



ORGANIZATION OF AMERICAN STATES
Inter-American Commission on Human Rights

Application to the Inter-American Court of Human Rights
in the case of Manuel Cepeda Vargas
(Case N° 12.531)
against the Republic of Colombia

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**APPLICATION FILED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS WITH THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
AGAINST THE REPUBLIC OF COLOMBIA**

**CASE 12.531
MANUEL CEPEDA VARGAS**

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission", "the Commission" or "the IACHR") hereby files this application with the Honorable Inter-American Court of Human Rights (hereinafter the "Inter-American Court" or "the Honorable Court"), instituting proceedings against the Republic of Colombia (hereinafter the "State", the "Colombian State", or "Colombia") in case 12,531, *Manuel Cepeda Vargas*, for the State's responsibility in the extrajudicial execution of Senator Manuel Cepeda Vargas (hereinafter "Senator Cepeda," "the Senator" or "the victim"¹), head of the National Directorate of the Colombian Communist Party (hereinafter the "PCC") and a prominent figure in the Unión Patriótica political party (hereinafter "the UP"). The Senator's extrajudicial execution was in Bogotá, Colombia, on August 9, 1994. This application also concerns the State's lack of due diligence in prosecuting and punishing those responsible for the victim's execution, the obstruction of justice, and the failure to make adequate reparations to the victim's next of kin.

2. The Inter-American Commission requests that it may please the Honorable Court to adjudge and declare that the Colombian State failed to comply with its international obligations by its violation of Article 4 (right to life), Article 5 (right to humane treatment), Article 8 (right to a fair trial), Article 11 (right to have one's honor respected and dignity recognized), Article 13 (right to freedom of thought and expression), Article 16 (freedom of association), Article 23 (right to participate in government), and Article 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in conjunction with the general obligation to respect and ensure the protected rights, undertaken in Article 1(1) of the Convention, to the detriment of Manuel Cepeda Vargas; and by its violation of Article 5 (right to humane treatment), Article 8 (right to a fair trial), Article 11 (right to have one's honor respected and dignity recognized), Article 22 (right to freedom of movement and residence), and Article 25 (right to judicial protection) of the Convention, all in relation to the general obligation to respect and ensure the protected rights, undertaken in Article 1(1) of the Convention, to the detriment of the victim's next of kin.

3. The procedure required under the American Convention has been followed in processing the instant case, which is being filed with the Honorable Court in accordance with Article 33 of its Rules of Procedure (hereinafter the "Rules of Court"). In compliance with Article 50 of the Convention, a copy of Report 62/08 is attached to this application as an appendix.²

4. The Commission submits that the filing of the present application is warranted by the need to obtain justice and reparations for the victim's next of kin. The Commission submits further that this case is emblematic of the situation of members of the Unión Patriótica political party, the acts of harassment, persecution and attacks they suffer and of the impunity that the perpetrators of such acts enjoy.

¹As described below, Senator Manuel Cepeda Vargas' next of kin are also victims of the events in this case. However, the expression "victim" will be reserved to refer to him alone; the phrase "the victim's next of kin" will be used when referring to his next of kin.

² IACHR, Report No. 62/08 (Merits), Case 12,531, *Manuel Cepeda Vargas*, July 25, 2008, Appendix 1.

II. PURPOSE OF THE APPLICATION

5. The purpose of the present application is to respectfully request the Honorable Court to adjudge and declare that

- a) The Republic of Colombia is responsible for violation of the rights to life, to humane treatment, to a fair trial, to protection of one's honor and recognition of one's dignity, to freedom of thought and expression, to freedom of association, to participate in government, and to judicial protection, established in articles 4, 5, 8, 11, 13, 16, 23 and 25 of the American Convention, all in relation to the general obligation to respect and ensure human rights, undertaken in Article 1(1) of that instrument, to the detriment of Manuel Cepeda Vargas;
- b) The Republic of Colombia is responsible for violation of the right to humane treatment, the right to have one's honor respected and dignity recognized, the right to a fair trial and the right to judicial protection, set forth in articles 5, 11, 8, and 25 of the American Convention, all in relation to the general obligation to respect and ensure human rights, undertaken in Article 1(1) of the American Convention, to the detriment of the following next of kin of the victim: Iván Cepeda Castro (son), María Cepeda Castro (daughter), Olga Navia Soto (permanent companion), Claudia Girón Ortiz (daughter-in-law), María Estella Cepeda Vargas, Ruth Cepeda Vargas, Gloria María Cepeda Vargas, Álvaro Cepeda Vargas and Cecilia Cepeda Vargas† (siblings); and
- c) The Republic of Colombia is responsible for violation of the right to freedom of movement and residence, established in Article 22 of the American Convention, in relation to the general obligation to respect and ensure the Convention-protected rights, undertaken in Article 1(1) thereof, to the detriment of the following next of kin of the victim: Iván Cepeda Castro (son) and María Cepeda Castro (daughter), and their immediate nuclear families.

6. Accordingly, the Inter-American Commission requests the Honorable Court to order the Colombian State to:

- a) conduct a thorough and impartial investigation for the purpose of prosecuting and punishing all the material and intellectual authors of the extrajudicial execution of Senator Manuel Cepeda Vargas;
- b) take measures to guarantee the security of the victim's next of kin and prevent them from being forced to move or go into exile to escape the acts of harassment and persecution targeted at them;
- c) take measures to restore Senator Manuel Cepeda Vargas' good name in history as a politician and journalist;
- d) take juridical, administrative and any other types of measures necessary to avoid a recurrence of events similar to those that are the subject of the present case, especially the priority adoption of a policy to eradicate violence driven by political ideology in general and against members of the UP in particular, and featuring preventive and protective measures;
- e) take measures of rehabilitation to assist the victim's next of kin;
- f) make reparations to Senator Manuel Cepeda Vargas' next of kin for the pecuniary and non-pecuniary damages suffered, and
- g) pay the legal costs and expenses incurred in prosecuting the present case with the inter-American system.

III. REPRESENTATION

7. In keeping with articles 22 and 33 of the Rules of Court, the Commission has designated Commissioner Víctor Abramovich and its Executive Secretary, Santiago A. Canton, as its delegates in this case. The Deputy Executive Secretary, Elizabeth Abi-Mershed, and attorneys Juan Pablo Albán Alencastro, Verónica Gómez and Karin Mansel, specialists with the Commission's Executive Secretariat, have been designated to act as legal advisors.

IV. JURISDICTION OF THE COURT

8. Under the terms of Article 62(3) of the American Convention, the Inter-American Court has jurisdiction to take up any case submitted to it seeking interpretation and application of the provisions of the Convention, provided that the States Parties to the case recognize or have recognized such jurisdiction.

9. The Court has jurisdiction to take up the present case. The Colombian State ratified the American Convention on May 28, 1973, and accepted the Court's contentious jurisdiction on June 21, 1985.

V. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION³

10. Pursuant to Article 29 of its Rules of Procedure, on October 23, 1992 -before it ever received the original petition in case 11,227- the Commission requested precautionary measures of the Colombian Government to protect a number of UP leaders.

11. On December 16, 1993, the *Corporación REINICIAR*, the Colombian Commission of Jurists and the *Colectivo de Abogados "José Alvear Restrepo"* lodged the complaint in case 11,227, *José Bernardo Díaz et al. "Unión Patriótica."*

12. On December 21, 1993, the Commission again asked the Colombian State to take precautionary measures to protect the leaders of the UP. On February 2, 1994, the Government presented its response to the Commission's request for precautionary measures.

13. On February 16, 1994, the Commission decided to open case 11,227 and to begin to process the case in accordance with the Commission's Rules of Procedure then in force.

14. On March 12, 1997, after completing the admissibility proceedings, the Commission adopted Report 05/97 in which it declared the case on the alleged persecution and extermination of Unión Patriótica activists to be admissible.⁴

15. Starting in 1999, the parties embarked upon a quest for a friendly settlement, with the Commission's good offices.

16. As part of the friendly settlement process, on March 24, 2001 representatives of REINICIAR and of the State signed an agreement "... to work to clarify the facts alleged in the Unión Patriótica case, so that the rights to truth and justice are observed and full compensation realized."

³ The proceedings described in this section are in the file documenting the history of the case with the IACHR. Appendix 3.

⁴ IACHR, Report No. 5/97 (admissibility), Case 11,227, *José Bernardo Díaz et al. "Unión Patriótica"*, Colombia, March 12, 1997, Appendix 2.

17. On May 9, 2005, the *Corporación Colectivo de Abogados "José Alvear Restrepo"* and the "Manuel Cepeda Vargas" Foundation -the latter represented by Iván Cepeda Castro, son of Manuel Cepeda- petitioned the Commission to terminate the friendly settlement procedure as it pertained to the State's alleged responsibility in the death of Senator Cepeda Vargas. They also petitioned the Commission to proceed to an examination of the merits of that case by separating it from the friendly settlement procedure being pursued in the case of the Unión Patriótica activists. In their submission, the petitioners alleged that the State was responsible for violation of the rights to life, to humane treatment, a fair trial, privacy, freedom of thought and expression, freedom of association, freedom of movement and residence, the right to participate in government, and the right to judicial protection, provided in articles 4, 5, 8, 11, 13, 16, 22, 23 and 25 of the American Convention, all in relation to Article 1(1) thereof and to the detriment of Manuel Cepeda Vargas and his next of kin.

18. On July 26, 2005, the Commission advised the parties in case 11,227 that the representatives of the next of kin of Senator Manuel Cepeda Vargas had requested that the allegations pertaining to the death of the UP Senator be made a separate case.

19. On December 5, 2005, the Commission decided to make the Senator's a separate case, and registered it as case 12,531. It also decided to inform the parties that it would proceed to the merits of the allegations pertaining to Senator Manuel Cepeda's death. Accordingly, the Commission asked the State to send its observations on the merits within two months' time, in accordance with Article 38(1) of its Rules of Procedure. By note of March 17, 2006, the State requested an extension of the time period for submitting its observations. The Commission granted the requested extension on March 24, 2006.

20. On February 6, 2007 the Commission convened the parties for a hearing on the merits, to be held on March 6, 2007, during the Commission's 127th session.

21. On February 28, 2007, the State submitted its arguments on the merits wherein it admitted its responsibility for violation of the rights protected under articles 4, 5, 11, 13, and 23, and partial responsibility for violation of articles 8 and 25, all in relation to Article 1(1) of the American Convention. The pertinent parts of this brief were forwarded to the petitioners that same day so that they could present their observations.

22. The petitioners presented their observations by note of May 16, 2007, received by the IACHR Secretariat on May 22, 2007. The brief was forwarded to the State, which was asked to submit its observations within one month. On June 27, 2007, the State requested a 30-day extension on the time period for filing its observations.

23. On October 23, 2007, the IACHR received the State's observations, the pertinent parts of which were forwarded to the petitioners on October 26, 2007. On October 24, 2007, the IACHR received the attachments to the petitioners' brief of May 16, 2007. On December 7, 2007, the petitioners submitted their observations on the State's brief of October 23, 2007.

24. On March 24, 2008, the IACHR forwarded to the State the petitioners' observations and all the corresponding attachments. It gave the State one month in which to present its observations. On April 9, 2008, the State requested a two-month extension to submit its observations, given the documentary evidence offered by the petitioners. On April 11, 2008, the IACHR granted the State an extension until June 2, 2008. On that date, the Commission received the State's final arguments.

25. On July 25, 2008, during its 132nd Regular Session, the Commission approved Merits Report 62/08, prepared pursuant to Article 50 of the Convention. In that report, the Commission concluded that

the State is responsible for violation of Article 4 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Senator Manuel Cepeda Vargas; that the State is responsible for violation of Article 5(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Senator Manuel Cepeda Vargas' next of kin; that the State is responsible for violation of Article 11 of the Convention, in relation to Article 1(1) thereof, to the detriment of Senator Manuel Cepeda Vargas and his next of kin; that the State is responsible for violation of Article 13 of the American Convention, in relation to articles 4 and 1(1) thereof; that the State is responsible for violation of articles 16 and 23 of the American Convention, to the detriment of Senator Manuel Cepeda Vargas; that the State is responsible for violation of Article 22 of the Convention, in relation to article 1(1) thereof, to the detriment of María Cepeda, Iván Cepeda and his family; that the State is responsible for violation of articles 8(1) and 25 of the Convention, in relation to Article 1(1) thereof.

26. In that report, the Commission made the following recommendations to the Colombian State:

1. That the State conduct an impartial and exhaustive investigation with a view to prosecuting and punishing all the material and intellectual authors of the extrajudicial execution of Senator Manuel Cepeda Vargas.
2. That the State make reparations to the next of kin of Senator Manuel Cepeda Vargas to compensate for the pecuniary and non-pecuniary damages caused by virtue of the violations of the American Convention established in the present report.
3. That measures be taken to restore Senator Manuel Cepeda Vargas to his place in history as a politician and journalist, in light of the findings contained in this report establishing the State's responsibility.
4. That the necessary measures be taken to avoid a recurrence of similar events, in keeping with the State's duty to prevent and to guarantee the fundamental rights recognized in the American Convention.

27. The State was notified of the Report on August 15, 2008, and was given two months to inform the Commission of the measures taken to implement the recommendations contained therein, pursuant to Article 43(2) of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter "the Commission's Rules of Procedure").

28. Furthermore, in keeping with Article 43(3) of its Rules of Procedure, the Commission notified the petitioners of the adoption of the report and its transmittal to the State; the Commission also gave the petitioners one month in which to express their position and the position of the victim's next of kin as to whether the case should be submitted to the Inter-American Court.

29. On September 16, 2008, the petitioners informed the Commission that the victim's next of kin intended to take the case to the Inter-American Court of Human Rights.

30. On October 14, 2008, the Colombian State informed the Commission that it did not agree with the report on the merits of the present case, and stated the following:

- The Commission did not issue a separate decision on the admissibility of case 12,531 (Manuel Cepeda Vargas); in fact, the Commission's consideration of the case began with the merits phase, based on the admissibility report issued in case 11,227 (Unión Patriótica), thus obscuring the facts and violating the State's right of self-defense.
- The Rules of Procedure of the Commission allow petitions to be disjoined, but not cases.
- The reasons why, in 2005, the victim's next of kin requested that Manuel Cepeda's case be separated from the UP case –based on the fact that the UP case was in the friendly settlement stage- would no longer be justified since the friendly settlement process had already broken down and therefore case 12,531 (Manuel Cepeda) should have been re-joined with case 11,277, which is now in the merits phase.
- The Commission's finding (and its recommendation four) to the effect that the facts in case 12,531 (Manuel Cepeda) were part of a pattern of violence against the Unión Patriótica, constitutes a prejudgment of case 11,227 (Unión Patriótica) that violates the State's right of self-defense.
- The Commission's finding in the operative part of the Report to the effect that Manuel Cepeda's execution constitutes a crime against humanity, oversteps the Commission's competence since the jurisdiction of the Commission and of the Court extends only to violations of the American Convention; even so, the existence of a State policy targeting members of the UP has not been proved.
- At the same time, the State again acknowledges responsibility for the action and omissions of agents of the State in Manuel Cepeda's extrajudicial execution.
- Lastly, the State had already complied with the Report's first three recommendations in fulfillment of its own constitutional obligations. It rejects the Commission's finding to the effect that the masterminds of the crime have not been punished. Nevertheless, it acknowledges that two judicial inquiries are in the preliminary phase and reports that a suspect was implicated in August 2008.

