violations of which he was a victim together with his sister, Nelly Valle Jaramillo, and Carlos Fernando Jaramillo, or that State agents sponsored or promoted them";

(c) regarding paragraph 56,<sup>8</sup> the State did not accept as true that some of the "known leaders of the [United Self-Defense Forces of Colombia (hereinafter 'AUC')]" were in "daily contact with the press or with State authorities";

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<sup>6</sup> Paragraph 38 of the application states: "On July 10, 1997, Jesús María Valle Jaramillo denounced in the media the joint action of troops attached to the Fourth Brigade and paramilitary groups. In response, an action for defamation was filed at the request of members of the Army. Carlos Fernando Jaramillo Correa's testimony states that, in this context, the Governor of Antioquia at the time declared publicly that 'Dr. Valle would appear to be an enemy of the Armed Forces.'"

<sup>7</sup> Paragraph 53 of the application indicates: "In brief, on February 27, 1998, Carlos Fernando Jaramillo Correa, Nelly Valle, and Jesús María Valle were held hostage by armed men, and the latter was killed in a state of total defenselessness. The available probative elements indicate that the motive for the murder was to silence the accusations of the human rights defender Jesús María Valle regarding the crimes perpetrated in the Municipality of Ituango by paramilitary groups in connivance with members of the Armed Forces, events for which the Inter-American Court of Human Rights has declared the State's international responsibility."

<sup>8</sup> Paragraph 56 of the application indicates: "Even though the ten individuals implicated were called in for questioning, three of them (Carlos Castaño Gil and two civilians eventually convicted as perpetrators of the offenses) never appeared before the authorities, and the order for their arrest was never executed; consequently, the investigation and trial were carried out in the absence of the accused. In this regard, the Commission notes, as it has in the past, that in cases of known AUC leaders implicated in proceedings concerning the perpetration of serious offenses, arrest warrants were not executed despite the daily contact of those persons with the press and, on occasion, with authorities of the State itself."

(d) Regarding paragraph 57,<sup>9</sup> the State clarified that one of the two prosecutors indicated in the application did not go into exile, but “was sent abroad by the Prosecutor General on a study mission and, on his return to the country, continued his association with the Prosecutor’s Office until he retired”;

(e) Regarding paragraph 60,<sup>10</sup> the State added that by December 4, 2006, “[two-former members of the [AUC] had been charged as allegedly responsible for the offenses of aggravated murder, simple kidnapping, and conspiracy to commit a crime. Also, [a] former member of the AUC had been charged and an order for his arrest issued for the same facts; he was captured on September 28, 2006, and subjected to a preliminary hearing, and his judicial situation is pending a decision”;

(f) regarding paragraph 61,<sup>11</sup> the State indicated that “the National Human Rights and International Humanitarian Law Unit of the Prosecutor General’s Office heard statements of [the two] former members of the AUC [named in the application] and declared them presumably responsible for the offenses of murder and simple kidnapping, to the detriment of Jesús María Valle, Nelly Valle Jaramillo, and Carlos Fernando Jaramillo Correa, and ordered their preventive detention by a ruling of June 8, 2007[...]. These individuals remain deprived of their liberty”;

(g) regarding paragraph 62,<sup>12</sup> the State clarified that “judicial investigations have been opened by the Human Rights and International Humanitarian Law Unit and by the Justice and Peace Unit of the Prosecutor General’s Office to establish whether State agents took part in the facts and, if so, which agents and in what circumstances”, and

(h) in general, the State denied that it “had fostered an environment of harassment, persecution, and violation of the rights of human rights defenders or their organizations.”

31. The State did not accept as true the contents of paragraph 36 of the application, which indicated that there was “evidence that Mr. Valle Jaramillo’s name was on the list of ‘people who could be eliminated’ (*eliminables*) due to his public declarations denouncing the joint activities of the Army, the Fourth Brigade, and the Girardot Battalion with paramilitary groups in Ituango and neighboring municipalities.” Nor did it accept the affirmation made in the same paragraph that the “animosity of members of the Army towards Jesús María Valle Jaramillo arose from the human rights defender’s report on the connections and

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<sup>9</sup> Paragraph 57 of the application indicates: “The failure to execute the arrest warrants should be added to the context of intimidation in which the investigations were conducted and which led to the withdrawal of the prosecutors whose efforts had resulted in the charges against the ten civilians initially implicated [in the crimes]. Indeed, the prosecutors who prepared the first phase of the investigation and charged the accused received death threats and, in two cases, were forced to go into exile.”

<sup>10</sup> Paragraph 56 of the application indicates: “On January 21, 2005, the Prosecutor General of the Republic assigned one of the investigations arising from the rupture in the proceedings to the National Human Rights Unit. However, as of the date of this report, we are unaware of any progress in this investigation and have no information on whether any State agents have been implicated in the investigations.”

<sup>11</sup> Paragraph 61 of the application indicates: “On January 26, 2007, the State reported that, on September 28, 2006, a former member of AUC implicated in the investigation was detained, together with [two other] former members of AUC. However, prosecutors have yet to issue a decision on the possible responsibility of these persons for the facts [of the instant case].”

<sup>12</sup> Paragraph 62 of the application indicates, “In short, almost nine years after the human rights defender Jesús María Valle Jaramillo was extrajudicially executed, and Nelly Valle and Carlos Fernando Jaramillo were held hostage, three civilians have been convicted *in absentia* and no judicial investigations exist to determine any responsibility of State agents.”

collaboration of members of the Army with paramilitary groups." Consequently, the Court finds that these alleged facts are still in dispute.

32. Regarding paragraphs 44 and 50 of the application, the State indicated that it did not accept them as true, because "they do not deal with the facts, but [...] are the [Commission's] conclusions when giving an opinion and an interpretation of the preceding facts, and this corresponds to the Court."

33. The State also indicated that the "facts presented by the representatives [...] in paragraphs 6[6].1 to 6[6].8 [of the brief with pleadings and motions] constitute new facts that do not appear in the Inter-American Commission's application and, therefore, the State asks the Court to exclude them from its analysis."

34. In this regard, the Court has indicated on many occasions that it is not admissible to allege new facts that differ from those described in the application, without prejudice to describing facts that can explain, clarify, or refute those mentioned in the application or respond to claims made by the plaintiff.<sup>13</sup> The Court observes that the factual assumptions indicated in the said paragraphs 56, 57 and 66(1) to 66(8) of the representatives' brief refer to the alleged context or pattern of violations allegedly experienced by human rights defenders in Colombia at the time of the facts. The Court considers that these alleged facts, if they are proved to be true, would clarify for the Court the context or the alleged pattern of violations mentioned by the Commission in its application. Therefore, the Court rejects the State's request "to exclude them from its analysis" and finds that they remain in dispute.

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35. Regarding the legal claims, the Court finds that according to the terms of the State's acknowledgement of responsibility, the dispute has ceased with regard to the State's international responsibility arising from its "omission in complying with its obligation to guarantee the rights embodied in Articles 4(1), 5 and 7(1), and 7(2) [of the Convention] with regard to Jesús María Valle Jaramillo; Articles 5 and 7(1), and 7(2) [of the Convention] with regard to Nelly Valle Jaramillo[; and] Articles 5, 7(1) and 7(2), and 22 of the American Convention with regard to Carlos Fernando Jaramillo Correa, all in relation to Article 1(1) thereof"; as well as for the violation of Article "22 of the Convention [in relation to Article 1(1) thereof], with regard to the direct nuclear family of Carlos Jaramillo Correa," and "Article 5 of the Convention, [in relation to Article 1(1) thereof], with regard to the direct nuclear families of the victims." Likewise, the dispute has ceased with regard to the State's responsibility for the violation of "the rights embodied in Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) thereof, with regard to Nelly Valle Jaramillo, Carlos Fernando Jaramillo Correa, and [their] respective direct nuclear families" and of Jesús María Valle Jaramillo. Despite the State's acquiescence, the Court will rule on the alleged violation of the rights embodied in Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Jesús María Valle Jaramillo in the corresponding chapter (*infra* para. 170).

36. Since the State acknowledged its responsibility "due to [its] omission in complying with its obligation to guarantee rights" and the Commission and the representatives alleged,

<sup>13</sup> Cf. "Five Pensioners" v. Peru. Merits, reparations and costs. Judgment of February 28, 2003. Series C No. 98, para. 153; Bayarri v. Argentina. Preliminary objection, merits, reparations and costs. Judgment of October 30 2008. Series C No. 187, note 16, and Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs. Judgment of August 12, 2008. Series C No. 186, para. 228;

although to different degrees, that the State's responsibility in this case should also be declared based on the "acts" of State agents, the Court finds that a dispute still subsists regarding the legal claims put forward in this case, which will be examined in the corresponding chapters of this judgment.

37. In addition, the State disputed the violations alleged by the representatives relating to the rights established in Articles 11, 13, 16, and 17 of the Convention; hence, the Court finds that a dispute subsists in this regard. In light of the facts that the State has acknowledged to be true, as well as those that the Court considers proved based on the evidence presented in the instant case, the Court will examine the pertinent arguments in the corresponding chapters.

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38. Regarding the identification of the victims, the Court observes that the State "in good faith and respecting the Court's jurisprudence," identified the following individuals as "injured parties":

Jesús María Valle Jaramillo for the violation of the rights embodied in Articles 4(1) (Right to Life), 5 (Right to Humane Treatment), 7(1) and 7(2) (Right to Personal Liberty), 8(1) (Judicial Guarantees), and 25(1) (Right to Judicial Protection), all in relation to Article 1(1) of the American Convention, and the next of kin of Jesús María Valle Jaramillo: María Leticia Valle Jaramillo (sister), Ligia Valle Jaramillo (sister), Luzmila Valle Jaramillo (sister), Magdalena Valle Jaramillo (sister), Romelia Valle Jaramillo (sister), Marina Valle Jaramillo (sister, deceased) (and as beneficiaries Mauricio Alberto Herrera Valle, Claudia Helena Herrera Valle, and Lilibian María Herrera Valle), Darío Valle Jaramillo (brother), and Octavio Valle Jaramillo (brother) (and as beneficiaries Juan Guillermo Valle Noreña, John Jairo Valle Noreña, Berta Lucía Valle Noreña, and Luz Adriana Valle Noreña), for the violation of the rights embodied in Articles 5 (Right to Humane Treatment), 8(1) (Judicial Guarantees), and 25(1) (Right to Judicial Protection), in relation to Article 1(1) of the American Convention[:]

[...]

[...] Nelly Valle Jaramillo, for the violation of the rights embodied in Articles 5 (Right to Humane Treatment), 7(1) and 7(2) (Right to Personal Liberty), 8(1) (Judicial Guarantees) and 25(1) (Judicial Protection), in relation to the general obligation (1(1)) and her direct nuclear family: Alfonso Montoya Restrepo (husband) and Luis Fernando Montoya Valle (son) for the violation of the rights embodied in Articles 5 (Right to Humane Treatment), 8(1) (Judicial Guarantees) and 25(1) (Judicial Protection) in relation to the general obligation (1(1))[:]

[...]

[...] Carlos Fernando Jaramillo Correa, for the violation of the rights embodied in Articles 5 (Right to Humane Treatment), 7(1) and 7(2) (Right to Personal Liberty), 8(1) (Judicial Guarantees), and 25(1) (Right to Judicial Protection) in relation to the general obligation (1(1)) and his next of kin for the violation of Articles 5 (Right to Humane Treatment), 8(1) (Judicial Guarantees) and 25(1) (Right to Judicial Protection), Gloria Lucía Correa (wife), Carlos Enrique Jaramillo Correa (son), María Lucía Jaramillo Correa (daughter), Ana Carolina Jaramillo Correa (daughter), Jesús Emilio Jaramillo Barrera (father), Adela Correa de Jaramillo (mother), Blanca Lucía Jaramillo Correa (sister), Romelia Jaramillo Correa (sister), Nellyda Jaramillo Correa (sister), José María Jaramillo Correa (brother) (and as beneficiaries: Juliana Jaramillo Tobón and Santiago Jaramillo Tobón), Luis Eugenio Jaramillo Correa (brother), Gloria Elena Jaramillo Correa (sister) and Adriana María Jaramillo Correa (sister)[, and]

[...] regarding Carlos Fernando Jaramillo Correa and his direct nuclear family for the violation of Article 22 (Freedom of Movement and Residence) in relation to the general obligation to respect rights (Article 1(1)), Gloria Lucía Correa (wife), Carlos Enrique Jaramillo Correa (son) and María Lucía Jaramillo Correa (daughter).

[...] However, in relation to the cousins and nephews and nieces of the direct victims, the State, in keeping with the Court's jurisprudence, has determined that their status must be

authenticated. In other words, with regard to the following: Francisco Javier García Valle, Juan Guillermo Valle Noreña, John Jairo Valle Noreña, Jairo Alberto Londoño Del Valle, John Alberto Henao Valle, Franklin Henao Valle, Fredy Henao Valle, Mauricio Alberto Herrera Valle, Andrés Felipe Valle Villegas, Oscar Fernando Hoyos Jaramillo, Andrés Felipe Ochoa Jaramillo, Diego Alejandro Ochoa Jaramillo, Juan Gonzalo Jaramillo Mejía, Alejandro Jaramillo Mejía, Santiago Jaramillo Tobón, Juan Camilo Jaramillo Gutiérrez, César Augusto Jaramillo Gutiérrez, Jorge Mario Jaramillo Gutiérrez, Luis Jairo Jaramillo Gutiérrez, Marta Luz García Valle, Diana Patricia García Valle, María Victoria García Valle, Claudia María García Valle, Berta Lucía Valle Noreña, Luz Adriana Valle Noreña, Juliana Patricia Londoño Del Valle, Adriana María Londoño Del Valle, Jannette Henao Valle, Claudia Helena Herrera Valle, Liliana María Herrera Valle, Ana María Valle Villegas, Ana Catalina Hoyos Jaramillo, María Isabel Jaramillo Mejía, Juliana Jaramillo Tobón, Luisa María Gómez Jaramillo, Gabriela Gómez Jaramillo and Victoria Alejandra Gómez Jaramillo, the State indicated that their close affective ties had not been proved.

39. Regarding the “cousins and nephews and nieces of the direct victims” indicated in the preceding paragraph, the Court considers that a dispute subsists regarding their status as victims. The Court observes that the State failed to mention among the “cousins and nephews and nieces of the direct victims” José Miguel Jaramillo Gutiérrez, nephew of Carlos Fernando Jaramillo Correa, who appears in the evidence forwarded by the representatives as an attachment to the brief with pleadings and motions (*infra* para. 131), so that a dispute subsists with regard to whether he is a victim of the violation of Article 5(1) of the Convention.

40. Moreover, the Court observes that the State did not recognize Gonzalo de Jesús Jaramillo Correa, who is another of Carlos Fernando Jaramillo Correa’s siblings (*infra* para. 130), as a victim of the violation of Article 5(1) of the Convention, so that a dispute also subsists in this regard.

41. In addition, the Court observes that the State failed to mention Ana Carolina Jaramillo Correa, who is also Carlos Fernando Jaramillo Correa’s daughter, as a victim of the violation of Article 22 of the Convention, so that a dispute subsists in this regard.

42. Furthermore, the State indicated that “the birth certificate of Gilma Valle Jaramillo (sister, deceased) (and as beneficiaries: John Alberto Henao Valle, Franklin Henao Valle, Fredy Henao Valle and Jeannette Henao) had not been provided.” Consequently, it argued that “the relationship with Jesús María Valle Jaramillo [had not been proved] or the date of her decease, in order to know whether she fulfils the requisites of injured party.” Accordingly, the Court finds that the dispute subsists regarding the status of victim or injured party of these individuals.

43. The State also contested “the claim of the representatives to include human rights defenders as new victims, because (i) [they] were not included as victims in the proceedings before the [Commission, and were not identified in the application], and (ii) a contentious case is not an *actio popularis*.” Consequently, the dispute on this point also subsists.

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44. Regarding the measures of reparation, as indicated above, the State affirmed that:

It found that there were significant discrepancies as regards the claims made in the application and those in the brief with pleas, motions and evidence [...]. Nevertheless, the State indicated that, in good faith, it had carried out some domestic acts of reparation and that it intended to compensate and provide satisfaction to the alleged victims and their next of kin, to repair the damage caused and to guarantee the non-repetition of acts of this significance and impact on society. In this regard, [it] outline[d] other complementary measures of reparation, consistent

with inter-American case law that could be implemented by the State, should the Court deem them pertinent and order them.

45. Therefore, the Court finds that a dispute subsists regarding certain claims relating to reparations and costs.

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46. Based on all the above, the Court finds that the State's position constitutes a positive contribution to the development of these proceedings, to the satisfactory functioning of the inter-American human rights jurisdiction, to the exercise of the principles that inspire the American Convention and to the conduct that the States are obliged to observe in this regard<sup>14</sup> as a result of the commitments they assume as parties to international human rights instruments.

47. The Court observes that despite the State's partial acknowledgement of facts and its acquiescence with regard to several claims of the parties, it is still necessary to define the importance and gravity of the violations perpetrated in the instant case. Consequently, based on its powers to ensure the greatest protection of human rights, the Court finds it necessary to deliver a judgment in which it establishes the facts and determines the merits of the case, as well as their corresponding consequences. This constitutes a form of reparation for the victims and their next of kin and also contributes to the preservation of historical memory, to the non-repetition of similar facts, and, in brief, to achieving the purposes of the inter-American system for the protection of human rights.<sup>15</sup>

48. Hence, without prejudice to the scope of the partial acknowledgment of facts made by the State, the Court finds it pertinent to assess the facts of the instant case, both those acknowledged by Colombia and those included in the application and indicated by the representatives that explain, elucidate, or allow the Court to reject the facts mentioned in the application. In addition, the Court finds it necessary to clarify the way in which the violations occurred in the context and circumstances of the case and the scope of the obligations established in the American Convention, and will include the respective chapters. These clarifications will contribute to the development of case law on the subject and thereby to the protection of human rights.

## V EVIDENCE

49. Based on the provisions of Articles 44 and 45 of the Rules of Procedure, as well as on the Court's jurisprudence concerning evidence and its assessment,<sup>16</sup> the Court will evaluate the documentary probative elements submitted by the Commission, the representatives, and the State at different procedural opportunities or as helpful evidence requested by the President and the Court, as well as testimonial and informative statements and opinions sworn before notary public (affidavits) or provided during the public hearing before the

<sup>14</sup> Cf. *Benavides Cevallos v. Ecuador. Merits, reparations and costs*. Judgment of June 19, 1998. Series C No. 38, para. 57; *Kimel v. Argentina. Merits, reparations and costs*. Judgment of May 2, 2008. Series C No. 177, para. 25, and *Case of Albán Cornejo et al.*, *supra* note 5, para. 24.

<sup>15</sup> Cf. *Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79; *Kimel*, *supra* note 14, para. 28, and *Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 166, para. 31.

<sup>16</sup> Cf. *The "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 25, 2001. Series C No. 76, para. 50; *Bayarri*, *supra* note 13, para. 31, and *Heliodoro Portugal*, *supra* note 13, para. 64.

Court. To this end, the Court will abide by the principles of sound judicial discretion, within the corresponding legal framework.<sup>17</sup>

**A) DOCUMENTARY, TESTIMONIAL, AND EXPERT EVIDENCE**

50. At the request of the Court and of the President,<sup>18</sup> the Court received the testimonies and informative statements of the following persons sworn before notary public (affidavits):<sup>19</sup>

(a) *Rafael Alberto Rincón Patiño*, witness proposed by the Commission and the representatives, was a lawyer and friend of Jesús María Valle Jaramillo and a former Municipal Attorney of Medellín. He testified on Jesús María Valle Jaramillo's professional qualities, experience, and exercise of the legal profession. He also referred to public policies and actions to confront the violence and the human rights situation in the Department of Antioquia during the period 1995-1998, when he worked as Municipal Attorney; on the type of activities or actions implemented by the authorities with human rights organizations for the defense of these rights; and on the dangerous conditions faced by Jesús María Valle Jaramillo before his murder;

(b) *Fernando María Velásquez Velásquez*, witness proposed by the representatives, was a lawyer and friend of Jesús María Valle Jaramillo. He testified on Jesús María Valle Jaramillo's professional qualities, experience, and exercise of the legal profession, referring to the obstacles confronted by the latter in the practice of his profession;

(c) *Saúl Jaramillo Giraldo*, witness proposed by the representatives, veterinarian, who worked with the Jaramillo Correa family in their agricultural enterprises and is a friend of Carlos Fernando Jaramillo Correa. His testimony referred to the family relations before the facts of the instant case and the consequences of the exile of Carlos Fernando and his family group on the Jaramillo Correa family;

(d) *María Amanda Correa Zuleta*, witness proposed by the representatives, is a friend of the Jaramillo Correa family. She testified about the family relations before the facts and the consequences of the exile of Carlos Fernando and his family group on the Jaramillo Correa family;

(e) *Darío Arcila Arenas*, witness proposed by the representatives, is a lawyer and was a colleague of Jesús María Valle Jaramillo. He testified on the impact of the death of Jesús María Valle Jaramillo on the work of human rights defenders. He also referred to the family relations of Jesús María Valle Jaramillo, to the origin of the financial resources that covered his personal expenses and those of his family, and on the emotional impact that the family suffered owing to his death;

(f) *Juan Guillermo Valle Noreña*, witness proposed by the representatives, is Jesús María Valle Jaramillo's nephew. His testimony related to the family

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<sup>17</sup> Cf. the "*White Van*" (*Paniagua Morales et al.*) v. *Guatemala*. Merits. Judgment of March 8, 1998. Series C No. 37, para. 52; *Case of Bayarri*, *supra* note 13, para. 31, and *Case of Heliodoro Portugal*, *supra* note 13, para. 64.

<sup>18</sup> Order issued by the Inter-American Court of Human Rights on November 30, 2007, and note of the Secretariat of the Inter-American Court of Human Rights of January 22, 2008, *supra* note 3.

<sup>19</sup> In its communication of January 10, 2008, the Inter-American Commission informed the Court that it desisted from presenting the sworn statement of the witness Magdalena Valle Jaramillo.



relationships, and to the emotional impact and financial consequences of Jesús María Valle Jaramillo's death for the Valle Jaramillo family. He also referred to the fact that the State had not granted any financial compensation to the Valle Jaramillo family and to the reparations he considered should be made;

(g) *Rafael Bustamante Pérez*, witness proposed by the State, is a lawyer and Director for Human Rights of the Ministry of the Interior and Justice. He testified about the nature, structure, and coverage of the Ministry's human rights protection program;

(h) *Jairo Alberto Cano Pabón*, witness proposed by the State, is Comptroller General. His informative statement referred to the documentation and arguments provided by the representatives of the alleged victims with regard to the scale of the productive and commercial activities of Carlos Fernando Jaramillo Correa and his direct nuclear family; and

(i) *José G. Patiño Escobar*, witness proposed by the State, is Assistant Manager of Productive and Social Development of the Colombian Rural Development Institute (INCODER). His informative statement referred to the agricultural expert opinion offered by the representatives as evidence in this case, emphasizing the technical parameters used to calculate production costs, production indicators, income, indirect damage, and loss of earnings.

51. During the public hearing in the instant case, the Court received the statements of the following witnesses, expert witnesses, and informative deponent:

(a) *Nelly Valle Jaramillo*, alleged victim and witness proposed by the Commission. She testified, *inter alia*, about the facts that occurred on February 27, 1998; the alleged obstacles faced by Jesús María Valle Jaramillo's family in the search for justice, and the consequences of the facts of this case on her personal life and on the family of Jesús María Valle Jaramillo;

(b) *Carlos Fernando Jaramillo*, alleged victim and witness proposed by the Commission. He testified, *inter alia*, about the circumstances in which he was displaced within the country and, subsequently, forced to go into exile as a result of his collaboration with the investigations into the human rights violations that are the subject of this case;

(c) *Beatriz Eugenia Jaramillo de González*, witness proposed by the representatives, member of the "Héctor Abad Gómez" Permanent Human Rights Committee, accompanied Jesús María Valle at his last meeting with the then Governor of Antioquia before [Valle Jaramillo] was murdered. She testified about the socio-political context and the human rights situation in Antioquia that led to the alleged threats and subsequent murder of Jesús María Valle, as well as other aspects related to the context of the facts of this case;

(d) *Rainer Huhle*, expert witness proposed by the representatives, expert in international human rights law and staff member of the United Nations Office of the High Commissioner for Human Rights in Colombia at the time of the facts. He testified on the alleged danger for those who worked as human rights defenders in Colombia at the time of the facts of this case, and on the application of, or failure to apply, the recommendations and principles relating to the protection of the work of human rights defenders in Colombia;

(e) *Alíer Hernández*, expert witness proposed by the State, Judge of the Third Section of the Counsel of State. His testimony related to the progress made in the standards applied in administrative law proceedings and their compatibility with international standards in cases involving the State's civil and extra-contractual responsibility submitted to this jurisdiction that involved human rights violations. He also referred to the standards applied by the Colombian Council of State with regard to reparations, and presented the official decision of the Council of State approving the settlement in the case of Jesús María Valle Jaramillo; and

(f) *Sandra Jeannette Castro Ospina*, informative deponent proposed by the State, Head of the National Human Rights and International Humanitarian Law Unit of the Prosecutor General's Office. She referred to the criminal investigations opened by the Prosecutor General's Office to determine the presumed authors of the murder of Jesús María Valle Jaramillo.

52. In addition to the statements and expert opinions described above, the Commission, the representatives, and the State forwarded probative elements at various procedural opportunities, as well as during the public hearing or as helpful evidence requested by the President and the Court (*supra* paras. 8 to 18).

**B) ASSESSMENT OF THE EVIDENCE**

53. In this case, as in others,<sup>20</sup> the Court admits the probative value of those documents and statements submitted by the parties at the appropriate procedural opportunity, in the terms of Article 44 of the Rules of Procedure, which were not contested or opposed, and the authenticity of which was not questioned.

54. With regard to the testimonies, informative statements, and expert opinions given by the witnesses and expert witnesses by means of sworn statements (affidavits) and at the public hearing, the Court considers them pertinent to the extent that they relate to the purpose defined by the Court in the order requiring them (*supra* para. 8), taking into account the observations submitted by the parties. The Court considers that since the alleged victims have a direct interest in the case, their testimony cannot be assessed alone, and will therefore be evaluated in conjunction with all the body of evidence in the proceedings.

55. The representatives contested the statement made by Rafael Bustamante Pérez (*supra* para. 50(g)), affirming that "the purpose of his statement was not a personal and spontaneous presentation of the issues, but rather an almost exact transcript of the information included on the web page of the Ministry of the Interior and of Justice" and, therefore, "should not be admitted by the Court, as it does not correspond to what was required" by the order of November 30, 2007. Nevertheless, the Court admits this evidence to the extent that it relates to the purpose established in the Court's order (*supra* para. 8), taking into account the observations of the representatives, and assessing it in accordance with the rules of sound judicial discretion and in conjunction with the body of evidence in the proceedings.

56. The also representatives contested the statement of José Guiller Patiño Escobar (*supra* para. 50(i)) because "there is no indication in any part of the document of a

<sup>20</sup> Cf. *Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140; *Case of Bayarri*, *supra* note 13, para. 35, and *Case of Heliodoro Portugal*, *supra* note 13, para. 67.

signature and its authentication before a notary public, as required" by the Court in its order of November 30, 2007. The representatives stated that "the formalities indicated by the Court for this 'informative' statement were not complied with and, therefore, it should not be assessed." The Court observes that, according to the case file, Mr. Patiño's declaration was duly signed before a notary public in Colombia, respecting the formal requirements indicated in the order of November 30, 2007. Consequently, the Court admits this evidence, which will be assessed in accordance with the rules of sound judicial discretion together with all the evidence in the proceedings.

