In the case of Manuel Cepeda Vargas v. Colombia,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 30, 32, 38(6), 56(2), 58, 59 and 61 of the Rules of Procedure of the Court [FN1] (hereinafter "the Rules of Procedure"), delivers this judgment.

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[FN1] According to Article 79(1) of the Inter-American Court's Rules of Procedure that entered into force on January 1, 2010, "[c]ontentious cases which have been submitted to the consideration of the Court before January 1, 2010, will continue to be processed, until the delivery of a judgment, in accordance with the previous Rules of Procedure." Hence, the Rules of Procedure of the Court applied in this case correspond to the instrument approved by the Court at its forty-ninth regular session held from November 16 to 25, 2000, partially reformed by the Court at its eighty-second regular session held from January 19 to 31, 2009, which were in force from March 24, 2009, until January 1, 2010.

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## I. INTRODUCTION OF THE CASE AND PROCEEDINGS BEFORE THE COURT

### A. INTRODUCTION OF THE CASE

1. On November 14, 2008, in accordance with Articles 51 and 61 of the Convention, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") lodged an application against the State of Colombia (hereinafter "the State" or "Colombia") concerning case 12,531 Manuel Cepeda Vargas, which the Commission had

detached from case 11,227, José Bernardo Díaz et al., "Patriotic Union," originating from the petition submitted on December 16, 1993, by the organizations: Corporación REINICIAR, the Comisión Colombiana de Juristas, and the Colectivo de Abogados "José Alvear Restrepo." On March 12, 1997, the Commission declared admissible the case relating to the alleged harassment and extermination of Patriotic Union activists by adopting Report 05/97 (case 11,227 José Bernardo Díaz et al., "Patriotic Union"). In May 2005, the Colectivo de Abogados "José Alvear Restrepo" and the "Manuel Cepeda Vargas" Foundation (represented by Iván Cepeda Castro) asked the Commission to end the friendly settlement stage concerning the State's alleged responsibility in the death of Senator Manuel Cepeda Vargas (hereinafter "Senator Cepeda," "Mr. Cepeda Vargas" or "the presumed victim") and to continue with the merits proceeding relating to this petition, separately from the said friendly settlement procedure. On December 5, 2005, the Commission decided to detach this case, registered it as number 12,531 and continued with the merits proceeding on the complaint concerning the death of Senator Manuel Cepeda Vargas. On July 25, 2008, the Commission approved Report on Merits 62/08, in which it made specific recommendations to the State, [FN2] which expressed its disagreement with the report. On November 14, 2008, the Commission submitted the case to the jurisdiction of the Court pursuant to Article 51(1) of the Convention and Article 44 of the Court's Rules of Procedure. The Commission appointed Víctor Abramovich, Commissioner at the time, and Santiago A. Canton, Executive Secretary, as its delegates and Elizabeth Abi-Mershed, Deputy Executive Secretary, Verónica Gómez, Karin Mansel and Juan Pablo Albán Alencastro, as legal advisers.

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[FN2] In this report, the Commission concluded that the State was responsible for the violation of Articles 4, 11, 16 and 23 of the American Convention to the detriment of Senator Manuel Cepeda Vargas; Articles 5(1) and 11 of the Convention to the detriment of his next of kin; Article 13 in connection with Articles 4 and 1(1) of this treaty to the detriment of Senator Manuel Cepeda Vargas; Article 22 of the Convention to the detriment of María Cepeda, and Iván Cepeda and his family; and Articles 8(1) and 25 of the Convention; all these articles in relation to Article 1(1) thereof. In its Report, the Commission recommended to the State that it should: conduct an impartial and exhaustive investigation in order to prosecute and punish all the perpetrators and masterminds of the extrajudicial execution of Senator Manuel Cepeda Vargas; make reparation to the next of kin of Senator Manuel Cepeda Vargas for the pecuniary and non-pecuniary damage suffered as a result of the said violations of the American Convention; organize acts to recover the historical memory of Senator Manuel Cepeda Vargas as a politician and a social communicator, in light of the conclusions reached concerning the State's responsibility in the report; and adopt the necessary measures to avoid the repetition of systematic patterns of violence, in accordance with the obligation to protect and guarantee the fundamental rights recognized in the American Convention.

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2. The facts alleged by the Commission refer to the extrajudicial execution of then Senator Manuel Cepeda Vargas perpetrated on August 9, 1994, in Bogotá, as well as alleged lack of due diligence in the investigation and punishment of all those responsible, obstruction of justice, and failure to make adequate reparation to the victim's next of kin. Senator Cepeda Vargas was a social communicator, and also a leader of the Colombian Communist Party (hereinafter "PCC") and the Patriotic Union political party (hereinafter "Patriotic Union" or "UP"). It is alleged that

his execution occurred in the context of a systematic pattern of violence against the members of the UP and the PCC, perpetrated by the alleged operational coordination between members of the Army and paramilitary groups under the so-called "coup de grâce plan." Furthermore, the Commission affirmed that this execution revealed the situation faced by the members of the UP, the acts of harassment and persecution, and the attempts on their life, as well as the impunity of these acts. In addition, it alleged that the execution of Senator Cepeda "was a conspicuous example of the pattern of violence against UP activists, given his role as the last publicly elected representative" of that party, and constituted a crime against humanity.

3. The Commission asked the Court to declare the State responsible for the violation of the rights to life, personal integrity, judicial guarantees, protection of honor and dignity, freedom of thought and expression, freedom of association, political rights, and judicial protection recognized respectively in Articles 4, 5, 8, 11, 13, 16, 23 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Manuel Cepeda Vargas. In addition, the Commission alleged that the State was responsible for the violation of the rights to personal integrity, judicial guarantees and judicial protection, established in Articles 5, 11, 8 and 25 of the Convention, to the detriment of the following next of kin of the presumed victim: Iván Cepeda Castro (son), María Cepeda Castro (daughter), Olga Navia Soto (common-law wife, deceased), Claudia Girón Ortiz (daughter-in-law), María Estella Cepeda Vargas, Ruth Cepeda Vargas, Gloria María Cepeda Vargas, Álvaro Cepeda Vargas and Cecilia Cepeda Vargas (deceased) (siblings); and of the right to freedom of movement and residence, recognized in Article 22 of the Convention, in relation to Article 1(1) thereof, to the detriment of Iván Cepeda Castro (son) and María Cepeda Castro (daughter), and their "direct families." The Commission asked the Court to order the State to take specific measures of reparation.

4. On April 4, 2009, Iván Cepeda Castro and Claudia Girón Ortiz, of the "Manuel Cepeda Vargas" Foundation; Rafael Barrios Mendivil, Alirio Uribe Muñoz, Jomary Ortegón Osorio and Ximena González of the Corporación Colectivo de Abogados "José Alvear Restrepo", and Viviana Krsticevic, Ariela Peralta, Francisco Quintana and Michael Camilleri of the Center for Justice and International Law (CEJIL), organizations representing the presumed victims (hereinafter "the representatives), submitted a brief with pleadings, motions and evidence to the Court in accordance with Article 24 of the Rules of Procedure. In this brief, they alluded to the facts indicated in the Commission's application and emphasized, in relation to the context in which they occurred, "the extent of the Colombian State's responsibility for the murder of the last elected senator of the Patriotic Union, by underscoring the importance of analyzing the pattern of systematic executions under which this one was perpetrated; the scope of the violations of the rights established in the American Convention […], and the effects of these violations on the political party that he led, on the electorate that he represented, and on the communications medium to which he belonged." The representatives alleged the violation of the same rights as the Commission, presenting their own analysis, and also asked that the State be declared responsible for the violation of Article 44 of the American Convention, because Senator Cepeda was the beneficiary of precautionary measures at the time of his execution, which interrupted "his right to petition" the inter-American system. They also alleged the violation of Article 2 of the Convention, because they considered that the legal framework of the demobilization law for members of paramilitary groups would promote impunity in the instant case. Lastly, the representatives requested various measures of reparation.

5. On July 4, 2009, the State submitted its brief in answer to the application, with observations on the brief with pleadings, motions and evidence, and filed four preliminary objections (infra Chapter III). Furthermore, the State submitted a partial acknowledgement of international responsibility for the violation of the rights to life, personal integrity, honor and dignity, freedom of expression, political rights, judicial guarantees and judicial protection, "the terms and scope" of which it asked the Court to accept (infra Chapter II). It also asked the Court, if the preliminary objections were not admitted, to declare that, in the instant case, there was no State policy to murder Manuel Cepeda Vargas; that the existence of the alleged "coup de grâce" plan had not been proved, and that there had not been a systematic pattern of violence against the members of the UP "at the highest level." In addition, it alleged that it was not responsible for the alleged violations of the rights recognized in Articles 16 and 22, or in Article 44, all of the American Convention. With regard to reparations, it asked that these should be limited to Senator Manuel Cepeda's immediate family and that the Court accept the reparations offered by the State, including the compensation awarded in the proceedings under administrative law and, consequently, that it reject the additional measures of reparation requested by the Commission and the representatives. The State appointed Ángela Margarita Rey Anaya, Juana Inés Acosta López and Martha Cecilia Maya Calle as its Agents.

B. Proceedings before the Court

6. Notice of the application was served to the State and to the representatives on February 3, 2009. [FN3] On April 7, 2009, the State asked the Court, on a preliminary basis, to "make a precise delimitation of the specific facts that correspond" to this case. After receiving the observations of the representatives and of the Commission, the Court declared the State's request irreceivable and decided to continue processing the case in an order of April 28, 2009. [FN4]

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[FN3] For a more detailed description of the proceedings up until April 2009, see the order issued by the Inter-American Court on April 28, 2009, available [in Spanish] at: http://www.corteidh.or.cr/docs/asuntos/asunto_ cepeda_1.pdf.

[FN4] Cf. Order issued by the Inter-American Court on April 28, 2009 (supra note 3).

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7. On September 5 and 11, 2009, the Commission and the representatives presented their observations on the preliminary objections. On October 20, 2009, the State referred to the representatives' brief with observations on the objections, which was not admitted, because the Rules of Procedure do not provide for it, and it had not been requested.

8. In an order of December 22, 2009, the President of the Court required the presentation of the statements of some of the witnesses and expert witnesses by affidavit, and summoned the parties to a public hearing to hear the testimony of other witnesses and expert witnesses proposed by the Commission, the representatives, and the State, together with the oral arguments of the parties on the preliminary objections, and possible merits and reparations. Lastly, the President granted the parties until March 1, 2010, to submit their final written arguments. [FN5] This order was contested on January 7 and 9, 2010, by the representatives [FN6] and by the Commission.

[FN7] After receiving the respective observations, the Court confirmed all aspects of the President's order in an order of January 25, 2010. [FN8]

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[FN5] Cf. Order issued by the President of the Inter-American Court on December 22, 2009.
[FN6] The representatives contested the said order, "insofar as it rejects the expert opinion of Mario Madrid Malo offered by the representatives and the Commission."
[FN7] The Commission "proposed to the Court in plenary that it reconsider the President's decision […], regarding the request to substitute the expert witness" Roberto Garretón for the expert opinion of Juan E. Méndez made by the Commission when presenting its final list of witnesses and expert witnesses offered in this case."
[FN8] Order issued by the Inter-American Court on January 25, 2010, available [in Spanish] at: http://www.corteidh.or.cr/ docs/asuntos/Cepeda_25_01_10.pdf

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9. The public hearing was held on January 26 and 27, 2010, during the Court's eighty-sixth regular session at its seat in San José, Costa Rica. [FN9]

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[FN9] At this hearing there appeared: (a) for the Inter-American Commission, Luz Patricia Mejía, President and delegate, Santiago Canton, Executive Secretary and delegate, Karin Mansel, Lilly Ching Soto and Juan Pablo Albán Alencastro, advisers; (b) for the representatives of the alleged victims, Rafael Barrios Mendivil, Alirio Uribe Muñoz, Jomary Ortegón Osorio and Ximena González for the Colectivo de Abogados "José Alvear Restrepo" (CCAJAR), and Viviana Krsticevic, Francisco Quintana and Michael Camilleri for CEJIL and (c) for the State, Ángela Margarita Rey Anaya, Juana Inés Acosta López, Martha Cecilia Maya Calle, Agents; Luis Guillermo Fernández Correa, Ambassador of Colombia to the Republic of Costa Rica, Carlos Franco Echaverría, Director of the Presidential Human Rights Program, Felipe Medina Ardila, Coordinator of the Inter-institutional Operations Group, and Henry Serrano Calderón, Adviser to the Inter-institutional Operations Group.

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10. On February 8, 2010, the "Unión de Organizaciones Democráticas de América (UnoAmérica)" forwarded an amicus curiae brief.

11. On March 1, 2010, the Commission, the representatives and the State submitted their final written arguments.

12. On February 5, 2010, the Court requested the Commission and the State to provide information and documentation as helpful evidence. [FN10] In response, on February 19, 2010, the Commission only forwarded a report by the State. On February 15, 2010, the Court granted the State additional time to send the information requested, and this was received in part on February 19 and 22, 2010. On March 1, 2010, the Secretariat of the Court, on the instructions of the President, asked the State to send, by March 8, 2010, at the latest, the documentation that was illegible or incomplete or that had not been forwarded. Regarding the request for a file of the investigation conducted by the office of the Prosecutor General of the Nation, on March 4, 2010,

the State expressed its concern owing to the confidential nature of the investigations under domestic law. In a note of March 12, 2010, the State was again asked to forward the information required, with the clarification that the Court would treat this documentation confidentially, exclusively to be examined by itself and by the parties, and that it would be transmitted to the latter with the express requirement that it was not made public by any medium (infra para. 59). On March 30, 2010, the State forwarded copies of the case file being processed by the office of the Prosecutor General of the Nation which contained documentation on the current investigation of the crime perpetrated against Mr. Cepeda Vargas. The Secretariat forwarded this documentation to the Commission and the representatives and, on the instructions of the President, granted them a specific time frame to present observations. The representatives submitted their observations on April 28, 2010. The Commission did not submit any observations. On May 13, 2010, the State presented observations on the representatives' brief which, on the instructions of the Court in plenary, were not admitted because such observations were not established in the Rules of Procedure and had not been requested.

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[FN10] The Court in plenary asked the State to remit the following documentation by February 15, 2010, at the latest, in accordance with Article 47 of the Rules of Procedure of the Court: "copy of the case file or the proceedings in relation to Investigation No. 329 of the 26th Special Prosecutor of the Human Rights and International Humanitarian Law Unit. […] In particular, the documents to be provided include those with information on the results of the investigations conducted on Edilson Jiménez Ramírez (alias "el Ñato"), and also the procedures conducted and the results obtained in order to determine the existence and scope of the alleged "coup de grâce plan" or any other plans to murder Patriotic Union members of Congress and presidential candidates, including Manuel Cepeda Vargas, to which the parties, witnesses and expert witnesses have referred in this case"; and copy of various documents contained in the file of Investigation No. 172 of the National Human Rights and International Humanitarian Law Unit, mentioned in the indictment of October 20, 1997, according to attachment 54 to the brief answering the application. In addition, it requested a copy of the information and documentation held by the Justice and Peace Unit of the office of the Prosecutor General of the Nation on the legal status of Edilson de Jesús Jiménez Ramírez (alias "El Ñato"), José Vicente Castaño Gil, and Diego Fernando Murillo Bejarano (alias "Don Berna"); whether they took advantage of the demobilization procedures and, if so, under which law; their current legal status, and whether reference has been made to the death of Patriotic Union members of Congress and presidential candidates, including that of Manuel Cepeda Vargas, in their statements or in investigations. The Court also asked for a transcript of any versión libre statements made by Ever (or Hebert) Veloza (alias "HH"), concerning the death of Patriotic Union members of Congress and presidential candidates, including that of Manuel Cepeda Vargas, in addition to the information already forwarded by the State in its answer to the application; copy of several documents delivered to the Director of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs by the Director of International Affairs of the office of the Prosecutor General of the Nation on June 17, 2009; copy of the measures taken by the Metropolitan Police of Bogotá and the office of the Prosecutor General of the Nation regarding the alleged or supposed detention of five individuals on August 22 or 23, 1994, by the said Police, in relation to the murder of Manuel Cepeda Vargas. Regarding the above, the Inter-American Commission was asked to forward any

pertinent information concerning the precautionary measures ordered on June 25, 2006, in favor of Iván Cepeda, Claudia Girón and Emberth Barrios Guzmán.

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## II. PARTIAL ACKNOWLEDGEMENT OF INTERNATIONAL RESPONSIBILITY

13. In the instant case, the State made a partial acknowledgment of the facts and of its international responsibility for several of the alleged violations of the rights recognized in the American Convention. Thus, in its answer to the application, the State reiterated and specified the partial acknowledgement made during the proceedings before the Commission, [FN11] as follows:

- By act and omission, for violation of the right to life embodied in Article 4 of the Convention, in relation to Article 1(1) of this instrument, of Manuel Cepeda Vargas, as a result of the events that occurred on August 9, 1994, in which the Senator lost his life.
- For violation of the right to personal integrity embodied in Article 5 of the Convention, in relation to Article 1(1) of this instrument, of Senator Manuel Cepeda Vargas, owing to the Senator's anguish and uncertainty because of the death threats, which led him to request measures of protection from the competent authorities, measures that were insufficient to avoid his murder.
- For violation of the right to personal integrity embodied in Article 5, in relation to Article 1(1) of the Convention, of the direct next of kin of the victim (Iván Cepeda Castro, María Cepeda Castro and Olga Navia Soto), owing to the mental and moral effects on them of the death of Senator Cepeda Vargas, who have undergone additional suffering owing to the acts and omissions of the State authorities in the perpetration of the facts.
- For violation of the right to honor and dignity embodied in Article 11 of the American Convention, in relation to Article 1(1) of this instrument, of Senator Manuel Cepeda Vargas, taking into account that the permanent harassment and threats against him had a negative effect on his honor and reputation.
- For violation of the right to freedom of expression embodied in Article 13 of the American Convention, in relation to Article 1(1) of this instrument, of Manuel Cepeda Vargas, taking into account that the State failed to protect and guarantee the Senator's exercise of freedom of expression, because he was arbitrarily prevented from expressing his thoughts by being killed.
- For violation of the political rights embodied in Article 23 of the Convention, in relation to Article 1(1) thereof, of Manuel Cepeda Vargas who, at the time of his murder, was a Senator of the Republic, and an active member of a political party that opposed the Government's policies, as a result of which he received death threats that he had reported to the public authorities.
- Partially, for violation of the rights to judicial guarantees and judicial protection (Articles 8 and 25 of the American Convention) in relation to Article 1(1) of this instrument; essentially, because the investigation exceeded a reasonable time and, to date, those who masterminded Manuel Cepeda's death have not been identified.

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[FN11] Cf. Observations of the Republic of Colombia of February, 28, 2010, regarding the admissibility and merits of the Manuel Cepeda Vargas case (evidence file, tome II, appendix III of the application, folios 980 to 986)

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14. During the pubic hearing before this Court, the State reiterated the above-mentioned acknowledgement, extended it to acknowledge Claudia Girón as a victim of the violation of the right to personal integrity and a beneficiary of measures of reparation in the instant case (infra paras. 180 and 212) and partly modified its position as regards the pertinence of alluding to the context in which the facts occurred. [FN12] Thus, on behalf of the State, and with the Colombian delegation standing to attention, its Agent addressed the next of kin of Senator Cepeda Vargas who were present and, through them, those who were not there, to apologize for the facts that had occurred. He said: "[t]he State regrets profoundly the crime of which your father, brother, companion and father-in-law was a victim, [and] asks you to accept its apology for having violated his rights to life, personal integrity, honor and dignity and freedom of expression and his political rights, owing to acts of State agents and to omission by failing to grant him sufficient protection. The Colombian State considers inacceptable that the investigation conducted by the justice system has lasted more than a reasonable time and that the truth is still not known about the precise circumstances and the masterminds who took part in the indefensible facts. The State also apologizes for the direct violation of your personal integrity, because the death of a beloved family member caused you profound and irremediable suffering." In addition, he indicated that "the acknowledgement of responsibility […] is the result of a profound self-examination by each institution involved in the errors that contributed to the violation of the rights of the honorable Senator Manuel Cepeda Vargas and to the fact that the full application of justice to all those responsible has not been achieved. […] It is also the acknowledgement that the State's obligation was to avoid the occurrence of the facts that today we are reproaching, and is now to prevent any future repetition of abhorrent crimes such as the one that ended Senator Cepeda's life."

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[FN12] Press communiqué CIDH_CP-03/10 of January 27, 2010, available at: http://corteidh.or.cr/docs/ comunicados/ cp_03_10.pdf

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15. Regarding this declaration by the State, during the hearing, Iván Cepeda, speaking on behalf of the next of kin, expressed "their gratitude for this moment […] accorded by the State," and indicated that, "after so many years of hearing the most senior State officials using denigrating and defamatory words against [his] father and against the members of the Patriotic Union, this is a significant moment." In addition, he asked the State that "this acknowledgement be made in Colombia, […] by the President of the Republic, before the two Chambers of Congress and in a broadcast on all the national radio stations, so that Colombian society, which for many years has heard the type of declaration and messages to which [he] referred, […] can hear the message that the Colombian delegation delivered in this Court." In their briefs, the representatives considered that the acknowledgement made by the State was limited and did not contribute to restituting the honor of the alleged victims. Specifically, they considered that the dispute subsisted in relation to legal and factual matters, and that a satisfactory analysis of the

factual and legal framework of the case called for an assessment of the aspects that had not been acknowledged. [FN13]

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[FN13] Among other aspects, the representatives indicated that the State had not acknowledged the following: "the facts that gave rise to the risks faced by Manuel Cepeda from the moment he became involved with the UP and up until the time of his death; the participation of paramilitaries and senior members of the Army in the murder of Senator Cepeda; the existence of a pattern of generalized and systematic violence under which the extrajudicial execution of the Senator occurred; the political activism of the Senator and the consequences that the crime had for the political movement to which he belonged, and the continuing situation of risk faced by Senator Cepeda's next of kin."

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16. The Commission considered that the dispute subsisted in relation to a significant number of the facts supposedly acknowledged. Therefore, even though it accepted that those recognized by the State without any conditions or reserves had been proved, it deemed that the Court should make its own assessment of the facts, the legal consequences, and the corresponding reparations, in accordance with the gravity and nature of the violations alleged in this case.

17. According to Articles 56(2) and 58 of the Rules of Procedure, and in exercise of its powers of international protection of human rights, a matter of international public order that transcends the will of the parties, the Court can determine whether an acknowledgement of international responsibility made by a defendant State offers sufficient grounds, in the terms of the Convention, for continuing the examination of the merits and determining possible reparations and costs. [FN14] Thus the latter does not prevent the Court from providing justice in the instant case, but rather the contrary. Consequently, the Court does not limit itself to merely confirming, recording or taking note of the acknowledgement made by the State, or verifying the formal conditions of such actions, but must weigh them against the nature and seriousness of the alleged violations, the requirements and interests of justice, the particular circumstances of the specific case, and the attitude and position of the parties, [FN15] in order to determine, insofar as possible and in the exercise of its competence, the truth of what occurred in the case.

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[FN14] Article 56(2) of the Rules of Procedure establishes that:
If the respondent informs the Court of its acquiescence to the claims of the party that has brought the case or the claims of the alleged victims or their representatives, the Court shall decide, after hearing the opinions of the other parties to the case, whether to accept such acquiescence, and rule upon its juridical effects. In that event, the Court shall determine the corresponding reparations and costs.
While, Article 58 of the Rules of Procedure stipulates that:
Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding paragraphs.
[FN15] Cf. Kimel v. Argentina. Merits, reparations and costs. Judgment of May 2, 2008. Series C No. 177, para. 24; González et al. ("Campo Algodonero") v. Mexico. Preliminary objection,

merits, reparations and costs. Judgment of November 16, 2009. Series C No. 205, para. 25, and Ticona Estrada v. Bolivia. Merits, reparations and costs. Judgment of November 27, 2008. Series C No. 191, para. 21.

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18. In the instant case, the Court finds, as it has in other cases it has heard, [FN16] that the State's partial acknowledgement of the facts and acquiescence with regard to some of the legal claims and claims for reparation make a positive contribution to the development of these proceedings, to the exercise of the principles that inspire the American Convention [FN17] and, in part, to satisfying the reparation required by the victims of human rights violations and their next of kin. Furthermore, the Court considers that, as in other cases, [FN18] the acknowledgement made by the State in the proceedings before the Commission and reiterated before this Court produces full legal effects pursuant to Articles 57 and 58 of the Court's Rules of Procedure, and has considerable symbolic value to ensure non-repetition of similar facts.

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[FN16] Cf. Valle Jaramillo et al. v. Colombia. Merits, reparations and costs. Judgment of November 27, 2008. Series C No. 192, para. 46; Escué Zapata v. Colombia. Merits, reparations and costs. Judgment of July 4, 2007. Series C No. 165, para. 20; La Rochela Massacre v. Colombia. Merits, reparations and costs. Judgment of May 11, 2007. Series C No. 163, para. 29, and Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs. Judgment of July 1, 2006. Series C No. 148, para. 79.

[FN17] Cf. Trujillo Oroza v. Bolivia. Merits. Judgment of January 26, 2000. Series C No. 64, para. 42; Case of González et al. ("Campo Algodonero") v. Mexico, supra note 15, para. 26, and Case of Kimel v. Argentina, supra note 15, para. 25.

[FN18] Cf. Acevedo Jaramillo et al. v. Peru. Preliminary objections, merits, reparations and costs. Judgment of February 7, 2006. Series C No. 144, paras. 176 to 180; Tiu Tojín v. Guatemala. Merits, reparations and costs. Judgment of November 26, 2008. Series C No. 190, para. 21, and Case of Kimel v. Argentina, supra note 15, paras. 23 to 25.

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19. The Court notes that the State has acquiesced to the violations of Articles 4, 5, 11, 8, 25, 13 and 23 of the Convention in relation to Manuel Cepeda Vargas, the last two rights only in their individual aspect. Regarding the facts that constituted these violations, the Court observes that the State has acknowledged, in general terms, the facts that are linked strictly to the murder of Senator Cepeda Vargas, [FN19] accepted specific facts related to the constitution and activities of the UP political party, [FN20] and presented its interpretation and the extent of the context of generalized violence in Colombia at the time of the murder. [FN21] Nevertheless, the Court notes that the State has not acknowledged certain facts set out in the application, such as those related to the alleged pattern of violence or systematic attacks against the leaders and members of the UP; the supposed existence of a State plan to conceive and execute the murder of Senator Cepeda Vargas and, specifically, the so-called "coup de grâce" plan; the allegation that State agents masterminded the execution; their supposed involvement with paramilitary groups to perpetrate the murder, and the alleged failure to comply with the obligation to investigate diligently all possible participants in Senator Cepeda's execution. Furthermore, the State contested the existence of the alleged declarations made by senior State officials that supposedly

violated Manuel Cepeda's right to honor. Regarding the other legal claims, the State has not acknowledged the existence of an aggravated violation of the right to life, or the alleged autonomous violation of Article 44 of the Convention, in relation to the existence of precautionary measures in favor of Manuel Cepeda. Moreover, the State denies responsibility for the violation of Article 16 of the Convention. Consequently, the Court considers that the dispute subsists concerning some facts and rights, as well as with regard to specific aspects of the violations of the Convention that the State has accepted. It therefore finds it necessary to analyze them in the chapters corresponding to the merits of the case.

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[FN19] Cf. brief in answer to the application, para. 253.
[FN20] Cf. brief in answer to the application, para. 227.
[FN21] Cf. brief in answer to the application, paras. 304 to 445, and the State's oral arguments presented at the public hearing held before the Inter-American Court on January 27, 2010.

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20. The State did acknowledge the alleged violation of Article 5 of the Convention with regard to the next of kin. However, the dispute subsists in relation to the threats the latter presumably received as a result of the measures they took to obtain justice and truth, as well as to the alleged violation of their right to justice and truth, and of their right to honor owing to declarations made against them by senior State officials. The State has not acknowledged the alleged violation of Articles 5 and 22 of the Convention in relation to the alleged exile undergone by Iván Cepeda, María Cepeda and Claudia Girón. Consequently, the Court notes that the dispute between the parties subsists in relation to the facts and the legal claims concerning these alleged violations of the Convention; therefore it must rule in this regard.

21. In addition, the State partially acknowledged its responsibility for the violation of Articles 8, 25 and 1(1) of the Convention, by accepting that "the investigation had exceeded a reasonable time and the masterminds of Manuel Cepeda's death had still not been identified." Nevertheless, some aspects remain in dispute between the parties, in particular regarding the alleged ineffectiveness of the disciplinary and administrative-law proceedings; the due diligence in the criminal investigations and the alleged obstacles to the investigation owing to the demobilization of members of the paramilitary groups, and these will be analyzed by the Court. Furthermore, a dispute continues with regard to the alleged violation of Article 2 of the Convention.

22. Regarding the claims for reparations, the State accepted that the presumed victim and his next of kin are the injured parties, recognized its obligation to make reparation for the violations acknowledged, indicated some measures that it had taken or that it offers to take and, also, asked that this Court take into a account the reparations awarded to some of the next of kin in the domestic sphere. However, the Commission and the representatives questioned some aspects of the results obtained in this regard, so that the dispute subsists in relation to all the other forms of reparation requested by the Commission and the representatives. Hence, the Court will make the necessary ruling.

23. Accordingly, the Court finds it must deliver a judgment in which it determines the facts and all the subsisting aspects of the merits and possible reparations, as well as the corresponding consequences, because the delivery of the judgment helps make reparation to the next of kin of Manuel Cepeda Vargas, avoid a repetition of similar facts and, in brief, satisfy the purposes of the inter-American jurisdiction on human rights. [FN22]

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[FN22] Cf. "Mapiripán Massacre" v. Colombia. Merits, reparations and costs. Judgment of September 15, 2005. Series C No. 134, para. 69; Case of Kimel v. Argentina, supra note 15, para. 28, and Bueno Alves v. Argentina. Merits, reparations and costs. Judgment of May 11, 2007. Series C No. 164, para. 35.

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## III. PRELIMINARY OBJECTIONS

24. The State filed four preliminary objections and indicated that the purpose of the first two was to "limit the factual framework of the instant case" in order to exclude from the Court's analysis "all the facts that are pending a decision in the case of the Patriotic Union," particularly the alleged systematic pattern of violence against its members. The Court will therefore examine the first two objections together; it will then do the same with the remaining two objections.

25. The Commission stated that it was contradictory to make an acknowledgement of responsibility, while simultaneously questioning the Court's jurisdiction to rule on the case by filing preliminary objections. The representatives considered that, in the instant case, there was no inconsistency between these procedural actions because they were partial and did not overlap. The State considered that the Court's case law showed that it had permitted the coexistence of the two actions; that, for the purposes of the system, it would be prejudicial if States were unable to carry out the two actions simultaneously, and that the objections filed were of a partial nature, because they referred to facts that were still in dispute, so that they did not affect the acknowledgement.

26. The Court considers that, even though an act of acknowledgement implies, in principle, the acceptance of its jurisdiction, [FN23] in each case it must determine the nature and scope of any objection filed in order to determine its compatibility with the said acknowledgement. [FN24] Consequently, pursuant to the provisions of Article 38(6), together with the provisions of Articles 56(2) and 58, all of its Rules of Procedure, the Court will examine the preliminary objections that have been filed in the understanding that they cannot limit, contradict or annul the content of the acknowledgment of responsibility.

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[FN23] Cf., mutatis mutandi, "Mapiripán Massacre" v. Colombia. Preliminary objections. Judgment of March 7, 2005. Series C No. 122, para. 30.

[FN24] In several cases, the Court has found, explicitly or implicitly, that these procedural actions are compatible. Cf. Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs. Judgment of November 23, 2009. Series C No. 209, paras. 14 and 52 to

63; and Case of González et al. ("Campo Algodonero") v. Mexico, supra note 15, paras. 20 to 30 and 80.

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A. The Court's lack of jurisdiction to hear this case owing to an alleged error in the proceedings before the Commission, or to examine facts that are still pending a decision in another case before the Commission

27. In its first objection, the State argued that the Court does not have jurisdiction to examine the facts of case 11,227 of the Patriotic Union (hereinafter "case of the UP" or "case 11,227"), as regards everything that is not directly related in time, means and place with the murder of Senator Cepeda, because case 11,227 is pending a decision by the Commission. In this regard, it argued that the Commission improperly prejudged case 11,227, by establishing in its Report on Merits 62/08 and in the application in the instant case, the existence of a systematic pattern of violence against members of the UP, facts that are disputed in that case. It indicated that this was because, without any grounds established in the Convention or in its Rules of Procedure, the Commission detached this case from case No. 11,277, and continued to examine it based on the Admissibility Report concerning the case of the UP, rather than on a specific report on the instant case that defined the precise facts included in the factual framework of the case of Senator Cepeda, so that there was never any legal certainty concerning the distinction between the cases. The State indicated that it had expressly opposed the inclusion of this pattern of violence, but the Commission did not give it an opportunity to comment on the matter or to contest it; nor did the Commission take into account its arguments in this regard under case 11,227. Consequently, the State argued that the Commission had violated its right to defense and the principles of equality of arms and procedural equality, which merited the Court exercising control of legality owing to the serious error committed by the Commission. The State also believed that the Commission's action would also prejudice the petitioners and presumed victims in case 11,227, who play no part in the instant case and whose right to the truth and reparation would be reduced owing to any procedural fact established in relation to the Patriotic Union political party in this case.

28. In its second preliminary objection, the State reiterated the previous arguments and alleged that the Court does not have jurisdiction to examine several facts, alleged violations, individualized presumed victims, and requests for reparation – introduced by the Commission and the representatives to illustrate this pattern – that, in its opinion, correspond to case 11,227 and that have not been properly submitted to the Court in a contentious case. Consequently, the State affirmed that, in the instant case, there is a sort of "partial concurrence" with what has been requested in case 11,227, because an attempt is being made to subsume case 11,227 in this case. Although it accepted that the Court could use some of those facts as context (the ones related to the situation that existed at the time of the murder), the State considered that they could not give rise to legal consequences in relation to its international responsibility, and that some of the alleged facts bear no relationship to Senator Cepeda's death.

29. The Commission alleged that it had not prejudged the facts of case 11,227, but merely gathered data from different sources (national and international organizations), to illustrate that the execution of Manuel Cepeda Vargas took place in a specific context, which was related to the

merits of the case. It argued that the fact that it had analyzed this context in a way that the State disagreed with should not be understood as an attack on legal certainty that could invalidate the proceedings. It stated that, by not making a new ruling on the admissibility of the Cepeda case, the Commission acted in exercise of its authority under the Convention, and its Statute and Rules of Procedure. Hence, it considered that the State's right to defense had not been violated because, after the case had been detached, the parties were able to present their arguments in writing and during the hearing. In this regard, the Commission indicated that, when deciding to separate the cases, it took into account the specific interest of the presumed victims who wanted to advance their case without continuing the friendly settlement procedure. Regarding the second objection, the Commission clarified that the facts included as background information are not the facts, rights, victims or reparations of case 11,227, but rather the context in which the murder of Senator Manuel Cepeda occurred, and referring to them does not entail prejudging case 11,227, because no arguments or requests for reparation have been made in relation to persons other than Senator Cepeda Vargas and his family. In any case, it alleged, the State's argument would have the "unfortunate consequence" of precluding the Court from examining future cases that concerned violations originating within the same historical contexts.

30. The representatives considered that there were no grounds for controlling the legality of the Commission's action, because the State had been accorded several opportunities to contest the facts of the case. They noted that the Commission did not "surprise" the State with the inclusion of the context of generalized and systematic violence against the UP in this case, because this "was a fundamental element of the petitioners' allegations since the case was opened as an individual case with its own procedures." Moreover, they considered that the arguments relating to the prejudgment of case 11,227 were "irreceivable and without grounds," bearing in mind that the Court is not examining that case and does not have jurisdiction over it. They clarified that they are not trying to assess the State's responsibility for the said pattern of violence against the UP, because that is beyond the scope of this case; however, they did ask that the extrajudicial execution of Senator Manuel Cepeda Vargas be examined in light of that context.

31. When the actions of the Commission in relation to the proceedings before it are alleged as a preliminary objection, the Court has affirmed that the Inter-American Commission has autonomy and independence in the exercise of its mandate as established by the American Convention and, particularly, in the exercise of its functions in the processing of individual petitions. [FN25] Also, in matters that the Court is examining, the Court has the authority to control the legality of the Commission's actions, [FN26] which does not necessarily entail reviewing the proceedings conducted before the latter, aside from in exceptional cases in which there has been a serious error that violates the parties' right to defense. [FN27] Hence, the party that affirms the existence of a serious error must prove it; [FN28] consequently, a complaint or difference of opinion in relation to the actions of the Commission is not sufficient. [FN29]

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[FN25] Cf. Control of Legality in the Exercise of the Powers of the Inter-American Commission on Human Rights (Arts. 41 and 44 of the American Convention on Human Rights). Advisory Opinion OC-19/05 of November 28, 2005. Series A No. 19, first operative paragraph; Garibaldi v. Brazil. Preliminary objections, merits, reparations and costs. Judgment of September 23, 2009.

Series C No. 203, para. 35, and Case of Escher et al. v. Brazil. Preliminary objections, merits, reparations and costs. Judgment of July 6, 2009. Series C No. 200, para. 22.
[FN26] Cf. Control of Legality in the Exercise of the Powers of the Inter-American Commission on Human Rights (Arts. 41 and 44 of the American Convention on Human Rights). Advisory Opinion OC-19/05, supra note 25, third operative paragraph; Case of Garibaldi v. Brazil, supra note 25, para. 35, and Case of Escher et al. v. Brazil, supra note 25, para. 22.
[FN27] Cf. Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary objections, merits, reparations and costs. Judgment of November 24, 2006. Series C No. 158, para. 66; Case of Garibaldi v. Brazil. Preliminary objections, supra note 25, para. 35, and Case of Escher et al. v. Brazil, supra note 25, para. 22.
[FN28] Cf. Case of Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru, supra note 27, para. 66; Case of Escher et al. v. Brazil, supra note 25, para. 23, and Castañeda Gutman v. United Mexican States. Preliminary objections, merits, reparations and costs. Judgment of August 6, 2008. Series C No. 184, para. 42.
[FN29] Cf. Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs. Judgment of November 28, 2007. Series C No. 172, para. 32; Case of Escher et al. v. Brazil, supra note 25, para. 23, and Case of Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru, supra note 27, para. 66.

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32. In the instant case, the Court observes that, during the proceedings before the Commission, the State acknowledged "in good faith, that the case of [Senator] Cepeda was a different and independent case," even when the Commission indicated that it would proceed to the merits stage [FN30] and considered the admissibility procedure exhausted. Nevertheless, it is true that the State alleged that it accepted the severance of the case provided that "limitations were placed on the factual framework, the purpose of the dispute, and the burden of proof on the two parties." Following the severance and at the public hearing held in March 2007, the Commission considered that the admissibility procedure had concluded and did not distinguish specific facts in Admissibility Report No. 5/97 applicable to the Cepeda Vargas case. However, according to the Commission, "the State indicated on at least two occasions while the case was being processed (at the public hearing […] before the Commission and [in the] brief of October 23, 2007), its understanding that the Cepeda case was at the merits stage, which logically implied that the discussion on admissibility had concluded with Report No. 5/97." Also, during the merits stage before the Commission, the State had three opportunities to submit observations on the representatives' arguments, and was even granted three extensions. [FN31]

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[FN30] The Commission informed the State that, "in view of the new procedural stage of the case, it needed to ask the Government of the Republic of Colombia to submit its observations on case No. 12,531 within two months […]". Cf. note sent by the Inter-American Commission on November 28, 2005 (evidence file, tome III, appendix III to the application, folio 1002).
[FN31] The State submitted observations during the merits proceedings on February 28, 2007, October 23, 2007 and May 30, 2008 (evidence file, tomes I and II, appendix III to the application, folios 293 to 304, 653 to 697 and 828 to 840). It requested extensions on March 21, 2006, June 27, 2007, and April 8, 2008, all of which were granted by the Commission (evidence file, tomes I and II, appendix III to the application, folios 323 to 325, 695 to 697 and 881).

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33. Although the Commission did not rule on the State's request concerning the specific facts that were part of both cases during the merits procedure, its answer was implicit when it decided, in exercise of its mandate, to examine the context in which the facts occurred contrary to a proposal of one of the parties to the proceedings, in this case, the State. In this regard, the State's conditioned acceptance of the severance of this case was not binding on the Commission as to the way it conducted the proceedings. The State was aware of the facts on which the case of Manuel Cepeda Vargas was based, as well as the context in which it is alleged they occurred, from the time it was detached from the case of the UP. Consequently, the State has not proved to this Court that its right to defense was violated.

34. Lastly, the State itself indicated that the purpose of its first two preliminary objections was to prevent the Court from examining the facts of the case of the UP (supra para. 24), and that "it is not its inflexible intention" that its claims be decided using the legal mechanism of the preliminary objection; therefore, it "trusts that the Court will use the most appropriate [means …] to limit the facts on which the instant case is based." In other words, the issue that remains to be decided is whether preliminary objections are the appropriate procedural mechanism to decide the State's claim.

