

**TO THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
ON THE MERITS OF THE PETITION OF MEMBERS OF JOSÉ ALVÉAR
RESTREPO LAWYERS' COLLECTIVE**

Case No. 12.380

**BRIEF OF
LAWYERS WITHOUT BORDERS CANADA
AND
LAWYERS' RIGHTS WATCH CANADA**

AS AMICI CURIAE

Lawyers without Borders Canada

Lawyers' Rights Watch Canada

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TABLE OF ABBREVIATIONS

AAJ	American Association of Jurists
ACADEHUM	Asociación Colombiana de Abogados Defensores de Derechos Humanos (Colombian Association of Human Rights Lawyers)
ACHR	American Convention on Human Rights
CAT	UN Committee against Torture
CCAJAR	<i>Corporación Colectivo de Abogados “Jose Alvear Restrepo”</i> (“Jose Alvear Restrepo” Lawyers’ Collective)
DAS	<i>Departamento Administrativo de Seguridad</i> (Administrative Department of Security)
ECtHR	European Court of Human Rights
ELN	<i>Ejercito de Liberación Nacional</i> (National Liberation Army)
ECOSOC	UN Economic and Social Council
ESAP	<i>Escrito de Solicitudes, Argumentos y Pruebas</i> (Brief containing Pleadings, Motions, and Evidence)
HRC	UN Human Rights Council
HRD	Human Rights Defender
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Commission of Jurists
LRWC	Lawyers’ Rights Watch Canada
LWBC	Lawyers Without Borders Canada
OHCHR	Office of the UN High Commissioner for Human Rights
OTP-ICC	Office of the Prosecutor - International Criminal Court
UN	United Nations

UNCAT	United Nations Convention against Torture
UNHCHR	United Nations High Commissioner for Human Rights
UNHRC	United Nations Human Rights Committee
UNSRIJL	UN Special Rapporteur on the Independence of Judges and Lawyers

INTRODUCTION

Interest of the *Amici Curiae*

The *amici curiae* are Lawyers Without Borders Canada (“LWBC”) and Lawyers’ Rights Watch Canada (“LRWC”), both associations of Canadian lawyers that share an interest in the fundamental role that lawyers, and particularly human rights lawyers, play in ensuring respect for the human rights of all and the proper administration of justice. The *amici* respectfully submit this *amicus* brief for the benefit of the Inter-American Court of Human Rights (“Court” or “IACtHR”) in its consideration of the Petition of the members of the “Jose Alvear Restrepo” Lawyers’ Collective (“CCAJAR” or “Lawyers’ Collective” or the “Petitioners”),¹ referred by the Inter-American Commission of Human Rights (“Commission” or “IACHR”) in July 2020.²

LWBC is a non-profit association incorporated under the laws of the province of Quebec, Canada. LWBC’s mission is to uphold the defence of the human rights of vulnerable groups or individuals by reinforcing access to justice through legal representation. LWBC is headquartered in Quebec City, and has offices in six countries, including Colombia. In that country, LWBC lends its support to lawyers who are threatened because of their work with, and support of, victims of human rights abuses committed during the armed conflict, and notably those of Indigenous and Afro-Colombian communities.

Lawyers’ Rights Watch Canada (‘LRWC’) is a committee of Canadian lawyers and human rights defenders who promote human rights and the rule of law internationally. Established in 2000, LRWC has held Special Consultative status with the Economic and Social Council of the United Nations since 2005. LRWC advocates for the independence and integrity of the legal profession, and for the protection of lawyers and other human rights defenders in danger because of their advocacy.

Focus of the *Amicus Curiae*

LWBC and LRWC join in presenting an elaboration of the ramifications of the Colombian State’s involvement in the succession of threats, surveillance, acts of intimidation and harassment to which the Petitioners have been subjected, in violation of Articles 4.1, 5.1, 8.1, 11, 13, 16, 19, 22 and 25.1 of the *American Convention on Human Rights* (“ACHR” or “Convention”), in connection with the State’s obligations under Article 1.1.

2013 Amicus Curiae

¹ IACHR, Report 55/06, Petition 12.380, *Admissibility, Members of José Alvear Restrepo Lawyers’ Collective v. Colombia*, July 20, 2006 [“Admissibility Report”].

² IACHR, *Referral to the IACtHR, Members of José Alvear Restrepo Lawyers’ Collective v. Colombia*, July 8th 2020.

Our previous *amicus* submitted to the IACHR in 2013 (“2013 Amicus”)³ examined the State’s failure to comply with its international obligations and protect the Petitioners from the violations of their human rights and to ensure that they could carry out their legitimate professional duties and vigorously represent their clients without fear and interference. The brief considered how the State’s conduct impaired the rights of victims and accused persons (i.e. the Petitioners’ clients) to adequate legal representation, fair trial rights, and effective judicial remedies. It examined the broader implications of these violations for the protection of human rights and the proper administration of justice in Colombia.

Current Amicus Curiae

The *amici*’s primary focus is the proper juridical treatment of the acts and omissions attributable to the Colombian State, given the serious adverse effects and legally cognizable harms of those rights violations for not only the Petitioners, but their families, clients, and for Colombian human rights defenders (“HRDs”) at large.

The *amici* advocate for an expansive understanding of the consequences of these grave violations on the ability of lawyers to fully and freely exercise their fundamental rights, professional duties and the social functions of lawyers to defend clients and human rights in furtherance of justice and the rule of law.

Our objectives are to more fully identify the scope and ramifications of the State’s violations and consequential harms to the Petitioners, and others, given the realities of emotional, familial, and communal or societal bonds. This approach would expand the inter-American human rights system’s conception of who qualifies as a victim or injured party, an important acknowledgement for the purpose of redress, particularly, the guarantee of non-repetition.

The current *amicus* builds on the Inter-American human rights system’s evolving elaboration of the universe of individuals, groups and communities that are victims in their own right, as primary victims and secondary victims. It further elaborates the pernicious effects and serious individual and collective harms that call for remedy and repair.

The *amicus* highlights the Inter-American human rights system’s focus on the harms experienced not only by targeted individuals but inter-dependent persons and those drawn from vulnerable social groups that are “subjected to structural patterns of violence and

³ Lawyers Without Borders Canada & Lawyers’ Right Watch Canada, *Brief to the Inter-American Commission of Human Rights on the Merits of the Petition of Members of José Alvéar Restrepo Lawyers’ Collective*, Case No.12.380, as *Amici Curiae*, 2013 available at: https://www.asfcanada.ca/uploads/publications/uploaded_lwrc-lwbc-amicus-brief-case-no-12380-pdf-44.pdf [“2013 Amicus”].

discrimination”.⁴ In advancing arguments in support of the Court’s developing harms-based accountability approach, the *amicus* takes as its juridical starting points the Inter-American system’s recognition of human suffering as being ‘at a lower tipping point’,⁵ together with its evolutive framework and “remarkable *pro-homine* [pro-human] interpretive approach”.⁶

⁴ Victor Abramovich, “Responsabilidad estatal por violencia de género: comentarios sobre el caso “Campo Algodonero” en la Corte Interamericana de Derechos Humanos”, *Anuario De Derechos Humanos* 6 (2010), at pp.167-168.

⁵ Louis Wolcher, *Law’s Task: The Tragic Circle of Law, Justice and Human Suffering*, Aldershot: Ashgate, 2008, cited in Marie-Bénédicte Dembour’s text, *When Humans Become Migrants: Study of the European Court of Human Rights with an Inter-American Counterpoint*, Oxford University Press, 2015 [“When Humans Become Migrants”], at p.503.

⁶ The *pro-homine* interpretive approach ensures that humans, as opposed to States alone, are given central consideration. This has been contrasted with other regional human rights systems, for example, see: *When Humans Become Migrants*, *Ibid* at p.509. The approach is also referenced in Mónica Feria-Tinta’s article, “Justiciability of Economic, Social and Cultural Rights in the Inter-American System of Protection of Human Rights: Beyond Traditional Paradigms and Notions” (May 2007) *Human Rights Quarterly* 29(2) 431 at p.444. The system’s application of the least restrictive approach to interpreting rights is mandated by Article 29(b) ACHR: see Claudio Grossman’s analysis, “The Inter-American System and its Evolution” (2009) 2 *Inter-American and European Human Rights Journal*. 49 at p.61. The evolutive interpretive approach is referenced in the separate concurring opinions of Judges Cançado Trindade and Abreu-Burelli in IACtHR, *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala*, Reparations and Costs, Judgment of May 26, 2001, Series C No. 77 [“Street Children – Reparations”]; see Judge Cançado Trindade’s concurring opinion at §§9-10.

PART I. FAMILY MEMBERS AS VICTIMS OF HUMAN RIGHTS VIOLATIONS AND INJURED PARTIES

Introduction

The *amici* are concerned both by the Commission's narrow conception of victimhood and of the consequences and harms identified for redress in its decision on the merits of the present case (the "Merits Report").⁷ The IACtHR's evolving jurisprudence invokes a more holistic and expansive conception of the presumed victims,⁸ whereas the Merits Report does not recognize numerous family members as victims, despite their injuries.