The State therefore requested

1. the Commission to reverse its decision to separate case 12,531 on the death of Manuel Cepeda, from case 11,227 on the members of the Unión Patriótica "because the grounds that the petitioners used to argue for it to be considered independently no longer obtain."
2. the Commission to rejoin case 12,531 with case 11,227, which is now in the merits phase.

31. After considering the information supplied by the parties with regard to implementation of the recommendations contained in the report on the merits and also taking account of the fact that no substantive progress has been made to effectively carry out those recommendations, at its 133rd regular session the Commission decided to submit this case to the Inter-American Court

VI. THE COLOMBIAN STATE'S ACKNOWLEDGEMENT OF THE FACTS AND ACCEPTANCE OF RESPONSIBILITY FOR VIOLATION OF ARTICLES 4, 5, 11, 13, 23 AND 1(1) OF THE CONVENTION AND ACCEPTANCE OF PARTIAL RESPONSIBILITY FOR VIOLATION OF ARTICLES 8 AND 25 OF THE CONVENTION

32. As noted in the preceding section (*supra* 21), on February 28, 2007 the State submitted a brief⁵ acknowledging the facts and accepting international responsibility for violation of the rights protected under articles 4, 5, 11, 13, and 23, and partial responsibility for violation of articles 8 and 25, all in relation to Article 1(1) of the American Convention.

33. In the Commission's view, that acknowledgement and acceptance of responsibility has consequences, particularly as evidence, that transcend the breakdown of the friendly settlement negotiations in case 11,227 and the State's repudiation of the report on the merits of the present case (*supra* 30).

34. In previous cases, the Inter-American Court has held that:

175. As regards of the instant case, it is worth noting that during the proceeding before the Commission, Peru acknowledged its international responsibility on July 22, 2002, after the issuance of the Report on Admissibility, and it repeated such acknowledgment on January 17, 2003, after the issuance of the Report on the Merits (*supra* paragraphs 152 and 154), and a "Working Commission" was established to prepare a final solution proposal in the case. In its pleading of July 22, 2002 the State alleged that it could not afford the compensations and the further reparation measures sought by the petitioners as a result of the economic crisis it was undergoing. Based on such acknowledgment and owing to the failure by the State to comply with the recommendations of the Report on the Merits, the Commission decided to refer the instant case to the Court.

[...]

177. [...] each act of acknowledgment made by Peru before the Commission created estoppel. Therefore, by admitting the legitimacy of the claim asserted in the proceeding before the Commission through a unilateral juristic act of acknowledgement, Peru is barred from adopting a contradictory position thereafter. The alleged victims and their representatives, as well as the Inter-American Commission, acted in the proceeding before the latter body on the basis of the position of acknowledgment taken up by the State.

178. Applying the estoppel rule to the instant case, and based on the foregoing, this Court gives full effects to and admits the acknowledgement of responsibility [...].⁶

47. [...] on March 3, 2000, while the instant case was pending before the Commission, Venezuela acknowledged its international responsibility at a conference held between the State, the petitioners and the representatives of the Inter-American Commission. In the friendly settlement executed by the parties on that day, the State acknowledged that "it violated the following articles of the American Convention in detriment of the victims in the instant case, to wit: 1(1), 2, 4, 5, 6, and 25; it further acknowledged that as a consequence thereof, delay and denial of justice existed regarding the determination of the circumstances, the facts, the persons who died and those responsible for this case." However, after four years of negotiations, on May 18, 2004, the State filed a brief before the Inter-American Commission by means of which it "denied and rejected such friendly settlement executed on March 3, 2000, alleging that it could not be enforceable against the State."

[...]

⁵ Appendix 3.

⁶ I/A Court H.R., *Case of Acevedo-Jaramillo et al*, Judgment of February 7, 2006 (Preliminary Objections, Merits, Reparations and Costs), Series C No. 144, paragraphs 175, 177, 178.

49. Pursuant to its prior decisions, this Court considers that, according to the *doctrine of estoppel*, a State that has adopted a certain position generating legal effects, cannot subsequently assume a different position which contradicts and changes the state of the situation relied upon by the other party. The failure of the State to acknowledge the friendly settlement previously agreed upon between the State and the petitioners on March 3, 2000, and to recognize the acknowledgement of international liability for the violations alleged during the pendency of the case before the Commission, which acknowledgement was included in the said settlement, coupled with other statements made by the State, could not be enforced due to the application of the *doctrine of estoppel*. Therefore, the acknowledgement of responsibility will have full legal force and effect.⁷

35. The Commission is therefore requesting that the Court take note of the Colombian State's acknowledgement of the facts and acceptance of responsibility for violation of articles 4, 5, 11, 13 and 23, and partial responsibility for violation of articles 8 and 25 of the Convention, and that the implications of that acknowledgement and acceptance of responsibility be reflected in the corresponding judgment.

VII. THE FACTS

1. Background information

36. As the Commission wrote in its Admissibility Report 5/97,⁸ the Unión Patriótica was formed as a political party on May 28, 1985 as a result of peace negotiations between the Revolutionary Armed Forces of Colombia (the "FARC") and the Government of President Belisario Betancur Cuartas. During those peace negotiations, the parties agreed to the establishment of the Unión Patriótica as a political party which would enjoy the guarantees necessary to allow it to function to the same extent as all other political parties.

37. The Unión Patriótica was conceived as a political alternative to the traditional power structure and would serve as a vehicle for the various manifestations of civil and popular protest. The Unión Patriótica was also envisioned as the political vehicle of the FARC for possible re-assimilation into civilian life. The newly-formed party received immediate support from opposition left-leaning political movements and quickly obtained significant electoral success in elections in 1986 and 1988. In some regions of the country -Urabá, Meta, Antioquia, Santander, Arauca, Cundinamarca- the UP was represented on the councils and in assemblies. For the first time in the history of leftist movements in Colombia, it achieved significant representation in the National Congress.⁹

⁷ I/A Court H.R., *Case of Montero Aranguren et al. (Retén de Catia)*. Judgment of July 5, 2006. Series C No. 150, paragraphs 47 and 49.

⁸ Appendix 2.

⁹ In 1988, 350,000 votes were cast for the UP (a record for left-leaning parties in Colombia): five UP senators were elected, along with nine UP representatives to the House, 19 UP deputies, 351 UP representatives on municipal councils, seven on provincial boards and eight on precinct boards. In those two electoral races, the UP gained nationwide representation and became a significant presence in local and regional government. See IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102 Doc.9 rev.1 of February 26, 1999, Chapter IX, Freedom of Association and Political Rights, E. Alternative Political Parties, paragraph 51.

38. At the same time, however, attempts were made on the lives of party leaders¹⁰ and efforts were made to wipe out the organization at its grassroots. Two presidential candidates were assassinated, as were congressmen, members of municipal councils, deputies, mayors, union members, activists and peasant leaders.¹¹ The spokespersons of the UP and the PCC reported at least five extermination operations, presumably planned at the highest levels of government.¹² The Ombudsman wrote a special report denouncing the existence of a program of systematic annihilation.¹³ In its "Second Report on the Situation of Human Rights in Colombia," published in 1993, the IACHR reported that many party members had been assassinated in the 1980s.¹⁴ In its 1996 Annual Report, the Commission disclosed information from sources indicating at least one member of the UP was being killed every two days.¹⁵

¹⁰ On August 30, 1986, a UP Representative to the House, Leonardo Posada, was killed in the city of Barrancabermeja. More than 200 activists were killed in that same region between 1985 and 1986. On October 11, 1987, the one-time presidential candidate for the Unión Patriótica, Jaime Pardo Leal, was traveling from La Mesa (Cundinamarca) to Bogotá when he was shot by someone in a passing vehicle. He died shortly thereafter in the local hospital. On March 3, 1989, José Antequera, a national leader of the UP, was shot at El Dorado Airport in Bogotá as he was about to fly to Santa Marta. The liberal-leaning Senator Ernesto Samper (later president of Colombia for the 1994-1998 term) was also wounded in that episode. On March 22, 1990, Congressman and UP presidential candidate Bernardo Jaramillo Ossa was shot several times and killed.

¹¹ In her report to the United Nations Commission on Human Rights, Mary Robinson, the United Nations High Commissioner for Human Rights, wrote the following: "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 Unión Patriótica, whose activists have been the victims of systematic executions. More than 1,500 members of this party have been assassinated since it was formed in 1985, including elected officials and almost all its representatives in Congress. Others have had to go into exile and give up their political posts." Report of the United Nations High Commissioner for Human Rights to the Commission on Human Rights at its 54th session, March 9, 1998, paragraph 58.

<http://www.hchr.org.co/documentoseinformes/documentos/html/informes/onu/acdh/E-CN-4-1998-16.html#IC>

¹² The goal of the "Esmeralda" (1988) and "Retorno" (1993) plans was to wipe out entire wings of the UP in the departments of Meta, Caquetá and the Urabá region. The purported aim of "Operation Condor" (1985) and the "Baile Rojo" (1986) and "Golpe de Gracia" (1992) plans was to wipe out the national leadership of the party and assassinate or kidnap any of its leaders who had been elected to public bodies. See Yezid Campos Zornosa, *El Baile Rojo*, Grafiq Editores, Bogotá, 2003, pages 17 and 18, Annex 42.

¹³ Ombudsman of Colombia, Jaime Córdoba Triviño. *Informe para el Gobierno, el Congreso y el Procurador General de la Nación. Estudio de caso de homicidio de miembros de la Unión Patriótica y Esperanza Paz y Libertad [Report for the Government, Congress, and the Prosecutor General of the Nation: Case study in the murder of members of the Union Patriótica and Esperanza, Paz y Libertad]*, Office of the Ombudsman of Colombia, 1992, Annex 1.

¹⁴ "In its first five years of existence (1985-1989), the violence against it was selective and relatively confined to those regions where it had greater political and electoral success. The incidence of violence was highest in election years: 1986 saw 159 cases, and 1988 saw 212 cases. The departments where violence was highest were Antioquia with 140 cases, Meta with 112 cases, and Santander with 91 cases. Not coincidentally, these were the very regions where the UP had the best showings in the 1986 and 1988 elections. Finally, the most frequent targets were political and union leaders: 193 and 120 cases, respectively. The most common type of violence was murder, which accounted for 614 cases, in other words, 83.20% of the total number of victims on record as of December 31, 1989. Among leaders elected to governing bodies in 1986 and 1988, the following were victims of violence: 2 senators, 3 representatives to the House, 6 departmental deputies, 89 town councilmen, 2 former councilmen, 9 mayors, 1 former mayor, 3 candidates for town council and 3 candidates for mayor. These represent 16% of the UP victims during that same period. According to a number of human rights organizations, agents of the state (military forces, police forces and the DAS) are among the alleged authors of this violence, although paramilitary groups account for the largest share of the violence against the UP, at 73.84% (544 cases). Hired gunmen, individuals associated with the underworld and repeatedly used for political violence are involved in 155 cases (21%)." IACHR, *Second Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.84 Doc. 39 rev., October 14, 1993, Chapter VII, available at <http://www.IACHR.org/countryrep/Colombia93sp/cap.7.htm>.

¹⁵ IACHR, *Annual Report of the Inter-American Commission on Human Rights, 1996*, OEA/Ser.L/V/II.95. doc. 7 rev., March 14, 1997, p. 663; also available at <http://www.IACHR.org/annualrep/96span/IA1996CaptV1.htm>.

39. Manuel Cepeda Vargas was a prominent politician and member of the leadership of the UP and the PCC.¹⁶ He was elected to serve in the House of Representatives for the 1991-1994 term¹⁷ and was then elected to serve in the Senate for the 1994-1998 constitutional term of office.¹⁸ He was also a prominent journalist and was an executive and member of the editorial board of the weekly news publication "Voz."¹⁹ In his last years of life, he wrote articles on the annihilation of members and leaders of the UP and the PCC, and followed the investigations into politically motivated assassinations.²⁰ He also filed complaints against high-ranking military officers allegedly involved in organizing and running paramilitary groups.²¹ Manuel Cepeda's activities put him in the ranks of the political opposition.

40. Starting in 1992, the UP and the PCC reported that its leaders, Senator Cepeda among them, were constantly being followed and that plans to assassinate them had been hatched.²² State agencies like the Office of the Prosecutor General of the Nation uncovered the existence of plans to kill members of the Unión Patriótica and threats against Manuel Cepeda and other members of the UP leadership, all traceable to paramilitary groups on the far right.²³ In October 1992, the Ombudsman reported the repeated acts of violence committed against members of the UP and the PCC, especially those elected to public office.²⁴

41. This state of affairs was also reported by and to agencies like the United Nations and various nongovernmental organizations.²⁵ On October 23, 1992, the IACHR ordered precautionary measures for Senator Manuel Cepeda and other UP leaders, so that the State would take measures to protect their lives and personal safety.²⁶

42. Starting in July 1993, the leaders of the UP and the PCC, headed by Senator Manuel Cepeda, filed various complaints with State agencies²⁷ and in the press.²⁸ The complaints

¹⁶ August 23, 1994 statement of the President of the Unión Patriótica, Aida Avella Esquivel, Annex 2.

¹⁷ November 26, 1991 certification by the National Electoral Council of the Republic of Colombia, Annex 3.

¹⁸ June 15, 1994 certification by the National Electoral Council of the Republic of Colombia, Annex 4.

¹⁹ As certified by the Director of the weekly news publication *Voz*, on September 4, 2007, Annex 5; columns published by Manuel Cepeda Vargas under the title "Flecha en el Blanco" ["Arrow in the Bulls Eye"], Annex 6.

²⁰ Congressional Gazette of October 21, 1993, p. 10, Annex 8; articles that Manuel Cepeda Vargas published in the column titled "Flecha en el Blanco", Annex 6.

²¹ Congressional Gazette, October 5 and 19, 1993, pp. 22 and 10, respectively, Annexes 7 and 9; "Flecha en el Blanco" articles published by Manuel Cepeda, Annex 6.