35. It has been the Court's constant criterion that a preliminary objection questions the Court's jurisdiction to hear a specific case or any of its aspects based on the person, the matter, the time or the place. [FN32] Hence, in the terms of Article 79(9) of the Rules of Court (1978) of the International Court of Justice, the objection must possess "an exclusively preliminary character"; this means that it can potentially impede the continuation of the proceedings or a decision on the merits. Thus, irrespective of whether a contention is described as a "preliminary objection," it must have the juridical characteristics, as regards its content and purpose, that accord it this character of a preliminary defense. Allegations that are not of this nature, such as those that refer to the merits of a case, may be formulated by means of other procedural acts established in the American Convention, but not using this mechanism. [FN33]

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[FN32] Cf. Las Palmeras v. Colombia. Preliminary objections. Judgment of February 4, 2000. Series C No. 67, para. 34; Case of Garibaldi v. Brazil, supra note 25, para. 17, and Case of Escher et al. v. Brazil, supra note 25, para. 15.

[FN33] Cf. Case of Castañeda Gutman v. United Mexican States, supra note 28, para. 39; Case of Garibaldi v. Brazil, supra note 25, para. 17, and Case of Escher et al. v. Brazil, supra note 25, para. 15.

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36. First, it should be noted that the Court is unaware of the current arguments, presumed victims or facts of case 11,227, so that it could not prejudge them or determine to what extent the Commission would do so. In reality, the opinion formed on one case does not prejudge others when the beneficiaries of the rights are different, even though the violations are the same. [FN34] The instant case refers to the violations of the rights of Senator Manuel Cepeda Vargas and his next of kin in relation to his execution; therefore they cannot be detached in limine litis

from their context, the relevance of which the Court must decide at the merits stage of the case, based on the arguments and the evidence provided by the parties. Even though specific or contextual facts are mentioned in this case that correspond also to the case of the UP, their existence, assessment or relevance will be decided solely on the basis of the evidence provided by the parties in this case. This cannot imply any prejudgment of case 11,227, or have any effects on the petitioners and presumed victims in that case. Consequently, even in the sense alleged by the State, it would not be possible to determine the existence of a "partial concurrence of legal actions"; hence its arguments on the possible prejudgment of case 11,227 are unfounded.

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[FN34] Cf. Durand and Ugarte v. Peru. Preliminary objections. Judgment of May 28, 1999. Series C No. 50, paras. 45 to 49; Case of the Saramaka People. v. Suriname, supra note 29, paras. 47 and 48, and Baena Ricardo et al. v. Panama. Preliminary objections. Judgment of November 18, 1999. Series C No. 61, para. 53.

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37. Accordingly, the State's intention to preclude the Court from examining certain facts, set out in its first two objections, is not a matter for a preliminary objection but rather, if appropriate, for the merits stage. Based on the above, the Court rejects the first and second preliminary objections filed by the State.

B. Lack of jurisdiction based on the subject matter to declare the existence of a crime against humanity

38. The State argued that, based on the subject matter, the Court does not have jurisdiction to determine or to declare that a crime has been committed in a case and, consequently, to determine whether it was a crime against humanity. In addition, it maintained that States do not commit offenses or crimes; rather, it is possible to speak of aggravated international responsibility in the case of systematic conducts by the States. It added that the Court had never described the conduct of a State "as an international crime"; rather, it has set out its findings in relation to the perpetration of a crime against humanity in the context of its analysis of the merits of the case and not in the operative paragraphs. Moreover, the State maintained that even though the Court has ruled on the existence of crimes, it has always been with the sole purpose of interpreting and underscoring the provisions of the Convention, without this implying that it assumed competences that exceeded the framework established in Article 62(3) of the Convention. It therefore alleged that, under its function of applying the inter-American norms, the Court did not have competence to classify an act as a crime against humanity.

39. The Commission argued that, in this regard, its intention is that the Court conclude that facts, such as those of the instant case, which occurred in a context of the systematic perpetration of acts of violence against a specific group of society, violate non-derogable norms of international law, which allows it to assess the extent of Colombia's aggravated obligation to investigate in this case. The representatives stated that they are asking the Court to include among its findings what has already been acknowledged by the Prosecutor General of Colombia; [FN35] namely, that Senator Cepeda's murder was a crime against humanity and that it formed part of a generalized and systematic attack against members of the UP, with the consequences

that this generates for the interpretation of the State's obligations under the Convention and for the measures of reparation that should be ordered.

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[FN35] In July 2009, Mario Iguarán, then Prosecutor General of the Nation, affirmed in an interview that "the cases of both Luis Carlos Galán and Manuel Cepeda reveal a systematic, generalized and subjective attack on the New Liberalism and the Patriotic Union, respectively, which allows it to be determined that an extermination was perpetrated and consequently a crime against humanity and, therefore, non-prescription of the criminal action." Cf. newspaper article published in "El Tiempo" on July 4, 2009, entitled "Intervención de la Procuraduría ha sido mínima en muchos casos, afirma fiscal Mario Iguarán" (evidence file, tome XIX, attachment 1 to the brief with pleadings, motions and evidence, folio 8164).

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40. During the public hearing, the representatives and the State agreed that the Court did not need to rule on the existence of a crime against humanity in the operative paragraphs; moreover, the Commission had not expressly requested this. Nevertheless, in its final written arguments, the State insisted that the Court did not have competence to classify an act as a crime against humanity under its function of applying the inter-American norms.

41. The Court recalls that the purpose of its mandate is the application of the American Convention and other treaties that grant it jurisdiction. It is not for the Court to establish individual responsibilities, [FN36] determination of which falls under the jurisdiction of the domestic or the international criminal courts; rather its mandate is to assess the facts submitted to it and to assess them in the exercise of its contentious jurisdiction based on the evidence presented by the parties. [FN37]

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[FN36] Cf. Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 134, and Suárez Rosero v. Ecuador. Merits. Judgment of November 12, 1997. Series C No. 35, para. 37. See also, Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs. Judgment of September 22, 2009. Series C No. 202, para. 36; Yvon Neptune v. Haiti. Merits, reparations and costs. Judgment of May 6, 2008. Series C No. 180, para. 37; Boyce et al. v. Barbados. Preliminary objection, merits, reparations and costs. Judgment of November 20, 2007. Series C No. 169, footnote 37, and Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs. Judgment of July 4, 2007. Series C No. 166, para. 93.

[FN37] Cf. Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs. Judgment of July 10, 2007. Series C No. 167, para. 87, and Kawas Fernández v. Honduras. Merits, reparations and costs. Judgment of April 3, 2009. Series C No. 196, para. 79.

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42. When examining the merits in cases of serious human rights violations, the Court has taken into account that, if they were committed in the context of massive and systematic or generalized attacks against one sector of the population, [FN38] such violations can be characterized or classified as crimes against humanity in order to explain clearly the extent of the

State's responsibility under the Convention in the specific case, together with the juridical consequences. Hence, the Court in no way attempts to attribute a crime to any natural person. In this regard, the need for comprehensive protection of the individual under the Convention has led the Court to interpret its provisions through their convergence with other norms of international law, [FN39] particularly with regard to the prohibition of crimes against humanity, which is ius cogens, without this implying that it has exceeded its powers, because, it should be reiterated that, in doing so, it respects the authority of the criminal jurisdiction to investigate, indict and punish the individuals responsible for such crimes. What the Court does, in accordance with treaty-based law [FN40] and customary law, is to employ the terminology used by other branches of international law in order to assess the legal consequences of the alleged violations vis-à-vis the State's obligations.

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[FN38] Cf. Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs. Judgment of September 26, 2006. Series C No. 154, paras. 94 to 96 and 98 to 99.
[FN39] Cf. Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs, supra note 22, para. 115.
[FN40] Art. 33.3.c. of the Vienna Convention on the Law of Treaties.

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43. Consequently, the Court declares the third preliminary objection inadmissible, because it bears no relation to the extent of its competence, since the Court would never charge a natural person or a State with the perpetration of a crime.

C. The Court's lack of temporal jurisdiction to examine certain contextual facts presented by the victims' representatives

44. The State requested the Court to exclude from its analysis all the alleged facts, whether presented as context or background, that occurred prior to Colombia's acceptance of the Inter-American Court's jurisdiction, and that appear in the section on "Factual grounds" of the brief with pleadings, motions and evidence. [FN41] In its final written arguments, the State specified that Senator Cepeda's record as a politician and journalist may be examined as part of the context of the case, but that "the Court could not include, even as part of the context, those facts that refer to matters that might also constitute alleged violations of the State's obligations."

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[FN41] Brief with pleadings, motions and evidence, April 4, 2009, paras. 37, 40 to 44 and 46.

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45. The Commission considered that it was not incumbent on it to make observations. For their part, the representatives stated that this background information represented facts aimed at describing Senator Cepeda's professional career and the harassment that he and his family suffered in reprisal for his work. They also indicated that none of the alleged violations was based on this background information, so that the Court would not establish any juridical consequence based on them.

46. The Court observes that the State is attempting to exclude certain facts presented by the representatives that allegedly occurred before the date on which it accepted the Court's compulsory jurisdiction on June 21, 1985. These facts include references to the personal life of Manuel Cepeda Vargas and the circumstances in which he carried out his activities, and therefore do not constitute facts that prima facie or per se are excluded from the Court's jurisdiction. In other words, the Court is able to refer to or incorporate this background information on the facts, as elements of the context of the merits of the case, without deriving specific juridical consequences from them. [FN42] Consequently, the fourth preliminary objection filed by the State is rejected.

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[FN42] Cf. Case of Almonacid Arellano et al. v. Chile, supra note 38, para. 82; García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations and costs. Judgment of November 20, 2007. Series C No. 168, para. 76, and Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits. Judgment of November 28, 2006. Series C No. 161, para. 67. See also, Case of the Saramaka People v. Suriname, supra note 29, para. 16.

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## IV. MERITS

47. The Court has jurisdiction to hear this case, in accordance with Article 62(3) of the American Convention. [FN43] Having decided the preliminary objections, and observed the terms of the State's acknowledgement of international responsibility, the Court will now decide the merits of the dispute.

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[FN43] 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.

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### IV.1. PRIOR CONSIDERATIONS

48. The State requested that a limit should be placed on the facts in dispute, specifically so that the Court would not consider "new facts presented by the representatives of the [presumed] victims" [FN44] and additional facts presented by both the Commission and the representatives that are not directly related to this case. [FN45] More specifically, at different procedural moments, the State insisted that the Court declare that the global phenomenon of paramilitarism, the paramilitaries' demobilization process, the implementation of the Justice and Peace Law, and the possible application of Law 1312 of 2009, exceed the purpose of this case.

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[FN44] Thus, the State considered that the following should be excluded: a section of the pleadings and motions brief entitled "Manuel Cepeda Vargas: promoter of the Patriotic Union political party," because it contained the representatives' assessment of the origin and actions of this party, which correspond to the Patriotic Union case; accusations made by Mr. Cepeda as a parliamentarian about acts by senior military commanders and paramilitary groups against this

movement or party; about alleged extermination operations against members of the UP and the corresponding reports prepared by State agencies and international organizations (including decisions of the Constitutional Court and the Ombudsman); the reference to declarations by the actual President of the Republic of Colombia during his political campaign; the alleged abandonment of his studies and academic activities by Iván Cepeda at one point; alleged threats against relatives of Manuel Cepeda following his death, and the facts indicated in its fourth preliminary objection. Cf. brief in answer to the application, para. 176.

[FN45] In its answer, the State presented "subsidiarily," arguments on the interpretation to be given to these facts, as well as the material assessment that, in its opinion, should be given to the probative elements offered by the representatives. Cf. brief in answer to the application, para. 224.

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49. It has been the Court's constant case law in the cases that it hears that the alleged victims, their next of kin or representatives may invoke the violation of rights other than those included in the application, provided they do not invoke new facts that do not appear in the application, [FN46] which constitutes the factual framework for the proceedings. [FN47] In addition, since a contentious case is, substantially, a litigation between a State and a petitioner or presumed victim, [FN48] the latter can refer to facts that explain, contextualize, clarify or reject those mentioned in the application or else respond to the claims of the State, [FN49] based on their arguments and the evidence they provide, without impairing the procedural balance or the adversarial principle, because the State is given procedural opportunities to respond to these allegations at all stages of the proceedings. Furthermore, the Court can be informed of supervening facts at any stage of the proceedings before it delivers judgment, [FN50] provided they are related to the facts of the proceedings. [FN51] In each case, it is for the Court to determine the need to prove the facts, as they were presented by the parties or taking into account other elements of the body of evidence, [FN52] provided the right to defense of the parties and the purpose of the litigation are respected.

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[FN46] Cf. "Five Pensioners" v. Peru. Merits, reparations and costs. Judgment of February 28, 2003. Series C No. 98, para. 155; Case of Radilla Pacheco v. Mexico, supra note 24, para. 148, and Case of González et al. ("Campo Algodonero") v. Mexico, supra note 15, para. 232.

[FN47] Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs, supra note 22, para. 59; Case of Radilla Pacheco v. Mexico, supra note 24, para. 62, and Case of González et al. ("Campo Algodonero") v. Mexico, supra note 15, para. 232.

[FN48] The recent reform of the Court's Rules of Procedure (and even of those of the Commission) reflects this conception. The introduction to the reforms indicates that "[t]he principal reform introduced by the new Rules of Procedure relates to the role of the Commission in the proceedings before the Court. In this regard, the different actors of the system that took part in this consultation referred to the advisability of modifying some aspects of the Commission's participation in the proceedings before the Court, granting greater prominence in the litigation to the representatives of the victims or presumed victims and the defendant State; thereby enhancing the role of the Commission as an organ of the inter-American system, and thus improving the procedural balance between the parties." Cf. Statement of motives for the

reform of the Rules of Procedure, available, in all four languages, at: http://www.corteidh.or.cr/reglamento.cfm.
[FN49] Case of "Five Pensioners" v. Peru, supra note 46, para. 154; Perozo et al. v. Venezuela. Preliminary objections, merits, reparations and costs. Judgment of January 28, 2009. Series C No. 195, para. 32, and Ríos et al. v. Venezuela. Preliminary objections, merits, reparations and costs. Judgment of January 28, 2009. Series C No. 194, para. 42.
[FN50] Cf., similarly, Case of "Five Pensioners" v. Peru, supra note 47, para. 154; Case of Perozo et al. v. Venezuela, supra note 49, para. 32, and Case of Ríos et al. v. Venezuela, supra note 49, para. 42.
[FN51] Cf. Case of the "Five Pensioners" v. Peru, supra note 46, para. 155; Case of Valle Jaramillo et al. v. Colombia, supra note 16, para. 174, and Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs. Judgment of August 12, 2008. Series C No. 186, para. 228.
[FN52] Cf. Case of Yvon Neptune v. Haiti, supra note 36, para. 19.
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50. In cases involving highly complex facts, that occurred over extended periods of time and in which the existence of patterns or practices of massive, systematic or structural human rights violations are alleged, it is even more difficult to seek a strict delimitation of the facts. Thus, the litigation submitted to the Court cannot be examined piecemeal or trying to exclude those contextual elements that could inform the judge about the historical, material, temporal and spatial circumstances in which the alleged facts took place. Nor is it necessary to distinguish or categorize each alleged fact, because the dispute submitted can only be settled based on an assessment of all the circumstances described.

51. Consequently, the Court is not attempting to rule on the global phenomenon of paramilitarism, or judge the different circumstances included in that context. [FN53] Furthermore, it is not called on to rule on the different facts alleged by the State and the representatives, or on public policies adopted at different times to counter such diverse and complex aspects of the generalized violence during the 1980s and 1990s in Colombia. The Court takes these facts into consideration as part of the arguments of the parties within their litigation. With regard to the normative that the State is attempting to exclude from this case, it is evident that "[t]he purpose of the Court's contentious jurisdiction is not to review domestic laws in abstract; rather it is exercised in order to decide specific cases in which it is alleged that an act [or omission] of the State, executed against specific individuals, is contrary to the Convention." [FN54]

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[FN53] Cf. Case of the La Rochela Massacre v. Colombia, supra note 16, para. 32.
[FN54] Gangaram Panday v. Suriname. Preliminary objections. Judgment of December 4, 1991. Series C No. 12, para. 50; Usón Ramírez v. Venezuela. Preliminary objection, merits, reparations and costs. Judgment of November 20, 2009. Series C No. 207, para. 154, and Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs. Judgment of June 30, 2009. Series C No. 197, para. 130, footnote 158. See also, International responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 American

Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 48.

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52. Hence, at the merits and possible reparations stage of the case, the Court will merely observe, in keeping with the arguments of the parties, whether specific procedures or acts that occurred based on those laws and mechanisms have had an impact on the alleged violations of the Convention, in particular with regard to the State's obligation to investigate the facts effectively. [FN55] In these terms, the Court will assess the evidence and proceed to adjudicate upon the disputed elements of the merits of the case.

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[FN55] The State concurred with this when, on alleging that issues relating to demobilization, the Justice and Peace Law and Law 1312 exceeded the purposes of this case, it affirmed that the Court "may examine those aspects that directly refer to the criminal investigations into the facts that have been conducted in Colombia, exclusively in relation to the rights to judicial guarantees and judicial protection." Cf. final written arguments of the State, para. 81.

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IV.2. EVIDENCE

53. Based on the provisions of Articles 46, 47 and 49 of the Rules of Procedure, as well as on the its case law concerning evidence and its assessment, [FN56] the Court will proceed to examine and assess the probative elements forwarded by the parties at different procedural opportunities, the statements provided by affidavit, and those received at the public hearing, together with the helpful evidence requested by the Court. To this end, the Court will abide by the principles of sound judicial discretion, within the corresponding normative framework. [FN57]

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[FN56] Cf. Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, reparations and costs. Judgment of August 31, 2001. Series C No. 79, para. 86; the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and costs. Judgment of May 25, 2001. Series C No. 76, para. 50, and Bámaca Velásquez v. Guatemala. Reparations and costs. Judgment of February 22, 2002. Series C No. 91, para. 15. See also Miguel Castro Castro Prison v. Peru. Merits, reparations and costs. Judgment of November 25, 2006. Series C No. 160, paras. 183 and 184; Case of Almonacid Arellano et al. v. Chile, supra note 38, paras. 67, 68 and 69, and Servellón García et al. v. Honduras. Merits, reparations and costs. Judgment of September 21, 2006. Series C No. 152, para. 34.

[FN57] Cf. The "White Van" (Paniagua Morales et al.) v. Guatemala. Merits. Judgment of March 8, 1998. Series C No. 37, para. 76; the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs. Judgment of November 24, 2009. Series C No. 211, para. 55, and Case of Radilla Pacheco v. Mexico, supra note 24, para. 67.

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A) Documentary, testimonial and expert evidence

54. The Order of the President of December 22, 2009, (supra para. 8) required that statements made before notary public (affidavits) be received from the following presumed victims and expert witnesses:

(1) Claudia Girón Ortíz, presumed victim, who testified on alleged acts of harassment, threats and attacks against her father-in-law; the facts that occurred on August 9, 1994; the different measures taken by the next of kin immediately after his death; the attitude and response of the authorities to these measures; the conduct of the investigations in the domestic sphere and the obstacles faced by the family of Mr. Cepeda Vargas in their search for justice; the exile that she underwent, together with her direct family, and the consequences that these facts have had on her personal life and on that of her family;
(2) María Cepeda Castro, presumed victim, who testified on alleged acts of harassment, threats and attacks against her father; the facts that occurred on August 9, 1994; the different measures taken by the family immediately after his death; the attitude and response of the authorities to these measures; the conduct of the investigations in the domestic sphere and the obstacles faced by the family of Mr. Cepeda Vargas in their search for justice; the exile that she is still undergoing together with her direct family, and the consequences that these facts have had on her personal life and on that of her family;
(3) Eduardo Cifuentes Muñoz, expert witness proposed by the Commission and the representatives who provided information on the context, and on the death of Manuel Cepeda Vargas and the alleged relationship of this with his role of leader of the UP political party, member of the PCC Central Committee, and Senator of the Republic, within the framework of an alleged pattern of violence and stigmatization against members of the Patriotic Union and the PCC;
(4) Anders Johnson, expert witness proposed by the representatives, who provided information on the alleged significance and relationship of the death of Manuel Cepeda Vargas with his role of UP member of Parliament, within the framework of an alleged pattern of violence against members of that party and of the PCC, as well as on possible measures of restitution and reparation of a political nature in this case;
(5) Carlos Beristain, expert witness proposed by the representatives, who provided information on the psycho-social problems of the alleged victims as a result of the facts of the instant case, and on possible reparations with regard to this harm;
(6) Roberto Garretón, expert witness proposed by the representatives, who provided information on the determination, scope and characteristics of the systematic and generalized patterns of human rights violations and of crimes against humanity;
(7) Fernando Quinché Ramírez, expert witness proposed by the representatives, who provided information on the alleged violation of political rights, the right to associate for political reasons, and the right of the electorate to elect a candidate of their choice in this case from a legal and constitutional perspective, and on possible reparations to redress the harm to these rights, and
(8) Francisco Javier Dondé Matute, expert witness proposed by the State, who provided information on the concept of crimes against humanity, their nature, and the possibility of attributing this type of crime to a State.

55. In addition, at a public hearing, the Court heard the statements of the following presumed victims, witnesses [FN58] and expert witnesses: [FN59]

(1) Hernan Motta Motta, witness proposed by the Commission and the representatives, who testified on the context in which the facts of this case occurred; the supposed "coup de grâce plan"; the complaints that Senator Cepeda Vargas had filed before the authorities owing to the presumed danger he faced, and the attention that the said authorities paid to these complaints;
(2) Jaime Caicedo, witness proposed by the Commission and the representatives, who testified on the activities, political life, and work as a journalist of Senator Cepeda Vargas; his role as leader of the UP, and the threats, harassment and pressure that he faced throughout his public life, as well as on the alleged situation faced by members of the UP and, particularly its leaders, at the time of the facts;
(3) María Estella Cepeda Vargas, presumed victim, who testified on the work of here brother, Senator Manuel Cepeda Vargas, as a politician and as a journalist, including his work at the weekly publication Voz, and in the PCC and UP parties; her relationship with him, and the impact of his death for her and the other members of the family;
(4) Iván Cepeda Castro, presumed victim, who testified on the work in politics and journalism of his father, Senator Cepeda Vargas; the Senator's family life and the impact of the supposed threats on his family; Senator Cepeda's death and its impact on himself and his family; the steps he took to obtain justice in this case, and the impact on his life project of Manuel Cepeda's death and the alleged threats and harassment that he received subsequently;
5) Michael Reed Hurtado, expert witness proposed by the representatives, who provided information on the process for the demobilization of the paramilitary groups in Colombia, from a legal and practical perspective, and on the effect of this process on the investigation of human rights violations, including this case, and
6) Luis González de León, expert witness proposed by the State, who provided information on the process for the demobilization of the paramilitary groups in Colombia, from a legal and practical perspective, on the implementation of the Justice and Peace Law, the supposed guarantees for the rights of the victims to the truth, justice and reparation under the said process, and the measures that have been taken to guarantee the rights of the victims in the case of paramilitaries demobilized and extradited to the United States of America. On ending his statement, Mr. González de León delivered his expert opinion in writing.

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[FN58] As required in the said order of the President, Fernando Brito was admitted as a witness offered by the State but, on January 18, 2010, the State advised that "owing to circumstances beyond his control, he was unable to appear at the hearing."
[FN59] Cf. Order issued by the President of the Court on December 22, 2009, first, second, third, fourth and fifth operative paragraphs.

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B) Assessment of the evidence

56. In this case, as in others, the Court accepts the probative value of the documents presented by the parties at the proper procedural opportunity that were not contested or opposed, and the authenticity of which was not questioned. [FN60]

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[FN60] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 36, para. 140; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 58, and Case of Radilla Pacheco v. Mexico, supra note 24, para. 70.

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57. The State asked the Court not to accept the opinion of expert witness Federico Andreu Guzmán because it considered that the purpose of the expert opinion was entirely outside the case, because it referred to a context related to facts prior to the Court's temporal jurisdiction and it reached conclusions about the violence in Colombia at a time that did not correspond to this case. If this was not possible, the State requested that the military manuals mentioned in the said opinion not be taking into account because, inter alia, it had not been sent a copy of the manuals in order to verify their authenticity. In this regard, in relation to the purpose established for the instant case (supra paras. 49 to 52), the Court considers that the State's observations refer to matters of probative value and not to the admissibility of the evidence. [FN61] Therefore, in application of the provisions of 46(1) of its Rules of Procedure, the Court incorporates into the body of evidence in the instant case the expert opinion of Federico Andreu Guzmán, comprising the opinion give in the case of the Mapiripán Massacre v. Colombia and the complementary opinion, and will assess it, taking into account the objections raised by the State. Moreover, regarding the State's objections to the expert opinion of Michael Reed Hurtado, since they relate to the probative value of the opinion, they will be assessed as pertinent when the Court examines the merits of the dispute.

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[FN61] Cf. Case of Reverón Trujillo v. Venezuela, supra note 54, para. 43.

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58. The State contested the incorporation of the documents forwarded by the representatives together with their final arguments. [FN62] The Court notes that these documents consist of laws, documents from criminal cases relating to proceedings before the Constitutional Court, letters and communications, newspaper articles, and diverse types of information. Although, in principle, their presentation was time-barred, the Court incorporates the documents relating to the criminal investigation of the case, pursuant to Article 47(1) of its Rules of Procedure. Regarding Law 1312 of 2009, and the laws concerning the imprisonment of members of the Army, since they are public knowledge and useful for deciding the instant case, they are incorporated. Furthermore, certain documents provided by the representatives [FN63] were not intended to prove specific facts, but to found legal arguments, so they are not considered to be true probative elements; rather, they will be taken into account by the Court as part of the representatives' arguments. Lastly, the Court finds that the newspaper articles that refer to exchanges between Iván Cepeda and José Obdulio Gaviria do not form part of the purpose of the case, so they will not be incorporated into the body of evidence, nor will the application for protection of constitutional rights (acción de tutela) filed by the former in that regard. [FN64]

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[FN62] In particular, it contested the inclusion of the attachments that were not cited in the brief and underscored that the presentation of these documents was time-barred. It also indicated that attachments 15 and 16 (newspaper articles) "do not constitute supervening evidence and there was no serious impediment to their prior presentation"; and that attachment 19 (a reference table) was not a piece of evidence or an official document, but was prepared by the representatives and should be understood as such in the proceedings.
[FN63] The following attachments: "Chart 1. Organization chart of presumed participants in the extrajudicial execution of Manuel Cepeda. Responsible by act and by omission"; "Table 1. Legal framework applicable to the military demobilization process"; "Constitutional Court of Colombia, Judgment T-1319 of 2001, Presiding Judge, Rodrigo Uprimmy Yepes"; "Constitutional Court of Colombia, Judgment C-265 of 1994, Presiding Judge, Alejandro Martínez Caballero", and "List of cases of members of the Armed Forces interned in military facilities" (evidence file, tome XXII, attachments 1, 2, 8, 9 and 19 to the brief with final arguments of the representatives, folios 9052, 9054 to 9059, 9103 to 9132, 9134 to 9160 and 9207 to 9211).
[FN64] Cf. evidence file, tome XXII, attachments 7, 14, 16 and 17 to the final arguments brief of the representatives, folios 9080 to 9101, 9189 to 9190, 9195 to 9196, 9198 to 9202 and 9204 to 9205.
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59. Regarding the documentation forwarded by the State as helpful evidence (supra para. 12), the Court decides to admit it based on its usefulness, in application of Article 47(1) of the Rules of Procedure, bearing in mind the observations of the parties. With regard to the documents from the file of Investigation No. 329 that is being processed before the office of the 26th Special Prosecutor of the Human Rights Unit, also transmitted by the State as helpful evidence, initially, the State alleged the confidential nature of the investigation in order not to send this documentation; nevertheless, it was ultimately forwarded. This type of restriction can be respected in domestic proceedings, because the dissemination of certain information at a preliminary stage of the investigations could obstruct them or prejudice the individuals involved. However, for the effects of the Court's international jurisdiction, it is the State that controls the means to clarify facts that took place on its territory [FN65] so that, as the parties were advised opportunely, the Court respects the due confidentiality of this documentation and incorporates it into the body of evidence.

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[FN65] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 36, para. 136; Gómez Palomino v. Peru. Merits, reparations and costs. Judgment of November 22, 2005. Series C No. 136, para. 106, and Yatama v. Nicaragua. Preliminary objections, merits, reparations and costs. Judgment of June 23, 2005. Series C No. 127, para. 134. See also, Case of González et al. ("Campo Algodonero") v. Mexico, Order of the Inter-American Court of January 19, 2009, considering paragraph 59, and Case of Radilla Pacheco v. Mexico, supra note 24, paras. 91 and 92.
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60. 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 declarations by State officials, or when they corroborate aspects related to the case. [FN66]

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[FN66] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 36, para. 146; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 67, and Case of Radilla Pacheco v. Mexico, supra note 24, para. 77.

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61. The State asked the Court, "as a general rule," not to admit as evidence any documents that were not directly related to aspects of this case that subsist as points in litigation following its acknowledgement of responsibility. The Court takes note of this observation of the State, in relation to its prior considerations set out in the preceding chapter (supra paras. 50 to 52); thus the relevance or probative value of the evidence provided by the parties should correspond to the substantial determination of the scope of the alleged violations of the Convention.

62. The State asked the Court not to consider "as valid evidence within the proceedings" a series of documents attached to the application regarding alleged accusations made by Mr. Cepeda Vargas and other leaders of the UP and the PCC, as well as by international organizations, before various national and international entities, [FN67] because the validity of a document depends on its authenticity and that there is proof that it has been effectively received by the entity addressed. In addition, it objected to a letter addressed to the Ministry of Defense [FN68] because it was undated. The Court considers that an acknowledgement of receipt does not constitute a formality that necessarily limits the validity of the document, so that its absence should not automatically imply the inadmissibility of the document in question. In this regard, these documents will be assessed together with the body of evidence, in relation to the fact they are intended to prove, in light of the State's acknowledgement of international responsibility and considering the decisions taken by the domestic authorities.

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[FN67] Namely: complaint of October 26, 1992, addressed to the Attorney General of the Nation by UP leaders; letter from the UP leaders to Amnesty International of July 27, 1993; request for protection addressed to the Minister of the Interior, of November 9, 1993; letter to the Attorney General of the Nation, Carlos Arrieta, dated October 26, 1992; letter to the Director of the Administrative Department of Security (DAS) of November 20, 1992; letter to the Minister of Defense, Rafael Pardo Rueda, undated; letter addressed to the Minister of the Interior by Human Rights Watch, dated November 6, 1999, and letter addressed to the President of the Republic by Amnesty International in November 1999.

[FN68] Cf. letter from the Director of the weekly publication Voz to the Minister of Defense dated November 26, 1993 (evidence file, tome III, attachment 23 to the application, folios 1403 to 1404).

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63. Regarding the State's clarifications concerning attachments 34 and 36 of the answer to the application, [FN69] the Court will take them into account and consider them when assessing

the evidence. Finally, as regards the observations of the State on attachments 146, 160, 162, and 165 of the brief with pleadings, motions and evidence, the Court observes that all these documents were issued by State authorities, so that the State had full access to them and, in any event, was able to submit the missing copies to the Court. Likewise, the Court considers that the State had access to attachment 27 to the application, given that this document was included in the criminal investigations.

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[FN69] Cf. letter from Human Rights Watch addressed to the Ministry of the Interior, dated November 6, 1999 (evidence file, tome IV, attachment 36 to the application, folio 1983).

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64. The Court will assess the statements and opinions provided by the witnesses and expert witnesses at the public hearing and in sworn statements, when they are in keeping with the purpose defined by the President in the Order requiring them and the object of the instant case, bearing in mind the observations of the parties.

65. The statements of presumed victims are useful insofar as they can provide additional information on the violations and their consequences; [FN70] but because they have a direct interest in this case, their statements will be assessed together with all the evidence in the proceedings. [FN71]

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[FN70] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala, supra note 56, para. 70; Case of Radilla Pacheco v. Mexico, supra note 24, para. 93, and Case of Perozo et al. v. Venezuela, supra note 49, para. 103.

[FN71] Cf. Loayza Tamayo v. Peru. Merits. Judgment of September 17, 1997. Series C No. 33, para. 43; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 63, and Case of Radilla Pacheco v. Mexico, supra note 24, para. 93.

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66. Having made a formal examination of the probative elements in the file of the instant case, the Court will proceed to examine the alleged violations of the American Convention, based on the facts that it finds have been proved, as well as on the arguments of the parties. To this end, it will abide by the principles of sound judicial discretion, within the corresponding normative framework. [FN72] In these terms, international courts have broad faculties to consider and assess the evidence, in accordance with the rules of logic and based on experience, without having to subject themselves to the rules of evidence assessment. [FN73] In this regard, circumstantial evidence, indications and presumptions may be used, provided they lead to consistent conclusions regarding the facts. [FN74]

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[FN72] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala, supra note 57, para. 76; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 55, and Case of Radilla Pacheco v. Mexico, supra note 24, para. 67.

[FN73] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala, Reparations and costs, supra note 56, para. 51; Case of Anzualdo Castro v. Peru, supra note 36, para. 29, and Case of Perozo et al. v. Venezuela, supra note 49, para. 112.
[FN74] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 36, Case of Anzualdo Castro v. Peru, supra note 36, para. 38, and Case of Escher et al. v. Brazil, supra note 25, para. 127.
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IV.3. THE RIGHTS TO LIFE AND TO PERSONAL INTEGRITY OF SENATOR MANUEL CEPEDA VARGAS (ARTICLES 4(1) AND 5(1) IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS ESTABLISHED IN ARTICLE 1(1)), OF THE AMERICAN CONVENTION)

67. The State acknowledged its international responsibility for the violation of Senator Cepeda's right to life, by act and omission, because the perpetrators were two Army sergeants, and because it had failed to adopt the necessary measures to protect him from the danger he faced (supra para. 13).

68. According to the Commission and the representatives, the dispute concerning the violation of the right to life subsists in relation to the following elements: the alleged existence of a systematic pattern of violence against members of the UP, in the context of which the extrajudicial execution of Senator Cepeda Vargas took place; the alleged responsibility of State agents in the authorship of the extrajudicial execution; the supposed operational coordination between members of the Army and of paramilitary groups to perpetrate the murder, and the State's responsibility for the participation of members of these groups in the execution; the supposed existence of the so-called "coup de grâce" plan, the purpose of which was to exterminate the leaders of the UP, including Senator Cepeda Vargas; the alleged failure to comply with the obligation to conduct an appropriate investigation into a complex crime such as the one of which Senator Cepeda Vargas was a victim; the alleged violation of Articles 41 and 44 of the Convention in relation to the right to life, since Senator Cepeda Vargas was a beneficiary of precautionary measures at the time of his murder, and the intent to characterize this violation of the right to life as a crime against humanity.

69. Finally, the State acknowledged the violation of the right to personal integrity of Mr. Cepeda Vargas (supra para. 13), and the Commission and the representatives have not referred specifically to this violation. Consequently, the Court finds that the dispute has ceased in this regard, without prejudice to noting the facts that motivated this in order to determine other aspects of the violations.

70. Based on the subsisting dispute, the Court finds it pertinent to analyze the scope and dimensions of the general obligations to respect and to ensure the rights to personal integrity and to life of Senator Cepeda Vargas, from the perspective of the obligations of prevention, protection and investigation in relation to these rights.

A. THE OBLIGATIONS OF PREVENTION AND PROTECTION IN RELATION TO THE RIGHT TO LIFE OF SENATOR CEPEDA VARGAS

71. It is uncontested that Senator Manuel Cepeda Vargas was a political leader and member of the UP and PCC, and that he was also a social communicator who tended towards critical opposition. He was a member of the directorate of the said parties and was elected Representative to the Chamber of Congress for the period 1991-1994, and Senator of the Republic for the period 1994-1998. As a social communicator, Senator Cepeda sat on the Board and helped edit the weekly publication Voz, for which he wrote a political column for several years.

72. On August 9, 1994, at around 9 a.m., Senator Manuel Cepeda Vargas was murdered en route from his home to the Congress of the Republic. The Senator's car was intercepted and the perpetrators fired several shots that killed him instantly. His escort reacted immediately firing his revolver several times unsuccessfully. Subsequently, the murderers abandoned their vehicle about a kilometer and a half from the site. At least two sergeants of the Colombian National Army took part in the execution and have been sentenced and convicted for the facts (infra para. 143). Other members of the Army and of paramilitary groups have been investigated although, to date, none of them has been found responsible (infra paras. 136 and 141 to 158).

73. The parties to this case have acknowledged that the motive for the murder of Senator Cepeda Vargas was his political activism in the opposition, which he exercised as a leader of the UP and the PCC, in his parliamentary activities as a Senator of the Republic, and in his publications as a social communicator. [FN75]

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[FN75] In the judgment of the Third Criminal Court of the Santafé de Bogotá Specialized Circuit delivering a guilty verdict, the judge stated: "[i]n this regard, the question that defines the matter is: why was Mr. Cepeda Vargas murdered? And the body of evidence provides us with the answer, because the accused have described […] how the act was in response to the fact that he was a "revolutionary"; moreover, it is well known that the deceased was the UP Senator and, as if this was not enough, his ideology, criticisms and accusations appeared in the publication, Voz." Cf. Judgment handed down by the Third Criminal Court of the Santafé de Bogotá Specialized Circuit, in case No. 5393-3 on December 16, 1999 (evidence file, tome IV, attachment 31 to the application, folio 1763).

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A.1 General situation of risk faced by Manuel Cepeda

74. According to the Ombudsman, the Patriotic Union was constituted as a political organization on May 28, 1985, as a result of a peace process between the National Secretariat of the Colombian Revolutionary Armed Forces (hereinafter the "FARC") and the Government of President Belisario Betancur Cuartas, [FN76] resulting in a pact known as the "Uribe Agreements" signed on March 28, 1984. [FN77] As part of the peace agreement, the National Government undertook to grant the necessary guarantees for the UP to be able to function under the same conditions as the other political parties. [FN78]

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[FN76] Cf. Report of the Ombudsman to the Government, the Congress and the Attorney General of the Nation entitled "Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad" (Report on cases of the murder of members of the Patriotic Union party and the Hope, Peace and Freedom party] of October 2002 (evidence file, tome III, attachment 1 to the application, folios 1213 to 1214).
[FN77] Cf. Opinion provided before notary public (affidavit) by expert witness Eduardo Cifuentes Muñoz on January 7, 2010 (evidence file, tome XX, folios 8341 to 8381).
[FN78] Cf. Report of the Ombudsman entitled "Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad," supra note 76, folio 1214.

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75. The UP participated in the elections for the first time in 1986, with the PCC. [FN79] From 1986 to 1994, the UP obtained significant representation in the Senate and the Chamber of Representatives, in municipal town councils and mayors' offices, and in the 1990 National Constituent Assembly. [FN80] In the 1994 elections, Manuel Cepeda Vargas was the only and last senator elected by a national constituency in representation of this political movement, [FN81] "a position that he assumed in a predominantly bipartisan chamber (91%)." [FN82]

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[FN79] Cf. Report of the Ombudsman entitled "Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad," supra note 76, folios 1214 to 1215.
[FN80] The Ombudsman indicated that, in the 1986 elections, the UP obtained more votes than the Colombian left had ever received, resulting in the election of five senators, nine representatives to the Chamber, 14 departmental deputies and 241 counselors, and the appointment of 23 municipal mayors. In the electoral period from 1988 to 1990, the UP obtained the election of 15 mayors and 13 deputies. In the period from 1990 to 1992, the UP obtained one senator with his substitute and four representatives to the Chamber with their substitutes and, in the election for the 1990 National Constituent Assembly it obtained two members, one its own and another by convergence. In 1991, one senator and three representatives to the Chamber were elected for the UP. Cf. Report of the Ombudsman "Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad," supra note 76, folios 1214 to 1216.
[FN81] The State alleged that Mr. Cepeda Vargas was elected in 1994 as a Senator for the PCC and not for the UP, based on a certification stating this issued by the National Electoral Council on June 15, 1994. Cf. certification issued by the National Electoral Council in favor of Manuel Cepeda Vargas on June 15, 1994 (evidence file, tome III, attachment 2 to the application, folio 1303). However, in general, the different State organs and authorities, as well as the parties to these proceedings, recognize that the Senator was the representative of the UP and a member of the PCC. Cf. Decision issued by the Santafé de Bogotá Second District Prosecutor's office under file No. 143-6444/96 in 1999 (evidence file, tome III, attachment 29 to the application, folios, 1473 and 1482); Indictment issued by the National Human Rights Unit of the office of the Prosecutor General of the Nation in investigation No. 172 on October 20, 1997 (evidence file, tome III, attachment 30 to the application, folio 1534) and judgment handed down by the Third Criminal Court of the Santafé de Bogotá Specialized Circuit in Investigation No. 5393-3 on December 16, 1999, supra note 75, folio 1735.
[FN82] Opinion provided before notary public (affidavit) by expert witness Eduardo Cifuentes Muñoz, supra note 77, folio 8358.