57. The State contested the statement made by Fernando María Velásquez Velásquez, because it exceeded "the purpose [of his] testimony." It also contested the statement of Rafael Alberto Rincón Patiño because it referred to "alleged facts in a general and incomplete manner [and was not limited to the] purpose for which it had been requested." The State also contested the statement made by Saúl Jaramillo Giraldo because he testified about "facts that did not relate to the purpose of the evidence [and exceeded] the purpose of the testimony required by the Court." In addition, the State raised the objection that, when testifying about the assets of Carlos Fernando Jaramillo Correa and his family, Mr. Jaramillo Giraldo "exaggerated some economic activities and figures that were not alleged in the brief with pleadings, motions, and evidence" of the representatives. In addition, the State contested the statement made by María Amanda Correa Zuleta because she was a "witness with an interest in the result of the case," "owing to her relationship to the family of Carlos Fernando Jaramillo." The statement by Darío Arcila Arenas was also contested by the State because it went beyond "the purpose of his testimony [by mentioning] as a new fact that Jesús María Valle 'helped poor students at the Universidad de Antioquia by paying their enrollment fees' [...]." Lastly, the State contested the statement made by Juan Guillermo Valle Noreña because he was a "witness with an interest in the result of the case" "owing to his relationship with the family of Jesús María Valle Jaramillo." In this regard, the Court takes into account the observations made by the State and finds that the statements [to which it objected] can assist the Court in determining the facts of this case to the extent that they relate to the purpose defined by the Court. It thus admits these statements and assesses them in accordance with the rules of sound judicial discretion, together with the body of evidence in the proceedings.

58. The Commission and the representatives requested that some of the facts contained in the judgment delivered by the Court in the *case of the Ituango Massacres* be transferred to the instant case, together with some of the statements and expert opinions provided in proceedings before the Commission and the Court. Specifically, they requested the incorporation into the body of evidence of the statements made by Carlos Fernando Jaramillo Correa during the hearing held before the Commission on March 1, 2004, in relation to the instant case, as well as in the hearing held before the Court on September 22, 2005, in the case of the Ituango Massacres. They also asked for the incorporation of the statement made by Carlos Álvaro Bonilla Cifuentes, Regional Prosecutor of Medellín at the time of the facts, during the hearing held before the Commission on March 2, 2000, in the case of the La Granja Massacre (the Ituango Massacres). Lastly, they requested the incorporation of the expert opinion given by Federico Andreu during the hearing held before the Court on March 7, 2005, in the case of the Mapiripán Massacre. In this regard, the State indicated that "it would not be pertinent to transfer the political and historical context indicated in the case of the Ituango Massacres, because: (i) the two cases do not share the same time and place; (ii) the two cases do not share the attribution of State responsibility, and (iii) a need for this transfer of facts and the attribution of responsibility from one case to the other cannot be derived from the concept of common evidence." Nevertheless, in a communication of December 14, 2007, the State indicated that "should the Court decide to transfer these statements [...], they should be examined and assessed in relation to the

facts corresponding to the violation of the human rights of Jesús María Valle Jaramillo, Nelly Valle Jaramillo, and Carlos Fernando Jaramillo Correa [...]” As it has on previous occasions, in application of the provisions of Article 45(1) of the Rules of Procedure,<sup>21</sup> the Court incorporates into the body of evidence the statements and expert opinions indicated above, since the State took part in the proceedings during which they were provided and because the Court considers them useful for deciding the instant case. This evidence will be assessed in accordance with the rules of sound judicial discretion and together with the body of evidence in the proceedings. Also, in application of the provisions of Article 45(1) of the Rules of Procedure, the Court will transfer the facts that it has already accepted as proved in other judgments that are relevant and useful for deciding the present case.

59. Regarding the documents provided by the State at the public hearing (*supra* para. 8), the Court considers that they are useful and relevant and incorporates them into the body of evidence to be assessed in accordance with the rules of sound judicial discretion and together with the body of evidence in the proceedings.

60. On April 23, 2008, the representatives submitted additional documentary evidence consisting of two statements made by Francisco Enrique Villalba Hernández in February and March 2008 during a criminal action at the domestic level, which contain information presumably related to the instant case and, therefore, requested its incorporation into the body of evidence as supervening evidence (*supra* paras. 10). In this regard, the State indicated that these statements had not been corroborated or assessed by the prosecutor in charge of the case, and they did not comply with the requirements for evidence established in Article 44 of the Court’s Rules of Procedure. Furthermore, they had not been subjected to an adversarial procedure at the domestic level. The State also questioned the validity of the statements, alleging that Mr. Villalba had little credibility. The Court finds that this documentary evidence complies with the formal requirements to be admitted as supervening evidence under Article 44(3) of the Rules of Procedure and incorporates it into the body of evidence in order to assess it, bearing in mind the objections raised by the State.

61. Also, on June 6, 2008, the State presented as supervening evidence the decision of the Supreme Court of Justice of April 1, 2008 (*supra* para. 13), which admitted the appeal filed by the Fifth Prosecutor of the National Human Rights and International Humanitarian Law Unit against the judgment of the Superior Court of the Judicial District of Medellín of July 25, 2001, confirming the acquittal of Jaime Alberto Angulo Osorio and Francisco Antonio Angulo Osorio for the compound offenses of aggravated murder to the detriment of Jesús María Valle Jaramillo. The Commission considered that this supervening evidence “is admissible and illustrates the adoption of positive steps towards clarifying the facts and the eventual prosecution and punishment of at least some of those responsible.” Nevertheless, it insisted that this evidence “cannot be admitted by the Court in order to declare that the State has not violated the Convention” in the instant case. The representatives classified the new information as “time-barred, almost superfluous, because it merely informs the Court that some isolated procedural actions have been carried out that are far from being effective mechanisms to ensure that justice is done” in this case. The Court finds that this evidence complies with the formal requirements for admissibility stipulated in Article 44(3) of the Rules of Procedure and incorporates it into the body of evidence, considering it useful and

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<sup>21</sup> Cf. *The “Mapiripán Massacre” v. Colombia. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 134, para. 90; *La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, para. 64, and *The Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of July 1, 2006. Series C No. 148, para. 123.

relevant for deciding this case. This evidence will be assessed in accordance with the rules of sound judicial discretion and in conjunction with all the evidence in the proceedings.

62. Regarding the newspaper articles submitted by the parties, the Court has considered that they can be assessed when they refer to well-known public facts or statements made by State officials, or when they corroborate aspects related to the case.<sup>22</sup>

63. Furthermore, the Court adds to the body of evidence, pursuant to Article 45(2) of the Rules of Procedure and because it finds it useful for deciding the case, the documentation requested by the Court as helpful evidence (*supra* paras. 9 to 12, 15, 17, 18, 49 and 52). This documentation includes the statements made by Salvatore Mancuso under the Peace and Justice Law. In this regard, as the parties were informed (*supra* paras. 17 and 18), the Court will maintain the due confidentiality of this information and incorporate into the body of evidence only those aspects that relate to the instant case, which will be assessed on the basis of sound judicial discretion together with the body of evidence in the case.

64. Having examined the probative elements in the case file, the Court will now analyze the alleged violations in the corresponding chapters, considering the facts that have been acknowledged and those that it finds proved.<sup>23</sup> The Court will also consider the pertinent arguments of the parties, bearing in mind the State's acknowledgment of facts and acquiescence.

## VI

### **VIOLATION OF ARTICLES 4,<sup>24</sup> 5,<sup>25</sup> AND 7<sup>26</sup> (RIGHT TO LIFE, RIGHT TO HUMANE TREATMENT, AND RIGHT TO PERSONAL LIBERTY) OF THE AMERICAN CONVENTION IN RELATION TO ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS) THEREOF**

65. The Commission and the representatives alleged that the State is responsible for the violation of the right to life of Jesús María Valle Jaramillo, as well as the right to humane treatment and the right to personal liberty of Jesús María Valle Jaramillo, Nelly Valle Jaramillo, and Carlos Fernando Valle Jaramillo. Additionally, the representatives asked that

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<sup>22</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 20, para. 146; *Case of Bayarri*, *supra* note 13, para. 38, and *Case of Heliodoro Portugal*, *supra* note 13, para. 79.

<sup>23</sup> Hereafter, this judgment contains facts that the Court finds have been established based on the acknowledgement made by the State. Where additional facts have been established by the probative elements, the Court records this in the corresponding footnote.

<sup>24</sup> In this regard, Article 4 establishes that:

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

<sup>25</sup> The relevant part of Article 5 establishes that:

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

<sup>26</sup> The relevant part of Article 7 stipulates that:

1. Every person has the right to personal liberty and security.

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the Constitution of the State Party concerned or by a law established pursuant thereto.

[...]

the Court declare the State responsible for the violation of the right to humane treatment of "the next of kin" of Jesús María Valle Jaramillo and Nelly Valle Jaramillo.

66. According to the Commission and the representatives, "the execution of Jesús María Valle did not occur in a void and was not an isolated case; rather it took place in a specific context as part of a series of murders, harassment, stigmatization, and attacks against individuals and social organizations dedicated to the defense of human rights. The consequences have continued over time owing to the ineffectiveness of the administration of justice in cases such as this." To support these allegations, the Commission indicated, *inter alia*, that "[t]he State authorities themselves declared that the grave situation of vulnerability in which Colombian human rights defenders found themselves generated a increased responsibility of protection for the State [...]. In this case, it was reasonable to think that the risk borne by Jesús María Valle Jaramillo merited that the State adopt measures in accordance with this increased responsibility of protection." The Commission also indicated that "the authorities were aware of the risk and adopted measures to deal with it. However, those measures were insufficient [...]."

67. In addition, the representatives argued that, "at the time the human rights defender Jesús María Valle Jaramillo was executed, the defense of human rights in Colombia took place in a context of systematic persecution and the absence of measures of protection and guarantees for the full and free exercise of this task, together with a pattern of impunity that [...] still characterizes the investigations undertaken in response to acts of intimidation and violence [...] against human rights defenders in different parts of the country." Furthermore, the representatives indicated that between July 1, 1996, and December 31, 1998, "several human rights defenders were executed in similar circumstances, using a specific *modus operandi*."

68. The representatives also insisted that Valle Jaramillo's "permanent denunciation of joint actions by members of paramilitary groups and soldiers [placed him] in great danger. Despite this, his life was not protected in any way and, to the contrary, he was the passive subject of criminal complaints filed by the Commander of the Fourth Brigade of the National Army, which, [according to the representatives,] was one more reason for the attempt on his life." The representatives alleged that, "[t]he criminal complaint filed by [...] State agents against Jesús María Valle Jaramillo, seeking to discredit and intimidate [him], and to prevent his denunciations in defense of the population of Ituango, together with public defamation by the Governor of Antioquia at the time, jeopardized the human rights defender's life. These acts of harassment and defamation potentially encouraged the paramilitary groups and those directly involved in the reported facts to take action against the humanist."

69. Furthermore, the Commission and the representatives indicated that the illegal and arbitrary detention of Jesús María Valle Jaramillo, Nelly Valle Jaramillo, and Carlos Jaramillo Correa placed them in a situation of vulnerability resulting in the real and imminent danger that their other rights would be violated. According to the representatives, the situation of "absolute defenselessness [...] must have caused them immense anguish, since the outcome was predictable; acts that corresponded to cruel, inhuman, and degrading treatment." In addition, the Commission and the representatives alleged that "the execution of [Jesús María] Valle Jaramillo had a specific and grave impact on the stability of the family, which was deprived of the person who guided and supported it," "because the pain and suffering caused by both his death and the circumstances surrounding the case constitute a violation of the physical and moral integrity of all [his] family."

70. The State acknowledged that "Jesús María Valle Jaramillo was a well-known human

rights defender in Antioquia who, as of 1996, had been systematically denouncing what he considered the arbitrary actions and excesses of paramilitary groups," particularly in the municipality of Ituango. The State accepted that, on February 27, 1998, two armed men [entered] Mr. Valle Jaramillo's office in Medellín and shot him with a pistol, killing him instantly. Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa were also present, and were tied up and later threatened with firearms, following which the armed men told Mr. Jaramillo Correa, "we will spare your life, but you haven't seen us," and left.

71. Based on this acceptance of facts, the State acknowledged its international responsibility by omission for failing to comply with its obligation to guarantee rights, for the violation of the right to life established in Article 4(1), in relation to Article 1(1), of the Convention, with regard to Jesús María Valle Jaramillo, as well as for the violation of the rights to humane treatment and to personal liberty established in Articles 5 and 7, respectively, of the American Convention, to the detriment of Jesús María Valle Jaramillo, Nelly Valle Jaramillo, Carlos Fernando Jaramillo Correa, and "their direct families." Despite this acknowledgment of responsibility, the State also indicated "that it had been established in the domestic criminal investigations that Jesús María Valle Jaramillo's murder '[...] was the result of a joint action of the Self-defense Forces of Córdoba and Urabá, the Self-defense Forces of Ituango, and the Self-defense Forces of the eastern part of the Department of Antioquia, [...] illicit armed groups [...] present in the Municipality of Ituango, [that] the State's armed forces were fighting against both before and after Mr. Valle Jaramillo's extrajudicial execution.'" Hence, the State affirmed that "[i]t is evident that [...] by omission, it failed to comply with its negative obligation; that is, to ensure that [Jesús María Valle Jaramillo] did not die at the hands of third parties." Nevertheless, the State "[did] not accept that the murder of Jesús María Valle Jaramillo [had taken place] within a general pattern of violence against human rights defenders in Colombia," or that the denunciations filed by Mr. Valle Jaramillo made him a "victim of persecution and harassment by State agents, civil and military authorities," that ultimately led to "his execution by paramilitary groups." To the contrary, the State indicated that it had adopted a series of measures through different State entities intended to promote the activities and the protection of human rights defenders.

72. In order to analyze Colombia's international responsibility for the violation of Articles 7, 5, and 4 of the Convention, in relation to Article 1(1) thereof, the Court deems it pertinent to structure this chapter as follows: (a) context and international responsibility of the State under the Convention; (b) measures of protection due to human rights defenders such as Jesús María Valle Jaramillo, who are especially vulnerable; (c) the violation of Jesús María Valle Jaramillo's right to personal liberty, to humane treatment, and to life; (d) the violation of Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa's right to personal liberty and humane treatment; and (e) the violation of the right to humane treatment of the other alleged victims.

A) *Context and international responsibility of the State under the Convention*

73. As part of its acquiescence, the State acknowledged that Jesús María Valle Jaramillo was a well-known human rights defender. According to the evidence provided, and as established by the Court in the *case of the Ituango Massacres*,<sup>27</sup> as of 1996 and until the time of his death, Jesús María Valle Jaramillo actively denounced the crimes perpetrated by paramilitary elements, as well as the collaboration and acquiescence between the latter and members of the National Army.

74. The Court considers it pertinent to make some observations on the phenomenon of

<sup>27</sup> Cf. *Case of the Ituango Massacres*, *supra* note 21, paras. 125(55) to 125(57).

paramilitarism in Colombia, as well as its consequences for those human rights defenders who, like Jesús María Valle Jaramillo, denounced the violations committed by paramilitary elements and some members of the National Army.

75. For example, in the *case of the "Mapiripán Massacre,"* the Court referred to the "internal armed conflict in Colombia and to the unlawful armed groups called "paramilitary groups," indicating that:

96(1) Various guerrilla groups began to operate in Colombia in 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 the face of this situation, the State [...] provided the legal basis for the establishment of the "self-defense groups" [and] stipulated that "[a]ll Colombians [...] could be used by the Government in activities and work that contributes to reestablishing normality." [It also...] provided that "[t]he Ministry of National Defense, through authorized command structures, may authorize, when it considers it appropriate, the use by private individuals of weapons whose use is restricted to the Armed Forces." The "self-defense groups" were legally established under the said provisions, and therefore had the support of State authorities [...].

96(2) In the context of the struggle against the guerrilla groups, the State fostered the creation of the said "self-defense groups" among the civilian population, whose 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.

96(3) 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" groups. They developed primarily near the middle course of the Magdalena River, and spread toward other regions of the country. [...]<sup>28</sup>

76. From the foregoing, it is evident that the State encouraged the creation of "self-defense" groups with specific objectives, but these were overstepped, and the self-defense groups began to function beyond the law. In this regard, the Court has observed that these paramilitary groups are responsible for numerous murders and many of the human rights violations committed in Colombia generally.<sup>29</sup> In addition, numerous links between paramilitary groups and members of the armed forces have been demonstrated before this Court in relation to facts similar to those of the present case, as have omissive attitudes by members of the armed forces in relation to the acts of such groups.<sup>30</sup> In cases such as these, the Court has declared that the Colombian State bears international responsibility for the failure to comply with "its obligation to ensure human rights, [and, thus,] its duty of prevention and protection."<sup>31</sup>

77. In this regard, the Court has recognized that, within the framework of the State's obligation to ensure respect for these rights between individuals, the State's international responsibility may arise when human rights violations committed by third parties or individuals are attributed to it.<sup>32</sup> Hence, the Court has found that:

<sup>28</sup> *The "Mapiripán Massacre" v. Colombia. Preliminary objections.* Judgment of March 7, 2005. Series C No. 122, paras. 96(1) to 96(3).

<sup>29</sup> *Cf. Case of the "Mapiripán Massacre," supra note 21, para. 96(18), and Case of the Ituango Massacres, supra note 21, para. 125(23).*

<sup>30</sup> *Cf. Case of the "Mapiripán Massacre," supra note 21, para. 96(19); the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs.* Judgment of January 31, 2006. Series C No. 140, para. 128, and *Case of the Ituango Massacres, supra note 21, para. 125(24).*

<sup>31</sup> *Cf. Case of the Pueblo Bello Massacre, supra note 30, paras. 126 and 140, and Case of the "Mapiripán Massacre," supra note 21, para. 123.*

<sup>32</sup> *Cf. Case of the Pueblo Bello Massacre, supra note 30, para. 113, and Case of La Rochela Massacre, supra note 21, para. 102.*



This international responsibility may arise also from the acts of individuals, which, in principle, are not attributable to the State. [The obligations *erga omnes* to respect and ensure respect for the norms of protection, which are the responsibility of the States Parties to the Convention,] extend their effects beyond the relationship between State agents and the persons subject to its jurisdiction, since they are also manifest in the positive obligation of the State to adopt the necessary measures to ensure the effective protection of human rights in relations between individuals. The attribution of responsibility to the State for the acts of individuals may occur in cases in which the State fails to comply with the obligations *erga omnes* contained in Articles (1) and 2 of the Convention, owing to the acts or omissions of its agents when they are in the position of guarantors.<sup>33</sup>

78. However, the Court has also recognized that a State cannot be responsible for every human rights violation committed by individuals subject to its jurisdiction. In other words, even though the legal consequences of an act or omission of an individual is a violation of the human rights of another, that violation cannot be automatically attributed to the State, but must be considered in light of the particular circumstances of the case and the way the State has carried out its obligations as guarantor. Indeed, the nature *erga omnes* of the State's Convention obligations do not entail its unlimited responsibility for every act of an individual, because the obligation of the State to adopt preventive measures to protect individuals in their relationships with each other is conditioned by its awareness of a situation of real and imminent risk for a specific individual or group of individuals, and on the existence of the reasonable possibility of preventing or avoiding that danger.<sup>34</sup>

79. In this regard, the European Court of Human Rights has found that States have:

62. [...] in appropriate circumstances[,] a positive obligation [...] to take preventive operational measures to protect an individual or individuals whose life is at risk from the criminal acts of another individual [...].

63. [Moreover,] not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materializing. For a positive obligation to arise, it must be established that the authorities knew or ought to have known, at the time, of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk [...].<sup>35</sup>

80. In this regard, the Court has previously indicated that "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 such as those of the instant case."<sup>36</sup> The Court recognizes, as it has on other occasions, that even though the State has adopted certain legislative measures to prohibit, prevent and sanction the activities of the "self-defense" or paramilitary groups, these measures did not translate into the effective deactivation of the danger that the State helped create. Consequently, while this danger subsists, it "accentuates the State's special obligations of prevention and protection in areas

<sup>33</sup> Cf. Case of the "Mapiripán Massacre", supra note 21, para. 111 and *Case of the Pueblo Bello Massacre*, supra note 30, para. 113.

<sup>34</sup> Cf. *Case of the Pueblo Bello Massacre*, supra note 30, para. 123.

<sup>35</sup> Cf. *European Court of Human Rights, Kiliç v. Turkey*, Judgment of 28 March 2000, Application No. 22492/93, paras. 62 and 63; *Osman v. the United Kingdom*, Judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VIII, paras. 115 and 116.

<sup>36</sup> *Case of the Pueblo Bello Massacre*, supra note 30, para. 126, and *Case of the Ituango Massacres*, supra note 21, para. 134.

where paramilitary groups are present [...].”<sup>37</sup>

81. The Court finds that the danger created by the State aggravated the situation of vulnerability of human rights defenders<sup>38</sup> who, like Jesús María Valle Jaramillo, denounced the violations committed by paramilitary groups and the armed forces.

*B) Measures of protection due to human rights defenders such as Jesús María Valle Jaramillo, who are in a situation of special vulnerability*

82. The Court observes that, in its T-590/98 ruling on the application for legal protection based on a violation of constitutional rights, issued on October 20, 1998,<sup>39</sup> the year in which Jesús María Valle Jaramillo was murdered, the Constitutional Court of Colombia stated that, at the time of the events of the instant case, human rights defenders in Colombia faced a grave risk of becoming victims of violence. According to the Constitutional Court, “the activities of Colombian human rights defenders [were] fraught with innumerable dangers,” making human rights defenders “a vulnerable sector of society,” and imposing upon the State the obligation to “prioritize their protection.”<sup>40</sup> Specifically, the Constitutional Court declared that, at the time of Jesús María Valle Jaramillo’s death, there was an “unconstitutional state of affairs”<sup>41</sup> in Colombia, owing to the State’s failure to protect human rights defenders.

83. It is worth noting that the Colombian Constitutional Court declared the existence of this “unconstitutional state of affairs” based on the reports of various international organizations regarding the vulnerability of human rights defenders in Colombia and the danger they faced.<sup>42</sup>

<sup>37</sup> *Case of the Pueblo Bello Massacre*, *supra* note 30, para. 126 and *Case of the Ituango Massacres*, *supra* note 21, para. 134.

<sup>38</sup> The Court shares the opinion of the Inter-American Commission in its Report on the Situation of Human Rights Defenders in the Americas, that “every person who in any way promotes or procures the realization of human rights and the fundamental liberties recognized at the national and international levels should be considered a human rights defender.” Thus, the Court finds that the concept of “human rights defender” includes officials belonging to entities such as the Ombudsman’s Office, Offices of Notaries Public, the Attorney General’s Office, and prosecutors specializing in human rights, among others. *Cf.* Inter-American Commission on Human Rights, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, Doc. 5 rev. 1, March 7, 2006.

<sup>39</sup> Constitutional Court of Colombia, Judgment T-590 of 1998 (file of attachments to the pleadings and motions brief, attachment I, folios 1377-1410).

<sup>40</sup> Constitutional Court of Colombia, Judgment T-590 of 1998, *supra* note 39 (folios 1406 and 1407); testimony given during the public hearing held of February 6 and 7, 2008, at the seat of the Inter-American Court of Human Rights by the expert witness, Rainer Huhle, who stated that “the situation of the human rights defenders at the end of the 1990s was characterized by considerable, accumulated violence in many regards.”

<sup>41</sup> Constitutional Court of Colombia, Judgment T-590 of 1998. It should be clarified that, according to the case law of the Colombian Constitutional Court, an “unconstitutional state of affairs” (*estado de cosas inconstitucional*) is declared when “(1) there is a repeated violation of the fundamental rights of many people – who can then, by filing an action for legal protection to defend their rights, overwhelm the courts, and (2) when the cause of that violation cannot be attributed solely to the defendant authority, but arises from structural factors.” *Cf.* Constitutional Court of Colombia, Judgment SU-250 of May 26, 1998.

<sup>42</sup> *Cf.* Report of the United Nations Special Rapporteurs on Torture, and on Extrajudicial Executions on their visit to Colombia in October 1994. Referring to the danger for human rights defenders in Colombia, the Special Rapporteurs stated in their report that “[t]he threat is very real if one considers the alarming number of deaths among activists in recent years.” Additionally, the Special Representative of the Secretary General on human rights defenders stated that, “numerous urgent appeals have been sent to the Colombian Government, urging the authorities to ensure the protection of human rights activists.” *Cf.* UN. Commission on Human Rights, Report of the mission to Colombia of the Special Representative of the Secretary General on the question of human rights defenders E/CN.4/2002/106. Furthermore, the Chairperson of the United Nations Commission on Human Rights stated in 1997 that he “urge[d] the Government of Colombia to continue strengthening its support, through all State institutions, for all those who promote the defense of human rights.” The Court observes that the death of

84. In the said decision T-590/98, the Colombian Constitutional Court decided:

To call upon all State authorities to halt this state of affairs; to ask the Attorney General and the Ombudsman to give particular importance to the protection of human rights defenders in the execution of their constitutional duty to safeguard and promote human rights, [and] to call upon all the inhabitants of Colombia to comply with Article 95 of the Constitution, which obliges them to defend and disseminate human rights as the basis of peaceful coexistence.<sup>43</sup>

85. Indeed, this Court recognizes, as noted by the Colombian Constitutional Court in the said ruling, that the 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.

86. Nevertheless, the Constitutional Court indicated that, when the facts of the present case occurred:

Despite the presidential directives [designed to protect human rights defenders and to promote their activities<sup>44</sup>], the attacks on human rights defenders [continued] and State authorities failed to take action to protect them, even when they had been informed of the threats they faced. This situation is plainly unconstitutional [...].<sup>45</sup>

87. The Court finds that in order to prevent such situations, States must create the necessary conditions for the effective enjoyment and exercise of the rights established in the Convention.<sup>46</sup> Compliance with this obligation is tied intrinsically to the protection and recognition of the importance of the role of human rights defenders,<sup>47</sup> whose work is essential to strengthen democracy and the rule of law.

88. It is worth noting that the monitoring, denunciation, and educational activities undertaken by human rights defenders make an essential contribution to respect for human rights, because they act as guarantors against impunity. Thus, human rights defenders

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Mr. Valle Jaramillo was expressly mentioned in this Report when it indicated that “[v]arious human rights leaders have been murdered since 1996. [In particular], Jesús Valle Jaramillo, a well-known human rights advocate, was shot dead in his office in Medellín in February 1998 [...], after he denounced the existence of links between the Colombian military and the paramilitary groups.” Cf. UN. Statement by the Chairperson of the Commission on Human Rights on the situation in Colombia, fifty-third session (1997). Statement of the Chairperson, 16 April 1997.

<sup>43</sup> Judgment T-590 of the Constitutional Court of Colombia, *supra* nota 39 (folio 1409).

