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**COMMITTEE ON THE HUMAN RIGHTS OF PARLIAMENTARIANS**

**REPORT OF THE DELEGATION**

**MISSION TO COLOMBIA, 9 TO 13 OCTOBER 2010**

► **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. CO/07 - LUIS CARLOS GALÁN SARMIENTO
3. CASE No. CO/121 - PIEDAD CÓRDOBA
4. CASE No. CO/140 - WILSON BORJA
5. CASE No. CO/142 - ALVARO ARAÚJO CASTRO
6. CASE No. CO/145 - LUIS HUMBERTO GÓMEZ GALLO
7. CASE No. CO/146 - IVAN CEPEDA

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## A. BACKGROUND, PURPOSE AND CONDUCT OF THE MISSION

1. The Committee on the Human Rights of Parliamentarians is examining several cases of violations of the human rights of incumbent and former members of the National Congress of Colombia. The focus in these cases is on three main concerns. The first was provided by the murder of six Congress members between 1986 and 1994, all belonging to the *Unión Patriótica* (Patriotic Union party), and of the liberal senator Mr. Luis Carlos Galán in 1989, and by the degree of impunity enjoyed by the culprits. The death threats and attacks on Congress members and the lack of effective protection make up the second concern in the cases of Mr. Hernán Motta, obliged to go into exile in 1996, House Representative Iván Cepeda, the target of an assassination plan, and of former Congress member Mr. Wilson Borja, who in 2000 suffered an attempt on his life. The question of the right to a fair and impartial trial, which extends to Colombian Congress members, is raised as the main theme in three cases, all of them recent. A third cause of concern is that, both in general terms - because of the procedure applied in criminal matters to the (former) Congress members, whereby it is the Supreme Court that investigates and judges in sole instance - and more specifically from an examination of the legal proceedings brought against three former Congress members, Álvaro Araújo Castro, Luis Humberto Gómez Gallo and Wilson Borja. The former two gave up their seats in order that their cases might cease to lie within the exclusive jurisdiction of the Supreme Court and might be transferred to the ordinary courts. Although the Supreme Court initially accepted that procedure, it decided on 1 September 2009 that the Congress members could no longer pursue that course and concluded that the Supreme Court itself was the only authority competent to hear and determine their cases.

2. In accordance with its procedure, the Committee has always considered it essential to maintain fluid and constructive dialogue with the authorities, starting with the National Congress, for the sake of progress in resolving each of the aforesaid causes of concern. A delegation composed of the present Chair of the Committee, Senator Rosario Green (Mexico), and the IPU Secretary General, Mr. Anders B. Johnsson, carried out a mission to Colombia in August 2009 to raise those concerns with the executive, parliamentary and judicial authorities, and to gain a better understanding of the political and legal situation. The report on that mission made a series of recommendations, including with respect to the strengthening of due process in criminal matters concerning Congress members, which resulted in the holding, in November 2009, of a workshop jointly organized by the Inter-Parliamentary Union and the National Congress of Colombia, seeking to promote theoretical and practical reflection on the matter.

3. At its session held from 12 to 15 July 2010, the Committee suggested that the delegation should return to Colombia, taking the view that, with the assumption of office of new executive and parliamentary authorities, Colombia's fresh political context offered an exceptional opportunity to move forward in the examination of its concerns and application of the recommendations contained in the previous mission report. The Colombian parliamentary authorities gave their consent to the proposed return of the mission, which visited the country from 9 to 13 October 2010.

## B. PROGRAMME OF THE MISSION

The mission conferred with the following persons:

### (a) Parliamentary authorities

- Mr. Armando Benedetti, Speaker of the National Congress and the Senate
- Mr. Carlos Alberto Zuluaga, Speaker of the House of Representatives
- Ms. Alexandra Morena Piraquive, Deputy Speaker of the Senate
- Dr. Alexander López, Chair of the Human Rights Committee of the Senate
- Ms. Consuela González de Perdomo, Chair of the Human Rights Committee of the House of Representatives
- Senator Juan Manuel Corzo Román

### (b) Government authorities

- Ms. María Paulina Rivero, Director of the Human Rights Programme of the Ministry of the Interior
- Dr. Hernán Jaime Ulloa, Director of the Presidential Programme of Human Rights and International Humanitarian Law

(c) Judicial authorities

- Dr. Jaime Alberto Arrubla, President of the Supreme Court of Justice (ad interim)
- Dr. Alejandro Ordóñez Maldonado, Attorney-General (Procurador General de la Nación)
- Mr. Mario González Vargas, Attorney for Prevention in the field of Human Rights and Ethnic Affairs
- Mr. Juan Carlos Novoa Buendía, Local Attorney
- Ms. Paula Andrea Ramírez Barbosa, Local Attorney
- Mr. Jairo Salgado Quintero, Local Attorney
- Mr. Juan Guillermo Jaramillo Díaz, Local Attorney
- Mr. Guillermo Mendoza Diago, Public Prosecutor (Fiscal General de la Nación) (ad interim)

(d) Serving or former parliamentarians concerned, and their families or lawyers

- Senator Juan Manuel Galán
- Mr. Iván Cepeda, Representative in the House and spokesperson of the National Movement of Victims of State Crimes, and son of Senator Manuel Cepeda
- Senator Jorge Enrique Robledo
- Ms. Clara López Obregón, President of the Alternative Democratic Pole
- Sra. Alba Luz Pinilla, Representative in the House
- Senator Piedad Córdoba
- Mr. Wilson Borja, former Congress member
- Mr. Álvaro Araújo Castro, former Congress member
- Mr. Luis Humberto Gómez Gallo, former Congress member. On the occasion of the visit to Mr. Gómez Gallo, the other former Congress members held in La Picota prison met briefly, and collectively, with the delegation. Also on the occasion of that visit, the delegation conferred separately with former Congress member Javier Cáceres Leal
- Mr. Carlos García Orjuela, former Congress member

(e) United Nations representatives

- Mr. Antonio Menéndez de Zubillaga, Coordinator of the Anti-Impunity Programme of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Colombia
- Ms. Adriana de la Espriella, of the Legal Area of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Colombia

(f) Representatives of human rights organizations

- Mr. Gustavo Gallón, Director of the Colombian Commission of Jurists (CCJ)
- Mr. Federico Andreu-Guzmán, Assistant Director for Litigation, CCJ

The delegation wishes to express its gratitude to all those who gave of their time to welcome it. Special thanks likewise go to the parliamentary authorities, and in particular Senator Corzo and members of the parliamentary staff, who organized the meetings with the governmental and judicial authorities and lent the necessary logistical support.