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76. The Colombian Ombudsman stated that "there is a direct relationship between the emergence, activity of and electoral support for the Patriotic Union and the murder of its activists and leaders in regions where this party's presence was interpreted as a danger to the preservation of the privileges of certain groups." [FN83] Thus, after 1985, several of its leaders and representatives were victims of murder or attempts on their life, including the presidential candidates, Jaime Pardo Leal and Bernardo Jaramillo Ossa, in addition to senators, representatives to the Chamber, mayors and counselors. [FN84]

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[FN83] Report of the Ombudsman entitled "Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad", supra note 76, folio 1290. Similarly, the Inter-American Commission indicated that "[i]n the first five years of its existence (1985-1989), the violence was characterized by being selective and relatively concentrated in the regions with the greatest political and electoral success." Cf. Inter-American Commission on Human Rights, Second report on the situation of human rights in Colombia, October 14, 1993 (evidence file, tome VII, attachment 91 to the brief with pleadings, motions and evidence, folio 3552). Also, the expert witness Andreu Guzmán affirmed that "[n]umerous massacres were perpetrated in regions and municipalities where the Patriotic Union (UP) could obtain significant results in the 1986 and 1988 elections or in those where it did obtain such results. In the latter municipalities, the purpose of the massacres was to modify the electoral behavior of the population and to punish it for supporting the UP candidates. Paramilitary groups, such as Muerte a Revolucionarios del Nordeste in the case of the massacre of Segovia (Antioquia, November 11, 1988), claimed to have perpetrated these massacres, although the judicial investigations or those of the Attorney General's office revealed subsequently that, members of the Army in coordination with groups of armed civilians organized by the Armed Forces, operated behind these paramilitary symbols." Cf. Opinion provided before notary public (affidavit) by expert witness Federico Andreu Guzmán on January 8, 2010 (evidence file, tome XX, folio 8324).

[FN84] Cf. report of the Ombudsman for the Government entitled "Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad", supra note 76, folios 1215 to 1216 and 1282. Furthermore, the expert witness Cifuentes affirmed that "[t]he acts of violence carried out selectively against the UP representatives were accompanied by crimes perpetrated against members of the communities or social sectors that belonged to or supported its political project in the different regions of the country. Abuses were committed in order to repress and provide a lesson. Using this mechanism, a generalized feeling of fear and terror was instilled that was able to progressively reduce the popular and electoral support for the UP, first in the areas where it received its main support and, subsequently, at the national level." Opinion provided before notary public (affidavit) by expert witness Eduardo Cifuentes Muñoz, supra note 77, folios 8349 to 8350.

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77. Available sources do not give irrefutable numbers of victims of the violence against the UP. In 1995, the United Nations Rapporteurs on torture and extrajudicial executions indicated that, since 1985, the UP had has lost "more than 2,000 members, including one member of the Senate, three deputies of the House of Representatives, and a number of mayors and municipal

counselors, as victims of politically motivated killings." [FN85] In 1998, the United Nations High Commissioner for Human Rights stated that, "Colombian political activity is characterized by a high degree of intolerance towards opposition parties and movements. The most striking example is the case of the Patriotic Union, whose activists have been the victims of systematic executions[, … with] more than 1,500 members […] assassinated since it was formed in 1985, including elected officials and almost all its representatives to Congress. Others have had to go into exile and abandon their political posts." [FN86] In 1999, the Inter-American Commission stated that "[a]lmost all the members of this party elected to Congress and other important posts have been assassinated." [FN87] A document prepared in 2008 by the Presidential Human Rights Program of the Vice President of the Republic affirmed that, over the period 1984 to 1993, 540 murders corresponded to members of the UP. This "reveals the magnitude of the victimization of the Patriotic Union (UP) in relation to the total number of fatal and non-fatal victims of political violence between 1984 and 1994" because, on average, UP victims represent 40% of the total; although in 1986 and 1987 they represented almost 60% of all victims. [FN88]

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[FN85] United Nations, Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, E/CN.4/1995/111, 16 January 1995 (evidence file, tome VII, attachment 86 to the brief with pleadings, motions and evidence, folio 3342).

[FN86] United Nations, Report of the United Nations High Commissioner for Human Rights on the Office in Colombia, E/CN.4/1998/16, of March 9, 1998 (evidence file, tome VII, attachment 84 to the brief with pleadings, motions and evidence, folio 3331).

[FN87] Inter-American Commission on Human Rights, Third report on the situation of human rights in Colombia, of February 26, 1999 (evidence file, tome VI, attachment 68 to the brief with pleadings, motions and evidence, folio 2905).

[FN88] Cf. National Administrative Department of Statistics (DANE), "Base de datos sobre conflicto y violencia política" [Database on political violence and conflict], DANE data processed by CERAC, Bogotá, January 31, 2008 (evidence file, tome XV, attachment 12 to the brief in answer to the application, folio 6554). Similarly, the expert witness Eduardo Cifuentes affirmed that "according to the records, 40% of all the reported cases of political violence in the country over the period between 1984 and 1994 (which includes all the legally recognized political parties and movements, and the social sectors affected by the violence) related to victimization of the UP; however, in 1986 and 1987 this reached 60%." Expert opinion provided by affidavit by expert witness Eduardo Cifuentes Muñoz on January 7, 2010 (evidence file, tome XX, folio 8351).

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78. The perpetrators of the crimes belonged to different groups, including the most important, the paramilitary groups, but State agents also allegedly took part in them directly and indirectly. [FN89] The data provided by the State indicates that State agents (principally members of the Army and the Police) occupied second place among those responsible for the violence against the UP. [FN90] The Ombudsman observed that, when they could not confront the guerrilla directly, paramilitary or self-defense groups had converted the UP "into the visible part and the military objective of their strategy" and, also, that "in isolated cases, there has been complicity between members of the armed forces and paramilitary groups or hired gunmen; a phenomenon

that reveals the intolerance or the generally erroneous understanding of their political labor." [FN91]

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[FN89] Cf. report of the Ombudsman entitled "Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad," supra note 76, folio 1218.
[FN90] Cf. National Administrative Department of Statistics (DANE), "Base de datos sobre conflicto y violencia política", supra note 88, folio 6554.
[FN91] Cf. report of the Ombudsman entitled "Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad," supra note 76, folio 1290. In addition, the Ombudsman indicated that, a review of those presumably implicated by the investigations shows that members of law enforcement bodies (the Army and the Police) occupied the second place in these proceedings. Those classified as "unknown" occupied the first place.

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79. In this regard, the State indicated that "[t]he members of the different Colombian political parties suffered as a result of the generalized violence in the 1980s," so that the UP and the PCC "were not the only victims of the political violence." [FN92] The State alleged also that, owing to the many motives, actors and victims, as well as the ideological differences within the UP, the factors that caused the violence against it were diverse; consequently, the State's actions of protection were designed to eliminate the most important sources of danger for the UP; namely paramilitary groups and drug trafficking.

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[FN92] It indicated that, from 1984 to 1993, the national media had recorded the perpetration of 1,005 crimes, mostly murders, against individuals belonging to political parties other than the UP and the PCC (evidence file, tome II, appendix III to the application, folios 892 to 893). In addition, the State affirmed that some members of the UP were victims of the FARC (evidence file, tome II, appendix III to the application, folio 897).

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80. However, the Constitutional Court of Colombia has considered that the State failed to adopt "sufficient measures to guarantee the special protection [of the UP] as a minority political party, systematically decimated despite being officially recognized." [FN93] In addition, it indicated that "[m]erely the number of deaths and disappearances of […] activists or sympathizers [of the UP] from 1985 to 1992 […] reveals clearly the objective dimension of the political persecution unleashed against it […]." [FN94] Similarly, in his "Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad," which the Constitutional Court asked him to prepare, the Ombudsman stated that the "wave of violence [against the UP] reveals evident symptoms of political intolerance, absence of electoral guarantees, and systematic extermination of UP leaders and activists […]"; consequently, he affirmed that "the empire of impunity reign[ed] in the face of the violent extermination of activists of this democratic movement." [FN95] Furthermore, the office of the Attorney General of the Nation indicated that "the leaders of the leftist political party [the UP], have been receiving death threats for a long time in the course of the so-called 'dirty war' waged against

this political movement since its creation by sectors of the country's extreme right, that have not been fully identified […]." [FN96]

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[FN93] Cf. Judgment delivered by the Second Review Chamber of the Constitutional Court in case No. T-439 on July 2, 1992, p. 14 (evidence file, tome III, attachment 11 to the application, folio 1367).
[FN94] Cf. Judgment delivered by the Second Review Chamber of the Constitutional Court in case No. T-439, supra note 93, folio 1367.
[FN95] Cf. report of the Ombudsman entitled "Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad," supra note 76, folios 1215 and 1217. The Report concluded by citing a newspaper article entitled: "La impunidad: asesina de la UP" [Impunity: the UP's murderer].
[FN96] Evaluation Report by the Second District Attorney for Santafé de Bogotá, Disciplinary procedure No. 143-6444, of July 11, 1997 (evidence file, tome III, attachment 28 to the application, folio 1421).
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81. The violence against the UP has been characterized as systematic by both national and international organizations, given the intent to attack and eliminate its representatives, members and even sympathizers. The United Nations High Commissioner for Human Rights referred to the executions perpetrated against the UP as "systematic"; [FN97] while the Ombudsman called the violence against this party "systematized extermination"; [FN98] the Constitutional Court of Colombia called it "progressive elimination"; [FN99] the Inter-American Commission "massive and systematic assassination"; [FN100] the office of the Attorney General of the Nation referred to "systematic extermination," [FN101] and the National Commission for Reparation and Reconciliation to "extermination." [FN102]

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[FN97] Report of the United Nations High Commissioner for Human Rights on the Office in Colombia, supra note 86, folio 3331.
[FN98] Report of the Ombudsman entitled "Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad," supra note 76, folio 1215.
[FN99] Judgment delivered by the Second Review Chamber of the Constitutional Court in case No. T-439, supra note 93, folio 1367.
[FN100] Inter-American Commission on Human Rights, Second report on the situation of human rights in Colombia, supra note 83, folio 3551. The Commission presented the violations against the UP as an example of "acts of genocide" in Colombia.
[FN101] Opinion of the office of the Attorney General of the Republic on the legality of the second instance judgment in relation to investigation No. 18,428, dated May 7, 2004 (evidence file, tome IV, attachment 32 to the application, folio 1802).
[FN102] National Reparation and Reconciliation Commission, first report on the historical memory entitled "Trujillo, una tragedia que no cesa" [Trujillo, an ongoing tragedy], Editorial Planeta, Bogotá, Colombia, September 2008 (evidence file, tome XII, attachment 184 to the brief with pleadings, motions and evidence, folio 5564).
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82. According to the Ombudsman, the failure of the National Government and the FARC to abide by the peace agreements [FN103] was decisive in generating the violence against the UP, inasmuch as it was not granted the necessary guarantees and security to enable it to carry out its political activities. [FN104] Above all, the violence was related to the identification of the UP with the FARC. [FN105]

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[FN103] Expert witness Eduardo Cifuentes stated that "[i]n 1986, when the new President of the Republic, Virgilio Barco Vargas, took office, there was an evident retreat from compliance with the agreements made under the peace process between the FARC-EP and the National Government. There was, on the one hand, an absence of progress in the implementation of structural changes in the institutional framework, except for the approval of the law that allowed mayors to be elected by popular vote and, on the other, FARC violations of the cease fire and its military expansion over a very short span of time." Opinion provided before notary public (affidavit) by expert witness Eduardo Cifuentes Muñoz, supra note 77, folio 8346.

[FN104] Cf. Report of the Ombudsman entitled "Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad," supra note 76, folios 1217 to 1218. Similarly, the first report of the National Reparation and Reconciliation Commission states that "[t]he reticence of some national political, ecclesiastical and trade union sectors towards the Betancur peace process, together with the opposition of local and regional authorities as well as some sectors of the Army and the Police to the Patriotic Union's political progress, undermined this process. These tensions were revealed by the failed attempt to grant legality to the most political sectors of the armed groups and the Communist Party, which resulted in the massacre of many of their members." First report on the historical memory entitled "Trujillo, una tragedia que no cesa", supra note 102, folio 5563.

[FN105] Cf. First report on the historical memory entitled "Trujillo, una tragedia que no cesa", supra note 102, folio 5564. The report indicates that "[t]his extermination [of the UP], starting in 1986, was based on the premise that Patriotic Union was the political arm of the FARC in order to legitimate a counterinsurgency operation that went beyond the combatants and extended to the political parties and movements that were considered to have links to the guerrilla." Also, the Constitutional Court observed that "[t]he formal or simply word-of-mouth connection with the Patriotic Union, in the context of the ideological and political persecution unleashed against its members or those who sympathized with it, is a determinant factor in the case." Judgment delivered by the Second Review Chamber of the Constitutional Court in case No. T-439, supra note 93, folio 1368. Expert witnesses Andreu and Cifuentes were of the same opinion. Cf. Opinion provided before notary public (affidavit) by expert witness Federico Andreu Guzmán, supra note 83, folio 8323 and opinion provided before notary public (affidavit) by expert witness Eduardo Cifuentes Muñoz, supra note 77, folio 8354.

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83. In this regard, the State alleged the existence of several different public versions issuing from different sectors of the country ("the media, […] journalists, authors, professors, non-governmental organizations, and the illegal armed groups themselves"), regarding the origins and actions of the UP, to which Senator Cepeda Vargas belonged. The State affirmed that certain sectors of the population believed that the PCC was "a party that was not exclusively dedicated

to political activities, but rather a party that carried out [this activity] in order to strengthen the revolutionary armed struggle, particularly of the FARC." In addition, it indicated that this situation resulted in an ideological ambiguity in the perception of the UP that, added to the Party's application of the thesis of "the combination of all forms of struggle," its origins in the Uribe agreements, and the military activities of the FARC-EP, "necessarily placed it in a vulnerable situation."

84. In this case, it is not for the Court to determine whether or not there was a connection between Senator Cepeda and the FARC and, especially, between that group and the PCC or the UP. If public officials possessed reliable information that linked Manuel Cepeda and other members of the UP to illegal activities, they could have informed the corresponding judicial authorities. [FN106]

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[FN106] Cf., similarly, Tristán Donoso v. Panama. Preliminary objection, merits, reparations and costs. Judgment of January 27, 2009. Series C No. 193, para. 81.

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85. From 1987 to 1993, prominent public officials made statements that linked the UP and the PCC to the FARC, a group that, in turn, was linked to illegal activities. [FN107] Even though there is no specific or direct reference to Senator Cepeda Vargas in these statements, [FN108] at a time when the UP and the PCC were considered the "internal enemy" under the "national security" doctrine, [FN109] they placed the members of the UP in a position of greater vulnerability and increased the level of risk they faced.

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[FN107] A newspaper article provided by the Commission reveals that the Commander of the Armed Forces stated that "the PCC depended on payments provided by the FARC" (Cf., newspaper article that appeared in "El Tiempo" on September 19, 1993, entitled "Por qué el optimismo de los militares?" [Why is the Army optimistic?] p. 19A. evidence file, tome IV, attachment 44 to the application, folios 2062 to 2063). In this regard, the State responded in these proceedings that "there were real indications that led both the Commander of the [Armed Forces], and civil society and the community in general to fear the regrettable existence of connections [between the FARC and the UP and the PCC.]" (evidence file, tome II, appendix III to the application, folio 829). In addition, the following statements by public officials are included in the body of evidence: (1) in September 1987, General Fernando Landazabal Reyes, Minister of the Interior told the weekly magazine Semana, "[a]nd you must be well aware that the FARC-EP were the armed branch of the Communist Party and that, today, the Communist Party is called UP"; (evidence file, tome XXII, attachment 18 to the final arguments brief of the representatives, folios 9204 to 9205); (2) on October 27, 1988, as a result of an attack on the UP offices in the municipality of Apartadó in Urabá, Antioquía, the Minister of Defense, General Rafael Samudio Molina, told the media that: "They obviously kept explosives in their offices"; (evidence file, tome V, attachment 12 to the brief with pleadings, motions and evidence, folio 2240); and (3) on March 19, 1990, the Minister of the Interior, Carlos Lemos Simmonds, stated during a debate in the Senate that, "in the elections of March 11, the country voted against the

violence and defeated the political arm of the FARC: the Patriotic Union" (evidence file, tome V, attachment 11 to the brief with pleadings, motions and evidence, folio 2236).
[FN108] Of the newspaper articles provided, only two refer more obviously to Senator Cepeda. Cf. an article that appeared in "El Espectador" on August 14, 1994, entitled "Jurassic's paranoia", p. 6A (evidence file, tome IV, attachment 44 to the application, folio 2060) and an article that appeared in "El Tiempo" on September 19, 1993, entitled "¿Por qué el optimismo de los militares?" p. 19A (evidence file, tome IV, attachment 44 to the application, folios 2062 to 2063).
[FN109] Similarly, according to the United Nations Rapporteurs on torture and extrajudicial executions, the PCC was considered the "internal enemy" under the "National Security" doctrine, which was invoked by the Army as justification for its counterinsurgency efforts at the time. (Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, para. 46, supra note, 87, folio 1127). Expert witness Andreu stated that "[t]he concept of the "internal enemy" under the national security doctrine, which was employed by the Colombian Armed Forces, went well beyond the spectrum of the guerrilla groups and extended to any type of political or social opposition and any type of dissidence. […] Since its creation, senior military leaders regarded the Patriotic Union as an 'internal enemy' because they considered that it was the 'political arm of the insurgency' – the 'party of the insurgency.'" Opinion provided before notary public (affidavit) by expert witness Federico Andreu Guzmán, supra note 83, 8326.
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86. Thus, in view of the harassment and threats that Senator Cepeda suffered owing to his membership in these political parties, personally and together with other activists and leaders, the declarations of these State officials not only expressed a conduct of intolerance, but could also have contributed to accentuating or exacerbating situations of hostility, intolerance or antipathy by public officials or other sectors of the population towards those connected with the UP and, therefore, towards Senator Cepeda. [FN110]

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[FN110] Cf. Case of Ríos et al. v. Venezuela, supra note 49, para. 148, and Case of Perozo et al. v. Venezuela, supra note 49, para. 160. Similarly, judgment delivered by the Second Review Chamber of the Constitutional Court in case No. T-439 on July 2, 1992: "[t]herefore the political situation of the Patriotic Union at that time and in those circumstances was relevant to reach a positive conclusion about the claimed threat. The formal or merely word-of-mouth connection with the Patriotic Union, in the context of the ideological and political persecution unleashed against its members or those who sympathized with it, is a determinant factor in the case in order to affirm that the belief that his life was in danger was reasonable, in view of the applicant's specific circumstances" (evidence file, tome III, attachment 11 to the application, folio 1368).
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87. Consequently, bearing in mind the statements made by State authorities and international organizations, the Court observes that the facts of the instant case occurred in the said context of systematic violence against the members of the UP.

A.2 Special obligation of protection in relation to Senator Cepeda Vargas

88. As the State has admitted, and as confirmed by the office of the Attorney General of the Nation and the Council of State (infra para. 96), the national authorities were informed of the threats against several members of the UP, including Senator Cepeda.

89. On October 23, 1992, the Commission ordered precautionary measures in favor of Álvaro Vásquez del Real, Manuel Cepeda Vargas and Aída Abella Esquivel for the State to protect their life and personal integrity in the face of the "imminent danger owing to the campaign of threats and intimidation against them at [that] time." [FN111] The measures were granted based on the threats, surveillance of leaders of these parties, media campaigns connecting the UP and the PCC to the insurgency in Colombia, and the raid on the UP offices, among other actions. [FN112]

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[FN111] Cf. letter addressed by the Inter-American Commission on Human Rights to the Colombian Minister of Foreign Affairs at the time on October 23, 1992 (evidence file, tome III, attachment 13 to the application, folios 1377 to 1378).
[FN112] Cf. letter addressed by the Inter-American Commission on Human Rights to the Colombian Minister of Foreign Affairs at the time on October 23, 1992, supra note 111, folios 1377 to 1378.

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90. UP spokesmen denounced five plans against the members of this political movement; namely, "Operation Condor" (1985), "Baile Rojo" (1986), "Esmeralda" (1988), "Coup de grâce" (1992) and "Retorno" (1993). [FN113] According to complaints made by Senator Cepeda Vargas and other leaders of the UP and the PCC, at the beginning of the 1990s, these leaders became aware that a plan to exterminate its members named "Operation coup de grâce" was about to be implemented. According to a complaint by Senator Cepeda Vargas himself, the principal objectives of this plan were Carlos Lozano, at that time Director of the weekly publication Voz; José Miller Chacón Peña, then a member of the Executive Committee of the PCC; Hernán Motta Motta, Senator of the Republic for the UP at the time; Aida Abella, then President of the UP; Álvaro Vásquez del Real, then Secretary General of the PCC; Gilberto Vieira, and Manuel Cepeda Vargas, at that time Representative to the Chamber. [FN114]

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[FN113] Cf. Opinion provided before notary public (affidavit) by expert witness Federico Andreu Guzmán, supra note 83, folio 8324; Opinion provided before notary public (affidavit) by expert witness Eduardo Cifuentes Muñoz, supra note 77, folios 8354, and Campos Zornosa, Yezid, "Memorias de los Silenciados," Editorial CEICOS, Bogotá, Colombia, 2003 (evidence file, tome IV, attachment 42 to the application, folio 2043).
[FN114] Cf. letter to Amnesty International of July 27, 1993 (evidence file, tome III, attachment 12 to the application, folios 1374 to 1375).

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91. The so-called "coup de grâce plan" was denounced in August 1993 by Manuel Cepeda Vargas, Hernán Motta Motta, Ovidio Marulanda and Octavio Sarmiento during a meeting with

the Minister of Defense at the time, Rafael Pardo Rueda. [FN115] In a letter sent to Aida Abella following this meeting, the Minister of Defense stated that he had been informed of the said plan, which appeared to have originated among senior Army officers. In this regard, he indicated that, even though "they had not provided any evidence about [the said plan] or the names of those presumably involved," he would send an official letter the office of the Prosecutor General of the Nation informing the latter of the content of the meeting "so that any necessary steps could be taken." [FN116] Furthermore, in a letter sent to the then Director of the weekly publication Voz, he indicated that "the Heads of the Armed Forces had been informed of the matter." [FN117]

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[FN115] Cf. also the testimony given by Mr. Motta Motta during the public hearing held before the Inter-American Court on January 26, 2010, and the letter from the then Minister of National Defense, Rafael Pardo Rueda, of August 2, 1993, addressed to Aida Abella E., President of the Patriotic Union (evidence file, tome III, attachment 15 to the application, folio 1383).
[FN116] Cf. letter from the then Minister of National Defense, Rafael Pardo Rueda, of August 2, 1993, addressed to Aida Abella E., President of the Patriotic Union, supra note 115, folio 1383.
[FN117] Letter from the Minister of Defense of November 30, 1993, addressed to Carlos A. Lozano Guillén, Director of the weekly publication Voz (evidence file, tome III, attachment 24 to the application, folio 1406).

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92. In October 1993, then Representative Manuel Cepeda Vargas denounced before the Congress of the Republic the seriousness of the situation facing members of the PCC and the UP, "owing to the pubic declarations of high-ranking Army officers repudiating communism and thus encouraging the paramilitary groups, which had killed many of their members, and also owing to the existence of an "extermination plan." [FN118] Senator Cepeda affirmed that high-ranking Army officers [FN119] maintained close "links with [the] paramilitary groups." [FN120]

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[FN118] Judgment delivered by the Third Section of the Administrative-law Chamber of the Council of State in Investigation No. 25000232600019961268O-01 (20,511) on November 20, 2008 (evidence file, tome XVIII, attachment 57 to the brief in answer to the application, folio 8117). Also, Cf. gazette of the Congress of the Republic of Colombia of October 5, 1993 (evidence file, tome III, attachment 7 to the application, folios 1346 to 1347).
[FN119] General Harold Bedoya Pizarro filed a criminal complaint against the then Representative to the Chamber, Manuel Cepeda Vargas, based on his declarations in the said parliamentary debates. According to the office of the Second District Attorney, this complaint "was finally closed by the Ethics Commission of the Chamber of Representatives based on the principle of the immunity of the opinions issued by the members of Congress in the exercise of their functions." Evaluation Report by the Second District Attorney for Santafé de Bogotá, Disciplinary procedure No. 143-6444, of July 11, 1997, supra note 96, folio 1423.
[FN120] Gazette of the Congress of the Republic of Colombia of October 19, 1993 (evidence file, tome III, attachment 9 to the application, folio 1350).

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93. It is well-known that José Miller Chacón Penna, one of the UP leaders who had been named as a possible victim of the "coup de grâce plan" (supra para. 90), was murdered on November 25, 1993. As a result, the Commission expanded the precautionary measures granted (supra para. 89) "to avoid the murder of the National Directorate of the [UP] and of the [CPP], and of the Director of the weekly publication Voz, Carlos Lozano Guillén, owing to the constant death threats against them." [FN121] In addition, this murder caused Senator Cepeda Vargas and other leaders of the PCC and the UP to address themselves to the Minister of Defense [FN122] and they also sent letters to the Attorney General of the Nation, the Ombudsman and the Prosecutor General of the Nation [FN123] in order to again denounce the said plan and to indicate that execution of the plan had started with the said murder. In these letters, they also advised that they had received threats in relation to the "plan" at the offices of both the PCC Central Committee and the weekly publication Voz.

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[FN121] Letter addressed by the Inter-American Commission on Human Rights to the Colombian Minister of Foreign Affairs at the time, on December 21, 1993 (evidence file, tome III, attachment 26 to the application, folios 1410 to 1411).
[FN122] Letter from the Director of the weekly publication Voz to the Minister of Defense of November 26, 1993, supra note 68, folios 1403 to 1404.
[FN123] Cf. letters addressed by Manuel Cepeda Vargas, Hernán Motta Motta and Ovidio Marulanda Sierra to the then Attorney General of the Nation, dated November 29, 1993 (evidence file, tome III, attachment 20 to the application, folios 1394 to 1395); to the then Ombudsman, dated November 29, 1993 (evidence file, tome III, attachment 21 to the application, folios 1397 to 1398), and to the then Prosecutor General of the Nation, dated November 29, 1993 (evidence file, tome III, attachment 22 to the application, folios 1400 to 1401). Also, see the letter of the Director of the weekly publication Voz to the Minister of Defense of November 26, 1993, supra note 68, folios 1403 to 1404.

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94. As confirmed by the Attorney General's office, Aida Abella requested the office of the Secretary of the Bogotá District Government to provide protection to Senator Manuel Cepeda and other UP leaders on December 2, 1993. There was no response to this request until August 26, 1994, and then only because Mrs. Abella reiterated the request several times following Senator's Cepeda's murder. The Attorney General's office indicated that the Government Secretary should have responded to requests for safety mechanisms. [FN124]

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[FN124] Cf. decision issued by the office of the Second District Attorney of Santafé de Bogotá in case No. 143-6444/96 in 1999, supra note 81, folios 1461 to 1486.

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95. The State denied the existence of the so-called "coup de grâce plan." It argued that the only evidence for it was the statements of the members of the PCC and the UP, who "unfortunately never indicated how they found out about the plan [or], at least, [the identity of] the presumed authors." It considered that it was illogical to think that there was a State extermination plan while State authorities were taking measures to protect the rights of the

members of the UP, and grant it guarantees as a political party in order to counter the different sources of violence that affected and threatened it. In particular, the State alleged that, following the Commission's request for precautionary measures, and their subsequent expansion, it had put in place specific measures to protect the leaders, [FN125] although it did not mention Senator Cepeda among the beneficiaries of this protection.

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[FN125] It indicated that meetings had been held with leaders of both parties, during which the leaders of the PCC acknowledged that the National Police had provided surveillance at the party's headquarters, but the agent responsible for providing this had been murdered. It indicated that an agreement had been reached with the Minister of Defense, the Director General of the National Police and the National Director of the DAS establishing that personal protection for the UP and the PCC leaders would be provided by the National Police. In addition, following a meeting held with the Ministry of Foreign Affairs on January 31, 1994, and after analyzing the requirements listed by the PCC and the UP spokesmen, the DAS Director of Security and Protection and the Head of Security for Presidential Pre-candidates were ordered to coordinate with a UP leader in order to assess the situations of risk of each leader and the protection that each leader required. It indicated that, consequently, a special protection service had been provided to the offices of the weekly publication Voz and the Central Committee of the PCC and that, by February 1994, the National Police was providing a specific protection service to some UP and PCC leaders.

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96. The Court notes that State authorities acknowledged the State's omissive attitude with regard to the measures of protection. [FN126] For example, when ruling on the failure to comply with the "obligation to protect," the Administrative Court, found that "the Administration's responsibility was engaged through the Ministry of Defense and the Administrative Department of Security (DAS), to the extent that these institutions did not comply adequately with their constitutional and legal obligations of protection, because they did not take appropriate security measures to protect the deceased Senator's life." [FN127] The Council of State itself indicated that, in response to the Senator's requests to protect his life made "directly, publicly, officially and through the Inter-American Commission, the State's response was almost inexistent," even though the grave danger that he and other members of the PCC and the UP faced was public knowledge. [FN128] For its part, when making an extensive analysis of the relevant facts and circumstances of the murder in its July 1997 Evaluation Report, the office of the Second District Attorney considered that the alleged "coup de grâce plan" had been denounced and noted the omissive conduct of other officials, including that of "the District Administration and high echelons of the National Executive." [FN129]

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[FN126] Cf. decision issued by the office of the Second District Attorney de Santafé de Bogotá in case No. 143-6444/96, in 1999, supra note 81, folio 1461 and judgment handed down by the Third Section of the Decision Chamber of the Administrative Court (de Descongestión) of Bogotá in case No. 12680 on February 8, 2001 (evidence file, tome IV, attachment 34 to the application, folio 1972).

[FN127] Judgment handed down by the Third Section of the Decision Chamber of the Administrative Court (de Descongestión) of Bogotá in case No. 12680 on February 8, 2001, supra note 126, folio 1972. See also Decision issued by the office of the Second District Attorney for Santafé de Bogotá, in case No. 143-6444/96, in 1999, p. 24, supra note 81, folio 1484, deciding to sanction Hernán Arias Gaviria because "based on his omission, the request for measures of security was not dealt with adequately and opportunely."
[FN128] Cf. Appeal judgment delivered by the Third Section of the Administrative-law Chamber of the Council of State in investigation No. 250002326000199612680-01 (20,511) on November 20, 2008 (evidence file, tome X, attachment 165 to the brief with pleadings, motions and evidence, folios 4523 and 4524).
[FN129] The report concluded with the recommendation to open a disciplinary investigation against the said Army sergeants; however, owing to his death, the investigation of Colonel Rodolfo Herrera Luna, who had been identified as the "mastermind" of the facts, was discontinued. In addition, the report noted the "omissive conduct of the "District Administration," and also of the then Secretary of Government of Santafé de Bogotá (Heman Arias Gaviria), and two coordinators from his office, because they failed to respond opportunely to requests for protection for Mr. Cepeda Vargas. In addition, it noted possible omissive conducts of "high echelons of the National Executive," and indicated that it was for the Attorney General of the Nation to take the pertinent decision regarding the former Ministers of Defense (Rafael Pardo Rueda) and of Foreign Affairs (Nohemi Sanín Posada de Rubio) and the former Director of the DAS (Fernando Brito). There is no record of any action in this regard. Cf. 1997 Assessment by the office of the Santa Fe de Bogotá Second District Attorney in case No. 143-6444, supra note 96, folios 1417 and ff.
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97. The Court observes that, in addition to alleging that it had taken various measures to counter the violence against the UP (supra para. 95), the State only offered Senator Cepeda Vargas the protection of the DAS, which he rejected. Indeed, the Council of State indicated that "[i]t has merely been recorded that the DAS helped pay for a private escort." [FN130] The explanation for this could be that, as the Rapporteurs on torture and extrajudicial executions mention, "in a number of cases the security forces themselves, [...] are said to be at the origin of the threats [so that] not surprisingly, there appears to be reluctance on the part of those under threat to seek the protection of escorts provided by State institutions." [FN131]

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[FN130] Appeal judgment delivered by the Third Section of the Administrative-law Chamber of the Council of State in Investigation No. 250002326000199612680-01 (20,511) on November 20, 2008, supra note 128, folio 4523.
[FN131] Joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, on their visit to Colombia, para. 47, supra note 85, folio 1127.
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98. Despite the precautionary measures and the different complaints, several of the individuals indicated as victims of the said "coup de grâce plan," were indeed threatened, murdered, or suffered an attempt on their life. Senator Manuel Cepeda Vargas was executed on

August 9, 1994. Subsequently, an attempt was made on the life of Aida Abella with a bazooka, while she was being driven in her car with her escort, although she was not injured in the attack. [FN132] Hernán Motta Motta, who took the place of Mr. Cepeda Vargas as a senator had to go into exile owing to the threats he received, because "he was fourth on the list" of the "coup de grâce plan," so that, following the death of Mr. Chacón Peña and Mr. Cepeda Vargas and the attempt on the life of Aida Abella (in May 1996), he was in great danger. [FN133]

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[FN132] Cf. testimony of October 10, 2007, rendered by Aida Abella before the Inter-American Commission on Human Rights (evidence file, tome XVIII, attachment 56 to the brief in answer to the application, folios 8052 to 8055).
[FN133] Cf. testimony provided by Hernán Motta Motta at the public hearing held before the Inter-American Court on January 26, 2010. Similarly, testimony provided by Jaime Caicedo Turriego at the public hearing held before the Inter-American Court on January 26, 2010, and testimony provided by Aida Abella before the Inter-American Commission on Human Rights on October 10, 2007, supra note 132, folios 8052 to 8055.

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99. According to the information provided by the State as helpful evidence, particularly in relation to some of the measures taken by the office of the Prosecutor General of the Nation, it was not until 2009 that the investigation appears to have connected the murder of Senator Cepeda to the existence of the said plan, without having achieved any specific results to date. [FN134] Considering that the State has acknowledged the delay in the investigations (supra para. 13 and infra para. 127), and that these investigations were not congruent with the complex nature of the facts (infra paras. 118 to 122), the Court appreciates that investigations continue into the existence of this plan, but finds that the belated actions taken in this regard reveal that the authorities did not exercise due diligence to clarify the threats and thus prevent the violation of the right to life of Senator Cepeda Vargas.

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[FN134] Cf. Office of the Prosecutor General of the Nation, the 26th Special Prosecutor of the National Human Rights and International Humanitarian Law Unit, Investigation No. 329, executive report of January 12, 2010 (evidence file, tome XXI, helpful evidence presented by the State, folios 8796 to 8805), and note No. 051 of the 26th Special Prosecutor of the National Human Rights and International Humanitarian Law Unit, addressed to the International Affairs Office of the office of the Prosecutor General of the Nation, of February 12, 2010 (evidence file, tome XXI, helpful evidence presented by the State, folios 8817 to 8818). As of that year and up until February 2010, the Prosecutor advised that other investigations were reviewed to try and find elements relating to the said plan and statements were required, particularly from Fernando Brito Ruiz, former DAS Director; retired General Harold Bedoya Pizarro, and Octavio Vargas Silva, Director General of the National Police at the time of the facts, who stated that they were unaware of or did not recall the situation. Furthermore, a statement was obtained from Rafael Pardo Rueda, Minister of Defense at the time of the facts, who advised that he recalled the complaints and stated that he had "requested the High Command and the DAS to conduct the respective investigations." In addition, the statements of Jaime Caicedo Turriego and Aidee Moreno Ibagué were incorporated, and the testimony of Aida Abella was required.

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100. However, it is relevant that numerous express requests to protect Senator Cepeda Vargas were made to diverse State authorities, including senior officials of the Executive. It is clear to the Court that the authorities abstained from protecting him without any justification, and that the limited measures adopted were evidently insufficient in a context of violence against members and leaders of the UP, which imposed on the State a special obligation of prevention and protection.

101. Regardless of the existence of a plan specifically named "coup de grâce," the Court finds that an organized structure existed that decided, planned and carried out the execution of Senator Cepeda Vargas. The State itself acknowledged that the delay in the investigations prevented identification of "the masterminds of the execution and the underlying organized criminal structures that promoted it" (infra para. 127). The State's obligation of due diligence meant that the investigation into the threats against Senator Cepeda and other members of the UP should also have been addressed at determining the existence of this or another plan, given the context in which the threats were reported, precisely as a measure of prevention to forestall them and, in this way, help prevent Senator Cepeda's execution or at least try to prevent it. There is no evidence that the State conducted an investigation of this kind at the appropriate time. Indeed, in view of the context of violence faced by the UP and the PCC in Colombia at the time of the facts, the obligation of due diligence in the face of the reports of death threats acquired a special more rigorous nature, because it required the State to prevent the violation of the rights of Senator Cepeda Vargas. [FN135] Since this obligation of means is more rigorous, it demanded prompt and immediate action by the police, prosecutorial and judicial authorities ordering the opportune and necessary measures to determine the authors of the threats made and the crimes committed in this context. [FN136]

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[FN135] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 36, paras. 174 and 175.

[FN136] Cf. Pueblo Bello Massacre v. Colombia. Merits, reparations and costs. Judgment of January 31, 2006. Series C No. 140, para. 126. See also, mutatis mutandi, Case of González et al. ("Campo Algodonero") v. Mexico, supra note 15, para. 283; Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs, supra note 22, para. 123, and Case of Valle Jaramillo et al. v. Colombia, supra note 16, para. 76.

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102. Consequently, in the said context, the execution of Senator Cepeda Vargas was fostered, or at least permitted, by the series of abstentions of several public authorities and institutions from adopting the necessary measures to protect his life, in particular the absence of an adequate investigation into the threats within the framework of an alleged plan to exterminate leaders of the UP. In this case, it is obvious that the execution of a senator of the Republic could not have been perpetrated without the necessary planning (supra para. 101) and coordination (infra paras. 114 and 115). The failure to comply with the obligation to respect and guarantee Senator Cepeda's right to life commenced as of that moment, given the serious shortcomings in the State's obligations of prevention and of protection.

## B. THE OBLIGATION TO RESPECT THE RIGHT TO LIFE OF SENATOR CEPEDA VARGAS

103. To determine the scope of the State's responsibility for the act perpetrated against Senator Cepeda Vargas by various agents, various contributions to the domestic investigations and proceedings must be examined, because the two sergeants of the Colombian Army sentenced and convicted as the perpetrators could not have acted alone in the execution. The State acknowledged this when admitting that the delay in the investigations thwarted the determination of the masterminds (supra paras. 13). As the authorities themselves have confirmed, the execution was perpetrated by several individuals; [FN137] hence, a division of tasks can be observed. [FN138] Thus, while one group of individuals shot Senator Cepeda, other groups protected that group and ensured its escape. [FN139] However, the failure to identify all the participants in the facts in the course of criminal proceedings does not prevent the Court from observing and analyzing all the facts that culminated in the execution, in order to gauge the scope of the State's responsibility. [FN140]

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[FN137] The judge of first instance indicated that Senator Cepeda Vargas "was killed by several individuals who intercepted his vehicle, and it was ascertained that some of them were driving in a white Renault 9 Brio." Judgment delivered by the Third Criminal Court of the Santafé de Bogotá Specialized Circuit in Investigation No. 5393-3, on December 16, 1999, supra note 75, folio 1657.

[FN138] Similarly, the Evaluation Report by the office of the Second District Attorney of Santafé de Bogotá in case No. 143-6444 of 1997, supra note 96, folio 1418.

[FN139] Cf. Evaluation Report by the office of the Second District Attorney of Santafé de Bogotá in case No. 143-6444 of 1997, supra note 96, folio 1418.

[FN140] In this regard, the Attorney General's office indicated that "[d]uring the proceedings, it was proved that many people had intervened in the illegal operation that ended Senator Cepeda's life; some of them belonged to the Army, and have been sentenced and convicted by the courts, and others were members of the so-called self-defense groups, and a court ruling on their responsibility is excluded because one of them died a violent death after executing the crime of murdering the Senator, and a separate investigation is being conducted against another." Opinion of the office of the Attorney General of the Republic on the legality of the second instance ruling in relation to Investigation No. 18,428, supra note 101, folio 1842.