<sup>44</sup> It is important to note that the presidential directives referred to by the Colombian Constitutional Court were the specific measures taken by the Colombian State to counteract the dangers to which human rights defenders were exposed. Cf. testimony given by the expert witness, Rainer Huhle, *supra* note 40, who referred to the existence of “several presidential directives addressed to all public officials [ordering them to] abstain from criticizing the work of the human rights defenders; [however,] the problem was that there was no mechanism to monitor [...] whether a public official disobeyed this directive [...]”.

<sup>45</sup> Judgment T-590 of the Constitutional Court of Colombia, *supra* nota 39 (folio 1399).

<sup>46</sup> Cf. Case of the “Mapiripán Massacre”, *supra* note 21, para. 111; *Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits*. Judgment of November 28, 2006. Series C No. 161, para. 74, and *Servellón García et al. v. Honduras. Merits, reparations and costs*. Judgment of September 21, 2006. Series C No. 152, para. 108.

<sup>47</sup> Cf. *Case of the Monagas Detention Center (“La Pica”). Provisional measures*. Order of the Inter-American Court of Human Rights of February 9, 2006, fourteenth considering paragraph; *Case of Nogueira de Carvalho et al.*, *supra* note 46, para. 74, and *Case of the Persons Deprived of Liberty in the “Dr. Sebastião Martins Silveira” Prison, in Araraquara, São Paulo*. Provisional measures. Order of the Inter-American Court of Human Rights of September 30, 2006, twenty-fourth considering paragraph.

complement the role, not only of the States, but of the inter-American system for the protection and promotion of human rights.

89. The Organization of American States has recognized this role of human rights defenders by underscoring that Member States must provide “support for the work carried out on the national and regional level by human rights defenders, recognize their valuable contribution to the promotion, respect, and protection of human rights and fundamental freedoms, [and condemn those] acts which directly or indirectly impede or obstruct [their] work in the Americas.”<sup>48</sup> The obligation to protect human rights defenders has been also emphasized in other international instruments<sup>49</sup> as the State itself has recognized in this case (*supra* para. 83).

90. Consequently, the Court finds that a State has the obligation to adopt all reasonable measures required to guarantee the rights to life, to personal liberty, and to personal integrity of those defenders who denounce human rights violations and who are in a situation of special vulnerability such as the internal armed conflict in Colombia. However, this obligation is conditional upon the State being aware of a real and immediate danger to the said human rights defenders and upon the existence of a reasonable possibility of preventing or avoiding this danger.<sup>50</sup>

91. To this end, the States must implement the necessary measures to ensure that those who denounce human rights violations can carry out their activities freely; to protect human rights defenders when they are threatened in order to avoid attacks on their life and personal integrity; to generate the conditions necessary to eradicate human rights violations by State agents or individuals; to abstain from imposing obstacles to the work of human rights defenders; and investigate effectively and efficiently violations committed against them, in order to combat impunity.<sup>51</sup>

C) *Violation of the rights to personal liberty, to humane treatment, and to life (Articles 7, 5, and 4 of the Convention) of Jesús María Valle Jaramillo*

92. The Court observes that, in the instant case, the State indicated that “it has never denied the existence of significant risk to Jesús María Valle Jaramillo’s life. Indeed, the State

<sup>48</sup> Organization of American States. *Human Rights Defenders in the Americas: 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) of June 7, 1999; AG/Res. 1711 (XXX-O/00) of June 5, 2000, and AG/Res. 2412 (XXXVIII-O/08) of June 3, 2008.

<sup>49</sup> For instance, Article 1 of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Liberties* establishes that “[e]very person has the right, individually or collectively, to promote and procure the protection and realization of fundamental human rights and liberties at the national and international level.” 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 Liberties*. A/RES/53/144 of 8 March 1999, Article 1 *Cf., also*, United Nations, *Basic Principles on the Role of Lawyers*, adopted by Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, UN Doc. No. A/CONF.144/28/REV.1, of 7 September 1990, Articles 16 to 22, and Council of the European Union, *Draft conclusions of the Council on the EU guidelines on human rights defenders*, 100056/1/04 REV 1, June 9, 2004. Additionally, the OAS General Assembly, by a resolution of June 7, 1999, called upon Member States to adopt the necessary measures to protect human rights defenders. *Cf.* AG/RES.1671 (XXIX-O/99), *supra* note 48.

<sup>50</sup> *Cf. Case of the Pueblo Bello Massacre*, *supra* note 30, para. 123, and *Sawhoyamaya Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of March 29, 2006. Series C No. 146, para. 155.

<sup>51</sup> *Cf. Case of the Monagas Detention Center (“La Pica”)*, *supra* note 47, fourteenth considering paragraph; *Case of Nogueira de Carvalho et al.*, *supra* note 47, para. 77, and *Case of the Persons Deprived of Liberty in the “Dr. Sebastião Martins Silveira” Prison, in Araraquara, São Paulo*, *supra* note 47, twenty-fourth considering paragraph. *Cf., also*, testimony given by the expert witness, Rainer Huhle, *supra* note 40.

has recognized its responsibility by omission, given that, despite its knowledge of this risk, it did not take the measures necessary to avoid the consequences." In this regard, on other occasions, the Court has declared that it was the Colombian State itself that created a dangerous situation, which it was subsequently unable to control or reverse (*supra* paras. 74 to 80). Thus, although the acts perpetrated by members of the paramilitary groups against the alleged victims in this case are facts committed by individuals, the responsibility for those acts can be attributed to the State "owing to its failure, by omission, to comply with its Convention obligations *erga omnes* to guarantee the effectiveness of human rights in these inter-individual relationships, and this was brought about and aggravated because the State failed to eliminate or satisfactorily resolve the dangerous situation created by the existence of these groups and because it had continued to encourage their actions by letting them go unpunished."<sup>52</sup>

93. The dangerous situation in which Jesús María Valle Jaramillo lived was revealed, for example, when, after having denounced the harassment suffered by the civilian population and the massacres that occurred during the mid-1990s in villages and districts of the Municipality of Ituango, he was allegedly warned by an emissary of the paramilitary chief at the time, Carlos Castaño Gil, that he should leave the country or remain silent "so that [he would] not have to be killed."<sup>53</sup> Despite these threats, Jesús María Valle Jaramillo continued his work as a human rights defender, even after the alleged murder of several members and former presidents of the "Héctor Abad Gómez" Permanent Human Rights Committee, a non-governmental organization of which Jesús María Valle Jaramillo had also been president.<sup>54</sup>

94. It is worth noting that one month before his death, at a meeting at the Army's Fourth Brigade, Jesús María Valle Jaramillo had denounced the collusion between members of the armed forces and the paramilitary groups, particularly about the perpetration of more than 150 murders in Ituango. Moreover, the day before his death, on February 26, 1998, Jesús María Valle Jaramillo testified about these accusations in the action on defamation and slander filed against him by a member of the Girardot Battalion attached to the Fourth Brigade (*supra* para. 68). The following day, February 27, 1998, Jesús María Valle Jaramillo was murdered.

95. In light of the foregoing (*supra* paras. 92 to 94), the Court finds that Jesús María Valle Jaramillo's declarations, which were intended to alert society to the links between paramilitary groups and some State agents, put his life, liberty, and personal integrity in grave danger. It also finds that the State, although aware of this danger, did not adopt the reasonable measures needed to prevent the violation of these rights.

96. In addition, the Court observes that the death of a human rights defender of the caliber of Jesús María Valle Jaramillo can have an intimidating effect<sup>55</sup> on other human

<sup>52</sup> *Case of the Pueblo Bello Massacre*, *supra* note 30, para. 151.

<sup>53</sup> Testimony given by Carlos Fernando Jaramillo Correa at the public hearing before the Inter-American Commission on Human Rights on March 1, 2004 (file of attachments to the application, attachment 3, folio 581).

<sup>54</sup> Although the representatives stated in their pleadings and motions brief that, at the time of the facts, several human rights defenders had presumably been victims of extrajudicial execution, this information was presented as "contextual facts" and did not appear in the Commission's application. Consequently, because they are specific facts that are not directly related to this case, the Court cannot find them proved.

<sup>55</sup> Regarding the extrajudicial execution of a union leader in retaliation for his activities of promotion and protection of human rights, the Court stated that:

The legitimate exercise that Pedro Huilca Tecse made of the right to freedom of association, (in trade union matters), resulted in a lethal reprisal, which, in turn, constituted a violation of Article 16 of the American Convention. The Court also considers that the execution of Pedro Huilca Tecse had an

rights defenders. The fear caused by such an event can directly reduce the possibility of human rights defenders exercising their right to perform their work by means of denunciations. Furthermore, the Court reiterates that the threats and attacks on the lives and personal integrity of human rights defenders, as well as the impunity enjoyed by those responsible for such acts, are particularly grave because they have not only individual, but also collective effects, inasmuch as society is prevented from learning the truth concerning the observance or the violation of the rights of those subject to the jurisdiction of a specific State.<sup>56</sup>

97. This Court finds that the facts of the present case created an obligation on the part of the State to investigate with respect to the violation of the right to life, personal integrity, and personal liberty of Jesús María Valle Jaramillo. In previous cases, the Court has recognized that from the general obligation to guarantee rights indicated in Article 1(1) of the Convention, gives rise to obligations for the State to ensure the free and full exercise of the rights established in the Convention to all persons subject to its jurisdiction.<sup>57</sup> Since its duty as guarantor is related to specific rights, it can be complied with in different ways depending on the right in question and the particular circumstances of the case.<sup>58</sup>

98. The obligation to investigate human rights violations is among the positive measures that the State must adopt to guarantee the rights established in the Convention. Additionally, the State must, if possible, try to reestablish a right that has been violated and, if applicable, repair the damage produced by human rights violations.<sup>59</sup>

99. It should be noted that the obligation to investigate does not only arise from the treaty-based norms of international law that bind all States Parties, but also arise from domestic law concerning the obligation to investigate *ex officio* certain illicit conducts and the norms that allow victims or their next of kin to file complaints in order to participate formally in criminal investigations intended to establish the truth about the facts.<sup>60</sup>

100. The obligation to investigate is one of means rather than results, and must be undertaken by the State as a juridical obligation and not as a mere formality predestined to be ineffective.<sup>61</sup> The State's obligation to investigate must be carried out diligently in order to avoid impunity and the repetition of facts such as these. In this regard, the Court recalls

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intimidating effect on the workers of the Peruvian trade union movement and thereby reduced the freedom of a specific group to exercise this right.

*Huilca Tecse v. Peru. Merits, reparations and costs.* Judgment of March 3, 2005. Series C No. 121, para. 78

<sup>56</sup> Cf. *Case of Nogueira de Carvalho et al.*, *supra* note 46, para. 76.

<sup>57</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 20, para. 167; *Case of Heliodoro Portugal*, *supra* note 13, para. 141, and *Yvon Neptune v. Haiti. Merits, reparations and costs.* Judgment of May 6, 2008. Series C No. 180, para. 77.

<sup>58</sup> Cf. *Vargas Areco v. Paraguay. Merits, reparations and costs.* Judgment of September 26, 2006. Series C No. 155, para. 73; *Case of Heliodoro Portugal*, *supra* note 13, para. 141, and *García Prieto et al. v. El Salvador. Preliminary objection, merits, reparations and costs.* Judgment of November 20, 2007. Series C No. 168, para. 99.

<sup>59</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 20, para. 166; *Case of Heliodoro Portugal*, *supra* note 13, para. 142, and *Case of García Prieto et al.*, *supra* note 58, para. 99.

<sup>60</sup> Cf. *Case of García Prieto et al.*, *supra* note 58, paras. 102 to 104, and *Case of Heliodoro Portugal*, *supra* note 13, para. 143.

<sup>61</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 20, para. 177; *Case of Heliodoro Portugal*, *supra* note 13, para. 144, and *Case of García Prieto et al.*, *supra* note 58, para. 100.

that impunity encourages the repetition of human rights violations.<sup>62</sup>

101. In light of this obligation, as soon as the State authorities become aware of the facts, they must initiate, *ex officio* and without delay, a serious, impartial, and effective investigation by all lawful means available in order to determine the truth and to ensure the pursuit, capture, trial, and eventual punishment, if applicable, of all the authors of the facts, especially when State agents are or may be involved.<sup>63</sup> To ensure this objective, the State must have, *inter alia*, an effective system to protect the judiciary, the witnesses, and the victims and their next of kin. In addition, it is also necessary to verify the existence of complex criminal structures and the connections that make such violations possible.<sup>64</sup>

102. Furthermore, the absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for victims and their next of kin, who have the right to know the truth of what happened.<sup>65</sup> This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.<sup>66</sup>

103. The next of kin of the victims also have the right to reparations for the damage they have suffered and the States have the obligation to provide them.<sup>67</sup> In this regard, the State has a binding obligation to repair directly those human rights violations for which it is responsible, according to the standards for attributing international responsibility and for reparation established in the Court's case law. Moreover, the State must ensure that satisfaction of the claims for reparation made by victims of human rights violations and their next of kin is not impeded or obstructed by excessively complicated procedures or other obstacles to the reparation of their rights.<sup>68</sup>

104. In this case, the assessment of the obligation to guarantee the rights to life, to humane treatment, and to personal liberty through a serious, complete, and effective investigation into the facts is made in Chapter VIII of this judgment. For the purpose of determining a violation of Articles 4, 5, and 7 of the Convention, in relation to Article 1(1) thereof, it is sufficient to indicate that, in this case, the State has not guaranteed the said rights effectively.

105. In conclusion, in accordance with the State's acknowledgement of responsibility in the instant case, the Court finds that the State did not comply with its duty to adopt the reasonable measures required to guarantee effectively the rights to personal liberty, humane treatment, and life of Jesús María Valle Jaramillo, who was in grave danger due to the public denunciations he made as part of his work as a human rights defender during

<sup>62</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.)*, supra note 17, para. 173; *Case of Heliodoro Portugal*, supra note 13, para. 244, and *Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 10, 2007. Series C No. 167, para. 122.

<sup>63</sup> Cf. *Case of the Pueblo Bello Massacre*, supra note 30, para. 143; *Case of Bayarri*, supra note 13, para. 92, and *Case of Heliodoro Portugal*, supra note 13, para. 144.

<sup>64</sup> Cf. *Case of La Rochela Massacre*, supra note 21, para. 194.

<sup>65</sup> Cf. *Case of Velásquez Rodríguez*, supra note 20, para. 181; *Case of Heliodoro Portugal*, supra note 13, para. 146, and *Case of García Prieto et al.*, supra note 58, para. 102.

<sup>66</sup> Cf. *Case of La Rochela Massacre*, supra note 21, para. 195.

<sup>67</sup> Cf. *Case of García Prieto et al.*, supra note 58, para. 103 and *Case of Heliodoro Portugal*, supra note 13, para. 146.

<sup>68</sup> Cf. *Case of the "Mapiripán Massacre"*, supra note 21, para. 219; *Case of La Rochela Massacre*, supra note 21, para. 195, and *Case of the Ituango Massacres*, supra note 21.

Colombia's internal armed conflict. International responsibility for these acts can be attributed to the State, inasmuch as it failed in its obligations to prevent and investigate such acts. Both obligations derive from Articles 4, 5, and 7 of the Convention, considered in relation to Article 1(1) thereof, which obliges the State to ensure the enjoyment of these rights.

106. Based on the above, and bearing in mind the State's acquiescence and acknowledgment of the facts, the Court finds that the State violated the rights to personal liberty, to humane treatment, and to life embodied in Articles 7(1), 5(1) and 4(1) of the American Convention, respectively, in relation to the obligation to respect rights embodied in Article 1(1) thereof, to the detriment of Jesús María Valle Jaramillo.

*D) Violation of the right to personal liberty and personal integrity (Articles 7(1) and 5(1) of the Convention) of Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa*

107. Based on the State's acknowledgment of the facts, the Court finds it proved that on February 27, 1998, Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa were held hostage in Jesús María Valle Jaramillo's office by armed individuals who proceeded to tie up their hands and feet. It has also been established that, after these individuals executed Jesús María Valle Jaramillo, the physical violence against Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa continued, because they were dragged around the office.

108. Based on these facts, the Court finds it pertinent to reiterate that, according to its case law, freedom must be recognized as a basic human right inherent in the individual that crosscuts the entire American Convention.<sup>69</sup> The Court has also held that the mere threat that an act prohibited by Article 5 of the Convention will be committed, when sufficiently real and imminent, can in itself violate the right to humane treatment. In other words, threatening or creating a situation that threatens a person's life can constitute inhuman treatment in some circumstances at least.<sup>70</sup>

109. In the instant case, the threat to Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa is evident and is revealed in the most extreme manner possible, as it was a direct threat of death.<sup>71</sup> Both Nelly Valle and Carlos Fernando Jaramillo were tied up and underwent an agonizing and threatening situation that, ultimately, resulted in the death of a third person held hostage with them. The treatment that Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa received was brutal and violent. In addition, the extrajudicial execution of Jesús María Valle Jaramillo permits the inference that Mrs. Valle Jaramillo and Mr. Jaramillo Correa could fear and anticipate that they would be arbitrarily and violently deprived of their life also, which constituted a violation of their personal integrity.<sup>72</sup>

110. Based on the above, and taking into account the State's acknowledgement of the facts and acquiescence, the Court finds that the State violated the right to personal liberty and to humane treatment recognized in Articles 7(1) and 5(1) of the American Convention, respectively, in relation to the general obligation to protect rights embodied in Article 1(1)

<sup>69</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez*, *supra* note 5, para. 52.

<sup>70</sup> Cf. *The "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 165; *Case of the Ituango Massacres*, *supra* note 21, para. 255, and *Baldeón García v. Peru. Merits, reparations and costs*. Judgment of April 6, 2006. Series C No. 147, para. 119.

<sup>71</sup> Cf. *Case of the Ituango Massacres*, *supra* note 21, para. 162.

<sup>72</sup> Cf. *The 19 Tradesmen v. Colombia. Merits, reparations and costs*. Judgment of July 5, 2004. Series C No. 109, para. 150; *Case of La Rochela Massacre*, *supra* note 21, para. 136, and *Case of the Ituango Massacres*, *supra* note 21, para. 256.



thereof, to the detriment of Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa.

*E) Violation of the right to personal integrity (Article 5(1) of the Convention) of other alleged victims*

*E.1) Other persons acknowledged by the State as victims of the violation of Article 5(1) of the Convention*

111. As mentioned above (*supra* para. 38), the State acquiesced to the claim of the Commission and the representatives that the following family members of Jesús María, Nelly Valle Jaramillo, and Carlos Fernando Jaramillo Correa should be declared victims of the violation of the right to personal integrity:

With regard to Jesús María Valle Jaramillo: María Leticia Valle Jaramillo (sister), Ligia Valle Jaramillo (sister), Luzmila Valle Jaramillo (sister), Magdalena Valle Jaramillo (sister), Romelia Valle Jaramillo (sister), Marina Valle Jaramillo (sister, deceased) (and as beneficiaries Mauricio Alberto Herrera Valle, Claudia Helena Herrera Valle and Liliana María Herrera Valle), Darío Valle Jaramillo (brother) and Octavio Valle Jaramillo (brother) (and as beneficiaries Juan Guillermo Valle Noreña, John Jairo Valle Noreña, Berta Lucía Valle Noreña, and Luz Adriana Valle Noreña);

With regard to Nelly Valle Jaramillo: Alfonso Montoya Restrepo (husband) and Luis Fernando Montoya Valle (son);

With regard to Carlos Fernando Jaramillo Correa: Gloria Lucía Correa (wife), Carlos Enrique Jaramillo Correa (son), María Lucía Jaramillo Correa (daughter), Ana Carolina Jaramillo Correa (daughter), Jesús Emilio Jaramillo Barrera (father), Adela Correa de Jaramillo (mother), Blanca Lucía Jaramillo Correa (sister), Romelia Jaramillo Correa (sister), Nellyda Jaramillo Correa (sister), José María Jaramillo Correa (brother) (and as beneficiaries Juliana Jaramillo Tobón and Santiago Jaramillo Tobón), Luis Eugenio Jaramillo Correa (brother), Gloria Elena Jaramillo Correa (sister), and Adriana María Jaramillo Correa (sister).

112. In relation to the violation of the personal integrity of the next of kin of Jesús María Valle Jaramillo, in addition to the State's acquiescence, it can be concluded from the body of evidence, according to the statement made before the Court by Nelly Valle Jaramillo, that "ever since [Jesús María Valle Jaramillo] died, ever since he was killed [...], they have always been afraid [...], their apprehensions persisted, [as well as their] fear of leaving the house." When questioned about the consequences of the events in relation to the safety of her family, she referred to her son, who had commented that "he was very afraid that someone would place a bomb or do something to him."<sup>73</sup>

113. In relation to Carlos Fernando Jaramillo Correa and his family, according to the testimony of Saúl Jaramillo Giraldo, a friend of Mr. Jaramillo Correa:

The emotional impact [caused by the forced displacement] broke up the family, which had been a united family that worked together. For the same reason, they had to go in different directions, abandoning their property, and Don Jesús Emilio, who was very attached to his home town, La Granja, had to live out his last days in Medellín and die there, displaced. [Jaramillo Giraldo also told of how,] on one occasion, he and Carlos Fernando visited the latter's father, who lived in the *Laureles* district, and [of how he] was surprised because [Don Jesús Emilio] cried as he welcomed them, recalling old times and their shared experiences in Ituango. [He also said that Carlos Fernando Jaramillo told him that, as a refugee, he felt] safe, but not [...] content, or happy as he was [when] he lived in La Granja [a place he remembers] every day.<sup>74</sup>

114. Also, according to the statement of María Amanda Correa Zuleta:

<sup>73</sup> Testimony given by the witness, Nelly Valle Jaramillo, during the public hearing held at the seat of the Inter-American Court of Human Rights on February 6 and 7, 2008.

<sup>74</sup> Statement made before notary public by the witness, Saúl Jaramillo Giraldo, on January 8, 2008 (file of affidavits and the respective observations, folio 2229).

The year before the death [of Carlos Fernando Jaramillo Correa's father, the latter was] very sad, very deteriorated, very pensive - someone who was morally destroyed, very quiet, very vulnerable even though he had his wife and his children attending to him, [and] emotionally vulnerable due to the abandonment, to the loss of all he had worked for, of his properties, of his businesses, of his people. [D]oña Adela, Mr. Jaramillo Correa's mother, [is] a completely different person from the one [...she] knew in [her] youth, because now she is very sad, very depressed, very silent[. She] does not leave the house, she says that she is unable to bear the burden of all the problems, [and] she talks about the family's situation; that is, the separation, [...] the distance.<sup>75</sup>

115. Since there is no dispute concerning the effect on their right to personal integrity, the Court finds, in accordance with the body of evidence, that the feelings of insecurity, frustration, anguish, and powerlessness that they have suffered for years and continue to suffer due to the events of February 1998 and, subsequently, to the State's failure to comply with its obligation to investigate the facts (*infra* paras. 147 and 159 to 165), have caused a grave alteration in their way of life and in their family and social relations, with significant infringement of their right to personal integrity. Consequently, based on the State's acceptance of facts and partial acquiescence, the Court finds that Colombia is responsible for the violation of the right to personal integrity recognized in Article 5(1) of the Convention, in relation to the general obligation to guarantee rights embodied in Article 1(1) thereof, to the detriment of the following persons: María Leticia Valle Jaramillo, Ligia Valle Jaramillo, Luzmila Valle Jaramillo, Magdalena Valle Jaramillo, Romelia Valle Jaramillo, Marina Valle Jaramillo, Darío Valle Jaramillo, Octavio Valle Jaramillo, Alfonso Montoya Restrepo, Luis Fernando Montoya Valle, Gloria Lucía Correa, Carlos Enrique Jaramillo Correa, María Lucía Jaramillo Correa, Ana Carolina Jaramillo Correa, Jesús Emilio Jaramillo Barrera, Adela Correa de Jaramillo, Blanca Lucía Jaramillo Correa, Romelia Jaramillo Correa, Nellyda Jaramillo Correa, José María Jaramillo Correa, Luis Eugenio Jaramillo Correa, Gloria Elena Jaramillo Correa, and Adriana María Jaramillo Correa.

*E.2) Other persons that the State does not acknowledge as victims of the violation of Article 5(1) of the Convention*

116. The Court observes that the State included the following persons in its acquiescence: Mauricio Alberto Herrera Valle, Claudia Helena Herrera Valle, and Liliana María Herrera Valle "as beneficiaries" of deceased victim Marina Valle Jaramillo (Jesús María Valle Jaramillo's sister); Juan Guillermo Valle Noreña, John Jairo Valle Noreña, Berta Lucía Valle Noreña, and Luz Adriana Valle Noreña "as beneficiaries" of deceased victim Octavio Valle Jaramillo (Jesús María Valle Jaramillo's brother), and Juliana Jaramillo Tobón and Santiago Jaramillo Tobón "as beneficiaries" of deceased victim José María Jaramillo Correa (Carlos Fernando Jaramillo Correa's brother) (*supra* para. 38 and 111). In this regard, the Court notes that the State used a different legal definition for the "beneficiaries" and the "victims" of the violation of Article 5 de la Convention indicated in its acquiescence. Therefore, the Court understands that the State has not acknowledged the status of "victim" of the violation of the right to personal integrity of Mauricio Alberto Herrera Valle, Claudia Helena Herrera Valle, Liliana María Herrera Valle, Juan Guillermo Valle Noreña, John Jairo Valle Noreña, Berta Lucía Valle Noreña, Luz Adriana Valle Noreña, Juliana Jaramillo Tobón, and Santiago Jaramillo Tobón, but instead considers them beneficiaries of the reparations that correspond to the victims who are deceased and who were acknowledged as such by the State (*supra* para. 115).

117. Based on the above, the Court observes that it was alleged that the following 40 persons were presumed victims of the violation of Article 5(1) of the Convention and that

<sup>75</sup> Statement made before notary public by the witness, María Amanda Correa Zuleta, on January 9, 2008 (file of affidavits and the respective observations, folios 2233 and 2234).

the State did not acquiesce to this claim: Adriana María Londoño Del Valle, Ana María Valle Villegas, Andrés Felipe Valle Villegas, Berta Lucía Valle Noreña, Blanca Inés Valle Jaramillo, Claudia Helena Herrera Valle, Claudia María García Valle, Diana Patricia García Valle, Francisco Javier García Valle, Franklin Henao Valle, Fredy Henao Valle, Jairo Alberto Londoño Del Valle, Jannette Henao Valle, John Alberto Henao Valle, John Jairo Valle Noreña, Juan Guillermo Valle Noreña, Juliana Patricia Londoño Del Valle, Liliana María Herrera Valle, Luz Adriana Valle Noreña, María Victoria García Valle, Marta Luz García Valle and Mauricio Alberto Herrera Valle (all next of kin of Jesús María Valle Jaramillo), as well as Alejandro Jaramillo Mejía, Ana Catalina Hoyos Jaramillo, Andrés Felipe Ochoa Jaramillo, César Augusto Jaramillo Gutiérrez, Diego Alejandro Ochoa Jaramillo, Gabriela Gómez Jaramillo, Gonzalo de Jesús Jaramillo Correa, Jorge Mario Jaramillo Gutiérrez, José Miguel Jaramillo Gutiérrez, Juan Camilo Jaramillo Gutiérrez, Juan Gonzalo Jaramillo Mejía, Juliana Jaramillo Tobón, Luis Jairo Jaramillo Gutiérrez, Luisa María Gómez Jaramillo, María Isabel Jaramillo Mejía, Oscar Fernando Hoyos Jaramillo, Santiago Jaramillo Tobón and Victoria Alejandra Gómez Jaramillo (all next of kin of Carlos Fernando Jaramillo Correa).