## **C. SUMMARY OF INFORMATION RECEIVED BEFORE THE MISSION'S DEPARTURE**

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

The Committee has always insisted that the Colombian authorities should do their utmost to identify and punish the perpetrators and instigators of each of those crimes and has followed very closely the judicial claims lodged by the families of the victims before the inter-American human rights system. In 1997, the Inter-American Commission on Human Rights received a petition concerning the persecution being suffered by the *Unión Patriótica* (Patriotic Union party) and the crimes committed against its members, including - directly and indirectly - the aforesaid

parliamentarians, all members of that party. After the difficult quest for an out-of-court settlement, the applicants decided in 2006, for want of any outcome, to end the proceedings and ask the Inter-American Commission to rule on the substance of their petition, which it yet has to do. With regard to the murder of Senator Cepeda Vargas, his particular case was separated from the collective case and was settled on 26 May 2010. On that date the Inter-American Court concluded, echoing a previous report of the Inter-American Commission, that the Colombian State was responsible for the crime by commission or omission. The Court ordered the State of Colombia to carry out an effective investigation to determine the identity of the instigators of the crime and the degree of cooperation existing between the State agents and the paramilitary forces in the commission of the murder, and to adopt a number of reparation measures. These included the organization of an official ceremony in the Colombian Congress, or in another prominent public place, in the course of which the State of Colombia, in the presence of the members of both Houses of Congress and of the highest-level public authorities, would publicly acknowledge their responsibility and ask for pardon. In a public statement on 26 June 2010, the Ministry of External Relations declared that the State of Colombia would fully comply with the sentence of the Court.

## **II. The case of Senator Luis Carlos Galán (CO/08)**

1. Senator Luis Carlos Galán was a presidential pre-candidate for the Liberal Party when he was murdered on 18 August 1989. The source affirms that Mr. Pablo Escobar, Mr. Gonzalo Rodríguez Gacha and Mr. Alberto Santofimio Botero, a Tolima politician, were the instigators of the crime. The family of Senator Galán, as claimant in the proceedings, and the Prosecutor's Office filed a petition in the Supreme Court to quash the acquittal of Mr. Santofimio, which is still pending. The family also lodged an appeal against the acquittal of former Lieutenant Flores, of Military Intelligence B2, who had been an accomplice of the perpetrators of the murder, all of them paramilitaries since deceased. The appeal is pending in the High Court of Cundinamarca.

2. The Public Prosecutor's Office defends the theory that the murder was part of a broad plan to persecute members of the party of Senator Galán and that it should be considered a crime against humanity. In August 2009 the authorities arrested Mr. Miguel Maza Márquez, a retired general and former Director of the Department of National Security (DAS), for his alleged involvement in the murder of Senator Galán. On 6 April 2010 the Prosecutor, after assuming direct control of the case, ordered the release of General Maza, and on 22 June 2010 he again put the case in the hands of his Office's Human Rights Unit.

## **III. The case of Senator Piedad Córdoba (CO/121)**

1. In the past, Senator Córdoba was the target of death threats, of an attempt on her life and of an abduction by paramilitary groups, all of which matters were the subject of lengthy examination by the Committee. In July 2010, the source asked the Committee to re-examine the situation of Senator Córdoba, stating that her telephone and email were monitored, that she was constantly followed and that she had not been assigned a bodyguard. According to the source, in early 2010 her apartment was entered by persons who must have been in possession of a key or other means of gaining access without forcing their entry. It appears that the Department of National Security (DAS), which was keeping track of prominent opposition politicians, engaging in illegal telephone tapping and conducting smear campaigns, also made Senator Córdoba a target of their activities.

2. A preliminary investigation is pending in the Supreme Court in connection with accusations that Senator Córdoba promoted the activities of the main guerrilla group, the Revolutionary Armed Forces of Colombia (FARC). On 27 September 2010, the Attorney-General's Office sanctioned Senator Córdoba, under a disciplinary procedure, for promoting and collaborating with FARC, stripping her of her membership of Congress and barring her from holding any public office for 18 years. The source affirms that the decision was politically motivated and is based on no firm evidence. At its session held in early October 2010, the Committee decided not to take any decision on the substance of this new and preoccupying event without asking the delegation mandated to revisit Colombia to raise the matter with the Colombian authorities.

#### **IV. The case of former representative Wilson Borja (CO/140)**

1. Mr. Borja suffered an attempt on his life on 15 December 2000, after receiving repeated death threats. Four persons were sentenced to prison terms and charges were filed against another five, who have not yet been detained. Since May 2006, shortcomings have been found on several occasions in the system of protection afforded Mr. Borja.

2. In June 2008, the Supreme Court opened a preliminary investigation into the alleged link of Mr. Borja with FARC, which link, according to the source, is baseless.

3. The Committee has expressed its serious concern at the information revealed regarding DAS, according to which this entity intercepted the communications of Mr. Borja and tracked his movements.

#### **V. The case of former senator Álvaro Araújo Castro (CO/142)**

1. On the occasion of the mission to Colombia conducted in August 2009, the delegation conferred with former senator Álvaro Araújo Castro, who at that time was under house arrest on the charge - completely groundless in his view - that he had cooperated with paramilitary groups for the purpose of securing electoral advantages in his César department. A legal expert, Mr. Alejandro Salinas, whom the Committee entrusted, after the mission, with the task of examining the question of whether the right to a fair trial had been respected in the case, concluded that the legal proceedings against Mr. Araújo were fundamentally flawed. After a reinterpretation of its jurisprudence, the Supreme Court re-established its jurisdiction with respect to the case of Mr. Araújo and, on 18 March 2010, declared him, without giving him the opportunity of being heard, guilty of aggravated criminal conspiracy and coercion of voters and sentenced him to a prison term of 112 months and payment of a fine. The Court requested in the sentence that an investigation be conducted into the possible participation of Mr. Araújo in the leadership of the paramilitary group in his department, which investigation is reportedly at present under way. In April 2010, by order of the Supreme Court, an investigation was launched against the magistrate who had earlier considered inadmissible an abduction case previously brought against Mr. Araújo. In March 2010, the Prosecutor's Office opened an investigation into Mr. Araújo for his alleged responsibility in the murder in 1996, at the hands of paramilitaries, of his employee Mr. Eusebio de Jesús Castro Visbal. On 21 May 2010, Mr. Araújo submitted a pleading in which he defended himself against a charge of illicit enrichment, stemming from the sentence handed down on him by the Supreme Court.

2. After he suffered a heart attack in September 2007, the detention order served on Mr. Araújo was changed into house arrest, which continued in force until he was found guilty on 18 March 2010, when he was immediately returned to La Picota prison in Bogotá. On 27 May 2010, Mr. Araújo, after losing consciousness as the result of another heart attack, was taken to a clinic in Bogotá. A doctor taken on by Mr. Araújo concluded that the need to provide him with special treatment under strict medical control, and with the aid of specialized emergency equipment, was incompatible with his continued imprisonment. In July 2010 Mr. Araújo was transferred to a prison in Valledupar, the capital of César department, which, being at sea level, was better for his health.

#### **VI. The case of former senator Luis Humberto Gómez Gallo (CO/145)**

1. On 10 December 2007, the Criminal Chamber of the Supreme Court of Justice issued an order for the imposition of measures to ensure the pretrial detention of the then Colombian Senator and former Speaker of the Colombian Congress (2004-2005), Mr. Luis Humberto Gómez Gallo. In August 2008, the Prosecutor's Office dismissed the charges for lack of evidence, closed the case and ordered the release of Mr. Gómez Gallo. However, the Attorney-General's Office appealed against the decision to close the investigation. Mr. Gómez Gallo was arrested for the second time on 22 January 2010 and is now held in La Picota prison, in Bogotá. The source affirms that there is no evidence against Mr. Gómez Gallo. It should be noted that one of the prosecution witnesses, Mr. Tapiero, has meanwhile been sentenced - for making false statements against Mr. Gómez Gallo - to a prison term of 4 years, 6 months and 20 days.

