INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF MEMBERS AND MILITANTS OF THE PATRIOTIC UNION VS. COLOMBIA

JUDGMENT OF JULY 27, 2022

(Preliminary Objections, Merits, Reparations and Costs)

In the *Case of Members and Militants of the Unión Patriótica v. Colombia,*

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal"), composed of the following Judges*:

Elizabeth Odio Benito, President;
L. Patricio Pazmiño Freire, Vice-President;
Eduardo Ferrer Mac-Gregor Poisot, Judge;
Eugenio Raúl Zaffaroni, Judge; and
Ricardo C. Pérez Manrique, Judge; also

present,

Pablo Saavedra Alessandri, Secretary, and
Romina I. Sijniensky, Assistant Secretary,

in accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31, 32, 36, 62, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules"), renders the present Judgment, which is structured in the following order:

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*This Judgment is delivered during the 65th Special Session of the Court. In accordance with Articles 54(3) of the American Convention on Human Rights, 5(3) of the Statute of the Court and 17(1) of its Rules of Procedure, the "judges shall remain in office until the end of their term of office. However, they shall continue to hear cases in which they have already been seized and which are in the sentencing stage". In view of the foregoing and by order of the Plenary, the composition of the Court, including its board of directors, that participated in the deliberation and signing of this Judgment is the one that took cognizance of the case. Judge Humberto Antonio Sierra Porto, a Colombian national, did not participate in the deliberation or sign this Judgment, in accordance with the provisions of Articles 19(1) and 19(2) of the Rules of Procedure of the Court. Judge Eduardo Vio Grossi, for reasons of force majeure, accepted by the Plenary, did not participate in the deliberation of this Judgment, which took place from July 25 to 27, 2022, nor did he sign this Judgment.

CASE OF MEMBERS AND MILITANTS OF THE PATRIOTIC UNION VS. COLOMBIA

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I
INTRODUCTION OF THE CAUSE OF ACTION AND SUBJECT MATTER OF THE DISPUTE

1. On June 29, 2018, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission")[1], submitted the case of "Integrantes y Militantes de la Unión Patriótica" v. the Republic of Colombia (hereinafter "the State" or "Colombia") to the jurisdiction of the Court. On June 13, 2018, the State had submitted the case to the jurisdiction of the Court[2] under Articles 51 and 61 of the American Convention. The dispute concerns the alleged serious human rights violations committed to the detriment of more than six thousand alleged victims who were members and militants of the Unión Patriótica political party (hereinafter also "UP") in Colombia from 1984 and for more than twenty years[3]. The Commission qualified these events as an extermination and considered that the State is internationally responsible for the failure to comply with its duties to respect and guarantee the deprivation of the right to life, forced disappearances, threats, harassment, forced displacement and attempted homicide of the members and activists of the Unión Patriótica political party. It also determined that the State violated the rights to personal liberty, to judicial guarantees, to honor and dignity and to judicial protection due to the alleged criminalization and torture of members and sympathizers of the Unión Patriótica. It also concluded that the State violated political rights, freedom of thought and expression, freedom of association and the principle of equality and non-discrimination, since the motive for the alleged human rights violations was the alleged victims' membership in a political party and the expression of their ideas through it. It also found that the State violated the right to honor and dignity of the members and militants of the Unión Patriótica, since they had been stigmatized by both State agents and non-State actors. Likewise, it determined that the State violated the rights to judicial guarantees and judicial protection, and the duty to investigate the alleged serious human rights violations that had occurred. Finally, the Commission argued that the State violated the right to integrity of the next of kin of the alleged victims in the case.

2. *Proceedings before the Commission.* - The procedure before the Commission was as follows:

   a) *Petition.* - On December 16, 1993, the Commission received the initial petition[4]. Subsequently, the organization Rights with Dignity also became a petitioning party, as well as the family of Miguel Angel Diaz.

   b) *Acknowledgement of State responsibility:* in September 2017, the State acknowledged its responsibility for the failure to comply with the duty to protect UP members and militants, although it indicated that specific facts and the determination of victims remained in dispute.

   c) *Admissibility and Merits Reports.* - On March 12, 1997 and December 6, 2017, the Commission approved, respectively, the Admissibility Report No. 5/97 (hereinafter "Admissibility Report") and the Report of

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[1] He appointed as his delegates the then Commissioner Francisco Eguiguren, the then Executive Secretary Paulo Abrão, the then legal advisor Silvia Serrano and Christian González Chacón as advisor.

[2] The State presented the case based on four reasons: a) the Inter-American Commission's assessment of the reparation measures adopted by the State; b) the concept of reparation; c) the concept of justice, both in transitional contexts proposed by the Inter-American Commission, and d) the universe of victims incorporated into the merits report and their identification.

[3] List of alleged victims annexed to the Commission's Merits Report.

[4] This was presented by the Corporation for the Defense and Promotion of Human Rights - REINICIAR and

the Colombian Commission of Jurists.

Merits No. 170/17 (hereinafter "Merits Report"). In the Merits Report it reached certain conclusions and made recommendations to the State.

d) *Notification to the State.* - The Commission notified the State of Report No. 170/17 by means of a communication dated May 8, 2018, granting it a period of two months to report on compliance with the recommendations.

e) *Reports on the Commission's recommendations.* - On May 15, 2018, the State submitted its response to the Merits Report indicating that the Commission "did not recognize the efforts it has advanced in terms of reparations and the relevance of its internal transitional justice mechanisms", as well as expressed its "opposition to providing reparations to the [alleged] victims" in the terms provided by the recommendations of Report 170/17, as well as informed its decision to submit the case to the Inter-American Court.

3. *Submission of the case to the Court by the State*. - On June 13, 2018, the State submitted the case to the Court. It requested this Court to send the Commission the necessary documents and information to process the case.

4. *Submission of the case to the Court by the Commission.* - On June 29, 2018, the Commission submitted the case to the Court with respect to the facts and human rights violations described in the Merits Report. The Commission requested this Court to conclude and declare the international responsibility of the State for the violations contained in its Merits Report and to order the State, as measures of reparation, those included in said Report. This Court notes with concern that 24 years and six months have passed between the presentation of the initial petition before the Commission and the submission of the case before the Court.

II PROCEEDINGS BEFORE THE COURT

5. *Notification to the common intervening representatives and to the State.* - The submission of the case by the State was notified to the common interveners of the alleged victims (hereinafter "the representatives" or "common interveners") and to the Inter-American Commission, by means of communications of June 29, 2019. The submission of the case by the Inter-American Commission was notified to the common intervenors and to the State by means of communications of July 5, [20195].

6. *Briefs of Requests, Arguments and Evidence.* - On April 12, 2019, the three joint intervenors submitted their briefs of requests, arguments and evidence (hereinafter "brief of requests and arguments"), pursuant to Articles 25 and 40 of the Rules of Procedure. They concurred with the Commission's allegations, submitted legal arguments related to other violations of the American Convention, and also requested additional measures of reparation. Likewise, the joint intervenors of the Díaz Mansilla family and the joint intervenors of the organizations Rights with Dignity and the Centro Jurídico de Derechos Humanos (hereinafter "DCD" and "CJDH", respectively), requested to avail themselves of the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "the Court's Assistance Fund" or the "Fund").

7. *Preliminary Objections and Response.* - On November 11, 2019, Colombia filed its statement of preliminary objections, reply to the submission of the

[5] The common interveners are: a) the Corporación Reiniciar; b) the CJDH and DCD, and c) the representatives of the Díaz Mansilla Family.

case and observations on the pleadings and motions (hereinafter "Statement of Defense"), in accordance with the terms of Article 41 of the Rules of Procedure of the Tribunal[6]. The State partially acknowledged its responsibility, raised five preliminary objections and five preliminary issues, and rejected some of the alleged violations and the appropriateness of the measures of reparation requested.

8. *Observations to the acknowledgment of responsibility and preliminary objections.* - On January 14, 15 and 18, 2020, the joint intervenors and the Inter-American Commission submitted their observations to the preliminary objections.

9. *Public hearing.* - On December 18, 2020, the President of the Court issued a Resolution[7] in which she summoned the parties and the Commission to a public hearing on preliminary objections and possible merits, reparations and costs, and to hear the parties' and the Commission's final oral arguments and observations, respectively[9]. The public hearing was held on February 8, 9, 10, 11 and 12, 2021, during the 139th Regular Session of the Court, held virtually[8].

