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COMMITTEE ON THE HUMAN RIGHTS OF PARLIAMENTARIANS

REPORT OF THE DELEGATION

MISSION TO COLOMBIA, 22 - 24 AUGUST 2009

► COLOMBIA

1. CASE No. CO/01 - PEDRO NEL JIMÉNEZ OBANDO
CASE No. CO/02 - LEONARDO POSADA PEDRAZA
CASE No. CO/03 - OCTAVIO VARGAS CUÉLLAR
CASE No. CO/04 - PEDRO LUIS VALENCIA GIRALDO
CASE No. CO/06 - BERNARDO JARAMILLO OSSA
CASE No. CO/08 - MANUEL CEPEDA VARGAS
CASE No. CO/09 - HERNÁN MOTTA MOTTA
2. CASE No. COL/07 - LUIS CARLOS GALÁN SARMIENTO
3. CASE No. CO/130 - JORGE TADEO LOZANO OSORIO
4. CASE No. CO/140 - WILSON BORJA
5. CASE No. CO/141 - POMPILIO AVENDAÑO LOPERA

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A. BACKGROUND, OBJECTIVE AND CONDUCT OF THE MISSION

1. There has been an upward trend in recent years in the number of cases referred to the Committee on the Human Rights of Parliamentarians concerning human rights violations committed against members of Parliament in Colombia. Between 1986 and 1994, the Committee received the cases of six members of the party *Unión Patriótica* (Patriotic Union): Jiménez Obando, Posada Pedraza, Vargas Cuéllar, Luis Valencia, Jaramillo Ossa and Cepeda Vargas, all of whom had been murdered. In 1996 the Committee had before it the case of Mr. Hernán Motta, driven into exile by threats against his life.

2. The Committee and the Council, the IPU's plenary governing body, have consistently expressed their concern over the limited progress being made to bring justice in these cases. These concerns, which remain unresolved, have been expressed regularly to the country's authorities, most notably during a mission to Bogotá in late March 2003. Impunity was also the central issue in the murder of Senator Luis Carlos Galán, in 1989, a case referred to the Committee only recently, as the pursuit of justice has now entered a decisive phase.

3. In addition to these historic cases, the Committee is reviewing three cases in which the main concern is the right of Colombian members of Congress to a fair trial. In the case of former congressman Jorge Tadeo Lozano, under review since 2001, the Committee has affirmed that the heavy prison sentence given to the congressman was the result of a flawed judicial process and has expressed its concern over the fact that the congressman has not been allowed to appeal it. The question at issue in the case of former congressman Mr. Pompilio Avendaño Lopera, tried for alleged links with paramilitary groups, concerned judicial protection in criminal cases. The case of Representative Wilson Borja, which the Committee has been reviewing since 2005, raises questions about the credibility of accusations concerning the Representative's alleged ties with the Revolutionary Armed Forces of Colombia (FARC), the largest guerrilla group in the country. This last case also raises concerns about the administration of justice following an attempt on his life in 2000, the stigmatization and intimidation of the opposition and the quality of protection afforded to members of Congress in risk situations.

4. The Committee has always considered it indispensable to maintain fluid and constructive dialogue with the country's authorities, starting with the National Congress, with a view to resolving the cases still pending before it. During its 126th session (from June 28 to 1 July), the Committee was pleased to be able to meet with Senator Juan Manuel Corzo, who had been delegated by the Speaker of the Colombian Congress at that time to visit Geneva and report on the latest events in each case, and on the Colombian political context. In view of the complex panorama that emerged as a result of the meeting, the Committee received with great satisfaction Senator Corzo's proposal for the appointment of a delegation to visit Colombia to discuss its concerns in these cases with authorities in the executive, legislative and judicial branches, and to better understand the political and legal situation.

5. The Committee designated its Vice-Chair, Senator Rosario Green (Mexico) and the Secretary General of the IPU, Mr. Anders B. Johnsson, to conduct the mission. Mr. Rogier Huizenga, Project Officer of the IPU's Human Rights Programme, also took part. On 30 July 2009, the current Speaker of the National Congress agreed to receive the mission in Bogota from 22 to 24 August 2009.

B. THE MISSION PROGRAMME

The mission interviewed the following persons:

(a) Parliamentary authorities

- Mr. Javier Cáceres Leal, Speaker of the National Congress and the Senate
- Mr. Edgar Gómez Román, Speaker of the House of Representatives
- Mr. Efraín Torrado García, First Vice-President of the Senate
- Dr. Alexander López, Chair of the Senate Human Rights Committee
- Dr. Germán Enrique Reyes, Chair of the Human Rights Committee of the House of Representatives
- Senator Juan Manuel Corzo Román

(b) Government authorities

- Mr. Álvaro Uribe Vélez, President of the Republic
- Mr. Miguel Antonio Ceballos, Vice-Minister of Justice
- Ms. Adriana Mejía Hernández, Vice-Minister for Multilateral Affairs
- Ms. Viviana Manrique Zuluaga, Vice-Minister of the Interior

(c) Judicial authorities

- Dr. Augusto Ibañez, President of the Supreme Court of Justice
- Dr. Jaime Alberto Arrubla, Vice-President of the Supreme Court of Justice
- Dr. Alejandro Ordóñez Maldonado, Attorney General
- Mr. Mario González Vargas, Deputy Attorney General for Prevention in the Area of Human Rights and Ethnic Affairs
- Mr. Guillermo Mendoza Diago, Prosecutor

(d) Current or former parliamentarians, members of their families and their attorneys

- Senator Juan Manuel Galán
- Representative Wilson Borja
- Mr. Jorge Tadeo Lozano, former congressman
- Mr. Álvaro Araújo Castro, former congressman
- Mr. Iván Cepeda, Spokesman for the National Movement of Victims of Crimes against the State, and the son of Senator Manuel Cepeda
- Mr. Rafael Barrios, José Alvear Restrepo, Collective Corporation of Attorneys

(e) Representatives of the United Nations

- Mr. Christian Salazar Volkmann, Representative of the United Nations High Commissioner for Human Rights
- Mr. Antonio Menéndez de Zubillaga, Legal Affairs Coordinator, Office of the United Nations High Commissioner for Human Rights

(f) Representatives of human rights organizations

- Mr. Gustavo Gallón, Director, Colombian Commission of Jurists (CCJ)
- Ms. Luz Marina Monzón, Director of Judicial Relations, CCJ
- Ms. Ana María Díaz, Coordinator of Research, CCJ

The delegation wishes to express its appreciation to all of the persons who dedicated time to receiving it. Special thanks go to the President of the Republic for the extensive and frank meeting he held with us. The delegation would also like to express special gratitude to parliamentary authorities, and in particular Senator Corzo and members of the parliamentary staff, who organized the meetings with government and judicial branch authorities and provided the necessary logistical support.

C. SUMMARY OF THE INFORMATION RECEIVED PRIOR TO THE MISSION'S DEPARTURE

I. The case of congressmen Jiménez Obando, Posada Pedraza, Vargas Cuéllar, Valencia Giraldo, Jaramillo Ossa, Cepeda Vargas and Hernán Motta (CO/01-CO/09)

1. The first six congressmen listed above were murdered between 1986 and 1994. The Committee has consistently expressed its concern over the fact that perpetrators were identified and convicted only in the cases of Jaramillo Ossa and Cepeda Vargas, and arrested only in the latter case. There have also been concerns over the authorities' lack of diligence in enforcing a sentence given to former paramilitary leader Carlos Castaño, since deceased, who was convicted of the murder of Jaramillo Ossa, and in holding him responsible - despite overwhelming evidence in the case - for his involvement in instigating the murder of Mr. Cepeda. Another continuing concern has been the failure to conduct effective investigations into evidence that Mr. Castaño may have organized threats against Mr. Motta.

2. In 1997 the Inter-American Commission on Human Rights was seized with a petition alleging persecution of *Unión Patriótica* and offenses committed, directly and indirectly, against its members - including the aforementioned parliamentarians, all members of that party. Following difficult efforts to reach a friendly settlement, and for lack of concrete results, the petitioners decided in 2006 to consider the proceedings at an end and to request the Commission to rule on the merits of their petition. The year before, the Commission had agreed to review separately the petition concerning the murder of Mr. Cepeda. On 25 July 2008, the Commission concluded that the Colombian State was indeed responsible for that murder, by commission and omission, and issued a series of recommendations. On 14 November 2008, after allowing time for the Colombian State to respond, the Commission referred the case to the Inter-American Court of Human Rights, requesting confirmation of its findings. The Colombian State submitted a brief to the Court in July 2009. The IPU Governing Council requested the Committee to act as *amicus curiae* before the Court. The Inter-American Commission has yet to rule in the collective case of *Unión Patriótica*.

II. The case of Senator Luis Carlos Galán (CO/07)

1. Mr. Luis Carlos Galán was a member of the Colombian Senate and a presidential pre-candidate for the Liberal Party when he was murdered on 18 August 1989 during a political rally. According to the source, the motive for the murder concerned the Senator's fight against the infiltration of drug trafficking into politics.