Part I of this brief considers two potential areas for expansion in respect of the Petitioners' next of kin.

The *amici* first submit that the Court should extend the status of victim to the entirety of the family members of the Petitioners found to be the primary victims of human rights violations ("Primary Victims") under Articles 4(1), 5(1), 8(1), 11, 13(1), 19, 22(1) and 25(1) ACHR, in relation to Article 1(1) thereof (the "Primary Violations").⁹ The *amici* submit that each of the Petitioners' family members were also 'primary victims' in their own right of various Primary Violations attributed to the Colombian State and its now-defunct *Departamento Administrativo de Seguridad* ("DAS"),¹⁰ as well as the State's post-DAS intelligence gathering activities.¹¹

Moreover, in keeping with a harms-based conception of accountability for human rights violations that is attuned to the multiplier effects of the Primary Violations, the *amici* urge the Court to consider other categories of harms and injured parties. Such an approach is consistent with the understanding that the Primary Violations "not only destabilize the person(s) toward

⁷ IACHR, *Members of the José Alvear Restrepo Lawyers' Collective (CAJAR)*, Report N° 57/19 (merits), Case No. 12.380 (May 4, 2019) ["Merits Report"] at §§298, 319, 332-333, 354.

⁸ Clara Sandoval Villalba, "The Concepts of 'Injured Party' and 'Victim' of Gross Human Rights Violations in the Jurisprudence of the Inter American Court of Human Rights: A Commentary on their Implications for Reparations" (2009) in Fertsman et al, *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity*, pp.243-282; Diana Contreras-Garduno, "Defining Beneficiaries of Collective Reparations: The Experience of the IACtHR," *Amsterdam Law Forum* 4, no. 3 (Summer 2012), pp. 53-55; Shelton, Dinah "The Rules and the Reality of Petition Procedures in the Inter-American Human Rights System" (2015) 5:1 *Notre Dame Journal of International & Comparative Law* ["Shelton, Rules and Reality"] at pp.22-23

⁹ Merits Report, *supra* note 7 at §355.

¹⁰ Admissibility Report, *supra* note 1 at §17.

¹¹ Merits Report, *supra* note 7 at §149.

whom the acts are directly intended but a wider circle whose own autonomous entitlements are precariously in balance with the well-being and safety of others [producing] a domino effect.”¹²

It follows that individuals in close relationship to CCAJAR members, as “codependent individuals”, “experience[d] a domino harm from the experiences of the primary subject[s] of violation”.¹³ For the purpose of this *amicus*, such individuals are termed secondary victims (“Secondary Victims”). The suffering they experienced through their emotional and familial bonds should be recognized by the Court, consistent with a harms-based expansion of the concept of a victim in international human rights law.¹⁴ The *amici* submit that in addition to being considered Primary Victims of various rights violations, all family members should be recognized as Secondary Victims of those “secondary harms”¹⁵ that flowed from the Primary Violations. The latter include the intense anguish and fear that family members experienced as a result of the damage caused to the Petitioners, damage that was “perceived, felt, actualized as a harm” by the next of kin.¹⁶ Secondary harms also flowed from their involvement in the Petitioners’ unsuccessful efforts to have the rights violations effectively investigated and addressed.¹⁷ The foregoing effects have been found by the Court to constitute inhumane treatment under Article 5 ACHR and to violate the rights to remedy under Article 8(1) and 25(1) ACHR.

We elaborate on these two positions in the following sections.

¹² Fionnuala Ni Aolain, “Sex-based Violence during the Holocaust – A Reevaluation of Harms and Rights in International Law” (2000) 12:1 *Yale JL & Feminism* 43 [“Harms”] at pp.77-78 .

¹³ *Ibid* at p.81.

¹⁴ Ruth Rubio-Marín, Clara Sandoval, and Catalina Díaz, “Repairing Family Members: Gross Human Rights Violations and Communities of Harm” in Ruth Rubio-Marín, ed., *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge: CUP 2009) 215 [“Repairing Family Members”] at p.220. See also: UN General Assembly (“UNGA”), *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of Humanitarian Law*, 16 December 2005, A/RES/60/147, Art.1; UNGA, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, 29 November 1985, Res 40/34, Art.2; *Convention for the Protection of All Persons from Enforced Disappearances*, 20 December 2006, Doc.A/61/448, Art.24; Heidi Rombouts, Pietro Sardaro, and Stef Vandeginste, “The Right to Reparations for Victims of Gross and Systematic Violations of Human Rights,” in *Out of the Ashes: Reparations for Victims of Gross and Systematic Human Rights Violations*, ed. Koen De Feyter et al. (Antwerp: Intersentia, 2005) at 360.

¹⁵ Harms, *supra* note 12 at p.79.

¹⁶ *Ibid* at p.81.

¹⁷ Secondary harms flowing from the State’s failure to effectively investigate and address these rights violations also led to the “secondary victimization” of the Petitioners’ family members. See IACHR, *Case of Claudina Isabel Velasquez et al v. Guatemala*, Merits, 4 November 2013, Report No. 53/13 (Case No. 12.777), at §68.

I(a) Primary Victims

The *amici* submit that all family members of CCAJAR members should be recognized as Primary Victims of various Primary Violations. First, despite the Commission's determination that the rights of four (4) CCAJAR members to freedom of movement and residence under Article 22(1) ACHR were violated,¹⁸ the Commission only extended primary victim status to the three (3) minor children who accompanied the respective CCAJAR members into exile.¹⁹ The *amici* submit that the Commission erred in failing to extend this finding to other family members who suffered from the Primary Violations, specifically, breaches of their rights to freedom of movement and residence under Article 22 ACHR. Moreover, it erred in only applying to the three minors the special protection granted under Article 19 ACHR in respect of the violation of Article 22.²⁰ For the sake of consistency, such protection should be applied to all violations of the rights of the minor victims.

Additionally, the Commission erred when it failed to extend primary victim status to all family members (including the three minor children) in respect of other rights violated as a result of the DAS' unlawful operations, namely, Articles 5(1) and 11 ACHR. The Merits Report establishes that the DAS' intelligence-gathering activities specifically targeted CCAJAR members.²¹ However, given the scope and nature of the acts of interception, surveillance and intimidation, it is a logical inference that the rights thereby violated extended beyond "the persons that belonged to CCAJAR at the time these intelligence activities were carried out."²²

To elaborate, in the 'Proven Facts' section of the Merits Report, the Commission correctly determined that the operations conducted under the so-called *Operación Transmilenio* included the families of CCAJAR members as targets of the same acts:

140. In particular, the following operations were carried out ... (ii) constant surveillance as an effective method for gathering information in relation to their homes, the composition of their families, routines, and other predetermined objectives regarding the Collective's members; (iii) photographing, filming, and constant surveillance of members of the collective and their relatives; and (iv) intercept[sic] of communications of CCAJAR members on their work telephones, personal land lines and mobile telephones, and private e-mail accounts, [...].²³

¹⁸ Merits Report, *supra* note 7 at §332.

¹⁹ *Ibid* at §332-333.

²⁰ *Ibid* at §333.

²¹ *Ibid* at §137. See also: IACHR, *2009 Annual Report*, December 30, 2009, available at: http://www.cidh.oas.org/annualrep/2009eng/Chap.IV.a.eng.htm#_ftn90 ["2009 Annual Report"], at §131.

²² Merits Report, *Ibid* at §319.

²³ *Ibid* at §140.

[...]

145. [...] Finally, in the cases of Alirio Uribe Muñoz and Soraya Gutiérrez, the G-3 prepared detailed curricula vitae that also contained an analysis of their routine behavior and relations with family members and work colleagues, with an “emphasis on their vices,” “weaknesses, strengths, habits, and places frequented.”²⁴

[...]

147. According to intelligence reports prepared by DAS officials, the G-3 also verified the source and management of financial income, credit operations, and other financial information of several members of CCAJAR, its administrative staff, and their families [emphasis added].²⁵

Further, the IACHR’s 2009 Annual Report on Colombia referenced the detailed information contained in the intelligence files of CCAJAR members, noting “[t]hat they and their families have been followed and kept under surveillance in public places and at work by undercover agents, who filmed and photographed them [emphasis added].”²⁶ The Commission referenced information it received “indicating that the State’s security forces have also engaged in telephone line intervention, secretly taping conversations, without judicial orders”,²⁷ thereby violating the CCAJAR members’ right to honor, privacy and family life under Article 11 ACHR.

The *amici* submit that these same acts violated the respective rights of all family members who participated in the intercepted telephone calls and email exchanges with CCAJAR members, as with the surveillance and photographing of family members who lived in the same residences and travelled with CCAJAR members. Many, if not all, family members were followed, photographed and kept under surveillance in public places; they had their calls intercepted and recorded; and the finances of some were closely inspected. The Commission’s determination that CCAJAR members’ Article 11 ACHR rights to respect for their private and family life, home, and correspondence were violated, leads to the inescapable conclusion that the same is true of all affected family members i.e. all family members whose private lives were or could have been captured by surveillance and/or photography. As such, the family members of CCAJAR members are Primary Victims in their own right of this subset of Primary Violations in respect of Article 11 ACHR.