10. *Amici Curiae.* - The Court received eight *amicus curiae* briefs submitted by: (a) Andrei Gómez-Suárez[9]; (b) the Unión Patriótica Bases in Rebellion Political Collective, American Corporation of Victims of Political Genocide (CAVIGEPO), Unión de Jóvenes Patriotas Political Collective, and the Colombian Society Victims of Genocide for Political Motives[10]; c) the José Alvear Restrepo Lawyers Collective (CAJAR), the Colombian Commission of Jurists (CCJ), the Legal Liberty Corporation (CJL), the Coordination Colombia Europe United States (CCEEU), and the Committee for Solidarity with Political Prisoners (CSSPP)[11];
d) the Collective of Colombian Migrants and Exiles (MECoPA) and the Network of Colombian Victims in Latin America and the Caribbean (REVICPAZ - LAC)[12]; e) the Center for Justice and Peace (Centro por la Justicia y el

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[6] The State appointed Mr. Camilo Alberto Gómez Alzate, Director of the Agencia Nacional de Defensa Jurídica del Estado, and Mrs. Juana Inés Acosta López as Agents in this case.

[7] *Case of Members and Militants of the Unión Patriótica v. Colombia. Call for a hearing.* Resolution of the President of the Inter-American Court of Human Rights of December 18, 2020. https://www.corteidh.or.cr/docs/asuntos/integrantes_y_militantes_de_la_union_patriotica_18_12_2020.pdf

[8] The following persons appeared at this hearing: a) for the Inter-American Commission: Antonia Urrejola Noguera, as First Vice President of the Commission, Marisol Blanchard, Deputy Executive Secretary, Jorge H. Meza Flores and Christian González, Advisors. Meza Flores and Christian González, Advisors; b) by the common interveners of the Corporación Reiniciar: Jael Quiroga Carrillo, Luz Stella Aponte Jaramillo, Sonia Esperanza Pinzón Hernández, and Raúl Ignacio Molano Franco; c) by the common interveners of the Díaz Mansilla Family: Diana Marcela Muriel Forero, Luisa Fernanda Díaz Mansilla, Juliana Díaz Mansilla and Germán Rodríguez; d) by the common interveners of the CJDH and DCD: Luis Felipe Viveros Montoya, Juan David Viveros Montoya, Juan Esteban Montoya Hincapié, and Daniel Fernando Montoya, and e) for the State: Camilo Gómez Alzate and Juana Inés Acosta López as Agents, as well as , María del Pilar Gutiérrez Perilla and Giovanny Vega}, Counsel and Advisor.

[9] The brief signed by Andrei Gomez-Suarez deals with the international responsibility of the State in the genocide of the Patriotic Union.

[10] The brief signed by Ricardo Pérez González, Kandy Juanita del Rio Florido, Gerardo Rodríguez López, Carlos Alfonso Figueroa Parra and Erika Cruz Moreno deals with the crime of political genocide, the loss of the legal status of the Unión Patriótica, and the responsibility of the State.

[11] The brief signed by Jomary Ortegón Osorio, Sebastián Escobar Uribe, Rafael Barrios Mendivil, Sebastián Saavedra Eslava, Franklin Castañeda Villacob, Daniela Estefanía Rodríguez, Juan Pablo Ramos Zambrano, Byron Góngora Arango, Alberto Yepes Palacio, Camila Andrea Galindo and Javier A. Galindo deals with the compliance of with the State obligations derived from Article 8 of the American Convention.

[12] The brief signed by Juan Mauricio Viloria Blanco and Deisy Alexandra González Suelta deals with the alleged violations committed by the Colombian State against more than six thousand alleged victims, members and

militants of the Unión Patriótica political party since 1984 and for more than twenty years.

International Law (CEJIL)[13]; f) Manuela de Carmen Arteaga Martínez[14]; g) Rafael Alberto Gaitán Gómez[15]; and h) José Fernando Toledo Perdomo[16].

11. *Surviving evidence and for better resolution*.

a) On December 18, 2020, the Presidency of the Court requested the State to submit certain documentation as evidence for a better decision[17]. The State submitted this documentation on January 29 and February 4, 2021;

b) On March 13, 2021, the joint intervenors of the CJDH and DCD organizations submitted supervening evidence, as well as requested evidence to require evidence for a better resolution, which was requested from the State by means of a note from the Secretariat dated March 19, 2021.[118] The State was also requested to provide evidence for a better resolution, which was requested by means of a note from the Secretariat dated March 19, 2021;

c) On March 30, 2021, the State submitted the information requested by the Court as evidence for a better resolution (*supra* para. 11.b), as well as made its observations on the supervening evidence submitted by the joint intervenors of the CJDH and DCD on March 13, 2021 (*supra* para. 11.b);

d) On April 26 and 27, 2021, the joint interveners of CJDH and DCD, and Corporación Reiniciar, respectively, submitted their observations on the information presented by the State on March 30, 2021; for their part, on April 27, 2021, the CJDH and DCD, and Corporación Reiniciar, respectively, submitted their observations on the information presented by the State on March 30, 2021.

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[13] The brief signed by Viviana Krsticevic, Gisela De León, Florencia Reggiardo, Helen Kerwin and Patricia Cruz Marín deals with evidentiary standards developed in the Inter-American System.

[14] The brief signed by Manuela del Carmen Arteaga Martínez deals with the Unification Judgment of the State Council on Caducidad that determined the inapplicability of the Warrant Rule of the Inter-American Court.

[15] The brief signed by Rafael Alberto Gaitán Gómez deals with the imprescriptibility of direct reparation actions when the damages are attributable to the State for serious human rights violations.

[16] The brief signed by José Fernando Toledo Perdomo deals with the ruling of unification of jurisprudence of January 29, 2020.

[17] The Presidency of the Court requested the following documents: 1) Copy of File 165 A, investigation related to the seizure of the municipality of Riosucio, Chocó. Directorate of the Specialized Prosecutor's Office against Human Rights Violations; 2) Copy of File 2212, Investigation being carried out for the attack against César Martínez Blanco, Alirio Traslaviña and another in the municipality of Barrancabermeja, Santander, Directorate of the National Specialized Prosecutor's Office against Human Rights Violations; 3) Copy of File 2212, Investigation being carried out for the homicide of Josué Gómez Gómez Blanco, Alirio Traslaviña and another in the municipality of Barrancabermeja, Santander: Investigation being advanced for the homicide of Josué Giraldo. File No. 140 Prosecutor's Office 95, Office of the National Prosecutor Specialized against Human Rights Violations; 4) Copy of file: investigation being conducted for the homicide of José Antequera, File No. 059, Office of the 41st Prosecutor Specialized against Human Rights Violations; 5) Copy of file: investigation being conducted for the homicide of Bernardo Jaramillo Ossa, File No. 1 of the Specialized Office for Citizen Security; 6) Copy of file: investigation being conducted for the homicide of Pedro Luis Valencia, File No. 066, Office of the Specialized Prosecutor Specialized against Human Rights Violations; 7) Copy of file: investigation being conducted for the homicide of Pedro Luis Valencia, File No. 066, Office of the Specialized Prosecutor Specialized against Human Rights Violations. 066, Specialized against Human Rights Violations; 7) Complete copies of the statements, orders, versiones libres or sentences in which in the framework of the Justice and Peace Law the homicide of Mr. Sofronio de Jesús Hernández Gómez has been confessed or documented; 8) Complete copy of the criminal proceeding for the homicide of Omaira Echavarría de Pulgarín and others; 9) Complete copy of the criminal proceeding with file No. 1511- 1384, filed under the Justice and Peace Law: 1511- 1384, filed and in the possession of the State and which was conducted for the facts of the massacre of the Mineros del Topacio; 10) Full copy of the criminal investigation being conducted on the occasion of the homicide of Mr. Rodrigo José Sánchez Reyes, identified with citizenship card no. 98.596.873; 11) Complete copy of the criminal investigation that is being carried out on the occasion of the homicide of Mr. Sergio Alirio Ocampo Vargas and Nubia Roso Ochoa Fría; 12) Documents stating if on November 24, 1987 there were protection and/or prevention measures in favor of the youth organization Juventud Comunista Colombiana

(JUCO) with headquarters in the city of Medellín, Antioquia. If so, what these measures consisted of, which authority or public entity granted them, who was in charge of their implementation and if they were in force on November 24, 1987, and 13) A complete copy of the risk reports, follow-up notes and other warning or early alert documents, indicating the probable occurrence of massive violations of human rights and international humanitarian law in the municipality of Dabeiba, Antioquia, for the period 1996-2000.

[18] The Court requested the voluntary statements made by German Custodio Tovio Medrano and Juan Manuel Grajales García before the Special Jurisdiction for Peace in case 04.