²² Complaint of October 26, 1992, which leaders of the UP sent to the Prosecutor General of the Nation, Annex 10.

²³ Assessment Report prepared by the Office of the Second District Attorney for Santafé de Bogotá, File 143-6444, pp. 6, 106 and 107, Annex 28.

²⁴ Ombudsman's Report for the Government, Congress and the Prosecutor General of the Nation. *Case study in the murder of members of the Union Patriótica and Esperanza, Paz y Libertad*, October 1992, Annex 1. See Admissibility Report No. 5/97, March 12, 1997, paragraph 29.

²⁵ Letter from the UP leadership to Amnesty International, dated July 27, 1993, Annex 12; Assessment Report prepared by the Office of the Second District Attorney for Santafé de Bogotá, File 143-6444, p. 6, Annex 28. See also the Report of the United Nations High Commissioner for Human Rights, 54th session, March 9, 1998, E/CN.4/1998/16, paragraph 58, available at <http://www.hchr.org.co/documentoseinformes/documentos/html/informes/onu/acdh/E-CN-4-1998-16.html#IC>

²⁶ Precautionary measures ordered by the IACHR on October 23, 1992, on behalf of Alvaro Vásquez del Real, Manuel Cepeda Vargas and Aida Avella Esquivel, leaders of the UP and the PCC, Annex 13.

²⁷ Preliminary inquiry by the Office of the Second District Attorney for Santafé de Bogotá, File 143-6444, pp. 6 and 7, Annex 29; letter dated August 2, 1993, from Minister of Defense Rafael Pardo Rueda, Annex 15; Congressional Gazette

concerned the plan called "*Golpe de Gracia*" [*coup de grâce*]. From what they had learned, the purpose of this plan was to eliminate the leadership of those political movements. On July 29, 1993, leaders of the UP and the PCC met with the then Minister of Defense to denounce the "*Golpe de Gracia*" plan. They also asked that an investigation be conducted and that the necessary security measures be taken to protect Gilberto Viera, Álvaro Vásquez, Aída Avella, José Miller Chacón, Carlos Lozano, Manuel Cepeda, and other leaders of the UP and the PCC. In airing their complaints, they alleged that high-ranking military officers had been instrumental in devising the plan. The Minister of Defense responded by saying that they had failed to provide sufficient evidence and had not identified those alleged to be involved in the plan.²⁹

43. In a report that appeared in the newspaper "*El Tiempo*" on September 19, 1993, the then Commander of the Armed Forces claimed that the PCC was financed by the FARC.³⁰ These statements, which claimed that the leaders of that political movement were taking funds from the FARC, placed Senator Manuel Cepeda's life and safety in even greater peril.

44. José Miller Chacón, a member of the PCC's Central Committee, was assassinated on November 25, 1993. Manuel Cepeda denounced the Minister of Defense for having turned a "deaf ear" to the complaints about the "*Golpe de Gracia*" plan. He filed his complaint with the Ombudsman, the Prosecutor General of the Nation and the Attorney General of the Nation.³¹

45. On November 30, 1993, the then Minister of Defense told Carlos Lozano, director of the weekly news publication "*Voz*," that complaints reporting the threats made against members of the UP and the PCC had been sent to the Office of the Attorney General, so that it might take the appropriate steps. The General Command of the Armed Forces was also informed.³²

46. Having learned of the assassination of José Miller Chacón Penna, on December 21, 1993 the IACHR expanded the precautionary measures ordered for the leaders of the UP and the PCC to include the Director of the weekly news publication "*Voz*," Carlos Lozano Guillén.³³

47. As the case file shows and as the State itself has acknowledged, Senator Manuel Cepeda was receiving death threats. These threats have been corroborated by testimony from a number of sources. Mr. Eduardo Fierra Paloma, the Senator's driver, told the Human Rights Unit in the Office of the Attorney General that during the period of time that he worked with the Senator,

...continuation

of October 5, 1993, pp. 21 and 22, Annex 7; Congressional Gazette of October 19, 1993, p. 10, Annex 9; letter that the PCC addressed to the public, dated November 26, 1993, Annex 17.

²⁸ Communiqué from the Central Executive Committee of the House of Representatives, Annex 25; complaint brought by the PCC on November 26, 1993, Annex 17.

²⁹ Letter from Minister of Defense Rafael Pardo Rueda, to the President of the Unión Patriótica, Aída Avella, dated August 2, 1993, Annex 15; letter to the Prosecutor General of the Nation, Carlos G. Arrieta, dated November 29, 1993, Annex 20; letter to Ombudsman Jaime Córdoba Triviño, dated November 29, 1993, Annex 21; letter to the Attorney General of the Nation, Gustavo de Greiff, dated November 29, 1993, Annex 22, and letter to Minister of Defense Rafael Pardo Rueda, Annex 23.

³⁰ Press clipping, "*¿Por qué el optimismo de los militares?*" ["Why are the military optimistic?"], Interview with Armed Forces Commander General Ramón Emilio Gil Bermúdez for the September 19, 1993 edition of the newspaper "*El Tiempo*," p. 19A, Annex 44.

³¹ Letter to Prosecutor General Carlos G. Arrieta, dated November 29, 1993, Annex 20; letter to Ombudsman Jaime Córdoba Triviño, dated November 29, 1993, Annex 21; letter to Attorney General Gustavo de Greiff, dated November 29, 1993, Annex 22.

³² Letter from Minister of Defense Rafael Pardo Rueda, dated November 30, 1993, Annex 24.

³³ Precautionary measures ordered by the IACHR on December 21, 1993, Annex 26.

the latter was constantly threatened and that “the Senator always said that the threats were made because he was a leftist activist.”³⁴ The driver also said that on August 8, 1994, Senator Manuel Cepeda had received a letter enclosing a list with his name on it, and that the letter said that he and other political leaders would be executed.³⁵ Mr. Alfonso Morales Aguirre, Senator Manuel Cepeda’s bodyguard, stated that the Senator had told him that he had received death threats on a number of occasions and that his enemies were the same people persecuting the leaders of the UP.³⁶ This information and other evidence confirm that Senator Manuel Cepeda did receive threats against his life and personal safety because of his membership in the UP and the PCC.

48. The State was aware of the serious threat to Senator Cepeda’s life because of the repeated complaints filed with various State authorities and the Congress and the reports aired in the media. The case file also shows that State agents had been singled out as having planned and carried out the extrajudicial execution.

49. Moreover, years later a book would be published revealing the paramilitary movement’s purported motive for collaborating in the extrajudicial execution. The book “*Mi confesión: Carlos Castaño revela sus secretos*” [“My Confession: Carlos Castaño reveals his secrets”] quotes from an interview in which the paramilitary leader says the following:

Now that we’re on the subject of the FARC, I’m going to tell you a secret. I went to Bogotá in August of 1994 and headed up the unit that executed Senator Manuel Cepeda Vargas. I ordered his death in response to an assassination that the FARC conducted off the field of combat. [...] I was able to act quickly after General Carlos Julio Colorado was killed [on July 19, 1994] because Manuel Cepeda was working for the FARC but was legitimate. I always had him under surveillance. I tapped his phones and listened to his conversations. [...]³⁷

50. The courts did not allow these statements by Carlos Castaño –reported in this book and elsewhere- to be admitted into evidence and have never issued a finding to the effect that the paramilitary movement had a hand in the Senator’s death.

51. No court has ever issued such a finding despite the fact that the Human Rights Unit of the Attorney General’s Office repeatedly accused Mr. Carlos Castaño of having participated in the crime; the Office of the First Prosecutor Delegate for Criminal Cassation of the Office of the Prosecutor General believed that members of the military and paramilitary had played roles in the commission of the crime;³⁸ in the disciplinary case, the Office of the Second District Attorney for Santafé de Bogotá prepared an assessment in which it acknowledged that Manuel Cepeda’s death

³⁴ Indictment handed down by the, Human Rights Unit of the Office of the Attorney General of the Nation, October 20, 1997, in which references are made to the statements that Eduardo Fierro Paloma and Luis Alfonso Morales Aguirre (Manuel Cepeda’s driver and bodyguard, respectively) made to the Office of the Attorney General, Annex 30.

³⁵ Indictment handed down by the Human Rights Unit of the Office of the Attorney General of the Nation, October 20, 1997, in which references are made to the statements that Eduardo Fierro Paloma and Luis Alfonso Morales Aguirre (Manuel Cepeda’s driver and bodyguard, respectively) made to the Office of the Attorney General, Annex 30.

³⁶ Indictment handed down by the Human Rights Unit of the Office of the Attorney General of the Nation, October 20, 1997, in which references are made to the statements that Eduardo Fierro Paloma and Luis Alfonso Morales Aguirre (Manuel Cepeda’s driver and bodyguard, respectively) made to the Office of the Attorney General, Annex 30.

³⁷ Mauricio Aranguren Molina “Mi Confesión. Carlos Castaño revela sus secretos” [My Confession: Carlos Castaño reveals his secrets”], pp. 213 and 214, Annex 43.

³⁸ Opinion on the legality of the appellate court ruling, prepared by the Office of the Prosecutor General of the Nation, May 7, 2004, Annex 32.

fit into a pattern of complicity between members of the police and military on the one hand and paramilitary groups on the other.³⁹

2. The death of Senator Manuel Cepeda Vargas and the effect on his political work and on his family

52. At around 9:00 a.m. on August 9, 1994, the victim was in his car, on his way to the National Congress. With him were his driver, Eduardo Fierro Palomo, and his bodyguard, Alfonso Morales Aguirre. His car was overtaken by a number of people in vehicles, including Army sergeants Hernando Medina Camacho and Justo Gilberto Zúñiga Labrador, who fired several shots that hit Senator Cepeda's car and the Senator himself, killing him instantly.⁴⁰

53. The day after the extrajudicial execution of Senator Manuel Cepeda, the paramilitary group "*Muerte a Comunistas y Guerrilleros*" (MACOGUE) [Death to Communists and Guerrillas] issued a communiqué claiming responsibility. It read as follows:

The bandits' political henchmen -Manuel Cepeda, Hernán Motta, Aída Avella, Álvaro Vásquez, Jaime Caicedo [...] - exploit the system and infiltrate the political classes that stand for freedom and democracy, only to create fear and chaos. We executed Manuel Cepeda today for being a collaborator, for representing the FARC bandits. Tomorrow we will go after others. Ours will be a country free of Communists and guerrillas.⁴¹

54. The body of evidence being offered to the Court suggests that the motive for the extrajudicial execution was the victim's leftist political activism as national leader of the UP and as a member of the PCC's Central Committee, and his work as a Senator of the Republic.⁴² His death stands out in the pattern of violence against UP activists as he was the last UP candidate ever elected to public office.⁴³

55. Following the victim's extrajudicial execution, State agents began to threaten his next of kin. María Cepeda (the victim's daughter) left Colombia after her father's death; for security reasons, she still lives abroad, even today. Iván Cepeda (the victim's son) had to leave Colombia from November 1994 to April 1995. Upon his return, he, too, became the target of threats because of his efforts to solve the case. Specifically, on November 5, 1999, Iván Cepeda Castro and his

³⁹ "Like so many other members of the left-leaning political party, the UP or Unión Patriótica, Senator Manuel Cepeda Vargas had been receiving death threats for a long time [...] The annihilation of the members of that political group has been systematic [...]; the mechanics of the pattern (at least in some isolated cases) have involved members of the security services conspiring with paramilitary groups [...] The situation has become public and has been severely criticized by various multinational human rights organizations, which have been receiving complaints from those affected." Assessment Report prepared by the Office of the Second District Attorney for Santafé de Bogotá, File 143-6444, pp. 6 and 43, Annex 28.

⁴⁰ Indictment handed down by the Human Rights Unit of the Attorney General's Office, at No. 172 UDH, October 20, 1997, p. 7, Annex 30.

⁴¹ MACOGUE communiqué dated August 10, 1994, Annex 27.

⁴² Conviction handed down by the Third Criminal Court of the Santafé de Bogotá Specialized Circuit, December 16, 1999, Annex 33.

⁴³ On August 9, 1994, the petitioners in case 11,227 reported Manuel Cepeda's assassination to the then President of the Commission, Professor Michael Reisman, and said the following: " His death today is added to the more than 2,000 members, friends and sympathizers of [the UP] assassinated by agents of the Colombian State or by gunmen whose identity the State conceals in furtherance of that systematic, ongoing campaign of extermination that has been waged against the Unión Patriótica since it first surfaced as a political option in 1985. Under international human rights law, that campaign can only be described as a crime against humanity [...] We believe that unless the Inter-American Commission on Human Rights acts quickly [...] it will not be long before we Colombians will look back sadly upon the Unión Patriótica as just a piece of our history." File for case 11,227, Appendix 3.

wife Claudia Girón Ortiz received threatening phone calls.⁴⁴ Iván Cepeda Castro and his family had to live abroad for four years because of the risk to their lives and personal safety. After his return to Colombia, the IACHR ordered precautionary measures to protect his life and personal safety and that of his wife, because of their activism as members of the Manuel Cepeda Vargas Foundation and the National State Victims Movement.⁴⁵

56. The case file also shows that even after the Senator's death, state security services and public authorities continued to make accusations against him. In fact, Manuel Cepeda was summoned to make a preliminary statement one year after his death, in a case in which he was accused of defamation because of his claims that a group of military officers was behind a plan to exterminate over two thousand members of the UP.⁴⁶ These accusations have also taken their toll on Senator Cepeda's next of kin. The Constitutional Court held that the dissemination of certain messages maligned the good name and honor of Ivan Cepeda Castro, as the son of one of the victims of the country's political violence.⁴⁷

3. The judicial process to establish the facts

57. The evidence being offered to the Court shows that two noncommissioned Army officers were tried and convicted of the material authorship of the victim's extrajudicial execution.