2. Mr. Alejandro Salinas, who at the Committee's request attended the hearing of 23 March 2010 before the Supreme Court, stated in his report that it was noteworthy that the Court had refused much of the evidence-taking sought by the defence while, at the same time, ordering a score of inquiries and evidential background items seemingly without any direct connection with the commission of the alleged crime. He also affirmed that the fact that the Supreme Court had acted as both investigator and judge of the relevance of the gathering of evidence requested by the defence could be construed to mean that it had already made up its mind about the case.

## **VII. The case of Representative Iván Cepeda (CO/146)**

Mr. Iván Cepeda, son of Senator Cepeda Vargas, whose murder spurred him to work tirelessly to see justice done and reparation obtained for that and other state crimes, was elected a member of the House of Representatives in the March 2010 elections. In early June 2010 information came to light that a group of hired killers linked to paramilitary groups intended to murder Mr. Iván Cepeda. The source affirmed that the plan was to be seen in the context of the ever more frequent threats levelled at Mr. Cepeda and MOVICE (movement of victims of state crimes), which he heads. Although the Minister of the Interior and Justice has provided him with the necessary security measures, the Committee had no official information about steps taken by the authorities to identify and try those behind the plan to murder Mr. Cepeda.

## **D. INFORMATION GATHERED DURING THE MISSION**

### **I. Changes in the political situation since the previous mission, in August 2009, and their repercussion on the cases before the Committee**

#### **► *The relationship between the Government and the Supreme Court of Justice***

1. During the mission to Bogotá in August 2009, the delegation was repeatedly told that there were strong tensions between the Government of the then President Uribe and the Supreme Court, with an exchange of accusations of mutually plotting to discredit the other. Several persons conferred with observed that the climate was explosive and marked not only by the politicizing of justice but also by the "judicializing" of politics. On the occasion of the return of the delegation to Colombia, the Director of the Presidential Programme of Human Rights and International Humanitarian Law stressed that the climate had changed with the election of President Santos, who made a priority of securing a rapprochement with the Supreme Court magistrates.

2. A matter that has caused persistent discord since the August 2009 mission is the appointment of a new Public Prosecutor. The mandate of Mr. Mario Iguarán ended in July 2009. The then President Uribe submitted, in accordance with the Constitution, a shortlist of three candidates to the Supreme Court for the latter to select a successor. It needs emphasizing that the person picked will have to resolve several extremely sensitive cases, such as the trials of those involved in the "parapolitics" scandal, the "FARC-politics" charges and the cases concerning the Justice and Peace process. When the delegation returned to Bogotá, the Supreme Court still lacked, despite the various rounds of voting, a requisite majority to elect one of the three candidates. There are apparently sharp divergences within the Court about how to break the deadlock. Some magistrates argue that the Court must elect one of the three candidates put forward by former President Uribe, taking the view that the shortlist of three lies exclusively within the competence of the Presidency, while others want to make it the business of the new President Santos to propose the shortlist so that he can come up with other candidates. Since the new Public Prosecutor has not been appointed, the Deputy Prosecutor, Guillermo Mendoza Diago, is standing in as Public Prosecutor.

#### **► *The situation of the opposition in the new National Congress***

On the occasion of the previous mission, several of the opposition people spoken with stated that during President Uribe's term a vindictive atmosphere had built up in which the opposition had been pilloried as an enemy of the State. The present Director of the Presidential Programme of Human Rights and International Humanitarian Law told the delegation that the new

Government was not going to discredit the opposition or the defenders of human rights but would consult them to the full extent necessary. However, the opposition people conferred with emphasized that the posture of the new President amounted to no more than a change of rhetoric. The opposition Congress members pointed in particular to the Government's decision to keep on Mr. Felipe Muñoz as Director of DAS, an organization that has been behind an extensive illegal strategy of tracking and discrediting the opposition at a time when, in their opinion, the authorities should be showing a genuine readiness to break with the past.

## **II. Threats against members of the Alternative Democratic Pole**

In the course of 2010, several local leaders of the Alternative Democratic Party were murdered. National leaders also received death threats, including, in addition to Representative Iván Cepeda whose case is already being examined by the Committee, several incumbent Congress members of that party. Worthy of note is the public communiqué dated 10 April 2010, issued by the illegal group "Los rastros – comandos urbanos", in which the group declared Senators Alexander López, Jorge Enrique Robledo and Guillermo Alfonso Jaramillo to be enemies and hence permanent military targets. In a communiqué of 4 June 2010, the United Self-Defence Forces of Colombia (AUC), Central Bloc, declared Senator Alexander López and Congress member Wilson Arias Castillo to be permanent military targets. Both threats were reported to the competent authorities. Congress member Arias Castillo has highlighted the issue on several occasions, as he did in August 2010, informing the authorities that his request for adequate protection had not been met. On 13 August 2010, the illegal group "Águilas negras" put out a pamphlet threatening Representative Iván Cepeda and others who took part in organizing a debate in Congress, on 18 August 2010, on the problem of land dispossession that was going to be broadcast live countrywide. The acting Public Prosecutor told the delegation that all the threats levelled at members of the Alternative Democratic Pole were investigated with the utmost diligence. He nevertheless emphasized that it was often very difficult to lay hands on those responsible since they were expert in covering up their identity and whereabouts.

## **III. Illegal telephone tapping and other illegal monitoring activities by the Department of National Security (DAS)**

1. Both the Attorney-General's Office and the Prosecutor's Office have instituted legal action in response to the allegations that DAS has designed a strategy to spy on and discredit magistrates, opposition figures, human rights defenders, pacifists, social leaders and journalists. As to disciplinary measures, at the meeting the delegation held at the Attorney-General's Office it was told of the adoption, on 1 October 2010, of the collective ruling (fallo matriz) reached against nine Colombian (former) senior officials. By that decision, the Attorney-General's Office dismissed from their posts and barred from holding public office for 20 years Mr. Jorge Aurelio Noguera Cotes, as Director of DAS, and Mr. José Miguel de Narváez, former Assistant Director of DAS who picked the specific "targets" for tracking. The previous director of DAS, Ms. María del Pilar Hurtado Afanador, Mr. Mario Alejandro Aranguren Rincón, in his capacity as Director of the Financial Analysis Information Unit (UIAF), and Mr. Bernardo Moreno Villegas, as Director of the Administrative Department of the Presidency of the Republic, were dismissed and barred for 18 years from holding public office. The collective ruling refers explicitly to the illegal telephone tapping and tracking of Mr. Borja and Senator Córdoba and to the DAS strategy of falsifying their ties with outlawed organizations. Several disciplinary proceedings have been instituted against senior officials, including the present DAS Director, Mr. Felipe Muñoz, which are still under way.

2. The acting Public Prosecutor told the delegation that the Attorney-General's Office had relied on the evidence gathered by the Prosecutor's Office. The legal proceedings were under way and several accusations were in preparation. With respect to the former DAS directors, they enjoyed special immunity whereby only the Public Prosecutor in person was empowered to institute legal proceedings, which obliged him to become deeply involved in the case. Several hearings were scheduled for October and November 2010.