On April 2021, the Commission stated that it had no observations to make on this information;

e) On June 25, 2021, joint intervenors DCD and CJDH submitted information as supervening evidence[19]. On July 15 and 16, 2021, the State, the joint intervenors of the Díaz Mansilla Family, the Corporación Reiniciar and the Commission, submitted their observations on the supervening evidence submitted by the CJDH and DCD on June 25, 2021;

f) On July 16, 2021, the State submitted information regarding one of the victims in this case, and on July 27 and 29, 2021, the joint intervenors of Reiniciar and the CJDH submitted their observations on this information. The joint intervenors of the Díaz Mansilla Family and the Commission, on the other hand, did not submit any observations on this information. On August 6, the joint intervenors of CJDH and DCD submitted supervening evidence[20]. On August 17 and 18, 2021, the Commission, the State and the joint intervenors of CJDH and DCD submitted their observations on the supervening evidence submitted by the joint intervenors of Reiniciar on August 6, 2021;

g) By note from the Secretariat dated August 10, 2021, the State was requested to submit information as evidence for a better resolution[21]. On August 18, 2021, the State submitted the information requested by the Court, as well as its observations on the same;

h) On August 17, 2021, the State requested the incorporation into the case file of two pieces of evidence referring to supervening facts[22]. On September 8, 2021, the Commission and the joint intervenors of Reiniciar submitted their observations on the documentation presented by the State on August 17, 2021;

i) On September 8, 2021, the joint interveners of CJDH and DCD

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[19] The joint interveners of DCD and CJDH forwarded the second instance judgment issued on May 21, 2021 by the Contentious Administrative Chamber, Third Section, Subsection A Bogotá D.C., by which it denied reparation to the victims invoking the expiration (statute of limitations) of the direct reparation action in the case of the forced disappearance of the mayor of Riosucio.

[20] The joint interveners of Reiniciar submitted as supervening evidence the press article entitled "Salvatore Mancuso and Rodrigo Londoño recognize their responsibilities before the victims", and requested that the Commission for the Clarification of the Truth (CEV), chaired by the priest Francisco de Roux, request a copy of the video and/or transcript of the session entitled "Route of contribution to the truth and recognition of responsibilities: Salvatore Mancuso1 and Rodrigo Londoño speak with the Truth Commission", transmitted and publicly disclosed on August 4, 2021, through several of the social networks of this mechanism that integrates the Integral System of Truth, Justice, Reparation and Non-Repetition (SIVJRNR).

[21] The Court requested the remission of the copy of the video and/or transcript of the session called "Route of contribution to the truth and recognition of responsibilities: Salvatore Mancuso and Rodrigo Londoño speak with the Truth Commission", transmitted and publicly disclosed on August 4, 2021, through several of the social networks of this mechanism that integrates the Integral System of Truth, Justice, Reparation and Non-Repetition (SIVJRNR).

[22] The State requested the inclusion in the file of two pieces of evidence that refer to supervening facts. Thus, in the first place, it requested the inclusion of the judgment of the Administrative Court of Cundinamarca, issued on May 28, 2021, by which it ordered the granting of a measure of compensation with respect to the Unión Patriótica Political Party, in order to compensate the affectation of the political rights caused to sympathizers, militants and leaders of the political organization, due to the cancellation of the legal personality of the Party in the year 2002. Secondly, the incorporation of Circular No. 0005 of the Attorney General's Office, issued on July 16, 2021, which clarifies the competence of the Attorney General's Office in cases related to forced appearances before the Special Jurisdiction for Peace (JEP), was requested.

submitted new supervening evidence[23]. On September 23, 2021, the State forwarded its observations to the information submitted by the CJDH and DCD joint intervenors on September 8, 2021, likewise, the Commission and the Reiniciar joint intervenors reported having no observations;

j) On September 16, 2021, the Court requested evidence for a better resolution from the State[24]. On September 24, 2021, the State submitted the information requested by the Court on September 16, 2021. On October 8, 2021, the joint intervenors and the Commission submitted their observations to the Court;

k) On October 29, 2021, the State requested the incorporation into the case file of two pieces of evidence that refer to supervening facts[25]. On November 5, 2021, the joint intervenors, Reiniciar and the Commission, submitted their observations on the documentation presented;

l) On March 7, 2022, the common intervenors of Reiniciar presented supervening evidence referring to the universe of alleged victims in this case, in addition,

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[23] The joint intervenors of the CJDH and DCD requested the incorporation of the following documents: 1. Decisions and hearing minutes of the Superior Court of Bogotá regarding the indictment of General Mario Montoya Uribe by the Prosecutor General's Office; 2. Order issued by the Administrative Court of Cundinamarca rejecting the claim for direct reparation filed by the relatives of Mr. Hernando de Jesús Gutiérrez, and 4. Procedural request for an anticipated sentence and application of the statute of limitations filed by the legal defense of the State in the process of direct reparation filed by the relatives of Dr. Gabriel Jaime Santamaría Montoya.

[24] The Court requested the following documents as evidence for a better resolution: 1. The database, reports or documents with lists of alleged victims of victimization of sympathizers and members of the Patriotic Union of the Ombudsman's Office through which the statistical analysis of Chapter 5 of the Ombudsman's Report for the Government, Congress and the Attorney General of the Nation (1992) was elaborated. The databases, reports or documents with lists of alleged victims of victimization of sympathizers and members of the Unión Patriótica through which the National Center of Historical Memory (CNMH) elaborated the Report of the Center of Historical Memory "Everything Happened Before Our Eyes. The genocide of the Patriotic Union 1984-2002". In addition, it is requested the remission of the reports and data of alleged victims of the Observatory of Memory and Conflict of the CNMH through which it documented the cases of 4,153 victims of the Patriotic Union murdered or disappeared or kidnapped. Likewise, it is required to submit any other report prepared by the National Center of Historical Memory (CNMH) that refers to the facts and alleged victims of victimization of sympathizers and members of the Patriotic Union; 3. The database of the Single Registry of Victims (RUV) that refers to the facts and alleged victims of victimization of sympathizers and members of the Patriotic Union; 4. The database, reports or documents with lists of alleged victims through which the Attorney General's Office, and in particular the National Directorate of Analysis and Contexts (DINAC), elaborated the statistical analysis alluding to the victimization of sympathizers and members of the UP. In addition, that the reports and data of alleged victims of the report of the Attorney General's Office of June 30, 2015, and of the official letter of the Specialized Prosecutor's Office 57 of June 24, 2016 related to the case filed 00123 be sent. Likewise, it is required to submit any other report prepared by DINAC and that refers to the facts and alleged victims of sympathizers and members of the Patriotic Union, and 5. The database, documents or reports with lists of alleged victims of victimization of sympathizers and members of the Patriotic Union with respect to which there were or are disciplinary investigations prepared by the Attorney General's Office of the Nation.

[25] The State requested the incorporation into the case file of two pieces of evidence that refer to supervening facts. Thus, first, it requested the incorporation of the note from the Colombian Commission of Jurists ("CCJ") sent to the Inter-American Commission on Human Rights on October 14, 2021 on Case No. 13.004 (Campamento Massacre v. Colombia). Secondly, the incorporation of the note of the CCJ sent to the Commission on October 15, 2021 on Case No. 11.794 (*Olga Luz Chavarría et al. v. Colombia*) was requested.

requested that the State be ordered to submit evidence for a better resolution[26];

m) On March 30, 2022, the Court requested the State to send the information related to the universe of victims of the Patriotic Union, based on which on March 3, 2022, the Special Jurisdiction for Peace and the Truth Commission issued a joint statement related to "figures of the violence against the Patriotic Union";

n) On April 12, 2022, the common intervenors of Reiniciar submitted evidence for a better resolution[27]. On April 19, 2022, the joint intervenors of CJDH and DCD, the Commission and the State submitted their observations on the supervening evidence submitted by the joint intervenors of Reiniciar. Likewise, the State submitted the information requested by the Court as evidence for a better resolution (*supra* para. 11.m);

o) On May 2, 2022, the joint intervenors of the Díaz Mansilla Family submitted "extensive and complementary documents", and on May 5, 2022, the joint intervenors of the Díaz Mansilla Family, Reiniciar and the Commission submitted, respectively, their observations to the information submitted by the State on April 19, 2022 (*supra* para. 11.n). No observations were received from the joint intervenors of the CJDH and DCD; and

p) On June 6, 2022, the joint intervenors of the DCD submitted supervening evidence on the denial of access to justice for victims of the extermination of the Patriotic Union recognized by the Commission and the State. On June 17, 2022, the Commission indicated that it had no observations on the information submitted by the DCD and CJDH joint intervenors on June 6. No observations were received from the joint intervenors of Reiniciar, the Díaz Mansilla family, and the State.

12. *Requests for Provisional Measures.*

a) By Resolution of March 16, 2021[28] , the Court rejected a request for provisional measures filed by the joint intervenors DCD and CJDH on February 1, 2021[29].

b) On April 13, 2022, the joint intervenors of the Diaz Mansilla family requested the adoption of provisional measures. Pursuant to articles

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[26] The joint interveners of Reiniciar requested that the State request, as evidence for a better resolution, the remission of the universe of victims identified jointly by the JEP and the CEV, in the framework of the fulfillment of constitutional and legal functions, related to the clarification of the Unión Patriótica case.

[27] The common interveners of Reiniciar requested the incorporation as evidence to better resolve the judgment issued on February 22, 2022 by the Forty-seventh Circuit Court of Bogota within the divisional process that was advanced against the family home acquired between Mr. Miguel Angel Diaz and his wife, prior to his disappearance.