58. On December 29, 1994, a criminal investigation was ordered into the aggravated homicide of Senator Manuel Cepeda on August 9 of that year.⁴⁸ On October 20, 1997, the Human Rights Unit in the Office of the Attorney General handed down an indictment against Army sergeants Hernando Medina Camacho and Justo Gil Zúñiga Labrador, on charges of aggravated homicide. On December 16, 1999, the Third Criminal Court of the Santafé de Bogotá Specialized Circuit convicted the two men and sentenced them to 43 years in prison. The Court acquitted Carlos Castaño Gil.⁴⁹ Representatives of the convicted men, who maintained they were innocent, filed an appeal to challenge the lower court's ruling. On January 18, 2001, the Criminal Chamber of the Bogotá Superior Court upheld the lower court's ruling in all its parts.⁵⁰ The attorneys for the two men then filed a petition of cassation with the Criminal Cassation Chamber of the Supreme

⁴⁴ On December 10, 1999, the IACHR requested information from the State concerning the safety of Ivan Cepeda and his wife. On January 24, 2000, the State reported that Iván Cepeda Castro and Claudia Girón were in the Ministry of the Interior's protection program. See letter dated November 6, 1999, which Human Rights Watch sent to the Minister of the Interior denouncing the threatening phone calls made to Iván Cepeda and his wife. The letter read in part as follows: "We believe that the threat may have been inspired by a letter that we sent to President Andrés Pastrana on November 3. In it, we requested that steps immediately be taken to discharge noncommissioned officers Hernando Medina Camacho and Justo Gil Zúñiga Labrador, material authors of the assassination of Senator Cepeda in 1994. According to our information, these two are still in active service, perform functions and move about freely, even though the Office of the Attorney General ordered that they be taken into custody." Attachment to the petitioners' brief of May 9, 2005, and letter that Amnesty International sent to the President of the Republic in November 1999, Annex 37.

⁴⁵ On June 26, 2006, the IACHR ordered precautionary measures for Iván Cepeda Castro, Claudia Girón and Emberth Barrios Guzmán, as members of the National Victims Movement. See Annual Report of the IACHR 2006, Chapter III, "Precautionary measures granted by the IACHR in 2006, available at <http://www.IACHR.org/annualrep/2006sp/cap3.1.2006.sp.htm>.

⁴⁶ The news magazine "*El Espectador*", "Juicio a Víctima de un Genocidio" July 1995, Annex 44.

⁴⁷ Colombian Constitutional Court Ruling T-959 of November 20, 2006, p. 23, Annex 41.

⁴⁸ Opinion on the legality of the appellate court ruling, prepared by the Office of the Prosecutor General of the Nation, May 7, 2004, p. 2, Annex 32.

⁴⁹ Conviction handed down by the Third Criminal Court of the Bogotá Specialized Circuit, at No. 5393-3, December 16, 1999, Annex 31.

⁵⁰ Opinion on the legality of the appellate court ruling, prepared by the Office of the Prosecutor General of the Nation, May 7, 2004, p. 5, Annex 32.

Court seeking acquittal of the two convicted men on the grounds of a violation of substantive law that would entitle them to relief. The appeal failed.⁵¹

59. The noncommissioned officers, convicted of aggravated homicide and originally sentenced to 43 years in prison, had their sentences reduced to 26 years, ten months and 15 days. Thereafter, their sentences were reduced to time served by factoring in work performed to total 3/5 of the sentence (as the actual penalty). Both were paroled: one on March 31, 2006, and the other on May 14, 2007.⁵²

60. As for the purported involvement of Carlos Castaño –the only paramilitary formally charged in the proceedings-, on October 20, 1997 the Human Rights Unit of the Office of the Attorney General charged him with masterminding the assassination⁵³ and dropped the investigation with respect to Héctor Castaño Gil, José Ferrero Arango and Edisson Manuel Bustamente García. On December 16, 1999, the Third Criminal Court of the Santafé de Bogotá Specialized Circuit acquitted Carlos Castaño Gil.⁵⁴ The prosecutor from the Human Rights Unit and the attorney representing the civilian party challenged the acquittal. The attorney for the civilian party filed an appeal of the verdict with the Chamber of Criminal Cassation of the Supreme Court, asking that Carlos Castaño Gil be convicted of masterminding the aggravated homicide of Senator Manuel Cepeda.⁵⁵

61. During the cassation proceeding, on June 14, 2003 the petitioners filed an appeal with the Chamber of Civil Cassation of the Supreme Court seeking relief against the decision of the Chamber of Criminal Cassation for not allowing the book *“Mi Confesión”* to be entered into evidence. Relief was denied on June 27, 2003, on the grounds that the decisions of that criminal court are “not subject to appeal and become *res judicata*.”⁵⁶ On November 10, 2004, the Chamber of Criminal Cassation of the Supreme Court decided not to annul the ruling and thus let stand the acquittal of Carlos Castaño in the case alleging his involvement in the homicide of Senator Manuel Cepeda.⁵⁷

⁵¹ Ruling of November 10, 2004, of the Chamber of Criminal Cassation, Supreme Court, Case No. 18428, Annex 31.

⁵² Brief from the State DDH.GOI 54482/2944, dated October 23, 2007, paragraphs 37 and 38. In a note sent to the Minister of Defense and dated November 6, 1999, Human Rights Watch alleges that at the time, members of the Army who should have already been in custody awaiting sentence “are still in active service, perform functions and move about freely, even though the Office of the Attorney General ordered that they be taken into custody.” Annex 36.

⁵³ Indictment handed down by the Human Rights Unit of the Attorney General’s Office, October 20, 1997, p. 152, Annex 30.

⁵⁴ Conviction handed down by the Third Criminal Court of the Bogotá Specialized Circuit, at No. 5393-3, December 16, 1999, Annex 31.

⁵⁵ Appellate court ruling in the homicide of Senator Cepeda, Case 99-5393-01, January 18, 2001, cited in the Opinion on the legality of the appellate court ruling, prepared by the Office of the Prosecutor General of the Nation, May 7, 2004, p. 7, Bogotá Superior Court, Criminal Chamber, Annex 32.

⁵⁶ Civil Cassation Chamber of the Supreme Court, order of June 27, 2003, see the petitioners’ brief of May 16, 2007, p. 26. Appendix 3. Iván Cepeda Castro, among others, filed a petition with the Constitutional Court seeking review of that decision. In a ruling delivered on February 3, 2004, the Constitutional Court recognized the right of citizens to go before any judge to request protection of any right that they believe to have been violated by a decision of either Cassation Chamber of the Supreme Court. See Constitutional Court, Decision 004/04, Reference: Requests seeking review of writs of protection, February 3, 2004, Annex 39.

⁵⁷ November 10, 2004 ruling of the Chamber of Criminal Cassation of the Supreme Court, Case No. 18428, Annex 33.

62. Despite the court convictions of two noncommissioned officers and the presumed innocence of the then paramilitary leader, the justice system has not yet established the identity of all those responsible for the extrajudicial execution of Manuel Cepeda.

63. In the opinion that the Office of the Prosecutor General prepared for the Criminal Chamber of the Supreme Court prior to the decision that upheld the convictions of the noncommissioned Army officers and the acquittal of Carlos Castaño, the following arguments are made:

[The court established that multiple persons were complicit in the illegal operation that ended Senator Cepeda's life: some were Army personnel whom the courts have convicted; others were members of the so-called self-defense groups; no court has held anyone in the self-defense groups responsible.[...] It has been shown that both groups were involved in the commission of Cepeda's murder [...] from the way in which the murder was executed one infers that the two groups coordinated, thus ensuring that they would achieve their criminal intentions.⁵⁸

64. Judging from the State's response to the report on the merits of the present case, the investigation does not appear to have made any headway, and is still ongoing.⁵⁹

65. Although evidence obtained in the criminal investigation did implicate General Rodolfo Herrera Luna, when he died the criminal action was closed on October 15, 1998.⁶⁰ The State has offered no further information on the involvement of other officials in the pending investigation. The evidence also shows that because of his cooperation with the Office of the Attorney General and the Prosecutor's Office, witness Elcías Muñoz Vargas allegedly received death threats and was the victim of reprisals in the form of the forced disappearance of his wife and daughter. Mr. Muñoz Vargas had named sergeants Medina and Zúñiga and General Herrera Luna as responsible.⁶¹

66. Summarizing, the scope of the material and intellectual authorship of Manuel Cepeda's extrajudicial execution has not yet been fully established.

VIII. THE LAW

A. Violation of the right to life (Article 4 of the American Convention, in relation to Article 1(1) thereof)

67. As explained in section VI of this application, during the Commission's examination of this case, the State acknowledged that two of its agents, both members of Colombia's National Army, committed the crime and that the conditions necessary to protect and preserve the Senator's life had not been afforded, despite the security measures taken to protect him. It further admitted that despite the findings obtained in the criminal investigation, "it was unable to ascertain the

⁵⁸ Opinion on the legality of the appellate court ruling, prepared by the Office of the Prosecutor General of the Nation, May 7, 2004, p. 93, Annex 32.

⁵⁹ Appendix 3.

⁶⁰ Note from the Ministry of Foreign Affairs DDH.GOI No. 9883/9477, dated October 23, 2007, Appendix 3.

⁶¹ Conviction handed down by the Third Criminal Court of the Bogotá Specialized Circuit, at No. 5393-3, December 16, 1999, pp. 29 and 30, Annex 31.

reasons for the threats that ultimately led to his murder.”⁶² The State therefore acknowledged its international responsibility by both action and omission.

68. The Commission appreciates the State’s acknowledgment of responsibility, by both action and omission, in the death of Senator Cepeda Vargas. This admission is based on the findings of the justice system which established the guilt of two of the material authors of the Senator’s extrajudicial execution⁶³ and, in a contentious administrative proceeding, the liability of the State.⁶⁴ The administrative law court established where the State agencies had failed in their duty to protect the leaders of the UP and the PCC, and held that “[h]ad the necessary security measures been provided, it is very likely that Manuel Cepeda Vargas would not have been killed.”⁶⁵

69. The Commission notes, however, that the State’s acknowledgement of responsibility does not extend to the charges that agents of the State were involved in the intellectual authorship of the crime, even though the findings of fact implicate high-ranking Army officers. Nor is it admitting that self-defense or paramilitary groups were involved, or that the extrajudicial execution of Manuel Cepeda was part of a systematic pattern of executing members of the UP.

70. The evidence now being offered to the Court points to the fact that agents of the State were responsible for masterminding the victim’s extrajudicial execution as part of a pattern of violence perpetrated against members of the UP and the PCC. This was evidence that the State had and has an obligation to investigate and employ as the basis for prosecuting the guilty parties. Furthermore, the presence of a systematic pattern and of operational coordination between members of the Army and paramilitary suggests that the involvement of State agents went well beyond the two noncommissioned officers whom the criminal justice system convicted of being the direct material authors of the crime. It also involved other State agents or private persons who have not been prosecuted.

71. As the Inter-American Court has observed, the commission of an extrajudicial execution taken within the context of systematic attacks against a civilian population constitutes a crime against humanity.⁶⁶ This was also the finding of the International Tribunal for the former

⁶² Notes from the Ministry of Foreign Affairs DDH.GOI No. 9883/9477, dated February 28, 2007, p. 9, and DDH.GOI No. 54482/2944, dated October 23, 2007, paragraphs 18 and 19, Appendix 3.

⁶³ Conviction handed down by the Third Criminal Court of the Bogotá Specialized Circuit, at No. 5393-3, December 16, 1999, Annex 31.

⁶⁴ Administrative Tribunal of Cundinamarca, Section Three, Administrative contentious ruling in the murder of Senator Cepeda. Case No. 96 D 12658, September 23, 1999, Annex 34.

⁶⁵ “...The negligent conduct of the authorities is even more glaring when one considers that the immediate targets of the threats were not the only ones to request protection directly from the Minister of Defense and the Director of the DAS; international organizations like the Inter-American Commission on Human Rights addressed the National Government requesting effective measures of protection for the threatened political leaders. Even so, the competent agencies failed to take any steps to prevent, by suitable means, the attempts made against the lives of the persons being threatened. The DAS itself reports that on the day Senator Manuel Cepeda Vargas was assassinated, he had only one private bodyguard, whose attempts to thwart the assassins proved futile.” Administrative Tribunal of Cundinamarca, Section Three, administrative contentious ruling in the homicide of Senator Cepeda, File No. 96 D 12658, September 23, 1999. Annex 34.

⁶⁶ In the *Almonacid Case*, the Court affirmed that the prohibition of crimes against humanity is a *jus cogens* rule and that punishment of such crimes is obligatory pursuant to the general principles of international law. In its judgment on that case, the Court underscored the elements established in the Charter of the Nuremberg Tribunal with regard to the characterization of murder in the context of generalized or systematic attacks against civilians as being a crime against humanity. Specifically, Article 6 states that “The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes : (...) (c) crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not

Yugoslavia in *Prosecutor v. Dusko Tadic*, where it held that "a single act by a perpetrator taken within the context of a widespread or systematic attack against a civilian population entails individual criminal responsibility and an individual perpetrator need not commit numerous offences to be held liable."⁶⁷

72. In the *cas d'espèce*, the extrajudicial execution occurred within the context of the systematic commission of acts of violence against persons with the same political affiliation,⁶⁸ preceded by complaints of extermination plans coming from State agencies themselves, such as the Office of the Prosecutor General and the Ombudsman's Office, public stigmatization of the UP leaders and members, who were branded as members of the FARC, and coordination between State agents and paramilitary groups.⁶⁹

73. The Commission is therefore petitioning the Court to adjudge and declare that the State is responsible for the extrajudicial execution of Senator Manuel Cepeda Vargas and the failure to take the necessary measures to protect his life, in violation of Article 4 of the American Convention, in conjunction with Article 1(1) thereof, and that the act was perpetrated in a context of systematic violence against activists in the Unión Patriótica and the PCC, which makes it a crime against humanity.

B. Violation of the right to humane treatment (Article 5 of the American Convention, in relation to Article 1(1) thereof)

74. With the Commission, the State acknowledged its international responsibility for the anguish and uncertainty that the death threats caused to the Senator, and the fact that the protective measures adopted were not sufficient to prevent his murder. The State also acknowledged responsibility for the psychological and emotional suffering that Senator Manuel Cepeda's extrajudicial execution caused to his next of kin.⁷⁰

75. The Commission and the Court have held that the right to mental and emotional integrity of the victim's next of kin may be violated by the particular circumstances of the violations

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violation of the domestic law of the country where perpetrated." In 1950, the United Nations International Law Commission classified homicide as a crime against humanity in its *Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal*, ILC Report, A/1316 (A/5/12), 1950, part III, paras. 95-127, *Yearbook of the International Law Commission*, 1950, vol. II, I/A Court H.R., *Case of Almonacid Arellano et al. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006, Series C No. 154, paras. 96 to 99.

⁶⁷ International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Dusko Tadic*, IT-94-1-T, Opinion and Judgement, May 7, 1997, at para. 649. This was subsequently confirmed by the same Court in *Prosecutor v. Kupreskic, et al*, IT-95-16-T, Judgement, January 14, 2000, at para. 550, and *Prosecutor v. Kordic and Cerkez*, IT-95-14/2-T, Judgement, February 26, 2001, at para. 178.