2. The source affirms that the perpetrators of the murder, two paramilitary members since deceased, were operating in complicity with former Lieutenant Flores, of Military Intelligence B2. Lieutenant Flores was acquitted by a lower court, but the family of Senator Galán, as complainant in the proceedings, filed an appeal against the decision, which is pending in the High Court of Cundinamarca.

3. The source affirms that the crime was masterminded by Pablo Escobar, Gonzalo Rodríguez Gacha and Alberto Santofimio Botero, a politician from Tolima. On 22 October 2008, the High Court of Cundinamarca quashed the sentence given to Mr. Santofimio. Senator Galán's family and the Prosecutor's Office filed a petition in the Supreme Court to quash the acquittal, which is still pending.

4. Recent testimony taken by the Office of the Prosecutor General also links retired National Police General Miguel Maza Márquez, formerly Director of the Administrative Department of Security (DAS), to the murder of Senator Galán.

III. The case of Mr. Jorge Tadeo Lozano (CO/130)

1. In 2000, Mr. Lozano was declared guilty of graft (misappropriation) and given a heavy prison sentence. The Committee has consistently considered his conviction to be the result of fundamentally flawed proceedings and has expressed its concern over the fact that the sentence could not be appealed, since under Colombian law, criminal proceedings against members of Congress are tried in a single instance. The petition that Mr. Lozano filed in 2001 to raise these concerns with the Inter-American Commission on Human Rights has still not been reviewed, despite assurances from Inter-American system authorities that it would be taken up in the near future.

2. On 23 July 2008, one of Mr. Lozano's sons was murdered in Medellín, after receiving threats that were brought to the attention of police authorities, who apparently took no protective measures whatsoever. A suspect was arrested in April 2009. According to the source, the murder took place following several attempts to silence Mr. Lozano's repeated criticisms of those acting against him as well as those holding political, military or paramilitary power in Colombia.

IV. The case of Representative Wilson Borja (CO/140)

1. Mr. Borja was the victim of an attempt on his life on 15 December 2000, after he had received repeated death threats. Four persons were convicted and sentenced to prison, and indictments were brought against five other persons, who have not yet been apprehended.
2. Complaints about deficiencies in the system of protection provided for Mr. Borja by the Ministry of the Interior, the Administrative Department of Security (DAS) and the Congress have been registered on several occasions (starting in May 2006).
3. On 4 July 2008, the Supreme Court opened a preliminary investigation into alleged ties linking Mr. Borja and other individuals with the Revolutionary Armed Forces of Colombia (FARC), but according to the source, those allegations are groundless. After being publicly linked with guerrilla forces by the President of the Republic in a radio interview broadcast on 20 February 2007, Mr. Borja filed a complaint with the Accusations Committee of the House of Representatives that is currently under investigation.
4. The Committee has expressed serious concerns over revelations that the DAS apparently intercepted Mr. Borja's communications and tracked his movements.

V. The case of Mr. Pompilio Avendaño Lopera (CO/141)

On 23 October 2008, the Criminal Chamber of the Supreme Court brought formal charges of aggravated criminal conspiracy against Mr. Avendaño, then a member of the opposition Liberal Party, based on testimonies provided by two former paramilitary members, according to which their leaders had met with him to reach agreements of a political nature. Mr. Avendaño qualifies the accusations as utterly bereft of credibility. He relinquished his seat in Congress on 20 October 2008, as a result of which the trial proceedings have been moved to the Special Tribunal of Ibagué de Tolima. An observer for the Inter-Parliamentary Union attended the hearings on 5 June and 28 July 2009. His report concludes that the judicial proceedings appeared to be in accordance with current Colombian law and that the main challenge rested in assessing the evidence, since two key witnesses had refused to appear before the trial judge in Ibagué.

D. BRIEF DESCRIPTION OF THE CONTEXT FOR THE CONFLICT IN COLOMBIA

Since the 1960s, when the insurgent groups - and as a corollary the paramilitary groups - first appeared, Colombia's history has been marked by political violence and systematic violations of human rights and international humanitarian law. Successive governments have been unable to end the conflict by means of force or negotiation, although in the late 1980s and early 1990s successes were achieved in demobilizing guerrilla groups: the 19 April Movement (M-19), the People's Liberation Army (EPL) and a fraction of the National Liberation Army (ELN). Since that time, however, the violence perpetrated by FARC, and to a lesser extent by ELN, has continued to wreak human and material devastation. The emergence of paramilitary groups not only complicated the panorama of conflict but also significantly increased the number of violations committed against the civilian population. Complicity and even close cooperation has been revealed on several occasions between these paramilitary groups and State agents and agencies. Narcotics trafficking, an easy source of money, has fuelled the violence and generated corruption, with the establishment of networks compromising all actors involved in the Colombian armed conflict. Since President Uribe's first administration, which took office in August 2002, the fight against FARC has been strengthened, its forces have been severely weakened, and a negotiation process to demobilize paramilitary groups has begun, better known as the Justice and Peace process (see the following chapter).

E. INFORMATION GATHERED DURING THE MISSION

I. Overview of the human rights situation and the peace process

- *General observations on the country's human rights situation*

1. During his meeting with the delegation, President Uribe stressed that enormous progress had been made. The government had promoted democratic values through a policy of democratic security. A legitimate monopoly over the use of force had finally been established, largely as a result of the successful demobilization of paramilitary groups, which had inspired great confidence in the population. Improved security had made it possible to proceed with decentralization of the administration. Mayors were no longer threatened and could exercise their mandates freely and without intimidation. Progress had also been made in the redress process for some 200,000 registered victims. President Uribe stressed that the Judiciary, the Parliament, and the press were all independent in Colombia, and that the government had stepped up its assistance to the Office of the Prosecutor and the Judicial System. He nonetheless recognized that impunity continued to prevail in some cases and that in contrast with the "parapolitical" situation, progress had been stymied in the case of "FARC-politics", because of general failures in the past to hold demobilized former guerrillas responsible for their acts.

2. On the other hand, according to human rights organizations and the Representative of the United Nations High Commissioner for Human Rights in Colombia, sociopolitical violence has not in fact diminished, as evidenced by the numerous homicides, disappearances and internal relocations observed - as well as a "false positives" phenomenon, in which the Armed Forces, in their zeal to produce results and settle scores has allegedly murdered innocent victims in order to then portray them as former guerrilla members. Between August 2002 and June 2008, more than 14,000 civilians were allegedly murdered in noncombat situations. Paramilitary groups have reportedly murdered more than 4,500 persons who were actually negotiating with the government at the time, a matter on which the latter has remained silent. These interlocutors called the delegation's attention to the high levels of impunity (more than 90%) as well as social exclusion in Colombia.

3. With respect to the issue of security, they affirm that, while the situation in the cities is indeed much better than before, rural populations are still largely unprotected. Following the demobilization of paramilitary groups, new violent groups have emerged. While there is no homogeneous pattern, some of these groups have ties with local authorities, operate as the old paramilitary organizations used to do, and include a considerable number of former paramilitary members. Their objective in using force is not to fight against FARC but rather to control the territory and engage in drug trafficking. While the government has emphasized their criminal character, the Representative of the United Nations High Commissioner for Human Rights, as well as several other human rights organizations, believe these groups and the government's response to them could pose a major challenge in the years ahead.

- *The demobilization of paramilitary groups*

1. The general legal framework

1. The Colombian Commission of Jurists informed the delegation that two distinct processes have been initiated. Paramilitary groups against which no action was taken prior to demobilization were granted amnesty under Law 782 of 2002, under constitutional provisions allowing for amnesty in cases involving the political crime of sedition. On 11 July 2007, however, the Supreme Court affirmed that crimes committed by paramilitary groups were not to be treated as political crimes but tried as aggravated criminal conspiracy, when accusations to such effect are filed. In June 2009, the Colombian Congress approved Law 1312, on the principle of opportunity. Under this law, the Office of the Prosecutor may take the opportunity to file for the suspension of judicial proceedings against demobilized paramilitaries but only if they have not committed crimes against humanity, have not been leaders of illegal armed groups, have not trafficked in narcotics, and have not committed crimes before or after demobilization. Several human rights organizations, as well as the Colombian Commission of Jurists, have argued that allowing such blanket immunity is tantamount to impunity. The Colombian Commission of Jurists observes in addition that some 30,000 demobilized forces have

been pardoned in this way - although past assessments have estimated the number of all paramilitary members at no more than 12,000.

2. In 2005, the Colombian Congress approved the Justice and Peace Law (Law 975), which imposes prison sentences of five to eight years for paramilitary members who have committed grave crimes, including those confessed to by the demobilized paramilitary members themselves as well as those proven by the State. The United Nations and many human rights organizations have criticized the law as too indulgent toward the perpetrators of grave violations, and as not providing sufficient guarantees that the truth will be uncovered and victims properly indemnified. In a judgment of 18 May 2006, the Constitutional Court declared that "those who seek protection under the law must fully comply with the law's provisions, fully confess their crimes, make redress, tell the truth, and refrain from further criminal activity". According to the law approved by Congress, on the other hand, full confession is not required, and crimes committed after demobilization have no effect on the legal advantages gained from demobilization. The Colombian Commission of Jurists told the delegation that out of the 3,500 demobilized paramilitary members covered by the Justice and Peace process, only 50 have been imprisoned and only 250 are cooperating. The others are all free.