118. Consequently, since the Commission and the representatives asked that the Court declare these persons, who are not included in the State's acquiescence, victims of the violation of Article 5 of the Convention, the Court will proceed to make the corresponding analysis in light of its case law and the evidence provided.

119. In this regard, the Court finds it pertinent to clarify some aspects of its case law concerning the determination of violations of the personal integrity of the next of kin of victims of certain human rights violations,<sup>76</sup> or other persons with close ties to such victims. For instance, the Court considers that a violation of the right to mental and moral integrity of the direct next of kin of victims of certain human rights violations can be declared, applying a presumption *iuris tantum* with regard to mothers and father, daughters and sons, husbands and wives, permanent companions (hereinafter "direct next of kin"), provided this responds to the specific circumstances of a case, as has happened, for example, in the cases of various massacres,<sup>77</sup> forced disappearance of persons,<sup>78</sup> and extrajudicial executions.<sup>79</sup> With regard to these direct next of kin, it is for the State to disprove their claim. In other cases, the Court must analyze if the evidence in the case file proves a violation of the right to personal integrity of the alleged victim, whether he/she is a next of kin of another victim in the case or not. In relation to those persons regarding whom the Court does not presume that the right to personal integrity has been harmed, because they are not direct next of kin, the Court must assess, for example, whether there is a particularly close tie between them and the victims in the case that would allow the Court to declare a violation of their right to personal integrity. The Court can also assess whether the alleged victims have been involved in seeking justice in the specific case,<sup>80</sup> or whether they have endured special suffering as a result of the facts of the case or of subsequent acts or

<sup>76</sup> Cf. *Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114; *Case of Heliodoro Portugal*, *supra* note 13, para. 163, and *Case of Cantoral Huamani and Garcia Santa Cruz*, *supra* note 62, para. 112.

<sup>77</sup> Cf. *Case of the "Mapiripán Massacre"*, *supra* note 28, para. 146, and *Case of the Ituango Massacres*, *supra* note 21, para. 262.

<sup>78</sup> Cf. *Case of Blake*, *supra* note 76, para. 114; *Case of Heliodoro Portugal*, *supra* note 13, paras. 174 and 175, and *Goiburú et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 22, 2006. Series C No. 153, paras. 96 and 97.

<sup>79</sup> Cf. *La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November 29, 2006. Series C No. 162, para. 218.

<sup>80</sup> Cf. *Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, para. 163; *Case of Heliodoro Portugal*, *supra* note 13, para. 163, and *Case of Albán Cornejo et al.*, *supra* note 5, para. 46.

omissions of the State authorities in relation to the facts.<sup>81</sup>

120. In this case, none of the persons who were excluded from the State's acknowledgement of responsibility were direct next of kin of Jesús María Valle Jaramillo, who has been declared a victim of the violation of the right to life in this judgment (*supra* paras. 105 and 106). Hence, the Court will not presume that his death harmed their mental and moral integrity. Consequently, the Court will assess the evidence in the case file to determine whether there are any other grounds for declaring the State's responsibility for the violation of the personal integrity of these individuals.

121. Regarding the alleged harm to the personal integrity of Juan Guillermo Valle Noreña, John Jairo Valle Noreña and Luz Adriana Valle Noreña, nephews and niece of Jesús María Valle Jaramillo,<sup>82</sup> the Court has the statements made before notary public of Juan Guillermo Valle Noreña and of Darío Arcila Arenas (*supra* paras. 50(e) and 50(f)). These statements were requested by order of the President of the Court because they were considered pertinent. Juan Guillermo Valle Noreña indicated that Jesús María Valle Jaramillo "constantly helped [... him,] and he could even say that [Mr. Valle Jaramillo was his] idol [...]; he always provided guidance about getting ahead and setting goals; whenever he [Juan Guillermo] needed him, he was there; at times of financial difficulties or family or moral problems."<sup>83</sup> Juan Guillermo Valle Noreña also indicated that he and John Jairo Valle Noreña "ran errands for Jesús [María Valle Jaramillo]; they chauffeured his car, since he was always helping them by paying for their transportation, lunches, studies, whatever they needed."<sup>84</sup> In addition, in a sworn statement, Darío Arcila Arenas emphasized that Jesús María Valle Jaramillo paid part of Luz Adriana Valle Noreña's legal studies, "which she suspended when they murdered [him]."<sup>85</sup>

122. From the above it is clear that close ties existed between Juan Guillermo Valle Noreña, John Jairo Valle Noreña and Luz Adriana Valle Noreña and Jesús María Valle Jaramillo. Therefore, the Court considers that the latter's death harmed their mental integrity.

123. Regarding Mauricio Alberto Herrera Valle, Claudia Helena Herrera Valle, Liliana María Herrera Valle and Berta Lucía Valle Noreña, all nephews and nieces of Jesús María Valle Jaramillo,<sup>86</sup> the Court underscores that, in a sworn statement, Darío Arcila Arenas referred to the impact that the latter's death had on his family as follows:

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<sup>81</sup> Cf. *Case of Blake*, *supra* note 76, para. 114; *Case of Heliodoro Portugal*, *supra* note 13, para. 163, and *Case of Albán Cornejo et al.*, *supra* note 5, para. 46.

<sup>82</sup> Cf. Birth certificate of Juan Guillermo Valle Noreña (file of attachments to the pleadings and motions brief, folios 834-835); birth certificate of Juan John Jairo Valle Noreña (file of attachments to the pleadings and motions brief, folios 837-838), and birth certificate of Luz Adriana Valle Noreña (file of attachments to the pleadings and motions brief, folios 843 and 844).

<sup>83</sup> Statement made before notary public by the witness, Juan Guillermo Valle Noreña, on January 9, 2008 (file of affidavits and the respective observations, folio 2245).

<sup>84</sup> Statement made by the witness, Juan Guillermo Valle Noreña, *supra* nota 83.

<sup>85</sup> Statement made before notary public by the witness, Darío Arcila Arenas, on January 9, 2008 (file of affidavits and the respective observations, folio 2238).

<sup>86</sup> Cf. Birth certificate of Mauricio Alberto Herrera Valle (file of attachments to the pleadings and motions brief, folios 860 and 861); birth certificate of Claudia Helena Herrera Valle (file of attachments to the pleadings and motions brief, folios 862 and 863); birth certificate of Liliana María Herrera Valle (file of attachments to the pleadings and motions brief, folio 850), and birth certificate of Bertha Lucía Valle Noreña (file of attachments to the pleadings and motions brief, folios 840 and 841).

Jesús María [Valle Jaramillo] not only provided the fundamental financial support for the family group with whom he lived, but he also helped his other siblings and nephews and nieces, who were quite numerous.

[...]

All of Jesús María's siblings, nephews, and nieces suffered morally and mentally due to the strong ties of affection that they all shared with him.<sup>87</sup>

124. In a sworn statement, Juan Guillermo Valle Noreña indicated, similarly, that Jesús María Valle Jaramillo “was always attentive to every problem of all [the family members], trying to resolve them in the best way possible. [Jesús María Valle Jaramillo w]as always attentive to the needs of his mother, his father, his siblings; to ensure that they wanted for nothing, and of [...] his nephews and nieces with even more reason.”<sup>88</sup>

125. In this regard, the Court observes that, although Mauricio Alberto Herrera Valle, Claudia Helena Herrera Valle, Liliana María Herrera Valle and Berta Lucía Valle Noreña are nephew and nieces of Jesús María Valle Jaramillo, and the statements referred to above referred to the suffering that his death caused to his “nephews and nieces,” those statements are very general and do not authenticate a specific close tie between Jesús María Valle Jaramillo and Mauricio Alberto Herrera Valle, Claudia Helena Herrera Valle, Liliana María Herrera Valle and Berta Lucía Valle Noreña, nor do they allow the Court to infer that the facts of the case allegedly specifically impaired the living conditions of each of them. The Court therefore finds that a violation of their personal integrity has not been proved.

126. The Court also observes that the State indicated that “the birth certificate of Gilma Valle Jaramillo (sister, deceased) was not provided”; it therefore argued that there was no evidence of “her relationship with Jesús María Valle Jaramillo or the date of her death that would allow a determination of whether she qualified as an injured party.” In this regard, the Court notes that in a sworn statement, Guillermo Valle Noreña refers to Blanca Inés Valle Jaramillo as one of his paternal aunts, clarifying that “everyone knew [her] as Gilma.”<sup>89</sup> In this regard, the witness, Darío Arcila Arenas declared that, for “Gilma, one of his older sisters, the death of Jesús María [Valle Jaramillo] caused her profound sadness that lasted several years, until she died of a heart attack.”<sup>90</sup> Moreover, the Court observes that the State included Blanca Inés Valle Jaramillo as a party in the conciliation agreement arranged at the domestic level (*infra*, para. 202). Therefore, from the evidence provided during the proceedings, it is clear that Blanca Inés Valle Jaramillo, also known as “Gilma,” was Jesús María Valle Jaramillo's sister, who suffered a grave alteration of her living conditions as a result of the facts of the case, and who died subsequently.<sup>91</sup>

127. Based on the above, the Court finds that the State is responsible for the violation of the right to personal integrity embodied in Article 5(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of the following next of kin of Jesús María Valle Jaramillo: Blanca Inés Valle Jaramillo, Juan Guillermo Valle Noreña, John Jairo Valle Noreña and Luz Adriana Valle Noreña.

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<sup>87</sup> Statement made by the witness, Darío Arcila Arenas, *supra* note 85.

<sup>88</sup> Statement made by the witness, Juan Guillermo Valle Noreña, *supra* note 83.

<sup>89</sup> Statement made by the witness, Juan Guillermo Valle Noreña, *supra* nota 83 (folio 2244).

<sup>90</sup> Statement made by the witness, Juan Guillermo Valle Noreña, *supra* nota 83 (folio 2244), and statement made by the witness, Darío Arcila Arenas, *supra* note 85

<sup>91</sup> Birth certificate of Blanca Inés Valle Jaramillo (file of attachments to the pleadings and motions brief, folio 858).

128. With regard to the following persons, the Court has no evidence to accredit that their personal integrity was harmed owing to the facts of the instant case. Therefore the Court finds that it has not been proved that the State is responsible for the violation of Article 5(1) of the Convention to the detriment of: Adriana María Londoño Del Valle, Ana María Valle Villegas, Andrés Felipe Valle Villegas, Claudia María García Valle, Diana Patricia García Valle, Francisco Javier García Valle, Franklin Henao Valle, Fredy Henao Valle, Jairo Alberto Londoño Del Valle, Jeannette Henao Valle, John Alberto Henao Valle, Juliana Patricia Londoño Del Valle, María Victoria García Valle and Marta Luz García Valle.

129. Furthermore, the Court finds that the particular circumstances of what happened to Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa (*supra* paras. 30, 70, 107 and 109 and *infra* paras. 136, 137, 140 and 141) do not allow it to apply the presumption that their direct next of kin suffered a violation of their personal integrity. Therefore, with regard to these persons, as well as to the other indirect next of kin of Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa, the Court will assess whether there is any evidence to justify declaring a violation of their personal integrity.

130. The State did not acknowledge that Gonzalo de Jesús Jaramillo Correa, Carlos Fernando Jaramillo Correa's brother, was a victim of the violation of Article 5(1) of the Convention (*supra* para. 111). However, the Court observes that, in its acknowledgement of responsibility, the State accepted that both the direct next of kin of Carlos Fernando Jaramillo Correa (father, mother, wife, children), and his siblings, suffered a violation of their personal integrity owing to the facts of the case, excluding only the nieces and nephews insofar as "their close affective ties [with the said victim] had not been proved." The Court also observes that the State did not expressly deny that Gonzalo de Jesús Jaramillo Correa was a victim. Therefore, in application of Article 38(2) of its Rules of Procedure, which indicate that "the Court may consider accepted those facts that have not been expressly denied and the claims that have not been expressly contested," the Court declares that the State is responsible for the violation of the right to personal integrity embodied in Article 5(1) of the Convention, in relation to Article 1(1) thereof to the detriment of Gonzalo de Jesús Jaramillo Correa.

131. Regarding the following persons, all next of kin<sup>92</sup> of Carlos Fernando Jaramillo Correa, the Court observes that Saúl Jaramillo Giraldo and María Amanda Correa Zuleta referred in their respective statements to the impact that the facts of this case had on the family of Carlos Fernando Jaramillo Correa (*supra* paras. 50(c) and 50(d)), as follows:

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<sup>92</sup> Birth certificate of Alejandro Jaramillo Mejía (file of attachments to the pleadings and motions brief, folios 916 and 917), birth certificate of Ana Catalina Hoyos Jaramillo (file of attachments to the pleadings and motions brief, folios 896 and 897), birth certificate of Andrés Felipe Ochoa Jaramillo (file of attachments to the pleadings and motions brief, folios 904 and 905), birth certificate of César Augusto Jaramillo Gutiérrez (file of attachments to the pleadings and motions brief, folios 932 and 933), birth certificate of Diego Alejandro Ochoa Jaramillo (file of attachments to the pleadings and motions brief, folios 907 and 908), birth certificate of Gabriela Gómez Jaramillo (file of attachments to the pleadings and motions brief, folios 950 and 951), birth certificate of Jorge Mario Jaramillo Gutiérrez (file of attachments to the pleadings and motions brief, folios 935 and 936), birth certificate of José Miguel Jaramillo Gutiérrez (file of attachments to the pleadings and motions brief, folios 941 and 942), birth certificate of Juan Camilo Jaramillo Gutiérrez (file of attachments to the pleadings and motions brief, folios 929 and 930), birth certificate of Juan Gonzalo Jaramillo Mejía (file of attachments to the pleadings and motions brief, folios 912 and 913), birth certificate of Juliana Jaramillo Tobón (file of attachments to the pleadings and motions brief, folios 922 and 923), birth certificate of Luis Jairo Jaramillo Gutiérrez (file of attachments to the pleadings and motions brief, folios 938 and 939), birth certificate of Luisa María Gómez Jaramillo (file of attachments to the pleadings and motions brief, folios 948 and 949), birth certificate of María Isabel Jaramillo Mejía (file of attachments to the pleadings and motions brief, folios 914 and 915), birth certificate of Oscar Fernando Hoyos Jaramillo (file of attachments to the pleadings and motions brief, folios 899 and 900), birth certificate of Luis Santiago Jaramillo Tobón (file of attachments to the pleadings and motions brief, folios 924 and 925) and birth certificate of Victoria Alejandra Gómez Jaramillo (file of attachments to the pleadings and motions brief, folios 952 and 953).

The most significant emotional impact is that [...] it broke up the family, which had been a united family that worked together. For the same reason, they had to go in different directions, abandoning their property.<sup>93</sup>

The principal characteristic of the family had been its unity, always, all together in their financial and social activities.<sup>94</sup>

132. In this regard, the Court observes that, although the above statements refer to the emotional impact that "the family" of Carlos Fernando Jaramillo Correa supposedly suffered as a result of the facts of this case, these statements are very general and do not make specific reference to the specific harm that the facts of the case allegedly caused to the living conditions of each one of the next of kin of Carlos Fernando Jaramillo Correa who were not included in the State's acknowledgement of responsibility. Accordingly, given that no evidence has been provided, for example, about the specific circumstances of their respective relationship with him, of the additional suffering that they may have endured as a result of the violations perpetrated in the instant case, or as a result of the subsequent acts or omissions of State authorities in relation to the facts of the case, the Court finds that the violation of the right to personal integrity has not been proved to the detriment of: Alejandro Jaramillo Mejía, Ana Catalina Hoyos Jaramillo, Andrés Felipe Ochoa Jaramillo, César Augusto Jaramillo Gutiérrez, Diego Alejandro Ochoa Jaramillo, Gabriela Gómez Jaramillo, Jorge Mario Jaramillo Gutiérrez, José Miguel Jaramillo Gutiérrez, Juan Camilo Jaramillo Gutiérrez, Juan Gonzalo Jaramillo Mejía, Juliana Jaramillo Tobón, Luis Jairo Jaramillo Gutiérrez, Luisa María Gómez Jaramillo, María Isabel Jaramillo Mejía, Oscar Fernando Hoyos Jaramillo, Luis Santiago Jaramillo Tobón and Victoria Alejandra Gómez Jaramillo.

## VII

### **VIOLATION OF ARTICLE 22<sup>95</sup> (FREEDOM OF MOVEMENT AND RESIDENCE) OF THE AMERICAN CONVENTION IN RELATION TO ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS) THEREOF**

133. The Commission and the representatives alleged the violation of the right to freedom of movement and residence of Carlos Fernando Jaramillo Correa and his family, since "as a result of the death threats he received following the events of February 27, 1998, due to his participation as a witness in their investigation and in the legal proceedings, and because the State had placed him in a situation of vulnerability and defenselessness, Carlos Fernando Jaramillo Correa, together with his family, suffered forced displacement within Colombia and, subsequently, exile in another country." In addition, the representatives stated that "Mr. Jaramillo Correa became the victim of constant threats and harassment by paramilitary groups because he testified about the events, physically described the perpetrators of the murder, and was available to assist the investigators so that the crime would not go unpunished." In this regard, the representatives indicated that "[a]t first, [Mr. Jaramillo Correa and his family] had to leave Ituango, the municipality where they had their home and led a decent life in stable conditions, since it was the place where they carried out

<sup>93</sup> Statement made by the witness, Saúl Jaramillo Giraldo, *supra* note 74.

<sup>94</sup> Statement made by the witness, María Amanda Correa Zuleta, *supra* note 75.

<sup>95</sup> The relevant part of Article 22 stipulates:

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.

[...]

their financial and political activities. After [the events of February 27, 1998,] and owing to the very dangerous situation they faced, because the harassment continued despite their departure from the municipality of Ituango, they were obliged to leave Colombia and go into exile in another country.”

134. The State acknowledged that “[a]fter the death of Jesús María Valle, Mr. Jaramillo Correa and his direct nuclear family became the victims of constant threats and harassment because they had testified before the Prosecutor’s Office. The situation of particular vulnerability in which [Mr. Jaramillo Correa] found himself obliged him to abandon his place of residence.” Consequently, the State acknowledged its international responsibility, by omission, for the violation of the right to freedom of movement and residence of Carlos Fernando Jaramillo Correa and his direct nuclear family. Nevertheless, the State specified that this acknowledgement “does not include their displacement after June 11, 1996, which was due to the difficult security situation in Ituango following the La Granja massacre and the abandonment of the properties of the Jaramillo Correa family,” because “[t]he situation of violence in the region of Ituango and its consequences for the inhabitants of the zone, including Carlos Fernando Jaramillo Correa and his family, are not the subject of these proceedings[...].”

135. The Court observes that the State’s acknowledgement of responsibility with regard to the violation of Article 22(1) of the Convention refers to the violation of the right to freedom of movement and residence of Carlos Fernando Jaramillo Correa and his family as a result of the facts of the instant case; that is, after February 1998. This acknowledgment does not include the violation of the right to freedom of movement and residence alleged by the representatives, of which Carlos Fernando Jaramillo Correa was the alleged victim in June 1996, following the La Granja Massacre,<sup>96</sup> when he was supposedly displaced from Ituango to Medellín. In this regard, the Court notes that, in its analysis in this chapter, it will not consider the alleged displacement of Carlos Fernando Jaramillo Correa and his family that may have taken place as a result of events prior to those of this case (*supra* paras. 133 and 134).

136. In his testimony during the public hearing before the Court, Carlos Fernando Jaramillo Correa stated that:

[...] Following the murder of Jesús María Valle Jaramillo in his office in Medellín, [...] he] collaborated with the Prosecutor General’s Office in the investigation into this murder [...] by testifying. When the Prosecutor’s Office had completed its investigations, the danger [he] faced at that time, and [prior] to the murder of [Jesús María Valle Jaramillo,] became more evident, and [he] had to go into exile, provisionally at first [...] and, at the end of 1998, definitively [...]. [...]

[W]hen the Prosecutor General’s Office [began making] arrests and [issuing] arrest warrants for those accused of the murder of [Jesús María Valle Jaramillo], [his] name was made public, since he never testified anonymously; to the contrary, [he] always wanted it to be clear that it was [he] who had testified. Hence, since [his] name was in the public domain, he was at greater risk of being murdered by paramilitary groups.<sup>97</sup>

137. Also, as part of his testimony during the public hearing, Carlos Fernando Jaramillo Correa stated that “every day of his life, [he] think[s] of returning [to Colombia,] but [he sees] that [he has] virtually lost [his] homeland; that [he] cannot return [because] so much

<sup>96</sup> Cf. *Case of the Ituango Massacres*, *supra* note 21.

<sup>97</sup> Testimony given by the witness Carlos Fernando Jaramillo Correa at the public hearing held at the seat of the Inter-American Court of Human Rights on February 6 and 7, 2008.



has been destroyed for [him and his family], and [they] go through life barely surviving. The situation is not appropriate for their return.”<sup>98</sup>

138. In this regard, the Court has indicated in its case law that the right to freedom of movement and residence, established in Article 22(1) of the Convention, is an essential condition for the free development of a person.<sup>99</sup> This article contemplates, *inter alia*, the following: (a) the right of all persons lawfully within a State to move freely within that State and to choose their place of residence; and (b) the right of such persons to enter, to remain in, or to leave the State’s territory without any unlawful interference. Thus, the enjoyment of this right does not depend on any specific purpose or reason for the person who wishes to move or to remain in a particular place.<sup>100</sup>

139. In addition, the Court has indicated that the right to freedom of movement and residence can be violated by *de facto* restrictions if the State has not established the conditions or provided the means to allow that right to be exercised.<sup>101</sup> In this regard, the right to freedom of movement and residence may be affected when a person is the victim of threats or harassment and the State does not provide the guarantees necessary to allow him/her to move freely and reside in the territory in question, even when those threats and harassments are carried out by non-State actors.

140. Finding themselves away from their own country, without being able or wanting to return home owing to a well-founded fear of persecution arising from the facts of the instant case, Carlos Fernando Jaramillo Correa and his direct nuclear family became refugees. They were obliged to seek international protection to ensure respect for their human rights and avoid being returned, against their will, to a country where they had and have good reason to fear for their lives.

141. The Court observes that Carlos Fernando Jaramillo Correa and his direct nuclear family found themselves in a vulnerable situation that prevented them from freely exercising their right to freedom of movement and residence, partly because the State did not offer them the guarantees necessary to enable them to move freely and reside in Colombian territory. Furthermore, their status as refugees has ruptured the social fabric that united their family, obliging them to lose contact not only with their country, but also with their affective ties within it. In this regard, Saúl Jaramillo Giraldo, a friend of the Jaramillo Correa family, testified that the greatest emotional impact of the family’s exile was that “not only did it destroy [its] financial patrimony, but also broke up a united family, whose members worked together. For the same reason, they had to disperse in different directions, abandoning their properties [...]”<sup>102</sup>

142. In its acquiescence, the State acknowledged as victims of the violation of Article 22 of the Convention Carlos Fernando Jaramillo Correa and, as part of his nuclear family, Gloria

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<sup>98</sup> Testimony given by the witness Carlos Fernando Jaramillo Correa, *supra* note 97.

<sup>99</sup> *Cf. Ricardo Canese v. Paraguay. Merits, reparations and costs.* Judgment of August 31, 2004. Series C No. 111, para. 115; *Case of the Ituango Massacres*, *supra* note 21, para. 206, and *Case of the “Mapiripán Massacre”*, *supra* note 21, para. 168.

<sup>100</sup> *Cf. United Nations. United Nations Human Rights Committee, General Comment No. 27, of 2 November 1999, paras. 1, 4, 8 and 19; Case of Ricardo Canese*, *supra* note 99, para. 115; *Case of the Ituango Massacres*, *supra* note 21, para. 206, and *Case of the “Mapiripán Massacre”*, *supra* note 21, para. 168.

<sup>101</sup> *The Moiwana Community v. Surinam. Preliminary objections, merits, reparations and costs.* Judgment of June 15, 2005. Series C No. 124, paras. 119 and 120; *Case of the Ituango Massacres*, *supra* note 21, para. 210, and *Case of the “Mapiripán Massacre”*, *supra* note 21, para. 170.

<sup>102</sup> Statement made by the witness, Saúl Jaramillo Giraldo, *supra* note 74.

Lucía Correa (wife), Carlos Enrique Jaramillo Correa (son), and María Lucía Jaramillo Correa (daughter). However, the State failed to mention Ana Carolina Jaramillo Correa, who is also the daughter of Carlos Fernando Jaramillo Correa, as a victim of said article, despite having included her as part of his nuclear family in its acquiescence to the violation of the rights embodied in Articles 5, 7(1), 7(2), 8(1), and 25(1) of the Convention.

143. In this regard, the relationship between Carlos Fernando Jaramillo Correa and Ana Carolina Jaramillo Correa has been proved by documents issued by competent authorities of the State.<sup>103</sup> Having said this, the Court also notes that in his testimony during the public hearing before the Court, Carlos Fernando Jaramillo Correa stated that due to his collaboration with the investigation into the murder of Jesús María Valle Jaramillo, he, his wife, and their “three children” went into exile,<sup>104</sup> demonstrating that Ana Carolina Jaramillo Correa was also affected by the facts of the case.

144. Based on the foregoing, the Court declares that the State is responsible for the violation of the right to freedom of movement and residence established in Article 22(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Carlos Fernando Jaramillo Correa, his wife, Gloria Lucía Correa, his son, Carlos Enrique Jaramillo Correa, and his daughters, María Lucía Jaramillo Correa and Ana Carolina Jaramillo Correa.

**VIII**  
**VIOLATION OF ARTICLES 8(1) (JUDICIAL GUARANTEES)<sup>105</sup> AND 25(1) (JUDICIAL PROTECTION)<sup>106</sup> OF THE AMERICAN CONVENTION, IN RELATION TO ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS) THEREOF**

145. The Commission alleged that the State is responsible for the violation of Articles 8(1) and 25 of the Convention, in relation to Article 1(1) thereof, to the detriment of Nelly Valle Jaramillo and her next of kin; Carlos Fernando Jaramillo Correa and his next of kin, and the next of kin of Jesús María Valle Jaramillo, since the “the State has not provided the means necessary to comply with its obligation to investigate, prosecute, and punish those responsible and make reparations to the victims and their next of kin.” In addition, the Commission indicated that “the investigation and the proceedings that have been conducted have lasted for more than eight years without the courts having tried those responsible.” In this regard, it emphasized that “those convicted *in absentia* have not been captured; the State has not presented specific information on the efforts made in this regard and, from the publicly-known context, it is clear that there is little likelihood of these sentences being served and providing an effective remedy.”

146. The representatives indicated that, “in the instant case, the State has not guaranteed the right of Jesús María Valle’s next of kin and of society as a whole to know the

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<sup>103</sup> Birth certificate of Ana Carolina Jaramillo Correa (file of attachments to the pleadings and motions brief, tome I, appendix D, folio 882).

<sup>104</sup> Testimony given by the witness, Carlos Fernando Jaramillo Correa, *supra* note 97.