Additionally, even if unaware of the full extent of the surveillance at the time, the family members were nonetheless conscious of their heightened risk and felt the same insecurity as a

²⁴ *Ibid* at §145.

²⁵ *Ibid* at §147.

²⁶ *Ibid* at §131.

²⁷ *Ibid* at §36.

result of the constant threats, the de-legitimizing comments, and DAS agents' constant harassment of their next-of-kin.²⁸

Moreover, family members were victims not only of surveillance and interception, but of threats and acts of harassment, in violation of Articles 4 and 5 ACHR. For example, CCAJAR lawyer Soraya Gutierrez Arguello received a package containing a note that she should take care of her beautiful family, along with a dismembered doll covered with simulated blood, together intended to convey the threat that her daughter would be the subject of gender-based violence and torture and murder.²⁹ This represented an explicit threat towards her daughter, and thus heightened risk to her daughter's life and well-being, all of which was exacerbated by the State's failure to investigate this grave threat.³⁰

To further illustrate, former CCAJAR member Maret Cecilia Garcias Alfonso received multiple death threats directed towards herself and her children, ultimately forcing her and her family into exile in Uruguay from 2001 to 2002.³¹ Her statement describes how her children suffered tremendous psychological trauma, causing her once joyful daughter, Lina Maria, to become quiet and withdrawn. Her son Diego Alejandro experienced a delay in his verbal and motor skills development, such that he only started walking at the age of two. Garcias Alfonso further states that she and her family suffered from depression and anxiety caused by the death threats and DAS surveillance.³² Another victim, Diana M. Murcia R., states that the death threats and interception of her phone lines by the DAS caused major anxiety, not only to herself, but also to her mother, who receives medical treatment for her continued depression and anxiety disorder.³³

None of these facts were properly investigated by the State, a further violation of the rights of the affected family members under Articles 8(1) and 25(1) ACHR.³⁴

The Primary Victims thus include not only the primary targets, that is to say the CCAJAR members themselves, but all of their affected family members. There is evidence that the respective rights of family members were also violated, yet the Commission failed to recognize them as primary victims of the State's violations of Articles 4(1), 5(1), 8(1), 11, 19, and 22, 25(1) ACHR, pursuant to Article 1(1) thereof.

²⁸ *Respuesta a escrito de contestación estatal al sometimiento del caso por la CIDH y escrito de solicitudes, argumentos y pruebas de los representantes de las víctimas, Case CCAJAR members vs. Colombia*, CDH 8-2020 ["ESAP"] at p.15.

²⁹ Admissibility Report, *supra* note 1 at §12; Merits Report, *supra* note 7 at §68.

³⁰ Merits Report, *supra* note 7 at §§50, 68, 331.

³¹ Notaria 70 del círculo de Bogotá, "*Declaración extrajudicial con fines extraprocesales (affidavit) de Maret Cecilia Garcias Alfonso*", no 949, 30 April 2022, at p.4.

³² *Ibid* at p.5.

³³ Anexo 2.3, *Historia de vida de Diana M. Murcia R.*, at p.43.

³⁴ Merits Report, *supra* note 7 at §179.

I(b) Secondary Victims

The *amici* submit that all family members of CCAJAR members were subjected to acts that violated rights and caused harms, such that they qualify as Secondary Victims. By the latter term, we include those individuals whose relationship and proximity to the primary targets of the Primary Violations is such that they too would have been “deeply affected by and suffer[ed] serious harms from the violent actions” committed against the primary targets.³⁵ Based on their close ties to the primary targets, family members have a legal entitlement to the protection of their rights and the reparation of the harms they have suffered as a result of such violations. This harm-oriented approach emerges from the dictates of a human rights accountability system that recognizes the serious psychological and physiological trauma that next of kin suffer as secondary victims of serious human rights violations. This approach recognizes the realities of human interdependency³⁶, as well as emotional and familial bonds.³⁷

Inter-American jurisprudence has already incorporated the ‘domino harm’ approach in respect of family members in cases of ‘grave, serious or gross human rights violations’.³⁸ The IACtHR has consistently held that family members and dependents of victims of such human rights violations qualify, in turn, as victims in their own right in having suffered the harmful consequences of the same violations.³⁹

This analysis has been applied in cases involving the next of kin of those whose rights to liberty and to life have been violated. In its decision in *Blake v. Guatemala*, the IACtHR held that

“[...] Article 8(1) of the *Convention* also includes the rights of the victim's relatives to judicial guarantees [recognizing] the right of Mr. Nicholas Blake's relatives to have his disappearance and death effectively investigated by the Guatemalan authorities; to have those responsible prosecuted for committing said unlawful acts; to have the relevant punishment, where appropriate, meted out; and to be compensated for the damages and injuries they sustained.”⁴⁰

³⁵ Repairing Family Members, *supra* note 14 at p.217.

³⁶ *Ibid* at p. 216.

³⁷ Harms, *supra* note 12 at p. 81.

³⁸ For multiple examples, see Repairing Family Members, *supra* note 14.

³⁹ See, for example, IACtHR, *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala*, Merits. Judgment of November 19, 1999, Series C No. 63 [“Street Children - Merits”] at §§171-176; IACtHR, *Case Díaz Loreto and others v. Venezuela*, at §136; Opinions of judges Antonio Cancado Trindade and Sergio Garcia Ramirez in IACtHR, *Case Bámaca Velásquez v. Guatemala*, Merits. Judgment of November 25, 2000, Series C No. 70.

⁴⁰ IACtHR., *Case of Blake v. Guatemala*. Merits. Judgment of January 24, 1998, Series C No. 36 [“Blake v. Guatemala”] at §97.

The Court in *Blake* further examined the direct effects of the violations of the primary targets' rights on the mental and moral integrity of their family members, finding that such effects constituted a violation of Article 5 ACHR: "The circumstances of such disappearances generate suffering and anguish, in addition to a sense of insecurity, frustration and impotence in the face of the public authorities' failure to investigate."⁴¹

As stated in the written inquiries, arguments and evidence submitted by the Petitioners' representatives (*Escrito de Solicitudes, Argumentos y Pruebas de los representantes de las víctimas*, "ESAP"),

"[...] Family members, in addition to some having suffered directly [as Primary Victims] from profiling and persecution, experienced the anguish suffered by anyone who is aware of the extraordinary risk suffered by a loved one. Threats, delegitimizing speeches, and offensive intelligence led to impacts such as stress, deterioration in physical and mental health, and feelings of insecurity [our translation and emphasis added]."⁴²

The chronic pattern of unlawful acts of threats, attacks, surveillance, defamatory statements, as well as unfounded lawsuits and prosecutions experienced by the primary targets had the inevitable effect of extending the message of fear and intimidation to their parents, partners, spouses, children, and siblings.⁴³ The Primary Violations committed against CCAJAR members would have left their family members "emotionally desolate."⁴⁴ This understanding is also consistent with the perpetrators' intended "communicated value" of their acts to those in relationship with their primary targets.⁴⁵

This analysis is consistent with the Court's finding of an Article 11 violation in *Gomez Paquiyauri v. Peru*, where "the alleged victims were treated as 'terrorists,' subjecting them and their family to hatred, public contempt, persecution, and discrimination [...] [emphasis added]."⁴⁶

Likewise, the Commission's 2015 *Report on Criminalization of the Work of Human Rights Defenders* underlined the negative effects of the misuse of criminal law against HRDs on their families:

"The processes of misuse of criminal law negatively impact the interpersonal relationships of human rights defenders, since in many cases the persons subjected to criminal proceedings are forced to separate from their families and change their place

⁴¹ *Ibid* at §§114-115.

⁴² ESAP, *supra* note 28 at p.15.

⁴³ Harms, *supra* note 12 at p.79.

⁴⁴ Repairing Family Members, *supra* note 14 at p.215.

⁴⁵ Harms, *supra* note 12 at p.80.

⁴⁶ IACtHR, *Case of the Gómez Paquiyauri Brothers v. Peru*, Merits, Reparations, and Costs, Judgment of July 8, 2004, Series C No. 110 at §182.

of residence and even to leave their community, city, or country, and therefore alter their life plans, abandoning their daily work. [It] can instill fear in children. Further, the stigma the families of the criminalized person have to endure, affects them and their relationships in a particular way [emphasis added].⁴⁷

Further, where family members of the primary targets are involved in judicial proceedings, they are commonly subject to further human rights violations, such as harassment and attempts on their lives, in order to deter them from appearing in court as potential witnesses.