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104. The Court observes that it appears that the above-mentioned sergeants took part in other crimes before and after the death of Senator Cepeda Vargas, while they were in active service with the Army. [FN141] Records show that these sergeants were investigated for at least three murders in which they allegedly participated together, the first of these in 1993. [FN142] The State has even recognized that, while they were deprived of liberty, the sergeants took part in a military operation that resulted in another disciplinary sanction for them and for a lieutenant colonel, who was discharged. [FN143] In this regard, the Attorney General's office indicated that these sergeants had a record of crimes "in the context of the dirty war." [FN144] In this respect, it is worth noting that, even before the Senator's murder, in the general recommendations

concerning penal and disciplinary matters included in his 1992 report on cases of murder of members of the Patriotic Union and Esperanza, Paz y Libertad [Hope, Peace and Freedom] parties, the Ombudsman had indicated that "the office of the Prosecutor General of the Nation should take preliminary measures in the case of punishable acts that, in principle, presumably involve members of the Army until, in addition to the functional connection, the relationship of the facts with active service has been established." [FN145]

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[FN141] Decision issued by the office of the Second District Attorney of Santafé de Bogotá in case No. 143-6444/96 in 1999, supra note 81, folios 1467 and 1476. Also, report of the National Directorate of Prosecution Services of the office of the Prosecutor General of the Nation of June 11, 2009 (evidence file, tome XXI, helpful evidence presented by the State, folio 8963) and ruling of sole instance issued by the Vice President of the office of the Attorney General of the Nation in Investigation No. 002-61126-02 on February 27, 2004 (evidence file, tome X, attachment 164 to the brief with pleadings, motions and evidence, folios 4439 to 4440).
[FN142] Cf. report of the National Directorate of Prosecution Services of the office of the Prosecutor General of the Nation of June 11, 2009, supra note 141, folio 8963.
[FN143] Cf. ruling of sole instance issued by the Vice President of the office of the Attorney General of the Nation in Investigation No. 002-61126-02 on February 27, 2004, supra note 141, folios 4439 to 4492.
[FN144] Decision issued by the office of the Second District Attorney of Santafé de Bogotá in case No. 143-6444/96 in 1999, supra note 81, folio 1477.
[FN145] Report of the Ombudsman entitled "Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad," supra note 76, folio 1293.
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105. In addition to the sergeants convicted for the facts of the instant case being on active service, because they perpetrated Senator Cepeda's execution while they were supposedly attending a training course, [FN146] the Court finds that the superior officers of the two sergeants knew, or at least, should have know that these sergeants had been investigated for the perpetration of several crimes prior to the execution of Senator Cepeda Vargas. This resulted in an obligation for the superior officers to adopt reasonable, specific and effective measures to end the human rights violations committed by their subordinates, and for the competent authorities to punish those responsible for these acts. [FN147]

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[FN146] Cf. Judgment handed down by the Third Criminal Court of the Santafé de Bogotá Specialized Circuit in Investigation No. 5393-3 on December 16, 1999, supra note 75, folios 1739 and 1447 to 1448.
[FN147] Cf. United Nations, Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989), principle 19; United Nations, Code of Conduct for Law Enforcement Officials, article 5; United Nations, Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, principle 27(b); Constitutional Court of Colombia, application for protection filed by Nory Giraldo de Jaramillo (Mapiripán Massacre), Judgment SU-1184 of November 13, 2001.
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106. Furthermore, it is relevant to note that one of the main probative elements that the domestic authorities took into account to establish the intervention of the two sergeants was the testimony of Elcías Muñoz, who had been an Army sergeant and, at the time of the facts, was a civilian and an Army informant. [FN148] The offices of the Attorney General and of the Prosecutor considered it established that Medina Camacho was the head of the intelligence network of the Ninth Brigade, for which Mr. Muñoz was an external informant, and of which Zúñiga Labrador was a member; that this network was principally concerned with "combating the guerrilla and the FARC," and that it was commanded by then Colonel Rodolfo Herrera Luna, who was Commander of the Ninth Brigade in 1993; in other words, he was the said sergeants' superior officer. [FN149] The testimony was crucial for implicating them in the proceedings in August 1996 [FN150] and for their subsequent prosecution and conviction. The same witness testified that these sergeants received payment for the act they committed from the then Colonel Herrera Luna, to whom they were subordinate. [FN151] The Attorney General's office affirmed that, while the then Colonel Herrera Luna was in command of the Ninth Brigade, the Brigade's active members and collaborators committed several crimes, and indicated that it had information that he had sponsored a paramilitary group. [FN152]

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[FN148] Cf. testimony rendered by Elcías Muñoz Vargas before the Regional Court of Santafé de Bogotá within proceedings JR 5393 on January 29, 1999 (evidence file, tome IX, attachment 145 to the brief with pleadings, motions and evidence, folios 4172 to 4175); indictment issued by the Human Rights Unit of the office of the Prosecutor General of the Nation in Investigation No. 172 on October 20, 1997 (evidence file, tome XVIII, attachment 54 to the brief in answer to the application, folios 7927 to 7928); judgment delivered by the Third Criminal Court of the Santafé de Bogotá Specialized Circuit in Investigation No. 5393-3 on December 16, 1999, supra note 75, folio 1739, and decision of the office of the Second District Attorney of Santafé de Bogotá in case No. 143-6444/96, in 1999, supra note 81, folios 1474 to 1475.

[FN149] Cf. Indictment issued by the Human Rights Unit of the office of the Prosecutor General of the Nation in Investigation No. 172 on October 20, 1997, supra note 148, folios 8001 to 8003; decision issued by the office of the Second District Attorney of Santafé de Bogotá in case No. 143-6444/96 in 1999, supra note 81, folios 1474 to 1477; decision to bring charges under case file No. 143-6444/96, issued by the office of the Second District Attorney of Santafé de Bogotá on March 23, 1999 (evidence file, tome X, attachment 158 to the brief with pleadings, motions and evidence, folios 4348-4350), and judgment delivered by the Third Criminal Court of the Santafé de Bogotá Specialized Circuit in Investigation No. 5393-3 on December 16, 1999, supra note 75, folio 1739.

[FN150] Cf. Indictment issued by the Human Rights Unit of the office of the Prosecutor General of the Nation in Investigation No. 172 on October 20, 1997, supra note 148, 7937 and 8001.

[FN151] Cf. Indictment issued by the Human Rights Unit of the office of the Prosecutor General of the Nation in Investigation No. 172 on October 20, 1997, supra note 148, folios 7974 and 8003 to 8004, and testimony given by Elcías Muñoz Vargas before the Regional Court of Santafé de Bogotá in proceedings JR 5393, on January 29, 1999, supra note 148, folios 4172 to 4175.

[FN152] Cf. Evaluation Report by the office of the Second District Attorney of Santafé de Bogotá in case No. 143-6444 of 1997, supra note 96, folios 1438 to 1439.

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107. Nonetheless, there is no record that the offices of the Attorney General and of the Prosecutor investigated this hypothesis diligently, or of why Colonel Herrera Luna was not investigated in the proceedings opportunely, even though he had been identified as the mastermind of the crime in the same testimony that resulted in the charges against the sergeants; he was one of the high-ranking military commanders identified by Senator Cepeda as instigators of the so-called "coup de grâce plan" (supra paras. 92), and other relevant evidence connected him to the facts. The Prosecutor's office indicated in October 1998 that "there were reliable indications" of the participation of officer Herrera Luna, who by that time was a Brigadier General, as the mastermind behind the murder, so that it tried to investigate him; however, this was not possible because he had died of natural causes. [FN153] In addition, it was only recently, in the current investigation into the facts that the Prosecutor requested information on the chain of command of the sergeants who were convicted, [FN154] and there is no record of the result of this measure.

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[FN153] Cf. Office of the Prosecutor General of the Nation, the 26th Special Prosecutor of the National Human Rights and International Humanitarian Law Unit, Investigation No. 329: note of January 19, 2006 (evidence file, tome XXVII, helpful evidence presented by the State, folio 10631); note of the office of the Prosecutor General of the Nation of February 16, 2007 (evidence file, tome XXVII, helpful evidence presented by the State, folio 10646); executive report of June 11, 2009 (evidence file, tome XVIII, attachment 58 to the answer to the application, folio 8146), and death certificate (evidence file, tome XXVI, helpful evidence presented by the State, folio 10180).

[FN154] Cf Office of the Prosecutor General of the Nation, the 26th Special Prosecutor of the National Human Rights and International Humanitarian Law Unit, Investigation No. 329: notes of November 12, 2008, addressed to the Seventh and Ninth Brigades of the National Army (evidence file, tome XXIX, helpful evidence presented by the State, folios 10797 and 10799). In addition, Cf. note of the Seventh Brigade of the National Army to the 26th Special Prosecutor of December 1, 2008, requesting "the expansion of the information provided, because it was not specified whether the said commanders were military leaders or the so-called 'Cabecillas' [heads] of the illegal organization; in addition, the sector from which the information is requested should be described" (evidence file, tome XXIX, helpful evidence presented by the State, folio 10799). Also, Cf. note of the Ministry of National Defense to the 26th Special Prosecutor of the National Human Rights and International Humanitarian Law Unit of December 29, 2008 (evidence file, tome XXIX, helpful evidence presented by the State, folio 10830) and note of the Second Commander of the Ninth Brigade to the 26th Special Prosecutor of the National Human Rights and International Humanitarian Law Unit of November 27, 2008, requesting more information (evidence file, tome XXIX, helpful evidence presented by the State, folio 10831). There is no record of the results of these measures.

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108. Similarly, the Attorney General's office indicated that "it is very significant" that none of the investigations tried to uncover more evidence tending to confirm or refute the responsibility of Coronel Herrera Luna, and he was never called on to provide even a spontaneous or "versión

libre" statement concerning the accusations made against him," [FN155] in order to tie him into the proceedings before he died.

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[FN155] Evaluation Report by the office of the Second District Attorney of Santafé de Bogotá in case No. 143-6444 of 1997, supra note 96, folios 1438 to 1439.

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109. Moreover, regarding the participation of members of paramilitary groups, it has been indicated that the day following the execution of Senator Cepeda Vargas, an allegedly paramilitary group called "Muerte a Comunistas y Guerrilleros" [Death to Communists and Guerrillas] (MACOGUE) issued a communiqué claiming responsibility for the facts. [FN156]

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[FN156] This communiqué reads: "[t]he political commissars of the criminals, Manuel Cepeda, Hernán Motta, Aida Abella, Álvaro Vásquez, Jaime Caicedo, […] use the benefits of the system, and infiltrate the echelons that symbolize freedom and democracy in order to create apprehension and chaos. Today, we are executing Manuel Cepeda, as a warning, because he represents the FARC criminals. Tomorrow it will be others and we will have a country free of communists and guerrillas." MACOGUE communiqué of August 10, 1994 (evidence file, tome III, attachment 27 to the application, folios 1413 to 1414).

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110. Nevertheless, this hypothesis was not found relevant in the subsequent investigations. Following Senator Cepeda's murder, evidence emerged of the participation of Carlos Castaño Gil, leader of one of the main paramilitary groups, the United Self-Defense Forces of Córdoba (AUC); consequently, both the Bogota Second District Attorney [FN157] and the office of the Prosecutor General [FN158] included him in their investigations as one of the principal masterminds of Senator Cepeda's murder.

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[FN157] Evaluation Report by the office of the Second District Attorney of Santafé de Bogotá in case No. 143-6444 of 1997, supra note 96, folio 1429.

[FN158] Indictment of the Human Rights Unit of the office of the Prosecutor General of the Nation, Investigation No. 172UDH, of October 20, 1997, supra note 81, folio 1610.

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111. The investigations of the offices of the Prosecutor [FN159] and Attorney General [FN160] verified, based on different testimony, DAS reports, and other probative elements, that one or more paramilitary group leaders had participated in the decision to murder Senator Cepeda Vargas, because there was evidence that they had instructed at least five of their collaborators to perform different actions, including stealing a vehicle, paying the hired gunmen, coordinating the logistics of the murder, perpetrating the murder, and concealing any traces of their participation. [FN161] At least one of the perpetrators was apparently at the orders of the paramilitary leader to carry out "very special actions," [FN162] and although his participation was mentioned in the initial investigations conducted by the Prosecution Service, he was not

individualized or identified opportunely (infra paras. 161 to 164). Almost all of these members of the paramilitary are dead, and it is unclear whether the said paramilitary leader died, because his whereabouts is unknown. [FN163] One of the main pieces of evidence now available concerning the participation of leaders of such groups is the testimony of other paramilitary leaders who have now demobilized, [FN164] as well as what one of them allegedly stated in an interview published in a book. [FN165]

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[FN159] Cf. Indictment issued by the Human Rights Unit of the office of the Prosecutor General of the Nation in Investigation No. 172 on October 20, 1997, supra note 81, folios 7876 to 8031.
[FN160] Cf. Final evaluation report on file 009-00151655 issued by the office of the Second District Attorney of Santafé de Bogotá on case file No. 143-6444/96 on February 20, 1996 (evidence file, tome X, attachment 160 to the brief with pleadings, motions and evidence, folios 4403 to 4421).
[FN161] Indeed, it has been verified that Carlos Castaño paid a police officer to conceal a member of the paramilitary groups in a hotel. Cf., inter alia, letter signed by "the man who called from Chía," addressed to the office of the Prosecutor General of the Nation on November 21, 1994 (evidence file, tome X, attachment 161 to the brief with pleadings, motions and evidence, folio 4424) and judgment delivered by the Third Criminal Court of the Santafé de Bogotá Specialized Circuit in Investigation No. 5393-3 on December 16, 1999, supra note 75, folio 1664.
[FN162] In his versión libre statement, Ever (or Hebert) Veloza García stated that the paramilitary leader, Carlos Castaño, explained to him with regard to alias "El Ñato" that "he is someone for very special operations, who took part; and Carlos said that in acts with national transcendence, and that should El Ñato" be captured, well, many things would suddenly be revealed." Transcript of extracts of the versión libre statement received from Hebert Veloza García under Law 975 of 2005 (evidence file, tome XVIII, attachment 58 to the brief in answer to the application, folio 8153).
[FN163] Thus, Fabio de Jesús Usme Ramírez, alias "Candelillo," and Edilson de Jesús Jiménez, alias "El Ñato," were presumably hired by Mr. Castaño Gil to kill Senator Cepeda; the person who drove the car from the place where the Senator was shot was presumably a paramilitary named Pio Nono Franco Bedoya, who appears to have died in October 1994. Indictment issued by the Human Rights Unit of the office of the Prosecutor General of the Nation in Investigation No. 172 on October 20, 1997, supra note 148, folios 7908 to 7910. See also the decision resolving the legal situation of Carlos Castaño issued by National Terrorism Unit of the office of the Prosecutor General of the Nation in Investigation No. 22461 on February 29, 1996 (evidence file, tome IX, attachment 142 to the brief with pleadings, motions and evidence, folio 4142) and judgment delivered by the Third Criminal Court of the Santafé de Bogotá Specialized Circuit in Investigation No. 5393-3 on December 16, 1999, supra note 75, folio 1686. Furthermore, the investigations conducted by the Prosecutor's office indicated that Víctor Alcides Giraldo, alias "Tocayo," was tied into the proceedings because he helped coordinate the hired gunmen who executed the Senator, and he also died in the course of the investigations, shortly after escaping from Bellavista maximum security prison in 1995. Cf. Judgment delivered by the Criminal Cassation Chamber of the Supreme Court of Justice in Investigation No. 18,428 on November 10, 2004 (evidence file, tome IV, attachment 33 to the application, folios 1871 and 1873). It was also indicated that it was Diego Alberto Pérez, alias "Lucho," who presumably paid the hired

gunmen. Cf. Decision declaring the extinguishment of the criminal action in favor of Víctor Alcides Giraldo issued by the National Terrorism Unit of the office of the Prosecutor General of the Nation in Investigation No. 22461 on February 29, 1996 (evidence file, tome IX, attachment 142 to the brief with pleadings, motions and evidence, folios 4147 to 4149).

[FN164] First of all the versión libre statements of Ever Veloza, alias "HH," were obtained under the Justice and Peace Law; he stated that he "heard Carlos Castaño say that he ordered 'El Ñato' to kill Senator Cepeda." Cf. note No. 051 of the 26th Special Prosecutor of the National Human Rights and International Humanitarian Law Unit, addressed to the International Affairs Office of the office of the Prosecutor General of the Nation, on February 12, 2010, supra note 134, folio 8813. In addition, Diego Fernando Murillo Bejarano, alias "Don Berna," indicated in statements before the Prosecutor's office that he knew that Carlos Castaño had ordered the Senator's execution because Castaño himself commented on it. Cf. Office of the Prosecutor General of the Nation, National Human Rights and International Humanitarian Law Unit, statement made by Diego Fernando Murillo Bejarano on September 17, 2009 (evidence file, tome XXII, attachment 5 to the final arguments brief of the representatives, folio 9071).

[FN165] In the book, Mi Confesión, which is supposed to be based on conversations and interviews with Carlos Castaño Gil as head of the AUC, he allegedly stated that he headed "the commando that executed Senator Manuel Cepeda Vargas" and that he ordered "his death in response to an assassination perpetrated by the FARC, unrelated to the combat." Furthermore, he added that the men who committed the execution included a retired police agent named Pionono Franco and "another youth who was executed by the guerrilla some time later." Mario Aranguren Molina, Mi Confesión, February 2001 (evidence file, tome IV, attachment 43 to the application, folio 2046). It is worth mentioning that, by a decision of the Cassation Chamber, this book was not admitted as evidence in the criminal proceedings undertaken based on the first investigations; however, this does not influence the assessment that an international court can make in order to determine State responsibility. Cf. Office of the Prosecutor General of the Nation, the 26th Special Prosecutor of the National Human Rights and International Humanitarian Law Unit, Investigation No. 329, executive report of January 12, 2010, supra note 134, folio 8800.

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112. Mr. Castaño Gil was acquitted in the criminal proceedings, "owing to lack of convincing and reliable evidence." He was acquitted because it had not been proved that there was "a direct relationship of command and execution" between him and the two soldiers who were convicted. [FN166] The Court observes that other domestic authorities, particularly, the office of the Attorney General and the Prosecutor's office have indicated that he was involved [FN167] and, in any case, given the complex characteristics of this crime, preponderance should have been given to the other evidence, instead of trying to prove a genuine relationship of command between paramilitary leaders and perpetrators, especially since there was evidence implicating other paramilitaries (at least, "El Ñato" and "Candelillo"), who had been at the orders of the said paramilitary leader.

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[FN166] Cf. Judgment delivered by the Third Criminal Court of the Santafé de Bogotá Specialized Circuit in Investigation No. 5393-3 on December 16, 1999, supra note 75, folio 1761. It is worth emphasizing that, in the said judgment, the Third Criminal Court rejected several pieces of evidence relating to the participation of Carlos Castaño Gil as mastermind.

[FN167] In May 2004, the office of the Attorney General of the Nation considered that, although "there is no evidence that Castaño Gil gave orders to the members of the National Army whose criminal responsibility has been declared in the judgment; [there is] abundant and effective [evidence …] that Castaño Gil instigated the members of the self-defense forces who operated under his orders (Candelillo and Ñato) to intervene in the death of Cepeda and he must answer for this conduct before the criminal courts." Opinion on the legality of the second instance ruling of the office of the Attorney General of the Republic in relation to Investigation No. 18,428, supra note 101, folio 1843. In the indictment, the Prosecutor's office accused Carlos Castaño Gil, Cf. indictment issued by the Human Rights Unit of the office of the Prosecutor General of the Nation in Investigation No. 172 on October 20, 1997, supra note 148, folios 7876 to 8031.

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113. Furthermore, the Court finds that Diego Fernando Murillo Bejarano, alias "Don Berna," one of the principal paramilitary leaders, also provided information on the participation in the crime of other State agents. Indeed, in his testimony, he stated that José Miguel Narváez, an adviser to the armed forces at the time of the execution, who later became deputy director of the DAS, had decided, together with "Don Berna", that Senator Cepeda Vargas should be killed. [FN168] Other paramilitary leaders have indicated that Mr. Narváez had links with the paramilitary group led by Castaño. [FN169] The Prosecution Service indicated that, according to the versión libre statements of demobilized paramilitary leaders, [FN170] Narváez "had presumably been a close adviser" of Carlos Castaño, and as a result Mr. Narváez was recently implicated in the criminal proceedings. [FN171]

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[FN168] Mr. Fernández Murillo stated that: "after the death of General Gil Colorado, Carlos [Castaño Gil] wanted to carry out another action as a reprisal or retaliation for the General's murder; consequently, he chose Senator Cepeda Vargas as a target. I found out from Commander Castaño that it was Miguel Narváez who suggested the name of Mr. Cepeda Vargas; furthermore, I was able to corroborate this during a conversation between Carlos and Mr. Narváez […]." He added that Narváez was "organic", which meant that "he is a person who is part of the organization," contrary to the "intermediary," who would be the person responsible for bringing information to or collecting it from members of the Army in the case of any potential operation against [them], or indicating targets." Office of the Prosecutor General of the Nation, National Human Rights and International Humanitarian Law Unit, statement of Diego Fernando Murillo Bejarano on September 17, 2009, supra note 164, folios 9075 to 9077.

[FN169] See, for example, Investigation No. 329, expansion of the statement of Iván Roberto Duque Gaviria of August 11, 2009 (evidence file, tome XXIX, helpful evidence presented by the State, folio 11238) and substantiating decision of the office of the Prosecutor General of July 23, 2009 (evidence file, tome XXIX, helpful evidence presented by the State, folio 11489).

[FN170] Investigation No. 329, substantiating decision of the office of the Prosecutor General of July 23, 2009, supra note 173, folio 11489.

[FN171] Cf. Office of the Prosecutor General of the Nation, Decision issued by the 26th Special Prosecutor of the National Human Rights and International Humanitarian Law Unit in Investigation 2182 on October 14, 2009 (evidence file, tome XXII, attachment 6 to the final arguments of the representatives, folios 9082 to 9084).

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114. The Court considers that, from the body of evidence provided, and from the context in which the facts occurred, it can be established that other members of the Army and members of one or several paramilitary groups took part in the planning and execution of the murder; and this is clear even from the findings of the domestic investigations. [FN172]

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[FN172] According to the Attorney General's office, it was possible to infer that "there was a coordinated action between two groups that ensured the success of the criminal intention; to affirm the contrary is unreasonable, because it would be like assuming that the two groups coincided in time, place and circumstances, without any prior agreement, and this hypothesis does not occur in highly elaborate types of organized crime." Opinion on the legality of the second instance ruling of the office of the Attorney General of the Republic in relation to Investigation No. 18,428, supra note 101, folios 1842 to 1843.

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115. In this regard, the Court finds that, in the context in which the execution of Senator Cepeda Vargas was committed, and because it was perpetrated by members of the Army – in other words, by the State itself – together with members of paramilitary groups, it required a complex organization, which has also been revealed by the difficulty to discover all the authors, both masterminds and direct perpetrators. In cases such as this, it is precisely the division of tasks among the masterminds and direct perpetrators that makes it hard to clarify the connections between them; in addition, the characteristics of the planning and execution of the crime tend to make it difficult to establish a connection between the two levels of authors. [FN173]

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[FN173] The Office of the United Nations High Commissioner for Human Rights affirms that: "The presumption behind system crimes is that they are generally of such a scale that they require a degree of organization to perpetrate. […] Most often, this organization will be the apparatus of the State." Office of the United Nations High Commissioner for Human Rights, Rule-of-law Tools for Post-Conflict States, Prosecution Initiatives (HR/PUB/06/4), United Nations, New York and Geneva, 2006, p. 11.

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C. THE OBLIGATION TO INVESTIGATE THE EXTRAJUDICIAL EXECUTION OF SENATOR MANUEL CEPEDA VARGAS

116. Part of the general obligation to guarantee the rights recognized in the Convention is a specific obligation to investigate cases alleging violations of those rights; in other words, this obligation arises from Article 1(1) of the Convention in relation to the right that must be protected or guaranteed. [FN174]

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[FN174] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 36, para. 162; Case of González et al. ("Campo Algodonero") v. Mexico, supra note 15, para. 287, and Case of Perozo et al. v. Venezuela, supra note 49, para. 298.

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117. It has been this Court's constant case law that, in cases of extrajudicial executions, enforced disappearances, torture and other serious human rights violations, conducting ex officio a prompt, genuine, impartial and effective investigation is a fundamental factor and a condition for the guarantee and protection of certain rights affected by these situations, such as personal liberty, personal integrity and life. [FN175] In these cases, the State authorities must conduct this investigation as an inherent juridical obligation, over and above the procedural activity of the interested parties, by all available legal means and designed to determine the truth. In addition, depending on the right that is in danger or alleged to have been violated, such as the right to life in this case, the investigation must endeavor to ensure the pursuit, capture, prosecution and eventual punishment of all the authors of the facts, especially when State agents are or may be involved. [FN176]

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[FN175] Cf. Case of the Pueblo Bello Massacre v. Colombia, supra note 136, para. 145; Case of Radilla Pacheco v. Mexico, supra note 24, para. 143, and Case of Anzualdo Castro v. Peru, supra note 36, para. 65.
[FN176] Cf. Case of the Pueblo Bello Massacre v. Colombia, supra note 136, para. 143; Case of González et al. ("Campo Algodonero") v. Mexico, supra note 15, para. 290, and Case of Valle Jaramillo et al. v. Colombia, supra note 16, para. 101.
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118. In complex cases, the obligation to investigate includes the duty to direct the efforts of the apparatus of the State to clarify the structures that allowed these violations, the reasons for them, the causes, the beneficiaries and the consequences, and not merely to discover, prosecute and, if applicable, punish the direct perpetrators. In other words, the protection of human rights should be one of the central purposes that determine how the State acts in any type of investigation. Thus, determination of the perpetrators of Senator Cepeda's extrajudicial execution will only be effective if it is carried out based on an overall view of the facts that takes into account the background and context in which they occurred and that seeks to reveal the participation structure.

119. As part of the obligation to investigate extrajudicial executions such as the one perpetrated in the instant case, the State authorities must determine, by due process of law, the patterns of collaborative action and all the individuals who took part in the said violations in different ways, together with their corresponding responsibilities. [FN177] It is not sufficient to be aware of the scene and material circumstances of the crime; rather it is essential to analyze the awareness of the power structures that allowed, designed and executed it, both intellectually and directly, as well as the interested persons or groups and those who benefited from the crime (beneficiaries). This, in turn, can lead to the generation of theories and lines of investigation, the examination of classified or confidential documents and of the scene of the crime, witnesses, and other probative elements, but without trusting entirely in the effectiveness of technical mechanisms such as these to dismantle the complexity of the crime, since they may not be sufficient. Hence, it is not a question of examining the crime in isolation, but rather of inserting it in a context that will provide the necessary elements to understand its operational structure.

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[FN177] Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs, supra note 22, para. 219; Case of González et al. ("Campo Algodonero") v. Mexico, supra note 15, para. 454, and Case of Valle Jaramillo et al. v. Colombia, supra note 16, para. 101.

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120. In this regard, expert witness Michael Reed indicated that the investigation of crimes such as that of Senator Cepeda should take into account all the evidence from other proceedings that allows patterns to be revealed; hence this execution should be related to other similar cases, such as the threats, harassment and murder of other UP leaders, representatives and even presidential candidates. [FN178]

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[FN178] Cf. statement made by Michael Reed Hurtado at the public hearing held before the Inter-American Court on January 26, 2010.

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121. Similarly, in 2004, the office of the Attorney General of the Republic stated that, owing to the specific characteristics of the case, an appropriate investigation into Senator Cepeda's execution would require, "the maximum investigative and deductive efforts in order to harmonize each and every piece of evidence within the context of the circumstances at the time." He added that:

We are faced with a criminal act that extends over time; that continued, after the crime had been perpetrated, owing to the deflection of the investigation with the death or disappearance of the participants and the search for ways and means to avoid the action of justice. Consequently, all the probative material must be examined and assessed within the frameworks indicated by logic and the rules of experience of how those who form part of illegal organizations operate. [FN179]

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[FN179] Opinion of the office of the Attorney General of the Republic on the legality of the second instance ruling in relation to Investigation No. 18,428, supra note 101, folios 1812 and 1813.

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122. In this case, three types of proceedings were conducted in relation to the execution of Senator Cepeda Vargas: a disciplinary procedure, two administrative proceedings, and a criminal investigation. These domestic proceeding are examined in the following chapters under Articles 8 y 25 of the Convention. In the case of the violation of Article 4 of the Convention, it is sufficient to say that the judicial authorities should have taken into account the characteristics of Senator Cepeda's execution; inter alia, that it was carried out in a context of violence against the members of the UP and the PCC, particularly against their leaders, of constant threats, and of accusations against senior military officials and an alleged extermination plan. Despite the specific contribution of each of the proceedings analyzed, as a whole, the investigations have not

been coordinated with each other, or sufficient to ensure due clarification of the facts that are the subject of this case.

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123. The Court finds that Senator Cepeda Vargas was ostensibly unprotected, in view of the situation of risk that he faced, owing to the general context of violence against the UP and the PCC, since he was a political leader and senator for these parties. In this context, State agents abstained from providing the special protection due to Senator Cepeda.

124. The Court finds that the State's responsibility for violating the right to life of Senator Cepeda Vargas was engaged not only by the action of the two sergeants who have already been convicted for his execution, but also by the joint action of paramilitary groups and State agents, which constituted a complex crime that should have been handled as such by the authorities in charge of the investigations, who have been unable to establish the connections between the different authors of the crime or identify the masterminds. Based on the way the extrajudicial execution of Senator Cepeda Vargas was planned and carried out, it could not have been perpetrated without the knowledge or orders of senior commanders and leaders of these groups, because it responded to an organized action of these groups, within a general context of violence against the UP.

125. Consequently, the State agents not only failed decisively to comply with their obligations of prevention and of protection of the rights of Senator Cepeda Vargas, embodied in Article 1(1) of the American Convention, but also used their official functions and State resources to commit the violations. Instead of the institutions, mechanisms and powers of the State acting as a guarantee of prevention and of protection of the victim against the criminal acts of its agents, the power of the State was used as a means and resource to commit the violation of the rights that it should respect and guarantee, [FN180] and this has been promoted by the impunity of these grave violations promoted and tolerated by a series of uncoordinated investigations that have been insufficient to duly clarify the facts and, consequently, have not complied satisfactorily with the obligation to investigate the violation of the right to life effectively.

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[FN180] Cf. Goiburú et al. v. Paraguay. Merits, reparations and costs. Judgment of September 22, 2006. Series C No. 153, para.66; Case of Perozo et al. v. Venezuela, supra note 49, para. 149, and La Cantuta v. Peru. Merits, reparations and costs. Judgment of November 29, 2006. Series C No. 162, para. 96.

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126. Based on the above, together with the failure to comply with the obligations of prevention, protection and investigation with regard to the extrajudicial execution perpetrated, the Court declares the aggravated responsibility of the State for the violation of the rights to life and personal integrity established in Articles 4(1) and 5(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Senator Manuel Cepeda Vargas.

IV.4. THE RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION (ARTICLES 8(1) AND 25 IN RELATION TO ARTICLE 1(1) OF THE AMERICAN CONVENTION)

127. First, it should be recalled that the State has partially acknowledged its responsibility for the violation of Articles 8, 25 and 1(1) of the Convention "essentially, because it had exceeded a reasonable time for the investigation" (supra para. 13). Later it indicated that, as a result of the delay in the investigations, "as yet, it had not been possible to establish the identity of the masterminds of the murder, and the underlying criminal structure that promoted it"; [FN181] hence, an investigation opened ex officio was underway to identify other authors of the facts, and was at the pre-trial investigation stage.

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[FN181] Brief in answer to the application, para. 609.

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128. In the instant case, the Court notes that, even though 16 years have elapsed since the facts occurred, the criminal proceedings are still open, without all those responsible having been prosecuted and eventually punished. This has exceeded excessively the time frame that could be considered reasonable for this purpose. In light of these considerations and of the State's acknowledgement of responsibility, the Court finds that it has been proved that the State failed to comply with the requirements of Article 8(1) of the Convention.

129. Consequently, and since the State has acknowledged the existence of a criminal structure that took part in the execution of Senator Cepeda Vargas, it only remains for the Court to examine the aspects where the dispute between the parties subsists; in particular, the alleged ineffectiveness of the disciplinary and administrative-law proceedings, the lack of due diligence in the criminal investigations, and the alleged obstacles to the investigation.

130. In order to guarantee the right of access to justice in the case of an extrajudicial execution, in which criminal proceedings play a vital role, other mechanisms, methods and proceedings available under domestic law [FN182] may be useful or effective as complementary elements in order to establish the truth, determine the scope and dimensions of the State's responsibility, and make integral reparation for the violations. [FN183] This is designed to avoid creating conditions of impunity [FN184] that can arise in many ways, which is why the State must remove all material or legal obstacles that may foster or maintain it. [FN185]

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[FN182] Principle 12 of 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 International Humanitarian Law (Resolution 60/147 adopted by the United Nations General Assembly on December 16, 2005).

[FN183] Case of La Cantuta v. Peru, supra note 180, para. 157. See also Case of Goiburú et al. v. Paraguay, supra note 180, para. 128.

[FN184] Impunity has been defined by the Court as the total absence of investigation, pursuit, capture, prosecution and conviction of those responsible for the violations of the rights protected

by the American Convention. Cf. The "White Van" (Paniagua Morales et al.) v. Guatemala. Preliminary objections. Judgment of January 25,1996. Series C No. 23, para. 173; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 234, and Case of Radilla Pacheco v. Mexico, supra note 24, para. 212.
[FN185] Cf. Case of La Cantuta v. Peru, supra note 180, para. 226; Case of Radilla Pacheco v. Mexico, supra note 24, para. 220, and Case of Anzualdo Castro v. Peru, supra note 36, para. 125.
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131. Consequently, the Court will analyze the proceedings conducted under the disciplinary, administrative-law and ordinary criminal jurisdictions in order to determine whether they have been an effective remedy to ensure the rights of the next of kin to access to justice, to know the truth, and to reparation.

A. THE DISCIPLINARY PROCEEDINGS

132. The representatives indicated that the disciplinary procedure against the two sergeants who were convicted was partially ineffective, even taking into account its inherent limitations, because they were only sanctioned with a "severe reprimand," without being discharged from the Armed Forces, a punishment that was disproportionate because it was so minor. The State argued that the disciplinary procedure contributed to the elucidation of the facts, because it was "diligent and continued up until the legal sanctions were imposed." Regarding the proportionality of the sanction, the State argued that, at the time of the decision, "it did not have any legal mechanisms other than those that were applied," and underlined that, subsequently, the law increased the sanctions that could be imposed on officials.

133. In previous cases, the Court has found that the procedure under the disciplinary jurisdiction can be assessed to the extent that it contributes to clarifying the facts and that its decisions are relevant as regards the symbolic value of the message of censure that this type of sanction can signify for public officials and members of the armed forces. [FN186] Moreover, to the extent that an investigation of this nature tends to protect the administrative function and to correct and control public officials, it can complement, but not fully substitute for the function of the criminal jurisdiction in cases of serious human rights violations. [FN187]

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[FN186] Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs, supra note 22, para. 215; Case of González et al. ("Campo Algodonero") v. Mexico, supra note 15, para. 373; Case of the La Rochela Massacre v. Colombia, supra note 16, para. 206; Case of the Ituango Massacres v. Colombia, supra note 16, para. 327, and Case of the Pueblo Bello Massacre v. Colombia, supra note 136, para. 203.
[FN187] Cf. Case of the Pueblo Bello Massacre v. Colombia, supra note 136, para. 203; Case of the La Rochela Massacre v. Colombia, supra note 16, para. 215, and Case of the Ituango Massacres v. Colombia, supra note 16, para. 333.
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134. In the instant case, the disciplinary jurisdiction intervened through an investigation conducted by different organs of the office of the Attorney General of the Nation initiated ex

officio by the Special Investigations Office as soon as the facts occurred. Thus, on March 23, 1999, the Santafé de Bogotá Second District Attorney's office, which received the files of the measures taken by the Human Rights Unit of the National Special Investigations Directorate, opened a charge sheet against Sergeants Medina Camacho and Zúñiga Labrador, the former as one of the perpetrators of the murder and the second as an accomplice, and against two officials of the Bogota Town Council. The District Attorney's office established the disciplinary responsibility of the two sergeants, on whom it imposed a sanction of "severe reprimand" (verbal admonition before the rank and file), and of Herman Arias Gaviría, then Governance Secretary of Bogotá Town Council because, by his omission, "the request for security measures" made by Counselor Aída Abella to ensure the safety of Senator Cepeda and other representatives of the UP "had not been dealt with adequately and opportunely"; he was therefore suspended from the exercise of his functions for 30 days. [FN188] On June 18 and August 3, 1999, in first and second instance respectively, the office of the Attorney General of the Nation confirmed the disciplinary responsibility.

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[FN188] Decision issued by the office of the Second District Attorney of Santafé de Bogotá in case No. 143-6444/96 in 1999, supra note 81, folios 1461 to 1486.

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135. The Court reiterates that the mere existence of a disciplinary procedure within the office of the Attorney General of the Nation that can respond, at least indirectly, to cases of human rights violations, clearly serves an important purpose of protection. [FN189] In this way, the Attorney General's office determined the offenses committed by the two above-mentioned sergeants and the former Governance Secretary of the Bogotá Town Council, even though it did not establish the responsibility of other public officials who were potentially implicated, such as other members of the Armed Forces, even though the July 1997 Evaluation Report had noted the seriousness, complexity and enormity of the facts. [FN190]

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[FN189] Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs, supra note 22, para. 215; Case of the La Rochela Massacre v. Colombia, supra note 16, para. 215; Case of the Ituango Massacres v. Colombia, supra note 16, para. 333, and Case of the Pueblo Bello Massacre v. Colombia, supra note 136, para. 203.

[FN190] In this report, the office of the Second District Attorney referred to the situation of other people involved, in order to "better illustrate the responsibility" of the officials, summarizing the conclusions of investigations conducted by several departments of the Attorney General's office (for human rights, special investigations, and the armed forces) when underscoring that, "together with some State agents, individuals who were not agents of the State took part" in the murder. Cf. Evaluation Report by the office of the Second District Attorney of Santafé de Bogotá in case No. 143-6444 of 1997, supra note 96, folios 1416 to 1459.

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136. In short, despite the conclusions that the Attorney General's office reached in its initial report, subsequently, it failed to conduct an effective disciplinary procedure in relation to those

other officials and members of the Army who, in one way or another, may have participated in the facts or allowed them to happen, as determined by its own investigation.

137. Regarding the proportionality of the disciplinary sanction imposed on the perpetrators of the murder, it is on record that, in July and August 1999, the Fundación Manuel Cepeda Vargas and the Colectivo de Abogados José Alvear Restrepo unsuccessfully asked the Minister of Defense at the time and the then President of the Republic that the soldiers be discharged from military service and imprisoned, based on the sentences imposed in the criminal proceedings. However, the Court stresses that, by sanctioning them, as members of the Army, with a "reprimand," the Attorney General's office classified the conduct as "extremely serious" and meriting the maximum disciplinary sanction established in the respective Code, which was their discharge from the Army; however, it noted an "inconsistency in the law that causes concern owing to the mildness of the sanctions for criminal acts that call for the most severe type of punishment." In other words, the Attorney General's office itself pointed out the disproportionate character of the sanction. [FN191]

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[FN191] Cf. Second instance judgment in case No. 143-6444/96, delivered by the office of the Attorney General delegated to the Military Forces on August 3, 1999 (evidence file, tome X, attachment 159 to the brief with pleadings, motions and evidence, folios 4364 and 1396).

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B. THE PROCEEDINGS UNDER ADMINISTRATIVE-LAW

138. The next of kin of Senator Cepeda Vargas filed two independent lawsuits under administrative law (infra paras. 245 and 249). In the first, in September 1999, the Cundinamarca Administrative Court declared the administrative responsibility of the Nation, the Ministry of Defense and the DAS by omission and ordered them to pay compensation to the next of kin. In the second, on February 8, 2001, that court declared the State's responsibility in the same terms, because "it had not complied adequately with its inherent constitutional and legal obligation to provide protection, since it had not taken appropriate safety measures to protect the life of the deceased Senator." [FN192] The DAS appealed the decision and it was then examined by the Council of State, which was the next jurisdictional level – in view of the subsequent discontinuance by the DAS – and, on November 20, 2008, it issued a final ruling in which it declared the State's responsibility by omission. [FN193]

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[FN192] Judgment delivered by the Third Section of the Decision Chamber of the Administrative Court (de Descongestión) of Bogotá in case No. 12,680 on February 8, 2001, supra note 126, folio 1972.

[FN193] Cf. Appeal judgment delivered by the Third Section of the Administrative-law Chamber of the Council of State in Investigation No. 250002326000199612680-01 (20,511) on November 20, 2008, supra note 128, folio 4495).

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139. As previously indicated, when assessing the effectiveness of the remedies filed under the domestic administrative jurisdiction, [FN194] the Court must verify whether the decisions taken by the jurisdiction have made an effective contribution to end impunity, to ensure non-repetition of the harmful acts, and to guarantee the free and full exercise of the rights protected by the Convention. In particular, these decisions may be relevant in relation to the obligation to make integral reparation for any rights violated. [FN195] Also, in several cases against Colombia, the Court found that the integral reparation of the violation of a right protected by the Convention could not be limited to the payment of compensation to the victim's next of kin. [FN196] Integral and adequate reparation, under the Convention, requires measures of rehabilitation, satisfaction, and guarantees of non-repetition. The results obtained in the domestic proceedings will be taken into account when establishing reparations (infra paras. 245 to 247 and 249 to 253).

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[FN194] Cf. Case of the "Mapiripán Massacre." Merits, reparations and costs, supra note 22, para. 210; Case of the La Rochela Massacre v. Colombia, supra note 16, para. 217; Case of the Ituango Massacres, supra note 16, para. 338, and Case of the Pueblo Bello Massacre, supra note 136, para. 206.

[FN195] Cf. Case of the "Mapiripán Massacre." Merits, reparations and costs, supra note 22, para. 214; Case of the La Rochela Massacre v. Colombia, supra note 16, para. 219; Case of the Ituango Massacres, supra note 16, para. 339; and Case of the Pueblo Bello Massacre, supra note 136, para. 206.

[FN196] Cf. Case of the "Mapiripán Massacre". Merits, reparations and costs, supra note 22, para. 214; Case of the La Rochela Massacre v. Colombia, supra note 16, para. 219; Case of the Ituango Massacres, supra note 16, para. 339; and Case of the Pueblo Bello Massacre, supra note 136, para. 206.