[28] Case of Members and Militants of the Unión Patriótica v. Colombia. Request for Provisional Measures. Resolution of the Inter-American Court of Human Rights of March 16, 2021. http://www.corteidh.or.cr/docs/medidas/up_se_01.pdf

[29] The request for provisional measures was filed by the joint intervenors of CJDH and DCD. They requested that: the State be ordered to adopt the necessary measures to ensure that the representatives are guaranteed access to the information and documents necessary to represent both the victims for whom they have power of attorney in the proceedings before the Court, as well as all those for whom they exercise informal representation by mandate of the San José Court; direct the State to adopt the necessary measures to ensure that the "unification judgment" on caducidad is not applied in direct reparation proceedings filed by victims in the instant case, and order the State to adopt all necessary measures to immediately cease all conduct that has an intimidating effect -v.g., acts of harassment and intimidation- and to cease all acts of violence against the victims of the instant case, as well as all acts of violence against the victims of the instant case.e.g., acts of harassment and stigmatization- and that endanger the integrity of the victims, representatives, declarants and their next of kin.

54.3 of the American Convention on Human Rights, 5.3 of the Statute of the Court and 17.3 of its Rules of Procedure, all matters relating to provisional measures are within the competence of the Court in office, composed of the incumbent Judges. Consequently, this composition of the Court lacks jurisdiction to rule on the aforementioned request, given that its functions ended on December 31, 2021.

13. *Arguments and final written observations.* - On March 15, 2021, the Commission submitted its final written observations and the State and the joint intervenors submitted their respective final written arguments.

14. *Observations to the annexes to the final arguments.* - On April 12, 2021, the joint intervenors of Reiniciar submitted their observations to the annexes presented by the State in its final written arguments; the remaining joint intervenors, for their part, did not submit any observations. On April 12, 2021, the Commission stated that it had no observations on the final written arguments submitted by the parties. On April 12, 2021, the State submitted its observations on the annexes to the final written arguments of the joint intervenors and referred to their admissibility.

15. *Deliberation of the present case.* - The Court began the deliberation of the present Judgment on November 4, [202130].

III
COMPETITION

16. The Court has jurisdiction to hear the present case, in accordance with the terms of Article
62.3 of the Convention, since Colombia has been a State Party to the Convention since July 31, 1973 and recognized the contentious jurisdiction of this Court on June 21, 1985. The State ratified the Inter-American Convention to Prevent and Punish Torture on February 12, 1998, and the Inter-American Convention on Forced Disappearance of Persons on January 4, 2005.

IV
ACKNOWLEDGEMENT OF RESPONSIBILITY

A. Acknowledgment of responsibility by the State, observations of the joint intervenors and the Commission

A.1. Recognition of the State's responsibility

17. The ***State*** made a partial acknowledgment of responsibility before both the Commission and the Court. Indeed, on September 15, 2016, the then President of the Republic of Colombia, Juan Manuel Santos Calderón, made an acknowledgement of responsibility with respect to what happened to the Unión Patriótica, in a public act carried out in the presence of members and survivors of the Unión Patriótica, as well as the petitioners in the instant case. In that same act, the then president of the Unión Patriótica political party requested that this acknowledgment be made before the Commission. In this way,

[30] This Judgment was deliberated and approved during the 144th and 146th Regular Sessions, as well as during the 65th Special Session, which were held in a non-presential manner using technological means in accordance with the provisions of the Rules of Procedure of the Court.

the State, by means of the brief submitted to the Commission on September 6, 2017, made a partial acknowledgment of responsibility, in the following terms:

> Therefore, in this brief, the State of Colombia, in accordance with its will to vindicate the rights of the victims, recognizes its international responsibility for the violation of the rights to life - Article 4 of the [Convention] - to personal integrity - Article 5-, to recognition as a person before the law - Article 3-, to personal liberty - Article 7-, to freedom of thought and expression - Article 13-, to freedom of association - Article 16-, to freedom of movement - Article 22-, to political rights - Article 23-, to judicial guarantees - Article 8- and to judicial protection - Article 25- in relation to Article 1.1 of the American Convention on Human Rights, for not having taken the necessary and sufficient measures to prevent and impede the murders, attacks and other acts of violence perpetrated against the members of the Unión Patriótica, despite the evidence that such persecution was underway". With respect to the scope of this acknowledgment of responsibility, the State recognized the violation of Articles 1 and 8 of the Inter-American Convention to Prevent and Punish Torture for failing to investigate, prosecute and, if applicable, punish the facts alleged by the petitioners, punished facts alleged by the petitioners and included in the Merits Report that could constitute acts of torture in relation to Alexander de Jesús Galindo Muñoz, Oscar de Jesús Lopera Arango, Gonzalo de Jesús Peláez Castañeda, Alcira Rosa Quiroz Hinestroza, Luis Enrique Ruiz Arango, Luis Aníbal Sánchez Echavarría and Andrés Pérez Berrio.

18. With respect to the universe of victims, he stated the following:

> Although this acknowledgment of international responsibility is formulated in a general manner, as there is still controversy regarding the universe of victims and facts in this case, the State emphasizes that it will continue to work to clarify the truth of the facts, fully identify the victims and guarantee access to their right to justice. The Integral System of Truth, Justice, Reparation and Non-Repetition of the Final Peace Agreement, and particularly the Commission for the clarification of the truth, coexistence and non-repetition, and the Special Jurisdiction for Peace, have been conceived, precisely to materialize such purpose, in collaboration and cooperation with the efforts made by the ordinary justice system to clarify these regrettable facts.

19. In the same document, it highlighted "the need for the merits report to i) establish, in a clear and detailed manner, the facts that make up the case and ii) identify the victims, in accordance with the evidentiary elements that have been provided to the file". In this regard, it indicated that, for 2014, "the Victims Unit in this exercise was able to identify that of the list of 6,528 victims provided by the petitioners, only 2,279 persons are fully identified with names, surnames and ID card numbers, which leads us to assume that there are at least 4,249 persons [...] for whom the information in the registry could not be verified with certainty." It also considered that "the best way to establish the scope of international responsibility in this case (with respect to individual cases) is through the internal mechanisms designed in Colombia in the framework of the transition from armed conflict to peace.

20. Regarding the factual framework, the State clarified that "it reserves the possibility of ruling on [the context] and all the facts of the instant case in subsequent procedural stages, taking into account what has been indicated in relation to the presentation by the petitioners of new alleged facts, other alleged rights and new alleged victims". It emphasized that "it has not been proven that the violence against the Unión Patriótica was a State policy" and that the Commission should not consider within the merits of the case the allegation of the existence of genocide against the members of the Unión Patriótica and reiterated the progress made in Colombia in the internal sphere in the comprehensive reparation of the Unión Patriótica.

21. In its response brief before this Court, the State made a new acknowledgment of partial responsibility. In this way, it acknowledged that it did not adopt the necessary and

sufficient measures to prevent, mitigate and impede the acts of harassment.

against the Unión Patriótica, despite the evidence of the violent acts that were taking place against the militants and sympathizers of this political organization. Likewise, it acknowledged that it did not diligently advance the corresponding investigations in order to identify and, eventually, punish those responsible for these events. It specified that the acknowledgment of responsibility only dealt with the universe of victims that has been determined and with respect to the factual framework defined in the Merits Report. It added that the acknowledgment was made without prejudice to the more general scope that the acknowledgment of responsibility of the then President of the Republic, made on September 15, 2016, in favor of the victims of the Patriotic Union, had at the domestic level. Specifically, the State recognized its international responsibility for the violation of the rights to life, personal integrity, recognition of juridical personality, personal liberty, freedom of association, freedom of movement, political rights, judicial guarantees and judicial protection, contained in Articles 4, 5, 3, 7, 7, 16, 22, 23, 8 and 25 of the American Convention, in relation to Article 1.1 of the same instrument "for not having taken the necessary and sufficient measures to prevent and impede the murders, attacks and other acts of violence perpetrated against the members of the Unión Patriótica".

22. With respect to the scope of this acknowledgment of responsibility, the State acknowledged the violation of Articles 1 and 8 of the Inter-American Convention to Prevent and Punish Torture for failing to investigate, prosecute and, if appropriate, punished facts alleged by the petitioners and included in the Merits Report that could constitute acts of torture in relation to Alexander de Jesús Galindo Muñoz, Oscar de Jesús Lopera Arango, Gonzalo de Jesús Peláez Castañeda, Alcira Rosa Quiroz Hinestroza, Luis Enrique Ruiz Arango, Luis Aníbal Sánchez Echavarría and Andrés Pérez Berrio.