The Court has previously acknowledged the multiplier effects of serious human rights violations on individuals other than the primary target:

“To compel the perpetrator of an illicit act to erase all the consequences produced by his action is completely impossible, since that action caused effects that multiplied to a degree that cannot be measured. [...] The solution provided by law in this regard consists of demanding that the responsible party make reparation for the immediate effects of such unlawful acts, but only to the degree that has been legally recognized.”⁴⁸

The Court also distinguished between consequences that are proximate and remote.⁴⁹ Thus, the proximate effects that are measurable in the present case should be legally recognized and redressed. Given the Court’s determination that family members are entitled to reparations, it is a natural progression to recognise the broader demonstrable harms of such violations experienced by the Secondary Victims.⁵⁰ This is consistent with the Court’s evolutive approach to the interpretation of the *Convention* and its expansive approach to human pain and suffering.⁵¹

Where the human rights violation at issue is considered “gross”, “grave” and “serious”, the Court has been more likely to extend its recognition of the consequential harms suffered to family members of primary targets.⁵² While the meaning of the terms “gross”, “grave” and “serious” is contentious and the terms are used interchangeably by the IACtHR,⁵³ the *amici*

⁴⁷ IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, 31 December 2015 [“IACHR Report on Criminalization of HRDs”] at §§217-218 .

⁴⁸ IACtHR, *Case of Aloeboetoe et al. v. Suriname*, Reparations and Costs, Judgment of September 10, 1993, Series C No. 15 at §§48-49.

⁴⁹ *Ibid* at §48.

⁵⁰ Harms, *supra* note 12 at p.78.

⁵¹ *Repairing Family Members*, *supra* note 14 at p.240: “This sensitivity toward the pain and loss experienced by family members has shaped many of the features of the court’s jurisprudence that stand out in contrast to the European jurisprudence”; Shelton, *Rules and Reality*, *supra* note 8 at pp.22-23.

⁵² *Repairing Family Members*, *supra* note 14 at p.242.

⁵³ Geneva Academy of International Humanitarian Law and Human Rights, “What amounts to a ‘serious violation of international human rights law?’”, August 2014, *Academy Briefing* No. 6 at pp.13 and 24.

submit that the Primary Violations in the instant case clearly qualify as such. The simultaneous violation of several human rights has been found to constitute a serious violation in the Inter-American jurisprudence because it “places a victim in a state of complete defencelessness, resulting in other related violations, with the situation being particularly serious when it forms part of a systematic pattern or practice that is applied or tolerated by the State”.⁵⁴ Several characteristics of a “consistent pattern of gross violations” are extant: the violation “cannot easily involve a single victim”; a number of breaches occur over a period of time; “an element of planning or of sustained will on the part of the perpetrator” is present; and the violations have an inherently “inhuman and degrading character”.⁵⁵

The crucial determining factor in recognizing family members as secondary victims is the harm produced by the violation.⁵⁶ The Court in *Tibi v. Ecuador* and *De la Cruz Flores v. Peru* found that where the primary target had been arbitrarily detained and subjected to torture or inhuman treatment, but not killed, the rights of their family members to humane treatment had also been violated.⁵⁷

The *amici* also rely on *Gutierrez-Soler v. Colombia*, where the primary target had “been subjected to a campaign of threats, harassment, surveillance, arrests, searches and attempts against their lives and their physical integrity”.⁵⁸ The Court found that “due to their having suffered constant fear, distress and family separation”, the victim and his family had undergone “such suffering as would amount to a violation of Article 5(1) of the *Convention*, in relation to Article 1(1) [...] by the State”.⁵⁹

For these reasons, the *amici* submit that the facts of the present case are properly viewed as inhumane and ill-treatment against members of the families of CCAJAR victims, prohibited by Article 5 ACHR.

⁵⁴ IACtHR, *Case of Contreras et al. v. El Salvador*, Merits, Reparations and costs, Judgment of August 31, 2011, Series C No. 232 at §83. See also IACtHR, *Case of Anzualdo Castro v. Peru*, Preliminary Objection, Merits, Reparations and cost, Judgment of September 22, 2009, Series C No. 202 at §59.

⁵⁵ M.E. Tardu, “United Nations Response to Gross Violations of Human Rights: The 1503 Procedure Symposium International Human Rights” (1980) 20:3, *Santa Clara Law Review*, Article 1 at p.583ff.

⁵⁶ Repairing Family Members, *supra* note 14 at p.244.

⁵⁷ IACtHR, *Case of Tibi v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114 at §§160-163; IACtHR, *Case of De La Cruz Flores v. Peru*, Merits, Reparations and Coast. Judgment of November 18, 2004. Series C No. 115 at §§135-136.

⁵⁸ IACtHR, *Case of Gutierrez-Soler v. Colombia*, Judgment of September 12, 2005. Series C No. 132, at §56.

⁵⁹ *Ibid* at §§56-57.

Finally, the IACtHR has previously ruled that family members found to be secondary victims also have the right to effective redress for the wrongs committed against them, including the rights to reparation and to the truth.⁶⁰

⁶⁰ Repairing Family Members, *supra* note 14 at p.244.

PART II. CLIENTS AS VICTIMS OF HUMAN RIGHTS VIOLATIONS AND INJURED PARTIES

Introduction

The submissions in Part II further the *amici's* appeal for a full accounting of the measurable and proximate effects of the State's conduct in this paradigmatic case. The objective is to capture a broader range of victims and 'communities of harm'⁶¹ and suffering. To that end, Part II examines the harm caused to CCAJAR clients by the persecution and Primary Violations of CCAJAR members.

We first explore the right of lawyers to engage in independent advocacy for the protection of fundamental rights, along with the State's duty to safeguard that right and to prevent and redress the breaches thereof.

Following a summary of the violations of the *Convention* and other international human rights law standards, we identify the adverse implications of the facts for the Petitioners' clients.

Applying the analysis from Part I, the *amici* submit that CCAJAR's clients represent another category of persons and organizations that merits recognition as victims or injured parties, with entitlement to the Court's acknowledgement of the serious harms that befell them and of their rights to an effective remedy and reparation.

A. Advocacy Rights of Human Rights Lawyers Subject to Persecution

Role of Human Rights Lawyers and the Rule of Law

One of the pillars upon which human rights and the rule of law rests is access to representation by a lawyer or lawyers free to safely and fully exercise their advocacy rights and provide a full range of legal services without intimidation, interference, harassment or reprisal so as to ensure that citizens can access justice for the protection and defence of their rights.⁶² The vital role of human rights lawyers such as CCAJAR members is particularly critical in the Colombian context.

Context for Human Rights Lawyers

⁶¹ Harms, *supra* note 12 at p.78.

⁶² United Nations, *Basic Principles on the Role of Lawyers*, Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 [“UN Basic Principles on Role of Lawyers”], Principles 16-17 available at: <https://www.refworld.org/docid/3ddb9f034.html>.

As the Commission observed in its Merits Report, the specific context for the Petitioners is that of the general context of Colombian HRDs.⁶³

The defence of human rights in Colombia entails risk-filled labour on behalf of vulnerable individuals and groups whose fundamental rights and freedoms have been violated. As with all human rights defence advocacy, Colombian human rights lawyers contend with the heightened vulnerability experienced by other HRDs as well as at-risk social leaders and marginalized communities. The latter groups often risk further violations of their rights in their efforts to exercise their fair trial rights and obtain judicial remedies.⁶⁴

In conducting their advocacy work, Colombian human rights lawyers are challenging a legal system imbued with “structural and systemic” impunity,⁶⁵ most notably with respect to human rights violations.⁶⁶ The administration of justice in Colombia is characterized by widespread lack of access to justice on an equal and non-discriminatory basis for specific vulnerable groups and particularly for persons in rural areas.⁶⁷

The lack of effective legal recourse to address and remedy this situation has produced low levels of public confidence in the justice system.⁶⁸ There is thus justified concern on the part of victims that the perpetrators of serious human rights violations may obtain confidential information, and that should such communications be intercepted, the information will be used against them. It follows that such individuals and groups are unable to act on their own behalf to exercise or defend and vindicate their rights, either at all, or on an equal and non-discriminatory basis.⁶⁹ These are the individuals and groups on whose behalf human rights lawyers, including CCAJAR members and other HRDs, labour.

B. CCAJAR Clients and their Causes

Among CCAJAR’s clients are victims of alleged human rights violations that qualify as gross and systematic. Their clients’ causes are often politically unpopular or allege misconduct or

⁶³ Merits Report, *supra* note 7 at §276.

⁶⁴ IACHR, *Report on the Situation of Human Rights Defenders and Social Leaders in Colombia*, OEA/Ser.L/V/II. Doc. 262, 6 December 2019 HRD Report 2019 [“IACHR 2019 Report on Rights Defenders in Colombia”] at §171.

⁶⁵ IACHR, *Third Report on the Human Rights Situation in Colombia*, 26 February 1999, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, at Chapter V at §16.

⁶⁶ IACHR 2019 Report on Rights Defenders in Colombia, *supra* note 64 at §§9, 89, 168.

⁶⁷ UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, 3 February 2011, A/HRC/16/22, at 109 (e) at 49.

⁶⁸ IACHR 2019 Report on Rights Defenders in Colombia, *supra* note 64 at §238. See also Corporación Excelencia en la Justicia, “Confidence of Colombians in Justice”, Press Release, 29 July 2018; <https://cej.org.co/sala-de-prensa/justiciometro/confianza-de-los-colombianos-en-la-justicia/>.