#### **IV. The physical protection of Congress members**

Decree 1740 concerning the protection of persons at risk has been in force since 19 May 2010. The Director of the Human Rights Programme of the Ministry of the Interior explained that, in accordance with Article 6 of the Decree, senators and representatives in the House were provided with protection under the Protection Programme of the National Police. Article 4 stipulated that the Human Rights Protection Programme of the Ministry of the Interior and Justice concerned itself with protecting other political or trade-union leaders. There was a special protection programme for Unión Patriótica members and their families. As a rule, the Ministry further took care of the security details for Congress members if, before being elected, they were also under the Ministry's protection. In such cases, that protection continued after the expiry of their parliamentary mandates. Decree 1740 confers an important role on the Risk Control and Assessment Committee, made up of various senior officials including the Director of the Presidential Programme of Human Rights and International Humanitarian Law. At the meeting with the delegation, the Director of the Human Rights Programme of the Ministry of the Interior explained that, after holding a consultation with the persons threatened, the Ministry identified the security measures needed. When the persons concerned proposed as guards persons enjoying their trust, their decision was respected. Those persons nevertheless had to meet certain requirements set by DAS. According to the Director of the Presidential Programme of Human Rights and International Humanitarian Law, DAS had been asked to be more flexible in applying the requirements, which on several occasions had prevented the trusted individuals from taking part in the protection plan. The Director of the Human Rights Programme of the Ministry of the Interior stated at the meeting held with the delegation that, on 11 October 2010, she was going to meet with the Alternative Democratic Pole to discuss the question of protection for its members.

#### **V. The situation of the National Congress of Colombia**

Several of the parliamentarians met by the delegation insisted that, although a new Congress had been elected and started functioning, Colombia's parliamentary institution was still weakened. Undeniably, the various scandals of recent years, with the emergence of extensive allegations - some of which have meanwhile been confirmed - of illegal activities of Colombian Congress members, have dented the credibility of the institution. The delegation was told that about 20% of the members of the previous Congress were charged, under trial or sentenced for links with the paramilitaries, and that some 30 were in detention. Several of the people met said that the impression remained that, of the executive branch, the Supreme Court and the National Congress, the latter was the least equipped and the institution that the other two entities did the most to impede the full exercise of its functions. Throughout the mission, concerns were repeated and amplified regarding the lack of adequate legal protection for Colombian Congress members and with respect to exercise of the parliamentary mandate in its criminal and disciplinary aspects.

► *The question of legal protection for Congress members*

- The right of Congress members to a fair trial in criminal cases

1. A recurrent theme during the previous mission was the lack of adequate and fair legal protection for Congress members in criminal matters. Up to 1991, the principle of parliamentary immunity was embodied in the Colombian Constitution. Following several cases in which criminal figures committed abuses to evade legal proceedings, the drafters of the 1991 Constitution modified that precept and gave rise to the concept of constitutional privilege (fuero constitucional), establishing that both the investigation and the trial of some senior officials fell within the exclusive remit of the Supreme Court of Justice. Since then the procedure has been slightly adjusted. Through decision C-545/08, of 28 May 2008, the Constitutional Court recognized that, since the Criminal Chamber of the Supreme Court had the twofold function of investigating and judging, the procedure did not duly respect the principle of the right to a fair trial, for which reason it should be the subject of legislative modification. The Supreme Court consequently decided that, of the nine members of the Criminal Chamber, four would take charge of the investigation and the remaining five would be those passing sentence.

2. In the conversations the delegation had in October 2010 with the executive, parliamentary and judicial authorities, all were agreed that the present procedure should be changed by means of



new legislation. It was stressed that the planned justice reform bill might, generically speaking, include a modification of the procedure applied to Congress members in criminal cases. One possibility mentioned was that of embodying in legislation the present practice whereby some Supreme Court magistrates did the investigating and others the judging, with the Criminal Chamber of the Supreme Court judging at first instance and the Plenary on appeal.

3. In addition to the concern raised by the lack of conformity of the procedure with the right to a fair trial, the delegation again heard in the course of its 2010 mission opinions that the manner in which the procedure was applied in practice was highly questionable. Several people spoken with affirmed that the investigations of Congress members were often launched on the basis of anonymous sources, which was denied by the President of the Supreme Court in the meeting with the delegation. They also emphasized that Congress members were investigated not by the Supreme Court magistrates themselves but by auxiliary magistrates - and often by other persons. During the 2010 mission several people observed that the Prosecutor's Office hunted for statements from former paramilitaries, who had frequently been induced to lie in the knowledge that what they said could earn them reduced sentences. The meetings often took place in the absence of lawyers and of the accused.

- The competence of the Supreme Court of Justice to investigate and judge former Congress members in criminal cases

1. The return of the delegation afforded an opportunity to gain a better understanding both of the circumstances of the Supreme Court's jurisprudential shift of 1 September 2009, with respect to the legal proceedings instituted against former Congress members, and of the Court's reasoning and the consequences.

2. For a start, it has to be noted that in Colombia parliamentary immunity continues after Congress members have left office, provided that the crimes of which they are accused have to do with their duties as parliamentarians. In its interpretation of Article 186 of the Constitution, the Supreme Court initially adopted the position that "upon the expiry of congressional status, it shall not suffice to claim any relationship whatsoever between the alleged conduct and the parliamentary condition; but the link shall of necessity be direct and immediate in terms of being concerned with what the doctrine calls 'offences proper' [delitos propios], meaning those that can be committed only by public servants in connection with the duties assigned to them under the Constitution or by law, or those associated therewith". The Court's understanding then was that the fact of Congress members conspiring with paramilitary groups could not be regarded as constituting conduct that was ongoing because of their duties as Congress members, for which reason if the members, in such cases, resigned their seats they forfeited their immunity and could be investigated by the Prosecutor's Office. That indeed prompted many to give up their privilege in order to prevent the Supreme Court from being competent to investigate and judge their alleged links with paramilitary groups. On 1 September 2009, however, the Court reconsidered its stance on observing that nowhere does the Constitution provide that the offences for which Congress members can be investigated and which are related to their duties must be those known as "*offences proper*". On the contrary, the Constitution refers only to offences "which are related to the functions discharged by members of Congress", without going into greater detail. In the Court's opinion, this implies that the connection between the offence and the public function materializes when the offence "takes place on account or on the occasion of [official] service or in the exercise of functions inherent in the post; that is, that the conduct originates in or is the necessary consequence of congressional activity, or that the exercise of the Congress member's functions proper is constituted in a propitious environment and opportunity for the execution of the punishable act, or represents a deviant or abusive exercise of functions". The Court affirms that: "Such is the case of the Congress members accused of the conduct of aggravated criminal conspiracy on account of their possible links with members of the Self-Defence Forces [AUC] when they already occupied a seat in the Congress of the Republic."