23. It also stated that it recognized its responsibility for the violation of the right to life, in relation to the duty of prevention (Article 4 of the Convention in relation to Article 1(1) of the same)[31]. Regarding this same right to life, but in relation to its duty to respect, it acknowledged its responsibility with respect to Antonio Palacios Urrea, Camilo Palacios Romero, Blanca Palacios Romero, Yaneth Palacios Romero and Rodrigo Barrera Vanegas. At

[31] Regarding Dionisio Calderón, Rubén Darío Castaño, Javier Sanabria Murcia, José Rafael Reyes Malagón, Darío Henao Torres, Octavio Vargas Cuellar, Leonel Forero Hernández, José Antonio Quiroz Rivero, José Francisco Ramírez Torres, Fernando Bahamón Molina, Fidel Antonio Ardila Parrado, Demetrio Aldana Quiroga, José Vicente Cárdenas Rodríguez, Luis Jesús Osorio Reátiga, Gerardo Cuellar, Froilán Gildardo Arango Echavarría, Argemiro Colorado Marulanda, Pedro Julio Herrera Marín, José Yesid Reyes Panqueva, Luis Alberto Ardila Parrado, Hildebrando Lora Giraldo, Alfonso Guillermo Cujavante Acevedo, Hernando de Jesús Gutiérrez, José Antonio Riveros Sanabria, Néstor Henry Rojas Rodríguez, Alirio Zaraza Martínez, Electo Flórez Banquez, Carlos Evelio Conda Tróchez, Gildardo Castaño Orozco, Teófilo Forero, Rosalba Camacho, Martin Vásquez Arévalo, María Leonilde Mora Salcedo, Antonio Sotelo Pineda, José Antonio Toscano Triana, Luis Alberto Cardona Mejía, Jorge Orlando Higuita Rojas, Alejandro Cárdenas Villa, Gustavo Walberto Guerra Doria, Guillermo Antonio Callejas Ríos, Armando Calle Ángel, Horacio Forero Páez, Bladimiro Escobar Morales, Dally Vásquez Camacho, Elizabeth Vásquez Camacho, Josefina Vásquez Camacho, Jairo Alfredo Urbina Lacouture, Carlos Julio Vélez Rodríguez, Norma Garzón de Vélez, Dilmas Elkin Vélez Rodríguez, Henry Cuenca Vega, María Mercedes Méndez de García, William Ocampo Castaño, Rosa Tulia Peña Rodríguez, Henry Millan González, Otoniel Casilimas Cantor, Eixenover Quintero Celis, Efraín Ángel Arévalo, Luis Eduardo Cubides Vanegas, Marcelino José Blanquicet Castro, Marceliano Medellín Narváez, Carmelo Durango, Pedro Malagón Sarmiento, Elda Milena Malagón Hernández, Luz Adriana Hernández Vásquez, Alcides Julio Ariza Vargas, Josué Giraldo Cardona, Edilberto Blanco Cortés, Alexis Hinestroza, James Ricardo Barrero, Heliodoro de Jesús Durango, Rosalba Gavilar Novoa, Octavio Sarmiento Bohórquez, José Ignacio Reyes Gordillo, José Francisco Reyes Gordillo, Albeiro de Jesús Bustamante Sánchez, Alexandre de Jesús Galindo Muñoz, Pedro Nel Arroyave, Luis Carlos Vélez Garzón, Manuel Álvaro Fernández Pinzón, Nicolás Alberto Ossa Suaza, Omaira de Jesús Echavarría Pulgarín, Osfanol Torres Cárdenas, Leonardo Posada, Pedro Nel Jiménez Obando, José Rodrigo García Orozco, Pedro Luis Valencia Giraldo, Juan Jaime Pardo Leal, Orfelina Sánchez García, Pedro Sandoval, Luz Marina Ramírez, Francisco Eladio Gaviria Jaramillo, Carlos Gónima López, Elkin de Jesús Martínez, Carlos Kovacs Baptiste, Luis Eduardo Yaya Cristancho, José de Jesús Antequera, Gabriel Jaime Santamaría, Diana Stella Cardona Saldarriaga, Bernardo Antonio Jaramillo Ossa, Alfredo Manuel Florez García, Carlos Enrique Rojo Uribe, Rosa Mejía, Ofelia Rivera, Ramón de Jesús Padilla Arrieta, Julio César Uribe Rua, Pablo Emilio Córdoba Madrigal, León de Jesús Cardona Izasa, Julio Cañón López and Luz Marina Arroyave.

Regarding the existence of possible patterns in the present case, the State did not deny the possible existence of such patterns, but considered that it is the domestic jurisdiction that is best placed to define the scope of these responsibilities.

24. On the other hand, in the cases of disappearance, the State specified that it recognized international responsibility for the violation of the rights to recognition as a person before the law, to life, to personal integrity and to personal liberty in relation to its duty of prevention (Articles 3, 4, 5 and 7 in relation to Article 1(1) of the Convention)[32.] On these same rights, in relation to the duty to respect, and also with respect to Article 1.a. of the Inter-American Convention on Forced Disappearance of Persons, the State acknowledged its responsibility in relation to Miguel Angel Diaz Martinez and Faustino Lopez Guerrero.

25. Likewise, with respect to the cases in which an attack aimed at depriving the victims of their lives was generated and was not consummated, the State recognized its international responsibility for the violation of the rights to humane treatment and to a life plan in relation to its duty of prevention (Articles 5 and 4 in relation to Article 1(1) of the Convention)[33.] Regarding these same articles, but in relation to its duty to respect, the State acknowledged its international responsibility with respect to the victims María Belarmina Romero Cruz, Leidy Marcela Palacios Romero and Cristian Rodrigo Barrera Palacios.

26. In the cases in which threats were presented, the State recognized its international responsibility for the violation of the rights to personal integrity and to a life plan in relation to its duty of prevention (Articles 5 and 4 in relation to Article 1(1) of the Convention)[34.]

27. In cases where the victims had to leave their homes because of the victimization scenario, the State recognized its responsibility for the violation of the rights to movement, protection of the family, personal integrity and life plan, in relation to its duty of prevention (Articles 22, 17, 5 and 4 in relation to Article 1.1 of the Convention)[35.]

28. In cases in which children or adolescents were directly affected, the State acknowledged its international responsibility for violating the rights enshrined in Article 19 of the Convention, in relation to its duty of prevention enshrined in Article 1.[136]. Concerning these same norms, but with respect to its duty to respect, the State acknowledged its responsibility with respect to the victims Leidy Marcela Palacios Romero and Cristian Rodrigo Barrera Palacios.

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[32] Regarding Marco Fidel Castro, Pablo Caicedo Siachoque, Álvaro Grijalba Beltrán, José Luis Grijalba Beltrán, Federico Grijalba Burbano, Javier Castillo, Segundo Epimenio Velasco Fajardo, Julio Serrano Patiño, Benjamín Artenio Arboleda Chavera, José Lisneo Asprilla Moreno, Vladimir Cañón Trujillo and Alfonso Miguel Lozano Barraza.

[33] Regarding María Trinidad Torres Hernández, Adelana Solano Rivera, María Angélica Ortíz Castro, José Samuel Urrego Morera, Wilson Pardo García, Reina Luz Pulgarín Roldán, Jaime Caicedo Turriago, César Martínez Blanco, José Alirio Traslaviña León, Miguel Antonio Castañeda, Alba María Fuentes Robles, Ana Carolina Bohórquez Triana, Ciro Ferrer Bula, Aida Yolanda Avella Esquivel, Olga Judith Vélez Garzón, Mónica Sandra Agudelo and Luis Alexander Naranjo León.

[34] Regarding Hernán Motta Motta, Imelda Daza, Rita Yvonne Tobón Areiza, Beatriz Helena Pereañez, Belarmino Salinas Rentería, José Domingo Ciro Buritica, Rosmery Londoño Gil, Pedro Nel Arroyave, Rosalba Camacho and Martín Vásquez Arévalo.

[35] Regarding Henry Cuenca Vega, Ana Carlina Bohórquez Triana, Rita Yvonne Tobón Areiza, Aida Yolanda Avella Esquivel, Beatriz Helena Pereañez, Belarmino Salinas Renteria, José Domingo Ciro Buritica, Rosmery Londoño Gil, Pedro Nel Arroyave, Rosalba Camacho, Martín Vásquez Arévalo and Olga Judith Vélez Garzón.

[36] Regarding Elda Milena Malagón Hernández, Luz Adriana Hernández Vásquez, Luis Carlos Vélez Garzón, Olga Judith Vélez Garzón, Luis Alexander Naranjo León and Cristian Rodrigo Barrera Palacios.

29. In cases in which, due to the scenario of victimization, the victims were unable to continue the union struggle, the State recognized its international responsibility for the violation of the right to freedom of association enshrined in Article 16 of the Convention, in relation to the duty of prevention established in Article 1.1 of the same body of law[37].

30. In relation to the alleged indirect victims of the case, the State recognized its international responsibility for the violation of the right to humane treatment (Article 5 in relation to Article 1(1) of the Convention), with respect to the next of kin and close relatives who had accredited a link with any of the members of the Unión Patriótica that is fully determined and represented in the present case, and who had suffered psychological harm as a consequence of the facts delimited in the case before the Court.