⁶⁹ IACtHR, “Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos No. 30 : Personas defensoras de derechos humanos” 2020 [“Cuadernillo 30”], at §44.

criminal behaviour by State actors. Many of CCAJAR's clients' cases that were advanced during the historical armed conflict languish in impunity.⁷⁰

CCAJAR's clients are themselves commonly persecuted and stigmatized. Some have also been criminalized. Many are from vulnerable groups that have been subject historically to violence and structural barriers to exercising their rights, and they are discriminated against on the basis of one, and often several, intersecting protected grounds.⁷¹ These groups are also identified by the Inter-American human rights system as being particularly at risk in Colombia.⁷² Indeed, some of CCAJAR's clients are themselves HRDs, which is another particularly at-risk and vulnerable group. As a general proposition, the causes of CCAJAR's clients are by their nature such that the clients themselves are unable without vigorous legal representation to defend and protect their rights and obtain remedies.⁷³

The foregoing serves to highlight the precarity of CCAJAR's clients and their vulnerability to further risks of serious rights violations including the right to remedies; the vital importance of the proper adjudication of their cases in accordance with the rule of law; and the grave consequences that flow from the persecution of their legal representatives.

C. Violations of Guarantees of Lawyers' Advocacy Rights & Consequences for Professional Labour

What follows is a brief review of key guarantees and safeguards of lawyers' professional functioning under the *Convention* and other international law standards. This is followed by an analysis of the consequences of the State's acts and omissions that are relevant to the professional labour and advocacy rights of human rights lawyers in Colombia.

Convention Violations in Instant Case

We commend to the Court our 2013 Amicus which examined the international law obligations required of States to ensure that lawyers are able to exercise their right to carry out their legitimate professional functions; to do so independently and safely; to protect lawyers from unlawful interferences of all types, including threats, physical attacks, the interception of communications and arbitrary surveillance (and the unlawful sharing of information gathered);

⁷⁰More recent cases in the post-Peace Accord era reflect the continued impunity and serious flaws in the administration of justice in Colombia. See IACHR 2019 Report on Rights Defenders in Colombia, *supra* note 63 at §§89, 168.

⁷¹ Abramovich, Victor. "From Massive Violations to Structural Patterns: New Approaches and Classic Tensions in the Inter-American human rights system" (2009) 6(11) *Sur - International Journal on Human Rights* 7 at 16.

⁷² See IACHR 2019 Report on Rights Defenders in Colombia, *supra* note 64, which lists community and *campesino* leaders; Indigenous and Afro-Colombian leaders; women HRDs; LGBTI HRDs; defenders of the Peace Agreement; and union leaders at §47 .

⁷³ Cuadernillo 30, *supra* note 69, at §44.

and to allow lawyers access to their clients in order that they can communicate on a private and confidential basis.⁷⁴ The 2013 Amicus evaluated the manner in which different forms of persecution and impediments to the independent and safe functioning of lawyers in Colombia constitute violations of various of the Petitioners' rights under Articles 4, 5.1, 8, 11, 13.1, 16.1, and 22 ACHR. This *amicus* elaborates on the intersection of these *Convention* rights with the international standards that all States must guarantee in order to safeguard the independence and safety of lawyers.

The Merits Report sets out the Commission's findings that CCAJAR members have suffered a series of acts of violence, harassment and threats, which by their nature are tied to CCAJAR's human rights advocacy.⁷⁵ The Commission finds that the State is responsible under international law, in having actively adopted measures that created and exacerbated the situation of risk for CCAJAR members.⁷⁶

The Commission determined that the State's intelligence gathering operations are unlawful and arbitrary, based on its illegitimate ends.⁷⁷ The State's acts are openly contrary to its duty to protect and to respect rights.⁷⁸ The Commission easily concludes that there is no basis to justify these interferences, and indeed, nor can there be under even the most minimal level of scrutiny, much less according to well-established international law principles.⁷⁹

Lawyer-Client Confidentiality and Legal Professional Privilege

In affirming the Commission's determinations, on the issue of State interception of work-related and lawyer-client communications and legal consultation, the *amici* add the following relevant international law considerations. With specific regard to the principles of lawyer-client confidentiality and legal professional privilege, the jurisprudence affirms the heightened protection afforded to the privacy of lawyer-client communications in situations of targeted surveillance of legal consultation. As this Court held in *Tristan Donoso v Panama*,⁸⁰ such communications garner an even greater degree of protection than that afforded to all

⁷⁴ 2013 Amicus, *supra* note 3.

⁷⁵ Merits Report, *supra* note 7 at §277.

⁷⁶ *Ibid* at §292.

⁷⁷ *Ibid* at §318.

⁷⁸ *Ibid*.

⁷⁹ *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71, art. 12; Council of Europe: European Court of Human Rights, *Guide on Article 8 of the European Convention on Human Rights - Right to respect for private and family life*, 31 August 2020, available at: <https://www.refworld.org/docid/5a016ebe4.html>; Articles 11(2) and 11(3) of the *Convention*.

⁸⁰ IACtHR, *Case of Tristan Donoso v. Panama*, Preliminary Objection, Merits, Reparations and Costs, Judgement of January 27, 2009 Serie C No. 193, at §75.

interceptions that threaten privacy. Surveillance of legal consultation is regarded as an extremely high level of intrusion into the right to privacy and fair trial rights.⁸¹

The principle of lawyer-client confidentiality is firmly established as an element of the *Convention* rights to a fair trial and respect for privacy and correspondence. This principle is regarded as “indispensable” to “public trust and confidence in the administration of justice and the independence of the legal system”.⁸²

Decisions of the European Court of Human Rights reinforce the highly adverse effects of interceptions of lawyer-client communications on lawyers’ fundamental role. Fair trial rights necessitate a relationship of trust between lawyer and client, which is jeopardized when the confidentiality of lawyer-client exchanges cannot be guaranteed.⁸³

Basic Principles on the Role of Lawyers

Further to the *Convention* provisions that undergird the protection of lawyers’ advocacy rights vis-à-vis their clients, the UN’s *Basic Principles on the Role of Lawyers* (“UN Basic Principles”)⁸⁴ are predicated on the core role that lawyers play in protecting fundamental rights and ensuring the rule of law.

Widely accepted by the international community and reflected in binding human rights instruments,⁸⁵ the UN Basic Principles were endorsed by the UN General Assembly⁸⁶ and are commonly cited by the European Court of Human Rights⁸⁷ and this Honourable Court.⁸⁸

The UN Basic Principles dictate the requirement of States to take all necessary steps and employ effective measures to protect the independence and safety of lawyers and ensure their proper functioning.⁸⁹ The objective of this core protection is to guarantee that all persons have effective access to legal services for the purpose of obtaining justice. It builds on the premise

⁸¹ *R.E. v United Kingdom* (62498/11) (2016) 63 E.H.R.R. 2, 27 October 2015, at §131.

⁸² International Bar Association, “Commentary on IBA International Principles on Conduct for the Legal Profession”, *Warsaw Council Meeting*, 28 May 2011, at §4.2.

⁸³ *Michaud v France*, (12323/11, 2012) ECHR 436, at §118.

⁸⁴ UN Basic Principles on Role of Lawyers, *supra* note 62.

⁸⁵ For example, the ICCPR and UNCAT: See rest of footnote 76 in 2013 Amicus.

⁸⁶ 2013 Amicus, *supra* note 3 at p.28.

⁸⁷ See: (1) ECtHR, *Case of Kyprianou v. Cyprus*. 2005, App. no. 73797/01, at § 58; (2) ECtHR, *Case of Kilikowski v. Poland*, 19 May 2009, App., no. 18353/03.; (3) ECtHR, *Case of Elci and Others v. Turkey*, 13 november 2003, App. no 23145/93, 25091/94, at §563.

⁸⁸ IACtHR, *Case of Valle Jaramillo et. al. v. Colombia*, Merits, Reparations and Costs. Judgment of November 27, 2008, Series C No. 192 [“Case of Valle Jaramillo v. Colombia”] at §89; and IACtHR, *Case of Nogueira de Carvalho et al v. Brazil*. Preliminary Objections and Merits. Judgment of November 28, 2006, Series C No. 161, citations at footnotes 14 and 54.

⁸⁹ 2013 Amicus, *supra* note 3 at p.28.

that the adequate protection of the human rights and fundamental freedoms to which all persons are entitled is dependent on having an independent legal profession.⁹⁰

In furtherance of accessing independent lawyers and legal services, UN Basic Principle 1 sets out the requirement that citizens be permitted to obtain the legal assistance of lawyers of their choice to protect and establish their rights and to defend them through all stages of criminal proceedings.⁹¹ UN Basic Principles 5 through 8 establish special safeguards in the context of criminal justice matters. UN Basic Principle 5 again references the right to be assisted by a lawyer of one's choice. Anyone arrested, detained or imprisoned has the right to "adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality".⁹²

Basic Principle 16 establishes the obligations of States to ensure that lawyers "are able to perform all their professional functions without intimidation, hindrance, harassment or improper interference";⁹³ and are able to travel and consult with their clients freely, both domestically and internationally.⁹⁴ UN Basic Principle 17 obliges authorities to provide adequate safeguards for lawyers whose security is threatened as a result of discharging their professional functions.

Consistent with Article 8 of the *Convention*, UN Basic Principle 22 establishes heightened protection for the requirement of recognition and respect for lawyer-client confidentiality and legal privilege principles, to ensure that all such communications within that professional relationship are confidential.