2. As to the explanation of that shift in position, at the meeting of the delegation with the acting President of the Supreme Court, he emphasized that case law was not something static and that the decision of 1 September 2009 had been reached after a change in the membership of the Court and by a narrow majority of five magistrates in favour and four against. The fact that some Congress members had been tried in the ordinary courts, after giving up their seats

considerably in advance of the jurisprudential change, was no advantage for them, from their point of view, since the rest enjoyed maximum legal protection by being tried by the country's highest court. The acting President affirmed that it could be argued that, with the incorporation of the concept of privilege (*fuero*) in the Constitution, the double-instance proceedings had been sacrificed. With regard to the concerns about the evidence provided to show the links between Congress members and paramilitaries, the President said that an assessment had to be made of each case and that it was impossible to say, in general, what the minimum evidence was for confirming such ties. The acting Public Prosecutor told the delegation that the credibility of the evidence given by the demobilized paramilitaries was checked constantly and critically.

## VI. Information gathered on particular cases

The following section contains more specific information that the delegation was able to gather on some of the cases.

### 1. The case of the murders of Congress members of the Unión Patriótica Jiménez Obando, Posada Pedraza, Vargas Cuéllar, Valencia Giraldo, Jaramillo Ossa and Cepeda Vargas, and the death threats against Hernán Motta (CO/01-09)

#### 1.1. Unión Patriótica

1.1.1. The delegation was told that, to speed up and simplify consideration of the collective case of the Unión Patriótica before the inter-American human rights system, the petitioners were thinking of making a communication before the end of 2010, asking the Inter-American Commission to concentrate on some 60 emblematic cases of persecution.

1.1.2. At the delegation's meeting with the Prosecutor's Office, the latter insisted that its team, established in the framework of the Human Rights Unit, would continue doing its utmost to make headway - often going by the testimonies of demobilized paramilitaries - with respect to the investigations into the persecution of members of the Unión Patriótica. In those cases, the Prosecutor's Office, in order to avoid prescription, is advancing the thesis that those violations were crimes against humanity; the courts have yet to accept this thesis, although they have offered encouraging indications that they will do so. The acting Prosecutor affirmed that much progress had been made in elucidating how the crimes against members of the Unión Patriótica had been planned and executed, it being generally established in that respect that there existed a large degree of paramilitary involvement and, to a certain extent, assistance and complicity of the armed forces against a background of hefty political and economic interests. However, and with some exceptions, very little headway had been made regarding the theme of justice; owing to the complexity of the matter, almost all the investigations were at a standstill.

#### 1.2. Manuel Cepeda Vargas

1.2.1. The petitioners before the inter-American system in the case concerning the murder of Senator Cepeda told the delegation that, despite the statement by the Ministry of External Relations, the Colombian authorities had so far given no indication of when and how they were going to apply the reparation measures ordered by the Inter-American Commission on Human Rights in the case. At the delegation's meeting with the Director of the Presidential Programme of Human Rights and International Humanitarian Law, he said that the authorities were going to comply fully with the sentence, although he specified nothing further.

1.2.2. The acting Public Prosecutor said that the work of his team on the subject of the persecution of the Unión Patriótica included the case of Senator Cepeda, the investigation of which was still open. He gave no updated information on the direction of the investigation in the light of the statements of the former paramilitary leader Mr. Diego Fernando Murillo or "don Berna" - held in the Metropolitan Correctional Center, New York - that Mr. Narváez, former DAS Deputy Director, had provided a hit list for AUC to murder left-wingers, including Senator Manuel Cepeda.

1.3. Bernardo Jaramillo Ossa

The delegation was told that, in March 2010, the Prosecutor's Office had asked for the murder of Mr. Jaramillo to be considered a crime against humanity to prevent the case, which was nearing 20 years unpunished, from becoming time-barred. The acting Public Prosecutor told the delegation that the paramilitaries had acknowledged their direct responsibility in the crime. However, it was still not known who the instigators had been. The Attorney-General's Office, which has given priority to reactivating the case, has questioned DAS's handling of the security plan for the protection of Mr. Jaramillo on the day of his death. Since February 2009 the Attorney-General's Office has therefore been asking for the former DAS intelligence chief, Mr. Alberto Romero, to be linked criminally to the case.

2. **Luis Carlos Galán**

At its meeting with the Attorney-General's Office the delegation was informed that, on 14 September 2010, the Office had sought the indictment of retired General Maza Márquez, having concluded that there was enough evidence to prove his criminal responsibility as co-instigator of the assassination. In that respect, the acting Public Prosecutor told the delegation that his Office was about to define the legal situation of Mr. Maza within the criminal proceedings. The delegation was also informed that, in March 2010, the Attorney-General's Office had asked the Prosecutor's Office to link Colonel Óscar Peláez, director of DIJIN when the acts were committed, Mr. Alberto Romero, former DAS intelligence chief, Colonel Manuel Antonio González Enríquez, who served as DAS protection chief, the former paramilitary Iván Roberto Duque Gaviria, alias 'Ernesto Báez', and Captain Luis Felipe Montilla Barbosa, Soacha Police Commander.

3. **Senator Piedad Córdoba**

At the meeting with the team of the Attorney-General's Office, the delegation was told that Senator Córdoba had been sanctioned disciplinarily as the result of a preliminary investigation launched under the previous Public Prosecutor. It emphasized that the Attorney-General's Office was competent, ex officio or on the basis of a complaint, to investigate and sanction all State officials except the President and the magistrates of the high courts, for disciplinary failings such as dereliction of duty or abuse of authority. The case of Senator Córdoba reached the Attorney-General's Office when the Supreme Court, on examining the allegations that she had maintained illegal ties with FARC, provided that Office with a copy of the documentation in order that it might decide whether or not to institute a disciplinary investigation. As a first step, the Attorney-General's Office invited her to be heard freely ("en versión libre"), but she decided to take part in the proceedings through her representative. The team could not go into any detail about the evidence mentioned in the original decision, which was the subject of an appeal for reconsideration. It stated that if the Attorney-General ratified the original decision,<sup>1</sup> it would take effect immediately. Only the Council of State, with responsibility for overseeing the legality of the decision at final instance, could reverse it. The Attorney-General's Office insisted that Senator Córdoba had not been punished for exercising her right to freedom of expression.

4. **Wilson Borja**

4.1. Mr. Borja told the delegation that the man who was the head of AUC in Colombia, Mr. Salvatore Mancuso, detained in the United States after admitting to being the instigator of the attack, handed over a series of documents to the Colombian authorities showing that General Jorge Enrique Mora and General Castellano knew about the attack. However, the Prosecutor's Office decided not to continue with the investigations regarding their possible responsibility. He said that the paramilitary Éver Velosa García, alias "H.H.", presented the authorities with three corpses of military and police personnel, all murdered for having failed in the attempt on his life. Mr. Borja insisted on the need to identify all the instigators of the attack although he thought that the paramilitaries, including Mr. Mancuso, were not going to provide any further clues since their families in Colombia were under threat.

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<sup>1</sup> He did so after the mission, on 27 October 2010.

4.2. Mr. Borja said that the proper functioning of his protection plan was a daily struggle, although he acknowledged that he was a heavily guarded man, just as when he was a Congress member. He expressed his great concern about the forthcoming possible release, on their having opted to benefit under the Justice and Peace Act as demobilized paramilitaries, of three military members sentenced to prison sentences of up to 55 years for their responsibility in the attempt on his life. Mr. Borja was going to raise that concern with the competent Colombian authorities. In his meeting with the delegation, the acting Public Prosecutor said he considered it improbable that the three former military members would be released on being considered beneficiaries under the Justice and Peace Act.