<sup>105</sup> Article 8(1) of the Convention establishes that “[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

<sup>106</sup> Article 25(1) of the Convention indicates that “[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”

identity of all those responsible for his execution. Justice has not been done by means of a punishment proportionate to the gravity of the facts, nor have the corresponding reparations been made that are essential to compensate the damage caused." "Only two individuals have been convicted for the execution of Jesús María Valle Jaramillo and they have never been brought before the authorities; in other words, they have not been detained and made available to respond for the facts." In addition, the representatives indicated that, "even though the State acknowledged the possibility that State agents could have been responsible for the crime, none were charged in the criminal investigations." On this last point, the representatives referred to the review undertaken by the Prosecutor General's Office of the decision of May 21, 1999, that concluded that there was no evidence of the participation of State agents and, in particular, of the Commander of the Army's Fourth Brigade, in the murder of Jesús María Valle Jaramillo. The representatives alleged that the evidence produced by the Prosecutor's Office "contained genuine and grave indications of the participation of State agents in the murder of [...] Valle Jaramillo." For example, in the said decision of May 21, 1999, the prosecutor stated that Jesús María Valle Jaramillo's name "appeared on Carlos Castaño Gil's lists as a candidate for assassination, at the request of the Commander of the Army's Fourth Brigade headquartered in Antioquia." Similarly, the representatives alleged that the State's responsibility arises from the "common evidence" that, according to the informative deponent, Sandra Jeannette Castro Ospina, exists relating to the facts relating to the Ituango Massacres and to the murder of Jesús María Valle Jaramillo.<sup>107</sup> Thus, the representatives concluded that, with regard to the violation of Articles 8(1) and 25(1) of the Convention, the "full international responsibility" of the Colombian State should be declared, not only for its omissions, but also for its affirmative acts.

147. The State acknowledged that it "had failed partially to comply with its obligation to investigate, prosecute, and punish all those responsible in an exhaustive and effective manner within a reasonable time [with respect to] the extrajudicial execution of Jesús María Valle Jaramillo, and his detention and subjection to cruel, inhuman, and degrading treatment together with his sister Nelly Valle, and Carlos Jaramillo Correa." In this regard, the State recognized "that the criminal and disciplinary proceedings carried out to date had not complied fully with its duty to provide reparation in the form of justice and truth for the victims, their next of kin, and society, because all those responsible for the facts had not been included in the investigations and because these investigations had not been conducted within a reasonable time and, in brief, had not complied effectively with their purpose." Despite the foregoing, in its brief with final arguments, the State indicated that in the criminal proceedings in which two civilians were convicted of the murder of Valle Jaramillo, "their pursuit, individualization, accusation, and trial were carried out within a reasonable time [...] because the pre-trial investigation took 19 months and the trial stage lasted 24 months, which does not constitute a violation of the right embodied in Article 8(1) of the American Convention. Accordingly, the State guaranteed partially the right of the alleged victims and their next of kin to know the truth of what happened, including how, when, and where it happened, and its obligation to punish the perpetrators of the violent death of Jesús María Valle Jaramillo." In addition, the State indicated that the criminal proceedings "were initiated *ex officio* and immediately, establishing as an hypothesis of the investigation: (i) the authorship and participation of individuals (members of self-defense groups who were operating in the zone), owing to the denunciations that Jesús María Valle Jaramillo had made regarding the Ituango massacres, [and] (ii) the participation of members of the Army in retaliation for Jesús María Valle Jaramillo's denunciations concerning alliances and connivance between members of the Army and paramilitary groups

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<sup>107</sup> Statement made by the deponent providing information, Sandra Jeannette Castro Ospina, during the public hearing held at the seat of the Inter-American Court on February 6 and 7, 2008.

operating in the region." In this regard, the State alleged that "there is no direct or circumstantial evidence that would indicate that State agents intervened in planning, executing, deciding, or acting as intermediaries in the murder of Jesús María Valle Jaramillo." In any case, the State clarified that its acknowledgement of responsibility was partial to the extent that "not all the investigations opened have concluded. Indeed, some of them are still open in the Prosecutor General's Office and are designed to identify other authors who could have taken part in the facts with different degrees of responsibility."

148. The Court observes that various criminal, disciplinary, and administrative proceedings were opened in relation to the facts of the instant case. The Court finds it pertinent, first, to make a brief summary of these proceedings in the said order and based on the State's acknowledgement of facts, and then to analyze the violation of Articles 8(1) and 25(1) of the Convention with regard to each one.

A) *Criminal proceedings*

149. The Court accepts as proved that, following the facts that are the subject of this case, the Prosecutor General's Office, through the Rapid Reaction Unit, began a preliminary investigation by conducting an on-site inspection. Following several preliminary measures, the Colombian State began a formal criminal investigation under case No. 26,017 on July 8, 1998, and, on May 21, 1999, the Prosecutor's Office assessed the merits of the investigation, charged 10 individuals with the offenses of "illegally forming paramilitary groups" and aggravated murder, and ordered that the investigation continue with regard to the offenses against the personal liberty and autonomy of Carlos Fernando Jaramillo Correa and Nelly Valle Jaramillo. On March 15, 2001, the Third Criminal Court of the Medellín Specialized Circuit sentenced Álvaro Goez Mesa and Jorge Eliécer Rodríguez Guzmán to 40 years' imprisonment as co-perpetrators of the murder of Jesús María Valle Jaramillo. Carlos Castaño Gil was sentenced to 20 years' imprisonment as author of the offense of forming unlawful armed groups or paramilitary groups. In the same judgment, another seven civilians were acquitted of the offense of aggravated murder and forming part of unlawful armed groups, and Carlos Castaño Gil was acquitted as co-author of the offense of murder. This decision was confirmed on July 25, 2001, by the Criminal Chamber of the Superior Court of Medellín, which reduced the term of imprisonment delivered by the judge of first instance from 20 years to 9 years for Carlos Castaño Gil, and from 40 years to 25 years for Álvaro Goez Mesa and Jorge Eliécer Rodríguez. Carlos Castaño Gil died in 2005.

150. On January 28, 2008, alleging the "significant non-compliance with the Colombian State's obligation to investigate seriously and impartially the [alleged] violations [in the case]," the National Human Rights Unit of the Prosecutor General's Office filed an application for judicial review of the judgment of July 25, 2001, delivered by the Superior Court of Medellín before the Supreme Court of Justice. On April 1, 2008, the Criminal Cassation Chamber of the Supreme Court of Justice decided to admit this application for judicial review.<sup>108</sup> At the time of this judgment, the Court has no further information in this regard.

151. As a result of the rupture of the unity of case No. 26, 017 (opened for the facts cited when assessing the investigation stage), cases No. 31,928 and No. 343,431 were opened. Regarding case No. 31,928, on November 23, 1999, the Medellín Regional Prosecutor charged another alleged member of the paramilitary forces *in absentia*. However, on May 31, 2007, the Fourth Criminal Court of the Medellín Circuit acquitted him. Regarding case

<sup>108</sup> Judicial decision of the Criminal Cassation Chamber of the Supreme Court of Justice of April 1, 2008 (file on merits, tome V, folios 1048 and 1049).

No. 343,431, on December 19, 2001, the opening of the preliminary investigation was ordered so as to identify other individuals who were possibly responsible. On January 21, 2005, the investigation was reassigned to the National Human Rights Unit of the Prosecutor's Office because the victim in the case was a human rights defender. On February 16, 2006, this Unit ordered that two alleged members of a paramilitary group should be charged as presumably responsible for the offenses of murder and simple kidnapping, to the detriment of Jesús María Valle, Nelly Valle Jaramillo and, Carlos Fernando Jaramillo Correa. Both of the accused are currently deprived of liberty as a result of other proceedings. The investigation was closed under article 393 of Law 600 of 2000, which means that "an order was issued that the case file be assessed."

152. In addition, proceedings are underway in the National Justice and Peace Unit of the Prosecutor General's Office against Salvatore Mancuso and Isaiás Montes Hernández, alias "Junior," under Law 975 of 2005 (*infra* paras. 161 to 164), in which, according to the State, "evidence is emerging that will help clarify the facts" of the instant case.

153. The Court observes that despite the State's acknowledgement of facts and acquiescence to various claims, it is still necessary to define the significance and gravity of the violations committed in relation to Articles 8(1) and 25(1) of the Convention. Consequently, the Court will examine whether the official investigative activities were carried out with due diligence, together with other elements, in order to determine whether the proceedings and procedures were conducted observing judicial guarantees and within a reasonable time, and whether they have been effective in ensuring the victims' rights to access to justice, the truth about the facts, and reparations.<sup>109</sup>

*A.1) Considerations on whether the duration of the criminal proceedings was reasonable*

154. The Court has indicated that the right of access to justice means that the settlement of the dispute must take place within a reasonable time,<sup>110</sup> since a prolonged delay can constitute, in itself, a violation of judicial guarantees.<sup>111</sup> In this case, the Court observes that more than 10 years have elapsed since the facts occurred and the respective criminal proceedings are still open. The reasonableness of this delay must be examined in relation to the "reasonable time" referred to in Article 8(1) of the Convention, taking into account the total duration of the proceedings until a final judgment is handed down.<sup>112</sup>

155. The Court has established that three elements must be taken into account in order to determine whether the time is reasonable: (a) the complexity of the matter; (b) the procedural activity of the interested party, and (c) the conduct of the judicial authorities.<sup>113</sup> In addition, the Court finds it pertinent to clarify that, in this analysis of reasonableness, the

<sup>109</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.)*, *supra* note 70, para. 222; *Case of Heliodoro Portugal*, *supra* note 13, para. 126, and *Case of García Prieto et al.*, *supra* note 58, para. 109.

<sup>110</sup> Cf. *Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 73; *Case of Heliodoro Portugal*, *supra* note 13, para. 148, and *Salvador Chiriboga v. Ecuador. Preliminary objection and merits*. Judgment of May 6, 2008. Series C No. 179, para. 59.

<sup>111</sup> Cf. *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; *Case of Heliodoro Portugal*, *supra* note 13, para. 148, and *Case of Salvador Chiriboga*, *supra* note 110, para. 59.

<sup>112</sup> Cf. *Case of Suárez Rosero*, *supra* note 110, para. 71; *Case of Bayarri*, *supra* note 13, para. 105, and *Case of Heliodoro Portugal*, *supra* note 13, para. 148.

<sup>113</sup> Cf. *Genie Lacayo v. Nicaragua. Merits, reparations and costs*. Judgment of January 29, 1997. Series C No. 30, para. 77; *Case of Bayarri*, *supra* note 13, para. 107, and *Case of Heliodoro Portugal*, *supra* note 13, para. 149.

adverse effect of the duration of the proceedings on the judicial situation of the person involved in it must be taken into account; bearing in mind, among other elements the matter in dispute. If the passage of time has a relevant impact on the judicial situation of the individual, the proceedings should be carried out more promptly so that the case is decided as soon as possible.

156. Although the domestic criminal proceedings in this case include three alleged victims, one of aggravated murder and two of simple kidnapping, the Court observes that the investigation has been complex as regards the arrest of the accused (who were even tried *in absentia* owing to the clandestine nature of paramilitary groups), and also the identification of all the perpetrators. The Court has referred in its case law to the difficulties faced by a State to respond properly and adequately to its international commitments when it must prosecute unlawful acts by members of groups that have taken up arms.<sup>114</sup> Nevertheless, the Court reiterates that the domestic situation of a State Party to the American Convention does not liberate it from its obligations under this treaty.<sup>115</sup> In this regard, and even though two of those responsible in this case who belong to paramilitary groups have been convicted, the Court finds that the complexity of the matter under investigation in the domestic jurisdiction does not, in itself, justify the fact that criminal proceedings are still open 10 years after the event.

157. Regarding the procedural activity of the interested party, it should be recalled that the instant case involves, *inter alia*, an extrajudicial execution and that, consequently, the State has the obligation to initiate, *ex officio* and without delay, a serious, impartial, and effective investigation.<sup>116</sup> Consequently, the effective search for the truth in this case corresponds to the State and does not depend on the procedural initiative of the victim or of his next of kin, or on their contribution of probative elements.<sup>117</sup> Additionally, nothing in the file before the Court shows that the alleged victims delayed or obstructed the judicial proceedings.

158. With regard to the conduct of the judicial authorities, the Court observes that the Colombian State opened the formal criminal investigation into the facts on July 8, 1998, and that this investigation culminated in a judgment of the Third Criminal Court of the Medellín Specialized Circuit on March 15, 2001, convicting two civilians as perpetrators of the murder of Jesús Valle Jaramillo and another as responsible for the offense of forming part of a paramilitary group, and acquitting seven of the ten accused of all charges (*supra* para. 149). Therefore, since only slightly more than three years elapsed between the occurrence of the facts, their investigation, the application of the norms in force, and the subsequent determination of two perpetrators in the case, the Court considers that, as regards these proceedings specifically, the measures taken by the Colombian State's prosecutors and judiciary were in keeping with criteria of diligence and reasonableness.

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<sup>114</sup> Cf. *Case of the "Mapiripán Massacre"*, *supra* note 21, para. 238; *Case of the Ituango Massacres*, *supra* note 21, para. 300, and *Case of the Pueblo Bello Massacre*, *supra* note 30, para. 146.

<sup>115</sup> Cf. *Case of Bámaca Velásquez*, *supra* note 80, para. 207; *Case of the Ituango Massacres*, *supra* note 21, para. 300, and *Case of the Pueblo Bello Massacre*, *supra* note 30, para. 146.

<sup>116</sup> Cf. *Juan Humberto Sánchez v. Honduras. Preliminary objections, merits, reparations and costs*. Judgment of June 7, 2003. Series C No. 99, para. 112; *Case of Heliodoro Portugal*, *supra* note 13, para. 115, and *Case of García Prieto et al.*, *supra* note 58, para. 101.

<sup>117</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 20, para. 177; *Case of Heliodoro Portugal*, *supra* note 13, para. 145, and *Case of Albán Cornejo et al.*, *supra* note 5, para. 62.

159. Even so, in accordance with the State's acknowledgement of the facts and with the decision of the Prosecutor General's Office of May 21, 1999,<sup>118</sup> this Court emphasizes that more than two people, that is, at least two men and a woman, took part in the facts of the case. Consequently, and in accordance with the State's partial acquiescence, the Court observes that, even though the criminal proceedings in which two individuals were convicted as authors of the facts were conducted within a reasonable time, there has been an unjustified judicial delay in the investigations into other possible authors of the facts of the case. Indeed, as indicated above, the State "accept[ed] that the criminal and disciplinary proceedings carried out to date had not complied fully with [its duty to provide] reparation [in the form of] justice and truth for the victims, their next of kin, and society, since all those responsible for the facts had not been encompassed by the investigations and since these investigations had not been conducted within a reasonable time and, in brief, had not complied effectively with their purpose."

160. According to the partial acknowledgement of responsibility made by the State, not all the investigations that were opened have concluded. In an investigation by the Human Rights Unit, preventive detention has been ordered for two members of a paramilitary group who have been convicted for other acts and who are serving their prison sentences. In addition, an action remains pending for review of the judgment of the Third Criminal Court of the Medellín Circuit of March 15, 2001, which, *inter alia*, acquitted several civilians charged in the instant case (*supra* paras. 149 and 150)). Also, as the State has indicated, measures have been taken before the Antioquia Sectional Council of the Judiciary in order to establish whether there are grounds for disciplining the judicial officials who processed the criminal action (*infra* para. 166).

161. Even taking into account that these proceedings are still open, the case file before the Court does not show that an active investigation is underway concerning the possibility that, in addition to private individuals, State agents may also have played a part in the planning or execution of the facts that are the subject of this case. Nevertheless, the Court observes that, during the public hearing, Sandra Jeannette Castro Ospina, Head of the National Human Rights and International Humanitarian Law Unit of the Prosecutor General's Office, when referring to the criminal investigations opened to clarify the facts of the case, stated that there was a "community of evidence" between the present case and the facts of the Ituango Massacres case, in which this Court found that the acquiescence and collaboration of members of the Army with paramilitary groups had been proved; and that this "community of evidence" could "help reactivate [the] investigation into the murder of Jesús María Valle."<sup>119</sup> Moreover, in the National Justice and Peace Unit of the Prosecutor General's Office, measures have been taken under Law 975 of 2005, also known as the "Justice and Peace Law,"<sup>120</sup> which would allow it to obtain information on the possible participation in the facts of State agents or other private individuals.

162. In this regard, as is clear from the body of evidence in this case and as indicated by the State, probative elements have emerged from the statements (*versiones libres*) made in these proceedings by Salvatore Mancuso and Isaías Montes Hernández, alias "Junior," well-known leaders of paramilitary groups in Colombia, that could help clarify the facts and

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<sup>118</sup> Decision of May 21 1999, of the Delegate Prosecutor before the Regional Judges of Medellín, of the Regional Directorate of Prosecutors' Offices, of the Office of the Prosecutor General (file of attachments to the application, appendices 1 and 2, folios 50 to 163).

<sup>119</sup> Statement made by the deponent providing information, Sandra Jeannette Castro Ospina, *supra* note 107.

<sup>120</sup> Cf. Law 975 of 2005 of July 25, 2005, "enacting provisions for the reincorporation of members of unlawful organized armed groups who make an effective contribution to national peace, and ordering other provisions for humanitarian agreements." *Case of La Rochela Massacre*, *supra* note 21, para. 180.

contribute to the investigation and punishment, if applicable, of all the authors. This evidence must be assessed by the pertinent domestic judicial authorities in the context of the proceedings that are open or that will be opened in order to determine the truth of what happened in the case and those responsible, particularly with regard to possible connections or connivance between State agents and paramilitary groups in the planning and execution of the violations that are the subject of this case.

163. In addition, the Court observes that, as indicated by the State as a supervening fact, on February 21, 2008, during a hearing before a prosecutor of the Justice and Peace Unit, a demobilized member of the paramilitary forces acknowledged his participation in the death of Mr. Valle Jaramillo, presumably on the orders of the paramilitary leader Carlos Castaño Gil. This must be verified by the Prosecutor General's Office, but, in any case, would appear to corroborate that the violations that are the subject of this case remain unpunished.

164. Furthermore, the Court observes, as it has on other occasions, that the application of the Justice and Peace Law is currently at an initial stage of procedural activities relating to receiving the statements (*versiones libres*) of some of the individuals who have demobilized, such as those indicated in the previous paragraphs. Subsequently, the National Justice and Peace Prosecutors Unit and the Superior Courts of the Judicial District must, *inter alia*, adopt the corresponding decisions.<sup>121</sup> Thus, although the information obtained under the Justice and Peace Law may contribute to obtaining justice and reparation in this case, it should be recalled that the time required to bring the pending criminal proceedings to final judgment, as well as those under the Justice and Peace Law, with their different stages, would have to be added to the time that has elapsed since the facts.

165. Based on the above, the Court finds that even though criminal investigations have been conducted, resulting in the conviction of several private individuals, partial impunity subsists in this case, as the State has acknowledged, to the extent that the whole truth of the facts and all those responsible have not been determined. In addition, the impunity in this case is reflected by the trial and conviction *in absentia* of members of paramilitary groups, who have benefited from the ineffectiveness of the punishment, because the warrants for their arrest have not been executed.

#### B) *Disciplinary proceedings*

166. In addition to the criminal proceedings described above, according to the State's acknowledgement of the facts, on December 5, 2001, the Delegated Disciplinary Prosecutor for the Defense of Human Rights opened file No. 008-65478/01 in order to investigate the alleged responsibility of public officials in the facts of the instant case. However, the file was archived at the preliminary stage of investigations by a judicial decision of June 13, 2002, owing to lack of sufficient evidence to charge any public servant. The Court also notes that disciplinary proceedings were conducted against two judicial officials of the Fourth Criminal Court of the Specialized Circuit before the Jurisdictional Disciplinary Chamber of the Sectional Council of the Judiciary of Antioquia for alleged irregularities in the exercise of their functions. In this regard, the Court observes that, although such disciplinary proceedings are no substitute for the function of the criminal jurisdiction in cases of human rights violations, because they tend to protect the administrative function and the correction and control of public officials rather than trying to clarify the facts and establish the

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<sup>121</sup> Cf. Articles 16 to 28 of Law 975 of 2005 of July 25, 2005.



responsibilities in a case,<sup>122</sup> the Court recognizes their complementary role in guaranteeing the rights recognized in the Convention.

C) *Administrative law proceedings*

167. In addition to the criminal and disciplinary proceedings examined above, the Court notes the fact, which has not been disputed, that on March 16, 2000, some of Jesús María Valle Jaramillo's next of kin filed a complaint under the direct reparation procedure before the Administrative Court of Antioquia against the Nation, represented by the Ministry of Defense, the Army, the Ministry of the Interior and Justice, the National Police, the Administrative Department of Security (DAS), the Department of Antioquia, and the Municipality of Medellín, for the facts that occurred on February 27, 1998. The judgment in first instance was adverse to the complainants, who on April 26, 2007, entered into a settlement agreement before the Council of State. In this settlement, the State agreed to make partial reparation to those victims and their next of kin who were parties to the administrative proceeding. In this regard, in keeping with its case law on the obligation to repair resulting from a violation of the Convention (*infra* paras. 201 to 210), the Court recognizes the role of the administrative jurisdiction as regards reparations and assesses positively that, in the domestic sphere, the State has made partial reparation to some of the victims in the instant case. This constitutes a significant contribution to the integral reparation of the violations declared in this judgment. Nevertheless, the scope and repercussions of the decisions made by that instance will be examined in the chapter on reparations (*infra* paras. 201 to 208). For the effects of this section, it is sufficient for the Court to observe that, although the purpose of the proceeding was to make reparation to the victims and their next of kin for pecuniary and non-pecuniary damages arising from the facts, an administrative proceeding does not constitute *per se* an effective and adequate remedy to make integral reparation for this violation.<sup>123</sup>

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168. In conclusion, despite the progress indicated in the preceding paragraphs, the Court finds that impunity prevails in the instant case because domestic procedures and proceedings have not constituted effective remedies to ensure access to justice, to investigate and eventually punish all those who took part in the perpetration of the violations, including the possible participation of State agents, to execute the arrest warrants issued against those responsible who have already been convicted, and to provide integral reparation for the consequences of the violations.

169. Based on the above observations in this chapter and bearing in mind the State's acknowledgement of the facts and its acquiescence, the Court finds that the State violated the right to judicial guarantees and to judicial protection recognized in Articles 8(1) and 25(1) of the American Convention, in relation to the general obligation embodied in Article 1(1) thereof, to the detriment of Nelly Valle Jaramillo, Alfonso Montoya Restrepo, Luis Fernando Montoya Valle, Carlos Fernando Jaramillo Correa, Gloria Lucía Correa, Carlos Enrique Jaramillo Correa, María Lucía Jaramillo Correa, Ana Carolina Jaramillo Correa, Jesús Emilio Jaramillo Barrera, Adela Correa de Jaramillo, Blanca Lucía Jaramillo Correa, Romelia Jaramillo Correa, Nellyda Jaramillo Correa, José María Jaramillo Correa, Luís Eugenio

<sup>122</sup> Cf. *Case of the "Mapiripán Massacre"*, *supra* note 21, para. 215; *Case of La Rochela Massacre*, *supra* note 21, paras. 206 and 215, and *Case of the Ituango Massacres*, *supra* note 21, para. 327.

<sup>123</sup> Cf. *Case of the "Mapiripán Massacre"*, *supra* note 21, para. 214; *Case of La Rochela Massacre*, *supra* note 21, paras. 220 and 222, and *Case of the Ituango Massacres*, *supra* note 21, para. 340.

Jaramillo Correa, Gloria Elena Jaramillo Correa, Adriana María Jaramillo Correa, María Leticia Valle Jaramillo, Ligia Valle Jaramillo, Luzmila Valle Jaramillo, Magdalena Valle Jaramillo, Romelia Valle Jaramillo, Marina Valle Jaramillo, Dario Valle Jaramillo and Octavio Valle Jaramillo.

170. The Court points out that, in the instant case, despite the State's acquiescence (*supra* paras. 35 and 38), it is not appropriate to declare Jesús María Valle Jaramillo a victim of the violation of Articles 8(1) and 25(1) of the American Convention, since in a case of extrajudicial execution the rights harmed are those of the deceased victim's next of kin, who are the interested parties in the search for justice and to whom the State must provide effective remedies in order to guarantee them access to justice, the investigation and eventual punishment, if applicable, of those responsible for the violations, and the integral reparation of the consequences of the violations.

**IX**  
**ARTICLE 11(1) AND 11(2) (RIGHT TO PRIVACY)<sup>124</sup> OF THE AMERICAN**  
**CONVENTION IN RELATION TO ARTICLE 1(1)**  
**(OBLIGATION TO RESPECT RIGHTS)<sup>125</sup> THEREOF**

171. The representatives alleged that the right to honor and dignity of Jesús María Valle Jaramillo and his next of kin, established in Article 11(1) and 11(2) of the Convention, had been violated because he had been "investigated by the Medellín Sectional Prosecutor's Office for the offense of slander as a result of the complaint filed by a member of the Girardot Battalion, attached to the Fourth Brigade, on July 10, 1997." The representatives also indicated that the right to family honor had been violated, since "the Valle Jaramillo family [...] took upon itself [...] the attack on Jesús María [Valle's] honor, of which he was made a victim when he was criminally charged, taking into account the family structure and Jesús María [Valle's] influence within it." The representatives emphasized that "[h]onor must be safeguarded in its broadest sense, since an attack on one member of the family extends to all its members: family honor is part of personal honor and vice versa [...]. Thus, any attack on the reputation of one person becomes an attack on the family." In addition, the representatives based this alleged violation on the fact that the Governor of Antioquia at the time had labeled Jesús María Valle Jaramillo an "enemy of the Army [...] in a context of conflict and [his] constant denunciations of the Army's collaboration with paramilitary groups." Lastly, the representatives alleged that Carlos Fernando Jaramillo Correa and his next of kin's right to honor was violated "because [...] they have been unable to return to the place where they have their properties and businesses and, in general, to the way of life built up with many years of work." Hence, citing the *Ituango Massacres case*, as regards the connection between "deprivation and violation of the right to the use and enjoyment of property" and "violation of the right to honor and dignity of the population," the

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<sup>124</sup> The pertinent part of Article 11 establishes that:

1. Everyone has the right to have his honor respected and his dignity recognized.
2. 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.

[...]

<sup>125</sup> Article 1(1) establishes that:

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

representatives alleged that, although “the homes were [not] burned down [in the instant case], this does not mean that the same conclusion cannot be reached when the use and enjoyment of property is adversely affected by forced displacement that makes it necessary to abandon property that has provided the family with a means of improving their situation and a way of life.”

172. The Commission did not allege the violation of this Article.

173. Citing the Court's case law, the State indicated that “a violation of the right to honor occurs when the public defamation of the person or persons affected is fully verified and when the State has tolerated the defamation, subjecting the victims and their next of kin ‘to hate, public contempt, harassment, and discrimination.’” Thus, according to the State, “the fact that Mr. [...] Valle [Jaramillo] was charged in a criminal action [...] cannot lead to the erroneous conclusion that the complaint against him was designed to violate his right to honor.” The State also indicated that the alleged violation of Article 11 of the Convention, based on the declarations of the departmental authorities of Antioquia, “is not supported by any evidence, but is based on a series of circumstantial elements taken out of context by the representatives in order to supposedly establish that Mr. Valle Jaramillo was subjected to a public loss of prestige.” In addition, it indicated that “[u]nder Colombian law, [...] slander and libel are defined as offenses; therefore, if it is considered that an affirmation by a private individual or a public official is false or dishonorable, a complaint based on these offenses can be filed before a competent judicial authority, for the latter to decide whether what was said was true or false.” Regarding the violation of this article to the detriment of Carlos Fernando Jaramillo Correa and his next of kin, the State considered that, contrary to the Court's findings in the *Ituango Massacres case*, the connection between the right to property and the right to honor was not applicable in this case, “because the destruction or arson of the home of Mr. [...] Jaramillo [Correa] by State forces has never been proved.” Accordingly, citing the Court's case law, the State emphasized that “the violation of Article 11 of the Convention does not occur autonomously” and that, in any case, “the harm to Mr. Jaramillo Correa's property could have resulted from [...] the displacement he suffered,” for which the State acknowledged its responsibility.