2. The extradition of paramilitary leaders to the United States

1. During the early hours of 13 May 2008, the Government of Colombia decided to extradite to the United States several paramilitary leaders imprisoned in Colombia and being dealt with as part of the demobilization process. President Uribe told the delegation that this decision had been taken because the paramilitary members were not fulfilling their commitments under the Justice and Peace process, and in particular, that they continued to commit crimes from prison and were not surrendering assets acquired illegally. According to several human rights organizations, extradition was intended to conceal the truth about crimes committed by the paramilitary members and their political accomplices. In a ruling on 9 July 2009, the Inter-American Court of Human Rights criticized the fact that paramilitary leader Salvatore Mancuso was extradited before his involvement in crimes against humanity in Colombia could be ascertained. The Court observed that "the application of measures such as extradition should not be used as a mechanism to promote, obtain, or ensure impunity."

2. On 20 August 2009, the Supreme Court denied the extradition of former Colombian paramilitary leader Luis Edgar Medina Flórez, alias "Comandante Chaparro", who is accused in the United States of narcotics trafficking but is also undergoing Justice and Peace proceedings in Colombia for criminal conspiracy. The Supreme Court for the first time gave precedence to victims' right to the truth and to the primacy of the Justice and Peace Law for the prosecution of paramilitary members, thereby implicitly calling into question the extradition of paramilitary leaders since 2008 and setting a precedent applicable to future extraditions. The Court affirmed that the extradition of "Comandante Chaparro" violated the spirit of the Justice and Peace Law, inasmuch as the Law's fundamental principle was to guarantee the rights of the paramilitaries' victims to the truth, to justice and to redress. The Court affirmed that extradition had pre-empted the holding of public hearings, and thus access to "unofficial" versions of the truth, undermining the victims' ability to exercise their rights. However, the Court qualified its opinion by affirming that extradition orders could become effective in cases where demobilized members: fail to cooperate in determining the truth and addressing victims' rights; commit offenses making them ineligible for the benefits of the Justice and Peace Law; are absolved of the charges against them; or fail to fulfil obligations required as conditions for alternative sentencing.

3. The delegation was informed that, in principle, the Supreme Court should have examined the substance of, and expressly authorized, each extradition request, but that this process was a meaningless formality in narcotics trafficking cases. A human rights organization told the delegation that paramilitary members should have been tried under common law, instead of being extradited, because of their failure to cooperate with the Justice and Peace process.

4. President Uribe told the delegation that the presence of the extradited paramilitary members in Colombia would not have helped the victims in any case, because the culprits were not in fact cooperating with the Justice and Peace process; the victims' attorneys, moreover, enjoyed access to the prisoners in U.S. custody, both physically and virtually. President Uribe added that he had assigned a judge to perform liaison functions and strengthen cooperation between the judicial authorities of both countries. He also mentioned that the U.S. prosecutor was authorized to reduce the sentences of those now willing to

cooperate with the Justice and Peace process. Several of the delegation's other interlocutors, however, said there had been no cooperation, there being no cooperation agreement between the two countries to ensure compliance with the Justice and Peace process.

II. General observations on the country's political situation

- *Prospects for a possible second re-election of President Uribe*

1. At the time of the mission, the biggest political issue was the possibility of constitutional reform to allow a second re-election of President Uribe, a reform his followers were pursuing by means of a referendum. Slightly more than 1.4 million voter signatures (5% of the potential Colombian electorate) were required to hold the referendum, which was triggered in August 2008 when more than 5 million signatures were submitted.

2. In December 2008, by a vote of 86 to 0, the House of Representatives approved legislation allowing presidents to be re-elected twice, though not consecutively, and only in 2014. The Senate passed the bill in June 2009, but allowing for re-election as early as 2010. A conference committee of Representatives and Senators convened to reconcile the two versions, proposed the allowance of re-election in 2010, and the Senate approved that text in mid-August 2009. At the time of the mission, the House was about to vote on it,¹ potentially opening the way for the Constitutional Court to confirm the constitutionality of the initiative and convene a popular referendum enabling the Colombian people to decide the matter. The President's coalition stresses that 80% of the Colombian population supports his policies and that the final decision should be taken in that light. The delegation also noted strong opposition, however, from other political and social actors, who considered the measure a step in the wrong direction.

- *Confrontation between the government and the Supreme Court of Justice*

1. The delegation was told at several meetings that there were strong tensions between the government and the Supreme Court, with each side accusing the other of efforts to discredit it. Interlocutors attributed this situation to the Supreme Court's investigation of political figures close to the government, including a cousin of President Uribe - and also to "parapolitics" and allegations that the government had bought votes for the constitutional reform that had permitted the President's re-election in 2006. Several interlocutors characterized the climate as explosive, marked not only by the politicization of Justice but also by a "judicialization" of politics. During his meeting with the delegation, the Attorney General said there had been excesses in both the executive and judicial branches.

2. Another source of tension is the appointment of a new Prosecutor General of the Nation to replace Mr. Mario Iguarán, whose term concluded in July 2009. Basing himself on the Constitution, President Uribe presented to the Supreme Court a list of three candidates from which to choose the successor. It should be stressed that this person will have to deal with several extremely delicate cases, including trials concerning "parapolitics", "Yidis-politics", "FARC-politics" and the Justice and Peace cases. At the time of the delegation's mission, the Court had still not selected a new Prosecutor, and had expressed dissatisfaction with the quality of the nominees. After the mission, in an unprecedented move in mid-September 2009, the Supreme Court returned the list of candidates to President Uribe.

- *Stigmatization of the opposition*

1. Several of the government interlocutors told the delegation that opposition leaders had expressed harsh opinions against President Uribe and strongly criticized his administration. Interlocutors from the opposition stressed that a vindictive atmosphere had been created under President Uribe, with the opposition characterized as enemies of the State - an attitude they said was being fuelled by public discourse at the highest levels of government. By way of illustration they referred to comments about Mr. Borja made by President Uribe in a radio interview (see the Wilson

¹ The House of Representatives passed the reconciled text on 1 September 2009.

Borja case). In addition, in late 2006, the Constitutional Court ordered the Uribe campaign to rectify a political advertisement about *Unión Patriótica*. The spot had featured a person identifying himself as a former militant with *Unión Patriótica* saying that he had committed murder on behalf of his party, and that this was what the President was up against. They said that the current political climate was very hostile and did not allow the opposition to function without intimidation. They also referred to illegal activities by the DAS with respect to the work of government opponents. These interlocutors said it still was not clear whether the illegal acts committed by DAS had been formally backed by the current government.

2. When he met with the delegation, President Uribe denied that the opposition was being stigmatized; he said it had been respected and effectively protected by the government. He acknowledged, however, being quite direct and not inclined to mince words, considering this necessary to advance the country's political agenda.

- *The illegal activities of the Administrative Department of Security (DAS)*

1. The DAS scandal broke out when that agency's IT director, Mr. Rafael García, was detained in November 2006, following revelations that he had used his position to support paramilitary groups and narcotics traffickers. It was at that point when Mr. García decided to cooperate with judicial authorities, issuing several denunciations and testifying as a key witness in the parapolitics case. Among other things, he alleged that former DAS Director Jorge Noguera Cotes had used his position to arrange for collusion between his agency and the paramilitary group led by "Jorge 40".

2. The accusations made against DAS took a new turn when the agency's illegal espionage scandal exploded in February 2009, the Colombian press having revealed actions against magistrates, opponents, human rights advocates, pacifists, social leaders and journalists. On 8 July 2009, the Prosecutor initiated investigations against Mr. José Miguel de Narváez, then Deputy Director of DAS, for alleged illegal surveillance and interception activities. Mr. Narváez has been indicated as a leader of the controversial "G-3" intelligence group and as the man who had targeted individuals for DAS surveillance, as indicated in countless memorandums seized by the Prosecutor's Office. Several other DAS functionaries have been accused as accomplices to these acts.

3. Mr. Narváez is also on trial for alleged links with paramilitary groups. Former paramilitary leaders, including Salvatore Mancuso, Jorge Iván Laverde (alias "el Iguano"), and Fredy Rendón Herrera (alias "el alemán") have named him as an ideological leader of that illegal group. Two former leaders indicate that Mr. Narváez gave talks entitled "Why it is legal to kill Communists in Colombia", in self-defense camps in Córdoba and in the south of Bolívar.

4. During his meeting with the delegation, President Uribe said that all of the DAS problems had been solved and that, under a new law, the DAS would return to its original role as an intelligence agency. Several other interlocutors, however, told the delegation that the DAS continues to operate on the principle that high-profile persons who disagree with the government are enemies, to be "neutralized". The Representative of the United Nations High Commissioner for Human Rights told the delegation that the revelations concerning the illegal activities of DAS were extremely serious and that the government had not shown sufficient interest in recognizing and investigating them.