⁶⁸ The United Nations High Commissioner for Human Rights, Mary Robinson, stated the following in her report to the U.N. Commission on Human Rights: "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 Unión Patriótica, whose activists have been the victims of systematic executions. More than 1,500 members of this party have been assassinated since it was formed in 1985, including elected officials and almost all its representatives in Congress. Others have had to go into exile and give up their political posts." Report of the United Nations High Commissioner for Human Rights, presented to the Commission on Human Rights at the 54th session, March 9, 1998 E/CN.4/1998/16, paragraph 58. <http://www.hchr.org.co/documentoseinformes/documentos/html/informes/onu/acdh/E-CN-4-1998-16.html#IC>

⁶⁹ Article 7(1)(a) and (h) of the Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on July 17, 1998 (A/CONF.183/9), classifies murder and persecution on political grounds as crimes against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

⁷⁰ Notes from the Ministry of Foreign Affairs DDH.GOI No. 9883/9477, dated February 28, 2007, p. 9, and DDH.GOI No. 54482/2944, dated October 23, 2007, paragraphs 18 and 19, Appendix 3.

committed against their loved one and that the subsequent actions or omissions of the State authorities may compound that suffering.⁷¹

76. Given the characteristics of the instant case and the State's acknowledgement, the Commission is petitioning the Court to adjudge and declare that the State is responsible for violation of the right to humane treatment, to the detriment of Manuel Cepeda and his family, in violation of Article 5(1) of the American Convention, in relation to Article 1(1) thereof.

C. Violation of the right to freedom of movement and residence (Article 22 of the American Convention, in relation to Article 1(1) thereof).

77. Article 22(1) of the American Convention provides that "[e]very person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law." Exercise of this right can only be lawfully restricted for reasons of public interest. The Court has stated that freedom of movement and residence is an essential condition for the free development of a person⁷² and consists, *inter alia*, of the following: the right of those lawfully in the territory of a State to move about freely in that State and to choose their place of residence.⁷³

78. Taking into account the applicable norms of interpretation and in keeping with Article 29(b) of the Convention — which prohibits a restrictive interpretation of rights — the Court has considered that Article 22(1) of the Convention protects the right not to be forcibly displaced.⁷⁴ Under the American Convention, this situation obliges the States to grant the displaced preferential treatment and to adopt positive measures to reverse the effects of this situation of vulnerability and defenselessness, including *vis-à-vis* acts and practices of individual third parties.⁷⁵

79. As explained in the application's section on the facts, the next of kin of Senator Manuel Cepeda were forced into exile by threats and acts of intimidation calculated to deter them in their efforts to have the crime solved. María Cepeda left Colombia in the wake of her father's death and, for safety reasons, remains in exile to this day. Iván Cepeda, for his part, had to leave Colombia for the period from November 1994 to April 1995. Then, after the criminal conviction of

⁷¹ I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, paragraph 335; *Case of Vargas Areco*, Judgment of September 26, 2006. Series C No. 155, paragraph 96; *Case of Goiburú et al.* Judgment of September 22, 2006. Series C No. 153, paragraph 96; *Case of the Rochela Massacre*. Judgment of May 11, 2007. Series C. No. 163, paragraph 137.

⁷² I/A Court H.R., *Case of the Ituango Massacres*, Judgment of July 1, 2006. Series C No. 148, para. 206; I/A Court H.R., *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, para. 168; I/A Court H.R., *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, para. 110; and I/A Court H.R., *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111, para. 115.

⁷³ I/A Court H.R., *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, para. 168; I/A Court H.R., *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, para. 110; and I/A Court H.R., *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111, para. 115. See also United Nations Human Rights Committee, General Comment No. 27 of November 2, 1999, paragraphs 1, 4, 5 and 19.

⁷⁴ I/A Court H.R., *Case of the Ituango Massacres*, Judgment of July 1, 2006. Series C No. 148, para. 207; I/A Court H.R., *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, para. 188. The United Nations Human Rights Committee also addressed the situation of Colombian human rights defenders forced to live in exile after being threatened or assaulted, when the crimes committed against them were never solved. The Committee wrote that: "considering the Committee's view that the right to security of person (art. 9, para.1) was violated and that there were no effective domestic remedies allowing the author to return from involuntary exile in safety, the Committee concludes that the State party has not ensured to the author his right to remain in, return to and reside in his own country." U.N., Human Rights Committee. Communication No. 859/1999: Colombia. April 15, 2002, para. 7.4.

⁷⁵ I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, paragraph 210; *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, paragraph 179.

two of the material authors of the crime –noncommissioned officers Medina Camacho and Zúñiga Labrador– Iván Cepeda and his wife were forced to live abroad between 2000 and 2004. Upon their return to Colombia, the IACHR had to order precautionary measures for Iván Cepeda and his wife, because of their activism as members of the Manuel Cepeda Vargas Foundation and the National State Victims Movement.⁷⁶

80. The State has not established the conditions necessary to enable all the victim's next of kin to safely return to their country, especially inasmuch as it has failed to identify all the authors of the extrajudicial execution.⁷⁷ Furthermore, exile is a complex phenomenon in which a wide range of human rights are affected. Those in exile are in an especially vulnerable and defenseless position, such that their condition may be understood as a *de facto* lack of protection affecting both the right to freedom of movement and residence and the right to mental and moral integrity.

81. The Commission should note that the State did not contest these facts in the Commission's proceedings on this case.

82. The Commission is therefore petitioning the Court to adjudge and declare that Colombia violated the right to freedom of movement and residence of Iván and María Cepeda Castro, son and daughter of the victim, and that of their immediate families, and thereby violated Article 22 of the American Convention, in relation to Article 1(1) thereof.

D. Violation of the right to have one's right one's honor protected and dignity recognized (Article 11 of the American Convention, in relation to Article 1(1) thereof)

83. During the Commission's proceedings on this case, the State admitted responsibility only with respect to the negative effect that the threatening acts and harassment had on the honor and good name of Manuel Cepeda.

84. The Commission observes that the State's acknowledgment of responsibility does not extend to the harm caused by the statements that State agents made linking Manuel Cepeda to the activities of the FARC, thereby insinuating that he was engaging in criminal activities. Nor does it extend to the impact that such accusations had on the members of his family.⁷⁸

85. In its case law the Honorable Court has held that actions that stigmatize victims of human rights violations affect the right of next of kin to have their honor protected and their dignity recognized.⁷⁹ In the instant case, Colombia's own Constitutional Court acknowledged that the

⁷⁶ On June 26, 2006, the IACHR ordered precautionary measures for Iván Cepeda Castro, Claudia Girón and Emberth Barrios Guzmán, as members of the National Victims Movement. See Annual Report of the IACHR 2006, Chapter III, "Precautionary measures granted during 2006", available at <http://www.IACHR.org/annualrep/2006sp/cap3.1.2006.sp.htm>.

⁷⁷ See I/A Court H.R., *Case of Moiwana Community*, Judgment of June 15, 2005, Series C, No. 124, paragraph 120.

⁷⁸ The Cepeda family was, at various times, the target of malicious and defamatory assertions made by State agents and paramilitary chiefs and Manuel Cepeda had been labeled a "Communist agitator," "dinosaur," "liaison for the FARC guerilla movement," "a member of the FARC;" his own complaints were branded "*Jurassic's paranoia*," exposing him to public scorn. See *in this regard*, Alfredo Molano Bravo, "Jurassic's paranoia", weekly news magazine *El Espectador*, August 14, 1994, p. 6-A. See also "*El Tiempo*" "*¿Por qué el optimismo de los militares?*" September 19, 1993, justice section, p. 19A, Annex 44.

⁷⁹ "Regarding Article 11 of the Convention, it has been proven that the alleged victims were treated as "terrorists", subjecting them and their family to hatred, public contempt, persecution, and discrimination, for which reason there has been

dissemination of certain advertising messages related to the movement to which Manuel Cepeda belonged maligned the good name and honor of Iván Cepeda Castro, as the son of one of the victims of the country's political violence.⁸⁰

86. The Commission is therefore petitioning the Court to adjudge and declare that the State is responsible for violation of the right to have one's honor protected and dignity recognized, inasmuch as the acts of stigmatization suffered adversely affected Manuel Cepeda and his next of kin and tarnished his memory, in violation of Article 11 of the American Convention, in relation to Article 1(1) thereof.

E. Violation of the right to freedom of thought and expression (Article 13 of the American Convention, in relation to Article 1(1) thereof)

87. The State acknowledged responsibility for violation of Article 13 of the American Convention in relation to Manuel Cepeda's right to freedom of expression, but strictly as a journalist, not as a political leader.

88. Given the scope of the State's acknowledgment of responsibility, the Commission observes that those protected by the Convention have not only the right and freedom to express their own thoughts, but also the right and freedom to seek, receive, and disseminate information and ideas of all types. As the Court has written, freedom of expression has an individual dimension and a social dimension.⁸¹

89. The Court has held that the first dimension of the right to freedom of expression, which is the individual right to freedom of expression, is not exhausted in the theoretical recognition of the right to speak or write, but also includes, inseparably, the right to use any appropriate method to disseminate thought and allow it to reach the greatest number of persons. In this sense, the expression and dissemination of thought and information are indivisible, so that any restriction of the possibilities of dissemination represents directly, and to the same extent, a limit on the right to free expression. Regarding the second dimension of the right to freedom of expression, the social element, the Court has held that freedom of expression is a medium for the exchange of ideas and information between persons; it includes the right to try to communicate one's points of view to others, but it also implies everyone's right to know opinions, reports and news. For the ordinary citizen, the right to know about other opinions and the information that others have is as important as the right to impart one's own. The Court's holding, therefore, is that both dimensions are of equal importance and should be guaranteed simultaneously in order to give total effect to the right to freedom of expression in the terms of Article 13 of the Convention.

90. Given the circumstances of this case, the Commission is petitioning the Court to adjudge and declare that the extrajudicial execution of Manuel Cepeda Vargas, a political leader and

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a violation of Article 11 of the American Convention, in combination with Article 1(1) of this same Convention, to the detriment of the members of the family [...] I/A Court H.R., *Case of the Gómez Paquiyauri Brothers. Merits, Reparations and Costs*. Judgment of July 8, 2004. Series C No. 110, paragraph 182.

⁸⁰ Colombian Constitutional Court Ruling T-959 of November 20, 2006, p. 23, Annex 41.

⁸¹ I/A Court H.R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107, paragraphs 108 and 111; *Ivcher Bronstein Case*. Judgment of February 6, 2001. Series C No. 74, paragraphs 146 and 149; *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73, paragraphs 64 and 69; and *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 of the American Convention on Human Rights)*. Advisory Opinion OC-5//85 of November 13, 1985. Series A No. 5, paragraphs 30 and 32.

journalist, violated the right to freedom of expression provided in Article 13 of the American Convention.

F. Violation of political rights and the right to freedom of association (articles 23 and 16 of the American Convention, in relation to Article 1(1) thereof)

91. During the Commission's proceedings on this case, the State acknowledged its responsibility for violation of Article 23 of the American Convention, in relation to Article 1(1) thereof, by its failure to adopt the measures necessary to ensure full exercise of Senator Manuel Cepeda's political rights and that his death put an end to his work in Congress and put a stop to the bills he was preparing.

92. As for Article 16 of the American Convention, the State argued that the fact that Mr. Cepeda was a member of a political party at the time of his death does not imply a violation of the right to freedom of association. It argued that the case law of the Inter-American Court of Human Rights is that violations of the right of association concern offenses committed against labor unions, union leaders or against the freedom to join or not to join a professional association. The State's contention, therefore, was that it was only called upon to admit responsibility for violation of the victim's political rights, since he was a political leader, not a leader of organized labor.

93. The Commission observes that Article 16(1) of the American Convention protects the right to associate freely for, *inter alia*, ideological and political purposes, without the intervention of the public authorities limiting or obstructing the exercise of this right, and not exclusively for the purpose of forming a union or professional association.⁸² Apart from these negative obligations, the article implies positive obligations as well, to prevent attacks against freedom of association, protect those who exercise it, and investigate violations of this right. These positive obligations must be practiced even in relations between private parties if the case so warrants.⁸³

94. As the evidence made available to the Court shows, the victim's extrajudicial execution exposed a disregard for the duty to respect and protect Manuel Cepeda's right to associate freely and without fear, both as a member of the UP and as a member of the PCC. The glaring pattern of violence perpetrated against members of the UP, the absence of effective measures to prevent that violence and the failure to fully solve the crimes committed, had the effect of restricting his right to associate freely.

95. Given the scope of the State's acknowledgment of responsibility in the violation of Senator Manuel Cepeda's political rights, the Commission is petitioning the Court to adjudge and declare that the State is responsible for violation of Article 23 of the American Convention, in relation to Article 1(1) thereof. The Commission is also petitioning the Court to adjudge and declare

⁸² Article 16(1) of the Convention establishes that those who are subject to the jurisdiction of the States Parties have the right to associate freely with other persons, without the intervention of the public authorities limiting or obstructing the exercise of this right. In addition, they have the right and the freedom to associate in order to seek together a lawful purpose, without pressure or interference that can alter or denature this purpose. I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, paragraph 144.

⁸³ In this regard, the Inter-American Court found in the Cantoral Huamani case that the union leader's execution had an intimidating effect on the workers of the trade union movement and that within that context, extrajudicial executions not only restricted the freedom of association of an individual, but also the right and the freedom of a specific group to associate freely without fear; in other words, the freedom of the mine workers to exercise this right was affected. The Court also held that the intimidating effect was compounded and made more severe by the context of impunity that surrounded the case. I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, paragraph 148.

that Colombia violated the right to freedom of association, recognized in Article 16 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Manuel Cepeda Vargas as a member of a political organization.

G. Violation of the rights to a fair trial and to judicial protection (articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof)

96. In the Commission's proceedings on this case, the State acknowledged partial responsibility in that the investigation to identify and prosecute the intellectual authors is still pending, whereas two noncommissioned Army officers were convicted of the material authorship of the crime of murder. It also admitted that the administrative law court also held the State liable for these very same facts.⁸⁴

97. Because the State acknowledged only partial responsibility, the Commission will now make its case as to whether the activity undertaken by the organs of the State to have the facts established through the justice system and administer justice rises to the standards set in the American Convention.

98. Article 8(1) of the American Convention provides that:

[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

99. Article 25 of the Convention provides the following:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

100. These provisions establish the State's obligation to ensure that all persons subject to its jurisdiction enjoy the guarantees of a fair trial within a reasonable period and the general obligation to provide an effective judicial recourse against acts that violate fundamental rights, which also follows from Article 1(1) of the Convention.⁸⁵

⁸⁴ Note from the Ministry of Foreign Affairs DDH. GOI No. 9883/9477, February 28, 2007, pages 9 and 10, Appendix 3.

⁸⁵ As the Inter-American Court of Human Rights has written, "Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, *inter alia*, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered." The Court held also that Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention." I/A Court H.R., *Loayza Tamayo Case, Reparations (Art. 63(1) American Convention on Human Rights)*. Judgment of November 27, 1998. Series C No. 42, paragraph 169.