174. Bearing in mind that the Commission did not allege the violation of Article 11 of the Convention, the Court finds it pertinent to reiterate that the alleged victim, his next of kin, or his representatives may invoke different rights from those included in the Commission's application, based on the facts presented by the Commission.<sup>126</sup> On this point, the Court has stated that it is not admissible to allege new facts that differ from those described in the application, without detriment to setting out facts that can explain, clarify, or reject the facts mentioned in the application or respond to the claims of the plaintiff. It has also indicated that the exception to this rule operates in the case of supervening facts, that is, facts that occur after the briefs in the proceedings (the application, the brief with pleadings and motions, and the brief answering the application) have been submitted.<sup>127</sup>

175. In this regard, the Court observes that the representatives alleged the violation of Article 11 of the Convention, to the detriment of Jesús María Valle Jaramillo and his next of kin, as well as to the detriment of Carlos Fernando Jaramillo Correa and his next of kin, based on the facts described in paragraphs 38 and 52, respectively, of the Commission's application. In Chapter IV of this judgment, the Court noted that the State had

<sup>126</sup> Cf. *Case of the “Five Pensioners”*, *supra* note 13, para. 155; *Case of Bayarri*, *supra* note 13, para. 118, and *Case of Heliodoro Portugal*, *supra* note 13, para. 212.

<sup>127</sup> Cf. *Case of the “Five Pensioners”*, *supra* note 13, paras. 84 and 154; *Case of Bayarri*, *supra* note 13, para. 46, and *Case of Heliodoro Portugal*, *supra* note 13, para. 228.

acknowledged that “an action for slander was filed [against Jesús María Valle Jaramillo] at the request of members of the Army” (*supra* para. 30(a)). The Court also emphasizes that, regarding paragraph 39 of the application, the State:

Questioned the contents of the testimony of Carlos Fernando Jaramillo Correa [...] to the effect that “the Governor of Antioquia at the time declared publicly that ‘Dr. Valle appeared to be an enemy of the Army,’” because it was not supported by any other evidence attached to the application.

176. Regarding the first allegation concerning the complaint against Valle Jaramillo for slander, the Court considers that a judicial proceeding does not, in itself, constitute unlawful harm to the honor or dignity of the individual. Despite the fact that it can indirectly cause difficulties to those who must undergo a trial, its purpose is to settle a dispute. Maintaining otherwise would completely exclude settling litigations by administrative proceedings.<sup>128</sup> Consequently, the Court finds that, in the instant case, it has not been proved that the State violated Article 11(1) and 11(2) of the Convention with regard to Jesús María Valle Jaramillo and his next of kin, based on the complaint filed against him for slander.

177. Regarding the second allegation concerning the supposed statement made by the Governor of Antioquia at the time (*supra* para. 171), the Court observes that neither the Commission nor the representatives submitted sufficient probative elements to corroborate the testimony of Carlos Fernando Jaramillo Correa, who is a victim in these proceedings (*supra* para. 54). Although the representatives provided a newspaper article as a means of proving this alleged fact,<sup>129</sup> the Court observes that it refers to a communiqué issued by “eleven non-governmental organizations that comprise the ‘Semillas de Libertad’ Human Rights Collective (CODEHSEL),” in which these organizations indicate that “the Governor of the Department [...] referred to [... Jesús María] Valle as ‘enemy of the Armed Forces.’” Since there are no other elements that support the information contained in this newspaper article, the Court finds that the latter lacks sufficient probative value (*supra* para. 53) and, therefore, considers that the fact being examined has not been proved.

178. The allegation of the representatives concerning the alleged violation of Article 11 of the Convention to the detriment of Carlos Fernando Jaramillo Correa and his next of kin is partially supported by the contents of paragraph 52 of the Commission’s application. The pertinent part of this paragraph, as well as the State’s acknowledgement of the facts (*supra* para. 134), indicate that Carlos Fernando Jaramillo Correa had possessions and properties that he had to abandon owing to his alleged forced displacement.

179. The Court considers that the facts and consequences alleged by the representatives with regard to the supposed violation of Article 11 of the Convention to the detriment of Carlos Fernando Jaramillo Correa and his next of kin are related to the complex violation of Article 22 thereof that has already been declared in this judgment (*supra* paras. 133 to 144). Moreover, taking into account the allegations of the representatives, the Court observes that, although the Court declared that Article 11(2) of the Convention had been violated in the case of the *Ituango Massacres*, it did so based on facts that differ from those indicated in the instant case, owing to the arson and destruction of the houses of the victims in the former case, and in order to “protect private life and home from arbitrary or abusive interference”;<sup>130</sup> consequently, that case law precedent is not applicable.

<sup>128</sup> Cf. *Cesti Hurtado v. Peru. Merits*. Judgment of September 29, 1999. Series C No. 56, para. 177, and *Bueno Alves v. Argentina. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 164, para. 122.

<sup>129</sup> Note published in the *El Colombiano* newspaper on July 12, 1997, entitled: “*Lo de Ituango evidencia unión paramilitares-Ejército*” (file of attachments to the pleadings and motions brief, attachment H-1 No. 39, folio 1310).

<sup>130</sup> Cf. *Case of the Ituango Massacres*, *supra* note 21, para. 193.

180. Therefore, the Court finds that an autonomous violation of Article 11(1) and 11(2) of the Convention has not been proved in the instant case.

**X**  
**ARTICLE 17 (RIGHTS OF THE FAMILY)<sup>131</sup> OF THE AMERICAN CONVENTION IN  
 RELATION TO ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS)<sup>132</sup> THEREOF**

181. In their brief with pleadings and motions, the representatives stated that they would prove the alleged violation of the rights of the family established in Article 17 of the Convention to the detriment of Jesús María Valle Jaramillo and “his next of kin,” but they failed to develop this allegation in any of their briefs.

182. The Commission did not allege the violation of this article.

183. Citing the Court’s case law, the State indicated that “the alleged violation of Article 17 of the Convention to the detriment of the next of kin of the alleged victims in this case [...] has already been examined in relation to the violation of the right to personal integrity of [the] next of kin.”<sup>133</sup>

184. In this regard, the Court finds that it has not been proved, nor even specifically alleged, that the State was responsible for the violation of the rights of the family established in Article 17 of the Convention.

**XI**  
**VIOLATION OF ARTICLES 5 (RIGHT TO HUMANE TREATMENT),<sup>134</sup> 13 (FREEDOM OF  
 THOUGHT AND EXPRESSION)<sup>135</sup> AND 16 (FREEDOM OF ASSOCIATION)<sup>136</sup> OF THE  
 AMERICAN CONVENTION IN RELATION TO ARTICLE 1(1) THEREOF,**

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<sup>131</sup> The relevant part of Article 17 establishes that:

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.  
 [...]

<sup>132</sup> Article 1(1) establishes that:

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

<sup>133</sup> Cf. *García Asto and Ramírez Rojas v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 25, 2005. Series C No. 137, para. 245; *Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, para. 205, and *the Yean and Bosico Children v. the Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of September 8, 2005. Series C No. 130, para. 197.

<sup>134</sup> The relevant part of Article 5 establishes that:

1. Every person has the right to have his physical, mental, and moral integrity respected.  
 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

<sup>135</sup> The relevant part of Article 13 establishes that:

### WITH REGARD TO HUMAN RIGHTS DEFENDERS

185. The representatives indicated that “[h]uman rights defenders and human rights organizations, regardless of whether they are individualized by name, are indirect victims of the murder of Jesús María Valle Jaramillo, owing to the violation of their rights to integrity, freedom of expression and thought, and freedom of association. Indeed, an act of such gravity and social importance, combined with repeated State actions that attempt to harm the foundations of the activity of human rights defense, generates fear and a general feeling of insecurity.” Notwithstanding the foregoing, throughout the proceedings, the representatives asked for recognition “that the murder of a leader of the caliber and abilities of Jesús María Valle entails an offense against the whole community of human rights defenders, deters them from continuing to denounce such serious acts as those revealed by Jesús María [Valle Jaramillo,] and discourages new members from joining their ranks, owing to the level of danger attached to this activity.”

186. The Commission did not allege that human rights defenders were victims in the instant case.

187. The State contested “the attempt of the representatives to include human rights defenders as new victims, based on the fact that: (i) human rights defenders were not included as victims in the proceedings before the [Commission] and, therefore, should not be considered as victims by the Court, and (ii) a contentious case is not an *actio popularis*.” In addition, the State affirmed that “in Colombia, the State does not encourage an environment of harassment, persecution, or violation of the rights of human rights defenders or the organizations of which they are members. To the contrary, the State has adopted different measures to protect their lives and their personal integrity, to guarantee the rights of social organizations, and to promote their participation in the development of public policies.”

188. This Court’s case law has stated that the alleged victims must be indicated in the application and in the Commission’s Report on merits under Article 50 of the Convention. According to Article 33(1) of the Court’s Rules of Procedure, it is for the Commission and not the Court to identify the victims in a case before the Court with precision and at the appropriate procedural opportunity.<sup>137</sup>

189. In this regard, the Court observes that the Commission did not include “human rights defenders” as alleged victims in its application or in its Report under Article 50 of the Convention, even though it did make general references to them in its different briefs when stating its position concerning the situation of human rights defenders in Colombia.

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1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.

<sup>136</sup> Article 16 establishes that:

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.

3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

<sup>137</sup> Cf. *Case of the Ituango Massacres*, *supra* note 21, para. 98; *Case of Bayarri*, *supra* note 13, para. 126, and *Case of Heliodoro Portugal*, *supra* note 13, para. 165.

190. Consequently, because they were not identified with precision at the appropriate procedural opportunity, the Court cannot consider human rights defenders to be alleged victims in the instant case.

191. Based on the above, this Court finds that it is not incumbent on it to rule on the alleged violation of Articles 5, 13, and 16 of the Convention to the detriment of the human rights defenders, since they are not alleged victims in this case.

**XII**  
**ARTICLE 13 (FREEDOM OF THOUGHT AND EXPRESSION)<sup>138</sup> OF THE AMERICAN  
 CONVENTION IN RELATION TO ARTICLE 1(1) THEREOF**

192. The representatives alleged that the State “did not respect or guarantee Jesús María Valle Jaramillo’s right to freedom of thought and expression, even though it had the legal obligation and duty to do so. To the contrary, in a context of democracy, it obstructed and prevented him from continuing to denounce the acts that were being perpetrated by paramilitary groups in connivance with and supported by the Army.” The representatives considered that the violation of Article 13 of the Convention was constituted by the alleged stigmatization of Jesús María Valle Jaramillo as an “enemy of the Armed Forces” by the Governor of Antioquia at the time, as well as by the criminal complaint filed against him by members of the Army for the offense of slander. According to the representatives, these State actions were intended to harass and intimidate Jesús María Valle Jaramillo, owing to his denunciations as a human rights defender. According to the representatives, “all the actions taken by the State authorities were designed to prevent him from continuing to denounce what was happening in the region of Ituango.”

193. The Commission did not allege the violation of Article 13 of the Convention.

194. The State indicated that “there is no evidence to prove the affirmation that State authorities declared that Jesús María Valle Jaramillo was an enemy of the Armed Forces.” It also stated that protection of the right to honor and reputation is guaranteed in the Colombian Constitution and that, “in Colombia, a criminal action for the offense of slander or libel can be filed against anyone by any citizen who considers that his moral integrity has been violated.” Therefore, the State was obliged “to receive the complaint made against Jesús María Valle Jaramillo for the presumed offense of slander or libel and open a preliminary investigation to decide whether or not this had been committed, and whether the accused had any participation in it, or whether the action was admissible.” Despite the above, the State requested that “should [the Court] find that the State has violated the right to freedom of expression, it declare that this violation was subsumed in the violation of the other rights that the State has acknowledged.”

195. As indicated above, the Court recalls that although the Commission did not allege the violation of Article 13 of the Convention, the representatives are allowed to invoke rights other than those included in the Commission’s application, based on the facts described in the application (*supra* para. 174). To prove this alleged violation, the representatives relied on two facts indicated in the application: the complaint for slander that members of the

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<sup>138</sup> The relevant part of Article 13 of the Convention establishes that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.

Army filed against Jesús María Valle Jaramillo, and the alleged declaration of the former Governor of Antioquia that Valle Jaramillo was an “enemy of the Armed Forces” (*supra* paras. 30(a), 68, 171, 173, 175 to 177 and 192). As mentioned above, the State acknowledged the complaint for slander and denied that there was sufficient evidence to prove the declaration by the departmental authority (*supra* paras. 30(a), 173 and 194).

196. Regarding the complaint for libel or slander and, as indicated in the preceding chapter, the Court considers that a judicial proceeding for an offense of this type does not, in itself, constitute a violation of the accused person’s right to freedom of expression. This is because anyone who considers that his honor has been harmed has recourse to the judicial mechanisms that the State has provided for his protection.<sup>139</sup> Although this kind of complaint may be imprudent or frivolous, it does not constitute *per se* a violation of the right to freedom of expression of the accused. Rather, in the instant case, an eventual decision by the judge of the case would have allowed the truth to be established regarding the allegedly unlawful act that Jesús María Valle Jaramillo publicly denounced; namely, the supposed connivance between members of the Colombian Army and the so-called paramilitary groups. To state that the complaint against him for the offense of slander or libel violated Jesús María Valle Jaramillo’s right to freedom of expression would lead to the total exclusion of the settlement of such disputes under administrative proceedings.<sup>140</sup> In this regard, the Court reiterates that freedom of expression is not an absolute right and that it is subject to certain restrictions.<sup>141</sup> Consequently, the Court finds that the State did not violate Article 13 of the Convention to the detriment of Jesús María Valle Jaramillo by charging him with the offense of slander or libel.

197. Regarding the alleged stigmatization of Jesús María Valle Jaramillo because the departmental authorities supposedly declared him an “enemy of the Armed Forces,” the Court has already indicated that this fact has not been proved in the instant case (*supra* para. 177). Based on the above, the Court finds that the alleged violation of Article 13 of the Convention to the detriment of Jesús María Valle Jaramillo has not been proved as regards the said allegation.

### XIII REPARATIONS (APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)<sup>142</sup>

198. It is a principle of international law that any violation of an international obligation that has resulted in harm entails the obligation to repair it adequately.<sup>143</sup> All aspects of this

<sup>139</sup> Cf. *Case of Ricardo Canese*, *supra* note 99, para. 101, and *Case of Kimel*, *supra* note 14, para. 55.

<sup>140</sup> Cf. *Case of Cesti Hurtado*, *supra* note 128, para. 177, and *Case of Bueno Alves*, *supra* note 128, para. 122.

<sup>141</sup> *Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of July 2, 2004. Series C No. 107, para. 120; *Apitz Barbera et al. (“First Administrative Court”) v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of August 5, 2008. Series C No. 182, para. 131, and *Case of Kimel*, *supra* note 14, para. 54.

<sup>142</sup> Article 63(1) of the Convention establishes that:

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.

<sup>143</sup> Cf. *Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25; *Case of Bayarri*, *supra* note 13, para. 119, and *Case of Heliodoro Portugal*, *supra* note 13, para. 217.



obligation to make reparations are regulated by international law.<sup>144</sup> The Court has based its decisions in this regard on Article 63(1) of the American Convention.

199. Within the framework of the partial acknowledgement made by the State (*supra* paras. 6 and 20 to 26), and according to the findings on merits described above and the violations of the Convention declared in the preceding chapters, as well as in light of the criteria established in the Court's case law concerning the nature and scope of the obligation to make reparations,<sup>145</sup> the Court will rule on the claims submitted by the Commission and the representatives, and on the position of the State with regard to reparations, and will order measures designed to repair the damage.

**A) INJURED PARTYS**

200. The Court finds that, pursuant to Article 63(1) of the American Convention, the following persons are the "injured party" as victims of the violations that have been declared (*supra* paras. 106, 110, 115, 127, 130, 144 and 169); they will therefore be beneficiaries of the reparations ordered by the Court: Jesús María Valle Jaramillo, Nelly Valle Jaramillo, Carlos Fernando Jaramillo Correa, María Leticia Valle Jaramillo, Ligia Valle Jaramillo, Luzmila Valle Jaramillo, Magdalena Valle Jaramillo, Romelia Valle Jaramillo, Marina Valle Jaramillo, Darío Valle Jaramillo, Octavio Valle Jaramillo, Alfonso Montoya Restrepo, Luis Fernando Montoya Valle, Gloria Lucía Correa, Carlos Enrique Jaramillo Correa, María Lucía Jaramillo Correa, Ana Carolina Jaramillo Correa, Jesús Emilio Jaramillo Barrera, Adela Correa de Jaramillo, Blanca Lucía Jaramillo Correa, Romelia Jaramillo Correa, Nellyda Jaramillo Correa, José María Jaramillo Correa, Luis Eugenio Jaramillo Correa, Gloria Elena Jaramillo Correa, Adriana María Jaramillo Correa, Blanca Inés Valle Jaramillo, Gonzalo de Jesús Jaramillo Correa, Juan Guillermo Valle Noreña, John Jairo Valle Noreña and Luz Adriana Valle Noreña.

**B) COMPENSATION**

201. The Court will determine the pertinence of ordering pecuniary reparations in this case and their respective amounts; to this end, it will take into account that the State has provided compensation to some of the victims in the present case pursuant to a judicially approved settlement agreement reached through a domestic action under administrative law.

202. In the instant case, the Court has recognized the role played by the Colombian administrative jurisdiction in providing pecuniary reparations for the human rights violations (*supra* para. 167). Thus, the Court observes that, on September 28, 2007, a Settlement Agreement<sup>146</sup> was approved between, on the one hand, the State of Colombia, represented

<sup>144</sup> Cf. *Aloeboetoe et al. v. Suriname. Reparations and costs*. Judgment of September 10, 1993. Series C No. 15, para. 44; *Case of Bayarri*, *supra* note 13, para. 120, and *Case of Heliodoro Portugal*, *supra* note 13, para. 169.

<sup>145</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 143, paras. 25 to 27; *Case of Bayarri*, *supra* note 13, para. 122, and *Case of Heliodoro Portugal*, *supra* note 13, para. 218.

<sup>146</sup> Compensation was agreed for "non-pecuniary damage," "pecuniary damage owed," and "future pecuniary damage" in favor of Luzmila Valle Jaramillo, María Magdalena Valle Jaramillo, María Nelly Valle Jaramillo, and Luis Fernando Montoya Valle; and compensation only for "non-pecuniary damage" in favor of Jesús María Valle Jaramillo, María Leticia Valle Jaramillo, Ligia Amparo Valle Jaramillo, Blanca Inés Valle Jaramillo, Romelia Valle Jaramillo, Marina Valle Jaramillo, and Octavio de Jesús Valle Jaramillo. Settlement Decision of April 26, 2007, Council of State, Administrative Law Chamber. Third Section, Reporting Judge: Mauricio Fajardo, File No. 32793 (2000-00925), (file of attachments to the brief answering the application, attachment 5, folios 2019 to 2026). The Settlement Agreement was approved on September 28, 2007 (file of documents submitted during the public hearing, folio 2797).

by the Ministry of Defense, the Ministry of the Interior, the Ministry of Justice, the Administrative Department of Security (D.A.S.), and the Municipality of Medellín and, on the other, by ten of Jesús María Valle Jaramillo's siblings and one nephew, namely: María Leticia Valle Jaramillo (sister), Ligia Amparo Valle Jaramillo (sister), Blanca Inés Valle Jaramillo (sister), Luzmila Valle Jaramillo (sister), María Magdalena Valle Jaramillo (sister), Romelia Valle Jaramillo (sister), Marina Valle Jaramillo (sister, deceased), Octavio de Jesús Valle Jaramillo (brother, deceased), María Nelly Valle Jaramillo (sister), Darío Valle Jaramillo (brother) and Luis Fernando Montoya Valle (nephew, son of María Nelly Valle Jaramillo). In the Settlement Agreement, the State indicated that "[i]t [had taken] into account the recommendation of the Inter-American Commission on Human Rights and the acceptance of that recommendation by the Colombian State through Decision 001 of 2007 for the recognition of [the respective] damages." The Court appreciates these efforts made by Colombia with regard to its obligation to make reparation and assesses them positively. The Court also assesses the information provided by expert witness Alier Hernández during the public hearing, to the effect that, in 2007, the Council of State indicated that "financial reparation is not sufficient, and this opens up the possibility for the victims to claim reparations other than mere financial compensation in their claims [under administrative proceedings]." According to the expert witness, this marks "the beginning of the penetration of the Inter-American Court's case law into the laws of Colombia."<sup>147</sup> The Court finds that, should this development occur within Colombia's administrative law jurisdiction, it could complement other forms of reparation available under different jurisdictions or other procedures at the domestic level intended to achieve, together, the integral reparation of the human rights violations. In this regard, the Court reiterates that, under the Convention, integral and adequate reparation requires measures of rehabilitation and satisfaction, and guarantees of non-repetition such as those the State has undertaken to provide in the instant case and which the Court orders in this judgment (*infra* paras. 227 to 239).

203. Furthermore, the Court observes, as it has in other cases against the Colombian State, that, even though the comprehensive reparation of the violation of a right protected by the Convention cannot be limited to the payment of compensation, the indemnities ordered in administrative law proceedings may be taken into consideration when deciding the pertinent reparations, "provided that the decisions handed down in those proceedings have generated *res judicata* and are reasonable under the circumstances of the case."<sup>148</sup>

204. The Court observes that the parties to the action under administrative law agreed that the State should pay compensation for pecuniary and non-pecuniary damages totaling \$1,702,944,360.47 Colombian pesos (approximately US\$845,000.00, eight hundred and forty-five thousand United States dollars). Under this action, the State granted Jesús María Valle Jaramillo compensation for "pecuniary damage [...] owed [and] future" totaling \$1,421,039,360.47 Colombian pesos (approximately US\$700,000.00, seven hundred thousand United States dollars). This amount was distributed between Luzmila Valle Jaramillo (\$369,019,165.72 Colombian pesos or approximately US\$180,000.00, one hundred and eighty thousand United States dollars), María Magdalena Valle Jaramillo (\$400,250,887.61 Colombian pesos or approximately US\$200,000.00, two hundred thousand United States dollars), María Nelly Valle Jaramillo (\$408,448,263.34 Colombian pesos or approximately US\$200,000.00, two hundred thousand United States dollars) and Luis Fernando Montoya Valle (\$238,275,467.80 Colombian pesos or approximately

<sup>147</sup> Expert opinion provided by Alier Hernández during the public hearing held at the seat of the Inter-American Court of Human Rights on February 6 and 7, 2008.

<sup>148</sup> Cf. *Case of the "Mapiripán Massacre," supra* note 21, para. 214. Similarly, *Case of La Rochela Massacre, supra* note 21, paras. 219 to 222; *Case of the Ituango Massacres, supra* note 21, para. 339, and *Case of the Pueblo Bello Massacre, supra* note 30, para. 206.

US\$120.000,00, one hundred and twenty thousand United States dollars); in other words, between three sisters and one nephew of Jesús María Valle Jaramillo, who, according to the body of evidence in the instant case, lived in the same house as he did.<sup>149</sup>

205. The Court finds that using cohabitation with the alleged victim as a presumed criterion and the amounts granted are compatible with the requirements of reasonableness indicated above (*supra* para. 203). Therefore, the Court will abstain from establishing further compensation for pecuniary damage for Luzmilla Valle Jaramillo, María Magdalena Valle Jaramillo, María Nelly Valle Jaramillo and Luis Fernando Montoya Valle.

206. The Court also notes that, in the said Settlement Agreement, the State granted compensation for “non-pecuniary damage” amounting to “100 SMLMV”<sup>150</sup> (approximately US\$20,000.00, twenty thousand United States dollars) to Jesús María Valle Jaramillo and “50 SMLMV” (approximately US\$11,000.00, eleven thousand United States dollars) to each of the following next of kin of Jesús María Valle Jaramillo: María Nelly Valle Jaramillo, María Leticia Valle Jaramillo, Ligia Amparo Valle Jaramillo, Luzmila Valle Jaramillo, Blanca Inés Valle Jaramillo, Marina Valle Jaramillo, María Magdalena Valle Jaramillo, Romelia Valle Jaramillo, Octavio de Jesús Valle Jaramillo and Luis Fernando Montoya Valle. In addition to the amount derived from the compensation for non-pecuniary damage for the death of Jesús María Valle Jaramillo, María Nelly Valle Jaramillo received a further amount for “moral damage, owing to the violation of her fundamental rights,” equal to 50 SMLMV (approximately US\$11,000.00, eleven thousand United States dollars).<sup>151</sup>

207. Although the State granted María Nelly Valle Jaramillo the sum of approximately US\$11,000.00 (eleven thousand United States dollars) for the non-pecuniary damage she suffered owing to the violation of her rights (*supra* para. 206), the Court finds it pertinent to order, based on the equity principle, an additional payment of US\$30,000.00 (thirty thousand United States dollars) in her favor for non-pecuniary damage, taking into account her particular situation, because she was obliged to witness the violent death of her brother, Jesús María Valle Jaramillo (*supra* paras. 70 and 107). This amount is additional to the sum ordered at the domestic level in the action under administrative law (*supra* para. 206). The State must make the payment of this additional amount directly to the beneficiary, within one year of the notification of this judgment.

208. Thus, taking into consideration that the Colombian State established compensation for ten siblings and one nephew of Jesús María Valle Jaramillo that complies with the requirements of reasonableness, this Court concludes that, with the exception of the provisions in the preceding paragraph concerning María Nelly Valle Jaramillo, the amounts provided by the State for non-pecuniary damage meet the standards of the Inter-American Court in terms of compensatory reparation. The Court will therefore abstain from

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<sup>149</sup> Cf. Statement made by the witness, Darío Arcila Arenas, who indicated that “Jesús María was unmarried, he had no children and he lived with his sister Nelly, her husband and their son, Luis Fernando Montoya Valle; another sister, Luzmila, was responsible for the housework with their sister Magdalena. [...] I witnessed his affectionate and respectful relationship with his sisters and his nephews and nieces. I was aware, for example, that he mentored his nephew Luis Fernando – Nelly’s son – as if he had been his own son.” Statement made by the witness, Darío Arcila Arenas, *supra* note 85 (folio 2238). Moreover, according to the testimony of Juan Guillermo Valle Noreña, “Jesús lived in his own house with several of [his sisters]: Magdalena, Nelly who was his secretary and lived on what he paid her, her husband and their son, Luis Fernando, who also lived there and Luzmila who had never studied or worked and lived for Jesús. He paid all the household expenses.” Statement made by the witness, Juan Guillermo Valle Noreña, *supra* note 83.

<sup>150</sup> The Agreement did not stipulate the payment of a fixed sum of Colombian pesos, but ordered the payment in terms of “Monthly Legal Minimum Wages in Force” (“SMLMV”).