III. The situation of the National Congress of Colombia

Several of the parliamentary interlocutors told the delegation that Congress was being demonized, particularly by the media. While acknowledging the involvement of several members of Congress in illegal activities, they said that scandals were all that really interested the press, which had painted a distorted picture of the useful work being done by Congress. They said that Congress had been caught in the middle of, and severely weakened by, confrontations between the government and the Supreme Court.

- *Parapolitics*

1. Revelations of links between politicians and paramilitary groups began to surface in 2006, following the paramilitary demobilization process. According to the investigations, several political leaders and a number of State officials appear to have benefited from such alliances as a means of intimidation and armed action against the civilian population - to secure political positions, divert money to finance and organize illegal armed groups and supply information to facilitate the activities of those groups. The acts included massacres, selective murders and forced relocation as a means to extend their perpetrators' power over the national territory.

2. The parapolitical scandal was unleashed following statements in 2006 by the head of the United Self-Defence Forces of Colombia (AUC), Mr. Salvatore Mancuso, affirming that more than 30% of the Colombian Congress "were friends" of his organization. The seizure of a portable computer owned by paramilitary leader Rodrigo Tovar Pupo, alias "Jorge 40", revealed the existence of alliances with various politicians for the purpose of expanding their power in the country. Following statements by "Jorge 40" in January 2007, that year saw the revelation of a document entitled the Ralito Pact, signed by AUC leaders and seven Representatives, four Senators, two Governors, and five Mayors, for the purpose of "re-founding the nation".

3. The first arrests of members of Congress took place in October 2006. The delegation was informed that 55 Senators (out of a total of 102) and 45 Representatives (out of a total of 166) were being investigated, and about 30 were being detained.

4. The Speaker of the House of Representatives indicated to the delegation that the House had no legal power to intervene in the trials, which as characterized by the President concerned individual situations and responsibilities. However, the delegation was informed that the congressional human rights committees were working with the Office of the Attorney General in each of the cases. It was mentioned that the accusations of "parapolitics" were a pretext in several cases for settling political scores. Until the latest political reform, each member of Congress had an alternate. Mere allegations of links between titular members and paramilitary groups were enough to enable alternates to replace their principals.

5. Several interlocutors, including the Attorney General of the Nation, told the delegation that the Supreme Court had been excessive in exercising its authority to order the arrest of members of Congress.² In addition, several interlocutors mentioned that the investigations frequently were initiated based on anonymous allegations. In their meeting with the delegation, the President and Vice-President of the Supreme Court denied this affirmation. They did, however, recognize that the investigation of allegations takes a considerable amount of time, particularly since the Court does not have an investigative body. They said that the prolonged, open-ended nature of the inquiries had cast doubt on the extent to which members of Congress were in fact compromised, with repercussions for their effectiveness and credibility in Congress. Several interlocutors also stressed that members of Congress were being investigated not by Supreme Court Justices but by auxiliary magistrates - and often by others. The Court's President and Vice-President explained that they were obliged to proceed in this manner, for lack of adequate human resources. Attorney General told the delegation that witnesses (former paramilitary members) had met separately with magistrates and stressed that the evidence was taken in the presence of all parties. The President of the Supreme Court told the delegation that investigations were conducted only if there was sufficient evidence and that the persons concerned were always informed.

- *"Yidispolitica"*

1. In April 2008, statements by former Representative Yidis Medina led to political scandal. In her statements, the Representative admitted to having received offers from government officials in exchange for her vote in favour of the constitutional reform that had enabled President Uribe to run for a second term as President in 2006. On 26 June 2008, the Supreme Court ruled that she had indeed sold her vote for re-election and sentenced her to 47 months of home detention for the crime of bribery. The Court affirmed that "approval of the constitutional reform constituted a clear abuse of power." The officials implicated by Ms. Medina have denied the accusations and are under investigation.

² Article 186 of the Constitution of 1991 stipulates that "crimes committed by members of Congress shall be reviewed exclusively by the Supreme Court of Justice, which shall have sole authority to order their arrests."

2. During the mission, the delegation was informed of new developments in the "*Yidispolitica*" affair, with accusations that the government had allegedly given notarized promissory notes to about 30 members of Congress in exchange for their votes in favour of the same reform. In July 2009, the former Superintendent of Notaries Public and Registrars, Mr. Manuel Cuello Baute, described the details of that operation to the Supreme Court. Based on his statement, during the week prior to the delegation's arrival in Bogotá, a warrant was issued to search the house of Senator Alirio Villamizar, and a safe containing 1 billion Colombian pesos was found there. On 18 August 2009 the house of Senator Corzo's mother was also searched, a measure he described as excessive and unjustified. During his meeting with the delegation, the Supreme Court President denied this to be the case.

- *Legal protection for members of Congress*

1. **The right of members of Congress to a fair trial in criminal proceedings**

1. A recurrent theme during the mission was the lack of adequate and fair legal protection for members of Congress in criminal cases. The principle of parliamentary immunity had been enshrined in the Colombian Constitution until 1991. Following several cases of abuses by criminal figures, such as Pablo Escobar, who gained election in order to escape justice, the authors of the new Constitution of 1991 altered the precept, introducing the concept of constitutional jurisdiction, determining that authority for the investigation and adjudication of cases involving high dignitaries would rest, in a single instance, with the Supreme Court of Justice. Since then, the procedure has been slightly adjusted. By decision C-545/08 of 28 May 2008, the Constitutional Court recognized that assigning dual functions to the Supreme Court's Criminal Chamber - investigative as well as adjudicatory - was not consonant with respect for the right to a fair trial, and should thus be treated as a matter for legislative modification. In consequence, the Supreme Court decided that among the nine members of the Criminal Chamber, three or four would deal with the investigation and the other four or five would concern themselves with the judicial ruling. Several of the delegation's interlocutors said that while this was a positive change, it was not sufficient to segregate the Supreme Court's two functions in such cases.

2. The current Attorney General considered it troubling that the members of Congress under investigation had persistently refused to recognize the Court's jurisdiction. He argued that such decisions related not to the concept of impunity but to the guarantee of a fair trial. The Attorney General told the delegation that he had submitted a brief to this effect to the Constitutional Court. It should be stressed that the Supreme Court, in its decision of 17 September 2008, ruled that members of Congress under investigation could relinquish their seats so that their cases could be adjudicated by the Office of the Prosecutor. However, after the mission - on 1 September 2009, the same day that the House of Representatives approved the bill allowing for a second re-election of President Uribe - the Supreme Court decided that the members of Congress had to be tried by the high court. Accordingly, several cases - some in the final stages of lower court adjudication - were transferred to the Supreme Court.

3. Efforts were made on various occasions to introduce new legislation in Congress to remedy the procedural flaws, including the possibility of appeal. Several of the parliamentary interlocutors told the delegation that each of the bills introduced were subsequently withdrawn because of hostility in the media, which characterized them as efforts to secure immunity for members of Congress. A bill submitted by Senator Corzo, currently pending consideration, would stipulate that no member of Congress may be arrested, except in cases of flagrant crime or certain specified offences. According to the bill, responsibility for investigation would rest with the Office of the Prosecutor, and that for adjudication with the Supreme Court. The Constitutional Court would have jurisdiction for appeals.

4. In the delegation's conversations with executive, parliamentary and judicial authorities, all agreed that the current procedure was an anomaly, at odds with the right to a fair trial. Their ideas differed, however, on how to resolve the issue. This would explain the failure of legislative efforts to date.

2. **Inviolability of the vote**

1. In December 2008, by a vote of 86 to 0, the House of Representatives approved legislation enabling the President to be re-elected a second time, though not consecutively, and only in 2014. Members of the Liberal Party and *Polo Democrático* (Democratic Pole) did not vote, observing for the record that the outcome of the referendum had not been clear. Representative Germán Navas Talero

(*Polo Democrático*), speaking in the plenary, announced his intention to file corruption charges against the 86 members before the Supreme Court, arguing that they had voted to approve the object of the referendum with full knowledge that the National Electoral Council had not yet certified the legality of the financing for efforts to collect the 5 million signatures. Shortly afterwards, he filed his complaint with the Supreme Court, which opened an investigation of the 86 members.

2. During his meeting with the delegation, the Speaker of the House of Representatives said that the House had taken the decision in good faith and that all aspects of the re-election issue had been discussed, including the objections raised by Mr. Navas. The Speaker considered that any defect in the decision should be reviewed not by the Supreme Court but by the Constitutional Court, as involving an alleged procedural flaw.

3. A commission of three Supreme Court justices investigated the complaint, and in a two-to-one decision decided to examine the substance of the accusations. Justice Jorge Luis Quintero Milanés, in his dissenting vote, considered that the Supreme Court should have issued a writ of prohibition in favour of the 86 members. He did not see how voting for a referendum to allow for the President's re-election could constitute a crime, and that if there had been a procedural flaw, the authority for resolving it should rest with the Constitutional Court.