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140. Regarding access to justice, it should be emphasized that, in this case, the administrative law courts did not establish the institutional responsibility, by act, of State officials in the execution of Senator Cepeda Vargas, taking into consideration the violation of his rights to life and to personal integrity, among other rights, even though, when arriving at their decisions, they were already aware of the partial results of the criminal proceedings and even of the disciplinary proceedings. Consequently, they did not make a substantial contribution to compliance with the obligation to investigate and clarify the facts (supra paras. 116 to 122). It is worth noting that, in one of the proceedings, the Council of State failed to assess the partial results of the criminal and disciplinary investigations that confirmed the responsibility of the two National Army sergeants, because it considered that the documentation had only been forwarded in the form of a copy. [FN197] Although it did not correspond to this jurisdiction to establish individual responsibilities, on determining the objective responsibility of the State, the jurisdictional authorities should take into account all the sources of information available to them. Consequently, the authorities in charge of these proceedings were called on not only to verify the State's omissions, but also to determine the scope of the State's institutional responsibility.

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[FN197] Cf. Appeal judgment delivered by the Third Section of the Administrative-law Chamber of the Council of State in Investigation No. 250002326000199612680-01 (20,511) on November 20, 2008, supra note 128, folios 4524 to 4525.

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C. THE CRIMINAL PROCEEDINGS

141. Regarding the proceedings under the criminal jurisdiction, the State opened Investigation No. 172 in the office of the Prosecutor General of the Nation, which resulted in the sentencing and conviction of the two sergeants. Currently, another investigation is being conducted: Investigation No. 329.

C.1 The first phase of the criminal investigation (Investigation No. 172)

142. The Prosecutor General of the Nation ordered the opening of a criminal investigation into the murder of Senator Cepeda on December 29, 1994. From 1994 to 1996, seven individuals were formally implicated in the investigation, [FN198] including the brothers, Carlos Castaño Gil and Héctor Castaño Gil, paramilitary leaders. Of these seven individuals, charges were filed against the above-mentioned Army sergeants as co-authors of first-degree murder, and against Carlos Castaño Gil, as mastermind of the murder, on October 20, 1997; [FN199] and the investigation was precluded with regard to three other individuals implicated. [FN200] Four paramilitaries tied into the investigations suffered violent deaths while these were underway; namely, Fabio Usme (alias "Candelillo"), Pio Nono Franco Bedoya, Victor Alcidez Giraldo (alias "El Tocayo"), [FN201] and Edilson Jiménez (alias "El Ñato"), although the cause of the latter's death remains to be determined. [FN202] In 1998, an attempt was made to implicate then Brigadier General Herrera Luna, but it was declared that the criminal action had extinguished owing to the death of the accused (supra paras. 106 to 108).

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[FN198] Cf. Decision of June 28, 1995, resolving the legal situation of José Luis Ferrero Arango and Edinson Bustamante, Office of the Bogotá Regional Prosecutor (evidence file, tome IX, attachment 137 to the brief with pleadings, motions and evidence, folio 4116). Both these individuals were implicated in Senator Cepeda's murder because they had taken part in the theft of the car from which the shots were fired. Also, decision of January 16, 1996, resolving the legal situation of Carlos Castaño Gil, Héctor Castaño Gil and Víctor Alcídes Gutiérrez, Office of the Bogotá Regional Prosecutor (evidence file, tome IX, attachment 141 to the brief with pleadings, motions and evidence, folios 4138 to 4145). These three were allegedly members of paramilitary groups. Also, Cf. Decision of August 6, 1996, issued by the Terrorism Unit of the Regional Directorate of Prosecution Services, in Investigation No. 22461, implicating sergeants Medina and Zúñiga (evidence file, tome IX, attachment 151 to the brief with pleadings, motions and evidence, folios 4279 to 4284) and Office of the Prosecutor General of the Nation, the 26th Special Prosecutor of the National Human Rights and International Humanitarian Law Unit, Investigation No. 329, executive report of January 12, 2010, supra note 134, folios 8796 to 8805.

[FN199] Indictment of the Human Rights Unit of the office of the Prosecutor General of the Nation, Investigation No. 172UDH, of October 20, 1997, supra note 81, folios 1488 to 1654.

[FN200] Cf. Office of the Prosecutor General of the Nation, the 26th Special Prosecutor of the National Human Rights and International Humanitarian Law Unit, Investigation No. 329, executive report of January 12, 2010, supra note 134, folios 8796 to 8805, and Indictment of the Human Rights Unit of the office of the Prosecutor General of the Nation, Investigation No. 172UDH, of October 20, 1997, supra note 81, folios 1488 to 1654.
[FN201] Cf. Judgment handed down by the Criminal Cassation Chamber of the Supreme Court of Justice in Investigation No. 18,428 on November 10, 2004, supra note 163, folio 1873; Decision issued by the National Terrorism Unit of the office of the Prosecutor General of the Nation in Investigation No. 22461 on February 29, 1996, supra note 163, folios 4147 to 4149, and letter signed by "The man who called from Chía" addressed to the office of the Prosecutor General of the Nation on November 21, 1994, supra note 161, folio 4423.
[FN202] Cf. Profile of Edilson Jiménez, alias "El Ñato," submitted to the office of the Prosecutor General of the Nation on August 21, 2008, and first report of his death; procedure during which the doctor who performed the autopsy on Edilson Jiménez, alias "El Ñato," gave testimony on October 7, 2009, and note of the DAS of May 19, 2009, opening the investigations to determine the cause of death of Edilson Jiménez, alias "El Ñato" (evidence file, tome XXVIII, helpful evidence presented by the State, folios 10766 to 10768 and tome XXIX; helpful evidence presented by the State, folios 10885, 10893-10901 and 10979-10990).

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143. On December 16, 1999, the Third Criminal Court of the Special Circuit of Santafé de Bogotá delivered judgment sentencing Sergeants Hernando Medina Camacho and Justo Gil Zúñiga Labrador to 43 years' imprisonment, and acquitted Carlos Castaño Gil. [FN203]

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[FN203] Cf. Judgment delivered by the Third Criminal Court of the Santafé de Bogotá Specialized Circuit in Investigation No. 5393-3 on December 16, 1999, supra note 75, folio 1656.

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144. This judgment was appealed by the representatives of the convicted men, and also by Senator Cepeda's next of kin. The latter filed an appeal owing to the acquittal of Carlos Castaño Gil. The Prosecutor's office also questioned this acquittal, and the office of the Attorney General of the Nation, acting as Ministerio Público, expressed its agreement with the judgment as regards the conviction of the two sergeants. On January 18, 2001, the Criminal Chamber of the Superior Court of the Bogotá Judicial district ratified all aspects of the judgment in first instance. [FN204] An appeal for review of this decision was filed before the Criminal Cassation Chamber of the Supreme Court of Justice by the convicted men, and also by the next of kin of Senator Cepeda Vargas, constituted in civil party, particularly with regard to the above-mentioned acquittal and considering, inter alia, that the judge had "completely disregarded the national situation in relation to the connections between State officials and the so-called 'paramilitary' groups, previously denounced by members of the [UP]."

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[FN204] Cf. Judgment delivered by the Criminal Chamber of the Bogotá High Court in proceedings 99-5393-01 on January 18, 2001 (evidence file, tome IX, attachment 146 to the brief with pleadings, motions and evidence, folio 4176).

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145. In parallel to the cassation proceedings, the next of kin of Senator Cepeda Vargas filed an action for protection of constitutional rights before the Civil Cassation Chamber of the Supreme Court of Justice against the decision of the Criminal Cassation Chamber refusing to admit the book "Mi Confesión" as evidence. This action for protection was rejected on June 27, 2003, on the grounds that the decisions of the said criminal court "are now res judicata, [and consequently] cannot be contested by the action for protection of constitutional rights." [FN205] Lastly, on November 10, 2004, the Criminal Cassation Chamber decided not to review the judgment, which then became final. [FN206]

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[FN205] Cf. Civil Cassation Chamber of the Supreme Court of Justice, decision of June 27, 2003, Presiding Judge Carlos Ignacio Jaramillo Jaramillo (evidence file, tome XI, attachment 172 to the brief with pleadings, motions and evidence, folio 4685). Iván Cepeda Castro, among others, filed an application for review of this decision before the Constitutional Court. The Constitutional Court, in a decision of February 3, 2004, recognized the right of private individuals to go before any judge to request the protection of any right they considered violated by the proceedings of a Cassation Chamber of the Supreme Court of Justice. Cf. Judgment on review of action for protection of constitutional rights handed down by the Constitutional Court of Colombia in Ruling No. 004/04 of February 3, 2004 (evidence file, tome IV, attachment 39 to the application, folios 1993 to 1999).

[FN206] Cf. Judgment handed down on November 10, 2004, by the Criminal Cassation Chamber of the Supreme Court of Justice in Investigation No. 18,428, supra note 163, folios 1868 to 1937. No evidence was provided with regard to the affirmations concerning the Civil Cassation Chamber; nevertheless, the State accepted this paragraph in its entirety in the brief in answer to the application (merits file, tome III, folio 840).

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146. Regarding the arguments of the Commission, the representatives, and the State concerning the remedy of cassation and the book with Mr. Castaño Gil's declarations, the Court considers that, on this point, the issue in dispute is not based on the possibility or pertinence of admitting evidence during the cassation remedy, but rather on the existence of a well-known fact, which has already been examined above. Therefore the Court finds it unnecessary to analyze the State's defense arguments concerning the remedy of cassation.

147. Furthermore, the Attorney General's office indicated that this type of crime is complex to deal with; hence the intention should be "to include the heads of these organizations as authors," and not merely the perpetrators, because the latter may be fungible for the purposes of the crime. In this regard, he stated that "[i]t is this fungibility of the perpetrator that results in the head of the organization retaining ownership of the act rather than transferring it to the individual who executes the act, because, whatever happens, the punishable act is perpetrated, even if the individual originally chosen to commit the crime reneges." [FN207] Hence, the Court considers

that the death of some of the presumed authors should not halt the investigations; rather it should indicate to the authorities the lines they should follow to find the leaders of the structures.

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[FN207] Opinion issued by the office of the Attorney General of the Nation on the legality of the second instance judgment in relation to Investigation No. 18,428, supra note 101, folios 1841 and 1845.

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148. Additionally, it was alleged that a key witness in case, Elcías Muñoz (supra para. 106), was the victim of threats, and that his common-law wife and daughter were disappeared in February 1997. [FN208] It has also been proved that some of the victim's next of kin who testified in the proceedings before the Court and who took part in the search to obtain justice, stated that they had been threatened and harassed at the time of the facts and also during the domestic investigations (infra paras. 184 to 195).

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[FN208] Cf. testimony given by Elcías Muñoz Vargas before the Regional Court of Santafé de Bogotá in proceedings No. JR 5393 on January 29, 1999, supra note 148, folio 4174; opinion provided before notary public (affidavit) by expert witness Carlos Martín Beristain on November 27, 2009 (evidence file, tome XX, folio 8243); judgment delivered by the Third Criminal Court of the Santafé de Bogotá Specialized Circuit in Investigation No. 5393-3 on December 16, 1999, supra note 75, folios 1684 to 1685, and judgment handed down on November 10, 2004, by the Criminal Cassation Chamber of the Supreme Court of Justice in Investigation No. 18,428, supra note 163, folios 1877 to 1878.

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149. As indicated above (supra paras. 116 to 122), due diligence in the investigations involved taking into account the patterns of action of the complex structure of the individuals who perpetrated the extrajudicial execution, because the structure remains after a crime has been committed; and, precisely to ensure its impunity, it uses threats to instill fear in those who investigate the crime and in those who could be witnesses or have an interest in the search for the truth, as in the case of the victim's next of kin. The State should have adopted sufficient measures of protection and investigation to prevent that type of intimidation and threat.

150. Even though the Court cannot substitute the domestic authorities in determining the punishment for the crimes established by domestic law, and has no intention of doing so, [FN209] an analysis of the effectiveness of criminal proceedings and of access to justice can lead the Court, in cases of serious human rights violations, to examine the proportionality between the State's response to the unlawful conduct of a State agent and the legal right allegedly affected by the human rights violation. Under the rule of proportionality, in the exercise of their obligation to prosecute such serious violations, States must ensure that the sentences imposed and their execution do not constitute factors that contribute to impunity, taking into account aspects such as the characteristics of the crime, and the participation and guilt of the accused. [FN210] Indeed, there is an international legal framework which establishes that the punishments established for

crimes involving acts that constitute serious human rights violations must be appropriate to their gravity. [FN211]

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[FN209] Cf. Vargas Areco v. Paraguay. Merits, reparations and costs. Judgment of September 26, 2006. Series C No. 155, para. 108, and Case of Usón Ramírez v. Venezuela, supra note 54, para. 87.

[FN210] Cf. Hilaire v. Trinidad and Tobago. Preliminary objections. Judgment of September 1, 2001. Series C No. 80, paras. 103, 106 and 108; Case of Heliodoro Portugal v. Panama, supra note 51, para. 203; Case of Boyce et al. v. Barbados, supra note 36, para. 50; Case of the La Rochela Massacre v. Colombia, supra note 16, para. 196; Raxcacó Reyes v. Guatemala. Interpretation of the judgment on merits, reparations and costs. Judgment of February 6, 2006. Series C No. 143, para. 81, and Case of Vargas Areco v. Paraguay, supra note 209, para. 108. Similarly, Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 55.

[FN211] Thus, the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions stipulated that "Governments […] shall ensure that any [extra-legal, arbitrary and summary] executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences" (Principle 1). Furthermore, with regard to torture and forced disappearance, the regional and international instruments establish specifically that the State must, in addition to recognizing them as offenses under their criminal laws, punish them and impose "severe penalties that take into account their serious nature" (article 6, Inter-American Convention to Prevent and Punish Torture) or "an appropriate punishment commensurate with its extreme gravity" (article III, Inter-American Convention on Forced Disappearance of Persons). Likewise, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that "[e]ach State Party shall make these offences punishable by appropriate penalties which take into account their grave nature" (article 4(2)).

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151. Regarding the punishment imposed, the perpetrators, as co-authors of the crime of first degree murder, were sentenced to the principal punishment of 43 years' real imprisonment, and 10 years of loss of civil rights as an accessory penalty, and this was confirmed in its entirety by the appeals court. Subsequently, in March [FN212] and June 2006, [FN213] the convicted men obtained a reduction of sentence to 26 years, 10 months and 15 days. Finally, owing to benefits granted while they were serving their sentences, Zuñiga Labrador was granted release on parole in March 2006, [FN214] and Medina Camacho in May 2007. [FN215] Hence, in reality they served sentences of 11 years and 72 days, and 12 years and 122 days imprisonment, respectively, and are currently at liberty.

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[FN212] Cf. Decision on recalculation of sentence based on the most favorable law (law 599 of 2000), in favor of Justo Gil Zuñiga Labrador issued by the Fourth Court for Execution of Sentences and Security Measures of Ibagué, Tolima, on March 31, 2006, in Investigation No. 2001-1374-110013107003-1999-5393 (evidence file, tome IX, attachment 147 to the brief with pleadings, motions and evidence, folios 4258 to 4260).

[FN213] Cf. Decision on recalculation of sentence based on the most favorable law (law 599 of 2000), in favor of Hernando Medina Camacho issued by the Fourth Court for Execution of Sentences and Security Measures of Ibagué, Tolima, on June 8, 2006, in Investigation No. 2001-1374-110013107003-1999-5393 (evidence file, tome IX, attachment 149 to the brief with pleadings, motions and evidence, folios 4269 to 4271).
[FN214] Cf. Note No. 38533/2020 of the Fourth Court for Execution of Sentences and Security Measures of August 21, 2007 (evidence file, tome XV, attachment 21 to the brief in answer to the application, folios 6772 to 6774).
[FN215] Cf. Note No. 38533/2020 of the Fourth Court for Execution of Sentences and Security Measures of August 21, 2007, supra note 214, folios 6772 to 6774.
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152. Furthermore, as established by domestic authorities [FN216] and as recognized by the State, [FN217] the said sergeants took part in the murder of a lieutenant on July 14, 1999, while they were deprived of liberty on military premises. The Court notes that, when the application of benefits during execution of sentence was being assessed, the acknowledged fact that, while deprived of liberty, they had left the military detention center [FN218] and taken part in the said operation [FN219] was not taken into consideration. The undue granting of such benefits could eventually lead to a form of impunity, particularly in cases of the perpetration of serious human rights violations, as in the instant case. [FN220] In addition, it has been verified that the convicted men served part of their sentence, exactly one year, three months and 18 days, in the Tolemaida Military Rehabilitation Center in Melgar, Tolima – intended for soldiers serving sentences for infringing the Military Criminal Code – even though, the military jurisdiction "should only prosecute members of the armed forces for committing crimes or misdemeanors that, by their nature, impair the legal interests of the military system," [FN221] a principle that is also applicable at the stage of execution of judgment. [FN222]

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[FN216] Record of a visit in case file No. 020-76-840-02 issued by the office of the Attorney delegated to the National Police on December 6, 2002 (evidence file, tome IX, attachment 144 to the brief with pleadings, motions and evidence, folios 4442 to 4445).
[FN217] Cf. oral arguments of the State during the public hearing held before the Inter-American Court on January 26, 2010, and final written arguments of the State, p. 30.
[FN218] They were interned in the barracks of the XIII Battalion, to which they belonged.
[FN219] Cf. Sole instance ruling by the Vice President of the office of the Attorney General of the Nation in Investigation No. 002-61126-02 on February 27, 2004, supra note 141, folios 4439 to 4492.
[FN220] Cf. Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs. Judgment of July 8, 2004. Series C No. 110, para. 145.
[FN221] Castillo Petruzzi et al. v. Peru. Preliminary objections. Judgment of September 4, 1998. Series C No. 41, para. 128; Case of Radilla Pacheco v. Mexico, supra note 24, para. 272; Case of Durand and Ugarte v. Peru, supra note 34, para. 117; Cantoral Benavides v. Peru. Merits. Judgment of August 18, 2000. Series C No. 69, para. 112; Case of Las Palmeras v. Colombia, supra note 32, para. 51; 19 Tradesmen v. Colombia. Merits, reparations and costs. Judgment of July 5, 2004. Series C No. 109, para. 165; Lori Berenson Mejía v. Peru. Merits, reparations and costs. Judgment of November 25, 2004. Series C No. 119, para. 142; Case of the Mapiripán

Massacre v. Colombia. Merits, reparations and costs, supra note 22, para. 202; Palamara Iribarne v. Chile. Merits, reparations and costs. Judgment of November 22, 2005. Series C No. 135, paras. 124 and 132; Case of the Pueblo Bello Massacre v. Colombia, supra note 136, para. 189; Case of Almonacid Arellano et al. v. Chile, supra note 38, para. 131; Case of La Cantuta v. Peru, supra note 180, para. 142; Case of the La Rochela Massacre v. Colombia, supra note 16, para. 200; Case of Escué Zapata v. Colombia, supra note 16, para. 105, and Case of Tiu Tojín v. Guatemala, supra note 18, para. 118.
[FN222] Cf. Barreto Leiva v. Venezuela. Merits, reparations and costs. Judgment of November 17, 2009. Series C No. 206, para. 29.
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153. In this regard, the Court considers it pertinent to reiterate that proceedings followed through up until their conclusion and that fulfill their purpose are the clearest sign of zero tolerance for human rights violations, contribute to the reparation of the victims, and show society that justice has been done. [FN223] The imposing of an appropriate punishment duly founded and proportionate to the seriousness of the facts, by the competent authority, [FN224] permits verification that the sentence imposed is not arbitrary, thus ensuring that it does not become a type of de facto impunity. [FN225] In this regard, the Court has emphasized that administrative or criminal sanctions play an important role in creating the type of institutional culture and competence required to deal with the factors that explain certain structural contexts of violence. [FN226]

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[FN223] Cf. The "Street Children" (Villagrán Morales et al.) v. Guatemala. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of January 27, 2009, para. 21.
[FN224] Cf. Case of the La Rochela Massacre v. Colombia, supra note 16, para. 196.
[FN225] The Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity establishes as one of the elements of impunity, the failure to "sentence to appropriate penalties" those found guilty of violations. Cf., also, Case of Heliodoro Portugal v. Panama, supra note 51, para. 203, in which the Court stated that: "it is necessary to avoid illusory measures that only appear to satisfy the formal requirements of justice."
[FN226] Cf. Case of González et al. ("Campo Algodonero") v. Mexico, supra note 15, para. 377.
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154. Even though this Court has indicated that it is not a criminal court (supra paras. 41 to 43), this does not prevent it from observing that the way in which, on repeated occasions, the sentence imposed on the only two perpetrators who were convicted was reduced, as well the fact that they were able to leave their place of confinement and, as confirmed by the domestic authorities, participate in the perpetration of another crime as part of the military intelligence apparatus while they were deprived of liberty, indicates that the State made an insufficient effort to prosecute and punish adequately serious human rights violations, such as those committed in this case.

C.2 The second phase of the criminal investigation (Investigation No. 329)

155. Once the first phase of the criminal investigation had concluded with the charges brought by the Prosecutor's office, this office continued on to a second phase of investigations under Investigation No. 329, which is still in its preliminary stages. The State indicated that this investigation "seeks to encompass all the facts and all those responsible for the human rights violations: perpetrators and masterminds, accomplices and accessories after the fact."

156. In the context of this investigation, the State advised that several measures had been taken, in particular the Prosecutor had incorporated into the case file the book "Mi Confesión," which had been rejected during the previous investigations; the paramilitary leaders were interviewed whose testimony had led to the identification of the paramilitary Edilson de Jesús Jiménez Ramírez, alias "El Ñato" [FN227] (infra paras. 161 to 164) and the investigation of the former military adviser Narváez Martínez (supra para. 113), and several statements were taken regarding the existence of the so-called "coup de grâce plan." [FN228] Nevertheless, as already mentioned, this investigation is still ongoing and in its preliminary stages; but in view of the death of Edilson Jiménez Ramírez, alias "El Ñato," the only person currently implicated in the proceedings is Mr. Narváez Martínez. [FN229]

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[FN227] In his versión libre statement, Éver (or Hebert) Veloza García stated that he "did not belong to the Self-Defense Forces at the time [of the death of Senator Cepeda], but later, based on comments made by Carlos [Castaño Gil] himself and other individuals who took part in Mr. Cepeda's death, I realized that it was ordered by Carlos and perpetrated by men under the orders of Carlos Castaño, because a man known by the alias 'El Ñato' was always to be found in Catalina, and Carlos did not let him leave and only used him for very special tasks and he remained in that area […]." Transcript of extracts of the versión libre statement received from Hebert Veloza García under Law 975 of 2005, supra note 162, folio 8152.

[FN228] Cf. Office of the Prosecutor General of the Nation, the 26th Special Prosecutor of the National Human Rights and International Humanitarian Law Unit, Investigation No. 329, executive report of January 12, 2010, supra note 134, folios 8796 to 8805.[FN229] Cf. National Human Rights and International Humanitarian Law Unit, Office of the Prosecutor General of the Nation, implication of José Miguel Narváez Martínez in Preliminary Investigation 2182, of October 14, 2009. (evidence file, tome XXII, attachment 6 to the final written arguments of the representatives, folios 9082 to 9084).

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157. The Court considers that the delay in the investigations, which the State has acknowledged, has been a decisive factor in the absence of the due diligence that this case required, because several of those involved have died, and this has not only prevented progress in the legal actions against them but, above all, progress in the investigations to clarify the facts and to identify those responsible for violating Senator Cepeda's right to life. In this regard, although the State reported that several different measures had been taken from those carried out during the first phase of the investigations that started in 2000, the Court notes that it was only in 2008, that they achieved results. Also, it is only now that the Prosecutor's office has begun to tie in other investigations for facts involving individuals who were also linked to the UP.

158. The measures taken as part of this investigation have resulted in some significant progress. However, the recent execution of these measures confirms that there was no coherence in the lines of investigation previously defined by the Prosecutor, based on the complex nature of the murder Senator Cepeda in the context in which it occurred.

C.3 Alleged obstacles to the investigation owing to the demobilization of members of the paramilitary groups

159. The representatives alleged that the application of the laws on demobilization have contributed to preserving impunity in relation to the Senator's execution. They indicated that one of the authors of the murder, Edilson Jiménez Ramírez, alias "El Ñato," had undergone the demobilization process without being properly identified and, therefore, might have enjoyed legal and financial benefits under those laws, without being subject to an exhaustive assessment of his activities as a paramilitary. They also indicated that José Vicente Castaño Gil, a paramilitary group leader at the time of the execution, was never questioned about this death or associated with the investigation, owing to Law 782 of 2002. Moreover, they alleged that the extradition of paramilitary leaders could prevent more information about the facts being obtained, even though these leaders were still providing their versión libre statements under the Justice and Peace Law (No. 975).

160. The State affirmed that Edilson Jiménez Ramírez demobilized collectively, under Decree 3360 of 2003; that, within the framework of Investigation No. 329, in conjunction with the National Unit of Justice and Peace Prosecutors and the High Commissioner for Reintegration, it had verified the information that those demobilized might have on the possible masterminds of the murder, and that the contribution of the demobilization process to learning the identity of alias "El Ñato" and to implicating José Miguel Narváez in the investigation, as presumed mastermind, "has been enormous and extremely valuable." It also indicated that, when Edilson Jiménez Ramírez was identified as alias "El Ñato," there was insufficient data to identify him and, even though a search was made for someone with this name and alias, it was not possible to identify him owing to lack of information. It alleged that, in 2006, when "El Ñato" demobilized, he did so using the alias "Jiménez," which explains why it was only possible to identify him when alias 'H.H' mentioned this during the versión libre hearing. In other words, the State alleged that "alias 'El Ñato' was duly individualized at the time of demobilization but, additionally, that it was after this that he was fully identified." [FN230]

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[FN230] In its final arguments, the State provided evidence confirming that Edilson Jiménez Ramírez demobilized with the Mineros Bloc on January 19, 2006, under the provisions of Law 782 of 2002, under the alias "Jiménez." At that time, Mr. Jiménez Ramírez identified himself with an identity card showing that he was 35 years old and came from Aquitania. Cf. Judicial Police report No. 515704 OT. 3557 of February 2, 2010 (merits file, tome VI, attachment 2 to the final arguments brief of the State, folio 1990).

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161. The Court finds that Edilson de Jesús Jiménez Ramírez, alias "El Ñato," had been mentioned in the initial investigations into Senator Cepeda's execution in 1994. Although it is

clear from Investigation No. 172 that the Prosecutor's office did not individualize or identify Mr. Jiménez Ramírez, [FN231] the Court finds that it did not conduct any subsequent measures to tie him into the proceedings, other than ordering his "individualization." [FN232] The involvement of Mr. Jiménez Ramírez only re-appeared as a relevant line of investigation for the Prosecutor's office in 2008, as a result of the testimony of Ever (or Hebert) Veloza, alias "HH." [FN233]

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[FN231] The office of the Prosecutor General of the Nation advised that "on September 29, 1994: a report prepared by the DAS Judicial Police was added to the file; it relates to an informant whose identity is confidential, and who indicates as authors of the crime alias 'El Ñato' and another individual, alias 'Candelillo,' whose real name is unknown"; that, on October 5, 1994, orders were given to verify the information provided by the informant whose identity is confidential; also, and based on the description given by this witness, to prepare an artist's sketch of the presumed perpetrators and their full identification, as well as verifying where they live." Note No. 051 of February 12, 2010, from the 26th Prosecutor of the National Human Rights and International Humanitarian Law Unit, addressed to the International Affairs Office of the office of the Prosecutor General of the Nation, supra note 134, folio 8812.

[FN232] The Prosecutor's office advised that, after 1994, it had taken the following measures: "(3) September 7, 1999: report of CTI judicial police, efforts to individualize alias 'El Ñato' started. (4) February 26, 2002: order reiterated to individualize and identify alias 'El Ñato.' (5) May 23, 2002: report of CTI judicial police. Information on efforts to individualize alias 'El Ñato' that were unsuccessful. (6) March 24, 2004: the office orders efforts to identify alias 'El Ñato.'" Cf. Note No. 051 of February 12, 2010, from the 26th Prosecutor of the National Human Rights and International Humanitarian Law Unit, addressed to the International Affairs Office of the office of the Prosecutor General of the Nation, supra note 134, folios 8812 to 8813.

[FN233] Cf. Note No. 051 of February 12, 2010, from the 26th Prosecutor of the National Human Rights and International Humanitarian Law Unit, addressed to the International Affairs Office of the office of the Prosecutor General of the Nation, supra note 134, folio 8813.

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162. Furthermore, the Court finds that alias "El Ñato" demobilized collectively as part of the Córdoba Mineros Bloc under the procedure stipulated in Decree 3360 of 2003. This decree established legal, social and financial benefits for those who demobilized, and that individuals who had committed serious human rights violations could not benefit from them. [FN234]

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[FN234] Cf. Note OFI9-00130834/AUV 1130 of the High Commission for Social and Economic Reintegration of Insurgent Groups and Individuals of December 16, 2009 (evidence file XXI, helpful evidence presented by the State, folios 8902 to 8903). According to the information provided by the State, Mr. Jiménez Ramírez, had been in contact with State authorities for the last time in December 2007. Furthermore, Mr. Jiménez Ramírez received from the Peace Programs fund "18 payments for humanitarian aid of 358,000 pesos each, and one payment of 100,000,000 pesos under the heading of return." Subsequently, he was granted payments under the heading of financial support for reinsertion for a total of 1,680,000 pesos in November and December 2007.

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163. Nevertheless, regarding his demobilization, the Court finds that, even though this person demobilized under the alias "Jiménez" and not as "El Ñato," the State did not say whether, at the time, the authorities in charge of the demobilization process exchanged information with the authorities responsible for the investigations, so that Edilson Jiménez Ramírez could have been identified as the person required by the Prosecutor's office since 1994. In fact, the Prosecutor's office had information that alias "El Ñato" corresponded to the name of "Edison" de Jesús Jiménez, according to information provided by the DAS on September 29, 1994. [FN235] The Court considers that, in the case of serious crimes and a serious violation of human rights, the obligation of due diligence requires that the authorities collaborate with each other in order to fully individualize and identify those suspected or accused of committing these serious violations.

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[FN235] Cf. Indictment issued by the Human Rights Unit of the office of the Prosecutor General of the Nation on October 20, 1997, under Investigation No. 172, supra note 148, folios 7897 and 7984.

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164. The Court finds that the fact that someone identified themselves with the alias "Jiménez" and not as alias "El Ñato" was insufficient reason for the authorities not to verify the individuals who underwent the process of demobilization in blocs with the greatest diligence and coherence in relation to the investigations. This is even more serious in the Court's opinion, because, on December 16, 2009, the High Commission for the Social and Economic Reintegration of Insurgent Groups and Individuals of the Presidency of the Republic, which supervised the participation of Mr. Jiménez Ramírez in the demobilization process, reported, that "it was unaware of the investigations and proceedings that were underway against Mr. Jiménez Ramírez and Mr. Castaño Gil, and of any guilty verdicts that had possibly been handed down against these individuals." [FN236] In this regard, the Court considers that, during the demobilization process of alias "El Ñato," the State did not act with the due diligence required to individualize him and identify him appropriately because, since he was implicated in the perpetration of a serious human rights violation, he should not have been a beneficiary of Decree 3360, under the terms of this norm. [FN237]

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[FN236] Cf. Note OFI9-00130834/AUV 1130 of the High Commission for Social and Economic Reintegration of Insurgent Groups and Individuals of December 16, 2009, supra note 234, folio 8904.

[FN237] Cf., mutatis mutandi, Case of the La Rochela Massacre v. Colombia, supra note 16, para. 293.

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165. Furthermore, the Court observes that two individuals who provided relevant information for the investigation into the execution of Senator Cepeda Vargas have been extradited to the United States of America charged with drug trafficking. The evidence in the instant case reveals that individuals subject to the application of Law 795 of 2005 were extradited; namely, Hebert

Veloza García, alias "H.H.," and Diego Fernando Murillo Bejarano, alias "Don Berna," both of them paramilitary leaders. [FN238] Prior to his extradition, the former provided information on Edilson de Jesús Jiménez, alias "El Ñato" [FN239] and, in September 2008, a warrant was issued for the latter's arrest; [FN240] the second, following his extradition, provided information that implicated other public officials in the execution. The State advised that it had adopted measures to ensure that the extraditions did not have a negative impact on the continuation of the proceedings that were underway in Colombia, and that it was taking measures and conducting judicial proceedings by video-conferences and virtual hearings. In particular, the State advised that, in order to obtain the versión libre statements, it had designed and implemented a system for transmitting the proceedings to special rooms for victims where the latter could intervene actively.

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[FN238] Cf. Note UNJP No. 006652 of June 25, 2009, from the Head of the National Unit of Prosecutors for Justice and Peace to the office of the Prosecutor General of the Nation (evidence file XXI, helpful evidence presented by the State, folio 8929).
[FN239] Cf. transcript of extracts of the versión libre statement received from Ever (or Hebert) Veloza García under Law 975 of 2005, supra note 162, folios 8152 to 8158.
[FN240] Cf. newspaper article that appeared in "El Espectador" on September 23, 2008, entitled "Nueva vinculación por homicidio de Senador de la Unión Patriótica" [Another person associated with the murder of Patriotic Union Senator] (evidence file, tome V, attachment 37 to the brief with pleadings, motions and evidence of the representatives, folio 2337).

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166. In this regard, the consistent case law of this Court should be recalled; it establishes that no law or provision of domestic legislation may prevent a State from complying with the obligation to investigate and punish those responsible for human rights violations. [FN241] A State cannot grant direct or indirect protection to those prosecuted for crimes that involve serious human rights by unduly applying legal mechanisms that undermine the pertinent international obligations. Consequently, the application of mechanisms such as extradition should not become a device that promotes, procures or ensures impunity. [FN242] Accordingly, the State authorities must ensure that considerations relating to the attribution of serious human rights violations prevail in decisions concerning the application of these procedural mechanisms to anyone. [FN243] It is opportune to observe that, following the said extraditions, this principle has been taken into account by the Criminal Cassation Chamber of the Supreme Court of Justice of Colombia in relation to a request for the extradition of a paramilitary in another case. [FN244] In any case, the State is obliged to adopt the necessary measures to ensure that those involved in serious human rights violations, or who could possess relevant information in that regard, appear before the courts, or collaborate with them, when required.

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[FN241] Cf. Loayza Tamayo. Reparations. Judgment of November 27, 1998. Series C No. 42 para. 168; Castillo Páez. Reparations. Judgment of November 27, 1998. Series C No. 43, para. 105; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 129; Case of Anzualdo Castro v. Peru, supra note 36, para. 125 and 182, and Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs, supra note 22, para. 304.

[FN242] The Mapiripán Massacre v. Colombia. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of July 8, 2009, considering paragraph 40.
[FN243] Case of the Mapiripán Massacre v. Colombia. Monitoring compliance with judgment, supra note 242, considering paragraphs 40 and 41.
[FN244] In proceedings No. 30451, the Criminal Cassation Chamber issued a negative opinion on the request for extradition of a candidate for the benefits established in the Justice and Peace Law, based on the following arguments: (i) it violated the spirit of Law 975 of 2005; (ii) it ignored the rights of the victims; (iii) it harmed the functioning the administration of justice in Colombia, and (iv) the crimes for which the individual's extradition was requested were less serious than the crimes he was accused of in Colombia.
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167. In short, despite the progress indicated in the preceding paragraphs, the Court considers that impunity prevails in the instant case, because the domestic procedures and proceedings have not been conducted within a reasonable time, and have not constituted effective remedies to ensure access to justice, to investigate and eventually punish all those who participated in committing the violations, including the possible participation of paramilitaries, and to provide integral reparation for the consequences of the violations. Based on the foregoing findings and on the State's partial acknowledgement of responsibility, the Court concludes 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 Senator Manuel Cepeda Vargas and his next of kin.

IV.5. RIGHTS TO THE PROTECTION OF HONOR AND DIGNITY, FREEDOM OF THOUGHT AND EXPRESSION, FREEDOM OF ASSOCIATION AND POLITICAL RIGHTS, (ARTICLES 11, 13(1), 16 AND 23 IN RELATION TO ARTICLE 1(1) OF THE AMERICAN CONVENTION)

168. The State acknowledged international responsibility for the violation of political rights, and the rights to honor and dignity and to freedom of expression (supra para. 13). According to the arguments of the Commission and the representatives, the dispute concerning the rights enshrined in Articles 13 and 23 of the Convention subsists with regard to the alleged violation of their social dimension.

169. Regarding article 16 of the Convention, the Commission considered that the execution of Senator Cepeda "revealed the failure to ensure [the] right to associate freely […] without fear," owing to the notorious pattern of violence against the members of the UP; the absence of effective measures of prevention, and the failure to completely clarify the crimes that had been committed. The representatives alleged the violation of Articles 13, 16 and 23 of the Convention jointly, because Senator Cepeda Vargas exercised these rights continuously, simultaneously and in an interrelated manner, so that the violation of these rights represented an attack on the values of the democratic system; because he was murdered to silence his voice and his political activities; and because his death, prevented him from being a member of the UP and curtailed his possibility of continuing to make a contribution towards achieving the political objectives of this party. When challenging the alleged violation of the right of association, the State indicated that

the mere membership of the victim in a political party did not imply this violation, and that the Commission and the representatives had tried to unduly extend its acknowledgement of responsibility to include harming the political rights and freedom of expression of Senator Manuel Cepeda as an individual, in order to exempt themselves from any need to prove the violation. In this regard, it asked that the Court "declare that this violation was subsumed in the harm to the political rights." Finally the State indicated that the only purpose of including a social dimension in the analysis would be to incorporate new victims in the proceedings, and that the loss of legal status of the UP resulted from a failure to comply with the legal and constitutional requirements.

170. As regards the violation of Article 11 of the Convention, the Court has already verified that public officials made statements concerning the alleged connections between the UP and the FARC (supra paras. 85 to 87). However, when acknowledging the violation of Mr. Cepeda's right to protection of his honor and dignity, the State declared that it made the acknowledgement because it had failed to protect him from threats related to statements made by various private individuals, organizations and public officials, for which it alleged that it was not responsible. In relation to the failure to take preventive measures with regard to the right to life, the Court has already indicated that public officials could not ignore the rights of Senator Cepeda Vargas in their statements, since they were guarantors of those rights. [FN245] Therefore, the Court does not need to weigh the Senator's right to honor and dignity against the freedom of expression of other officials or other sectors of society, as the State proposes. Consequently, the Court takes note of the State's acknowledgement of responsibility in this regard.

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[FN245] Cf. 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; Case of Perozo et al. v. Venezuela, supra note 49, para. 151, and Case of Ríos et al. v. Venezuela, supra note 49, para. 139.

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171. Although each of the rights contained in the Convention has its own sphere, meaning and scope, it sometimes becomes necessary to analyze them together, owing to the specific circumstances of the case or the necessary interrelation among certain rights, in order to make an appropriate assessment of the possible violations and their consequences. In the instant case, the Court will examine the dispute that subsists concerning the alleged violation of political rights, freedom of expression, and freedom of association together, in the understanding that these rights are of fundamental importance under the inter-American system, because they are closely interrelated and, together, make democracy possible. [FN246] Additionally, Senator Cepeda Vargas was, at one and the same time, a leader of the UP and the PCC, a social communicator and a parliamentarian; consequently, it is not necessary to disaggregate his activities in order to decide which of them was the origin or cause of each alleged violation, because he exercised these rights during the same period, context and situation of absence of protection that has been described above.

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[FN246] Cf. Case of Castañeda Gutman v. Mexico, supra note 28, para. 140. Similarly, the Constitutional Court of Colombia, "under the Constitution and under the doctrine of human rights, the freedoms of expression, assembly and association form a trilogy of personal freedoms that are also a pre-requisite for political rights." Judgment C-265 of the Constitutional Court, Presiding Judge Alejandro Martínez Caballero, of June 2, 1994 (evidence file, tome XXII, attachment 9 to the final arguments of the representatives, folio 9145).

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172. The Court considers that the Convention protects the essential elements of democracy, which include "access to power and its exercise subject to the rule of law." [FN247] Among other political rights, Article 23 of the Convention protects the right to be elected, which assumes that the beneficiary of these rights has a real opportunity to exercise them, which means that effective measures must be adopted to guarantee the necessary conditions for their full exercise. [FN248] Similarly, the Court has found that this freedom of expression may be unlawfully restricted by de facto conditions that directly or indirectly place those who exercise it at risk or in a situation of increased vulnerability. Therefore, the State must abstain from acting in a way that contributes to, stimulates, promotes or increases this vulnerability [FN249] and must adopt, when pertinent, necessary and reasonable measures to prevent violations and protect the rights of those who find themselves in this situation. [FN250] In addition, freedom of expression, particularly on matters of public interest, guarantees the dissemination of information and ideas, even those that are disagreeable to the State or any sector of the population. [FN251] Also, Article 16 of the Convention protects the right to associate for political purposes, [FN252] which is why a violation of the right to life or to personal integrity that can be attributed to the State may, in turn, give rise to a violation of Article 16(1) of the Convention, when it results from the victim's legitimate exercise of the right to freedom of association. [FN253]

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[FN247] The Inter-American Democratic Charter stipulates that: "[e]ssential elements of representative democracy include, inter alia, […] the pluralistic system of political parties and organizations […]." Inter-American Democratic Charter, Article 3.

[FN248] Cf. Case of Yatama v. Nicaragua, supra note 65, para. 195, and Case of Castañeda Gutman v. United Mexican States, supra note 28, para. 145.

[FN249] Cf. Case of Perozo et al. v. Venezuela, supra note 49, para. 118, and Case of Ríos et al. v. Venezuela, supra note 49, para. 107. Also, inter alia, Juridical Situation and Rights of Undocumented Migrants. Advisory Opinion OC-18/03. Series A No. 18, paras. 112 to 172 and Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs, supra note 22, paras. 173 to 189.