<sup>151</sup> Settlement Agreement of April 26, 2007, approved on September 28, 2007, *supra* note 146.

establishing an amount to be paid in addition to the one agreed upon at the domestic level for non-pecuniary damage in favor of María Leticia Valle Jaramillo, Ligia Amparo Valle Jaramillo, Luzmila Valle Jaramillo, Blanca Inés Valle Jaramillo, Marina Valle Jaramillo, María Magdalena Valle Jaramillo, Romelia Valle Jaramillo, Octavio de Jesús Valle Jaramillo and Luis Fernando Montoya Valle.

209. Moreover, although the representatives requested an additional amount for Ligia Valle Jaramillo and Octavio Valle Jaramillo for pecuniary and non-pecuniary damage, because they had declared that they disagreed with the Settlement Agreement (*infra* paras. 214 and 222), the Court considers that it has not been proved before the Court that these two victims, who did not live with Jesús María Valle Jaramillo and who are parties to the Settlement Agreement, suffered pecuniary damage. Regarding non-pecuniary damage, the Court finds that the amounts ordered and approved at the domestic level in favor of Ligia Valle Jaramillo and Octavio Valle Jaramillo are reasonable and meet this Court's standards. Consequently, the Court does not find it pertinent to establish an additional amount for pecuniary and non-pecuniary damage for these two victims.

210. Lastly, considering that Francisco Darío Valle Jaramillo, who was declared a victim in this case and regarding whom the State acquiesced (*supra* paras. 38, 111, 115 and 169), did not receive any compensation<sup>152</sup> under the Agreement signed between the Colombian State and ten siblings and one nephew of Jesús María Valle Jaramillo (*supra* para. 202), the Court establishes, in equity, in his favor, the sum of US\$10,00000 (ten thousand United States dollars) as compensation for non-pecuniary damage. The State must make the payment of this amount directly to the beneficiary, within one year of notification of this judgment.

211. Based on the above, in the following paragraphs, the Court will refer to pertinent reparations of a pecuniary nature with regard to the others who have been declared victims in this case and who did not participate in the Settlement Agreement.

#### B.1) Pecuniary damage

212. The Court has developed the concept of pecuniary damage and the assumptions in which it must be compensated.<sup>153</sup>

213. The Commission asked the Court to "establish, in equity, the compensation corresponding to special damage and loss of earnings." In this regard, the Commission "observe[d] that several members of the deceased victim's family and Carlos Fernando Jaramillo Correa, surviving victim, have not benefited" from the settlement agreement reached in the domestic administrative jurisdiction, and that "the payments offered have not been made in full." In addition, it considered that the Court "should rule on whether the amounts paid under the extrajudicial settlement [...] should be deducted from those it orders in its judgment."

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<sup>152</sup> Settlement Agreement of April 26, 2007, approved on September 28, 2007, *supra* note 146 (folios 2841 and 2842).

<sup>153</sup> The Court has established that pecuniary damage entails "the loss of, or detriment to, the income of the victim, and the expenses incurred by the next of kin due to the facts of the case." *Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43; *Case of Bayarri*, *supra* note 13, para. 127, and *Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, note 74.

214. With regard to Jesús María Valle Jaramillo and his next of kin, the representatives requested that the Court “establish a sum of money [...] to compensate their loss of income resulting from the violations of which they were victims in relation to these facts. To this end, it should base the calculation on the salary and benefits earned by a judge of a high court in Colombia.” In addition, the representatives indicated that, “with the exception of Ligia Valle and the successors of Octavio Valle, Jesús María [Valle Jaramillo’s] next of kin have expressed their satisfaction with the settlement agreement offered by the State.” Consequently, the representatives asked the Court to order the State to pay US\$300,000.00 (three hundred thousand United States dollars) to both Ligia Valle Jaramillo and Octavio Valle Jaramillo, the equivalent to the amount received by each of their siblings, Luzmila, Nelly and María Magdalena Valle Jaramillo, for pecuniary and non-pecuniary damage under the settlement agreement. With regard to the indirect damage incurred by Carlos Fernando Jaramillo and his family, the representatives indicated that the family had to abandon its home and possessions following the facts *sub judice*; consequently, they asked the Court to order the State to “pay, in equity, a sum equivalent to the commercial value of the properties they had to abandon in the municipality of Ituango,” which, in any case, should be a minimum of US\$1,000,000.00 (one million United States dollars). In relation to compensation for the loss of earnings suffered by Carlos Fernando Jaramillo and his family, the representatives asked the Court to establish, in equity, an amount “of at least US\$300,000 [three hundred] thousand United States dollars.” Alternatively, they asked the Court to order the State to order the acquisition of “the land belonging to the Jaramillo Correa family in the municipality of Ituango and dedicate it to environmental programs or programs for the displaced. To this end, negotiators appointed by the victims should be used, respecting the commercial value of the property before the facts took place that led to its depreciation owing to the State’s failure to comply with its obligations.” Should “no agreement be reached in this regard, [the representatives asked the Court to order the State to grant the family] an area of land appropriate for raising cattle and crops, similar to the area they possessed in the municipality of Ituango, in another region of the Department or of the country chosen by the victims.”

215. The State indicated that “it will recognize the compensation that the Court orders for indirect damage and loss of earnings.” Given that the Council of State had approved a settlement with some of Jesús María Valle Jaramillo’s next of kin in this case, the State asked that, “when granting reparation for pecuniary and non-pecuniary damage with regard to Jesús María Valle Jaramillo, Nelly Valle Jaramillo and their direct nuclear family, [the Court] consider that the compensation agreed and paid [under the settlement agreement signed between the State and Nelly Valle Jaramillo and her next of kin and the next of kin of Jesús María Valle Jaramillo on April 26, 2007] was sufficient and recognize the significant progress made [by Colombia] concerning reparation in order to adapt to the guidelines provided by the case law of the inter-American system.”<sup>154</sup> Furthermore, the State asked that it be allowed to deduct from each family member the amount awarded under the administrative proceedings when paying the reparations ordered by the Court. With regard to the alleged losses caused to Carlos Fernando Jaramillo and his nuclear family owing to the presumed loss of properties and possessions, the State argued that: “(i) there is no causal nexus between the facts of the case and the losses claimed; (ii) moreover, and if the losses are found to have been proved, the said request is not admissible in light of the Court’s case law, because it attempts to repair a violation of Article 21, which is not in discussion in this case, and (iii) if the losses are found to have been proved, [...it] asked the Court to order compensation only with regard to the losses that had been duly proved,

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<sup>154</sup> Final oral argument on merits and possible reparations and costs submitted by the State during the public hearing held at the seat of the Inter-American Court of Human Rights on February 6 and 7, 2008.

bearing in mind that no one should be made richer by the reparations granted by the Court.”

216. Regarding the loss of earnings corresponding to Carlos Fernando Jaramillo Correa, the Court observes that, at the time of the facts, he “worked with a friend in a lumber yard in Medellín”<sup>155</sup> and, as indicated in Chapter VII of this judgment, was forced to go into exile owing to the facts of this case. Based on the foregoing, the Court establishes, in equity, as it has in other cases,<sup>156</sup> the sum of US\$30,000.00 (thirty thousand United States dollars) for the loss of earnings of Carlos Fernando Jaramillo Correa. This amount shall be delivered directly to Carlos Fernando Jaramillo Correa within one year of notification of this judgment.

217. Regarding the alleged indirect damage caused to Carlos Fernando Jaramillo and his family by the loss of possessions and properties owing to his departure from Colombia as a refugee, the Court observes that Carlos Fernando Jaramillo stated in his testimony before the Court that this presumed loss commenced as a result of the alleged forced displacement that occurred before the facts of this case. In this regard, Carlos Fernando Jaramillo stated that he continued to be involved in the production and administration of his farms “until the beginning of 1997, because with [the arrival of a] paramilitary group in the municipal capital of Ituango [...] everything became more difficult [and] the only person who [was able to administer] the farm [was his] father, [who] was the only one who went into Ituango.” He also testified that, at the time of the facts in 1998, he was working in Medellín.<sup>157</sup> Similarly, Saúl Jaramillo Giraldo testified that, in “1996 [...] Carlos Fernando [had to leave Ituango] owing to the threats he had received [from members of the paramilitary groups].”<sup>158</sup>

218. Based on the above, it is clear that the possessions and properties of the family of Carlos Fernando Jaramillo Correa in the municipality of Ituango were being administered by his father before the facts of the instant case occurred and that Carlos Fernando Jaramillo Correa had been displaced from Ituango since 1996, owing to the unsafe situation caused by the paramilitary presence in that municipality. Hence, the Court finds that the causal nexus between the alleged loss of those possessions and properties and the facts of the instant case has not been proved. Consequently, the Court will not order the State to pay compensation for actual damages in relation to these alleged facts.

### B.2) Non-pecuniary damage

219. The Court will determine the non-pecuniary damage according to the guidelines established in its case law.<sup>159</sup>

<sup>155</sup> Statement made by the witness, Carlos Fernando Jaramillo Correa, *supra* note 97.

<sup>156</sup> *Cf. Case of Cantoral Benavides, supra* note 15, paras. 49 and 50; *Case of Bayarri, supra* note 13, para. 151, and *Case of Yvon Neptune, supra* note 57, para. 163.

<sup>157</sup> *Cf. Statement made by the witness, Carlos Fernando Jaramillo Correa, supra* note 97.

<sup>158</sup> Statement made by the witness, Saúl Jaramillo Giraldo, *supra* note 74 (folio 2226).

<sup>159</sup> Non-pecuniary damage may comprise the pain and suffering caused to the direct victim and his next of kin, the impairment of values that are significant to an individual, and also the non-pecuniary damage caused by alterations in the living conditions of the victim and his next of kin. Since it is not possible to allocate a precise monetary amount to such damage, it can only be compensated by the payment of a sum of money or the delivery of goods or services with a pecuniary value that the Court establishes, in equity, as well as by means of acts or works of a public scope or impact designed to acknowledge the dignity of the victim and avoid the occurrence of human rights violations. *Cf. The “Street Children” (Villagrán Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 26, 2001. Series C No. 77, para. 84; *Case of Bayarri, supra* note 13, para. 164, and *Case of Apitz Barbera et al. (“First Administrative Law Court”), supra* note 141, para. 237.

220. The Commission asked the Court to “establish, in equity, the amount of compensation” for non-pecuniary damage. In this regard, the Commission “observe[d] that several family members of the deceased victim and Carlos Fernando Jaramillo Correa, surviving victim, have not benefited” from the settlement agreement reached in the proceedings in the domestic administrative jurisdiction, and that “the total amounts of the payments offered have not been delivered.” In addition, it considered that the Court “should rule on whether the sums paid under the extrajudicial settlement [...] should be deducted from those that it orders in its judgment.”

221. The representatives indicated that “with the exception of Ligia Valle and the successors of Octavio Valle, Jesús María [Valle Jaramillo’s] next of kin have expressed their satisfaction with settlement agreement offered by the State.” Therefore, the representatives asked the Court to order the State to pay US\$300,000.00 (three hundred thousand United States dollars) to both Ligia Valle Jaramillo and Octavio Valle Jaramillo, equivalent to the sum received by each of their sisters Luzmila, Nelly and María Magdalena Valle Jaramillo under the settlement agreement for pecuniary and non-pecuniary damage. Regarding Carlos Fernando Jaramillo and his family, the representatives asked the Court to establish and amount of no less than US\$50,000.00 [(fifty thousand United States dollars)] for each of them. In addition, they alleged that “[t]he other members of the Jaramillo Correa family, who suffered forced displacement from the municipality of Ituango, but who live in Colombia, [...] have the right to compensation established by the Court, in equity, which should be no less than US\$20,000 [twenty thousand] United States dollars.”

222. The State indicated that “it had reached a settlement for the facts in the Colombian administrative jurisdiction, [and that] under the settlement, the State had awarded an amount for non-pecuniary damage” in favor of some of Jesús María Valle Jaramillo’s next of kin. Consequently, it asked the Court “not to decide other compensation for pecuniary and non-pecuniary reparation for Jesús María Valle Jaramillo, Nelly Valle Jaramillo, and their family groups, owing to *res judicata* and the exhaustion of domestic remedies.”

223. According to the State’s acquiescence and the findings in Chapter VI of this judgment, the absence of justice and the lack of knowledge about the truth in the instant case have caused the victims profound pain, intense psychological suffering, anguish, and uncertainty (*supra* para. 102). During the public hearing before the Court, Carlos Fernando Jaramillo Correa stated: “every day of my life I think about returning [to Colombia ...] but I see [...] that I have virtually lost my homeland; that I cannot return now. So much as been destroyed for us, and life continues and we just survive. The situation is not appropriate to return.”<sup>160</sup>

224. The Court’s case law has established repeatedly that a judgment declaring the violation of human rights constitutes, *per se*, a form of reparation.<sup>161</sup> However, owing to the violations declared in this judgment to the detriment of Carlos Fernando Jaramillo Correa, the Court establishes, in equity, the sum of US\$40,000.00 (forty thousand United States dollars) as compensation for the non-pecuniary damage he suffered. The State must pay this amount directly to the beneficiary within one year of notification of this judgment.

225. In addition, the Court establishes, in equity, the sum of US\$10,000.00 (ten thousand United States dollars) for Gloria Lucía Correa, Carlos Enrique Jaramillo Correa, María Lucía

<sup>160</sup> Statement made by the witness, Carlos Fernando Jaramillo Correa, *supra* note 97.

<sup>161</sup> Cf. *Neira Alegría et al. v. Peru. Reparations and costs*. Judgment of September 19, 1996. Series C No. 29, para. 56; *Case of Bayarri*, *supra* note 13, para. 164, and *Case of Heliodoro Portugal*, *supra* note 13, para. 239.

Jaramillo Correa, and Ana Carolina Jaramillo Correa, wife and children of Carlos Fernando Jaramillo Correa, respectively, as compensation for non-pecuniary damage. The State must pay these amounts directly to the beneficiaries within one year of notification of this judgment.

226. Lastly, the Court establishes, in equity, the sum of US\$5,000.00 (five thousand United States dollars) each for Jesús Emilio Jaramillo Barrera, Adela Correa de Jaramillo, Blanca Lucía Jaramillo Correa, Romelia Jaramillo Correa, Nellyda Jaramillo Correa, José María Jaramillo Correa, Luis Eugenio Jaramillo Correa, Gloria Elena Jaramillo Correa, Adriana María Jaramillo Correa, Gonzalo de Jesús Jaramillo Correa, Juan Guillermo Valle Noreña, John Jairo Valle Noreña and Luz Adriana Valle Noreña as compensation for non-pecuniary damage. The State must pay these amounts directly to the beneficiaries within one year of notification of this judgment.

### **C) MEASURES OF SATISFACTION AND GUARANTEES OF NON-REPETITION**

227. The Court will determine the measures of satisfaction that seek to repair non-pecuniary damages and that are not of a pecuniary nature, and will order measures of public scope or consequence.<sup>162</sup> To this end, it will bear in mind that the State has undertaken:

(a) “To take all necessary measures to continue conducting an impartial and exhaustive investigation in order to prosecute and to punish all the masterminds and perpetrators”;

(b) “To publish in a national newspaper [...] the proven facts and the operative paragraphs of the judgment delivered by the Court in the instant case [and also,] to disseminate within the State entities, particularly the Executive Branch, the judgment that the Court delivers in this case”;

(c) “To conduct “acts to recover the historical memory of Jesús María Valle Jaramillo as a human rights defender, [which include]:

1. Organization of a public act in the presence of senior State authorities to apologize to the victims and their next of kin, underscoring the memory of Jesús María Valle as a human rights defender[, to be held] at the Antioquia University, from where Jesús María Valle graduated and where he taught. [It also undertook] to pay the travel expenses for Carlos Fernando Jaramillo to attend this event and [...] to ensure the necessary conditions of safety for his attendance at the said act;

2. Elaboration of a plaque in memory of Jesús María Valle Jaramillo, [...] to be installed in the Courthouse of the Department of Antioquia, in order to keep his memory alive and prevent violations such as those determined in the instant case, and

3. Establishment of the ‘Jesús María Valle Jaramillo’ grant, which will be provided only once, to support the work of the Human Rights Defenders Unit of the Inter-American Commission on Human Rights for two (2) years”;

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<sup>162</sup> Cf. *Case of the “Street Children” (Villagrán Morales et al.)*, supra note 159, para. 84; *Case of Bayarri*, supra note 13, para. 177, and *Case of Heliodoro Portugal*, supra note 13, para. 240.



(d) "To continue the Human Rights Defenders Policy, based on current programs, measures and actions as an expression of the guarantee of non-repetition in relation to the protection of the human rights defenders";

(e) "[To provide] psychosocial and medical care in national health establishments to the victims determined by the Court in the judgment delivered in this case";

(f) "Regarding the damage to the life plans and change in the living conditions of Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa, [...] to offer, following consultation with the victims, a study grant in Colombia for educational opportunities in the sector, profession, or subject that the victims wish to study," and

(g) "To guarantee the safety of Carlos Fernando Jaramillo should he consider returning to Colombia permanently [and] to facilitate the process of return to their places of origin for the victims."

228. In addition, it "requested the Court to recognize that [the publication of the settlement agreement and the official decision approving the settlement] constituted a measure of satisfaction in this case," and that the Court consider "the additional measures of reparation contained in the settlement as tangible progress towards integral reparation in administrative jurisdiction."

229. The Court takes note and recognizes that the said measures seek to repair the damage caused to the victims and their next of kin, to keep alive the memory of the deceased victim, and to avoid a recurrence of facts such as those in this case. The Court also notes that the State has provided that the measures that so require it are adequately disseminated and that specific aspects of the implementation of the measures must first be coordinated between the State and the representatives.<sup>163</sup>

230. Specifically, the Court notes the undertaking made by the State concerning the establishment of the "Jesús María Valle Jaramillo" grant to support the Human Rights Defenders Unit of the Inter-American Commission on Human Rights as an "act to recover the historical memory of Jesús María Valle Jaramillo as a human rights defender." The Court also takes note of the commitment made concerning the "Human Rights Defenders Policy," which the State presented as "a way of expressing the guarantee of non-repetition in relation to the protection of human rights defenders."

231. The Court accepts and orders the measures of satisfaction and guarantees of non-repetition offered by the State in sections (a), (b), (c.1), (c.2), (e), (f) and (g) of paragraph 227, with the clarifications indicated in paragraphs 232 to 234 and 238 of this judgment, since they constitute a way of providing satisfactory reparation for the consequences of the violations declared in this judgment, and are in keeping with the Court's case law; in addition, they represent a positive contribution by Colombia to compliance with its obligation to make reparation in accordance with Article 63(1) of the Convention. Consequently, the State must comply with the measures indicated in paragraph 227(c.1), 227(c.2), 227(f) and 227(g) within one year of notification of this judgment, and with the measures indicated in paragraph 227(b) and 227(e) within six months of notification of this judgment, and with the obligation indicated in paragraph 227(a) within a reasonable time.

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<sup>163</sup> Cf. *Case of La Rochela Massacre*, *supra* note 21, para. 280.

232. The Court recalls that, in compliance with its obligation to investigate and, if applicable, to punish those responsible for the facts *sub judice*, the State must remove all the obstacles, *de facto* and *de jure*, that prevent adequate investigation into the facts, and use all available means to expedite that investigation and the respective proceedings in order to avoid a recurrence of facts as grave as those of this case.

233. At the same time, taking into account the Court's case law,<sup>164</sup> the State must ensure that the next of kin of the victims have full access and capacity to act at all stages and in all instances of these investigations and proceedings so that they may submit pleas and motions, receive information, offer evidence, formulate arguments and, in brief, assert their interests. Domestic law must organize the respective proceedings in accordance with the American Convention and this judgment. The purpose of this participation must be access to justice, knowledge of the truth about what happened, and obtaining fair reparation. In addition, the result of the proceedings must be publicized so that Colombian society is informed of the judicial determination of the facts and of those responsible in the instant case.<sup>165</sup>

234. Also, with regard to the publication indicated in paragraph 227, as it has in other cases,<sup>166</sup> the Court finds it pertinent to order that this should be made once in the official gazette and once in another national newspaper with widespread circulation, and should comprise paragraphs 2 to 4, 6, 29, 47, 70 to 78, 80 to 97, 104 to 107, 109, 110, 115, 122, 125 to 128, 130, 132, 140 to 144, 147, 160, 161, 165 to 170, 176 to 180, 184, 190, 191, 196, 197 and 200 of this judgment, without the corresponding footnotes, but with the titles of the respective chapters, and also the operative paragraphs.

235. The Court recognizes and assesses positively as a measure of satisfaction that the State has published Report on merits No. 75/06 issued by the Inter-American Commission in the instant case, as well as the settlement agreement and the official decision approving the settlement in Bulletin No. 16 of the Council of State.<sup>167</sup>

236. Regarding the actions to recover the historical memory of Jesús María Valle Jaramillo indicated in paragraphs 227, the Court assesses and appreciates the partial acknowledgement of international responsibility made by the State in its brief answering the application and during the public hearing in the instant case held on February 6 and 7, 2008, (*supra* paras. 20 to 25).

237. The representatives asked that the Court order the State "to establish a permanent course on human rights in the law schools in the name of [Jesús María Valle Jaramillo]," in order to "recover [his] memory." In this regard, as it has on other occasions,<sup>168</sup> the Court considers it pertinent to urge the State to make every effort to establish a course on human

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<sup>164</sup> Cf. *El Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 118; *Case of Bayarri*, *supra* note 13, para. 176, and *Case of Heliodoro Portugal*, *supra* note 13, para. 247.

<sup>165</sup> Cf. *Las Palmeras v. Colombia. Reparations and costs*. Judgment of November 26, 2002. Series C No. 96, para. 67; *Case of Heliodoro Portugal*, *supra* note 13, para. 247, and *Case of Cantoral Huamani and Garcia Santa Cruz*, *supra* note 62, para. 191.

<sup>166</sup> Cf. *Case of Cantoral Benavides*, *supra* note 15, para. 79; *Case of Heliodoro Portugal*, *supra* note 13, para. 248, and *Case of Castañeda Gutman*, *supra* note 153, para. 235.

<sup>167</sup> Bulletin No. 16 of the Council of State of December 15, 2007 (File of attachments to the brief with final arguments of the State, attachment 6, folio 3109).

<sup>168</sup> Cf. *Case of Huilca Tecse*, *supra* note 55, para. 113. *Mutatis mutandis*, *Escué Zapata v. Colombia. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, paras. 178 and 179.

rights that, as a measure of satisfaction, will honor the memory of the human rights defender.

238. Regarding the medical and psychological care indicated in paragraph 227, the Court finds it necessary to order the State to provide this care free of charge immediately, adequately and effectively through its specialized health care institutions. The psychological and psychiatric care must be provided by personnel and institutions specialized in treating the difficulties and ailments of these persons arising from the facts of the case. This medical and psychological care must be provided as of notification of this judgment and for the time necessary, and must include the provision of the required medicines, and take into account the ailments of each person related to the facts of the instant case, following an individual assessment.<sup>169</sup>

239. The Court observes that the Commission and the representatives requested additional measures of reparation with the objective of raising awareness about the risks faced by human rights defenders, in order to avoid a recurrence of facts such as those of the instant case. However, the Court finds that the measures already ordered (*supra* paras. 231 to 234 and 238) make a significant contribution to achieving this purpose, so that it does not find it necessary to order additional measures in the context of this case.<sup>170</sup>

#### **D) COSTS AND EXPENSES**

240. The Commission asked the Court to order the State to “pay the costs and expenses duly authenticated by [the representatives], bearing in mind the special characteristics of the case.”

241. The representatives alleged that the costs and expenses they incurred to litigate the case at the domestic level and before the Commission amount to US\$11,681.84 (eleven thousand six hundred and eighty-one United States dollars and eighty-four cents) for the *Grupo Interdisciplinario por los Derechos Humanos* and US\$4,382.76 (four thousand three hundred and eighty-two United States dollars and seventy-six cents) for the *Comisión Colombiana de Juristas*. In addition, the representatives alleged that they had incurred expenses of US\$33,805.00 (thirty-three thousand eight hundred and five United States dollars) to produce the evidence provided to the Court, which included the transportation of witnesses, lawyers, and expert witnesses between Colombia and Costa Rica. In addition, in the case of their fees, they suggested that the Court take into account the amounts established for proceedings under administrative law by the National Lawyers’ Professional Association

242. The State undertook to pay the representatives’ legal costs and expenses, and alleged that the other expenses incurred by the representatives should be subsumed in the costs ordered by the Court.

243. As the Court has indicated on previous occasions, costs and expenses are included in the concept of reparations embodied in Article 63(1) of the American Convention, since the actions taken by the victims, their next of kin, or their representatives to obtain justice at both the national and the international level involve expenditure that must be compensated

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<sup>169</sup> Cf. *Case of Cantoral Benavides*, *supra* note 15, para. 51; *Case of Heliodoro Portugal*, *supra* note 13, para. 256, and *Case of Cantoral Huamani and Garcia Santa Cruz*, *supra* note 62, para. 200.

<sup>170</sup> Cf. *Case of Heliodoro Portugal*, *supra* note 13, para. 262.

when a State's international responsibility has been declared in a judgment convicting it. Regarding reimbursement of costs and expenses, it is for the Court to assess their scope prudently. This reimbursement includes the costs arising before the domestic authorities, as well as those arising during the proceedings before the Inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment can be made based on the principle of equity and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.<sup>171</sup>

244. The Court observes that the *Grupo Interdisciplinario por los Derechos Humanos* and the *Comisión Colombiana de Juristas* forwarded certifications issued by their respective accountants indicating the expenses they allegedly incurred to assist the case at the domestic level and before the Commission. Furthermore, regarding the expenses for producing evidence before this Court, the representatives presented a so-called "budget of expenses."<sup>172</sup> The Court finds that the documents submitted by the representatives are not appropriate for determining the amount of the expenditure incurred.<sup>173</sup> Nevertheless, the Court can confirm that the representatives incurred expenses related to processing this case before it, including bringing lawyers, witnesses, and expert witnesses from Colombia to the seat of the Court. Consequently, the Court determines, in equity, that the State shall deliver the sum of US\$20,000.00 (twenty thousand United States dollars) to Nelly Valle Jaramillo for costs and expenses. This amount includes any future expenses that the victims may incur at the domestic level or while monitoring compliance with this judgment. This amount shall be delivered within one year of notification of this judgment. Nelly Valle Jaramillo shall, in turn, deliver the amount she considers appropriate to those who represented her in the proceedings before the inter-American system, based on the assistance they provided.

#### **E) MEANS OF COMPLYING WITH THE PAYMENTS ORDERED**

245. The payment of the compensation and the reimbursement of costs and expenses shall be made directly to the victims. If any of these persons should be deceased or die before the respective compensation has been delivered, it shall be delivered to his or her heirs, in accordance with the applicable domestic law.<sup>174</sup>

246. The State shall comply with its obligation by payment in United States dollars or the equivalent amount in Colombian currency.

247. If, for causes that can be attributed to the beneficiaries of the compensation, the said beneficiaries are unable to receive it within the specified time, the State shall deposit the appropriate amounts in an account or a certificate of deposit in favor of the beneficiaries in a Colombian financial institution, in United States dollars, and in the most favorable financial conditions allowed by banking practice and law. If, after 10 years, the

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<sup>171</sup> Cf. *Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 82; *Case of Bayarri*, *supra* note 13, para. 192, and *Case of Apitz Barbera et al. ("First Administrative Court")*, *supra* note 141, para. 257.