4. The Attorney General of the Nation shared this opinion and told the delegation that the criminal justice system did not have jurisdiction to investigate whether approval of the bill had been procedurally flawed. Accordingly, on 12 August 2009, the Attorney General delivered a letter to the Supreme Court outlining his position that the judicial review of legislation was a function that should rest exclusively with the Constitutional Court. The Attorney General said that the preliminary investigation ordered by the Supreme Court ran contrary to the principle of the inviolability of the vote, as enshrined in Article 185 of the Constitution.

5. The delegation discussed the situation of the 86 members of Congress with the President and Vice-President of the Supreme Court. Their position was clear: it was necessary to continue investigating whether the action taken by the members represented an abuse of public office or authority, and whether they were bound by their duties to refer the bill to the plenary, with all supporting elements, prior to the vote. While recognizing the inviolability of the vote, they considered that the vote had to have occurred in accordance with the law. In the view of the Court, the issues raised by the case were not of minor importance.

III. Information gathered on particular cases

This section contains information gathered by the delegation on some of the cases. It will be observed that no specific information was provided on investigations into the murders of Pedro Nel Jiménez Obando, Leonardo Posada Pedraza, Octavio Vargas Cuéllar or Pedro Luis Valencia - nor on the death threats that forced Hernán Motta Motta into exile, nor on the case of Pompilio Avendaño Lopera.

1. *Unión Patriótica*

1.1. The collective case of *Unión Patriótica* before the Inter-American Commission on Human Rights was described to the delegation as highly complex, involving 1,600 abuses, homicides, forced disappearances and threats, each requiring evidence of State responsibility. Contrary to the Cepeda case, for which the background and judicial proceedings were very clear, the collective case represented a major procedural challenge, particularly since the Inter-American Court had recently strengthened its evidentiary standards. The delegation was told that the Inter-American Commission would probably wait for the Inter-American Court's ruling in the Cepeda case before proceeding with the collective case.

1.2. During its meeting with the Office of the Prosecutor, the delegation was informed that the Office's Human Rights and Humanitarian Law Unit had assembled a team to reactivate the investigations into the persecution of *Unión Patriótica* members. To get around the statute of limitations in these cases, the Office of the Prosecutor is arguing that the violations concerned represented crimes against humanity, an argument yet to be accepted by the courts.

2. Manuel Cepeda Vargas

2.1. The petitioners before the Inter-American Court in the case of Senator Cepeda's murder characterized the crime, as did the Inter-American Commission on Human Rights, as part of a systematic pattern of violence against *Unión Patriótica* and a crime against humanity. The Colombian State recognized its responsibility for the crime and for having violated, to Senator Cepeda's detriment, various articles of the American Convention on Human Rights: Articles 4 (right to life), 5 (right to humane treatment), 11 (right to privacy), 13 (freedom of thought and expression) and 23 (right to participate in government), as they pertain to the general obligation established in Article 1(1) to respect and guarantee human rights. The State partially recognized its responsibility with respect to the Convention's Articles 8 (right to a fair trial) and 25 (right to judicial protection), but not with respect to Article 16 (freedom of association). The Colombian State refutes the crime against humanity argument, considering that Senator Cepeda's murder was not part of a systematic, generalized persecution, and affirming that the Court cannot rule on this case as long as the collective *Unión Patriótica* case remains pending.

2.2. Following presentation of the Colombian State's brief, the petitioners and the Inter-American Commission were under a deadline to submit observations to the Inter-American Court by 13 September 2009. In October 2009, the Court will decide whether to accept the Colombian State's preliminary objections and examine the substance of the case. According to the petitioners, the Court will probably call a hearing of the parties in March 2010. Third-party submissions, including expert testimony by the Inter-Parliamentary Union, will be submitted a few weeks after that. To conclude, the parties will submit their final observations, taking into account the results of the hearing and the third-party submissions. The Court is expected to issue its ruling by mid-2010.

2.3. The petitioners hope to obtain guarantees against non-recovery and greater efforts to shed light on intellectual responsibility for the crime, and in particular the collaboration between State agents and paramilitary groups. The petitioners told the delegation that while it remains active as a political movement, *Unión Patriótica* forfeited its legal personality when it failed to obtain 50,000 signatures in 2001. In the current environment they see nothing of a political nature as being guaranteed. Their hope is to create a new parliamentary constituency through a special law giving *Unión Patriótica* a seat in order to advance its political agenda. In this manner, by way of remedy, the petitioners also hope to gain reinstatement of Senator Cepeda's seat, following the precedent established for the guerrilla group M-19 when it demobilized and was reinstated in Congress - and taking also into account the existence of a special electoral constituency in Colombia for indigenous peoples.

2.4. In his meeting with the delegation, President Uribe emphasized that the crimes against members of *Unión Patriótica* had resulted in part from their ties with FARC. According to the petitioners, although *Unión Patriótica* had emerged in 1984 as part of an agreement between the government and FARC, the latter had withdrawn from the agreement a few years later. They said there was no proof whatsoever of any ties between members of *Unión Patriótica* and FARC. They mentioned that in the only case where both lower and appeal courts had convicted members of *Unión Patriótica* because of their relations with FARC - the one concerning the La Chinita massacre - the Supreme Court had acknowledged irregular and arbitrary elements in the judicial proceedings.

2.5. With respect to the proposal to consider the creation of a separate seat, President Uribe and his ministers said they were unaware of the idea and that the Cepeda case was still pending before the Inter-American Court. The Prosecutor said it would not be possible within Colombia's current legal framework to create such a seat as a remedy in the case.

2.6. The Prosecutor stressed that the work being conducted by his team on the matter of persecution against *Unión Patriótica* included the case of Senator Cepeda, which was still under investigation. The Prosecutor confirmed that a statement *in absentia* had linked the crime to Mr. Edilson Jiménez Ramírez, alias "Ñato", the alleged third occupant of the vehicle from which the shots at Senator Cepeda had been fired.

2.7. The delegation was informed that on 28 May 2009, in a meeting with Senator Piedad Córdoba and Mr. Iván Cepeda, former paramilitary leader Diego Fernando Murillo, "don Berna", incarcerated in the Metropolitan Correctional Centre of New York, confirmed that Mr. Narváez, former Deputy Director of the DAS, had furnished a list of leftist members, including Senator Cepeda, to be

murdered by the United Self-Defense Forces of Colombia (AUC). The petitioners in the Cepeda case want the Inter-American Court to attribute the murder to a vast apparatus of State agencies and military groups.

3. Bernardo Jaramillo Ossa

The Attorney General characterized the Jaramillo Ossa murder case as emblematic and said he hoped to reactivate it in the cause of justice. He said he had already held a meeting with Mr. Jaramillo's wife.

4. Luis Carlos Galán

4.1. The delegation arrived in Colombia, on 18 August 2009, exactly 20 years after Mr. Galán's assassination by order of General Miguel Maza Márquez, and a few days after the latter's arrest and preventive detention as a co-conspirator. Mr. Maza, then Director of the DAS, the agency responsible for Senator Galán's security detail, is accused of having replaced the head bodyguard with an inexperienced person of dubious background, Mr. Jacobo Torregrosa. Mr. Torregrosa was identified as having facilitated the attack by Mr. Alfonso Baquero (alias "Negro Vladimir", who in 1989 was commander of the Gavilanes Front of the Magdalena Medio paramilitary group), Mr. Iván Roberto Duque (alias "Ernesto Báez") and Mr. John Jairo Velásquez (alias "Popeye", leader of Pablo Escobar's hired killers). Another reason for the detention - confirmed by "Ernesto Báez", one of the longest standing paramilitary veterans of Colombia, as well as by "Popeye" - was the alleged relationship between Mr. Maza and one of the crime's alleged masterminds, Mr. Henry Pérez, then leader of the Magdalena Medio paramilitary group. There are also allegations that Mr. Maza pressured witnesses and fabricated evidence to mislead and obstruct the investigation by making accusations against Mr. Hubiz Hasbun, who spent three years in prison.

4.2. In terms of motive for the murder, the delegation was told that Mr. Maza had conspired with the Cali Cartel to eliminate Pablo Escobar's Medellín Cartel. During the week of the delegation's mission, former President César Gaviria disclosed to the press that, at the time of the murder, U.S. intelligence agents had informed him of a possible link between Mr. Maza and the Cali Cartel.

4.3. Mr. Maza filed a writ of *habeas corpus*. The delegation was told that the 20-year statute of limitations for murder in Colombia could only be waived by a formal indictment. Mr. Maza's case is still in the preventive detention stage. To bring it to trial, the Offices of the Prosecutor General and Attorney General argue that Mr. Galán's assassination was a crime against humanity, since it formed part of a systematic and mass-scale pattern of crimes against members of the political party "*Nuevo Liberalismo*" (New Liberalism), including the murder of former Minister of Justice Rodrigo Lara Bonilla, the attacks against former Minister Enrique Parejo and Representative Alberto Villamizar, and the crimes committed against councillors in Antiochia and Magdalena Medio, the abduction of Maruja Pachón and the terrorist attack on the Avianca plane that Dr. César Gaviria was going to board and which caused more than 100 fatalities. That argument has yet to be accepted by the courts.