101. The evidence offered to the Court shows that the investigations initiated after Senator Cepeda's death led to judicial proceedings in which two agents of the State – noncommissioned Army officers Hernando Medina Camacho and Justo Gil Zúñiga Labrador- were convicted of the crime of aggravated homicide.⁸⁶ The conviction was upheld in 2004⁸⁷ and the noncommissioned officers –who served the sentence of incarceration in a military facility- were paroled: one on March 31, 2006, and the other on May 14, 2007.⁸⁸

102. As explained in the section of this application that concerns the facts of the case, while these court rulings established the direct responsibility of two noncommissioned officers in the material authorship of the crime, not all those responsible in the extrajudicial execution of Manuel Cepeda have been brought to justice. First, the State's acknowledgement of responsibility by virtue of omission notwithstanding, no court of law or disciplinary proceeding has convicted any agent of the State for omission or negligence in the assassination of Senator Manuel Cepeda. Second, while the findings of fact show that other agents of the State and members of self-defense groups were involved in the extrajudicial execution of Senator Cepeda, thus far -14 years later- the investigation has not moved forward and is still in its preliminary phase. As a result, the masterminds of the Senator's extrajudicial execution have never answered for their crime.

103. The Inter-American Court has defined impunity as "the absence of any investigation, pursuit, capture, prosecution and conviction of those responsible for the violations of rights protected by the American Convention."⁸⁹ It has also written that even in cases in which some of the accused have been convicted, impunity persists as long as the whole truth has not been determined and as long as all those responsible have not been identified.⁹⁰

104. The Court has also held that when the intellectual authorship of an extrajudicial execution must be determined –whether the suspects be State agents or private citizens-, the State has the obligation to initiate, *ex officio* and immediately, a genuine, impartial and effective

⁸⁶ The evidence shows that on December 29, 1994, a criminal investigation was ordered into the aggravated homicide of Senator Manuel Cepeda. On October 20, 1997, the Human Rights Unit of the Attorney General's Office handed down an indictment charging Army sergeants Hernando Medina Camacho and Justo Gil Zúñiga Labrador with aggravated homicide. On December 16 1999, the Third Criminal Court of the Bogotá Specialized Circuit delivered its verdict convicting the two men and sentencing them to 43 years in prison, and acquitting Carlos Castaño Gil. The attorneys for the convicted men appealed the verdict asking the higher court to acquit them. On January 18, 2001, the Criminal Chamber of the Bogotá Superior Court confirmed the lower court's verdict in all its parts.

⁸⁷ The attorneys for the convicted men filed a petition seeking relief with the Chamber of Criminal Cassation of the Supreme Court, arguing that the sentence was a violation of substantive law. Accordingly, they requested that their clients be acquitted. The Court refused. Judgment of November 10, 2004, of the Chamber of Criminal Cassation of the Supreme Court, Case No. 18428, Annex 33.

⁸⁸ The noncommissioned officers convicted of aggravated homicide –originally sentenced to 43 years in prison- had their sentences reduced to 26 years, 10 months and 15 days. Their sentences were later reduced to time served, as they were credited with work performed while in prison to complete 3/5 of the time sentenced (as the actual penalty).

⁸⁹ I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, paragraph 299; *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, paragraph 237; *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, paragraph 203; and *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, paragraph 170.

⁹⁰ I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006, Series C No. 148, paragraph 320. In the *Case of the Gómez Paquiyauri Brothers*, the Court held that the impunity of those responsible had not been total, as the two direct perpetrators were tried and found guilty of the facts. However, at the time of that judgment, after more than 13 years, the mastermind or masterminds of the facts had not yet been tried or punished. Therefore, this constituted a situation of grave impunity, which was an infringement of the duty of the State to investigate and punish those responsible for the acts that abridged human rights in that case, injuring the next of kin of the victims and fostering chronic recidivism of the human rights violations involved. I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 228.

investigation, not undertaken as a mere formality predestined to be ineffective.⁹¹ In the case *sub examine*, although two material authors of the crime were convicted, 14 years have passed since Manuel Cepeda's extrajudicial execution yet no effective measures have been taken to prosecute the intellectual authors of the crime and any accomplices they may have had. In this case, the delay has diminished any possibility of establishing the intellectual authorship of the extrajudicial execution and of prosecuting those responsible. As a general rule, a criminal investigation must be undertaken to protect the interests of the victims, preserve the evidence and even safeguard the rights of anyone who might become a suspect in the investigation.

105. The fact that the intellectual authors of the extrajudicial execution have never been made to answer for their crime is inimical to the quest by the victim's next of kin to know the truth of what happened. The Inter-American Court has held that victims or their next of kin have a right to know what happened and has written that the right to the truth is subsumed in the right of the victim or his next of kin to obtain from the competent organs of the State, through the investigation and prosecution required under articles 8 and 25 of the Convention, a clarification of the events that violated human rights and the corresponding responsibilities.⁹² The right to the truth constitutes an important means of reparation for victims and their next of kin and creates an expectation that the State must fulfill.⁹³

106. The Court has also held that impunity encourages chronic repetition of human rights violations.⁹⁴ The fact that the masterminds of Senator Manuel Cepeda's extrajudicial execution have never faced justice impairs the work of those who also engaged in his opposition political activity and practiced his brand of journalism since, as the context of the case shows, they, too, have been the targets of threats and actions inimical to their security and personal integrity. The involvement of State agents in the intellectual authorship of Senator Cepeda's extrajudicial execution, against the backdrop of the violence being perpetrated against members of the UP and the PCC, was a widespread or systematic attack on a specific group and thus a crime against humanity.⁹⁵

107. Based on the foregoing considerations, the Commission is petitioning the Court to adjudge and declare that the State has not deployed the means necessary to comply with its obligation to investigate, prosecute and punish all those responsible for the extrajudicial execution of Senator Manuel Cepeda Vargas, and has thus violated articles 8(1) and 25 of the American

⁹¹ I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, paragraph 296; *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, paragraph 143; *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, paragraph 223; and *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, paragraph 146. See also I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 229.

⁹² I/A Court H.R. *Barrios Altos Case*. Judgment of March 14, 2001. Series C No. 75, paragraph 48. *Bámaca Vélasquez Case*. Judgment of November 25, 2000. Series C No. 70, paragraph 201. *Case of Blanco Romero et al.* Judgment of November 28, 2005. . Series C No. 138, paragraph 62, *Case of Almonacid Arellano et al.* Judgment of September 26, 2006. Series C No. 154, paragraph 148, and *Myrna Mack Chang Case*, Judgment of November 25, 2003, paragraphs 217 and 218.

⁹³ I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, paragraph 78, and *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, paragraph 62.

⁹⁴ I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, paragraph 299; *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, paragraph 168; *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, paragraph 266; *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, paragraph 237; *Paniagua Morales et al. Case*. Judgment of March 8, 1998, paragraph 173.

⁹⁵ I/A Court H.R., *Case of Almonacid Arellano et al. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, paragraph 96.

Convention, in relation to Article 1(1) thereof, to the detriment of the victim and his next of kin Iván Cepeda Castro (son), María Cepeda Castro (daughter), Olga Navia Soto (permanent companion), Claudia Girón Ortiz (daughter-in-law), María Estella Cepeda Vargas, Ruth Cepeda Vargas, Gloria María Cepeda Vargas, Álvaro Cepeda Vargas and Cecilia Cepeda Vargas† (siblings).

IX. REPARATIONS AND COSTS

108. Given the facts alleged in the present application and based on the *jurisprudence constante* of the Inter-American Court, which holds that “any violation of an international obligation that has caused harm carries with it the obligation to make adequate reparations for that violation,”⁹⁶ the Commission is submitting to the Court its views on the reparations and costs that should be required of the Colombian State by virtue of its responsibility for the human rights violations committed against the victim.

109. Bearing in mind the Rules of Court, which grant the individual autonomous representation, the Commission will simply outline below the general criteria for reparations and costs that it believes the Court might consider in the instant case. The Commission understands that under Article 63 of the American Convention and Article 23 *et al.* of the Rules of Court, the victim and his representative are entitled to submit their pleadings, motions and evidence.

A. Obligation to make reparations

110. One of the essential functions of justice is to redress the harm caused to the victim. This function can materialize through rectification or restitution, and not simply through some compensation that does nothing to restore the moral balance or return that which was taken.

111. Article 63(1) of the American Convention provides the following:

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.

112. The *jurisprudence constante* of the Court has been that “Article 63(1) of the American Convention contains a rule of customary law that is one of the basic principles of contemporary international law regarding the responsibility of States. Thus, an unlawful act attributable to a State immediately engages the latter’s international responsibility for violation of the international provision, with the consequent duty to make reparations and to have the consequences of the violation remedied.”⁹⁷

113. Reparations are vital to ensuring that justice is done in an individual case and are the vehicle that carries the Court’s decision beyond the realm of moral condemnation. Reparations are measures intended to cause the effect of the violations committed to disappear. Reparation of the

⁹⁶ I/A Court H.R., *Case of Cantoral Huamaní and García Santacruz*. Judgment of July 10, 2007. Series C No. 167, para. 156; I/A Court H.R., *Case of Zambrano Vélez et al.* Judgment of July 4, 2007. Series C No. 166, para. 103; and I/A Court H.R., *Case of Escué Zapata*. Judgment of July 4, 2007. Series C No. 165, para. 126.

⁹⁷I/A Court H.R. *Case of La Cantuta. Merits, Reparations and Costs*. Judgment of November 29, 2006, Series C No.162, par. 200; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No.160, para. 414; I/A Court H.R., *Case of Montero Aranguren et al. (Retén de Catia)*. Judgment of July 5, 2006, Series C No.150, para. 116.

damage caused by breaching an international obligation requires, whenever feasible, full restitution (*restitutio in integrum*), which involves reestablishment of the situation before the violation.

114. Where full restitution is not possible, as in the instant case, it is up to the Inter-American Court to order a series of measures that will not only ensure that the violated rights are respected but also redress the consequences that the violations caused and ensure payment of indemnification as compensation for the damage caused in that case.⁹⁸

115. The obligation to make reparations is regulated in all its aspects (scope, nature, modes and determination of beneficiaries) by international law and cannot be modified by the respondent State by invoking the provisions of its own domestic laws.⁹⁹

116. In the instant case, the Inter-American Commission has shown that the State's international responsibility was engaged by the violation of the rights to life, humane treatment, a fair trial, the right to have one's honor respected and dignity recognized, the right to freedom of thought and expression, the right to freedom of association, the right to participate in government and the right to judicial protection, recognized in articles 4, 5, 8, 11, 13, 16, 23 and 25 of the American Convention, all in relation to the general obligation to respect and ensure the Convention-protected rights, undertaken in Article 1(1) thereof, to the detriment of Manuel Cepeda Vargas; the rights to humane treatment, to have one's honor respected and dignity respected, to a fair trial, and to judicial protection, recognized in articles 5, 11, 8 and 25 of the American Convention, in relation to the general obligation to respect and ensure the Convention-protected rights, undertaken in 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†; and the right to freedom of movement and residence, protected under Article 22 of the American Convention, in relation to the general obligation to respect and ensure the Convention-protected rights, undertaken in Article 1(1) thereof, to the detriment of Iván Cepeda Castro, María Cepeda Castro and their immediate families.

B. Measures of reparation

117. To remedy the situation of the victim and/or his next of kin, the State must fulfill certain obligations: "the obligation to investigate and report the facts that can be reliably established (truth); the obligation to prosecute and punish those responsible (justice); the obligation to make full reparations for the pecuniary and non-pecuniary damages caused (reparations); and the obligation to oust from the ranks of the security forces anyone who is known to have committed, ordered and tolerated these abuses (creation of the upright forces of law and order that a democratic State should have). No one of these obligations is an alternative for the others, nor is any single one of them optional; a responsible State must comply with each and every one to the extent that it is able and in good faith."¹⁰⁰

⁹⁸ I/A Court H.R., *Case of La Cantuta. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, para. 201; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 415; I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.). Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2006. Series C No. 158, para. 143.

⁹⁹ I/A Court H.R., *Case of Cantoral Huamaní and García Santacruz*. Judgment of July 10, 2007. Series C No. 167, para. 190; I/A Court H.R. *Case of Zambrano Vélez et al.* Judgment of July 4, 2007. Series C No. 166, para. 148; I/A Court H.R., *Case of La Cantuta. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, para. 200; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 415.

¹⁰⁰ MÉNDEZ, Juan E., "El Derecho a la Verdad frente a las graves violaciones a los Derechos Humanos", article published in *La Aplicación de los Tratados sobre Derechos Humanos por los Tribunales Locales*, CELS, 1997, p. 517.

118. The United Nations Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation of Victims of Gross Violations of Human Rights and Fundamental Freedoms has classified the elements of that right into 4 different general categories: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁰¹ In the opinion of the United Nations Special Rapporteur on the Question of the Impunity of Perpetrators of Human Rights Violations, these measures include cessation of the existing violations; verification of the facts; broad, public dissemination of the truth of what happened; an official statement or court order restoring the honor, reputation and rights of the victim and of the persons having ties to him; an apology that includes a public acknowledgement of the facts and admission of responsibility; enforcement of judicial or administrative sanctions against those responsible for the violations; prevention of new violations, and so on.

119. Furthermore, the United Nations Commission on Human Rights has determined that

[i]n accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁰²

120. The Court, for its part, has held that measures of reparation tend to remove or redress the consequences of the violations committed.¹⁰³ Those measures include the various ways in which a State can compensate for the international responsibility it has incurred. Under international law, those measures may include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁰⁴

121. Based on the foregoing, the Inter-American Commission would have the Court order measures of full reparations, which in turn send a message condemning the impunity with which the vast majority of human rights violations in the member states of the Organization of American States are committed. This requires that the judicial and administrative mechanisms be established and reinforced so as to enable victims to obtain reparation through *ex officio* proceedings that are swift, fair, inexpensive and accessible.

¹⁰¹ Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law, prepared by Mr. Theodore Van Boven pursuant to Sub-Commission [on Prevention of Discrimination and Protection of Minorities] decision 1995/117, Commission on Human Rights, E/CN.4/ Sub.2/1996/17.

¹⁰² United Nations Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17, *The administration of justice and the human rights of detainees, Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law*, prepared by Mr. Theo Van Boven pursuant to Sub-Commission decision 1995/117, May 24, 1996, para. 7.

¹⁰³ I/A Court H.R., *Case of La Cantuta. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, para. 202; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 416; I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al) Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2006. Series C No. 158, para. 144.