<sup>172</sup> "Budget" of expenses for processing the Case of Jesús María Valle Jaramillo before the Inter-American Court of Human Rights, May 7, 2007 (file of attachments to the pleadings and motions brief, tome II, attachment J, folios 1419 to 1421).

<sup>173</sup> Cf. *Case of Vargas Areco*, *supra* note 58, para. 167; *Case of Bayarri*, *supra* note 13, para. 193, and *Case of Cantoral Huamaní and García Santa Cruz*, *supra* note 62, para. 205.

<sup>174</sup> Cf. *Case of Myrna Mack Chang*, *supra* note 5, para. 294; *Case of Bayarri*, *supra* note 13, para. 195, and *Case of Heliodoro Portugal*, *supra* note 13, para. 268.

compensation has not been claimed, the amounts shall be returned to the State with the accrued interest.

248. The amounts assigned in this judgment as compensation and as reimbursement of costs and expenses shall be delivered to the beneficiaries in full, as established in this judgment, without any reductions arising from possible taxes or charges.

249. If the State falls in arrears, it shall pay interest on the amount owed corresponding to bank interest on arrears in Colombia.

250. In keeping with its consistent practice, the Court reserves the authority, inherent in its attributes and derived also from Article 65 of the American Convention, to monitor compliance with all aspects of this judgment. The case will be closed when the State has fully complied with the judgment.

251. Within one year of notification of this judgment, the State shall provide the Court with a report on the measures adopted to comply with it.

#### **XIV OPERATIVE PARAGRAPHS**

252. Therefore,

#### **THE COURT**

#### **DECLARES,**

Unanimously, that:

1. It accepts the State's partial acknowledgement of international responsibility in the terms of paragraphs 20, 35 and 38 of this judgment, and declares a violation of the rights to personal liberty, to personal integrity, and to life, embodied in Articles 7(1), 5(1), and 4(1), respectively, of the American Convention on Human Rights, in relation to the general obligation to ensure rights contained in Article 1(1) thereof, to the detriment of Jesús María Valle Jaramillo, in the terms of paragraphs 105 and 106 of this judgment.

2. It accepts the State's partial acknowledgment of international responsibility in the terms of paragraphs 20, 35 and 38 of this judgment, and declares a violation of the rights to personal liberty and to personal integrity embodied in Articles 7(1) and 5(1), respectively, of the American Convention on Human Rights, in relation to the general obligation to ensure rights contained in Article 1(1) thereof, to the detriment of Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa, in the terms of paragraph 110 of this judgment.

3. It accepts the State's partial acknowledgment of international responsibility, in the terms of paragraphs 20, 35 and 38 of this judgment, and declares a violation of the right to personal integrity embodied in Article 5(1) of the American Convention on Human Rights, in relation to the general obligation to ensure rights contained in Article 1(1) thereof, to the detriment of María Leticia Valle Jaramillo, Ligia Valle Jaramillo, Luzmila Valle Jaramillo, Magdalena Valle Jaramillo, Romelia Valle Jaramillo, Marina Valle Jaramillo, Darío Valle Jaramillo, Octavio Valle Jaramillo, Alfonso Montoya Restrepo, Luis Fernando Montoya Valle, Gloria Lucía Correa, Carlos Enrique Jaramillo Correa, María Lucía Jaramillo Correa, Ana

Carolina Jaramillo Correa, Jesús Emilio Jaramillo Barrera, Adela Correa de Jaramillo, Blanca Lucía Jaramillo Correa, Romelia Jaramillo Correa, Nellyda Jaramillo Correa, José María Jaramillo Correa, Luis Eugenio Jaramillo Correa, Gloria Elena Jaramillo Correa and Adriana María Jaramillo Correa, in the terms of paragraphs 118 to 129 of this judgment.

4. It accepts the State's partial acknowledgment of international responsibility, in the terms of paragraphs 20, 35 and 38 of this judgment, and declares a violation of the right to freedom of movement embodied in Article 22(1) of the American Convention on Human Rights, in relation to the general obligation to ensure rights contained in Article 1(1) thereof, to the detriment of Carlos Fernando Jaramillo Correa, his wife, Gloria Lucía Correa, his son, Carlos Enrique Jaramillo Correa, and his daughters, María Lucía Jaramillo Correa and Ana Carolina Jaramillo Correa, in the terms of paragraph 144 of this judgment.

5. It accepts the State's partial acknowledgment of international responsibility, in the terms of paragraphs 20 and 38 of this judgment, and declares a violation of the rights to judicial guarantees and to judicial protection embodied in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to the general obligation to respect rights contained in Article 1(1) thereof, to the detriment of Nelly Valle Jaramillo, Alfonso Montoya Restrepo, Luis Fernando Montoya Valle, Carlos Fernando Jaramillo Correa, Gloria Lucía Correa, Carlos Enrique Jaramillo Correa, María Lucía Jaramillo Correa, Ana Carolina Jaramillo Correa, Jesús Emilio Jaramillo Barrera, Adela Correa de Jaramillo, Blanca Lucía Jaramillo Correa, Romelia Jaramillo Correa, Nellyda Jaramillo Correa, José María Jaramillo Correa, Luis Eugenio Jaramillo Correa, Gloria Elena Jaramillo Correa, Adriana María Jaramillo Correa, María Leticia Valle Jaramillo, Ligia Valle Jaramillo, Luzmila Valle Jaramillo, Magdalena Valle Jaramillo, Romelia Valle Jaramillo, Marina Valle Jaramillo, Darío Valle Jaramillo and Octavio Valle Jaramillo, in the terms of paragraphs 168 to 170 of this judgment.

6. The State violated the right to personal integrity embodied in Article 5(1) of the American Convention on Human Rights, in relation to the general obligation to ensure rights contained in Article 1(1) thereof, to the detriment of Blanca Inés Valle Jaramillo, Gonzalo de Jesús Jaramillo Correa, Juan Guillermo Valle Noreña, John Jairo Valle Noreña and Luz Adriana Valle Noreña, in the terms of paragraphs 122, 126, 127 and 130 of this judgment.

7. In the instant case, it has not been proved that the State violated the right to personal integrity embodied in Article 5(1) of the American Convention on Human Rights, in relation to the general obligation to ensure rights contained in Article 1(1) thereof, to the detriment of the following persons: Mauricio Alberto Herrera Valle, Claudia Helena Herrera Valle, Liliana María Herrera Valle, Berta Lucía Valle Noreña, Adriana María Londoño Del Valle, Ana María Valle Villegas, Andrés Felipe Valle Villegas, Claudia María García Valle, Diana Patricia García Valle, Francisco Javier García Valle, Franklin Henao Valle, Fredy Henao Valle, Jairo Alberto Londoño Del Valle, Jeannette Henao Valle, John Alberto Henao Valle, Juliana Patricia Londoño Del Valle, María Victoria García Valle and Marta Luz García Valle (next of kin of Jesús María Valle Jaramillo); or of Alejandro Jaramillo Mejía, Ana Catalina Hoyos Jaramillo, Andrés Felipe Ochoa Jaramillo, César Augusto Jaramillo Gutiérrez, Diego Alejandro Ochoa Jaramillo, Gabriela Gómez Jaramillo, Jorge Mario Jaramillo Gutiérrez, José Miguel Jaramillo Gutiérrez, Juan Camilo Jaramillo Gutiérrez, Juan Gonzalo Jaramillo Mejía, Juliana Jaramillo Tobón, Luis Jairo Jaramillo Gutiérrez, Luisa María Gómez Jaramillo, María Isabel Jaramillo Mejía, Oscar Fernando Hoyos Jaramillo, Luis Santiago Jaramillo Tobón and Victoria Alejandra Gómez Jaramillo (next of kin of Carlos Fernando Jaramillo Correa), in the terms of paragraphs 125, 128 and 132 of this judgment.

8. In the instant case, it has not been proved that the State violated the right to privacy embodied in Article 11(1) and 11(2) of the American Convention on Human Rights, in the terms of paragraphs 176 to 180 of this judgment.

9. In the instant case, it has not been proved that the State violated the rights of the family embodied in Article 17 of the American Convention on Human Rights, in the terms of paragraph 184 of this judgment.

10. It is not appropriate to rule on the alleged violation of the rights to personal integrity, to freedom of thought and expression, and to freedom of association, embodied in Articles 5, 13, and 16, respectively, of the American Convention on Human Rights, to the detriment of the human rights defenders, since they are not alleged victims in the instant case, in the terms of paragraphs 188 to 191 of this judgment.

11. In the instant case, it has not been proved that the State violated the right to freedom of thought and expression embodied in Article 13 of the American Convention on Human Rights, in the terms of paragraphs 196 and 197 of this judgment.

**AND DECIDES,**

Unanimously, that:

12. This judgment constitutes *per se* a form of reparation.

13. The State must pay the amounts established in this judgment for pecuniary and non-pecuniary damage, and for reimbursement of costs and expenses, within one year of notification of this judgment, in the terms of paragraphs 207, 210, 216, 224 to 226 and 244 hereof.

14. The State must investigate the facts that gave rise to the violations in the instant case, in the terms of paragraphs 231, 232 and 233 of this judgment.

15. The State must publish once in the official gazette and once in another national newspaper with widespread circulation, paragraphs 2 to 4, 6, 29, 47, 70 to 78, 80 to 97, 104 to 107, 109, 110, 115, 122, 125 to 128, 130, 132, 140 to 144, 147, 160, 161, 165 to 170, 176 to 180, 184, 190, 191, 196, 197 and 200 of this judgment, without the corresponding footnotes but with the titles of the respective chapters, as well as its operative paragraphs, within one year of notification of this judgment, in the terms of paragraphs 227, 231 and 234 hereof.

16. The State must organize a public act to acknowledge its international responsibility for the violations declared in this case at the University of Antioquia within one year of notification of this judgment, in the terms of paragraph 227 and 231 hereof.

17. The State must place a plaque in memory of Jesús María Valle Jaramillo in the Courthouse of the Department of Antioquia within one year of notification of this judgment, in the terms of paragraphs 227 and 231 hereof.

18. The State must provide immediately and free of charge, through its specialized health care institutions, any psychological and psychiatric care required by the victims, in the terms of paragraphs 227, 231 and 238 of this judgment.

19. The State must grant Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa an educational grant to study or train for a profession, within one year of notification of this judgment, in the terms of paragraphs 227 and 231 hereof

20. The State must guarantee the safety of Carlos Fernando Jaramillo Correa should he decide to return to Colombia, in the terms of paragraph 227 and 231 of this judgment.

Judge Sergio García Ramírez informed the Court of his concurring opinion, which is attached to this judgment.

Done, at San José, Costa Rica, on November 27, 2008, in Spanish and English, the Spanish text being authentic.

Cecilia Medina Quiroga  
President

Diego García-Sayán

Sergio García Ramírez

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri  
Secretary

So ordered,



Cecilia Medina Quiroga  
President

Pablo Saavedra Alessandri  
Secretary

**CONCURRING OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ RELATING TO  
THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS  
IN THE CASE OF VALLE JARAMILLO ET AL. OF NOVEMBER 27, 2008**

1. In its judgment of November 27, 2008, in the case of *Valle Jaramillo et al.* (Colombia), the Inter-American Court of Human Rights made considerable progress in formulating criteria on relevant matters relating to criminal proceedings, from a human rights perspective, which it had previously approached restrictively and which it is now examining in greater detail and depth. They relate, above all, to two issues: (a) the definition of the so-called “reasonable time” for concluding the proceedings and the definition of certain situations relating to this; an issue that has frequently been submitted to the consideration of the Inter-American Court in relation to the delays that occur in domestic proceedings, and (b) the victim’s role in ordinary criminal proceedings; an important issue when we consider that the violations perpetrated give rise to the State’s obligation to provide justice, which introduces a new scenario involving actions and rights that are of vital interest to the victims of those violations.

I. *Reasonable time*

2. Regarding reasonable time, up until now, the Inter-American Court had followed the criteria adopted by the European Court of Human Rights, which evidently provides a useful frame of reference with regard to the issues that must be considered in relation to the reasonableness of the time invoked in the context of due process of law. On this question, both Courts cite three relevant factors: the complexity of the matter being tried, the activity of the court hearing the case, and the procedural conduct of the litigant. In other words, one element relating to the very nature of the facts being heard and of the proceedings during which this consideration takes place; and two elements relating to the conduct of the procedural subjects (or, more broadly, of the subjects who intervene in the proceedings, because, in this regard, acts or omissions of the Police or of the Attorney General’s Office (*Ministerio Público*) could be involved, in addition to those of the court). I have examined these aspects in several separate and concurring opinions relating to judgments handed down by the Inter-American Court, in the terms I will cite below.

3. The Inter-American Court does not usually provide its own definition of this determinant information for weighing the reasonableness of the time in a case. In my separate opinion in the case of *López Álvarez* (Honduras), which concluded with a judgment of February 1, 2006, I attempted to describe it as set out below. With regard to the complexity of the matter, the Court, which verifies the compatibility between the State’s conduct and the provisions of the Convention – in other words, it is the organ that monitors the “conventionality” – should explore the *de jure* and *de facto* circumstances of the case. The legal analysis may be relatively simple, once the facts on which the litigation was based are established, but they can be extraordinarily complex and difficult to prove, and the collection of evidence may be prolonged or complicated, costly, hazardous or belated. The contrary may also occur: the relative clarity and simplicity of the facts, compared to acute difficulty in their legal assessment or definition; opposing opinions, changing case law, vague legislation, motives that can be understood in different ways or that differ.

4. When analyzing this issue, it also appears necessary to consider the number of briefs that are submitted during litigation. Often, not just one, but multiple briefs are submitted in a dispute, all of which must be examined and clarified. It is also necessary to take into consideration the number of participants mentioned in the briefs and in the procedural

processes, with their respective positions, their rights, the interests they bring to the proceedings, their motives and expectations. Furthermore, the conditions in which the case is examined must be borne in mind, because it may be heard under the pressure of different types of contingency, ranging from natural to social.

5. The procedural conduct of the interested party may be the determining factor in the prompt or delayed attention to the dispute. I refer to the activity in the proceedings and, in this regard, to the procedural activity, but it is also necessary to consider the activity – or, better still, the conduct: active or omissive – in other areas, if it transcends the proceedings or has an influence on them. It may be that, in order to defend his rights, the individual uses a wide range of the instruments and opportunities that the law makes available to him, such as appeals or other mechanisms, which delay the decision on merits. It is also necessary to be on guard against the possibility that an individual dispenses with actions to defend himself in order to move forward promptly or following supposed criteria of rationality in the opinion of distant or interested observers. The Court must distinguish prudently between the acts and omissions of the litigant – well or badly advised – to defend himself, and those whose only purpose is to create delays. Obviously, it is not a matter of transferring to the accused, who is defending himself, the responsibility for the delays in the trial and, consequently, for violation of the reasonable time that prejudices him.

6. In relation to the conduct of the court – although, it would be preferable to refer, in general, to the conduct of the authorities, because it is not only the court that functions in the name of the State – the activity exercised with justifiable caution and reflection should be distinguished from the activity performed with excessive parsimony, exasperating slowness and excessive ritual. What is the possible conduct or performance of a court (or, more broadly, of an authority) genuinely dedicated to deciding the disputes submitted to it, and that of a court that sidetracks its energy while the accused await rulings that are never handed down?

7. In this regard, the deficit of courts, the complexity of outdated procedural systems, and the overwhelming workload are relevant factors, even as regards courts that make a real effort to be productive. It is necessary to be aware of these factors; nevertheless, none of them should impair the rights of the individual and prejudice him. An excessive workload cannot justify the failure to respect reasonable time, which is not a balance between volume of domestic litigations and number of courts, but rather an individual reference for a specific case. All those shortcomings become obstacles, ranging from severe to insurmountable, to access to justice. Does the impossibility of having access to justice because the courts are overloaded with cases or have frequent legal holidays no longer violate rights?

8. Furthermore, in the same opinion in the *López Álvarez* case – and in others that I will mention below – I indicated that it was necessary to expand the analysis of the reasonable time and examine the possibility of incorporating other elements that merited analysis into this concept – in order to assess respect for or failure to respect due process. In the said opinion, I stated: “it seems possible that the complexity of the matter that motivates the process, the behavior of the interested party –in this case, the defendant—and the acts of the authority may not be enough to provide a convincing conclusion of the undue delay, that violates or puts the judicial rights of the subject in grave danger. Thus the appropriateness, in my opinion, of exploring other elements that complement, but do not substitute them, for the determination of a fact – the violation of the reasonable time – for which there are no quantitative universally-applicable boundaries.”

9. Then I mentioned “as a possible fourth element to be considered in estimating a reasonable time, what I called the *‘actual impairment of an individual’s rights and*

*obligations caused by the proceedings – that is, his judicial situation.* It is possible that the latter could have little relevance on this situation; if this is not so, that is, if the relevance increases, until it is intense, it would be necessary, for the sake of justice and security, both seriously threatened, that the process be more diligent so that the subject's situation, which has begun to seriously affect his life, may be decided in a short time – 'reasonable time.' The impairment must be real, not simply possible or probable, eventual or remote."

10. I added: "I am aware that these concepts do not have the precision I would want, as in the case of others provided for the analysis of the reasonableness of the time period: complexity of the matter, behavior of the interested party, behavior of the judge. Certainly this is information subject to a reasoned examination; references that must be assessed as a whole, within certain circumstances that are not the same in all cases. The reasonableness of the time period will be inferred from this totality and the assessment of the Court will be supported, in each case, by the excess incurred in and the violation committed."

11. I again referred to this issue in my opinions relating to the judgments in the *Sawhoyamaxa* (Paraguay) case, of March 29, and the *Ituango Massacres* (Colombia) case, of July 1, 2006. Finally, in the judgment in the case of *Valle Jaramillo et al.*, the Inter-American Court has expanded its consideration of reasonable time and incorporated the elements to assess it that I suggested in the personal opinions mentioned above. This acceptance is based on the conviction that, in addition to the factors established by European case law and incorporated by inter-American case law – or together with them – it is essential to assess the greater or lesser harm caused by the time - also greater or lesser – that elapses in the processing and deciding of a dispute or in the definition of an obligation or a right.

12. At times, when weighing the harm, the time elapsed is irrelevant; in others, it is very detrimental to the victim. Consequently, the other elements used to assess reasonableness – complexity of the matter and conduct of authorities and private individuals – should also be examined in light of the prejudice that is being caused to the victim. Time does not elapse equally for everyone, and the elements usually taken into consideration to establish the reasonableness of time do not affect everyone in the same way. I realize that it is possible to identify weaknesses in this argument, but I also maintain that the inclusion of this new item of information helps improve the definition of reasonable time and give greater precision to the concept.

13. I must emphasize that it is not my purpose to replace the elements of traditional legal doctrine and concentrate all the consequences of measuring reasonable time on the harm caused; on no account. Nor have I suggested that a lack of appreciable harm legitimates the passage of time, whatsoever the length, and absolves the State of responsibility as regards due process; on no account. I am merely suggesting the pertinence of looking at the traditional elements of measurement also – and only, also – from the optic or the perspective of the actual harm that the passage of time causes to the victim. This constitutes an additional factor in the assessment, which should be combined with the other factors considered to measure the reasonableness of the elapsed time.

14. This idea has now been introduced into the Inter-American Court's case law as of this judgment handed down in the case of *Valle Jaramillo et al.* Indeed, it enhances the examination of the time period and enhances the decision adopted by the Court in this regard, when it states: "The Court has established that three elements must be taken into account in order to determine whether the time is reasonable: (a) the complexity of the matter; (b) the procedural activity of the interested party, and (c) the conduct of the judicial authorities. In addition, the Court finds it pertinent to clarify that, in this analysis of

reasonableness, the adverse effect of the duration of the proceedings on the judicial situation of the person involved in it must be taken into account; bearing in mind, among other elements, the matter in dispute. If the passage of time has a relevant impact on the judicial situation of the individual, the proceedings should be carried out more promptly so that the case is decided as soon as possible" (para. 155). This progress in inter-American case law paves the way towards new modifications on an important issue that is submitted with increasing frequency. The high incidence of this issue in the cases submitted to the consideration of the European Court of Human Rights should also be recalled.

## II. The victim's role in the proceedings

15. I am not referring here to the procedural activity of the victim in the international proceedings based on possible human rights violations, but rather to his participation or that of his representatives – the procedural legitimation – in the domestic proceedings to investigate the violations perpetrated, which lead to the identification of those responsible, the respective prosecution, and the corresponding judgment. The Inter-American Court has often dealt with this legitimation and has reminded the States of the pertinence, pursuant to the American Convention on Human Rights, of providing opportunities for the victim to intervene in the domestic proceedings leading to compliance with what has been called the "obligation to provide justice" – inherent in the State's obligation to ensure the exercise of human rights (Article 1(1) of the American Convention) – which has special relevance as regards criminal justice, although it evidently includes, or may include, other types of justice (disciplinary, administrative or civil).

16. If we examine the Court's case law on this matter, we will conclude that the victim's participation, invoked by the Court, is based on the right of access to justice and to judicial protection (embodied in Article 8(1) of the Pact of San José) – a right that corresponds to everyone and, in particular, to those for whom a legally-protected interest or right to which they are entitled has been violated unfairly – in order to determine their rights, and also, if applicable, any obligations they may have. The procedural participation (*lato sensu*) of the victim (or his representatives) reflects the victim's right to know the truth about what happened; that is, the conditions or characteristics of the violations perpetrated and the corresponding responsibilities, and these are the object of the domestic investigation. It also includes the victim's right to reparation of the damage caused. In brief, the justification for the victim's participation is threefold, and this has now been specifically included in the judgment in the case of *Valle Jaramillo et al.*: "access to justice, knowledge of the truth about what happened, and obtaining fair reparation" (para. 233).

17. This same examination of inter-American case law on the matter, allows us to see that the Court has understood that this participation by the victim – in other words, the scope of his legitimation – must be expanded and adapted to domestic law and international law. Evidently, domestic provisions must be compatible with the guiding principles of international human rights law, which the State has undertaken to comply with by means of an explicit sovereign decision, in the terms of Articles 1 and 2 of the American Convention. After all, we are dealing here with concentric circles of protection or concurrent elements in the establishment of a single procedural framework.

18. Nevertheless, in my opinion, our case law has not been sufficiently precise about the required content and characteristics of the victim's procedural intervention. It must obviously be broad-ranging as I have mentioned, and not insignificant, symbolic, ineffective and illusory – a minimization resulting from an extreme version of the punitive powers of the State with its powers to exclude extended to all procedural acts – and must be subject to the domestic legal system and to international precepts. At times it has been understood

– erroneously, in my opinion – that compliance with domestic law supposes that this can establish, on its own, the scope of the intervention that could result in a denial of effective intervention and a return to symbolic participation; and this, in effect, implies the exclusion of the person who is the substantive party – a party in the substantive connection created by the offense – although not necessarily a procedural party, with the capacity to act. The extreme example of this converts the victim into a stranger or, at most, a witness in his own case. I will return to this matter in another paragraph of this opinion.

19. The Court's case law needed to define further the form of the victim's participation in the domestic proceedings, without reaching the point where it empowered him to conduct the criminal action – a matter that must be regulated in the domestic sphere; in other words, without granting him the capacity of a full party in the proceedings, displacing the Prosecutor General's office or being a party with the latter in the prosecutorial function it has traditionally performed in numerous countries and for an extensive series of offenses. In the judgment in the case of *Valle Jaramillo et al.*, which this opinion, accompanies, the Court makes headway in establishing a reasonable and effective profile for the victim's participation, which gives effect to the right that inter-American case law has recognized to him for some time.

20. The Court's judgment in this case specifies, with sufficient precision, the activities that the victim and his representatives (whether or not they are next of kin) can carry out in the proceedings. Thus, it chooses to refer to each sector of activities, instead of using, as it has until now, more general terms that may be ambiguous and not clarify, as necessary in the case of procedural actions, their content, the moment when they occur, their possible consequences (according to their nature), etc. It alludes to "*submit pleas and motions, receive information, offer evidence, formulate arguments and, in brief, assert their interests.*" It is thus that the very general phrase used by the Court: "full access and capacity to act" is given substance – and practical applicability. There is, evidently, a reference point for these activities, which I will refer to below, which embodies the victims' rights and helps to explain their significance and purpose to the interpreter and the enforcer of the law, and which should be taken into consideration when assessing its meaning and pertinence: access to justice (in the sense of Article 8(1) of the Convention), knowledge of the truth, and fair compensation (para. 233), as I stated above.

21. According to this paragraph 233 of the judgment, which establishes basic principles in this regard, the victim – and his representatives – may submit pleas and motions, offer evidence and formulate arguments; in other words, they may request what they need to meet their interests, draw the court's attention to matters relating to this, and ask for the corresponding rulings. These powers should not be confused with conducting the criminal action, although this could be placed in the hands of the victim, if national law so decides, based on certain internal decisions relating to criminal policy that have consequences for the procedural system.

22. Moreover, victim and representatives can receive information – and not merely "be pending," passively, on information that others decide to give them. To the contrary, they can require it in the exercise of procedural powers – on substantive and procedural aspects of the proceedings in which they are actors. They can also offer evidence: it is understood that this is offered in order to support their participation, and thus the evident relevance of any admissible probative elements that help prove facts and responsibilities before the different authorities who intervene in the proceedings and whose decisions influence their development and conclusion. They are authorized to formulate arguments; that is, to state their position on the facts and the latter's legal significance, which includes the pertinence of the prosecution and the legal consequences of the offense committed – if applicable. And

they can use any means of objection as regards the rights they allege during the proceedings. The same paragraph 233 includes a broader phrase that “summarizes” the meaning of the previous ones and keeps access to other natural implications of the procedural performance of the victims open; they may “assert their interests.”

23. Paragraph 233 clarifies two other matters of great importance for the issue in question. On the one hand, the right of access and the capacity to act of victims and representatives is manifest throughout the proceedings: “at all stages and in instances of these investigations or proceedings.” The Court recognizes and respects the structure of the prosecutorial system in the different countries and knows that prosecutions may be conducted by different authorities, composed of different stages, and correspond to different concepts. Consequently, it does not allude merely to investigations or trials, because it does not want to restrict the extensive right of the victims, which could clash with the national particularities – perfectly valid – of the prosecutorial system. To the contrary, it alludes to all the stages and instances that may be pertinent for the purpose of investigation and prosecution, and this naturally ranges from the start of the investigation until the exhaustion of the dispute by the final concluding ruling provided for by domestic law.

24. On the other hand, the judgment has also been careful – in light of the concern I expressed above – to ensure that there is clarity concerning the functioning of the domestic legal system in relation to the victims’ procedural rights, as these are inferred from international human rights law. In this area as in many others, the latter has made significant advances under the *pro homine* banner, which does not combat, but rather contributes to justice. Obviously, it does not want to lose in the domestic jurisdiction, what it has tried to obtain in favor of the rights of the victim in the international jurisdiction.

25. After all, paragraph 233 does not infer that domestic law will decide whether or not the victim will be given access to the stages, instances, investigations and trials; whether or not he may submit pleas and motions, receive information, offer evidence, and formulate legal findings and arguments. This series of possibilities gives content to the victim’s participation under international law. The domestic legal system, which should not reduce the fundamental rights of the victim, can and must establish the ways, channels, means, and reasonable times for its exercise, without losing sight of the essence of these rights and the purpose of their exercise.

Sergio García Ramírez  
Judge

Pablo Saavedra Alessandri  
Secretary