31. The ***State*** clarified that the recognition, established because of the violation of Article 7 of the American Convention, was limited to cases in which the configuration of a disappearance was proven. In these cases, the State accepted that it ignored its duty to respect, its duty to prevent and its duty to investigate, prosecute and punish. Thus, it explicitly excluded from its recognition arbitrary preventive detentions, deprivations of liberty resulting from a sentence reflecting an abuse of power, and deprivations of liberty without respect for the minimum guarantees of due process. It argued, in these cases, that such alleged violations were remedied at the domestic level.

32. With respect to Reiniciar's request to declare the violation of the right to truth as an autonomous right, the State clarified that it recognized its responsibility for the violation of this right with respect to the duty to investigate and clarify the facts and the duty to publicly disseminate information on the results of the investigations. This acknowledgment was made with respect to the victims who are duly identified and in relation to the facts delimited and answered in the answer.

33. Regarding the recognition of responsibility in relation to political rights, freedom of expression, the right of association, and honor and dignity (Articles 23, 13, 16 and 11 of the Convention), the State specified that this was limited to cases in which the motive was associated with the victims' membership in the Unión Patriótica in a context of systematic violence; to those in which, in the context of the complex scenario of victimization against the Unión Patriótica, the victims were subjected to a climate of stigmatization that exacerbated the violence against them, and that the State did not adopt the necessary and sufficient measures to prevent, mitigate and impede the acts of harassment against the militants and sympathizers of the Unión Patriótica.

34. With respect to the recognition of responsibility in relation to the rights to judicial guarantees and judicial protection (Articles 8 and 25 of the Convention in relation to Article 1.1 of the same body of law), he stressed that this cannot be understood as an acceptance of the configuration of a possible scenario of deliberate omission on the part of the State. It emphasized that, despite the obstacles and the overflow of institutional capacity to investigate, prosecute and punish conducts framed in the armed conflict, the State has made significant progress in the processes carried out both in the ordinary jurisdiction and in the transitional jurisdiction.

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[37]Regarding Rubén Darío Castaño, Froilán Gildardo Arango Echavarría, Argemiro Colorado Marulanda, Hildebrando Lora Giraldo, Electo Flórez Banquez, Carlos Evelio Conda Tróchez and Jorge Orlando Higuita Rojas.

35. In a brief submitted on February 5, 2021, the State expanded its acknowledgment of international responsibility for breach of the duty of prevention and clarified the scope of its acknowledgment[38].

36. Likewise, in the cases in which disappearance occurred, the State acknowledged international responsibility for the violation of Articles 3, 4, 5 and 7 of the American Convention, in relation to its duty of prevention established in Article 1(1) of the same body of law, with respect to Alcides Forero Hernández, Francisco Martínez Mena, Robinson Martínez Moya and Edison Rivas Cuesta.

37. In the cases in which an attack aimed at depriving the victims of their lives was generated and was not consummated, the State recognized international responsibility for the violation of Articles 5 and 4 of the American Convention, in relation to its duty of prevention established in Article 1(1) of the same body of law, with respect to the victims Diana Catalina Velásquez Torres; Jennifers Chico Vásquez and Magnely Vásquez Camacho.

38. In the cases in which the victims had to leave their homes because of the victimization scenario, the State acknowledged its responsibility for the violation of Articles 22, 17, 5 and 4 of the Convention, in relation to its duty of prevention established in Article 1(1) of the same body of law, with respect to Chesman Cañón Trujillo; Jorge Guillermo Forero Hernández; Sofronio de Jesús Hernández Gómez; Alberto Trujillo; Isabel Trujillo and Nelly Trujillo.

39. In the cases in which children or adolescents were directly affected, the State recognized its international responsibility for the violation of the rights enshrined in Article 19 of the Convention, in relation to its duty of prevention enshrined in Article 1.1 of the same instrument, with respect to Jennifers Chico Vásquez, Magnely Vásquez Camacho, David Galindo Ortiz and Diana Catalina Velásquez Torres.

40. Finally, the State specified that, due to an error in its response, the name of Nelson Cañón Trujillo was not included in the final list with the acknowledgments of responsibility, and therefore clarifies that its acknowledgment includes Mr. Nelson Cañón Trujillo for the violation of the right to life and as a consequence of his failure to comply with the duty to respect.

41. At the public hearing held on February 12, 2021, the State reiterated its acknowledgment of responsibility and indicated that, "although this acknowledgment is limited to the victims that have been duly identified in the Merits Report, Colombia is committed to the comprehensive clarification of the victimization of members and militants of the Unión Patriótica, especially through the mechanisms of Transitional Justice, with the reparation of the victims and the adoption of the necessary measures to ensure that events such as those being acknowledged by the Inter-American Court never occur again. Likewise, it reiterated its international responsibility with respect to the victims mentioned both in its response and in the extension of its recognition.

42. In its final arguments, the State reiterated its acknowledgment of responsibility. It affirmed that this acknowledgment in the framework of the present case "has been consistent and, under no circumstances

[38] Thus, in the cases of deprivation of the right to life for failing to comply with its duty of prevention, it acknowledged its responsibility in relation to María Concepción Bolívar Bedoya; Mario de Jesús Castrillón García; Gabriel de Jesús David Loaiza; Moisés Forero; Héctor Fabio Franco; Daniel Galindo; Gabriel Galindo; Hugo Alberto García Soto; Hermes Garzón; Orlando Gil; Sofronio de Jesús Hernández Gómez; Hoover Hernández; Ángel María Hurtado; Roberto Luis Jiménez Murillo; Luis Alberto Lopera Múnera; Marco Fidel Ortíz González; Jaime Pérez; Efraín Antonio Pérez Trujillo; Ruth Prada Peña; Marlene del Carmen Ramírez Rodríguez; Nidia Reyes Gordillo; Gustavo Ríos Gallego; Edilberto Rodríguez; Alberto Salazar; José Irian Suaza Jaramillo; Emilio Zúñiga James; David Galindo Ortíz.

circumstances it can be affirmed that the State has modified it". It emphasized that, in its observations on the merits before the Commission, the State insisted on the need to identify the victims and the specific facts of the case, proposing minimum standards for the identification of the alleged victims and the factual platform of the case. In this way, it argued that it did not violate the principle of *estoppel regarding the* delimitation of the recognition of responsibility before the Court, since it has maintained a consistent position throughout the international proceedings. It indicated that the delimitation of the scope of the acknowledgment of responsibility made before the Commission was conditioned to a mechanism of clarification that never took place.

A.2. Observations of the Commission

43. The ***Commission***, in its Merits Report, informed of the existence of the international recognition carried out by the State through a brief submitted on September 6, 2017. It considered that "this acknowledgment of international responsibility is a positive contribution to the development of this process, to the validity of the principles that inspire the inter-American system for the protection of human rights". However, it pointed out that the acquiescence did not include an acknowledgement of the facts on which the recognized violations were based, nor did it include a specific number of victims. Likewise, it indicated that said recognition was only related to the failure to comply with the duty to guarantee in its prevention and protection component and that it did not take into account those acts that did not constitute acts of violence, such as unfounded criminalization, stigmatizing statements and violations derived from the loss of the legal status of the Unión Patriótica as a political party. Finally, regarding the rights to judicial guarantees and judicial protection, it noted that the State did not explain the scope of this issue.

44. On the other hand, it considered that the State's acknowledgment of responsibility made before the Court with respect to the duty of prevention did not comply with the principle of *estoppel*, since it "restricted the scope of the acknowledgment made before the Commission, which has effects before the Inter-American Court. In effect, in the acknowledgment presented before the Commission, the State acknowledged its responsibility for the duty of prevention in a general manner and requested the Commission to identify and individualize the victims, while before the Court it individualized the persons it considered as victims with respect to each violation, following its own criterion of the universe of victims.

45. Regarding the duty to investigate, it recalled that in its Merits Report it determined that "the State violated the right to judicial guarantees, judicial protection, and the duty to investigate the serious human rights violations that occurred to the detriment of the persons listed in the annexes to the Merits Report".

46. Regarding the violation of political rights, in relation to personal integrity, freedom of expression, freedom of association and equality and non-discrimination, he recalled that in his report he determined the responsibility of the State not only in its dimension of guarantee, but also in its dimension of respect.

47. With respect to the recognition made for violation of the rights to recognition as a person before the law, to life, to personal integrity, to personal liberty, to freedom of association, to protection of the family, to the rights of the child and to freedom of movement and residence, it emphasized that the controversy persists with respect to the attribution for duty of respect with respect to the facts and victims indicated in the Merits Report.

48. Regarding the recognition of the duty to respect and guarantee, in the terms referred to by the State and with respect to the persons identified in the response, the Commission considered that there is no controversy.