4.3. With respect to the proceedings for alleged ties with FARC, Mr. Borja reaffirmed that the Supreme Court, which had acquitted another Congress member, Ms. Gloria Ramírez, in connection with the same charges, had still not progressed in the investigation against him. He emphasized that the Supreme Court had opened a preliminary investigation in June 2008 whose statutory duration was reportedly limited to one year. On being asked about this at the meeting with him, the acting President of the Supreme Court told the delegation that there was probably a misinterpretation of the time limits or of their starting dates because the Court was obliged to abide by the procedural requirements.

## 5. **Álvaro Araújo Castro**

### - Medical situation

Pursuant to the decision of the Director-General of the National Penitentiary and Prison Institute (INPEC) of 16 July 2010, Mr. Araújo was transferred for health reasons from La Picota prison in Bogotá, which is 2,600 metres above sea level, to the Valledupar judicial prison. On 30 August 2010, the National Institute of Legal Medicine and Forensic Sciences concluded that the medical situation of Mr. Araújo did not justify his being classed as seriously ill. However, the Institute emphasized that, in view of the pathologies affecting Mr. Araújo and the fact that his situation was variable, the Legal Medicine entity would have to make another assessment of his state and update its report in line with the concepts of internal medicine and cardiology. On 15 September 2010, Judge Leonel Romero Ramírez, pursuant to what had been decided by the Second Sentence Enforcement Court in Valledupar, requested the Director of the Valledupar Penitentiary Establishment to have Mr. Araújo transferred for a medical examination. On 20 September Mr. Araújo was taken urgently to the Laura Daniela Clinic in Valledupar with a combination of very serious symptoms of hypertensive crisis, exacerbated by an acute coronary syndrome of unstable angina, requiring his hospitalization until 1 October 2010. Dr. Luis Guerra Orozgo and Dr. Jesús Pavajeau Ospino, both interns at the clinic, in their communication of 7 October 2010 to Mr. Carlos Arce, the manager of the clinic, concluded that Mr. Araújo presented a pathology classed as one of high cardiovascular risk and serious illness. The cardiologist Dr. Luis Alberto Pumajero, after analysing the medical situation of Mr. Araújo, concluded in his letter of the same date to Mr. Carlos Arce that the patient's coronary illness was classed as a serious illness and was one of the cardiac pathologies involving the greatest risk of lethal arrhythmia, so that his state should be diagnosed as one putting him at risk of sudden death. Dr. Pumajero considered it essential to bring about a change in the patient's lifestyle as urgently as possible in order to reduce the risk factors.

### - Investigations pending against Mr. Araújo and prospects of his being released in January 2011

1. Mr. Araújo says that he could leave prison in January 2011 having served, if the time of the studies he is undergoing in prison is included, three fifths of his long-term prison sentence. Mr. Araújo will apply for release although he fears that his detention may meanwhile be ordered in connection an investigation under way, in which he is accused of crimes against humanity.

2. At the meeting with the acting Public Prosecutor, he told the delegation that, with respect to the alleged involvement of Mr. Araújo in the murder of an employee of his, the investigation was not going to yield any result and would be dropped. The Prosecutor's Office had nevertheless reopened the investigation regarding the charge of aggravated abduction against Mr. Araújo and confirmed that the Prosecutor who had previously dropped the preliminary investigation was herself being investigated for that decision.

## E. CONCLUSIONS AND RECOMMENDATIONS

### - The relevance of the Justice and Peace process to the cases before the Committee

The delegation highlights the high degree of relevance of the Justice and Peace process, in the legal framework of the 2005 Justice and Peace Act, to the course of the Colombian cases that the Committee is examining. It recognizes that, as a result of this process, thousands of paramilitaries have handed over their weapons and, to a certain extent, it has been possible to gain a general view of their crimes and offer the victims a tribune. The experiences of other countries relating to disarmament and the demobilization of illegal armed groups and, more generally, to the establishment of transitional justice mechanisms show that such efforts are complex and only succeed in the end if they are carried through with great resolve and with due respect for some basic principles. The delegation consequently wishes to emphasize how crucially important it is that the authorities meet the following challenges:

#### (I) *Preventing the re-emergence of paramilitary groups.*

One of the purposes of demobilization has been to end the brutal violence to which the Colombian population has been subjected at the hands of the paramilitaries. The delegation is therefore greatly concerned about the resurgence of illegal armed groups such as AUC, the Águilas Negras and the Rastrojos, and the fact that they operate in a manner similar to that of the old paramilitary groups. The delegation is alarmed at the murders and death threats to which these groups have resorted in 2010 targeting members of the Alternative Democratic Pole, not only violating and threatening thus the lives of those persons but also endangering the space for the exercise of politics and freedom of expression in Colombia. The delegation recalls that the case of the Unión Patriótica shows very well how political persecution can take shape and spread, and with what consequences, if it is not brought to an effective end. The delegation therefore encourages the authorities to do their utmost, in accordance with their obligation, to apprehend and punish those responsible for the crimes against the Alternative Democratic Pole and, in general, to prevent the demobilized paramilitaries from committing further acts of violence.

#### (II) *Establishing responsibilities by means of an effective, transparent and just process.*

1. The delegation recalls that the Committee is examining cases in which Congress members are regarded as both victims and accomplices of paramilitary activity. The delegation considers that in both situations the authorities should act with the same resolve, diligence and equity for the sake of truth and justice. From its point of view, this requires them also to be attentive to any shortcoming observed in the implementation of the Justice and Peace process.

2. In this respect the delegation considers it important to highlight the sensitive matter of the testimonies of demobilized paramilitaries. In its opinion, such testimonies, however useful they may be, must be treated with great caution. The credibility of those persons, who have committed atrocious abuses, cannot be taken for granted. What seems clear is that the demobilized paramilitaries have their own interest in acting in a certain manner in order to be granted the lenient sentences provided for in the Justice and Peace Act. This necessarily implies that many feel it better to speak than remain silent, even when they know little or nothing of information that might serve the cause of justice. The delegation observes that, on several occasions, demobilized paramilitaries have changed or retracted their statements, very often as a result of contradictions coming to light subsequently. Generally speaking, the delegation is very alarmed at the allegation that the Prosecutor's Office, in its eagerness to achieve results, on some occasions might be improperly offering demobilized paramilitaries incentives to make incriminating statements. The delegation considers it essential that the Attorney-General's Office should be present during the interviews between the Prosecutor's Office and the demobilized paramilitaries and that, whenever the latter incriminate someone, that person's lawyer should be immediately notified and invited to appear at the meeting.

3. The delegation takes note with concern of the allegations that several demobilized paramilitaries used extortion from prison on public figures by threatening to link them to paramilitary activity should they fail to cooperate. Another worrying aspect is that there is no deadline for demobilized paramilitaries to say everything they know about the crimes they

committed. Hence, in several "parapolitics" trials, it has happened that new testimonies have been incorporated even though the evidence-gathering stage was over.

4. All the foregoing impels the delegation to urge the authorities to conduct a critical re-examination of the application of the Justice and Peace process with respect to the testimonies of demobilized paramilitaries.