¹⁰⁴ See United Nations, Preliminary Report submitted by Theo Van Boven, Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, E/CN.4/Sub2/1990/10, July 26, 1990. See also: I/A Court H.R., *Blake Case. Reparations (Art. 63(1) American Convention on Human Rights)*. Judgment of January 22, 1999. Series C No. 48, para. 31; I/A Court H.R., *Suárez Rosero Case. Reparations (Art. 63(1) American Convention on Human Rights)*. Series C No. 44, para. 41.

122. Based on the criteria established by inter-American and universal case law, the Commission is presenting its conclusions and pleadings with respect to the measures of reparation that are appropriate in the case of Manuel Cepeda Vargas and his next of kin.

1. Measures of cessation

123. Cessation of the wrongful conduct is essential once a State is determined to be responsible for human rights violations.¹⁰⁵

124. The *jurisprudence constante* of the Court has been that identification of the responsible parties follows naturally from a State's obligations under conventions and is a precondition to eliminating generalized states of impunity.¹⁰⁶

125. The Court has held that impunity is a violation of the State's obligation and is harmful to the victim, his next of kin and society as a whole; impunity fosters chronic recidivism of human rights violations.

126. The Commission believes that investigation is not just a measure of satisfaction; it is also a measure of cessation, since so long as the State is in noncompliance with its obligation to duly investigate, prosecute and punish the human rights violations committed in the instant case, it is in continuing violation of the rights established in articles 8(1) and 25 of the Convention, and of its obligation under Article 1 thereof.

127. The Court has repeatedly held that every individual and society as a whole have a right to be informed of what happened in connection with human rights violations.¹⁰⁷ Similarly, the United Nations Commission on Human Rights has recognized that for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators of these violations, including their accomplices, are essential steps towards rehabilitation and reconciliation. It has urged States to intensify their efforts to provide victims of human rights violations with a fair and equitable process through which these violations can be investigated and made public, and to encourage victims to participate in such a process.¹⁰⁸

128. The Court has also held that

... the State is required to remove all obstacles –both factual and legal- contributing to impunity [...]; grant sufficient guarantees of security to witnesses, judicial authorities, prosecutors, other judicial agents, and the next of kin of the victims, and use all possible measures to advance the proceeding.¹⁰⁹

¹⁰⁵ I/A Court H.R., *Case of Castillo Páez. Reparations (Art. 63(1) American Convention on Human Rights)*. Judgment of November 27, 1998. Series C No. 43, para. 52.

¹⁰⁶ The Court has defined impunity as “the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention...” See in this regard I/A Court H.R., *Case of Blanco Romero et al.* Judgment of November 28, 2005. Series C No. 138, para. 94; I/A Court H.R., *Case of Gómez Palomino.* Judgment of November 22, 2005. Series C No. 136, para. 76.

¹⁰⁷ I/A Court H.R., *Case of Bueno Alves. Merits, Reparations and Costs.* Judgment of May 11, 2007. Series C No. 164, para. 90; I/A Court H.R., *Case of the Miguel Castro Castro Prison.* Judgment of November 25, 2006. Series C No. 160, para. 347.

¹⁰⁸ E/CN.4/RES/2001/70.

¹⁰⁹ I/A Court H.R., *Case of La Cantuta. Merits, Reparations and Costs.* Judgment of November 29, 2006. Series C No. 162, para. 226; I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 134. See, also, I/A Court H.R., *Case of Almonacid Arellano. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 26, 2006 Series C No. 154, para. 156.

129. In keeping with the Court's case law and given the seriousness of the human rights violations that happened in the present case, full restitution requires that the Colombian State diligently conduct a serious, impartial and exhaustive investigation into the extrajudicial execution of Manuel Cepeda Vargas to establish the truth of what happened and to prosecute and punish not just the material authors of the crime, but its intellectual authors as well. To that end, it should exhaust every judicial and administrative measure necessary to complete the investigation, locate, prosecute and punish all those who participated, and report the findings. The State is also obligated to investigate and punish those responsible for the obstruction of justice and cover-up and for allowing the case to go unpunished.

130. On November 29, 1985, the United Nations General Assembly approved, by consensus, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,¹¹⁰ which provides that victims "are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered"; accordingly, it is essential that the State allow "the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system."

131. Therefore, the State must ensure that the next of kin of the victims have full access and capacity to act at all stages and in all instances of these investigations and proceedings, pursuant to domestic law and the provisions of the American Convention. The State must also ensure effective compliance with the decisions adopted by the domestic courts, in fulfillment of this obligation. The result of the proceedings must be publicized so that Colombian society may know the truth.¹¹¹

132. Furthermore, as another measure of cessation, the State will guarantee the safety and security of the victim's next of kin and protect them from having to move or from being driven into exile yet again by acts of harassment and persecution targeted at them.

2. Measures of satisfaction

133. Satisfaction has been defined as "any measure which the author of a breach of duty is bound to take under customary law or under an agreement by the parties to a dispute, apart from

¹¹⁰ A/RES/40/34, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. "Access to justice and fair treatment" "4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered. 5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms. 6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system; (c) Providing proper assistance to victims throughout the legal process; (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims."

¹¹¹ I/A Court H.R. *Case of Cantoral Huamaní and García Santacruz*. Judgment of July 10, 2007. Series C No. 167, para. 191; I/A Court H.R. *Case of Escué Zapata*. Judgment of July 4, 2007. Series C No. 165, para. 166; I/A Court H.R. *Case of Huilca Tecse*. Judgment of March 3, 2005. Series C No. 121, para. 107; I/A Court H.R. *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, para. 175.

restitution or compensation Seeking a token of regret and acknowledgment of wrongdoing."¹¹² Satisfaction involves measures of three kinds, generally taken cumulatively: apologies or any other gesture acknowledging authorship; prosecution and punishment of the individuals involved, and measures taken to prevent a repetition of the wrong done.¹¹³

134. The seriousness and nature of the crimes that the present case involves demand investigation. But they also demand that the State take measures to honor the victim's memory. The Commission is therefore petitioning the Court to order, *inter alia*, the following:

- Public dissemination of the domestic fact-finding and sentencing proceedings, to serve the right that the victim's next of kin and Colombian society have to know the truth;
- Publication of the judgment that the Court eventually delivers in a newspaper with nationwide circulation;
- Stage a public acknowledgment of State responsibility for the harm done and for the serious violations committed;
- Undertake a project aimed at restoring the historical memory of Manuel Cepeda Vargas as a political leader and social communicator; and
- In consultation with the victim's next of kin, name a street or school in the victim's honor or establish a monument or memorial in his name.

3. Guarantees of non-repetition

135. The Commission considers further that the State is obliged to prevent a recurrence of the kinds of human rights violations that occurred in the *cas d'espèce*, and is therefore petitioning the Court to order Colombia to undertake the juridical, administrative and other measures necessary to avoid similar acts, especially priority adoption of a policy aimed at eradicating violence driven by political ideology in general and against members of the UP in particular, and featuring prevention and protection measures.

4. Measures of rehabilitation

136. Colombia must take measures of rehabilitation for the victim's next of kin, which must include medical and psychological treatment.

5. Measures of compensation.

137. The Court has established the basic criteria to be followed in setting the amount that will constitute adequate and effective indemnity that will serve as just economic compensation to redress the damages sustained as a result of human rights violations. The Court has held that the indemnity is purely compensatory in nature and will be granted to the extent and in an amount sufficient to compensate for the pecuniary and non-pecuniary damages caused.¹¹⁴

¹¹² Brownlie, *State Responsibility*, Part 1. Clarendon Press, Oxford, 1983, p. 208.

¹¹³ *Idem*.

¹¹⁴ I/A Court H.R. *Case of La Cantuta. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, para. 210; I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.* Judgment of June 21, 2002. Series C

138. The Commission's view is that the Court should set the amount of compensation to which the victims in the present case are entitled, relying on the considerations of equity that have always informed the Court's decisions on matters of reparations and in keeping with its earlier jurisprudence. In so doing it should consider whether the amounts actually paid in compliance with rulings delivered in domestic administrative contentious proceedings should be deducted from the amounts it orders in its own judgment.

5.1. Pecuniary damages

139. The *jurisprudence constante* of the Court on the matter of reparations has been that pecuniary damages include both the *damnum emergens* and the *lucrum cessans*, and non-pecuniary or moral damages for the victim and, in certain cases, for his immediate family.¹¹⁵

140. *Damnum emergens* has been defined as the direct and immediate damage caused to assets as a result of what happened.¹¹⁶

141. *Lucrum cessans*, on the other hand, has been defined as the economic earnings or benefits lost or not received by virtue of a given event and that can be quantified by certain measurable and objective indicators.¹¹⁷

142. Notwithstanding any claims that the representatives of the victim and his next of kin may make at the appropriate stage in the proceedings, the Commission is asking the Court, in exercise of its broad authority, to set an amount, in equity, as compensation for *damnum emergens* and *lucrum cessans*.

5.2. Non-pecuniary damages

143. On the matter of non-pecuniary damage, the Court has written that:

Non pecuniary damage may cover both the suffering and distress caused to the direct victim and the victim's relatives, the impairment of values of major personal significance, and the non pecuniary changes to the victim's or the victim's family's living conditions. Since accurately quantifying non pecuniary damage is impossible, such damage can only be compensated, for the purpose of providing comprehensive reparation to the victim, through the payment of such sum of money or the provision of such goods or services of monetary worth as may be determined by the Court, in fairness and at its reasonable judicial discretion, and through public action or works aimed at giving recognition to the victim's human dignity and preventing any further human rights such as the transmission of a message of official

...continuation

No. 94, para. 204; I/A Court H.R., *Case of Garrido and Baigorria. Reparations (Art. 63(1) American Convention on Human Rights)*. Judgment of August 27, 1998, Series C No. 39, para. 41.

¹¹⁵ I/A Court H.R. *Case of La Cantuta. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, paragraphs 213 and 214; I/A Court H.R. *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 423; I/A Court H.R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114.

¹¹⁶ I/A Court H.R. *Case of La Cantuta. Merits, Reparations and Costs*. Judgment of November 29, 2006 Series C No. 162, para. 215; I/A Court H.R., *Case of Loayza Tamayo. Reparations (Art. 63(1) American Convention on Human Rights)*. Judgment of November 27, 1998. Series C No. 42, para. 147; and I/A Court H.R., *Case of Aloeboetoe et al., Reparations (Art. 63(1) American Convention on Human Rights)*. Judgment of September 10, 1993. Series C No. 15, para. 50.

¹¹⁷ See, for example, I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, paragraphs 105 *et seq.*; I/A Court H.R., *Case of De la Cruz Flores*. Judgment of November 18, 2004. Series C No. 115, paragraphs 151 and 152.

disapproval of the corresponding violations to human rights and of commitment with the efforts tending to avoid the repetition of the violations ...¹¹⁸

144. Given the nature of the *cas d'espèce*, the Commission is requesting the Court, should it deem it appropriate, to set the amount of compensation for non-pecuniary damages based on the principle of equity.

C. Beneficiaries

145. Article 63(1) of the American Convention requires that the consequences of a violation be remedied and that "fair compensation be paid to the injured party." The persons entitled to such compensation are generally those directly affected by the events that the violation involved.

146. Given the nature of the *cas d'espèce*, the beneficiaries of any reparations that the Court should see fit to order the Colombian State to make are the victim named in the present application and his family members who have suffered pecuniary and/or non-pecuniary damages as a consequence of the human rights violations alleged. According to the information in the case file, the immediate family members include:

- Iván Cepeda Castro (son)
- María Cepeda Castro (daughter)
- Olga Navia Soto (permanent companion)
- Claudia Girón Ortiz (daughter-in-law)
- María Estella Cepeda Vargas (sister)
- Ruth Cepeda Vargas (sister)
- Gloria María Cepeda Vargas (sister)
- Álvaro Cepeda Vargas (brother)
- Cecilia Cepeda Vargas (the victim's deceased sister, represented by her children Rita Patricia, Clara Inés and Javier Ocampo Cepeda)

D. Costs and expenses

147. The *jurisprudence constante* of the Court is that costs and expenses must be considered part of the concept of reparation set forth in Article 63(1) of the American Convention, since the activity of the victim, his heirs or his representatives to obtain international justice entails disbursements and financial commitments that must be compensated.¹¹⁹

148. In the *cas d'espèce*, the Commission is petitioning the Court, once it has heard from the representatives of the victim and his next of kin, to order the Colombian State to pay the duly proven reasonable and necessary costs and expenses incurred in litigating this case in the domestic system and in the inter-American human rights system.

¹¹⁸ I/A Court H.R. *Case of La Cantuta. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, para. 216; I/A Court H.R. *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 430; I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 383; I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, para. 254.

¹¹⁹ I/A Court H.R., *Case of La Cantuta. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, para. 243; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 455; I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 152.

X. CONCLUSION

149. The failure to adopt the measures necessary to protect the life of Senator Manuel Cepeda Vargas; his extrajudicial execution; the suffering and uncertainty that the victim endured because of the threats made against his life; the mental and moral suffering that the victim's extrajudicial execution caused to his loved ones and the denial of justice; the forced exile of the victim's next of kin and the absence of the conditions necessary for them to be able to return to their country safely; the toll that the threats and harassment have taken on Manuel Cepeda's good name and honor; the harm caused by the statements made by State agents linking Manuel Cepeda with lawless activities; the impact that these insinuations had on members of his family; the impairment of the victim's freedom of thought and expression as a journalist and political leader; obstruction of the exercise of political rights and of the possibility to associate freely for ideological and political purposes; and the lack of due diligence in investigating, prosecuting and punishing all those responsible for the victim's extrajudicial execution: these are violations of the rights protected by articles 4, 5, 8, 11, 13, 16, 22, 23 and 25 of the Convention, and constitute a failure to comply with the general obligation to respect and ensure the Convention protected rights, undertaken in Article 1(1) of that instrument.

XI. PETITUM

150. Based on the arguments of fact and of law set forth in the present application, the Inter-American Commission on Human Rights asks the Inter-American Court to adjudge and declare that:

- a) The Republic of Colombia is responsible for violation of the rights to life, to humane treatment, to a fair trial, to have one's honor respected and dignity recognized, to freedom of thought and expression, to freedom of association, to participate in government, and to judicial protection, established in articles 4, 5, 8, 11, 13, 16, 23 and 25 of the American Convention, all in relation to the general obligation to respect and ensure the Convention-protected human rights, undertaken in Article 1(1) thereof, to the detriment of Manuel Cepeda Vargas;
- b) The Republic of Colombia is responsible for violation of the right to humane treatment, the right to a fair trial, the right to have one's honor respected and dignity recognized, and the right to judicial protection, established in articles 5, 8, 11 and 25 of the American Convention, all in relation to the general obligation to respect and ensure the Convention-protected human rights, undertaken in Article 1(1) thereof, to the detriment of the following next of kin of the victim: Iván Cepeda Castro (son), María Cepeda Castro (daughter), Olga Navia Soto (permanent companion), Claudia Girón Ortiz (daughter-in-law), María Estella Cepeda Vargas, Ruth Cepeda Vargas, Gloria María Cepeda Vargas, Álvaro Cepeda Vargas and Cecilia Cepeda Vargas† (siblings); and
- c) The Republic of Colombia is responsible for violation of the right to freedom of movement and residence, set forth in Article 22 of the American Convention, in relation to the general obligation to respect and ensure the Convention-protected human rights, undertaken in Article 1(1) thereof, to the detriment of the following next of kin of the victim: Iván Cepeda Castro (son), María Cepeda Castro (daughter), and their immediate families.