[FN250] Cf. Case of Ríos et al. v. Venezuela, supra note 49, para. 107 and Case of Perozo et al. v. Venezuela, supra note 49, para. 118.

[FN251] Cf. Case of Ríos et al. v. Venezuela, supra note 49, para. 105 and Case of Perozo et al. v. Venezuela, supra note 49, para. 116.

[FN252] Cf. Case of Baena Ricardo et al. v. Panama, supra note 34, para. 156; Case of Escher et al. v. Brazil, supra note 25, para. 170, and Case of Kawas Fernández v. Honduras, supra note 37, para. 143.

[FN253] Similarly, Cf. Case of Cantoral Huamaní and García Santa Cruz v. Peru, supra note 37, para. 147.

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173. In this regard, it should be emphasized that opposition voices are essential in a democratic society; without them it is not possible to reach agreements that satisfy the different visions that prevail in society. [FN254] Hence, in a democratic society States must guarantee the effective participation of opposition individuals, groups and political parties by means of appropriate laws, regulations and practices that enable them to have real and effective access to the different deliberative mechanisms on equal terms, but also by the adoption of the required measures to guarantee its full exercise, taking into consideration the situation of vulnerability of the members of some social groups or sectors. [FN255]

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[FN254] Likewise, the European Court of Human Rights has indicated that: "[t]he fact that […] a political project is considered incompatible with the current principles and structures of [a] State does not mean that it infringes democratic rules. It is of the essence of democracy to allow diverse political projects to be proposed and debated, even those that call into question the way a State is currently organized, provided that they do not harm democracy itself". Case of Freedom and Democracy Party (ÖZDEP) v. Turkey (Application No. 23885/94), 8 December 1999, para. 41; Case of Socialist Party and others v. Turkey (20/1997/804/1007), 25 May 1998, para. 47.
[FN255] Similarly, Cf. Case of Yatama v. Nicaragua, supra note 65, para. 201; Juridical Situation and Rights of Undocumented Migrants. Advisory Opinion OC-18/03, supra note 249, para. 89, and Juridical Situation and Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 46.

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174. In this case, the Court finds that the "agreement to prolong the truce," signed by representatives of the FARC and the Peace Commission with regard to the UP, acknowledged the particular situation of risk that the candidates of the UP and allied parties, such as the PCC, could face by taking part in general elections and, therefore, established that the Government would "grant the [UP] and its leaders the essential guarantees and assurances to enable them to carry out their recruitment and electoral activities, in the same way as the other political parties." [FN256]

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[FN256] Agreement to extend the truce, La Uribe (Meta), of March 2, 1986. Cf. attachment 5 to the opinion provided before notary public (affidavit) by expert witness Eduardo Cifuentes Muñoz, supra note 77, folios 8341 to 8381. Similarly, the Constitutional Court of Colombia, when referring to the situation of the UP indicated that: "[t]he emergence of minority groups, movements and political parties as a result of the demobilization of former members of the guerrilla requires special protection and support from the State. The institutionalization of the conflict, the surrender of weapons and their substitution by the active exercise of democratic political participation and the renunciation of violence as a way of achieving a vision for society, are alternatives that must be guaranteed by all the authorities in order to avoid the so-called 'dirty war' ending up by closing the possibilities of reaching a consensus that unites all sectors of the population and permits peaceful coexistence." Judgment delivered by the Second Review Chamber of the Constitutional Court in case No. T-439, supra note 93, folios 1354 to 1372.

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175. As previously verified, Senator Manuel Cepeda tended towards a critical opposition to the different Governments in his newspaper articles and in his political and parliamentary activities (supra para. 71). While he was a leader of the UP and the PCC, his life was in constant danger, and this increased up until his death; consequently, he carried out his activities in a context of permanent harassment and threats owing to his political positions and to the absence of protection by State agents. Indeed, the parties recognize the political motives behind the extrajudicial execution (supra para. 73).

176. In this regard, although it could be considered that, even under threat, Senator Cepeda Vargas was able to exercise his political rights, freedom of expression and freedom of association, the fact that he continued to exercise them was obviously the reason for his extrajudicial execution. And this was precisely because its purpose was to impede his political activism, for which the exercise of these rights was essential. Consequently, the State did not create either the conditions or the due guarantees for Senator Cepeda, as a member of the UP in the said context, to have the real opportunity to exercise the function for which he had been democratically elected; particularly, by promoting the ideological vision he represented through his free participation in public debate, in exercise of his freedom of expression. In the final analysis, the activities of Senator Cepeda Vargas were obstructed by the violence against the political movement to which he belonged and, in this sense, his freedom of association was also violated.

177. Based on the above, the Court considers that the threats and the deliberate absence of protection faced by Senator Cepeda Vargas, owing to his participation in the democratic mechanisms to which he had access, were expressed by undue or unlawful pressure and restrictions on his political rights, freedom of expression and freedom of association, and also by a rupture of the rules of the democratic game. In addition, since the political motive for the murder has been acknowledged (supra para. 73), the Court considers that the extrajudicial execution of an opponent for political reasons not only entails the violation of several human rights, but also breaches the principles upon which the rule of law is based, and directly violates the democratic system, inasmuch as it results from a failure to ensure that the different authorities abide by their obligation to protect nationally and internationally recognized human rights, and submit to the domestic organs that guarantee the observance of those rights.

178. In this regard, it is unnecessary to examine the impact that the general situation of danger faced by Senator Cepeda and his death had on the electorate's right to vote. Moreover, it is not incumbent on the Court to analyze the relationship between Senator Cepeda's death and the Patriotic Union's loss of legal status. However, it is possible to consider that the violation of Mr. Cepeda's rights had threatening and intimidating effects for the collectivity of individuals who were members of his political party or who sympathized with his ideas. The violations in this case went beyond the readers of his column in the weekly publication, Voz, to members and sympathizers of the UP, and those who voted for this party.

179. Consequently, the State is responsible for violating the rights to the protection of honor and dignity, to freedom of expression and to freedom of association and the political rights of

Mr. Cepeda Vargas, established in Articles 11, 13(1), 16 and 23 of the Convention, in relation to Article 1(1) thereof.

## IV.6. RIGHTS TO PERSONAL INTEGRITY, PROTECTION OF HONOR AND DIGNITY, AND FREEDOM OF MOVEMENT AND RESIDENCE OF THE NEXT OF KIN (ARTICLES 5, 11 AND 22, IN RELATION TO ARTICLE 1(1) OF THE AMERICAN CONVENTION)

180. The State acknowledged its international responsibility for the violation of the right to personal integrity of the victim's direct family (Iván Cepeda Castro, María Cepeda Castro and Olga Navia Soto), and of his sisters and brother, owing to the mental and moral effects of the death of Senator Cepeda Vargas; and they "have endured additional suffering owing to the acts or omissions of State authorities in relation to the perpetration of the facts." Although the State initially rejected responsibility with regard to Claudia Girón Ortiz, Iván Cepeda Castro's wife, during the public hearing it indicated that, in good faith, it extended its acknowledgement of responsibility to her, as this was fair, "based on the testimony provided."

181. The Court assesses this acknowledgement of responsibility and considers that the suffering endured by the next of kin as a result of the extrajudicial execution of Senator Cepeda Vargas, is also proved, among other evidence, by the testimony rendered before the Court so that, in this regard, it declares that the State is responsible for the violation of Article 5 of the Convention (infra para. 210).

182. Moreover, the State did not extend its acknowledgement of responsibility to the alleged violation of Article 22 of the Convention, considering that there was no relationship between the possible situation of risk of the next of kin and the execution of Senator Cepeda. It the absence of this connection, it asked the Court to declare that it had not violated this right, because there was no material or legal evidence to declare this violation.

183. Thus, the dispute subsists as regards: (a) the alleged violation of personal integrity owing to the threats that the next of kin allegedly received, presumably because of their actions to obtain justice and truth; as well as the allegations of the Commission and the representatives regarding the violation of Articles 5 and 22 of the Convention, in relation to the presumed exile endured by Iván Cepeda, María Cepeda and Claudia Girón and (b) the alleged violation of the right to personal integrity and to honor of the next of kin, owing to the alleged statements made by State officials.

### A. THE ALLEGED VIOLATION OF PERSONAL INTEGRITY OWING TO THREATS ALLEGEDLY RECEIVED BY THE NEXT OF KIN, AS WELL AS THE ALLEGED VIOLATION OF THIS RIGHT AND OF THE RIGHT TO FREEDOM OF MOVEMENT AND RESIDENCE IN RELATION TO THE ALLEGED EXILE OF SOME OF THE NEXT OF KIN

184. The Commission stated that, following the extrajudicial execution of Senator Cepeda Vargas, his next of kin received death threats from State agents. According to the representatives, the threats and other acts of harassment against the next of kin of Manuel Cepeda, especially Iván Cepeda and Claudia Girón, began the day after the Senator's death and grew in intensity as their efforts to obtain justice in this case increased. For its part, the State

affirmed that "it has not been proved and it cannot be concluded logically, that the threats were a direct consequence of the efforts of the next of kin to obtain justice [… rather than to] their efforts in defense of human rights."

185. In addition, the Commission argued that "Iván Cepeda had to abandon Colombia from November 1994 until April 1995 [and was forced to] remain abroad from 2000 to 2004," that time together with his wife, "owing to the threats and acts of intimidation designed to dissuade him from trying to obtain the elucidation of the crime." The representatives endorsed this argument and extended it to Claudia Girón, underscoring that "the State did not provide the necessary guarantees for them to continue residing freely and safely in Colombian territory." For its part, the State affirmed that "it has not been proved and it cannot be concluded logically, that the exile suffered by the next of kin resulted from their efforts to obtain justice," and also that the State had complied with "the obligations arising from the right to freedom of movement and residence."

186. The Court finds that the next of kin of Senator Cepeda Vargas played a role in the search for justice and truth. [FN257] The opinion of the expert witness Beristain reveals that the creation of "the Manuel Cepeda Foundation (set up in 1994 […]) became practically the focal point of his family, from shortly after his execution," as a "way of dealing with" the facts. [FN258] In this regard, María Estella Cepeda Vargas testified that "on August 9, the ill-fated date of [my] brother's murder, while we were keeping vigil over him in the National Capitol [Note: the seat of Congress], his son Iván, his daughter María and Iván's wife, Claudia, and the siblings who were present, we decided to set up the Manuel Cepeda Vargas Foundation." [FN259] María Cepeda and Claudia Girón took part in the creation of this Foundation, [FN260] and Iván Cepeda Castro "focused all his energies and, overall, his whole life, on the elucidation of the truth about what happened and the prosecution of those responsible for the assassination, and on the creation of the Foundation." [FN261] Based on the documentation examined and on the testimony of the different people interviewed, the expert witness described the central role played by Iván Cepeda in the investigation of his father's murder. [FN262] Moreover, María Cepeda acted, together with Iván Cepeda, as spokesperson of the Foundation, and "from Europe collaborate[d] with the lobbying activities, organizing the tours, and preparing press communiqués." [FN263] In addition, both Iván and María Cepeda took part in meetings with different authorities to request that the investigations be expedited. [FN264] The efforts made through the Foundation to clarify the facts "took place in a context of constant threats." [FN265]

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[FN257] The next of kin's participation in the search for justice and truth in this case occurred at both the judicial and the political levels. In this regard, since 1995, Olga Navia Soto, María Cepeda Castro and Iván Cepeda Castro have acted as the civil party in the criminal proceedings against the authors of Manuel Cepeda's murder. In this capacity, among other matters, they submitted arguments to the Third Criminal Court of the Santafé de Bogota D.C. Special Circuit and Iván Cepeda addressed the President of the Republic to request that the two sergeants be discharged from the Army because it had been declared that they bore disciplinary responsibility for the murder of Manuel Cepeda. In addition, Iván Cepeda stated that members of the Foundation played "almost the role of judicial investigators." Subsequently, the evidence shows that Iván Cepeda travelled to the United States of America to attend the September 17, 2009,

procedure in which testimony was received from Diego Fernando Murillo Bejarano, alias "Don Berna," one of the paramilitaries extradited to that country. Cf. information on relevant procedures under Investigation No. 329 of the 26th Special Prosecutor of the National Human Rights Unit (evidence file, tome XXI, folio 8808); judgment delivered by the Third Criminal Court of the Santafé de Bogotá Specialized Circuit on December 16, 1999, in Investigation No. 5393-3, supra note 75, folios 1725; letter of September 23, 1999, from the office of the President of the Republic to the Fundación Manuel Cepeda Vargas and the Colectivo de Abogados "José Alvear Restrepo" (evidence file, tome VIII, attachment 112 to the brief with pleadings, motions and evidence of the representatives, folios 4009 to 4010); testimony given by Iván Cepeda Castro at the public hearing held before the Inter-American Court on January 26, 2010; sworn statement made before notary public (affidavit) by Claudia Victoria Girón Ortiz on January 4, 2010 (evidence file, tome XX, folio 8299), and office of the Prosecutor General of the Nation, National Human Rights and International Humanitarian Law Unit, testimony of Diego Fernando Murillo Bejarano on September 17, 2009, supra note 164, folios 9068 to 9080.

[FN258] Cf. Opinion provided before notary public (affidavit) by expert witness Carlos Martín Beristain, supra note 208, folio 8243.

[FN259] Cf. testimony given by María Estella Cepeda Vargas at the public hearing held before the Inter-American Court on January 26, 2010.

[FN260] Cf. sworn statement made before notary public (affidavit) by Claudia Victoria Girón Ortiz, supra note 257, folio 8296, and sworn statement made before notary public (affidavit) by María Cepeda Castro on December 30, 2009 (evidence file, tome XX, folio 8544).

[FN261] Cf. Opinion provided before notary public (affidavit) by expert witness Carlos Martín Beristain, supra note 208, folio 8240.

[FN262] Cf. Opinion provided before notary public (affidavit) by expert witness Carlos Martín Beristain, supra note 208, folio 8243. Likewise, María Estella stated that "the weight of all this has been supported by the Fundación Manuel Cepeda Vargas on behalf of Iván Cepeda and Claudia, his wife." Testimony given by María Estella Cepeda Vargas at the public hearing held before the Inter-American Court on January 26, 2010. See also an article that appeared on the Internet site of "The Washington Post" (at "washingtonpost.com") on October 19, 2005, entitled "Keeping Alive the Memories of Colombia's Victims" written by Nora Boustany (evidence file, tome V, attachment 38 to the brief with pleadings, motions and evidence, folios 2339 to 2341), and an article that appeared in "The New York Times" on January 8, 2005, entitled "A Colombian Fighting for Victims of a Political War" by Nora Boustany (evidence file, tome V, attachment 39 to the brief with pleadings, motions and evidence, folios 2343 to 2346).

[FN263] Sworn statement made before notary public (affidavit) by Claudia Victoria Girón Ortiz, supra note 257, folios 8298.

[FN264] Cf. sworn statement made before notary public (affidavit) by María Cepeda Castro on December 30, 2009, supra note 260, folio 8544.

[FN265] Cf. Opinion provided before notary public (affidavit) by expert witness Carlos Martín Beristain, supra note 208, folio 8243.

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187. Furthermore, María Estella Cepeda, one of the Senator's sisters, stated that "the best homage that she could pay [to her] brother was to present [her] candidacy for the UP." [FN266] She testified that her "life has changed radically, because [she has] to be accompanied permanently by an escort […] since, from the time [she] became a counselor for the [UP] and

because [she] was the sister of Manuel Cepeda Vargas, [she has] suffered constant threats." [FN267] Moreover, she has reported the threats against her. [FN268]

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[FN266] Testimony given by María Estella Cepeda Vargas at the public hearing held before the Inter-American Court on January 26, 2010.
[FN267] Testimony given by María Estella Cepeda Vargas at the public hearing held before the Inter-American Court on January 26, 2010.
[FN268] Cf. Amnesty International press communiqué No. AU 235/01 of September 17, 2001 (evidence file, tome IV, attachment 38 to the application, folios 1990 to 1991).

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188. Regarding the alleged threats, María Estella Cepeda stated that "the close family group of [her] brother, his children and his daughter-in-law, were victims of harassment and of anxiety knowing that their father was in such danger, and they were also threatened personally." [FN269] In this regard, Claudia Girón testified that "[m]ost of the threats were made by telephone and, in the messages, we were told that we were being followed," and that "[s]ome threats were addressed at [her] directly, with insults and stating that [she] would be raped and dismembered." [FN270]

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[FN269] Testimony given by María Estella Cepeda Vargas at the public hearing held before the Inter-American Court on January 26, 2010.
[FN270] Sworn statement made before notary public (affidavit) by Claudia Victoria Girón Ortiz, supra note 257, folio 8300

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189. With regard to María Cepeda, the Court notes that she left the country in 1984 to study in Bulgaria. She stated that this "was the best possibility that [her] father found to get [them] away from the climate of anxiety and constant threats in which [they] were living." [FN271] In 1987, she met her husband, a Greek national; she married him in 1988 and their first daughter was born in 1990. [FN272] In 1992, María Cepeda returned to Colombia, planning to live there together with her family; nevertheless, she decided to abandon the country again after four months, owing to the lack of security for her family. [FN273] In August 1994, following her father's death, she returned to Colombia again for approximately three months. [FN274] The Court also notes the observation of expert witness Beristain that "[i]n 15 years, María's family has only travelled twice to Colombia […], and both times it was in an environment of fear and measures of security that altered her normal coexistence with her brother and her relatives." [FN275]

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[FN271] Sworn statement made before notary public (affidavit) by María Cepeda Castro, supra note 260, folio 8541.
[FN272] Cf. sworn statement made before notary public (affidavit) by María Cepeda Castro, supra note 260, folio 8541.
[FN273] Cf. sworn statement made before notary public (affidavit) by María Cepeda Castro, supra note 260, folio 8542.

[FN274] Cf. sworn statement made before notary public (affidavit) by María Cepeda Castro, supra note 260, folio 8543.
[FN275] Cf. Opinion provided before notary public (affidavit) by expert witness Carlos Martín Beristain, supra note 208, folios 8240 to 8241.
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190. The Court considers that even though the fact that María Estella Cepeda lived outside Colombia before and at the time of the murder could indicate a violation of her right to freedom of movement and residence, because Article 22(5) of the Convention also encompasses the right of entry into the country of which the person in question is a national, according to the affidavit, she has not tried to return to live in Colombia since 1992. Even though her decisions to leave the country in 1984 and in 1992 took place in the context of the danger faced by her father, the Court observes that the parties have not provided indications or evidence, such as information about supposed threats linked to María Cepeda, about the specific situation of danger that prevented her return to Colombia at those times, or following her father's death. Consequently, the Court finds that it does not have sufficient information to establish whether the right to freedom of movement and residence of María Estella Cepeda was violated.
191. On the other hand, the evidence before the Court reveals that Iván Cepeda Castro and Claudia Girón left Colombia several times following the death of his father. These trips abroad were made for different reasons, including coordination of international efforts (1994-1995 and 1999), presentation of progress in and obstacles to the case before the United Nations in the United States of America (1997), and attendance at a course of an academic nature in Costa Rica (1998). [FN276] Since the statements taken as evidence do not refer to these trips abroad as exiles, [FN277] the Court does not have other probative elements to determine whether Iván Cepeda and Claudia Girón made these trips abroad as a result of the security situation in their country.

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[FN276] Cf. sworn statement made before notary public (affidavit) by Claudia Victoria Girón Ortiz on January 4, 2010, supra note 257, folios 8299 to 8300.
[FN277] See, for example, opinion provided before notary public (affidavit) by expert witness Carlos Martín Beristain, supra note 208, folio 8241; sworn statement made before notary public (affidavit) by María Cepeda Castro on December 30, 2009, supra note 260, folio 8545, and sworn statement made before notary public (affidavit) by Claudia Victoria Girón Ortiz on January 4, 2010, supra note 257, folios 8299 to 8300. From the last statement, it can be observed that they had to leave the country from 2000 to 2004, "this time as exiles."
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192. The Court also notes that the State alleged that it had not received information on the harassment and threats that occurred from 1994 to 2002. Nevertheless, the evidence provided permits the Court to determine that the State was aware of the situation of risk of Iván Cepeda and Claudia Girón as of 1999. First, the Court observes that the Minister of the Interior received a letter dated November 6, 1999, in which Human Rights Watch expressed its concern regarding a death threat that Iván Cepeda and his wife had received the previous day. [FN278] Furthermore, although Claudia Girón stated in her testimony that she and Iván Cepeda had been included in a State protection program since 1999, [FN279] the State indicated that, on

November 30, 1999, Iván Cepeda advised that he was not interested in the risk assessment offered by the State. [FN280]

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[FN278] Cf. letter of November 6, 1999, from Human Rights Watch to the Ministry of National Defense (evidence file, tome IV, attachment 35 to the application, folio 1980).
[FN279] Cf. sworn statement made before notary public (affidavit) by Claudia Victoria Girón Ortiz on January 4, 2010, supra note 257, folio 8300.
[FN280] Cf. note DAS.OJUR.102.No.4864 of the Administrative Department of Security (DAS), of February 16, 2010 (merits file, tome VI, folio 1985).

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193. Regarding the connection between the threats against Iván Cepeda Castro and Claudia Girón and the search for justice and truth, the testimony received reveals that the increase in the frequency of the threats was linked to the progress of the investigations up until the conviction of the perpetrators of the execution of Senator Manuel Cepeda in December 1999. [FN281] Thus, the expert witness Beristain stated that, following the conviction of the two perpetrators of the murder, "the pressure against Iván and the Foundation increased, and an attempt was even made on his life in 2007." [FN282] Similarly, the Court notes that, in the said letter of November 6, 1999, Human Rights Watch linked the threat against Iván Cepeda and his wife to another letter it had addressed to the President of Colombia on November 3 that year requesting "immediate measures to dismiss the […] perpetrators of Senator Cepeda's murder." [FN283] Similarly, there is another public letter from Amnesty International dated November 11, 1999, affirming that "this death threat is related to the judicial proceedings filed against two members of the Colombian armed forces implicated in the murder of […] Manuel Cepeda Vargas." [FN284]

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[FN281] Cf. Opinion provided before notary public (affidavit) by expert witness Carlos Martín Beristain, supra note 208, folios 8241 to 8243, and sworn statement made before notary public (affidavit) by Claudia Victoria Girón Ortiz, supra note 257, folio 8300.
[FN282] Cf. Opinion provided before notary public (affidavit) by expert witness Carlos Martín Beristain, supra note 208, folio 8243.
[FN283] Cf. letter of November 6, 1999, from Human Rights Watch to the Ministry of National Defense, supra note 278, folio 1980. See also, letter of November 3, 1999, from Human Rights Watch to the President of the Republic of Colombia at the time (evidence file, tome IV, attachment 37 to the application, folios 1985 to 1988).
[FN284] Public letter from Amnesty International "Temor por la seguridad" [Fearful for their safety] concerning Iván Cepeda and Claudia Girón of November 11, 1999 (evidence file, tome XXII, attachment 12 to the final arguments of the representatives, folio 9172). In addition, the particular danger for their safety at that time is illustrated, among other matters, by the fact that, as of 1999, Iván Cepeda and Claudia Girón were accompanied by Peace Brigades International, an organization dedicated to accompanying human rights defenders in dangerous situations. Cf. Opinion provided before notary public (affidavit) by expert witness Carlos Martín Beristain, supra note 208, folio 8244, and sworn statement made before notary public (affidavit) by Claudia Victoria Girón Ortiz on January 4, 2010, supra note 257, folio 8300.

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194. In brief, the Court has sufficient evidence to presume a connection between the efforts to elucidate Senator Cepeda's execution and the threats received by Iván Cepeda Castro and Claudia Girón. In this regard, the Court finds that their human rights defense activities, through the Manuel Cepeda Vargas Foundation, and the participation in politics of María Estella Cepeda (leader of the UP and the PCC in the city of Pasto, Nariño), cannot be disassociated from Senator Manuel Cepeda's execution since, as the testimony received reveals, these activities have been assumed as a way of responding to what happened.

195. In other cases, the Court has found that the right to mental and moral integrity of the victims' next of kin has been violated owing to the additional suffering resulting from subsequent acts or omissions by the State authorities in relation to the facts. [FN285] In this case, the Court takes into account the situation experienced by the next of kin as a result of the threats they have faced following Senator Cepeda's execution, among other possible motives, as a way of preventing them promoting the search for justice; and, in particular, the investigation and punishment of all those responsible for the facts, so that this constituted a violation of the right to personal integrity to the detriment of Iván Cepeda Castro, Claudia Girón and María Estella Cepeda

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[FN285] Cf. Blake v. Guatemala. Merits. Judgment of January 24, 1998. Series C No. 36, paras. 114-116; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 206, and Case of Heliodoro Portugal v. Panama, supra note 51, 163.

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196. Similarly, the Court has verified that the said situation of insecurity led Iván Cepeda Castro and Claudia Girón to abandon Colombia from 2000 to 2004. In this regard, María Estella Cepeda stated that after the death of her father, her brother and his wife suffered constant threats, and were obliged to go abroad for four years in Lyon, France." [FN286] During their time abroad, they "received support from Amnesty International's program for refugees, and they remained outside Colombia for four years owing to the exacerbation of the security conditions that made it inadvisable for them to return earlier." [FN287] The Court finds, therefore, that a sufficient relationship can be presumed between the threats received by Iván Cepeda Castro and Claudia Girón and their decision to abandon the country in 2000.

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[FN286] Cf. sworn statement made before notary public (affidavit) by María Cepeda Castro on December 30, 2009, supra note 260, folio 8545.
[FN287] Cf. Opinion provided before notary public (affidavit) by expert witness Carlos Martín Beristain, supra note 208, folio 8241.

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197. The Court has indicated 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 the individual. [FN288] This article includes, inter alia, the right of the individual to enter, to remain in and to leave the territory of the State without unlawful interference. Hence, the enjoyment of

this right does not depend on any particular objective or motive of the individual who wishes to move or to remain in one place. [FN289] Furthermore, the Court has considered that the right to freedom of circulation and residence can be violated by de facto restrictions if the State has not established the conditions, or provided the means that allow it to be exercised. [FN290] In this regard, the right to freedom of circulation and residence may be violated when an individual is the victim of threats or harassment and the State fails to provide the necessary guarantees to enable him or her to move about and reside freely in the territory in question, even when the threats and harassment are executed by non-state actors. [FN291]

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[FN288] Cf. Ricardo Canese v. Paraguay. Merits, reparations and costs. Judgment of August 31, 2004. Series C No. 111, para. 115; Case of Valle Jaramillo et al. v. Colombia, supra note 16, para. 138; Case of the Ituango Massacres v. Colombia, supra note 16, para. 206; and Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs. Judgment of June 15, 2005. Series C No. 124, para. 110.
[FN289] Cf. United Nations, Human Rights Committee, General Comment No. 27, of November 2, 1999, paras. 1, 4, 8 and 19. Also, Cf. Case of Ricardo Canese v. Paraguay, supra note 288, para. 115; Case of Valle Jaramillo et al. v. Colombia, supra note 16, para. 138; Case of the Ituango Massacres v. Colombia, supra note 16, para. 206; Case of the Moiwana Community v. Suriname, supra note 288, para. 110, and Case of the "Mapiripán Massacre." Merits, reparations and costs, supra note 22, para. 168.
[FN290] Cf. Case of the "Mapiripán Massacre." Merits, reparations and costs, supra note 22, para. 170; Case of Valle Jaramillo et al. v. Colombia, supra note 16, para. 139; Case of the Moiwana Community v. Suriname, supra note 288, paras. 119 and 120, and Case of the Ituango Massacres, supra note 16, para. 210.
[FN291] Cf. Case of Valle Jaramillo et al. v. Colombia, supra note 16, para. 139.
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198. It should be mentioned that, as Claudia Girón explained, she and Iván Cepeda Castro had considered returning to Colombia in 2002. However, their return to the country was prevented by the publication of the book "Mi Confesión" in which they were both denounced as leaders of a FARC unit allegedly named after Manuel Cepeda, because they considered that this would place them in renewed danger. [FN292] Following their return to Colombia, the pressure and threats increased, as of 2005. [FN293] Hence, on June 26, 2006, at the request of the Corporación Colectivo de Abogados, [FN294] the Inter-American Commission ordered urgent precautionary measures to protect the life and personal integrity of Iván Cepeda, Claudia Girón and Emberth Barrios Guzmán, [FN295] because "the beneficiaries have allegedly been threatened and followed, which increases the risk for their life in light of the context of accusations and acts of violence against members of the [UP]," and that "an attempt had been made on the life" of Iván Cepeda Castro's escort. [FN296]

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[FN292] Sworn statement made before notary public (affidavit) by Claudia Victoria Girón Ortiz, supra note 257, folio 8300.
[FN293] Cf. Opinion provided before notary public (affidavit) by expert witness Carlos Martín Beristain, supra note 208, folio 8241.

[FN294] Cf. brief of the Corporación de Abogados José Alvear Restrepo addressed to the Inter-American Commission on Human Rights on June 6, 2006 (evidence file, tome XII, attachment 182 to the brief with pleadings, motions and evidence of the representatives, folios 5306 to 5317).
[FN295] Cf. letter of the Inter-American Commission on Human Rights of June 26, 2006, concerning the request for precautionary measures MC 125-06 (evidence file, tome IV, attachment 40 to the application, folio 2001).
[FN296] Inter-American Commission on Human Rights, Annual Report, Chapter III, C.1. Precautionary measures granted by the IACHR during 2006, para. 17.
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199. According to the expert witness, "even today the threats are still constant, and they also follow a pattern of becoming worse at certain moments when Iván Cepeda is more in the public eye; moments when he has to change his behavior drastically." [FN297] Iván Cepeda Castro is obliged "to restrict his freedom of movement, limit his time away from home, or confine himself to closed places, and avoid travelling to certain parts of the country." [FN298] In an interview with the expert witness, former President Ernesto Samper stated that "[t]he threats against Iván Cepeda still relate to those that killed his father: McCarthyism, stigmatization, intolerance." [FN299]

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[FN297] Opinion provided before notary public (affidavit) by expert witness Carlos Martín Beristain, supra note 208, folio 8244.
[FN298] Opinion provided before notary public (affidavit) by expert witness Carlos Martín Beristain, supra note 208, folio 8244.
[FN299] Opinion provided before notary public (affidavit) by expert witness Carlos Martín Beristain, supra note 208, folio 8239.
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200. The State affirmed that it had provided sufficient guarantees for both of them to be able to return safely to their country. Indeed, the State advised that it had provided some measures of protection: Iván Cepeda and Claudia Girón were included in a collective security plan as of January 14, 2005, and January 1, 2006, respectively, comprising a three-person escort and support materials. [FN300] In addition, in 2006, the Inter-American Commission adopted precautionary measures to be implemented by the State. Also, the State provided information on the investigations conducted into the threats suffered by Manuel Cepeda's next of kin. Specifically it referred to nine investigations where Iván Cepeda Castro appears as a victim of the facts; in two of these his wife, Claudia Girón, also appears as a victim. Furthermore, it reported on two other investigations, one in relation to Olga Navia Soto and another with regard to María Estella Cepeda Vargas. However, the evidence before the Court does not indicate the date of the complaint or to which facts it allegedly corresponded. According to the information provided, a restraining order has allegedly been issued in some cases, in two cases it was decided to suspend the investigation and, in others, the investigations are still underway. [FN301]

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[FN300] The State's brief with final arguments, para. 162.

[FN301] Cf. note No. 345 of the office of the Prosecutor General of the Nation of January 14, 2010 (evidence file, tome XXI, helpful evidence presented by the State, folios 8921 to 8922).
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201. Although the Court assesses the measures adopted by the State, it is important to underline that, in the context of danger for the safety of Iván Cepeda and Claudia Girón, the absence of an effective investigation of the extrajudicial execution may contribute to or perpetuate an exile or forced displacement. [FN302] In the instant case, the lack of an effective investigation and the identification and prosecution of all the authors of Senator Cepeda's execution and, in particular, the impunity of the facts, not only undermined the confidence of the next of kin in the Colombian system of justice, but also contributed to the lack of security.

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[FN302] Cf. mutatis mutandi, Case of the Moiwana Community v. Suriname, supra note 288, para. 120, and Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs, supra note 22, para. 170.
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202. Based on the above, the Court finds that the justified fear for their own safety, linked to the execution of Senator Cepeda Vargas and the failure to identify all those responsible for this act, added to the threats they had received, caused Iván Cepeda Castro and Claudia Girón to go into exile for four years, which constituted a failure to guarantee the right to freedom of movement and residence together with a de facto restriction of this right in violation of Article 22 of the Convention, in relation to Article 1(1) thereof, to the detriment of both of them.

B. THE ALLEGED VIOLATION OF THE RIGHTS TO PERSONAL INTEGRITY AND TO HONOR AND DIGNITY OF THE NEXT OF KIN DUE TO STATEMENTS ALLEGEDLY MADE BY PUBLIC OFFICIALS

203. The Commission asked that the Court declare the State responsible for violating the right to the protection of the honor and dignity of the next of kin, because the statements made against them by senior State officials constituted "acts of stigmatization" that harmed them "and the Senator's memory." The representatives considered that these statements "were particularly serious because, in addition to promoting hate, public contempt and persecution, they had and have the effect of inciting violence against the victim and his next of kin." The State indicated that it had not "been proved that the next of kin suffered harassment directly related to this situation and, in particular, that this harassment has actually taken place; consequently the State did not extend its acknowledgement of responsibility" to this aspect.

204. In this regard, it is reasonable to consider, first, that the vulnerability occasioned to Senator Cepeda Vargas, in the context in which he was linked to the FARC (supra paras. 85 to 87), had repercussions also on his next of kin, harming their honor, since the social stigma and the public accusations against him extended also to his family, especially following his execution. Iván Cepeda, in particular, was affected, and this formed "part of the context of threats and security problems that he continues to endure, and that arise from accusations based on his efforts on behalf of his father's memory and from his role in the investigation of the case,

and also because he is currently a focal point of the struggle for human rights in Colombia." [FN303]

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[FN303] Cf. Opinion provided before notary public (affidavit) by expert witness Carlos Martín Beristain, supra note 208, folio 8242.

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205. Second, the alleged violation of Article 11 is based on two specific facts that prejudiced Iván Cepeda: on the one hand, a message issued as part of the electoral publicity for the re-election campaign of the President of the Republic, Álvaro Uribe Vélez, starting in mid-April 2006 [FN304] and, on the other, a speech of the President of the Republic on May 6, 2008, in which he allegedly "accused the son of Senator Cepeda, Iván Cepeda, of being a human rights imposter and of using the protection of victims of human rights violations to request donations from abroad." This Court notes that the speech of May 6, 2008, is a new fact, not included within the factual framework of the application; consequently, in cannot be examined.

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[FN304] In this publicity message, a presumed former member of the UP political group said: "Mr. President: I belonged to the UP; I believed it to be a good movement, but we became twisted; kill for the sake of killing; harm others; kill civilians; this is bad. It is a good thing that you are combating them; that is why we are now supporting you with all we have. Keep it up, Mr. President!" Ruling of the Fifth Review Chamber of the Constitutional Court of Colombia of November 20, 2006, in case T-13911055 (evidence file, tome IV, attachment 41 to the application, folio 2010).

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206. Regarding the former fact, the Court has verified that it appears in the application, which indicates that it was the Constitutional Court itself that, on November 20, 2006, handed down Judgment T-959 which recognized that the dissemination of certain messages through the mass media had harmed the good name and honor of Iván Cepeda Castro, as the son of one of the victims of the political violence in the country, and that the said rights had also been violated in the case of his next of kin. [FN305]

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[FN305] Cf. Ruling of the Fifth Review Chamber of the Constitutional Court of Colombia of November 20, 2006, in case T-13911055, supra note 304, folios 2036 to 2037.

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207. In the said decision, the Constitutional Court of Colombia analyzed the content of the message issued by the media as part of President Álvaro Uribe's re-election campaign, indicating that "a simple reading of the 'testimonial' is sufficient to distinguish between the statements [that correspond to facts], and other statements that express an opinion or ethical judgment about the said facts." That court concluded that "accusing an individual or a group of individuals of killing and injuring civilians, without providing evidence to justify such serious statements, goes beyond the limits of freedom of expression, because it is not reasonable to understand that such

statements are shielded by the protection of freedom of expression, however extensive this may be." Lastly, in this judgment, the Constitutional Court ordered the manager of the President's re-election campaign to "explicitly and publicly state [in a communiqué] that the campaign had incurred in error by disseminating, as part of its publicity strategy, a message whose content had not been proved even though it included assertions that were injurious to the good name and honor of Iván Cepeda Castro and his next of kin." [FN306]

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[FN306] Cf. Ruling of the Fifth Review Chamber of the Constitutional Court of Colombia of November 20, 2006, in case T-13911055, supra note 304, folios 2029, 2032 and 2039.

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208. The Court has analyzed the said judgment of the Constitutional Court, insofar as it declared that the right to honor and dignity of Iván Cepeda Castro and his next of kin had been violated by the said publicity message and ordered pertinent reparations at the domestic level. In these terms, [FN307] the Court declares the corresponding violation (infra para. 210).

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[FN307] Cf. regarding what is relevant in relation to "ensuring harmonization with the provisions of the Convention," Case of Almonacid Arellano et al. v. Chile, supra note 38, paras. 124 and 125; and Case of Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru, supra note 27, para. 128.

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209. The Court finds that the situation of stigmatization that affects the next of kin of Senator Cepeda Vargas has exposed them to continued threats and harassment in their search to clarify the facts. These circumstances have been further exacerbated by the extended length of time that has elapsed without all the responsibilities for the facts having been clarified. [FN308]

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[FN308] Cf. Myrna Mack Chang v. Guatemala. Merits, reparations and costs. Judgment of November 25, 2003. Series C No. 101, para. 272; Case of Radilla Pacheco v. Mexico, supra note 24, para. 168, and Case of Anzualdo Castro v. Peru, supra note 36, para. 113.

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210. In brief, the Court concludes that the State has incurred international responsibility for the violation of Article 5(1) of the Convention in relation to Article 1(1) thereof, to the detriment of the following next of kin of Senator Manuel Cepeda Vargas: his children Iván Cepeda Castro and María Cepeda Castro; his common-law wife Olga Navia Soto (deceased); his daughter-in-law Claudia Girón Ortiz; and his sisters and brother, María Estella Cepeda Vargas, Ruth Cepeda Vargas, Gloria María Cepeda Vargas, Álvaro Cepeda Vargas and Cecilia Cepeda Vargas (deceased), based on the suffering endured by the next of kin as a result of the extrajudicial execution of Senator Cepeda Vargas. Furthermore, the Court has determined that, at both the initial stage of the investigations, and in more recent times, Iván Cepeda Castro, María Estella Cepeda Vargas and Claudia Girón have received threats owing to their search for justice and truth, and this constitutes a violation of their right to personal integrity, in the terms of Article

5(1) of the American Convention. Regarding the other family members, insufficient evidence has been provided to allow the Court to establish an additional violation of their right to personal integrity, beyond that already acknowledged by the State. In addition, the Court considers that the exile endured by Iván Cepeda and Claudia Girón owing to the unsafe situation related to their search for justice resulted in a violation of Article 22(1) of the Convention, in relation to Article 1(1) thereof, to their detriment. Lastly, the Court concludes that the State is responsible for the violation of Article 11 of the American Convention to the detriment of the next of kin of Senator Cepeda Vargas.

## V. REPARATIONS (Application of Article 63(1) of the American Convention)

211. Based on the provisions of Article 63(1) of the American Convention, [FN309] the Court has indicated that any violation of an international obligation that has caused damage entails the obligation to repair it adequately, [FN310] and that this "provision embodies a norm of customary law that is one of the basic principles of contemporary international law on State responsibility." [FN311]

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[FN309] Article 63(1) of the Conventions stipulates that "[i]f 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."
[FN310] Cf. Velásquez Rodríguez v. Honduras. Reparations and costs. Judgment of July 21, 1989. Series C No. 7, para. 25; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 223, and Case of Radilla Pacheco v. Mexico, supra note 24, para. 327.[FN311] Case of Bámaca Velásquez v. Guatemala. Reparations and costs, supra note 56, para. 38. Also, Cf. Cesti Hurtado v. Peru. Reparations and costs. Judgment of May 31, 2001. Series C No. 78, para. 35, and Case of La Cantuta v. Peru, supra note 180, para. 200.

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### A. INJURED PARTY

212. Since no dispute subsists in this regard, the Court considers that the "injured parties" are Manuel Cepeda Vargas and his next of kin as follows: Iván Cepeda Castro, María Cepeda Castro, Olga Navia Soto (deceased), Claudia Girón Ortiz, María Estella Cepeda Vargas, Ruth Cepeda Vargas, Gloria María Cepeda Vargas, Álvaro Cepeda Vargas and Cecilia Cepeda Vargas (deceased). All of them will be beneficiaries of the reparations ordered by this Court.

213. Taking into account the State's partial acknowledgement of responsibility and the findings concerning this acknowledgement, as well as the merits of the case and the violations of the Convention declared in the corresponding chapters, the Court has examined the claims submitted by the Commission and the representatives and the State's arguments in this regard in light of the criteria established in the Court's case law concerning the nature and scope of the obligation to repair, [FN312] and will proceed to order measures tending to repair the said violations.