#### IIa Congress members victims of paramilitary activity and its ties with the Colombian State

1. Throughout the 25 years that the Committee has been examining cases of violations of the human rights of parliamentarians in Colombia, a great many reports have surfaced, in particular of the United Nations and the inter-American human rights system, pointing to the existence of complicity and even cooperation between the paramilitaries and State agents. The delegation takes note with great concern of the revelations that have come to light as a result of the Justice and Peace process, which appear to demonstrate the extent of the phenomenon.

2. The delegation considers that those revelations offer an excellent opportunity, nevertheless bearing in mind the observations made in the previous section, to throw light on the crimes and punish all the culprits. The delegation notes that in several of the cases of murders of, attacks on or threats against Congress members, evidence or strong indications exist that the crimes were perpetrated by paramilitaries with the complicity of or in cooperation with the authorities. As to the crimes committed against the Congress members of the Unión Patriótica, the delegation encourages the Prosecutor's Office to continue doing its utmost to identify all the culprits and to determine the extent of collusion between paramilitaries and representatives of the State. In the case of the murder of Mr. Manuel Cepeda, the delegation recalls that the Inter-American Court of Human Rights, in its sentence of 26 May 2010, ordered the Colombian State to conduct an exhaustive investigation of all the persons with links to State institutions and members of paramilitary groups who might have been involved in the crime.

3. With respect to the threats against members of the Alternative Democratic Pole, the delegation takes note of the considerable effort being made by the authorities to offer them appropriate protection. The delegation nevertheless expresses its concern at the alleged lack of a protection plan for Representative Wilson Arias Castillo and trusts that, after the meeting announced with the Alternative Democratic Pole for 12 October, it has been possible to remedy that situation and to meet the concerns repeatedly raised by Mr. Borja about his security.

#### IIb Congress members accused of complicity with paramilitary activity

The concern about the degree of credibility of the testimonies of demobilized paramilitaries fits into the broader, more worrying context of the parapolitics trials. There are strong indications that several of the trials have been held without tangible and direct evidence. The delegation wishes to place on record the major concern it is caused by the fact that Mr. Araújo was sentenced chiefly on the basis of indirect statements of paramilitaries and other persons, of an analysis of his election results and of some general studies on the presence at a given time of paramilitaries in César department. Unlike other parapolitics cases in which there are cooperation pacts or audio recordings of conversations with paramilitaries, his case included no definite evidence.

#### (III) Awarding the victims adequate compensation

1. The delegation takes note with satisfaction of the efforts of the Colombian Government at the parliamentary level to improve the situation of the victims of violence in Colombia. The delegation trusts that the final bill will cover all the victims, including those who suffered abuses at the hands of representatives of the State, and that an adequate budget will be earmarked for compensatory measures.

2. In the case of the murder of Senator Manuel Cepeda, the delegation recalls that the Inter-American Court found it fitting, as a measure of satisfaction and guarantee of non-repetition, that the State should hold a public event of recognition of international responsibility in Colombia, an event that should be staged in the National Congress or in a prominent public place, in the presence of members

of both Houses and of the highest State authorities. The State has a time limit of one year, from the date of notification of the sentence, in which to organize the event. The Court likewise considered it fitting that the State should issue a publication and make an audiovisual documentary on the political and journalistic life and the political role of Senator Cepeda. The delegation observes with satisfaction that both the Ministry of External Relations and the Director of the Presidential Programme of Human Rights and International Humanitarian Law made it clear that the authorities were going to comply fully with the sentence. The delegation is nevertheless worried that so far there has been no indication of how and when those and other compensatory measures ordered by the Court are going to materialize. The delegation urges the authorities to adopt as soon as possible, in a manner befitting their public commitment and international obligation to comply with the sentence, the necessary measures in this case.

(IV) *Rectifying the discrepancy between the sentences of the demobilized paramilitaries and those handed down on their political associates*

The delegation is concerned about the discordant effects of the Justice and Peace process for those who have committed serious violations of human rights and for the politicians having allegedly taken advantage of the paramilitary presence to secure their election. It is ever worried by the fact that the paramilitaries demobilized under the Justice and Peace Act receive a maximum prison sentence of eight years while the politicians sentenced in the parapolitics trials have been given harsher sentences. That situation creates the impression that the conduct of the accomplice is more reprehensible than that of the person directly responsible. Another factor adding to the inconsistency is that, by contrast with the speed of the parapolitics trials, several of which have already ended, those instituted against the former paramilitary leaders are hardly moving forward or are at a standstill. The delegation considers that, to ensure both the equity and the credibility of the Justice and Peace process, both inconsistencies absolutely must be remedied. It therefore urges the authorities to do their utmost to advance towards a satisfactory solution.

(V) *Ensuring the reliable application of the Justice and Peace Act*

The Justice and Peace Act grants the demobilized paramilitaries certain benefits in exchange for their full cooperation. The delegation stresses that, particularly in the light of the reduced sentences provided for, it is essential that the benefit of the Act go only to those meeting the requirements. In this respect, the delegation hopes to obtain confirmation that, as the acting Public Prosecutor gave it to be understood, the military personnel sentenced for their responsibility in the attempt on the life of Mr. Borja in 2000 will be unable to have recourse to and benefit under the Act.

• **The question of DAS**

1. The delegation signals its alarm at the ongoing confirmation of the allegations coming to light in 2009 that DAS mounted a strategy to spy on and discredit Colombian entities and persons of note. The delegation considers those revelations particularly disturbing since they come on top of an already dubious DAS record that includes the alleged - direct or indirect - involvement of senior DAS officials in murders such as those of Mr. Luis Carlos Galán, Mr. Jaramillo Ossa and Mr. Manuel Cepeda Vargas.

2. The delegation emphasizes that the authorities must effectively make all the involved individuals belonging to DAS responsible for their wrongdoing. It therefore takes note with satisfaction of the measures adopted by the Attorney-General's Office and of those being prepared by the Prosecutor's Office to punish those who, within DAS, have conducted illegal telephone tapping and tracking of Colombian public figures. The delegation considers it important to continue those efforts until all the instigators have been identified and all the victims have been recognized as such. It emphasizes in this respect that the collective ruling of the Attorney-General's Office makes no reference to the illegal activities of DAS regarding Senators Juan Fernando Cristo, Cecilia Matilde López and Juan Manuel Galán.

3. As to the murders of Mr. Galán and Mr. Jaramillo Ossa, the delegation hopes that the

Prosecutor's Office will rule rapidly on the requests submitted by the Attorney-General that, under the criminal investigation, several DAS officials be charged. The delegation would also like to know whether the alleged role of Mr. Narváez in connection with the murder of Mr. Cepeda has been examined.

4. In addition to the matter of making people individually answerable, the delegation considers it essential give careful consideration to how to reorganize DAS in order to avoid any repeat of past errors. The delegation notes with interest the events that occurred since the mission, which indicate the Government's intention to dismantle DAS and establish a new organization which would take over part of its job. The delegation notes that intention with satisfaction, albeit insisting that the scheme can only succeed if a thorough examination is first made of the shortcomings of DAS and the corresponding lessons learnt.