4.4. The delegation was also informed that there were strong indications to justify an investigation of General Oscar Peláez Carmona, who had been Director of the Judicial Police at the time. General Peláez allegedly acted in complicity with General Maza in misleading and obstructing the investigation. However, no official action has been taken to date in that regard.

4.5. With respect to the involvement of political figure Alberto Santofimio, the Attorney General regards as credible the testimony provided by "Popeye", who allegedly told Pablo Escobar, during a meeting at the latter's Marionetas Ranch, that it was highly possible that Senator Galán might be elected President and would undoubtedly prosecute and even extradite him - which made his assassination necessary. Mr. Santofimio allegedly belonged to the leadership of the Medellín cartel and managed its political wing. The Attorney General's Office expressed its disposition to entertain the application for judicial review made by the Prosecutor's Office and the claimant. The Supreme Court is expected to rule on the petition to quash Mr. Santofimio's acquittal in the next few months.

4.6. The delegation was informed that the Attorney General had assembled a special team to conduct the investigations into Senator Galán's murder.

5. Jorge Tadeo Lozano

5.1. The delegation was informed by Mr. Tadeo Lozano that he had not received a response to his petition to the Inter-American Commission. Mr. Lozano reminded the delegation that apart from imprisonment, the original sentence had included the forfeiture of civil and political rights for 10 years, starting in February 1998, when he was arrested. Upon expiration of this period, in June 2009, Mr. Lozano requested the Sentence Enforcement Court to officially reinstate his rights, but that request remains unanswered, preventing Mr. Lozano from exercising his political and civil rights, including the right to contract for bank loans.

5.2. With respect to the murder of one of his sons, Iván Lozano, two persons apparently known to him have been detained. Although a confession has been obtained, the witnesses are fearful and the judicial process has been very slow. Mr. Lozano and his family fear for their own security.

6. Wilson Borja

6.1. Mr. Borja told the delegation that those responsible for the attempt on his life in 2000 have still not been identified and held responsible. He said the former head of United Self-Defense Forces of Colombia (AUC), Mr. Salvatore Mancuso, detained in the United States after admitting to masterminding the attack, has turned over a series of documents to Colombian authorities demonstrating that Generals Jorge Enrique Mora and Castellano were aware of the attempt. Despite this, the Office of the Prosecutor decided against continuing the investigation into their possible involvement.

6.2. Mr. Borja stressed that while he had in general been well guarded, obtaining effective security arrangements had been a daily struggle. On some occasions he had had no security detail at all. He said the vehicle assigned to him one year earlier had been changed. He also described problems encountered whenever DAS was responsible for his security arrangements. A bigger problem currently is the Colombian State's use of a private firm for his protection. He has registered his disagreement with these arrangements, arguing that his contract with the State makes his security the government's responsibility. Mr. Borja stressed that private-sector employees lack the necessary legal authority to open fire in the event of attacks, or to request identification from suspicious individuals.

6.3. With respect to the trial against him for alleged connections with FARC, Mr. Borja said first that he should have been investigated by the Supreme Court and not by the Prosecutor General, and second, that the e-mails found in computers owned by FARC member Raúl Reyes referred only to his activities as a politician and union leader, not to any agreements or meetings with FARC. Mr. Borja said he had attended meetings with the ELN - to mediate in the liberation of hostages and as a member of an official committee to establish dialogue - but never with FARC. He underscored the fact that before the computers were turned over to Interpol, they had been in the hands of the police for three days and could have been manipulated. The Supreme Court, which in the meantime had absolved another member of Congress, Ms. Gloria Ramírez, of the same accusations, had still not formally accused Mr. Borja. According to Mr. Borja, attempts were made, but failed, to frame him by inciting FARC members to testify against him. He said the Supreme Court was now asking FARC members to testify that they had associated with him.

6.4. President Uribe told the delegation that the opposition and its leaders were fully protected. The Minister of the Interior explained that DAS was no longer responsible for protecting members of Congress. That responsibility had now been assigned to the police, on their own or in coordination with the Ministry of the Interior. The Ministry currently had a protection programme that had identified 17 vulnerable groups, including political leaders. Over the past year, protection for members of Congress had been improved and was now being provided for 20 members. Protective arrangements, moreover, were always determined in dialogue with the individuals concerned, and members of Congress were free to suggest individuals of confidence for their security details, for which purpose background and qualification checks were to be approved.

6.5. The Minister of the Interior said that protection for the Congress had been weak. Unlike the Ministry, which had new vehicles, the Congress did not have an adequate number of vehicles, and the few they had were often defective or under repair. The Ministry had therefore signed an agreement to provide protection for the Senate and was about to do the same for the House.

6.6. Since the programme protected more than 10,000 persons, it was impossible for the Ministry or the Police, relying solely on their own human resources, to apply the security system for all concerned. They were therefore resorting to private enterprises, competitively and publicly selected. About 40 Ministry employees had been assigned to ensuring that these firms were performing in accordance with their contracts. A protection and human rights training programme was also being conducted for a unit of the Police.

7. The situation of Mr. Álvaro Araújo Castro

7.1. The delegation met with former Senator Álvaro Araújo Castro, at his request, at his home. Mr. Araújo Castro, who has been placed under house arrest in connection with his prosecution on charges of having ties to paramilitary groups, initially wished to inform the delegation about his situation. Since the mission, and in the light of the most recent developments in the case, Mr. Araújo Castro has indicated that he wishes the Committee on the Human Rights of Parliamentarians to undertake a formal examination of his situation.

7.2. Mr. Araújo Castro sat in the Chamber of Representatives for Cesar department from 1994 to 2002. He was elected to the Senate in 2002 with the *Movimiento Alas Equipo Colombia*, which backed the Liberal candidate Horacio Serpa for president. Once in office, he joined the coalition of President Uribe. He was re-elected to the Senate in 2006.

7.3. Mr. Araújo Castro stressed to the delegation that at first he was not even aware that he had been accused of anything. In the face of public rumours, on 15 November 2006, he and his sister, Ms. María Consuelo Araújo, at the time the Minister for Foreign Affairs, met with the Prosecution Service to ascertain whether there was an investigation pending against him. Two days later, on 17 November 2006, the Prosecution Service announced that Mr. Araújo Castro was part of an investigation. Mr. Araújo Castro was arraigned before the Supreme Court on 28 November 2006. On 15 February 2007, the Supreme Court ordered that Mr. Araújo Castro be detained on charges of maintaining ties with paramilitary groups and taking part in an aggravated abduction for the purpose of extortion. Mr. Araújo Castro gave up his seat on 27 March 2007 and his case was transferred to the Delegated Prosecution Service on 18 April 2007. The investigation was completed on 18 July 2007 and on 22 August of the same year Mr. Araújo Castro was formally charged with the crimes of aggravated criminal conspiracy, aggravated abduction for the purpose of extortion and electoral fraud.

- *Accusations of abduction*

7.4. The Supreme Court accused Mr. Araújo Castro and his father, Mr. Álvaro Araújo Noguera, of being behind the abduction of Mr. Víctor Ochoa, the brother of the former mayor of Valledupar, Mr. Elías Ochoa, both of whom were activists in the *Movimiento Revolucionario Liberal* (Liberal Revolutionary Movement - MRL) political group. The Court held that the abduction "was the outcome of a criminal plot in support of Mr. Álvaro Araújo Castro's senatorial ambitions". According to the testimony received, the paramilitary group "Jorge 40" not only obliged Ms. Juana Ramírez, of the MRL, to withdraw from the race for the Chamber of Representatives, it pressured her, by kidnapping her ally, into putting her name on Mr. Araújo Castro's Senate list, with a view to helping him obtain more votes. The Court concluded that Mr. Araújo Castro and his father, Mr. Araújo Noguera, not only benefited from this plot, they were part of a "common agreement" for its implementation. Although originally Mr. Elías Ochoa publicly accused the Araújo's of having arranged the abduction in order to exert pressure and obtain the desired political support, in January 2007, before the Supreme Court, he partially retracted his statement.

7.5. The Attorney General's Office requested that the charges against Mr. Araújo Castro and his father be dropped, for lack of proof. On 3 July 2009, the Prosecution Service decided to cancel the proceedings against both men, after which Mr. Araújo Noguera was released. His son, Mr. Araújo Castro, remained in detention because he was being prosecuted for his presumed ties to paramilitary groups.

- *Accusations of ties to paramilitary groups*

7.6. On 15 February 2007, the Supreme Court issued detention orders for Mr. Araújo Castro and seven other politicians from Cesar department, all charged with criminal conspiracy. The seven other politicians were convicted on the grounds of their own confessions, telephone calls with or between paramilitaries and an analysis of voting results. Mr. Araújo Castro asserts that there is no proof in his case, which he insisted on several occasions be separated from that of the other representatives, a request that was never granted.

7.7. The Prosecution Service finished its proceedings in mid-2007 without charging Mr. Araújo Castro, who, despite very strict deadlines, was only granted the opportunity to defend himself on 16 July 2009. Seventy-two witnesses were heard, and only one, a convicted person of little credibility, accused him. Mr. Araújo Castro filed an appeal before the Constitutional Court, which has yet to rule on the matter.