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[FN312] Cf. Case of Velásquez Rodríguez. Reparations and costs, supra note 310, paras. 25 to 27; Case of the Dos Erres Massacre vs. Guatemala, supra note 57, para. 228, and Dacosta Cadogan v. Barbados. Preliminary objections, merits, reparations and costs. Judgment of September 24, 2009. Series C No. 204, para. 95.

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B. FULL INVESTIGATION, IDENTIFICATION, PROSECUTION AND EVENTUAL PUNISHMENT OF ALL THE MASTERMINDS AND PERPETRATORS

214. The Court has established that the State did not comply with its obligation to investigate fully and effectively the human rights violations that occurred in the instant case. The Court finds that the ineffectualness of the proceedings was clearly revealed when analyzing the lack of due diligence in the way in which the official investigation measures were undertaken, by the absence of a vision of the extrajudicial execution as a complex crime owing to the participation of different State agents and members of paramilitary groups. Furthermore, the lack of due diligence is also revealed by the failure to investigate the threats in the above-mentioned context and by the alleged existence of an extermination plan. Owing to the absence of an investigation with these characteristics, as well as other obstacles de facto, the Senator's execution remains in impunity.

215. Additionally, the Court emphasizes that, as has been proved, given the complex method of execution of the crime in this case, the absence of an exhaustive investigation has been one of the factors that have impeded the identification, prosecution and, when applicable, punishment of all those responsible (supra paras. 124, 125 and 167). This situation has led to the impunity of the serious human rights violations committed jointly by members of paramilitary groups and agents of the armed forces.

216. Based on the foregoing, the State must use all necessary means, pursuant to its domestic laws, to continue conducting the investigations that are underway effectively and with the greatest diligence, and initiate any that may be necessary in order to individualize, prosecute and eventually punish all those responsible for the extrajudicial execution of Senator Manuel Cepeda Vargas, and to remove all the material and legal obstacles, that maintain impunity in this case. In particular, the State must conduct the investigations based on the following criteria: [FN313]

(a) Investigate effectively all the facts and background of this case, including the alleged existed of the "coup de grâce plan" or other plans designed to intimidate and murder members of the UP, such as the corresponding investigations underway by the office of the Prosecutor General of the Nation and, to this end, it must adopt all necessary measures to detect and reveal patterns of systematic violence against the collectivity to which Mr. Cepeda belonged;
(b) Identify the group of individuals involved in the planning and execution of the facts, including those who designed, planned or assumed control, decision or leadership of their implementation, and those who performed the necessary logistic functions to execute the decisions taken, even if senior civil authorities, high-ranking military officers or intelligence services are involved, avoiding omissions in following up on logical lines of investigation;

(c) To this end, establish coordination mechanisms between the different State organs and institutions with powers to investigate, and other existing or future entities in order to conduct the most coherent and effective investigations, so that the protection of the human rights of the victims is one of the objectives of the proceedings, particularly in cases of serious violations.
(d) Remove all the obstacles that prevent the adequate investigation of the facts in the respective proceedings so as to avoid a repetition of acts and circumstances such as those of the instant case. [FN314] In this regard, the State may not apply amnesty laws or argue prescription, non-retroactivity of the criminal law, res judicata, the principle of ne bis in idem, or any other similar mechanism that excludes responsibility, in order to exempt itself from this obligation; [FN315]
(e) Ensure that those who take part in the investigation, including victims, witnesses and administrators of justice, are provided with the necessary guarantees for their safety.
(f) When investigating the interaction between the illegal group and State agents and civilian authorities, conduct with special diligence the exhaustive investigation of all individuals with connections to State institutions and the members of paramilitary groups who could be involved. Hence, the application of the principle of the most favorable law [FN316] or the granting of any other administrative or penal benefit should not create any kind of obstacle to due diligence in the investigation of crimes associated with the perpetration of serious human rights violations, and
(g) Ensure that the paramilitaries who have been extradited are accessible to the competent authorities and continue cooperating with the proceedings being conducted in Colombia. The State should also ensure that the proceedings abroad do not obstruct or interfere with the investigations into the serious violations that occurred in the instant case, or reduce the rights recognized to the victims in this judgment, [FN317] using mechanisms that enable those extradited to collaborate with the investigations conducted in Colombia and, if appropriate, the participation of the victims in the measures taken abroad.

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[FN313] Cf. Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 233.
[FN314] Cf. Case of La Cantuta v. Peru, supra note 180, para. 226; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 240, and Case of Anzualdo Castro v. Peru, supra note 36, para. 182.
[FN315] Cf. Barrios Altos v. Peru. Merits. Judgment of March 14, 2001. Series C No. 75, paras. 41 to 44; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 233, and Case of Anzualdo Castro v. Peru, supra note 36, para. 182.
[FN316] Regarding the possible application of Law 1312 of 2009, amending Law 906 of 2004, in the future, in relation to the principle of the most favorable law, the Court notes that it includes the possibility of applying this principle to those demobilized from a paramilitary group and empowers the office of the Prosecutor General of the Nation to suspend, interrupt or waive criminal prosecution in these cases. In particular, the Law indicates that, in order to accede to this benefit, the person demobilized must have demonstrated unequivocally his willingness to reincorporate society; he must not have applied to be included under the Justice and Peace Law procedure, and there must be no investigations against him for crimes committed before or after his demobilization, with the exception of belonging to the criminal organization, illegal use of uniforms and insignias, and illegally bearing arms and ammunition. Although this law establishes that “for the application of this provision, the person demobilized must sign a sworn

statement affirming that he has not committed any crime other than those established in this provision," the Court has already verified that this type of legal provision may be insufficient if, at the same time, the authorities in charge of the investigations or the office of the Prosecutor General fail to verify these affirmations rigorously (supra para. 166). Cf. Law 1312 of July 9, 2009 (evidence file, tome XXII, attachment 3 to the final arguments brief of the representatives, folios 9061 to 9063).

[FN317] Case of the Mapiripán Massacre v. Colombia. Monitoring compliance with judgment, supra note 242, considering paragraphs 40 and 41.

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217. Furthermore, the results of the proceedings must be publicized so that Colombian society may know the truth about the facts. [FN318]

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[FN318] Cf. El Caracazo v. Venezuela. Merits. Judgment of November 11, 1999. Series C No. 58, para. 118; Case of Radilla Pacheco v. Mexico, supra note 24, para. 334, and Case of Anzualdo Castro v. Peru, supra note 36, para. 183.

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218. Lastly, the Court finds that the State must guarantee the safety of the next of kin of Senator Cepeda Vargas and ensure that they do not have to relocate or leave the country again, as a result of any possible threats, harassment or persecution against them following notification of this judgment. In addition, under its general obligations of guarantee contained in Article 1(1) of the Convention, the State must conduct and conclude, with due diligence and within a reasonable time, the investigations into the complaints of intimidation and threats filed by the next of kin at the domestic level; the State has provided information about the said investigations without indicating to which facts each one corresponds. Above all, it is essential that, when conducting the said investigations, the corresponding authorities make every effort to determine all the facts surrounding the threats and how they were expressed; they must also try and determine whether there has been a pattern of threats against the victims, or the group or entity to which they belong, as well as the object and purpose of the threats, the individual or individuals behind them and, if applicable, impose the penalties established by law. [FN319]

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[FN319] Cf. Carpio Nicolle v. Guatemala. Provisional measures. Order of the Inter-American Court of Human Rights of July 6, 2009, para. 24.

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C. MEASURES OF SATISFACTION, REHABILITATION AND GUARANTEES OF NON-REPETITION

219. The Court will determine other measures that seek to repair the non-pecuniary damage and that are not of a pecuniary nature, and will order measures of public scope or repercussion. [FN320]

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[FN320] 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 the Dos Erres Massacre v. Guatemala, supra note 57, para. 255, and Case of Dacosta Cadogan v. Barbados, supra note 312, para. 99.

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C.1 Satisfaction and non-repetition

a) Publication of the judgment

220. The Commission requested the publication in a national newspaper of the judgment that the Court will eventually hand down, and the State accepted this. As ordered on other occasions, [FN321] the Court finds that, as a measure of satisfaction, the State must publish once in the official gazette and in another national newspaper paragraphs 1 to 5, 13 to 23, 71 to 73, 85 to 87, 88, 100 to 102, 103, 114, 115, 122 to 126, 167, 175 to 177, 179, 180, 181, 194 to 196, 201, 202, 204, 209, 210, 216 to 218, 220, 223, 228, 233 and 235 of this judgment, including the headings of each chapter and of the respective section – without the corresponding footnotes – and the operative paragraphs. In addition, as the Court has ordered on previous occasions, [FN322] this judgment must be published integrally, for at least one year, on an appropriate official web page, taking into account the characteristics of the publication that has been ordered. The Court establishes a time frame of six and two months as of notification of this judgment for the publications in the newspapers and on the Internet, respectively.

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[FN321] Cf. Case of the Gómez Paquiyauri Brothers v. Peru, supra note 220, Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 256, and Case of Radilla Pacheco v. Mexico, supra note 16, para. 350.

[FN322] Cf. Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs. Judgment of March 1, 2005. Series C No. 120, para. 195; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 256, and Case of Radilla Pacheco v. Mexico, supra note 24, para. 350.

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b) Public acknowledgment of international responsibility

221. Both the Commission and the representatives asked that the Court "order an act to make public reparation in which the State acknowledges its international responsibility for the extrajudicial execution of Senator Manuel Cepeda Vargas and the subsequent obstruction of justice, and apologizes for the facts to his next of kin." Furthermore, the representatives asked that, during this act, the State acknowledge its responsibility by both act and omission, restore the memory of the victim, acknowledge that this execution constituted a crime against humanity and apologize to the victim's next of kin and the members of his political party. They considered it essential that the act be held during a plenary session of the Congress of the Republic of Colombia, on the anniversary of the Senator's murder, in the presence of the members of the two chambers, the victim's next of kin, and a representative of the Patriotic Union, and that the President of the Republic, as the person responsible for making the official acknowledgement,

address those present; also, that the act be broadcast in direct by the State radio stations and television channels and covered by the mass media.

222. For its part, the State indicated that, notwithstanding the public acknowledgement of State responsibility made during the public hearing held in this case (supra para. 14), it accepted the measure of reparation and would organize a "public act [in Colombia] to acknowledge the international responsibility of the Colombian State, by act and omission, in the murder of Senator Manuel Cepeda Vargas and to apologize publicly to his next of kin as a form of reparation." Nevertheless, it did not specify the exact conditions or ways in which such act would take place, and did not accept those requested by the Commission and the representatives. The Court observes that the acknowledgement of responsibility made during the hearing is an act of satisfaction and has taken note of the acknowledgement made by the State.

223. On previous occasions, the Court has assessed favorably those acts that result in the recovery of the victims' memory, the recognition of their dignity, and the consolation of their heirs. [FN323] The Court considers it appropriate that the State organize a public act of acknowledgement of international responsibility in Colombia to ensure that the acknowledgement of international responsibility made before the Court achieves its full effects as a measure of satisfaction and guarantee of non-repetition of the serious human rights violations that have been declared. During this act reference must be made to: (a) the facts relating to the execution of Senator Manuel Cepeda Vargas, committed in the context of generalized violence against members of the UP, by act and omission of public officials, and (b) the human rights violations declared in this judgment. [FN324]

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[FN323] Cf. Case of the Pueblo Bello Massacre v. Colombia, supra note 136, para. 254; Case of the Miguel Castro Castro Prison v. Peru, supra note 56, para. 430; Case of Vargas Areco v. Paraguay, supra note 209, para. 149, and Case of Radilla Pacheco v. Mexico, supra note 24, para. 352.

[FN324] Cf. Case of the Ituango Massacres v. Colombia, supra note 16, para. 406; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 261, and Case of Kawas Fernández v. Honduras, supra note 37, para. 202.

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224. Insofar as possible, the organization and characteristics of this public ceremony must be decided with the agreement and participation of the victims, if they so wish. To create awareness about the consequences of the facts of the instant case, this acknowledgement act or event should be held in the Congress of the Republic of Colombia, or in a prominent public place, in the presence of members of the two chambers, as well as the highest-ranking State authorities.

225. The State must organize this act within one year of notification of this judgment.

c) Measures to commemorate and render homage to the victim

226. The Commission asked that the Court order the State to undertake a project to recover the historical memory of Manuel Cepeda Vargas as a political leader and social communicator, and

to establish a place to commemorate him. Meanwhile, the representatives indicated that traditional commemoration mechanisms have not had much social impact in this case and therefore asked that the Court order the State to arrange, in coordination "with the next of kin, the writing, design, editing, publishing and definition of the distribution medium […], of a publication and a television documentary on the political life, career in journalism, and political leadership of Senator Cepeda to restitute his honor and reputation, to reclaim the democratic importance of his legacy, and to rectify the false information that State officials disseminated about him."

227. The State rejected this measure of satisfaction requested by the representatives because a street and a monument already existed as places to commemorate Senator Cepeda Vargas and it considered that they were sufficient in relation to this matter. In its final arguments, the State clarified that the monument had been financed by the Manuel Cepeda Vargas Foundation, so that it should not be taken into account as a measure granted by the State.

228. As a measure of satisfaction, and given the importance of reclaiming the memory and dignity of Senator Cepeda Vargas, the Court assesses the representatives' request, because such initiatives are significant for the preservation of the memory and satisfaction of the victims, and also for the recovery and re-establishment of the historical memory in a democratic society. Consequently, the Court finds it appropriate that the State prepare a publication and an audiovisual documentary on the political life, career in journalism and political role of Senator Cepeda, in coordination with his next of kin.

229. The video documentary on the facts that occurred must be shown on a national State television channel, once a week for a month. In addition the State must show the video in a public act in Bogotá, either a specific act or within the framework of the act of acknowledgement of responsibility. The said acts must be organized with the participation of the victims or their representatives. In addition, the video must be distributed as widely as possible among the victims, their representatives, and the national universities for its subsequent promotion and projection. The State must organize these acts within two years of notification of this judgment.

230. Notwithstanding the above, the Court appreciates the fact that the State has initiated the pertinent steps to name a school in the district of a Bogotá after the Senator.

d) Creation of the "Manuel Cepeda Vargas" grant for journalists of the weekly publication, Voz

231. Given the victim's activities in the field of journalism throughout his career, the representatives requested the creation of a grant bearing his name in order to recover and to preserve his memory, and to enhance the capacities of the journalists working with the weekly publication Voz and, thus, to restitute in part the harm caused to the journalism community to which Senator Cepeda belonged and which he led. The grant would be awarded each year to a journalist chosen by the board of directors of Voz, and would finance one year of first-level or graduate university studies in a Colombian public university chosen by the beneficiary of the grant.

232. The State rejected this measure requested by the representatives because it was already working on measures for the recovery of the victim's memory and considered that they were sufficient in this regard.

233. Based on the above and as decided in this judgment, the Court requires that the State award a one-time grant bearing the name of Manuel Cepeda Vargas, to be administered by the Manuel Cepeda Vargas Foundation. The grant will cover the total cost, including living expenses, of a degree course in communication sciences or journalism in a Colombian public university chosen by the beneficiary. The grant will be awarded and implemented by a competition on merits, using a procedure established by the Foundation that respects objective criteria.

C.2 Rehabilitation

Medical and psychological care for the victims

234. The Commission asked that the Court order the State to adopt measures of psychological and medical rehabilitation for the victim's next of kin. The State accepted the measures of rehabilitation requested by the Commission for the next of kin of the victim, which will include measures of psychological and medical rehabilitation.

235. The Court finds, as it has in other cases, [FN325] that it must order a measure of reparation that provides appropriate care for the mental and moral sufferings that the victims endured owing to the violations declared in this judgment. Consequently, in order to help repair this harm, the Court decides that the State has the obligation to provide, free of charge and immediately, the medical and psychological treatment required by Senator Cepeda's next of kin, following their informed consent and for the time necessary, including the provision of medication. The psychological treatment must be provided by State institutions and personnel specialized in the care of victims of acts of violence such as those that occurred in this case. [FN326] If the State does not have such facilities, it must use specialized private or civil society institutions. The provision of this treatment must also take into consideration the specific circumstances and needs of each victim, so that that they are offered collective, family or individual treatment, as agreed with each of them and following individual assessment. [FN327] Lastly, this treatment must be provided, insofar as possible, in the centers nearest to their place of residence.

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[FN325] Cf. Barrios Altos v. Peru. Reparations and costs. Judgment of November 30, 2001. Series C No. 87, para. 45; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 269, and Case of Anzualdo Castro v. Peru, supra note 36, para. 203.

[FN326] Cf. Case of Barrios Altos v. Peru. Reparations and costs, supra note 325, paras. 42 to 45; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 270, and Case of Anzualdo Castro v. Peru, supra note 36, para. 203.

[FN327] Cf. Case of the 19 Tradesmen v. Colombia, supra note 221, para. 278; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 270, and Case of Kawas Fernández v. Honduras, supra note 37, para. 209.

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C.3 Other measures requested

a) Request for the adoption of different types of measures to avoid the repetition of similar facts and for the creation of a research center

236. Both the Commission and the representatives asked the Court to declare that the State "must undertake legal, administrative and any other measures required to avoid a repetition of such acts" against the members of the UP. In particular, the Commission asked that the State adopt, as a priority, a policy to eradicate violence based on political ideology. The State objected to this request, because it has been working on a general domestic policy to deal with the violence based on political ideology and to protect human rights defenders, rather than a particular one in relation to a specific group. Furthermore, it argued that the said measure exceeded the scope of the instant case and referred to an issue that must be decided in the case of the UP, which is being processed by the Commission.

237. The representatives asked that "to restore the honor and reputation of Senator Manuel Cepeda Vargas, to guarantee that political crimes such as the one perpetrated […] are not forgotten, and to contribute to the non-repetition of such acts, the State should establish a research center bearing his name, responsible for preserving the historical memory and studying measures to ensure non-repetition of crimes against humanity and genocide." The State rejected this measure of reparation, because it would seek to associate Manuel Cepeda's name with the concepts of genocide and crimes against humanity. In the State's opinion, this would manipulate the truth of the matter and lead to conclusions that could confuse Colombian society.

238. Since the members of the UP were not declared to be victims in this judgment, the Court will abstain from ordering reparations on this aspect. In addition, the Court considers that the delivery of this judgment and the reparations ordered in this chapter are sufficient and adequate to make reparation for the violations that have been declared in this case. [FN328]

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[FN328] Cf. Case of Radilla Pacheco v. Mexico, supra note 24, para. 359.

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b) Request for reactivation of the legal status of the UP and restitution of the parliamentary seat of Senator Manuel Cepeda Vargas in favor of the UP

239. The representatives explained that, owing to the "explicit political motivation for the extrajudicial execution of Senator Cepeda Vargas, and its consequences for the Patriotic Union […], the Court should order the Colombian State to restore the Senator's parliamentary seat, which, in turn, requires reactivating Patriotic Union's legal status." Furthermore, the representatives affirmed that "to implement the measures of reparation, the State merely has to enact a law that includes the Patriotic Union among the political minorities, so that its seat in Congress is restituted, as a special electoral circumscription." Lastly, they asked that both the

restitution of the seat and the legal recognition of the UP as a minority political movement be announced during the act of public acknowledgement of responsibility by the State.

240. The State argued that the representatives had exceeded the nature and purpose of this litigation by over-interpreting current criteria on reparations, and that if this measure of reparation were granted, it would violate the right to elect and to be elected in equal conditions. Also, it considered "inconceivable that a specific collectivity accede to legal status and exercise public power, when this does not arise from the specific support of the electorate." It also argued that there is no direct relationship between the death of Senator Cepeda and the political party's loss of legal status and, consequently, that this reparation was inadmissible. Finally, the State affirmed that it is not true that Senator Cepeda had occupied the last seat of the UP in the Congress of the Republic, because a document of the Electoral Organization of the Republic of Colombia revealed that he was a Senator for the PCC rather than for the UP.

241. Based on the above considerations, the Court finds that, in this case, it is not in order to order the restitution of the parliamentary seat as requested. First, although the Court has ordered similar measures in the case of officials dismissed from their functions, there is a substantial difference in this case, because the person who occupied the post of Senator cannot be reinstated. Furthermore, the requested measure of reparation would benefit the UP party which, as has already been indicated, is neither a victim nor a beneficiary in this case, so that it is not in order to grant this request. For the same reason, it is not incumbent on the Court to rule on the restitution of this political party's legal status.

D. COMPENSATION

242. The Court has developed the concept of pecuniary [FN329] and non-pecuniary damage [FN330] and the assumptions under which they must be compensated. Consequently the Court will determine the pertinence of granting pecuniary and non-pecuniary reparations and the respective amounts owed in this case, taking into account that the State awarded compensation at the domestic level under two administrative proceedings.

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[FN329] This Court has established that pecuniary damage supposes "the loss of or detriment to the income of the victims, the expenses incurred as a result of the facts, and the pecuniary consequences that bear a relationship to the facts of the case." Case of Bámaca Velásquez v. Guatemala. Reparations and costs, supra note 56, para. 43; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 275, and Case of Radilla Pacheco v. Mexico, supra note 24, para. 360.

[FN330] This Court has established that non-pecuniary damage "may include the suffering and distress caused to the direct victims and their next of kin, the impairment of values that are highly significant to them, and other alternations, of a non-pecuniary nature, in the living conditions of the victim or his family." Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs, supra note 320, para. 84; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 275, and Case of Radilla Pacheco v. Mexico, supra note 24, para. 371.

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D.1 Pecuniary damage

243. The Commission asked that the Court "establish, based on equity, the amount of the compensation for indirect damage and loss of potential earnings." While, the representatives indicated that "the compensation ordered in the [domestic] judgments did not correspond to the true scope of the State's responsibility and, consequently, it was substantially insufficient and partial"; in addition, the criteria used in these proceedings did not correspond to the standards of the inter-American system. Regarding the amount awarded for loss of earnings, the representatives affirmed that the State used different criteria and calculation methods from those used by the Court, and that the State awarded the compensation to Olga Navia Soto, Manuel Cepeda's common-law wife at the time of his death, excluding his children, Iván and María Cepeda Castro, from the payment. Therefore, they asked the Court to recognize the sum of US$1,187,519.00, [FN331] less the amount recognized in the domestic proceedings and, since Olga Soto Navia was deceased, they urged that the amount that would have corresponded to her, be delivered in equal parts to each of the Senator's children; that is, 50% each. With regard to the indirect damage, the representatives affirmed that the State should compensate the most representative expenses that the next of kin of Senator Cepeda Vargas had incurred over 16 years in their search to obtain justice, for the alteration of their life projects, and for the trips abroad they had to make.

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[FN331] They indicated that this calculation was based on the total value of the Senator's salary, less the amounts corresponding to the legal deductions – which included payments for taxes and insurance, and health care and pensions contributions – and the result, brought to its current value, was the amount used to calculate compensation. In addition, they took into account that Senator Cepeda's political career was in ascent and that it was very probable, that if he had not been murdered, he would be one of the few opposition voices that remained on the political scene.

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244. The State considered that the request for a payment for loss of potential earnings in favor of the children of Manuel Cepeda Vargas was inadmissible, because, at the time of his death they were adults and were not financially dependent on him, so that their father's death did not cause them any pecuniary damage. Furthermore, the State argued that "the victim's son and daughter did not ask for any compensation for pecuniary damage for themselves based on the death of Manuel Cepeda under the administrative proceedings, and had agreed with the distribution of the compensation for loss of earnings made by the administrative court; evidence of this is that they did not appeal the decision, even though they could have done so." In addition, the State asked that the Court take into account the financial reparations already awarded and not order additional amounts of compensation for the next of kin who had already been compensated. Also, when admitting that the Court could order indirect damages, because proceedings under administrative law did not cover this, the State indicated that the relationship of cause and effect had not been proved, in particular concerning the allegations relating to Article 22 of the Convention, and it asked that any expenses related to access to justice be excluded from this concept, as they correspond to costs and expenses.

245. In the instant case, the Court has verified that two administrative proceedings were held. In one of them, based on criteria established in the domestic jurisdiction, Olga Navia Soto was awarded the sum of 910,308,742.00 Colombian pesos as compensation for "loss of earnings"; this was equivalent to approximately US$388,500.00 at the exchange rate in force when the judgment was delivered. When awarding this "loss of earnings" in favor of the next of kin, the Colombian Council of State took into account the amount of money those who were financially dependent on the victim failed to perceive from him. Thus, in this case, the Council granted the loss of earnings to Olga Navia Soto, and confirmed the decision of the administrative court; [FN332] namely, not to establish an amount for this concept in favor of the Senator's children, considering that, since they were adults, they were not financially dependent on the deceased victim.

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[FN332] Cf. Judgment delivered by the Third Section, of the Decision Chamber of the Administrative Court (Decongestion) in case No. 12680 on February 8, 2001, supra note 126, folios 8076 to 8098.

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246. The Court considers that, when national mechanisms exist to determine forms of reparations, these procedures and results can be assessed (supra para. 139). If these mechanisms do not satisfy criteria of objectivity, reasonableness and effectiveness to make adequate reparation for the violations of rights recognized in the Convention that have been declared by this Court, it is for the Court, in exercise of its subsidiary and complementary competence, to order the pertinent reparations. In this regard, it has been determined that the next of kin of Senator Cepeda Vargas had access to the administrative courts, which established compensation for loss of potential earnings based on objective and reasonable criteria. Consequently, the Court assesses positively the measures taken by the domestic courts in this case, [FN333] and finds that the amount established by these courts is reasonable in terms of its case law.

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[FN333] Cf. Case of the La Rochela Massacre, supra note 16, para. 245.

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247. On the other hand, having analyzed the information provided by the parties, the facts of the case, and its case law, [FN334] the Court observes that, even though the vouchers for the expenses were not provided it can be presumed that Senator Manuel Cepeda's direct family incurred various expenses as a result of his execution. The State acknowledged that these expenses were not covered at the domestic level. Besides, it should be noted that Iván Cepeda Castro and Claudia Girón had to leave the country as a result of the facts, so they incurred different expenditure in relation to their living expenses abroad and their re-establishment in Colombia. Consequently, the Court finds that, to make reparation for this damage, in equity, the sum of US$40,000.00 (forty thousand United States dollars) should be granted to Iván Cepeda Castro and Claudia Girón, and the sum of US$10,000.00 (ten thousand United States dollars) to María Cepeda Castro and Olga Navia Soto (infra para. 260).

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[FN334] Cf. Case of the Miguel Castro Castro Prison v. Peru, supra note 56, para. 428; Case of Servellón García et al. v. Honduras, supra note 56, para. 177; and Ximenes Lopes v. Brazil. Merits, reparations and costs. Judgment of July 4, 2006. Series C No. 149, para. 226.

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D.2 Non-pecuniary damage

248. The Commission asked that the Court "establish, in equity, the amount of compensation for non-pecuniary damage." Regarding the compensation awarded for "moral damage" by the domestic courts, the representatives alleged that it did not include the different dimensions of the suffering of the Senator's next of kin, such as the alteration of their life projects in order to undertake the search to obtain justice (in the case of Claudia Girón, Iván and María Cepeda Castro); the threats, acts of harassment, public accusations, and exile to which Claudia Girón, María Estella Cepeda Vargas, Iván and María Cepeda Castro were subjected, and the physical and mental problems suffered by all the siblings, especially Ruth and Estella Cepeda Vargas, Claudia Girón, Iván and María Cepeda Castro following his death. For its part, the State considered that "under the domestic legal system, compensation had been awarded [for non-pecuniary damage] to all Manuel Cepeda's next of kin." Nevertheless, it recognized that compensation had not been awarded to Senator Manuel Cepeda Vargas for the threats suffered; therefore, it accepted that this compensation be ordered.

249. The Court has verified that, under the administrative proceedings, the State awarded, for the concept of "non-pecuniary damage," compensation of 100 minimum monthly legal salaries in force (SMLMV) to Iván and María Cepeda Castro, and also to Olga Navia Soto, and 500 grams gold to each of the siblings of Manuel Cepeda Vargas. [FN335] The Court finds that the compensation ordered took into account the suffering and hardship resulting from the death of a spouse, father and brother. The State alleged that the compensation was paid in 2000, but did not provide any evidence in this regard.

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[FN335] Cf. Appeal ruling issued by the Third Section of the Administrative-law Chamber of the Council of State in Investigation No. 25000232600019961268O-01 (20,511) on November 20, 2008, supra note 128, folios 4495 to 4536, and judgment delivered by the Third Section of the Cundinamarca Administrative Court in case No. 96 D 12658 on September 23, 1999 (evidence file, tome XV, attachment 14 to the brief in answer to the application, folios 6700 to 6718), respectively.

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250. However, although the judgments of the administrative courts endeavored to repair the damage suffered by the next of kin as a result of the death of Senator Manuel Cepeda Vargas, they did not include compensation for the violations suffered by the Senator himself, or other violations verified in this judgment. In addition, in this case the Court observes that the said rulings did not determine the State's responsibility for the acts of State agents in the violation of the rights to life and to personal integrity, and other rights embodied in the Convention; in other words, the compensation established by those courts did not include these other aspects that had

already been proved in the domestic investigations and that have now been determined in the judgment of this Court (supra paras. 114, 115 and 140). Therefore, the Court must now also order compensation for the aspects that were not included in the domestic judgments.

251. As the Court has indicated on other occasions, [FN336] in cases such as this the non-pecuniary damage inflicted on the victim is evident. In this regard, the Court finds it appropriate to order, in equity, a compensatory payment of US$80,000.00 (eighty thousand United States dollars) for the non-pecuniary damage suffered by Senator Manuel Cepeda Vargas. The total amount to be delivered in equal part to the victim's children, Iván Cepeda Castro and María Cepeda Castro.

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[FN336] Cf. Case of Myrna Mack Chang v. Guatemala, supra note 308, para. 260; Case of Kawas Fernández v. Honduras, supra note 37, para. 185, and Case of Zambrano Vélez et al. v. Ecuador, supra note 36, para. 142.

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252. In addition, in this judgment, the Court decided the manner and circumstances in which Senator Cepeda Vargas was murdered, as well as the lack of due diligence of the State authorities in conducting investigations into the threats he faced as well as to clarify the facts and the responsibilities of all those involved. The victims suffered non-pecuniary damage because their mental and moral integrity was harmed as a result of the lack of adequate access to justice and the partial impunity that persists in this case, as well as because of the stigmatization of the next of kin of Senator Cepeda Vargas, which has exposed them to continuous harassment and threats during their efforts to clarify the facts (supra paras. 187 to 192 and 194). In addition, it has been proved that Iván Cepeda Castro and Claudia Girón had to leave the country as a result of the threats they received owing to their efforts to seek clarification and justice.

253. Consequently, the Court finds it appropriate to award compensation, based on the equity principle, for the non-pecuniary damage suffered by these next of kin, in addition to that established in the administrative proceedings and, therefore, orders the State to pay the following amounts: US$70,000.00 (seventy thousand United States dollars) to Iván Cepeda Castro; US$40,000.00 (forty thousand United State dollars) to María Cepeda Castro; US$35,000.00 (thirty five thousand United State dollars) to Claudia Girón Ortíz, and US$20,000.00 (twenty thousand United State dollars) to María Estella Cepeda Vargas.

D.3 Costs and expenses

254. 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. [FN337]

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[FN337] Cf. Garrido and Baigorria v. Argentina. Reparations and costs. Judgment of August 27, 1998. Series C. No. 39, para. 79; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 296, and Case of Radilla Pacheco v. Mexico, supra note 24, para. 376.

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255. The Commission asked the Court to order the State to pay the duly authenticated reasonable and necessary costs and expenses incurred and to be incurred in processing this case in the domestic sphere and before inter-American system.

256. In their pleadings, motions and evidence brief, the representatives asked the Court to establish the sum of US$35,125.98 for costs and expenses in favor of the Colectivo de Abogados "Jose Alvear Restrepo," because it had incurred expenses in relation to the domestic criminal, administrative, disciplinary and constitutional proceedings, as representatives of the victims and next of kin, as well as for the expenses incurred as co-petitioners before the Commission in the processing of this case at the international level. In addition, they considered that the expenses for processing the case before the Court could amount to US$6,000. Furthermore, they asked the Court to recognize, in equity, the costs and expenses incurred by the Manuel Cepeda Vargas Foundation, owing to its actions in the domestic sphere and also in the international sphere, since it acted as a co-petitioner before the Commission and took part in the processing of the case before this Court.

257. The representatives also indicated that CEJIL had incorporated the international litigation of the case as a co-petitioner in January 2009, when the case was already before the Court, so that it had not requested costs and expenses for this organization.

258. As the Court has indicated previously, costs and expenses are included in the concept of reparations, when the actions taken by the victims in order to obtain justice at both the domestic and the international levels involve expenditure that should be compensated when the State's international responsibility is declared in a judgment that returns a guilty verdict. Regarding reimbursement, the Court must prudently assess their scope, which includes the expenses incurred before the authorities of the domestic system of justice, as well as those arising from the proceedings before this Court, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be based on the principle of equity, taking into consideration the expenses indicated by the parties, provided the quantum is reasonable. [FN338] In this case, the Court takes into account the symbolic nature of the case and the difficulties described in the search to obtain justice at the domestic level.

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[FN338] Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs, supra note 338, para. 82; Case of the Dos Erres Massacre v. Guatemala, supra note 57, para. 300, and Case of Radilla Pacheco v. Mexico, supra note 24, para. 381.

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259. Based on the foregoing findings and on the body of evidence, the Court determines, in equity, that the State must deliver the sum of US$35,000.00 (thirty-five thousand United States dollars) to Iván Cepeda Castro, so that he may deliver this to the corresponding representatives for the costs and expenses incurred before the Commission and the Court. This sum includes any future expenses that the victims may incur during the monitoring of compliance with this

judgment. If the representatives and the victims have agreed on a specific sum for the litigation, this must be attributed to the amount established for costs and expenses.

D.4 Method of complying with the payments ordered

260. The payment of the compensation for pecuniary and non-pecuniary damage and reimbursement of costs and expenses established in this judgment shall be made directly to those indicated in the judgment, within one year of its notification, in accordance with the provisions of paragraphs 247 to 253 and 259 herein. Should any of the victims die before payment of the respective amounts, these shall be delivered to their heirs, according to the applicable domestic laws.

261. The State must comply with its pecuniary obligations by payment in United States dollars or the equivalent amount in national currency, using the exchange rate in force on the New York market the day before payment to make the respective calculation

262. If, for reasons that can be attributed to the beneficiaries of the compensation or to their heirs, it is not possible to pay the amounts established within the time frame indicated, the State shall deposit the amount in their favor in an account or a deposit certificate in a solvent Colombian banking institute in United States dollars and in the most favorable financial conditions permitted by law and banking practice. If, after 10 years, the compensation has not been claimed, the amounts shall revert to the State with the accrued interest.

263. The amounts allocated in this judgment as compensation for pecuniary and non-pecuniary damage and for reimbursement of costs and expenses must be delivered to the victims integrally, as established in this judgment, and may not be affected or conditioned by current or future taxes or charges.

264. If the State falls into arrears, it shall pay interest on the amount owed, corresponding to banking interest on arrears in Colombia.

VI. OPERATIVE PARAGRAPHS

265. Therefore,

THE COURT

DECIDES:

unanimously,

1. To reject the first, second and fourth preliminary objection filed by the State, in accordance with paragraphs 24 to 37 and 44 to 46 of this judgment.
2. To declare that the third preliminary objection filed by the State is inadmissible, in accordance with paragraphs 38 to 43 of this judgment.

AND DECLARES,

unanimously, that:

1. It accepts the State's partial acknowledgment of international responsibility, in the terms of paragraphs 13 to 23 of this judgment.
2. The State violated the rights to life and personal integrity, established in Articles 4(1) and 5(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Senator Manuel Cepeda Vargas, in the terms of paragraphs 67 to 126 of this judgment.
3. The State violated the rights to judicial guarantees and to judicial protection, established in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Senator Manuel Cepeda Vargas and his next of kin in the terms of paragraphs 127 to 167 of this judgment.
4. The State violated the rights to protection of honor and dignity, freedom of association, and freedom and thought and expression, and political rights, established in Articles 11, 13(1), 16 and 23 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Senator Manuel Cepeda Vargas, in the terms of paragraphs 168 to 179 of this judgment.
5. The State violated the rights to personal integrity, protection of honor and dignity, freedom of movement and residence, established in Articles 5, 11 and 22(1), of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Iván Cepeda Castro, María Cepeda Castro, Olga Navia Soto, Claudia Girón Ortiz, María Estella Cepeda Vargas, Ruth Cepeda Vargas, Gloria María Cepeda Vargas, Álvaro Cepeda Vargas and Cecilia Cepeda Vargas, in their respective circumstances, in the terms of paragraphs 180 to 210 of this judgment.
6. It is not incumbent on the Court to issue a ruling on the alleged violation of Articles 41 and 44 of the American Convention on Human Rights to the detriment of Senator Manuel Cepeda Vargas, or on the alleged failure to comply with Article 2 of thereof.

AND ORDERS:

unanimously, that:

7. This judgment shall constitute, per se, a form of reparation.

unanimously, that:

8. The State must conduct the domestic investigations that are underway effectively and, if applicable, those opened in future to identify, prosecute and, when applicable, punish all those responsible for the extrajudicial execution of Senator Manuel Cepeda Vargas, in the terms of paragraphs 214 to 217 of this judgment.

unanimously, that:

9. The State must adopt all necessary measures to guarantee the safety of the next of kin of Senator Manuel Cepeda Vargas and to prevent them having to move or to leave the country again as a result of threats, or acts of harassment or persecution against them following notification of this judgment, in the terms of paragraph 218 of this judgment

unanimously, that:

10. The State must publish, once, in the official gazette and in another national newspaper, paragraphs 1 to 5, 13 to 23, 71 to 73, 85 to 87, 88, 100 to 102, 103, 114, 115, 122 to 126, 167, 175 to 177, 179, 180, 181, 194 to 196, 201, 202, 204, 209, 210, 216 to 218, 220, 223, 228, 233 and 235 of this judgment, including the headings of each chapter and of the respective section – without the corresponding footnotes – and the operative paragraphs hereof. In addition, this judgment must be published integrally, for at least one year, on an appropriate official web page of the State, in the terms of paragraph 220 of the judgment.

unanimously, that:

11. The State must organize a public act of acknowledgement of international responsibility for the facts of this case, in the terms of paragraphs 223 to 225 of this judgment.

unanimously, that:

12. The State must prepare a publication and make an audio-visual documentary on the political life, journalism career and political role of Senator Manuel Cepeda Vargas, in coordination with the next of kin, and disseminate it, in the terms of paragraphs 228 and 229 of this judgment.

unanimously, that:

13. The State must provide the medical and psychological treatment that the victims require, in the terms of paragraph 234 of this judgment.

By five votes to two, that:

15. The State must pay the amounts established in paragraph 247 hereof, as compensation for pecuniary damage, in the terms of paragraphs 247 and 260 to 264 of this judgment.

Judges Manuel E. Ventura Robles and Alberto Pérez Pérez partially dissent, in relation to the determination of the compensation for loss of potential earnings.

unanimously, that:

16. The State must pay the amounts established in paragraphs 251, 253 and 259 hereof, as compensation for non-pecuniary damage, and reimbursement of costs and expenses, in the terms of paragraphs 251, 253, 259 and 260 to 264 of this judgment.

unanimously, that:

17. Within one year of notification of the judgment, and in order to monitor the judgment, the State must submit a report to the Court on the measures it has adopted. The Court will close the instant case when the State has fully complied with all the measures ordered herein.

Judges Diego García-Sayán and Eduardo Vio Grossi advised the Court of their separate concurring opinions, and Judges Manuel E. Ventura Robles and Alberto Pérez Pérez advised the Court of their partially dissenting opinions.

Done at San José, Costa Rica, on May 26, 2010, in the Spanish language.

Diego García-Sayán
President

Leonardo A. Franco
Manuel E. Ventura Robles
Margarette May Macaulay
Rhadys Abreu Blondet
Alberto Pérez Pérez
Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

Concurring opinion of Judge Diego García-Sayán in relation to the judgment of the Inter-American Court of Human Rights, in Cepeda Vargas v. Colombia of May 26, 2010

1. In this concurring opinion, I develop the grounds for my agreement with the decision taken by the Court in the judgment in the case of Cepeda Vargas v. Colombia as regards the positive assessment of the measures taken in the domestic sphere by the administrative jurisdiction concerning the determination of compensation for loss of potential earnings, and find that the amount established in that sphere was reasonable. My reasoning on this point appears below.

2. In this case, among other aspects, the Court considered two that I believe are especially relevant. The first, that it was incumbent on the Court to assess whether the "national mechanisms for determining forms of reparation […] satisfy criteria of objectivity,

reasonableness, and effectiveness to make adequate reparation for the violations of rights recognized in the Convention that have been declared by this Court" (para. 246). The second, that, in this case, the Court developed this attribution by determining that "it has been determined that the next of kin of Senator Cepeda Vargas had access to the administrative law courts, which established compensation for loss of potential earnings based on objective and reasonable criteria. Consequently, the Court assesses positively the measures taken by the domestic courts in this case, [FN1] and finds that the amount established by these courts is reasonable in terms of its case law" (para. 246).

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[FN1] Cf. Case of the La Rochela Massacre, supra note 16, para. 245.

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3. In my opinion, the conclusion reached by the Court in the instant case on this issue is supported by three fundamental factors. The first is the principle of the subsidiarity of the international jurisdiction; the second, consists in substantive juridical and doctrinal considerations concerning compensation for pecuniary damage, and the third, is the verification by the Court of the conformity of the compensation decided internally with the international obligation to make reparation.