49. Finally, with respect to the facts related to the unfounded criminalization of 32 members and militants of the Unión Patriótica for allegedly having participated in a massacre that occurred on January 23, 1994 in the La Chinita neighborhood, for which the State denied its responsibility and argued that its responsibility ceased thanks to a judgment of the Supreme Court of Justice and resolutions of the Attorney General's Office, the Commission considered that the controversy subsists since it must be evaluated whether the internal measures made the consequences of the measure or situation that led to it cease and were fully repaired.

A.3. Comments from common participants

50. The ***joint interveners of the Diaz Mansilla family*** considered that the acknowledgment of responsibility is based on theses that attempt to disregard the systematicity, generality and gravity of the conducts. They also argued that the acknowledgment denies the context proven by the domestic courts under which the extermination of the UP took place; it ignores the direct participation, acquiescence and tolerance of the State in the conducts and its deliberate omission in the investigation, trial and punishment of those responsible; it ignores its responsibility by action and omission in the search, identification and surrender of the disappeared persons of the UP and, finally, it ignores the collective dimension and nature of the case.

51. They criticized the absence of an effective commitment to punish forced disappearance as a State practice. On the other hand, they considered that the recognition was made on the basis of an excessively limited universe of victims, ignoring the dimensions and seriousness of the facts, thus denying the possibility of a real clarification of the facts and making impossible the effectiveness of the victims' rights to comprehensive reparation.

52. In particular, they considered that the recognition should cover all the characterized or characterizable cases arising from the context and the factual platform, from the annexed list of alleged victims presented by the Commission in its Merits Report, as well as from those cases registered by the representatives and those that appear in the Unified Registry of Victims. They indicated that the acknowledgment must show that the facts of the case are not unconnected, but rather that they were the result of a systematic and generalized practice in which the State had direct responsibility. In this way, they argued that the responsibility must be for the State's failure to comply with its duty to respect, "for its direct participation, tolerance and acquiescence in the facts that involve denigrating conduct and constitute serious human rights violations, crimes against humanity that are part of a political genocide that was deliberately directed against the members, sympathizers, militants and relatives of the UP".

53. They also indicated that the recognition of responsibility for the lack of judicial guarantees and the failure to investigate, prosecute and punish cannot be justified by the alleged lack of institutional capacity and must take into account the direct participation in obstructing the clarification of the facts, as well as its inaction in the search for, identification and delivery of the victims of forced disappearance of the UP. They considered positive the efforts of the State to recognize and repair the victims of the UP from administrative mechanisms such as those provided for in Law 1448, however, they considered that these measures are insufficient to guarantee the effectiveness of the rights of the victims. Finally, they concluded that the recognition should show signs of

The government's commitment to the clarification of the facts goes beyond delegating this duty exclusively to the mechanisms of transitional justice.

54. Thus, they requested "a substantive pronouncement rejecting the terms under which the State made such recognition and proceeding to modify, in accordance with international standards and the *pro homine or pro persona* principle*,* the attribution of the State's international responsibility" taking into account their considerations.

55. In their final arguments, the representatives of the Díaz Mansilla family emphasized that "the recognition of international responsibility for the facts is partial and highly victimizing, as it ignores the obstacles that the Díaz Mansilla family has faced during more than thirty-six years of searching to find their whereabouts [...]". They added that the recognition in the case of the disappearance of Miguel Angel Diaz Martinez is insufficient "until it is recognized that this crime was part of a story that did happen: a genocide that prevented the free exercise of the political rights of this group".

56. The ***joint interveners of Reiniciar*** described the acknowledgment as "very partial and limited in general with respect to the integrity of the case and even with respect to the acknowledgment of responsibility that it had made before the Inter-American Commission, specifically with respect to the facts and victims covered". They argued that this circumstance could be assessed in light of the principle of *estoppel.* They also considered that the controversy is maintained in its entirety with respect to the great majority of the direct and indirect victims in the case. They noted that the recognition is limited to 175 named persons, in a case that has a dimension of more than 6,000 alleged victims. Likewise, even with respect to the universe of the 175 persons named by the State in its acknowledgment, they alleged that the controversy remains, since the acknowledgment does not coincide with the claims presented in the Merits Report and in the pleadings and motions brief. They further alleged that the dispute remains with respect to the modalities of attribution of international responsibility. On the other hand, with respect to the rights to judicial guarantees and judicial protection, they emphasized that the State did not detail what should be understood to be included in their recognition. Finally, with respect to political rights, freedom of expression, the right of association and the right to honor and dignity, they described the State's recognition as ambiguous. For all of the above, they requested the Court to "take into account their allegations and observations on the partial acknowledgment of international responsibility made by the Colombian State, at the time of establishing the scope and legal effects of the State's acknowledgment".

57. The ***joint intervenors of the CJDH and DCD*** requested that the acknowledgment of responsibility presented by the Colombian State in its response be dismissed. They argued that such acknowledgment has an indeterminate scope. They also argued that "by virtue of the principle of *estoppel,* the acts of acknowledgment of international responsibility made by Colombia in the answer, in the brief of February 5, 2021 and in the public hearing, cannot have the legal effects requested by the State insofar as they are incompatible and contradictory with its previous conduct". They then requested the Court to only give value to the State's manifestations and representations made in the 2016 and 2017 acknowledgments.

B. Considerations of the Court

58. Pursuant to Articles 62 and 64 of the Rules of Procedure, and in exercise of its powers of international judicial protection of human rights, a matter of international public order, it is incumbent upon this Tribunal to ensure that the acts of recognition of responsibility

are acceptable for the purposes that the inter-American system seeks to achieve[39]. In the present case, there is a controversy regarding the scope of the State's acknowledgment expressed before the Court, with respect to the acknowledgment made at the stage before the Commission. For this reason, we will first analyze the arguments regarding the alleged violation of the principle of *estoppel* by the State, and then examine the scope of the acknowledgment of responsibility in this case, considering its terms and its effects with respect to the facts of the case, the legal claims and the measures of reparation.

B.1. State's alleged violation of the principle of estoppel

59. In accordance with its jurisprudence, this Court considers that a State that has adopted a certain position, which produces legal effects, cannot then, by virtue of the principle of *estoppel,* assume another conduct that is contradictory to the first and that changes the state of affairs on the basis of which the other party was guided[40]. The principle of *estoppel* has been recognized and applied in both general international law and international human rights law[41] . This Court has applied it both with respect to objections that were not raised in the proceedings before the Commission and that the State then seeks to raise before the Court, and to grant full scope to the acknowledgment of responsibility made by the State or to an agreement signed by it, which it sought to disregard in later stages of the proceedings[42].

60. The Commission and the representatives alleged that the acknowledgment made by the State before the Court is more limited than the one made before the Commission, which was presented in a general manner without establishing an express universe of victims or a specific factual framework. They considered, therefore, that the acknowledgment before the Court, by being limited by the factual framework established by the State itself in its answer and by taking into account only a part of the alleged victims in the case, violated this principle of *estoppel.*

61. First, it should be noted that the acknowledgment made by the State before the Court is broader than that presented before the Commission in relation to the rights recognized, since it includes the violation of Articles 1 and 8 of the Inter-American Convention to Prevent and Punish Torture for not having investigated, tried and, if applicable, punished the facts alleged by the petitioners and included in the Merits Report to the detriment of seven persons[43]. Likewise, before the Court, the State acknowledged its responsibility in relation to its duty of prevention with respect to the right to protection of the family (Article 17 of the American Convention) and the rights of children and adolescents (Article 19 of the American Convention). Likewise, this recognition included considerations with respect to the responsibility of the State with regard to

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[39] *Cf. Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of May 26, 2010. Series No. 293, *supra*, para. 17, and *Case of Mota Abarullo et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of November 18, 2020. Series C No. 417, para. 18.

[40] *Case of Neira Alegría et al. v. Peru. Preliminary Objections.* Judgment of December 11, 1991. Series C No. 13, para. 29, and *Case of Amrhein et al. v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of April 25, 2018. Series C No. 354, note 17.

[41] *Cf. Case concerning the Territorial Dispute (Lybia/Chad),* I.C.J Reports 1994, Judgment of 13 February 1994, paras. 56, 68, 75; *Nuclear Tests (Australia v. France),* I.C.J Reports 1974, paras. 42-46; and *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, I.C.J Reports 1962, Judgment of 15 June 1962, para. 32.

[42] *Cf. Case of Neira Alegría et al. v. Peru. Preliminary Objections, supra*, para. 29, and *Case of the Campesino Community of Santa Bárbara v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 1 , 2015. Series C No. 299, para. 27.

[43] Alexander de Jesús Galindo Muñoz, Oscar de Jesús Lopera Arango, Gonzalo de Jesús Peláez Castaneda, Alcira Rosa Quiroz Hinestroza, Luis Enrique Ruiz Arango, Luis Aníbal Sánchez Echavarría and Andrés Pérez Berrio.