Implications of Persecution of CCAJAR Lawyers for Professional Functioning

A plethora of adverse consequences for CCAJAR lawyers and their advocacy rights flow from the pattern of persecution, unlawful interferences and State conduct in the instant case.

Among them is the tremendous psychological and physical toll on individual lawyers,⁹⁵ requiring interventions such as psycho-social counseling in the case at bar.⁹⁶

To this diversion of psychic and other energy must be added the expenditures of time and financial and other resources towards one of two ends. The first is the lawyers' efforts to secure

⁹⁰ UN Basic Principles on Role of Lawyers, *supra* note 62, Preamble.

⁹¹ *Ibid*, Basic Principles 1 and 8.

⁹² *Ibid*, Basic Principle 8.

⁹³ *Ibid*, Basic Principle 16(a).

⁹⁴ *Ibid*, Basic Principle 16(b). See also Basic Principle 16(c), protecting against prosecution or administrative, economic or other sanctions for any action taken in accordance with professional duties and standards.

⁹⁵ Merits Report, *supra* note 7 at §148; IACHR 2019 Report on Rights Defenders in Colombia, *supra* note 64, at §133.

⁹⁶ Merits Report, *Ibid* at §148.

greater security and safety and to obtain justice through the legal system. The second is in launching challenges to State attempts to subject lawyers to improper administrative or criminal forms of ‘judicialization’ and instrumentalization of the law.⁹⁷

Other direct and indirect impediments have operated to restrict the Petitioners’ ability to provide effective legal advocacy work to their clients,⁹⁸ as was their intended effect.⁹⁹

Most obvious are the acts taken to impede and de-legitimize CCAJAR members’ legal work, evidenced in the stigmatizing language and ‘smear campaigns’ directed against CCAJAR lawyers.¹⁰⁰

Additional examples include the theft of clients’ case-related information¹⁰¹ and the use or threatened use of privileged information, and the monitoring of cases being litigated by CCAJAR members, such as those before the IACtHR.¹⁰²

A further direct effect on CCAJAR clients is the intensification of persecution directed at clients owing to their connection to CCAJAR, an example of which is referenced in the ESAP¹⁰³ concerning a family represented by then-CCAJAR lawyer Dora Lucy Arias.¹⁰⁴ Following an incident of surveillance of Ms. Arias at a military base when attending in her capacity as the client’s legal representative, as described in the Merits Report,¹⁰⁵ her client was subjected to intense persecution, including new acts of harassment of the family members that threatened their life, security, and personal liberty.¹⁰⁶

Another consequence of the State’s efforts to impede, stigmatize and de-legitimize CCAJAR members’ work is the reinforcement of impunity in their clients’ cases. As an example, we reference the ESAP’s observations concerning the State’s failure to prosecute or diligently

⁹⁷ IACHR 2019 Report on Rights Defenders in Colombia, *supra* note 64 at §133. Basic Principle 16(c) provides that lawyers shall not suffer or be threatened with such acts or any form of economic or other sanctions for any actions taken in accordance with their professional duties.

⁹⁸ Merits Report, *supra* note 7 at §133.

⁹⁹ IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 31 December 2011, OEA/Ser.L/V/II, Doc.66, [“IACHR 2011 Report on Human Rights Defenders”] at §25.

¹⁰⁰ Merits Report, *supra* note 7 at §§164, 166, 171, 328. See also: IACHR 2019 Report on Rights Defenders in Colombia, *supra* note 64, at §137; LWBC, “Mapiripán Masacre Scandal Affair: LWBC Troubled by Public Attacks against Its Partners in Colombia”, 21 November 2011, available at: http://www.asfcanada.ca/documents/file/mapiripan_francais.pdf.

¹⁰¹ *Ibid* at §43, 79, 116, 120.

¹⁰² *Ibid* at §141.

¹⁰³ ESAP, *supra* note 28, at pp.26-27.

¹⁰⁴ *Ibid* at p. 27, in reference to the family of Jorge Andrés Rodríguez Castillo.

¹⁰⁵ Merits Report, *supra* note 7 at §127.

¹⁰⁶ ESAP, *supra* note 28 at p. 26-27.

conduct critical investigations owing to their clients' connection to CCAJAR, in the above referenced case.¹⁰⁷

Additional pernicious consequences have arisen further to the unlawful wiretapping and tracking of CCAJAR members' movements in public spaces, at work, and as a consequence of the restrictions on their ability to freely move through the territory of Colombia. CCAJAR members are not able to carry out unimpeded communications with clients who are located at a distance from where CCAJAR members live and reside.¹⁰⁸ Direct contact with such clients is thus necessary, however, in addition to adding inconvenience and cost, this option is itself hampered by restrictions on CCAJAR members' free movement throughout the country.¹⁰⁹

The *amici* further submit that such demonstrated and reasonably foreseeable implications for CCAJAR's clients flow directly from the State's own illegal acts and interferences and its failure to fulfill its duty to protect and guarantee the safeguards necessary for CCAJAR lawyers' independent functioning.

Given the foregoing, CCAJAR's clients confront impediments in accessing or are unable to access legal assistance and representation, contrary to the minimum guarantees under Article 8 of the *Convention* and other international standards, specifically:

- i. adequate time and the means to prepare a proper defence;
- ii. impediments to their legal counsel's ability to review inculpatory evidence or to obtain exculpatory evidence;
- iii. accessing and retaining counsel of one's choosing, in light of the instances of CCAJAR lawyers being forced into exile;¹¹⁰
- iv. free and private communications therewith; and
- v. violations of lawyer-client confidential communications and legal advice.

The foregoing inevitably leads to the loss of CCAJAR clients' trust in their lawyers.

D. Violation of Clients' Rights as Primary Victims and Injured Parties

In light of the foregoing, the *amici* submit that CCAJAR's clients are victims in their own right - that is to say Primary Victims and injured parties - further to violations of various *Convention* rights.

Pursuant to Articles 11, 13, 16, and 8 and 25 of the *Convention*, we submit that CCAJAR's clients inevitably suffered violations of their rights to privacy, honour or reputation and dignity,

¹⁰⁷ *Ibid.*

¹⁰⁸ 2013 Amicus, *supra* note 3, at pp.31-2.

¹⁰⁹ Merits Report, *supra* note 7 at §329.

¹¹⁰ *Ibid* at §331.

as with their rights to freedom of expression and association, and their rights to a fair trial and judicial remedy. These violations were caused by various acts, *inter alia*:

- (i) The State's interceptions of the confidential exchange of documents, correspondence and verbal and written communications between the clients and their lawyers. This conclusion flows ineluctably from the fact that the intercepted communications and correspondence are as much theirs as that of the targeted CCAJAR members.
- (ii) The stigmatization (i.e. smear campaigns and defamatory statements) of their lawyers, which, in this context, and in their content, commonly extends to the clients and their cases or causes.

As established, the State's interception, recording, and surveillance of CCAJAR members extended to their work phones and email.¹¹¹ They were photographed and observed in public places and at work.¹¹² In addition, the State's illegal information-gathering covered CCAJAR members' work itineraries, work-related meetings, and their professional contacts. Work-related information was stolen.¹¹³ It follows that CCAJAR clients were necessarily subject to the same violations as the primary targets (i.e. the Petitioners) of the surveillance and interceptions in question.

In addition, CCAJAR's clients have suffered violations of their fair trial rights and right to access effective judicial remedies further to acts that violated their rights under Articles 8(2)(c) and 8(2)(d) and 25(1) and 25(2)(a) and (b) ACHR. As above, we reference the specific violations of the minimum guarantees of adequate time and means to prepare a defence, to be assisted by counsel of one's choosing, and to communicate freely and privately with counsel. Further, the *amici* underline the violations that occur when CCAJAR's clients are unable to obtain judicial protection in seeking recourse for protection against acts that violate their fundamental rights, including when those acts are committed by State authorities.

CCAJAR clients also suffered violations of their rights under Articles 13 and 16 ACHR. Specifically, the clients were impeded from freely expressing themselves and associating freely with CCAJAR members owing to the interception, surveillance, and stigmatization.

Finally, CCAJAR's clients' rights under Articles 4 and 5.1 ACHR were violated by the reasonable fear that because of their relationship with CCAJAR lawyers, clients would also be targeted with the threats, attacks and interference experienced by their lawyers.

¹¹¹ Merits Report, *supra* note 7 at §51.

¹¹² *Ibid* at §§36, 131.

¹¹³ *Ibid* at §§43, 79, 116, 120.

E. Clients' Rights Violated as Secondary Victims

Together with the foregoing (Section D), the *amici* submit that CCAJAR's clients experienced similar harm (or secondary harms), caused by the persecution and Primary Violations suffered by their lawyers. As such, CCAJAR's clients are Secondary Victims.

CCAJAR's clients experienced deleterious consequences and serious harms flowing from said persecution and the State's acts and omissions, giving rise to the meritorious claim that the clients' rights under Articles 4, 5, 8, 11 and 25 (ACHR) were also violated and that such consequential harms and injuries should be remedied.