And that it therefore order the State to:

- a) conduct an impartial and exhaustive investigation with a view to prosecuting and punishing all the material and intellectual authors of Senator Manuel Cepeda Vargas' extrajudicial execution;
- b) take measures to ensure the security and safety of the victim's next of kin and to guarantee that they will not be forced to move or go into exile yet again by acts of harassment and persecution targeted against them;
- c) conduct measures to restore the historical memory of Senator Manuel Cepeda Vargas as a politician and journalist;
- d) adopt juridical, administrative and other measures necessary to prevent a recurrence of events similar to those that are the subject of the present case, especially priority adoption of a policy to eradicate violence driven by political ideology in general, and particularly the violence targeted at members of the UP; that policy should include preventive and protective measures;
- e) adopt measures of rehabilitation for the victim's next of kin;
- f) make reparations to Senator Manuel Cepeda Vargas' next of kin for pecuniary and non-pecuniary damages, and
- g) pay the costs and legal expenses incurred in litigating the present case with the inter-American system.

XII. EVIDENTIARY SUPPORTS

A. Documentary evidence

151. What follows is a list of the documentary evidence available at this time:

- APPENDIX 1.** IACHR, Report No. 62/08 (merits), Case 12,531, *Manuel Cepeda Vargas*, Colombia, July 25, 2008.
- APPENDIX 2.** IACHR, Report No. 5/97 (admissibility), Case 11,227, *José Bernardo Díaz et al., "Unión Patriótica"*, Colombia, March 12, 1997.
- APPENDIX 3.** File documenting the history of the case with the Inter-American Commission on Human Rights.
- ANNEX 1.** Ombudsman of Colombia, Jaime Córdoba Triviño. *Informe para el Gobierno, el Congreso y el Procurador General de la Nación. Estudio de caso de homicidio de miembros de la Unión Patriótica y Esperanza Paz y Libertad [Report for the Government, Congress, and the Prosecutor General of the Nation: Case study in the murder of members of the Union Patriótica and Esperanza, Paz y Libertad]*, Office of the Ombudsman of Colombia, 1992.
- ANNEX 2.** August 23, 1994 statement of the President of the Unión Patriótica, Aida Avella Esquivel.
- ANNEX 3.** November 26, 1991 certification by the National Electoral Council of the Republic of Colombia.
- ANNEX 4.** June 15, 1994 certification by the National Electoral Council of the Republic of Colombia.

- ANNEX 5.** Certification by the Director of the weekly news publication *Voz*, on September 4, 2007.
- ANNEX 6.** Columns published by Manuel Cepeda Vargas under the title “Flecha en el Blanco” [“Arrow in the Bulls Eye”] in the weekly news publication *Voz*.
- ANNEX 7.** Congressional Gazette of October 5, 1993, relevant pages.
- ANNEX 8.** Congressional Gazette of October 21, 1993, relevant pages.
- ANNEX 9.** Congressional Gazette of October 19, 1993, relevant pages.
- ANNEX 10.** Complaint of October 26, 1992, which leaders of the UP sent to the Prosecutor General of the Nation.
- ANNEX 11.** Colombian Constitutional Court Ruling T-439/92, July 2, 1992.
- ANNEX 12.** Letter from the leaders of the UP to Amnesty International, dated July 27, 1993.
- ANNEX 13.** Precautionary measures ordered by the IACHR on October 23, 1992, on behalf of Alvaro Vásquez del Real, Manuel Cepeda Vargas and Aída Avella Esquivel, leaders of the UP and the PCC.
- ANNEX 14.** Request filed with the Commission seeking precautionary measures, dated November 29, 1993.
- ANNEX 15.** Letter from the Minister of National Defense, Rafael Pardo Rueda, to the President of the Unión Patriótica, Aída Avella, August 2, 1993.
- ANNEX 16.** Request to the Minister of Government, seeking protection, dated November 9, 1993.
- ANNEX 17.** Letter that the PCC addressed to the public, dated November 26, 1993.
- ANNEX 18.** Letter to the Prosecutor General of the Nation, Carlos G. Arrieta, dated October 26, 1992.
- ANNEX 19.** Letter from the Director of the Government Security Department (DAS) dated November 20, 1992.
- ANNEX 20.** Letter to the Prosecutor General of the Nation, Carlos G. Arrieta, dated November 29, 1993.
- ANNEX 21.** Letter to Ombudsman Jaime Córdoba Triviño, dated November 29, 1993.
- ANNEX 22.** Letter to the Attorney General of the Nation, Gustavo de Greiff, dated November 29, 1993.
- ANNEX 23.** Letter to the Minister of Defense, Rafael Pardo Rueda.
- ANNEX 24.** Letter from Minister of Defense Rafael Pardo Rueda, dated November 30, 1993.
- ANNEX 25.** Communiqué from the Central Executive Committee of the House of Representatives.
- ANNEX 26.** Precautionary measures ordered by the IACHR on December 21, 1993.
- ANNEX 27.** MACOGUE communiqué dated August 10, 1994.
- ANNEX 28.** Assessment Report prepared by the Office of the Second District Attorney for Santafé de Bogotá, File 143-6444, July 11, 1997.
- ANNEX 29.** Resolution of the Office of the Second District Attorney for Santafé de Bogotá containing the first-instance decision in disciplinary proceeding No. 143-6444/96, 1999.

- ANNEX 30.** Indictment handed down by the, Human Rights Unit of the Office of the Attorney General of the Nation, at No. 172UDH, October 20, 1997.
- ANNEX 31.** Conviction handed down by the Third Criminal Court of the Bogotá Specialized Circuit, at No. 5393-3, December 16, 1999.
- ANNEX 32.** Opinion on the legality of the appellate court ruling, prepared by the Office of the Prosecutor General of the Nation, May 7, 2004.
- ANNEX 33.** November 10, 2004 ruling of the Chamber of Criminal Cassation of the Supreme Court, Case No. 18428.
- ANNEX 34.** Administrative Tribunal of Cundinamarca, Section Three, administrative contentious ruling in the homicide of Senator Cepeda, File No. 96 D 12658, September 23, 1999.
- ANNEX 35.** Letter to the Minister of the Interior from Human Rights Watch, dated November 6, 1999.
- ANNEX 36.** Letter to the Minister of Defense from Human Rights Watch, dated November 6, 1999.
- ANNEX 37.** Letter that Amnesty International sent to the President of the Republic in November 1999.
- ANNEX 38.** Communiqué from Amnesty International concerning the security of Estella Cepeda Vargas, dated September 17, 2001.
- ANNEX 39.** Colombian Constitutional Court, File 004/04, Reference: requests for review of the petitions seeking protection, dated February 3, 2004.
- ANNEX 40.** Precautionary measures ordered by the Commission on June 26, 2006.
- ANNEX 41.** Colombian Constitutional Court Ruling T-959 of November 20, 2006.
- ANNEX 42.** Yezid Campos Zornosa, *El Baile Rojo*, Grafiq Editores, Bogotá, 2003, relevant pages.
- ANNEX 43.** Mauricio Aranguren Molina "Mi Confesión. Carlos Castaño revela sus secretos" [My Confession: Carlos Castaño reveals his secrets", relevant pages.
- ANNEX 44.** Press clippings.
- ANNEX 45.** CD containing a recording of the hearing held with the Inter-American Court of Human Rights on March 7, 2005, in Case 12,250, *Mapiripán Massacre*.
- ANNEX 46.** Curriculum vitae of Mario Madrid Malo, expert offered by the Commission.
- ANNEX 47.** Curriculum vitae of Eduardo Cifuentes Muñoz, expert offered by the Commission.
- ANNEX 48.** Curriculum vitae of Roberto Garretón, expert offered by the Commission.
- ANNEX 49.** Copies of the powers of attorney that the victim's next of kin granted to Rafael Barrios Mendivil and Jomary Ortegón Osorio, from the organization *Corporación Colectivo de Abogados "José Alvear Restrepo"*, and Iván Cepeda Castro, from the *Fundación "Manuel Cepeda Vargas"*.

152. The Commission should advise the Court that the copies of the documents that are attached as annexes, particularly certain documents from judicial, administrative and contentious administrative proceedings conducted at the domestic level, certain press clippings and others, are the best copies it has and has been able to obtain thus far. Some of the files are incomplete or illegible.

153. The Commission is therefore petitioning the Honorable Court to order the State of Colombia to submit certified copies of all the documents related to proceedings conducted in the domestic courts in connection with the events in this case, and an authenticated copy of the applicable laws and regulations.

B. Testimony

154. The Commission respectfully requests that the Court hear the testimony of the following witnesses:

- María Cepeda Castro, the victim's daughter, who will testify to the harassment, threats and attacks against her father; the events that occurred on August 9, 1994; the various steps taken by the victim's family in the period immediately following his extrajudicial execution; the authorities' response to those efforts and their attitude; the obstacles that the victim's family encountered in their quest for justice; the exile that she and her immediate family still endure; the effects that the human rights violations in this case had on her personal life and that of her family; and other matters relevant to the object and purpose of the present application.
- Claudia Girón Ortiz, the victim's daughter-in-law, who will testify to the harassment, threats and attacks against her father-in-law; the events that occurred on August 9, 1994; the various steps taken by the victim's family in the period immediately following his extrajudicial execution; the authorities' response to those efforts and their attitude; the investigations conducted at the domestic level; the obstacles the victim's family encountered in their quest for justice; the exile that she and her immediate family experienced; the toll that the human rights violations in this case have taken on her personal life and that of her immediate family, and other matters relevant to the object and purpose of this application.
- Hernán Motta Motta, UP survivor, who will testify about the context in which the events in the present case occurred; the "*golpe de gracia*" [coup de grâce] plan; the complaints that the victim filed with the authorities because of the danger he was in and the attention that the authorities gave to those complaints, and other matters relevant to the object and purpose of this application
- Jaime Caicedo, professor at the Universidad Nacional, who will testify about the victim's political activity; his journalistic work; the threats, harassment and pressure to which Senator Cepeda was subjected throughout his entire career in public service; the insecurity that members of the UP experienced, particularly its leaders, at around the time of the events in this case, and other matters relevant to the object and purpose of the present application.

C. Expert testimony

155. The Commission is asking the Honorable Court to hear the opinion of the following experts:

- Mario Madrid Malo, doctor of laws, former National Director for Promotion and Dissemination of Human Rights in Colombia, who will provide expert testimony on the violation of the right to have one's honor protected and dignity recognized – both in general and in the context of this particular case. He will also testify to other matters relevant to the object and purpose of the present application.

- Eduardo Cifuentes Muñoz, former Justice on Colombia’s Constitutional Court and former Colombian Ombudsman, who will provide expert testimony on the situation of the members of the Unión Patriótica political party, the acts of harassment, persecution and assaults against them, the fact that the violations have never been punished, and other issues relevant to the object and purpose of the present application.
- Roberto Garretón, an expert in human rights, who will testify about the systematic and widespread patterns of human rights violations; crimes against humanity, and other matters relevant to the object and purpose of the present application.

156. The Commission is requesting the Court that for the sake of procedural economy and in keeping with Article 44(2) of the Rules of Court, it accept the following statement into evidence as expert testimony:

- Statement given under oath by Dr. Federico Andreu during the hearing that the Inter-American Court of Human Rights held on March 7, 2005, in Case 12,250, *Mapiripán Massacre*. Colombia participated in that hearing. The statement appears in Annex 45.¹²⁰

XIII. PARTICULARS ON THE ORIGINAL COMPLAINANTS AND THE VICTIM

157. In keeping with Article 33 of the Rules of Court, the Inter-American Commission presents the following information: the original complaint in case 11,227 was filed by *Corporación REINICIAR*, the *Comisión Colombiana de Juristas* and the *Colectivo de Abogados “José Alvear Restrepo”*. The request to separate the facts pertinent to the execution of Senator Manuel Cepeda Vargas from case 11,227 was presented by the organization *Colectivo de Abogados “José Alvear Restrepo”* and by Mr. Iván Cepeda Castro (the victim’s son), in his capacity as President of the *Fundación “Manuel Cepeda Vargas”*.

158. The following members of the victim’s family have designated attorneys Rafael Barrios Mendivil and Jomary Ortégón Osorio of the organization *Corporación Colectivo de Abogados “José Alvear Restrepo”* and Iván Cepeda Castro of the *Fundación “Manuel Cepeda Vargas”* to represent them in the judicial proceedings on the case within the inter-American system, as the attached documents state.¹²¹

- María Cepeda Castro (daughter)
- Claudia Girón Ortiz (daughter-in-law)
- María Estella Cepeda Vargas (sister)
- Ruth Cepeda Vargas (sister)
- Gloria María Cepeda Vargas (sister)
- Álvaro Cepeda Vargas (brother)
- Rita Patricia, Clara Inés and Javier Ocampo Cepeda (children of Cecilia Cepeda Vargas, the victim’s deceased sister)

¹²⁰ The expert in question addressed the following issues relevant to the present case: “the past and present associations between the paramilitary and the public forces [;] the role of Colombian administration of justice in investigating crimes committed by paramilitary groups [...] the factual, legal and political obstacles obstructing justice in investigations of human rights violations in general.” I/A Court H.R., *Case of the Mapiripán Massacre*. Order convening the public hearing. January 28, 2005, p. 9.

¹²¹ See Annex 49, powers of attorney.

159. Mr. Iván Cepeda Castro (the victim's son) has designated attorneys Rafael Barrios Mendivil and Jomary Ortégón Osorio of the *Corporación Colectivo de Abogados "José Alvear Restrepo"* to represent him in the judicial proceedings on the case within the inter-American system, as the attached document shows.¹²²

160. The representatives of the victim and his next of kin have established their domicile at the offices of the *Corporación Colectivo de Abogados "José Alvear Restrepo"*, located in the

[REDACTED]

Washington, D.C.
November 14, 2008

¹²² *Idem.*