7.8. Mr. Araújo Castro has submitted various arguments to counter the charges. First, he claims that all the evidence shows that he received no support from "Jorge 40" to win the elections. "Jorge 40" controlled northern Cesar, whereas Mr. Araújo Castro obtained the most votes in the south of the department and fewer in the north. In addition, when "Jorge 40" withdrew in 2006, the number of votes cast for Mr. Araújo Castro increased. Also, Mr. Araújo Castro won 46,000 votes (half) in Bogotá, showing that he had considerable support outside Cesar and did not depend on the region's votes.³

7.9. Mr. Araújo Castro underscored that ever since running for Congress in 2001, he has been a "strong opponent" of the political and military plans of the *Autodefensas Unidas de Colombia* (AUC) and criticized the paramilitary presence in his department. He asserted that at various public events in which he participated before and after the 2002 elections he rejected the armed activities of the paramilitaries and the pressure they brought to bear on the electoral process that year. According to Mr. Araújo Castro, the best evidence of his opposition to the paramilitary groups is a letter to the Office of the President of the Republic confirming his denouncement of the paramilitaries at a Security Council meeting in Valledupar in 2003. He himself was targeted by AUC, when he was a victim of an attack in southern Cesar which two witnesses state had to do with a declaration he made in a community council meeting rejecting the paramilitary groups.

7.10. During the trial, the Attorney General's Office emphasized that there was no documentary evidence connecting Mr. Araújo Castro with "Jorge 40" and asked that he be declared innocent because of various irregularities in the proceedings.

7.11. During a hearing held in early May 2009, the Prosecution Service asked the second specialized judge of Bogotá to convict Mr. Araújo Castro for criminal conspiracy and electoral fraud, given that even though he did not take part in military operations and was not a member of a paramilitary organization, his political affiliations did in fact boost his election chances during the time AUC held sway in Cesar.

7.12. In his meeting with the delegation, Mr. Araújo Castro said that his trial was about to conclude and that the judge would hand down a ruling in the coming months. He was sure that the charges would be dismissed. However, as already indicated, on 1 September 2009 the Supreme Court decided that the cases of congressmen under investigation who had given up their seats should be examined by it alone. Mr. Araújo Castro's file was subsequently transferred to the Supreme Court. On 21 September 2009, the Attorney General's Office asked that this decision be declared null and void.

- *State of health*

7.13. As a consequence of two strokes suffered in 2007, Mr. Araújo Castro had to be urgently taken from La Picota prison, where he was being held, to a clinic in Bogotá. On 22 November 2007, the Prosecution Service changed his detention to house arrest for health reasons.

³ In Colombia, senators are elected, not by department, but for a national constituency.

F. CONCLUSIONS

• **General situation of human rights: the demobilization of paramilitary groups**

1. The delegation notes with satisfaction that the authorities have made great progress in protecting citizens against violence and monopolizing the use of force at the State level. It remains concerned, however, by information indicating a continuation of sociopolitical violence. The delegation considers the paramilitary demobilization process a monumental step forward of great relevance to the cases referred to the Committee. In the delegation's view, that process could help ensure progress toward a solution in those cases and become a key to lasting peace in Colombia, subject to the following conditions:

- *The guarantee of respect for human rights, and in particular the fundamental rights of victims of human rights violations to know the truth and obtain fair redress.* The delegation expresses its concern over the limited number of former paramilitary leaders being actively prosecuted for their alleged crimes, and over the lack of cooperation from many quarters in establishing responsibilities and shedding light on the truth. It is also troubled by the extradition of important paramilitary leaders to the United States, apparently with no clear guarantees for the rights of victims to the truth, justice, and redress. The delegation underscores that the transfer to the United States of paramilitary members Diego Fernando Murillo and Salvatore Mancuso has direct implications, at the very least, for the cases concerning the murder of Senator Cepeda and the attempt on Representative Borja's life. It urges the authorities to do everything possible to ensure that the extradited paramilitary members will cooperate fully in the pursuit of truth and justice. In that regard, it notes with satisfaction that President Uribe plans to appoint a judge as liaison and trusts that the authorities of both countries will cooperate more closely in pursuing the Justice and Peace process. Prior to any extradition of paramilitary members still held in Colombia - including "Ernesto Báez" and others, whose continued presence is crucial to the search for truth and the establishment of responsibilities in the murder of Senator Galán - the delegation considers it extremely important for the authorities to ensure that extradition would not undermine victims' rights to truth, justice, and redress.
- *Determination of responsibility among the authorities for crimes committed by paramilitary groups.* The delegation recalls that numerous reports, including reports from the United Nations and the Inter-American system of human rights, indicate that on many occasions, paramilitary groups have acted in concert with State agents in committing violations, and that for several of the cases referred to the Committee there is proof or indications to that effect. The delegation notes with great concern the increasing revelations of recent years, as indications of the breadth of such complicity. However, it also considers that in making such information public, in large part thanks to the Justice and Peace process, a crucial opportunity has been created to establish what happened, assign responsibilities, and take measures to avoid recurrences.
- *Steps to prevent the re-emergence of paramilitary groups.* The delegation wishes to recall that it is extremely important for the government to do everything possible to ensure that demobilized paramilitary members do not fall back into their former patterns of violence. The information provided by the United Nations and by human rights organizations are very troubling and an indication that this issue could pose a serious challenge in the years ahead. The delegation also wishes to recall the obligation of the Colombian State to ensure that its own security apparatus complies with the various provisions on human rights and international humanitarian law.

• **The political situation: confrontations between the Executive Branch and the Supreme Court, a weak Congress and a stigmatized opposition**

2. The delegation is troubled by the public confrontations between the government and the Supreme Court and the apparent tendency to manipulate justice for political purposes - and to "judicialize" politics, a situation that could seriously undermine governance in the country.

3. The delegation takes note of the special situation now affecting the National Congress and its members. The delegation has observed with great concern that more than one-third of all members of Congress are currently on trial and that several have been convicted for having ties with

paramilitary groups. The delegation notes further that Congress is caught in the middle of a confrontation between the government and the Supreme Court. It is very aware that this confrontation, and the cases involving "parapolitics" and "FARC-politics", have made the political climate extremely tense - a problem only exacerbated by the possibility that new politically compromising revelations may grow out of the Justice and Peace Process - and by the continuous presence of guerrilla forces in armed confrontation with the authorities. In that context, there is a tendency among politicians to exchange accusations of corruption or of ties with illegal armed groups, knowing full well that such accusations, even if groundless, might easily be believed and damage the credibility - or even endanger the safety - of the persons concerned. Precisely because of this tense situation, the delegation considers it important that all political actors distinguish fact from fiction. It is crucial that they not level accusations against their opponents until the judicial system has ruled on the veracity of the allegations concerned. The delegation wishes to express its particular concern over the discourse and actions observed at the highest levels of government, which appear to stigmatize opponents as enemies of the State. The delegation was also disturbed to hear from President Uribe himself - alluding to supposed ties with FARC that have yet to be substantiated in the courts - that the persecution of *Unión Patriótica* members was in essence their own fault.

4. The delegation considers it crucial to strengthen the work of the National Congress and its image among the people of Colombia. With legislative elections so imminent, the delegation considers that Congress and the political parties have a major opportunity to ensure that only persons of the highest quality and probity stand as candidates. It is extremely important that Congress perform oversight functions diligently to ensure that the Executive Branch fulfils its obligation in the area of human rights. Another area requiring strengthening is the legal protection provided to members of Congress.

- **The rights of members of Congress to a fair trial**

5. The delegation shares the great concerns expressed over failures to respect the rights of members of Congress to a fair trial, including the lack of recourse to appeal and the need for total segregation of duties between those who investigate and those who adjudicate. The delegation is extremely concerned by the fact that the only way for members of Congress under investigation to gain recourse to appeal is to relinquish their seats, which many of them have decided to do. The delegation is aware that the issue of how to strengthen the legal protection of members of Congress in Colombia is very delicate, particularly at a time when some 100 parliamentarians are under investigation. Colombian citizens might easily conclude that the growing concern of Executive and Legislative Branch authorities over the right to a fair trial is simply a matter of serving their own interests.

6. The delegation therefore considers it crucial to strengthen legal protection for members of Congress, and to explain to the Colombian people, and the media, that parliamentary immunity is a concept shared by legislative bodies throughout the world, as a basic protection to ensure that parliamentarians exercise their functions without undue interference. It is important to stress that members of Congress currently do not enjoy, as do other Colombian citizens, the basic elements of the right to a fair trial. A solution to this situation must be found, while also ensuring that the remedy found does not allow the country to fall back into the problematic practices observed before 1991. In that regard, the delegation believes it may be useful for the Colombian Congress to familiarize itself with models for legal protection for parliamentarians applied in and outside of Latin America. During the mission, the delegation proposed that the Inter-Parliamentary Union and the Colombian Congress jointly organize a workshop - with the participation of other authorities, including the government, the Supreme Court and the Office of the Attorney General - on the issue of parliamentary immunity and the right to a fair trial for members of Congress in Colombia. That proposal was received very favourably by all of the interlocutors, and the delegation is hopeful that such an event can be organized in November 2009.