- **The situation of the National Congress and concerns about the legal protection of its members**

1. The delegation observes with concern the level of disrepute, acknowledged by the parliamentarians with whom it conferred, of the parliamentary institution in Colombia. The political scandals of recent years have undeniably contributed to a loss of confidence on the part of the Colombian population. The delegation therefore considers it necessary to restore the image of the National Congress and of the parliamentary mandate, and it urges the authorities to continue exploring, through political reform, the adoption of any effective measures to promote the probity of candidates standing in parliamentary elections and, once elected, of Congress members. At the same time, the delegation emphasizes that it is essential to afford Colombian Congress members greater legal protection, both because this is one of Colombia's international human rights obligations and on account of the need to strengthen the institution of Congress as a whole. In this respect, the delegation wishes to express its concern at the extent and complexity of the legal regime applied to Colombian Congress members and at its effects on the exercise of the parliamentary mandate and, in general, on freedom of expression and political activity.

2. The delegation stresses that parliamentarians, being public figures, easily fall into disrepute when charged, which impairs the performance of their duties. The situation of Mr. Borja illustrates this perfectly. More than two years after the opening of the preliminary investigation against him on a charge of FARC links, Mr. Borja still has no news of the matter. The delegation finds it indisputable that the existence of an inquiry harmed Mr. Borja's recent re-election campaign. The delegation greatly regrets this situation and urges the Supreme Court to do its utmost to spur or otherwise drop the investigation.

3. The delegation is aware that the strengthening of legal protection for Congress members in Colombia is still a very sensitive issue and that it has to be well explained to the Colombian people and to the media. Solutions have to be found, drawing on legal protection models for parliamentarians which are applied both inside and outside Latin America, and which provide adequate protection and, at the same time, rule out any abuse. The delegation emphasizes that all political parties - majority and opposition alike - must recognize that the need for such protection transcends party interests and affects the institution of parliament as a whole and that, consequently, any legislative initiative in this regard requires the active involvement of all. During the mission, the delegation and the parliamentary authorities agreed that the Inter-Parliamentary Union and the Colombian Congress should continue cooperating on the issue.

- **Criminal proceedings**

1. The delegation is still dismayed at the decision of the Supreme Court, of 1 September 2009, to claim back the cases of the former Congress members from which it had previously desisted in favour of the ordinary courts. As the delegation sees it, that reclaiming of jurisdiction has meant that the proceedings instituted against former Congress members, some of which were in their final stage, have been unjustifiably prolonged and, in several cases, have become excessively long. The delegation stresses the fact that all the former Congress members with whom it met briefly in La Picota prison highlighted that concern. The delegation is aware that jurisprudence can vary but it considers that the aforesaid major shift in case law harms in practice the principles of legality, benefit of criminal law, and legal security of the persons under trial.



2. Even if it is recognized that it is a privilege to be tried by the Supreme Court in criminal proceedings, the view of the delegation is that the decision of the Court to re-establish its jurisdiction in the cases concerning the former Congress members denies them the option, which on the other hand was open to those whose trials ended before the Court's decision, of being tried under a system offering them a genuine separation between those investigating and those judging, in addition to the double-hearing principle. The delegation is therefore still extremely worried by the fact that all the incumbent Congress members and the former members still under trial are subjected to proceedings which do not duly respect the right to a fair trial. The delegation emphasizes that both the American Convention on Human Rights, to which the Colombian State is party, and the associated case law offer extensive protection regarding the right to a fair trial. Particularly noteworthy is the Figueredo Planchart *versus* Venezuela case, in which the Inter-American Commission concluded, in its report No. 50/00 adopted on 13 April 2002, that the Venezuelan State had breached the Convention by judging the former member of parliament Mr. Figueredo Planchart under single-instance proceedings conducted by the Supreme Court, an entity which, according to the country's constitutional order, heads Venezuela's judiciary and issues unappealable decisions.

3. The delegation acknowledges that a measure of progress has been made with the internal decision of the Supreme Court that those investigating and those sentencing in any particular case will not be the same magistrates. The delegation nevertheless considers that this measure will clearly not dispel all the doubts that may arise about the impartiality of the Supreme Court's decisions. The delegation finds it very hard to understand that the Supreme Court should hand down the indictment of a person and then rule on the substance of the case. It likewise seems strange that the Court, on sentencing a Congress member for an offence, should decide in its sentence to investigate that person for alleged responsibility in another crime. It is difficult to suppose that, when initiating such an investigation, the Court has not already formed an opinion on the culpability of the person in question. Although different magistrates will be handling the different stages of the legal proceedings, the delegation observes that within one and the same Court there always exists a degree of collegiality that may, not necessarily on purpose, prevent colleagues from contradicting one another. While this delegation is not seeking to demonstrate that such has been the case in specific instances, it does wish to emphasize that justice must not only be done but also be seen to have been done. The delegation therefore urges the authorities to ensure that the planned reform of justice includes a genuine separation between those who investigate and those who judge. The delegation also encourages them to include in the reform a double-hearing system for Congress members that offers guarantees - both in fact and in perception - that their cases will be re-examined impartially.

4. As indicated previously, the delegation suggests that the Inter-Parliamentary Union should continue helping the National Congress to progress in examining new legislative norms relating to the criminal proceedings applicable to incumbent and former Congress members. The delegation meanwhile recommends that the Committee continue monitoring the legal proceedings against Mr. Araújo and that it send an observer to the next hearings of Mr. Gómez Gallo.

- In disciplinary matters

1. The delegation observes that Colombian legislation stipulates that Congress members may lose their seats on disciplinary grounds. The delegation nevertheless wishes to emphasize that this situation is exceptional in other countries. In the cases dealt with by the Committee in which parliamentarians have been subjected to disciplinary sanctions, these have without any exception been applied by the parliaments concerned and with a limited effect in time. The delegation understands that, in the Colombian context, deprivation of the parliamentary mandate on account of a disciplinary sanction has been applied to other Congress members, but only after a definitive criminal conviction by the Supreme Court. Although a disciplinary sanction and a criminal conviction are different legal concepts in Colombia on account of its own procedure and legal basis and are applied independently, the delegation emphasizes that in the case of Senator Córdoba, both sanctions correspond to the same events that the Supreme Court must still assess. The delegation therefore deeply regrets the provisional decision, ratified by the Attorney-General after the delegation's mission, to bar Senator Córdoba from holding public office for 18 years,

which in its view constitutes a punishment that is not only disproportionate but also unjustifiable given the facts and arguments relied on for the substantive decision, which fail to dispel the suspicion that it may be a matter of recourse to legal proceedings for what should rather be seen as a political activity.

2. The delegation further deplores the fact that the Attorney-General did not prefer to wait for the Supreme Court to rule on those events. It is concerned that, from its point of view, Senator Córdoba is not accorded the double-hearing principle to obtain a full re-examination of the decision against her. The delegation emphasizes in this respect that it was the Attorney-General's Office that took the first decision, which, on being ratified by the Attorney-General himself, then still within the same institution, can be appealed against in the Council of State, which does not examine the substance of the matter but merely checks whether the decision is in accordance with the law.

3. The delegation recommends that the proceedings of the Council of State be monitored in the case and the possibility explored of sending an Inter-Parliamentary Union observer. The delegation considers that the case raises serious doubts about the appropriateness of having the Attorney-General's Office competent to revoke a parliamentary mandate and suggests that the issue should also be included in the debate on a reform of justice.

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