The adverse effects of the stigmatization and defamatory statements and the judicialization of the clients' CCAJAR lawyers, inevitably led to the clients' own exposure to public contempt, derision, hatred, persecution and discrimination.

The clients also experienced significant harm and suffering in conjunction with the inevitable increase in their risk of experiencing additional and serious rights violations, including threats to their lives and reputations. To this must be added the anguish and fear associated with their own original rights claims, subsequently exacerbated by the further obstruction of efforts to obtain recourse in their cases, in terms of their continued inability to exercise their fair trial rights and obtain meaningful access to effective judicial remedies.

Conclusion

In general terms, we commend to the Court this more comprehensive account of the multiple implications of the facts of this paradigmatic case, incorporating these measurable significant adverse effects on this additional category of victims and injured parties.

Based on the State's acts and omissions, and given that the State admittedly set out to neutralize and obstruct CCAJAR's legal advocacy and representation work, it is clear that the Petitioners' professional labour has been demonstrably impaired. The same conclusion applies to their clients' cases and core interests. The State has been successful in impairing the access of clients to legal representation and access to the courts to determine rights and prevent violations.

In light of the patterned persecution of these prominent human rights lawyers, the State's failure to prevent the attacks, and the State's acts that violated its duty to protect, we submit that the Court should consider the grave implications for the claims that CCAJAR championed on behalf of its clients.

PART III. HUMAN RIGHTS DEFENDERS AS VICTIMS AND INJURED PARTIES

Introduction

Part III addresses the grave implications of the State's conduct and the persecution of CCAJAR for all Colombian HRDs.

The Petitioners' ability to conduct their professional activities freely and in association with others for the defence of rights victims was and remains not only vital to their clients but benefits the society at large. As the Inter-American human rights system has repeatedly emphasized, this work is fundamental to strengthening the rule of law and reinforcing the State's duty to respect human rights, prevent violations, and punish potential offenders.¹¹⁴

When high profile and well-respected human rights organizations, such as CCAJAR, are the object of threats, attacks, and intimidation,¹¹⁵ there is an inevitable chilling effect on other human rights lawyers and HRDs.¹¹⁶ The *amici* maintain that this is particularly true of human rights lawyers with ties to CCAJAR through their association with the *Asociación Colombiana de Abogados Defensores de Derechos Humanos* ("ACADEHUM"). The ACADEHUM network was established in response to the State's failure to ensure the protection of CCAJAR and other human rights lawyers whose free exercise of their professional functions was threatened.¹¹⁷

The *amici* submit that human rights defence work in Colombia is imperilled by the Colombian State's conduct and systemic failures - both its acts and omissions - to respect and ensure the

¹¹⁴ IACHR 2019 Report on Rights Defenders in Colombia, *supra* note 64 at §33-34: Colombia has recognized the important role of human right defenders in the consolidation of democracy, the full respect for the rule of law, and the pursuit of stability in the country, and has guaranteed its commitment to protect the life of human right defenders and to work in collaboration with the IACHR. The importance of human rights defenders has also been recognized at the international level by the UN Declaration on Human Rights Defenders, which guarantees the right to "promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels."

¹¹⁵ See recent letter from various lawyers' organizations: "*Colombia: Ensure protection from death threats for lawyers of CCAJAR*", 22 December 2021, available at: <https://protect-lawyers.org/wp-content/uploads/Final-letter-Ensure-protection-from-death-threats-for-lawyers-of-CCAJAR-22-December-2021.pdf>.

¹¹⁶ *Case of Valle Jaramillo v. Colombia*, *supra* note 88 at §96; IACtHR, *Case of Kawas Fernández v. Honduras*, Merits, Reparations and Costs, Judgment of April 3, 2009, Series C No. 196 ["Case of Kawas Fernández v. Honduras"], at §153.

¹¹⁷ LWBC and AAJ, *Report on the Situation of Lawyers in Colombia*, 10 December 2007, available at: http://asfcanada.ca/uploads/publications/uploaded_report-lwb-aaj-english-translation-pdf-15.pdf

rights of CCAJAR members, individually and as an organization. As such, HRDs should be recognized as presumed victims and injured parties by the Court.

Part III elaborates on the core social functions of HRDs before setting out the State's obligations to respect and ensure the rights essential to human rights defence work. We then consider how the various forms of the State's actions created risk for CCAJAR, including through the persecution, its application of the "internal enemy" doctrine to CCAJAR (which amounted to discrimination), and given the impunity of the acts of persecution. The section concludes with a summary of the broader implications for all HRDs and human rights work, in support of the *amici's* call for the Court's recognition of HRDs as presumed victims and injured parties.

Social Function of Human Rights Defenders

CCAJAR was formed to promote and protect the "realization of human rights and fundamental freedoms, nationally or internationally"¹¹⁸ in association with others, thus qualifying it and its members as HRDs, as defined by the Commission in the Merits Report and consistent with the regional and international definitions.¹¹⁹

The work of HRDs contributes to preserving the rule of law and, as such, benefits entire communities.¹²⁰ HRDs' fundamental role is recognized unequivocally in the universal and Inter-American human rights system alike.¹²¹

¹¹⁸ IACHR 2019 Report on Rights Defenders in Colombia, *supra* note 64 at §24, citing the following previous reports: IACHR, *Report on the Situation of Human Rights Defenders in Americas*, OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006 ["IACHR 2006 Report on Human Rights Defenders"] at §13; IACHR 2011 Report on Human Rights Defenders, *supra* note 99, at §12. See also Merits Report, *supra* note 7 at §262.

¹¹⁹ UN *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, Art.1 ["UN Declaration on HRDs"]; UN, *Report of the Special Rapporteur on the situation of human rights defenders*, A/73/215, July 23, 2018, at §15; *Esperanza Protocol*, December 16, 2021 at p.3, available at: <https://esperanzaprotocol.net/wp-content/uploads/2021/12/AN-EFFECTIVE-RESPONSE-DIC-16.pdf?x97536&x58469>.

¹²⁰ IACHR Report on Criminalization of HRDs, *supra* note 47 at §29.

¹²¹ IACHR 2011 Report on Human Rights Defenders, *supra* note 99 at §§13 and 538; United Nations Special Rapporteur on the situation of human rights defenders, Michel Forst, Visit to Colombia, 20 November to 3 December 2018, End of mission statement at p.2, available at: https://www.ohchr.org/Documents/Issues/Defenders/StatementVisitColombia3Dec2018_EN.pdf ["UN Visit to Colombia 2018"]; IACtHR, *Case of Human Rights Defenders et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 283. ["*Case of Human Rights Defenders et al. v. Guatemala*"].

This essential social function is imperilled when HRDs face “[a] variety of practices and acts that hinder or nullify the exercise of human rights defense. These practices, some of them violative of internationally protected human rights, are violations of the rights to life, integrity, liberty and security, due process and a fair trial, freedom of expression, privacy, and judicial protection.”¹²² All of these rights have been violated by Colombia in the case at bar.¹²³

States’ Duty to Protect and Prevent HR Violations against Human Rights Defenders

States’ general duty pursuant to Article 1(1) ACHR is to effectively prevent, investigate, prosecute, and provide redress for human rights violations in order to effect the swift restoration of the victim’s rights and freedoms. The duty encompasses the positive obligation to ensure access to the protection of victims’ human rights and to prevent human rights violations.

States must prevent rights violations when they have knowledge of the existence of a real and imminent threat.¹²⁴ Such preventive measures can take many forms: legal, administrative, political, cultural, social, educational, remedial, etcetera. The duty to prevent human rights violations further entails a duty to not subject a person to a situation of risk, even if such illegal acts are committed by private individuals.

The Inter-American Court’s jurisprudence elaborates that “provisions in the inter-American system establish many rights - i.e. right to personal integrity, right to dignity, freedoms of expression and of association - whose guarantee makes the work of human rights defenders possible”.¹²⁵ However, HRDs in Colombia routinely experience serious violations of these rights.

Creating Risk for CCAJAR’s Human Rights Defence Work

The State has created and exacerbated the risks for CCAJAR members through various means.

¹²² IACHR 2006 Report on Human Rights Defenders, *supra* note 118, at §137.

¹²³ Merits Report, *supra* note 7 at §§298, 319, 332-333, 354.

¹²⁴ IACHR 2011 Report on Human Rights Defenders, *supra* note 99 at §540; ECtHR, *Kiliç v. Turkey*, Judgment of March 28, 2000, Application No. 22492/93 at §§62-63; ECtHR, *Osman v. the United Kingdom*, Judgment of October 28, 1998, *Reports of Judgments and Decisions 1998-VIII* at §§115-116; IACtHR, *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006, Series C No. 140 at §124.

¹²⁵ IACtHR, *Case of Escaleras Mejía et al. v. Honduras*, Judgment of September 26, 2018, Series C No. 361 at §60; *Case of Human Rights Defenders et al. v. Guatemala*, *supra* note 121 at §129.