- **General concerns with respect to parapolitical processes**

7. The delegation expresses its concern over information suggesting that several of the investigations against members of Congress have been instigated without concrete evidence and on the basis of anonymous allegations. It is also concerned that trials are frequently conducted by auxiliary magistrates who, moreover are frequently changed. The delegation considers that this situation can only be detrimental to quality and continuity in the cases concerned. It stresses that the parliamentarians under investigation by the Supreme Court have the right to be investigated by their

peers, i.e. by Supreme Court Justices. It is also troubling - though understandable, since the Constitution treats trials of parliamentarians as an exceptional situation - that the Supreme Court lacks the personnel necessary to investigate and try members of Congress, a situation that complicates the trials against them. The delegation recalls that the reputation of parliamentarians, as public figures, can be easily compromised, with negative implications for the effective exercise of their functions when accusations are made against them. The delegation therefore urges the authorities to take all possible steps to accelerate the trials and act only when the evidence is sufficiently convincing.

8. Following the mission, the delegation has learned with great consternation that the Supreme Court has decided to take up the cases it had earlier declined in favour of the lower courts. The delegation does not understand this turn in the Court's reasoning and fears that it can only give weight to accusations from certain quarters that its motives in reaching such a decision are not strictly judicial in character. The delegation considers that the decision violates the principles of legality, favourability and judicial security for the members of Congress under investigation. It urges the Supreme Court to reconsider its position. The delegation affirms that in the case of Mr. Alvaro Araújo Castro, the effect is particularly insidious given that the lower court trial was about to conclude. If the case of Mr. Pompilio Aveñano Lopera is also transferred to the Supreme Court, the same concern would apply there as well.

- **The inviolability of the vote**

9. The Inter-Parliamentary Union has always held that the inviolability of votes cast and opinions expressed in Parliament is a cornerstone of representative democracy - a principle firmly protected in parliaments throughout the world in order to protect them from judicial or other interference. In that regard, the investigations being conducted into the corruption allegations made against 86 members of Congress is a subject of serious concern. The delegation has no doubt that these members of Congress are being investigated for a decision taken in the exercise of their mandate. It therefore hopes to see these investigations discontinued.

- **The physical protection of members of Congress**

10. The delegation takes note of the efforts made by the authorities to offer appropriate protection to all members at risk, and trusts that the security arrangements agreed to with Mr. Borja will be fully and effectively implemented. The delegation is aware that the authorities cannot directly protect everyone at risk in Colombia, but is nonetheless troubled over the transfer of security functions to private firms. In the delegation's view, it is incumbent upon the State to ensure that all protection arrangements are fully functional. The delegation fears that the private firms concerned do not have the same legal capacity as the State security sector to act with the necessary determination and effectiveness to protect those at risk.

- **The pursuit of justice in the cases of members of Congress murdered, attacked and threatened**

11. The delegation expresses its grave concern over the increasing number of accusations and indications that DAS agents, including those at the highest level, are involved in several of the cases referred to the Committee, including the murders of Senators Galán and Cepeda. It is troubled that their actions in that regard were conducted in cooperation with paramilitary groups. The delegation is also concerned by the allegation that senior officers in the Armed Forces were aware of the attempt against Mr. Borja in 2000 and that the investigation into this matter has been discontinued. The delegation urges the authorities to do everything in their power to shed light on this case and determine where responsibilities lie. In that regard, the delegation wishes to know how Mr. Mancuso is being tried for his alleged involvement in the attempt.

12. The delegation trusts that the new evidence uncovered in the case of Mr. Galán will permit rapid progress in the pursuit of justice and the identification of all those responsible for his assassination. The delegation notes with satisfaction that the Office of the Attorney General has assembled a special team for this case and is giving special priority to the murder of Mr. Jaramillo Ossa. It is also pleased that the Office of the Prosecutor has assembled a team to reactivate the cases concerning *Unión Patriótica*. The delegation notes with interest the argument that the murders more

than 20 years ago of Jiménez Obando, Posada Pedraza, Vargas Cuéllar and Luis Valencia constituted a crime against humanity, and that these cases can therefore still be tried. The delegation hopes that the courts issue their ruling on this argument rapidly. In the meantime, the delegation trusts that the Office of the Prosecutor can provide it with information on how the investigation into these four murders is being intensified, particularly in the cases of Jiménez Obando and Posada Pedraza, in which suspected culprits have been identified but legal action against them withdrawn.

13. The delegation recalls that in the case of Mr. Cepeda's murder, a report already issued by the Inter-American Commission on Human Rights contains a series of concrete recommendations for the Colombian State in respect of justice, truth and redress. It urges the State to fully implement those recommendations. The delegation notes with interest, in that connection, that since the report was prepared a third person has been implicated in the crime. The delegation trusts that the authorities will act with the determination necessary to follow up on the grave revelations of Mr. Murillo in this case. With respect to the issue of redress, the delegation invites the authorities to be innovative in applying measures, in consultation with the victim's family, to offer redress consonant with the circumstances of Mr. Cepeda's murder.

- **The case of Mr. Jorge Tadeo Lozano**

14. The delegation expresses its concern over the fact that a year-and-a-half after the end of the 10-year period imposed for the forfeiture of his civil and political rights, Mr. Jorge Tadeo Lozano's rights have still not been reinstated. The delegation urges the competent authorities to remedy this situation as soon as possible.

15. The delegation trusts that the authorities will do everything in their power to ensure that the trial concerning the murder of Iván Lozano, Mr. Tadeo Lozano's son, will be conducted diligently and promptly. The delegation also trusts that the authorities will provide the necessary protection to Mr. Lozano and his family.

ANNEX

G. OBSERVATIONS OF THE AUTHORITIES ON THE REPORT

- **Communication addressed to the Secretary General of the Inter-Parliamentary Union by Mr. Augusto J. Ibáñez Guzman, President, Supreme Court of Justice, Office of the President (*Bogotá, 9 December 2009 - Original: Spanish*)**

Sir,

[...]

With reference to your note of 17 October 2009 please be advised, first, that contrary to my wishes, prior commitments prevent me from participating in the workshop organized by the National Congress and Inter-Parliamentary Union.

I refer, second, to the report of the delegation sent to this city from 22 to 24 August 2009 by the Committee on the Human Rights of Parliamentarians, which contains a number of observations and recommendations. I consider it indispensable to point out the following:

1. The well-known difficulties being addressed by the Supreme Court of Justice are indeed closely related to the parapolitical trials brought before it, linking members of Congress with illegal armed groups.

2. It is not true that the procedure being applied in the ongoing trials of members of Congress disregard guarantees of the right to a fair trial; the proceedings are constitutionally and legally sanctioned and intended to ensure that individuals with parliamentary immunity are not subject to lower court jurisdiction but to that of a collegial body like the Court, composed of justices of the highest professional and academic qualifications, responsible for investigating and adjudicating with the greatest possible rigour persons who, from their privileged positions as members of Congress, may have violated the law - all, of course, with unconditional respect for fundamental guarantees and unrestricted observance of the "constitutionality block".

3. All of the Court's investigations, without exception, are grounded in duly evaluated evidence.

The auxiliary justices perform an essential function of investigative support, under the continuous direction and control of the Court's Criminal Chamber. This in no way disqualifies them. Nor can it be insinuated that their activities disregard the accused's fundamental rights, since the specialized chamber has exclusive authority and responsibility to scrutinize the evidence gathered in the case and reach decisions after assessing it.

4. The Supreme Court of Justice has not decided to "take up" cases that it had earlier declined to refer to the Prosecutor General of the Nation, as you hastily conclude in your note. To understand the turn in case law, explicable under any Democratic judicial structure, it is an indispensable precondition to review and weigh firsthand the new arguments being advanced on the matter of parliamentary privileges. Otherwise, there is the risk of taking a dangerous and misguided conceptual path.

The mere circumstance that the lower court trials of Mr. Álvaro Araujo Castro and Mr. Pompilio Avendaño Lopera were about to conclude should not fuel ingenuous and unfounded speculation that the Court has engaged in aberrant violations of the accused's fundamental rights. That malevolent line of argument is based on the fallacy that the Supreme Court of Justice is motivated by concealed interests or prejudices - insinuations that this Court repudiates vigorously and vehemently.

With respect to Mr. Pompilio Avendaño Lopera, the Court has now ruled on the merits and acquitted him of the charges against him.

5. While I am not a member of the Investigative Chamber seized with the charges made against 86 members of Congress, it is well known that the matter under investigation has nothing to do with the inviolability of the votes or opinions of legislators. Kindly inform yourself better on this point.

The Supreme Court of Justice has always emphasized to the Inter-Parliamentary Union the equanimity and carefully considered nature of its opinions, always with a view to strengthening our democratic institutions. As an unrivalled defender of human rights, it will continue in its endeavour to strengthen the communication channels that have served us in this high purpose.

Accept, Sir, the renewed assurances of my respect.

[Signed]
Augusto J. Ibáñez Guzman
President