I. The principle of the subsidiarity of the international jurisdiction

4. The preamble of the American Convention establishes a fundamental principle, which is the subsidiarity of the inter-American human rights jurisdiction to the domestic jurisdiction, when recognizing that the international protection of human rights "reinforc[es] or complement[s] the protection provided by the domestic law of the American states." This subsidiarity is also embodied in Articles 46(1)(a) and 61(2) of the American Convention, which stipulate the requirement of exhausting domestic remedies before having recourse to lodging a petition before the inter-American system.

5. The Court has developed this principle, when affirming that "[t]he rule of prior exhaustion of domestic remedies permits the State to resolve the problem in accordance with its domestic laws before becoming involved in international proceedings, which is especially valid in the international human rights jurisdiction, because this reinforces or complements the domestic jurisdiction." [FN2] The Court has established that State responsibility:

Can only be required at the international level after the State has had the opportunity to examine it and to declare it by means of remedies within the domestic jurisdiction, and to repair the damage caused. The international jurisdiction is of a subsidiary, reinforcing and complementary nature. [FN3]

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[FN2] Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 61.

[FN3] Perozo et al. v. Venezuela. Preliminary objections, merits, reparations and costs. Judgment of January 28, 2009. Series C No. 195, para. 64.

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6. Hence, the States of the Americas have wanted to leave it sufficient clear that the protection system established by the American Convention on Human Rights does not substitute the national jurisdictions, but rather complements them. [FN4] "After all, the State's international responsibility arises when a violation is committed – as a direct result of failure to comply with or violation of the obligation, also international, that it assumed – but the jurisdiction of the Inter-American Court is not necessarily brought into play. This will be deployed in the hypothesis that the domestic jurisdiction does not function." [FN5]

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[FN4] FAÚNDEZ LEDESMA, Héctor, El agotamiento de los recursos internos en el sistema interamericano de protección de los derechos humanos, IIDH/IIHR, San José, Costa Rica, 2007, p. 43.
[FN5] GARCÍA RAMÍREZ, Sergio, "El sistema interamericano de protección de los derechos humanos. La Corte Interamericana," in La jurisdicción interamericana de Derechos Humanos, CIDH/IACHR and Inter-American Court of Human Rights, Mexico, 2006, p. 90.
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7. Furthermore, the Court has explained that:

The American Convention is a multilateral treaty under which States Parties undertake to respect and ensure the rights and freedoms recognized therein and to comply with any reparations ordered. The Convention is the cornerstone of the system for the protection of human rights in America. This system is a two-tiered system: a local or national tier consisting of each State's obligation to guarantee the rights and freedoms recognized in the Convention and punish violations committed. If a specific case is not resolved at the local or national level, the Convention provides an international tier where the principal bodies are the Commission and this Court. But as the Preamble to the Convention states, the international protection is "reinforcing or complementing the protection provided by the domestic law of the American states."Consequently, when a question has been definitively settled under domestic law – to use the language of the Convention – the matter need not be brought to this Court for "approval" or "confirmation." [FN6]

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[FN6] Case of Las Palmeras v. Colombia. Merits. Judgment of December 6, 2001. Series C No. 90, para. 33.
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8. The American Convention imposes on the States Parties the obligation to ensure that presumed victims have effective remedies before the domestic courts against violations of the rights recognized in the treaties or under domestic laws, [FN7] and establishes the correlative obligation of complainants to exhaust previously the remedies under domestic law as a condition for the admissibility of their petitions at the international level. The establishment of these complementary obligations underscores the necessary interaction that must exist between international law and domestic law in the sphere of the protection of human rights.

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[FN7] American Convention on Human Rights, Article 25(1).

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9. The principle of subsidiarity of the inter-American system for the protection of human rights implies that the States – through their domestic organs and authorities – bear the primary responsibility to respect and guarantee, within their sphere of jurisdiction, the human rights embodied in the international laws of protection and to comply with the international obligations that derive from them. And the primary guarantors of the protection of human rights are called on to be the domestic courts and authorities. "In principle, the national administrators of justice are better placed to know, assess and decide the presumed violations of human rights. The international administrators of justice only intervene when the State has failed to comply with its international obligations. Consequently, the principle of subsidiarity establishes an adequate mechanism for defining the limits of the international jurisdiction and the obligations of the national authorities." [FN8]

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[FN8] DEL TORO HUERTA, Mauricio Iván, "El principio de subsidiaridad en el derecho internacional de derechos humanos con especial referencia al sistema interamericano" in La Corte Interamericana de Derechos Humanos a veinticinco años de su funcionamiento, Becerra Ramírez, Manuel (coord.), UNAM, Mexico, 2007, p. 24, citing PASTOR RIDRUEJO, José Antonio, "Le principe de subsidiarité dans la Convention européenne des droits de l´homme", Internationale Gemeinschaft und Menschenrechte, Festschrift für Georg Ress zum 70. Geburtstag am 21. January 2005, Carl Heymanns Verlag, 2005, pp. 1077-1083.

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10. These implications of the principle of subsidiarity were emphasized in the case of Acevedo Jaramillo et al. v. Peru, when the Court recalled that:

The State is the principal guarantor of human rights and, as a consequence, if a violation of the said rights occurs, the State must resolve the issue under the domestic system and redress the victim before resorting to international forums such as the inter-American system for the protection of human rights; which derives from the ancillary nature of the international system in relation to domestic systems for the protection of human rights. Domestic courts and state organs have the duty to guarantee the implementation of the American Convention at the domestic level. [FN9]

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[FN9] Acevedo Jaramillo et al. v. Peru. Interpretation of the judgment of preliminary objections, merits, reparations and costs. Judgment of November 24, 2006. Series C No. 157, para. 66.

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11. That essential element of the international law of human rights is at the conceptual basis of its essential interaction with domestic law and the conduct that the different State institutions should have in this regard, taking into account the obligations that, freely and in exercise of its

sovereignty, the State has assumed under an international treaty. And this applies in at least two spheres, each arising from two fundamental provisions of the Convention: Article 1(1) and Article 2. [FN10] Thus the States play an essential role as members of the inter-American system of human rights. In this regard, a crucial role corresponds to the national courts, as part of the State apparatus.

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[FN10] GARCÍA-SAYÁN, Diego, "Justicia interamericana y tribunales nacionales," in Anuario de Derecho Constitucional Latinoamericano, Diké, Medellín, 2008, p. 378.

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12. In this process of interaction, the Court is not placed above the State, but rather fulfills its role in the sphere of litigation when a case is submitted to it after the domestic jurisdiction has been exhausted. Today, the binding nature of the Court's judgments is not in question and, essentially, the States abide them. It is particularly significant that domestic courts are increasingly using the Court's jurisprudential criteria, an international mechanism that today inspires the jurisdictional reasoning of the most relevant courts of Latin America. In this way, the Court's case law is multiplied in hundreds and perhaps even thousands of national courts. For its part, the inter-American Court is also nourished by the important case law of national courts. The Court cannot place itself outside or above this institutional dynamic, or try to rectify domestic decisions, except in the case of decisions that are contrary or opposed to international standards in light of the American Convention.

13. The subsidiary nature of the protection organs of the inter-American system for the protection of human rights presumes that the domestic courts are able to establish and apply criteria to repair a violation. This allows the domestic organs and institutions to enhance their ability to use procedures and criteria that accord with international standards concerning human rights. Evidently, the States "do not enjoy unlimited discretionary authority and it will correspond to the organs of the inter-American system, within the framework of their respective competences, to exercise subsidiary and complementary control." [FN11]

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[FN11] Cf. Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs. Judgment of July 4, 2007. Series C No. 166, para. 47.

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14. Once the State's international responsibility has been declared, it is incumbent on the Inter-American Court to comply with the obligation imposed on it by Article 63(1) of the Convention, to 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" (emphasis added). To comply with this obligation, the Court must verify that the reparations awarded in the domestic sphere conform to the international obligations and order measures to repair the damage that was not repaired adequately at the domestic level. The Court must assess whether it is appropriate to require the State to pay additional compensation, if compensation had been established by the domestic courts. It is not appropriate to require this

measure when the State, through its domestic organs, has established and executed fair compensation that repairs the damage caused.

15. Consequently, the rulings of the Inter-American Court concerning reparations do not depend on and are not limited by the mechanisms or standards established under the domestic legal system, or by what has been decided by the domestic organs. When verifying the conformity of the reparations awarded at the domestic level, the Court does not have such restrictions. To the contrary, it is the final interpreter of the international obligation to make reparation in relation to human rights but, at the same time, it has the obligation to recognize and encourage, if applicable, the steps taken under domestic law that are in accord with international law.

II. Compensatory damages for pecuniary harm

16. In international human rights law, compensatory damages have been considered the form of reparation par excellence to compensate the pecuniary harm resulting from the violation of human rights.

17. Under comparative domestic law, loss of income is one of the basic elements that almost all legal systems include as a matter that requires the damage to be compensated. [FN12] Clearly, there are procedural differences and diverse criteria as regards how to determine the loss and the amounts awarded. It should also be recognized that, at times, the development of the right to reparation in the domestic sphere, owing to State responsibility for the violation of human rights, has been influenced by international human rights law.

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[FN12] SHELTON, Dinah, Remedies in International Human Rights Law, Second Edition, Oxford University Press, New York, 2005, pp. 35-36.

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18. Even though it is evident under international human rights law that the States are obliged to establish an effective remedy that permits making reparation for human rights violations, international laws do not expressly regulate the parameters that the States should observe when determining the compensation that will repair the pecuniary damage caused.

19. The Principles and Guidelines adopted by the General Assembly of the United Nations in this regard, [FN13] recognize the right of the victims of such violations to “full and effective reparation […], which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.” [FN14] When referring in detail to compensation, article 20 indicates that “[c]ompensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from […] violations” and, among such damage, it specifically includes “[m]aterial damages and loss of potential earnings, including loss of earning potential” (paragraph (c)). Other instruments of international human rights law have also incorporated compensation as a form of reparation.

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[FN13] "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 International Humanitarian Law." Resolution 60/147 adopted by the United Nations General Assembly on 16 December 2005.
[FN14] Article 18.

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20. Meanwhile, under general international law, article 31 of the draft articles on Responsibility of States for Internationally Wrongful Acts [FN15] establishes the obligation of responsible States "to make full reparation for the injury caused by the internationally wrongful act" and indicates that the "injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State." Article 34 stipulates the forms that full reparation for the injury caused by the internationally wrongful act must take, which include compensation. Article 36 on compensation recognizes that: "[t]he State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution," and also details that "[t]he compensation shall cover any financially assessable damage including loss of profits insofar as it is established." The commentaries on several of the articles clarify that the concept of proportionality or equity plays an important role with regard to the different forms of reparation, including compensation. [FN16]

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[FN15] Adopted by the United Nations International Law Commission at its fifty-third session (A/56/10) and attached by the General Assembly to its Resolution 56/83 of 12 December 2001.
[FN16] Cf. Commentaries on Articles 31, 35 (b), 37(3) and 39; and SHELTON, Dinah, "Righting Wrongs: Reparations in the Articles on State Responsibility", The American Journal of International Law, Vol. 96, No. 4, Oct. 2002, p. 851, and SHELTON, Dinah, Remedies in International Human Rights Law, op. cit., p. 94.

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21. As can be seen, these instruments of international law set out general parameters for establishing compensation, but do not elaborate on how to calculate or determine the amounts for compensation of pecuniary damage. Under the inter-American system, pursuant to the extensive competence granted to the Inter-American Court by Article 63(1) of the American Convention [FN17] and based on the principle that any violation of an international obligation gives rise to the State's obligation to repair it, since its first rulings on the matter in 1989, the Court has been developing standards applicable to the compensation of damage, once it has been determined that the State is internationally responsible for the human rights violation, endeavoring to ensure full and effective reparation for the damage caused and taking into account the special nature of human rights treaties.

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[FN17] "When it decides that there has been a violation of a right or freedom protected in this Convention, the Court shall order that the person injured is guaranteed the enjoyment of his right or freedom that was violated. It shall also order, if appropriate, that the consequences of the

measure or situation that has constituted the violation of these rights be repaired and the payment of a fair compensation to the injured party."

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22. In its vast case law on reparations, the Court has developed the aspects of pecuniary damage that must be repaired in cases of human rights violations. The Court has established that pecuniary damage refers to the loss or prejudice to the income of the victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that are directly related to the facts of the case. [FN18] The elements of pecuniary damage recognized by the Inter-American Court include loss of potential earnings, indirect damage and damage to family assets. Although, through its case law, the Court has used diverse criteria to calculate loss of earnings, it has also made it clear that, in order to establish the compensation, "international courts usually use the principle of fairness, according to the circumstances of the specific case, and thus order reasonable compensation for the damage caused; in general, they do not base this on invariable, rigid formulas." [FN19] In Velásquez Rodríguez v. Honduras it even indicated that, if the compensation for loss of income was received by the victim's next of kin "[i]t is not correct […] to adhere to rigid criteria, […], but rather to arrive at a prudent estimate of the damage, given the circumstances of each case." [FN20] It should be noted that in order to establish the compensation corresponding to loss of income, although the Court takes into account certain criteria and the evidence provided, on repeated occasions it has been establishing the amounts, "in fairness" [FN21]; in other words, without using a rigid criteria applicable to all cases and, in certain cases, it has even decided to distribute the amounts established in keeping with the inheritance law in force in the country where the facts occurred. [FN22]

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[FN18] Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs. Judgment of June 7, 2003. Series C No. 99, para. 162, and Cf. inter alia, Bámaca Velásquez v. Guatemala. Reparations and costs. Judgment of February 22, 2002. Series C No. 91, para. 43; La Cantuta v. Peru. Merits, reparations and costs. Judgment of November 29, 2006. Series C No. 162, para. 213, 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. 166.

[FN19] Juan Humberto Sánchez v. Honduras. Interpretation of the judgment on preliminary objection, merits and reparations. Judgment of November 26, 2003. Series C No. 102, para. 56. In this case, the State had argued that the Court's judgment that ordered the reparations was not clear as regards the procedure used to determine the amounts of the compensation for pecuniary and non-pecuniary damage, because "it has not established a formula for this" (para. 50.b).

[FN20] Velásquez Rodríguez v. Honduras. Reparations and costs. Judgment of July 21, 1989. Series C No. 7, para. 48.

[FN21] Cf., inter alia, Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs. Judgment of November 23, 2009. Series C No. 209, para. 365; Usón Ramírez v. Venezuela. Preliminary objection, merits, reparations and costs. Judgment of November 20, 2009. Series C No. 207, para. 180; González et al. ("Campo Algodonero") v. Mexico. Preliminary objection, merits, reparations and costs. Judgment of November 16, 2009. Series C No. 205, para. 577, and Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs. Judgment of September 22, 2009. Series C No. 202, para. 214.

[FN22] González et al. ("Campo Algodonero") v. Mexico. Preliminary objection, merits, reparations and costs. Judgment of November 16, 2009. Series C No. 205, para. 578.

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III. Verification that domestic compensation conforms to the international obligation to make reparation

23. At times, such as in the instant case, when establishing reparations in the international sphere, the Court may face the situation in which the domestic jurisdiction has ordered compensatory damages for the harm derived from the State's responsibility. In the instant case, the administrative proceedings established the responsibility of the State and, based on the criteria established in the domestic jurisdiction, "Olga Navia Soto was awarded the sum of 910,308,742.00 Colombian pesos as compensation for "loss of potential earnings"; this was equivalent to approximately US$388,500.00 at the exchange rate in force when the judgment was delivered." (para. 245). This sum was awarded to the deceased victim's common-law wife considering that she was the only persons who depended on the victim financially.

24. The Inter-American Court cannot bypass or ignore the measures taken by the State organs to comply with their obligation to make reparation. It is for the Court, in the exercise of its jurisdiction, to ensure, at the international level, that the measures taken by the State at the national level as regards reparation are in keeping with its international obligations. This means that the Court must make assessments such as: verifying whether the State compensated all aspects of the damage declared by the Court (supra para. 22), so that, if any aspect was not included among those that the State compensated, it would correspond to the Inter-American Court, as a subsidiary organ, to establish compensation for this element; establishing whether the State made its decision based on objective and reasonable criteria, and whether the said reparation was effective to achieve the purpose sought by compensation, which is to make financial reparation for the situation and the expenses arising from the violation, and to re-establish for those affected the situation or status they would have enjoyed in the absence of that damage or injury, [FN23] and that would have allowed them to pursue their projects and goals.

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[FN23] SHELTON, Dinah, Remedies in International Human Rights Law, op. cit., p. 22.

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25. Although Article 63(1) of the Convention does not condition the reparations established by the Court to the instruments of reparation that exist under the domestic laws of the State Party responsible for the violation, in application of the principle of subsidiarity, it is advisable that, when deciding whether or not to establish compensation to make reparation for a specific pecuniary damage, the Court assesses whether the State has already made reparation for this damage, in light of the American Convention and the principles of international law applicable to the matter.

26. In addition to the above, when examining the reparation awarded at the domestic level the Court must verify whether the State has complied with its obligation under the Convention to establish in its domestic law an effective remedy to repair human rights violations, to be

implemented using proceedings that respect the rights and guarantees established in Articles 8 and 25 of the American Convention. These considerations are limited to examining the effectiveness of the remedy created to make reparation for the pecuniary damage.

27. In the instant case, the Colombian Council of State, the highest organ of the administrative-law jurisdiction of that country made the final determination of the compensation for loss of earnings based on explicit, clear, objective and reasonable criteria that sought to compensate the damage suffered. The way in which the Council of State calculated the loss of potential income differed from the way that the Court usually calculates it; nevertheless, the criteria used by this State organ was not contrary to the essential criteria intended to establish fair compensation for the financial damage caused to those who would have benefited directly from the income that the victim would have perceived. The decision adopted by the domestic courts was not arbitrary, but was founded on objective standards, which were known previously at the domestic level. Consequently, the Court cannot and must not disregard this domestic decision.

28. Moreover, consequent with the foregoing criteria, the Court also verified that the decision made during the administrative proceedings did not include another type of damage that the Court has considered must be compensated; namely, indirect damage. it therefore ordered compensatory damages to compensate that harm (para. 247), without limiting itself to what had been established in the domestic sphere.

IV. Interaction between the Inter-American Court and the domestic courts: seeking to improve the protection of rights in the domestic sphere

29. The effective respect and guarantee of human rights depends, above all, on the will and action of the States; consequently, it is an obligation of the States to be the initial mechanism for the protection of human rights. As founders and actors of the inter-American system for the protection of human rights, the States have the obligation to ensure the implementation at the domestic level of the international norms of protection. After all, the daily effectiveness of the rights established under the system depends on this.

30. In this context, the domestic courts are called on to play a crucial role, because they are one of the principle vehicles for the State to be able to convert the obligations contained in the international human rights treaties into domestic law, by applying them in their jurisprudence and daily proceedings. [FN24] Evidently, not only must they guarantee rights by ensuring the effectiveness of domestic judicial remedies, but they must also put in practice the binding decisions of the Inter-American Court that interpret and define the international laws and standards for the protection of human rights. [FN25]

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[FN24] GARCÍA-SAYÁN, Diego, “Una Viva Interacción: Corte Interamericana y Tribunales Internos”, in The Inter-American Court de Derechos Humanos: Un Cuarto de Siglo: 1979-2004, Corte Interamericana of Human Rights, San José, Costa Rica, 2005, p. 330.

[FN25] GARCÍA-SAYÁN, Diego, “Una Viva Interacción: Corte Interamericana y Tribunales Internos”, op. cit., p. 330, and Diego García-Sayán “Justicia interamericana and tribunales nacionales”, op. cit., p. 379.

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31. The active participation of the domestic courts in guaranteeing human rights creates a favorable environment for reinforcing their capacity to use procedures and criteria that are increasingly in conformity with international laws and standards for human rights protection, and this ensures the enhanced implementation of those laws and standards at the domestic level.

32. Consequently, one of the main purposes of the interaction between the international and national bodies of laws is to improve the national protection systems. This encourages the national jurisdictional organs to deal with violations of rights and to do whatever is possible to repair them, if they occur. “In the international guarantee there is a general interest, in addition to a merely subjective one, to foster the effectiveness of the State system. International protection should not act as a substitute for domestic protection; its function is to complete and promote the latter’s increased effectiveness.” [FN26]

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[FN26] PEREZ TREMPS, Pablo, “Las garantías constitucionales y la jurisdicción internacional en la protección de los derechos fundamentales”, in Anuario de la Facultad de Derecho, Universidad de Extremadura, No. 10, 1992, p. 81.

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33. The highest courts of Latin America have been nourishing themselves from the Court’s case law in a process that can be referred to as the “nationalization” of international human rights law. [FN27] For this important process of interaction between the region’s national and international courts to take place, in which the former are called on to apply international human rights law and observe the provisions of the Inter-American Court’s case law, constant incentives must be provided for the substantive dialogue that allows this. Within the framework of the different types of actions that encourage this dialogue, the Inter-American Court’s decision to assess positively the measures taken in the domestic sphere to make reparation for the pecuniary damage constitute an important step on this path.

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[FN27] GARCÍA-SAYÁN, Diego, “Una Viva Interacción: Corte Interamericana y Tribunales Internos”, op. cit., p. 325-331.

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Diego García-Sayán
Judge

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI

I concur with the judgment on preliminary objections, merits, reparations and costs in the case of Cepeda Vargas v. Colombia, handed down today by the Inter-American Court of Human Rights.

Nevertheless, I find it necessary to make the following observations concerning the compensation for loss of earnings established therein:

1. Under the inter-American system for the protection of human rights, compensation is ordered solely and exclusively if it is "appropriate" and, if this is so, the Inter-American Court will establish the payment of the compensation it considers "fair." [FN1]

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[FN1] Article 63(1) of the American Convention on Human Rights:
"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. (Emphasis added by the author)
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2. Consequently, in order to decide whether the said compensation is appropriate, the Court must inevitably verify whether the State responsible for the human rights violations in question has already paid it and, if so, assess its fairness, based on the principle of subsidiarity or complementarity that underlies the said system as a whole. [FN2]

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[FN2] Preamble, paragraph 3, of the American Convention on Human Rights:
"Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states;" (Emphasis added by the author)
And see, inter alia, Perozo et al. v. Venezuela, Preliminary objections, merits, reparations and costs. Judgment of January 28, 2009. Series C No. 195, paras. 42 and 64.
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3. The harmonious application of the concepts of fairness and subsidiarity or complementarity is expressed, in this case, by the fact that, under general international law, compensation is appropriate if the State responsible for the internationally wrongful act in question does not make reparation [FN3] by means of restitution, [FN4] or fails to do so appropriately. [FN5]

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[FN3] Article 31 of the draft articles on Responsibility of States for Internationally Wrongful Acts, prepared by the United Nations International Law Commission:
"Reparation
1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State."

[FN4] Article 35 of the draft articles on Responsibility of States for Internationally Wrongful Acts prepared by the United Nations International Law Commission:
"Restitution
A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:
(a) is not materially impossible;
(b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation. (Emphasis added by the author)
[FN5] Article 36 of the draft Articles on State Responsibility for an internationally illegal act prepared by the United Nations International Law Commission:
"Compensation
3. The State responsible for an internationally unlawful act is obliged to compensate the damage caused by this act to the extent that the said damage has not been repaired by restitution.
4. The compensation shall cover all damage that can be financially assessed, including loss of earnings insofar as this has been proved." (Emphasis added by the author)
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4. Taking into account that, in the instant judgment, the Inter-American Court found that the payment of compensation for loss of earnings made by the State "is reasonable in the terms of its case law," I conclude that it considered this payment to be fair and, consequently, that it was unnecessary for the Court to proceed in a subsidiary or complementary manner in this regard. [FN6]

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[FN6] Paragraphs 245 and 246 of the Judgment.
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Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary

PARTIALLY DISSENTING OPINION OF JUDGE MANUEL E. VENTURA ROBLES

My partial dissent with regard to the fifteenth operative paragraph of this judgment in Manuel Cepeda Vargas v. Colombia, "in relation to the determination of compensation for loss of potential earnings," refers specifically to the criterion adopted by the majority of the judges of the Court when determining the amount for loss of earnings, which assessed positively the relevant measures taken by the domestic courts in the case sub judice and considered the amount calculated by these courts to be reasonable in terms of the Court's case law.

Textually, paragraph 246 of the judgment reads:

246. The Court considers that, when national mechanisms exist to determine forms of reparations, these procedures and results can be assessed (supra para. 139). If these mechanisms do not satisfy criteria of objectivity, reasonableness and effectiveness to make adequate reparation for the violations of rights recognized in the Convention that have been declared by this Court, it is for the Court, in exercise of its subsidiary and complementary competence, to order the pertinent reparations. In this regard, it has been determined that the next of kin of Senator Cepeda Vargas had access to the administrative courts, which established compensation for loss of potential earnings based on objective and reasonable criteria. Consequently, the Court assesses positively the measures taken by the domestic courts in this case, [FN1] and finds that the amount established by these courts is reasonable in terms of its case law.

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[FN1] Cf. La Rochela Massacre v. Colombia. Merits, reparations and costs. Judgment of May 11, 2007. Series C No. 163, para. 245.

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This text, approved by the majority of the judges of the Court, adopted a criterion that I do not share with regard to the subsidiary nature of the international protection of human rights under the inter-American system, and to the nature of the compulsory competence or jurisdiction of the Inter-American Court of Human Rights.

The principle of the complementary and subsidiary nature of the inter-American system of human rights is established in the second paragraph of the Preamble of the American Convention on Human Rights, which stipulates:

Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American States;

And Article 46(1)(a) of the said Convention which establishes that:

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:
(a) That the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.

The Convention is frugal as regards the nature and functions of the Court’s compulsory jurisdiction, but it is sufficiently clear in specifying the essential aspects. Thus, Article 62(1) of the Convention establishes that:

A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.

All these texts, which define the subsidiary nature of the inter-American system, indicate that there is a before (one or several domestic proceedings) and an after (an international proceeding before the Inter-American Commission and another before the Inter-American Court), each with its own procedures and limitations. And, consequently, that none of them should invade the criteria or stages of the others, since they all have their own nature based on the purpose that each one fulfills. Hence, the criterion or the procedure to determine a reparation or amount in the domestic jurisdiction is one element, among others, that legitimates whether a case is submitted to the Court or to seek a friendly settlement, but never a criterion for deciding an aspect of a case that has been submitted to the Court's jurisdiction, as set out in Article 62(1) of the Convention. The nature of the Court's jurisdiction is unique and indivisible and, consequently, the amount or amounts of a reparation are decided by the Court in keeping with its own procedures, criteria and practice and not those of the domestic jurisdiction, however reasonable the amount established or appropriate the procedure used, as occurred with the Colombian Council of State in this case. An appropriate action by a domestic organ does not constitute a sufficient reason for the Court, in exercise of its compulsory competence or jurisdiction, to adopt parts of the domestic proceedings.

The issue of the uniqueness and indivisibility of the Court's jurisdiction was discussed by Judges Antônio A. Cançado Trindade and Máximo Pacheco Gómez in their joint separate opinion in Las Palmeras v. Colombia, in which they expressly stated that:

In our understanding, it is essential that the Inter-American Court itself determines the international responsibility of the State under the American Convention, without any need to refer to decisions of domestic courts. Moreover, in the present case, the State adopted a positive attitude in the proceedings before this international Court, taking the initiative of acknowledging its international responsibility under Article 4 of the American Convention […].
The responsibility of the State under domestic law does not necessarily coincide with its responsibility under international law. In the instant case, the two judgments of the Administrative Law Chamber of the Council of State constituted a positive step, by declaring, respectively, the patrimonial responsibility of the State […] and the administrative responsibility of the State […]. Nevertheless, in light of the American Convention, we do not consider that the decision of the domestic administrative jurisdiction was sufficient or, above all, definitive.
In principle, res judicata under domestic law is not binding on an international tribunal such as the Inter-American Court. The latter must determine motu propio the responsibility of the State Party for violating the American Convention, an international treaty. The Court cannot abdicate from making this determination, even if the decision of a domestic court is entirely in agreement with its own as regards the merits. Otherwise, the result would be total juridical relativism, illustrated by the "endorsement" of a decision of a domestic court when this is considered in accordance with the Convention, or the determination that it does not or should not generate legal effects […] when it is considered incompatible with the American Convention.
It may be recalled, [… that] the Inter-American Court found that "within the international jurisdiction, the parties and the matter in dispute are, by definition, different from those within the domestic jurisdiction," [FN2] because the substantive aspect of the dispute before the Court is whether the respondent State has violated the international obligations it assumed on becoming a party to the Convention.

From the Inter-American Court's perspective, the only definitive aspect is its own determination of whether the respondent State's administrative acts and practices, domestic laws, and decisions of domestic courts are compatible with the American Convention. No one
questions the principle of the subsidiary nature of the international jurisdiction, which relates specifically to the mechanisms of protection; nor should it be forgotten that, at the substantive level, in the domain of protection, the norms of the international and domestic legal systems are in constant interaction, to the benefit of the human beings who are protected. [FN3]

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[FN2] Cesti Hurtado v. Peru. Preliminary objections. Judgment of January 26, 1999. Series C, No. 49, para. 47.
[FN3] Las Palmeras v. Colombia. Merits. Judgment of December 6, 2001. Series C No. 90. Joint separate opinion of Judges A.A. Cançado Trindade and M. Pacheco Gómez, paras. 2 to 6.

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Based on the foregoing, I dissent with regard to the said fifteenth operative paragraph, because the Court should have established the amount of the reparation for loss of earnings based on its own jurisdiction and not by accepting the criteria of a domestic court that serves other jurisdictional purposes. The fact that the Inter-American Court, which has assumed jurisdiction in a case, agrees with a specific amount is insufficient reason for it to forego determining the amount of a loss of potential earnings motu propio and in keeping with the norms and practices of international human rights law, and for it to endorse the decision of a court with jurisdiction in domestic matters that interprets and applies norms other than the American Convention on Human Rights. The subsidiary nature lies precisely in the empowerment of a new international jurisdiction, the inter-American jurisdiction for the protection of human rights, and not in the adoption of the criteria of another jurisdiction – the domestic jurisdiction – that ceased to exercise its functions when the international jurisdiction was empowered. Consequently, the principle of subordination was not clearly applied by the majority of the judges in the instant case.

Manuel E. Ventura Robles
Judge

Pablo Saavedra Alessandri
Secretary

PARTIALLY DISSENTING OPINION OF JUDGE ALBERTO PÉREZ PÉREZ

1. I fully agree with the fundamental parts of the judgment accepting the State's partial acknowledgement of responsibility and determining that the State violated the rights to life and personal integrity, protection of honor and dignity, freedom of thought and expression, and freedom of association, as well as the political rights of Senator Manuel Cepeda Vargas; the rights to judicial guarantees and judicial protection of Senator Manuel Cepeda Vargas and his next of kin, and the rights to personal integrity and the protection of honor and dignity, and the right to movement and residence of Iván Cepeda Castro, María Cepeda Castro, Olga Navia Soto,

Claudia Girón Ortiz, María Estella Cepeda Vargas, Ruth Cepeda Vargas, Gloria María Cepeda Vargas, Álvaro Cepeda Vargas and Cecilia Cepeda Vargas, in their respective circumstances.

2. I consider of particular importance the reaffirmation that it is incumbent on the Court, "in the exercise of its contentious jurisdiction, to examine the facts brought before it and to assess them in accordance with the evidence submitted by the parties" and, in "cases of serious violations of human rights, when examining the merits" to take into account "that, since they were committed in the context of massive and systematic or generalized attacks against one sector of the population, such violations can also be characterized or classified as crimes against humanity, in order to explain clearly the extent of the State's responsibility under the Convention in the specific case, together with the [pertinent] juridical consequences." Thus, the Convention is interpreted "through [its] convergence with other norms of international law, particularly with regard to the prohibition of crimes against humanity, which is ius cogens," without this implying "establish[ing] individual responsibilities, determination of which falls within the jurisdiction of the domestic or the international criminal courts" (paras. 41 and 42).

3. I also agree with almost all the measures ordered in the judgment in relation to the violations that have been verified.

4. I dissent exclusively with regard to the decision of the majority of the members of the Court not to grant, as compensation for loss of earnings, any amount additional to the sum awarded by the Colombian State solely to Olga Navia Soto (common-law wife of Senator Manuel Cepeda Vargas at the time of his death) and, thus, to deprive of any compensation for this concept all the other people considered "injured parties"; namely, "Iván Cepeda Castro, María Cepeda Castro, […] Claudia Girón Ortiz, María Estella Cepeda Vargas, Ruth Cepeda Vargas, Gloria María Cepeda Vargas, Álvaro Cepeda Vargas and Cecilia Cepeda Vargas (deceased)" (para. 212, which nevertheless states that "[a]ll of them shall be beneficiaries of the reparations ordered by this Court").

5. This decision arises from the contents of paragraph 246 of the judgment, which reads as follows:

The Court considers that, when national mechanisms exist to determine forms of reparations, these procedures and results can be assessed (supra para. 139). If these mechanisms do not satisfy criteria of objectivity, reasonableness and effectiveness to make adequate reparation for the violations of rights recognized in the Convention that have been declared by this Court, it is for the Court, in exercise of its subsidiary and complementary competence, to order the pertinent reparations. In this regard, it has been determined that the next of kin of Senator Cepeda Vargas had access to the administrative courts, which established compensation for loss of potential earnings based on objective and reasonable criteria. Consequently, the Court assesses positively the measures taken by the domestic courts in this case, [FN1] and finds that the amount established by these courts is reasonable in terms of its case law.

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[FN1] [Footnote 334 in the text of the judgment] Cf. Case of the La Rochela Massacre, supra note 16, para. 245.

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6. Far from being reasonable compensation in the terms indicated, that decision constitutes an unjustified departure from the Court's case law, expressed, for example, by the judgment handed down in the Case of the La Rochela Massacre, [FN2] in the following words:

245. In this case, the Court notes that, in the administrative proceedings, the State awarded damages for loss of potential earnings to twelve children and seven spouses or companions [FN3] of eight of the deceased victims in accordance with the guidelines set out by its domestic courts (supra para. 239). The Court recognizes the efforts made by Colombia with regard to the obligation to provide reparations and assesses them positively.
246. The Court notes, however, that the formula used to calculate and distribute the compensation for loss of earnings in the domestic proceedings is distinct from the formula used by this Court. The Court considers that compensation for loss of earnings should include the income that the deceased victim would have received during his or her remaining life expectancy. That amount, therefore, is incorporated into the estate of the deceased victim, but is delivered to the next of kin. Therefore, the Court will determine the appropriate amounts that it deems pertinent to order.
247. The Court has verified that the next of kin of the deceased victims, Carlos Fernando Castillo Zapata, Benhur Iván Guasca Castro and Orlando Morales Cárdenas, filed a claim under administrative law, but were not awarded loss of earnings, and that the next of kin of Arnulfo Mejía Duarte did not have recourse to this procedure. In this regard, and in keeping with its case law, the Court deems it appropriate to order compensation for loss of earnings to each of the four deceased victims mentioned above.
248. As it has in other cases, [FN4] the Court establishes the following compensation, in equity, for the loss of potential earnings of the twelve deceased victims. In doing so, the Court takes into account aspects such as the victims' occupations and their corresponding remuneration, their age and life expectancy, and the compensation awarded at the domestic level (supra para. 245): […]
249. The compensation established in the preceding paragraph shall be distributed among the next of kin of the deceased victims, in accordance with the provisions of paragraph 237 of this judgment. The State shall make these payments within one year from notification of this judgment.
250. Furthermore, when paying the reparations ordered by this Court in paragraph 248, the State may subtract from each family member, the amount granted to that person under the domestic administrative proceedings for loss of potential earnings. Should the compensation ordered in those domestic proceedings exceed the compensation ordered by the Court in this judgment, the State many not require the victims to return the difference. [FN5]

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[FN2] La Rochela Massacre v. Colombia. Merits, reparations and costs. Judgment of May 11, 2007. Series C No. 163, paras. 245 to 250. The transcript of paragraph 248 omits the details of the compensation established.
[FN3] [Footnote 243 in the text of the judgment in the Case of the La Rochela Massacre]. The children and spouses or companions of the deceased victims who received compensation for loss earnings were: Nicolás Gutiérrez Morales and Sergio Andrés Gutiérrez Morales, sons of Mariela

Morales Caro; Esperanza Uribe Mantilla, wife, and Pablo Andrés Beltrán Uribe and Alejandra Maria Beltrán Uribe, children of Pablo Antonio Beltrán Palomino; Hilda María Castellanos, wife of Virgilio Hernández Serrano; Paola Martínez Ortiz, companion and Daniel Ricardo Hernández Martínez and Julián Roberto Hernández Martínez, sons of Luis Orlando Hernández Muñoz; Luz Nelly Carvajal Londoño, wife, and Angie Catalina Monroy Carvajal, daughter of Yul Germán Monroy Ramírez; Mariela Rosas Lozano, wife, and Marlon Andrés Vesga Rosas, son of Gabriel Enrique Vesga Fonseca; Blanca Herrera Suárez, companion, and Germán Vargas Herrera and Erika Vargas Herrera, children of Samuel Vargas Páez; and Luz Marina Poveda León, wife, and Sandra Paola Morales Póveda and Cindy Vanesa Morales Póveda, daughters of César Augusto Morales Cepeda.

[FN4] [Footnote 244 in the text of the judgment in the Case of the La Rochela Massacre] Cf. Case of the Ituango Massacres, supra note 15, para. 373; Case of the Pueblo Bello Massacre, supra note 12, para. 248; and Case of Blanco Romero et al., supra note 119, para. 80.

[FN5] [Footnote 245 in the text of the judgment in the Case of the La Rochela Massacre] Cf. Case of the Ituango Massacres, supra note 15, para. 376.

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7. The decision of the majority of the members of the Court with which I dissent also implies a departure from one of the most fundamental aspects of its case law, established in the first judgment on reparations, in the Velásquez Rodríguez case: [FN6]

28. Indemnification for human rights violations is supported by international instruments of a universal and regional character. Based on the Optional Protocol, the Human Rights Committee, created by the International Covenant of Civil and Political Rights of the United Nations, has repeatedly called for compensation for violation of human rights recognized in the Covenant (see, for example, communications 4/1977; 6/1977; 11/1977; 132/1982; 138/1983; 147/1983; 161/1983; 188/1984; 194/1985; etc., Reports of the Human Rights Committee, United Nations). The European Court of Human Rights has reached the same conclusion, based upon Article 50 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

29. Article 63(1) of the American Convention provides as follows:

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.

30. This article does not refer to or limit the ability to ensure the effectiveness of the means of reparation available under the internal law of the State Party responsible for the violation, so it is not limited by the defects, imperfections or deficiencies of national law, but functions independently of it.

31. This implies that, in order to establish the corresponding indemnity, the Court must rely upon the American Convention and the applicable principles of international law.

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[FN6] Velásquez Rodríguez v. Honduras. Reparations and costs. Judgment of July 21, 1989. Series C No. 7, paras. 28 to 31.

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8. It is undeniable that, regarding "the formula used to calculate and distribute the compensation for loss of earnings" (Case of the La Rochela Massacre, para. 246), there is an evident difference between the criteria used by the Colombian State, which consists in considering only "the amount of money those who were financially dependent on the victim failed to perceive from him" (para. 245 of the judgment), and the criteria of the Court, which "considers that the compensation for loss of earnings should include the income that the deceased victim would have received during his or her remaining life expectancy" and that this "amount, therefore, is incorporated into the estate of the deceased victim, but is delivered to the next of kin"; therefore, "the Court will determine the appropriate amounts that it deems pertinent to order" (Case of the La Rochela Massacre, para. 246).

9. Furthermore, I consider that the reasoning of the majority of the members of the Court is incorrect when it progresses from the premise that "when national mechanisms exist to determine forms of reparation" they "can be assessed," to affirming that "it has been determined that […] the administrative courts […] established compensation for loss of potential earnings based on objective and reasonable criteria," and finally to conclude that "the Court assesses positively the measures taken by the domestic courts in this case, [FN7] and finds that the amount established by these courts is reasonable in terms of its case law." Here there is a clear petitio principii, because precisely what should have been determined, using convincing arguments based on the evidence, was that the criteria used by the Colombian administrative system of justice had effectively been "objective and reasonable," and that "the amount established by these courts" was "reasonable in terms of [the] case law" of the Court, so that it could be assessed "positively," not only to recognize "the efforts made by Colombia" (as in the Case of the La Rochela Massacre, para. 245), but rather to consider them decisive and final.

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[FN7] [Footnote 334 in the text of the judgment] Cf. Case of the La Rochela Massacre, supra note 16, para. 245.

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10. The reasoning of the majority of the members of the Court has unduly inverted the correct reasoning set out in the Velásquez Rodríguez case (paras. 30 and 31) because, by accepting uncritically the decision of the domestic courts on "the formula used to calculate and distribute the compensation for loss of earnings," it is, in fact, "condition[ing] the reparations established by the Court to the instruments of reparation that exist under the domestic laws of the State Party responsible for the violation" and allowing the calculation of the compensation for loss of earnings to be established "in function of the defects, imperfections or deficiencies of national law," instead of establishing compensation "independently of it" and based "upon the American Convention and the applicable principles of international law."

Alberto Pérez Pérez
Judge

Pablo Saavedra Alessandri
Secretary