The Commission determined that CCAJAR members have been, and remain, the object of a pattern of persecution¹²⁶ for the work they carry out as HRDs in Colombia and internationally.¹²⁷ Members of CCAJAR have been the targets of multiple death threats in reprisal for their work in the defense of human rights.¹²⁸ At the same time, the State has also implemented ‘protection measures’ that exacerbated the situation of risk faced by CCAJAR members and other HRDs.¹²⁹

This pattern of persecution is widespread and systematic and extends to other HRDs in Colombia:

“The Human Rights Ombudsman stated that ‘these human rights violations are widespread in that they have a significant number of victims who belong to groups with similar characteristics, and they took place within the same period and geographical area.’ Similarly, the Office of the Inspector General has described attacks on HRDs as a ‘systematic and widespread practice’ that directly affects organizational, community, or ethnic structures. The UN Special Rapporteur on the situation of HRDs has also described the existence of widespread violence against these groups.”¹³⁰

A further feature of the State’s of Colombia’s breach of its duties under Article 1(1) ACHR in respect of the violations of CCAJAR members’ human rights is the clear discriminatory pattern of the persecution. The *amici* submit that the Petitioners’ advocacy rights have been violated on the basis of discrimination for reasons of actual or perceived “political or other opinion”, thereby violating the right to equality and non-discrimination (Art. 1.1 ACHR). As with other Colombian HRDs, the State has attributed political or other opinions to the Petitioners in the conduct of their legal representation and it has identified them with their clients or their clients’ actual or perceived causes.¹³¹ The State’s conduct is consistent with its historical and continued

¹²⁶ The term ‘persecution’ found in Article 1A(2) of the 1951 *Refugee Convention* has been interpreted in light of human rights law as a “sustained or systemic violation of basic human rights demonstrative of a failure of state protection”: *Canada (Attorney General) v. Ward* [1993] 2 SCR 689 at pp. 733-734.

¹²⁷ Merits Report, *supra* note 7 at §260.

¹²⁸ Admissibility Report, *supra* note 1 at §11.

¹²⁹ Merits Report, *supra* note 7 at §§292, 297.

¹³⁰ IACHR 2019 Report on Rights Defenders in Colombia, *supra* note 64 at §114, citing: Office of the Human Rights Ombudsman, Al menos 120 líderes y defensores de DD.HH. han sido asesinados en los últimos 14 meses, reportó la Defensoría del Pueblo, March 3, 2017; Office of the General Inspector, Violencia sistemática contra defensores de derechos territoriales en Colombia, 2018 at p.72; and UN Visit to Colombia 2018, *supra* note 121 at p.5.

¹³¹ Ascribing such an association is contrary to the UN Basic Principles on Role of Lawyers, *supra* note 62, Principle 18.

application of the notion of the ‘internal enemy’ to HRDs, framing them as enemies of the nation.¹³²

It is clear from its explicit and implicit acts that the State has viewed the Petitioners as critics of the State that must be silenced. The State’s identification of the Petitioners with their clients’ cases and causes is thus also a violation of the Petitioners’ rights to exercise their rights and freedom equally and without discrimination.¹³³

Discrimination based on perceived or actual political or other opinion has also manifested in the the State’s use of coercive power to restrict the Petitioners’ freedom of expression and association through using criminal proceedings and laws to silence or intimidate the Petitioners (and other HRDs) who express critical views or lodge complaints of human rights violations.

Broader Implications of CCAJAR’s Persecution for Colombian Human Rights Defenders

The Commission has emphasized the extremely grave implications of violations that target HRDs:¹³⁴

“140. [...] [O]ne of the most serious consequences of these patterns of violations targeting HRDs is that they send society as a whole an intimidating message putting it in a defenseless situation. These acts are aimed at causing generalized fear, and so, at discouraging all other HRDs, and intimidating and silencing the denunciations, claims, and grievances of the victims of human rights violations, spurring on impunity, and impeding the full realization of the rule of law and democracy.

141. Both the Commission and the Inter-American Court have found that grave violations of the human rights of HRDs have a direct intimidating effect on the processes of vindicating rights or denouncing violations.¹³⁵ The attacks on them may produce an immediate halt to or almost total reduction of their activities, as defenders must abandon the areas where they work, change their places of residence or work habits, or, in some cases, leave the country. In addition to these direct effects, the Commission has learned of collateral effects that have a detrimental impact on all other defenders, who even though not receiving the attacks directly, are victims of fear on

¹³² IACtHR, *Case of Isaza Uribe et al. v. Colombia*, Merits, Reparations and Costs, Judgment of November 20, 2018, Series C No. 363 at §144.

¹³³ This also violates UN Basic Principle 18, “Lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.” UN Basic Principles on Role of Lawyers, *supra* note 62.

¹³⁴ IACHR 2006 Report on Human Rights Defenders, *supra* note 118.

¹³⁵ IACtHR, *Case of Huilca Tecse v. Peru*, Judgment of March 3, 2005, Merits, Reparations and Costs, at §67 ff.

seeing the situation of their colleagues and the ease with which the same arbitrary acts could be committed against them.”

The Colombian State has demonstrably violated the obligation to investigate and punish those responsible for violations targeting HRDs. The State has consistently failed to conduct “diligent and effective investigation[s] [...] [which are] crucial in order to seriously identify sources of risk, and on the basis of its findings, take specific actions to mitigate them”.¹³⁶ The impunity of such acts encourages the repetition of similar human rights violations,¹³⁷ with inevitable adverse and collective consequences. At the same time, the State has also implemented ‘protection measures’ that exacerbated the situation of risk faced by CCAJAR members and other HRDs.¹³⁸

The Court has found in previous judgments that the intimidating effect of attacks on primary targets for other HRDs is accentuated and aggravated by the impunity in which the facts remain.¹³⁹

Human Rights Defenders as Presumed Victims and Injured Parties

The Commission’s Merits Report elaborated on the general context of violence in which HRDs carry out their work in Colombia.¹⁴⁰ The Commission has issued numerous reports outlining the evidence of the persecution of the Petitioners and other HRDs, a pattern that has continued to worsen since the 2016 Peace Agreement.¹⁴¹

The *amici* respectfully submit that the Court should find that HRDs are presumed victims and injured parties, to the end of ensuring non-repetition and the adequate protection of this vital work in Colombia.

Precedents exist for recognizing additional victims and injuries, even where not identified by the Commission in its prior merits reports.¹⁴² The Court has permitted petitioners to raise new

¹³⁶ Merits Report, *supra* note 7 at §291.

¹³⁷ See: IACtHR, *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala*, Merits, Judgment of March 8, 1998, Series C No. 37 at §173; IACtHR, *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 12, 2008, Series C No. 186 at §244; IACtHR, *Cantoral Huamani and García Santa Cruz v. Peru*, Preliminary objection, Merits, Reparations and Costs, Judgment of July 10, 2007, Series C No. 167 [“*Case of Cantoral Huamani and García Santa Cruz v. Peru*”] at §§122, 148; *Case of Valle Jaramillo v. Colombia*, *supra* note 88 at §100.

¹³⁸ Merits Report, *supra* note 7 at §§292, 297.

¹³⁹ *Case of Kawas Fernández v. Honduras*, *supra* note 116 at §153; IACtHR, *Case of Cantoral Huamani and García Santa Cruz v. Peru*, *supra* note 137 at §148.

¹⁴⁰ Merits Report, *supra* note 7 at §270, citing IACtHR, *Case of Yarce et al. v. Colombia*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 22, 2016, Series C No. 326at §271.

¹⁴¹ IACHR 2019 Report on Human Defenders in Colombia, *supra* note 64 at §370.

¹⁴² IACtHR, *Mack Chang v. Guatemala*, Merits, Reparations and Costs, Judgement of November 25, 2003, Series C No. 101 at §§223-225; IACtHR, *Ximenes-Lopes v. Brazil*, Merits, Reparations, and Costs, Judgment of July 4, 2006, Series C No. 149 at §156.

issues and claims, including for the recognition of new victims, such as next of kin, finding them to be victims of violations of Article 5 ACHR.¹⁴³ This approach accords with the principle of *jura novit curia* and the right of access to justice under the *Convention*.¹⁴⁴

CONCLUSION

In the present case, the scope of the harms caused by the State's acts and omissions is extremely broad and deeply concerning. The reverberating effects of the State's active campaigns against CCAJAR members and its failure to effectively investigate and prosecute those responsible for the persecution, extend to the members' families and close associates, their clients, and the human rights defence community at large. The *amici* urge the Court to extend full recognition to these 'communities of harm and suffering',¹⁴⁵ in the interest of ensuring that the harms are adequately redressed and that these facts are not repeated. As observed by the Commission, the chronic lack of remedies for violations against lawyers and other HRDs, sends a message that no one is protected, ensures impunity for state actors and prevents meaningful realization of the rule of law and democracy.

¹⁴³ *Ibid.* See also Shelton, Rules and Reality, *supra* note 8 at pp.22-23.

¹⁴⁴ IACtHR, *Case of the "Five Pensioners" v. Peru*, Merits, Reparations and Costs, Judgment of February 28, 2003, Series C No 98. See concurring opinion of Judge Cançado Trindade at §§2, 19, 21.

¹⁴⁵ Harms, *supra* note 12 at p.78.

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May 30, 2022



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