The Court also recognized the duty to respect and guarantee in cases in which the right to life was deprived, in cases in which a disappearance occurred, in cases in which an attack aimed at depriving the victims of their lives was carried out but was not consummated, and in cases in which children or adolescents were directly affected, with respect to a specific group of victims identified by name by the State. Likewise, recognition was extended to the next of kin and close relatives of the alleged victims identified by the Court.

62. On the other hand, this Court notes that, effectively, the acknowledgment made before the Court, unlike the one made before the Commission, is limited to a group of victims identified by the State, based on the factual framework established in the response brief. However, this Court also emphasizes that the acknowledgment made by the State before the Commission was expressly conditioned to the establishment of the factual framework and the individualization of the alleged victims by the Commission in its Merits Report. In the same sense, this Court notes that the Commission pointed out precisely this circumstance in the Merits Report when it recalled that the State had expressed "that such acknowledgment is of a general nature and argued that the specific facts of the case and the determination of the victims remain in controversy".

63. In addition to the foregoing, with respect to the individualization of the victims, in the acknowledgment made before the Commission, the State expressly requested the Commission to bear in mind the identification criteria proposed by it, among which is the cross-checking of information from the list of alleged victims with the Unified Registry of Victims. However, the Commission followed other criteria to determine the universe of victims in the instant case, considering, in addition, that, in the case of massive violations, there is a difficulty inherent to the nature and dimension of the case regarding the construction of a definitive list of victims and that the due individualization of alleged victims corresponds to the merits stage.

64. In accordance with the foregoing, it could not be considered that the determination of the victims covered by the acknowledgment made in the briefs submitted before the Court is a conduct contradictory to what was established in their acknowledgment before the Commission. Therefore, the principle of *estoppel with respect to the* general determination of the universe of victims is not considered to have been violated.

65. In relation to the factual framework, it should be noted that the acknowledgment presented and expanded before the Court was established "on the basis of the factual platform that was defined and specified in the chapter corresponding to the facts of the [...] Answer". However, the State considered that the factual framework developed by the Commission in its Merits Report had not been sufficiently precise or proven, and therefore did not meet the condition of the precise establishment of a factual framework to which it submitted its plea. Thus, it cannot be considered that the legal conduct of the State in this acknowledgment was contrary to the conduct deployed in the acknowledgment before the Commission, so that neither would the figure of *estoppel* be configured on this point.

B.2. Acknowledgement of responsibility for the facts

66. The State explicitly established that its acknowledgment is built on the basis of the factual platform defined and specified in its own answer. Thus, the acknowledgment made by the State is a limited acknowledgment not only with respect to the recognized victims, but also with respect to the facts of the instant case. In effect, of the alleged victims referred to by the joint intervenors and the Commission, the State

only acknowledges its responsibility with respect to 201 direct victims and their respective families[44].

67. Thus, the factual framework corresponding to the victims recognized by the Commission in its Merits Report and listed by the representatives, who are included in the list established by the State in its response and expanded by the brief of February 5, 2021, is expressly excluded from the recognition and, therefore, continues to be the subject of controversy.

68. This Court also notes that in the cases in which the State only acknowledged its responsibility for the duty to guarantee, and not for the duty to respect, the controversy persists with respect to the facts alleged by the Commission and the representatives that seek to attribute responsibility to the State for the duty to respect. Likewise, even in the cases in which the State acknowledged its responsibility for violation of the duty to respect, the State does not acknowledge the totality of the facts alleged by the Commission in its Merits Report. In effect, the State made clarifications and comments with respect to the factual platform presented by the Commission and the representatives, indicating which different aspects of these facts are not known to it, which prevents it from considering that there is a full and ample recognition of the facts in the present case.

69. Likewise, the State expressly excluded from its recognition, (i) the responsibility for the duty of respect in the cases not specified in its recognition before the Court, (ii) the context of a State policy of violence against the Unión Patriótica, (iii) the existence of genocide against its members and (iv) the existence of violations that do not constitute acts of violence. On these points, therefore, the controversy continues.

B.3. Acknowledgment of liability as to the claims at law

70. With respect to the legal claims, given the terms of the acknowledgment of responsibility, the Court finds that the dispute regarding Colombia's international responsibility for the following violations has ceased:

a) Articles 1 and 8 of the Inter-American Convention to Prevent and Punish Torture in that it has not investigated, tried and, if applicable, punished acts that could constitute acts of torture to the detriment of Alexander de Jesús Galindo Muñoz, Oscar de Jesús Lopera Arango, Gonzalo de Jesús Peláez Castañeda, Alcira Rosa Quiroz Hinestroza, Luis Enrique Ruiz Arango, Luis Aníbal Sánchez Echavarría and Andrés Pérez Berrio;
b) The right to life (Article 4 of the American Convention) in relation to the duty of prevention (Article 1(1))[45];

[44] The State presented an acknowledgement of responsibility that refers to 219 violations of the American Convention to the detriment of 201 persons.

[45] Against Dionisio Calderón, Rubén Darío Castaño, Javier Sanabria Murcia, José Rafael Reyes Malagón, Darío Henao Torres, Octavio Vargas Cuellar, Leonel Forero Hernández, José Antonio Quiroz Rivero, José Francisco Ramírez Torres, Fernando Bahamón Molina, Fidel Antonio Ardila Parrado, Demetrio Aldana Quiroga, José Vicente Cárdenas Rodríguez, Luis Jesús Osorio Reátiga, Gerardo Cuellar Cuellar, Froilán Gildardo Arango Echavarría, Argemiro Colorado Marulanda, Pedro Julio Herrera Marín, José Yesid Reyes Panqueva, Luis Alberto Ardila Parrado, Hildebrando Lora Giraldo, Alfonso Guillermo Cujavante Acevedo, Hernando de Jesús Gutiérrez, José Antonio Riveros Sanabria, Néstor Henry Rojas Rodríguez, Alirio Zaraza Martínez, Electo Flórez Banquez, Carlos Evelio Conda Tróchez, Gildardo Castaño Orozco, Teófilo Forero, Rosalba Camacho, Martin Vásquez Arévalo, María Leonilde Mora Salcedo, Antonio Sotelo Pineda, José Antonio Toscano Triana, Luis Alberto Cardona Mejía, Jorge Orlando Higuita Rojas, Alejandro Cárdenas Villa, Gustavo Walberto Guerra Doria, Guillermo Antonio Callejas Ríos, Armando Calle Ángel, Horacio Forero Páez, Bladimiro Escobar Morales, Dally Vásquez Camacho, Elizabeth Vásquez Camacho, Josefina Vásquez Camacho, Jairo Alfredo Urbina Lacouture, Carlos Julio Vélez Rodríguez, Norma Garzón de Vélez, Dilmas Elkin Vélez Rodríguez,

c) To the right to life (Article 4 of the American Convention), in relation to its duty to respect, to the detriment of Antonio Palacios Urrea, Camilo Palacios Romero, Blanca Palacios Romero, Yaneth Palacios Romero, Rodrigo Barrera Vanegas, and Nelson Cañón Trujillo;
d) To the rights to recognition as a person before the law, to life, to personal integrity and to personal liberty in relation to its duty of prevention (Articles 3, 4, 5 and 7 in relation to Article 1(1) of the American Convention), with respect to its duties of respect, prevention, investigation, prosecution and eventual punishment, in cases of disappearance[46];
e) To the rights to recognition as a person before the law, to life, to personal integrity and to personal liberty in relation to their duty to respect (Articles 3, 4, 5 and 7 in relation to Article 1(1) of the American Convention), with respect to their duties to respect, prevent, investigate, prosecute and eventually punish, as well as to Article 1(a) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Miguel Ángel Díaz Martínez and Faustino López Guerrero;
f) To the rights to personal integrity and to a life plan in relation to its duty of prevention (Articles 5 and 4 in relation to Article 1(1) of the American Convention), in cases where an attack aimed at depriving the life of the victims was generated and was not consummated[47];
g) To the rights to personal integrity and to a life plan in relation to their duty to respect (Articles 5 and 4 in relation to Article 1(1) of the American Convention) in the cases in which an attack aimed at depriving the victims of their lives was generated and was not consummated, to the detriment of María Belarmina Romero Cruz, Leidy Marcela Palacios Romero and Cristian Rodrigo Barrera Palacios;
h) To the rights to personal integrity and to a life plan in relation to its duty of prevention (Articles 5 and 4 in relation to Article 1.1 of the American Convention), in the cases in which threats were made to the detriment of Hernan

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Henry Cuenca Vega, María Mercedes Méndez de García, William Ocampo Castaño, Rosa Tulia Peña Rodríguez, Henry Millan González, Otoniel Casilimas Cantor, Eixenover Quintero Celis, Efraín Ángel Arévalo, Luis Eduardo Cubides Vanegas, Marcelino José Blanquicet Castro, Marceliano Medellín Narváez, Carmelo Durango, Pedro Malagón Sarmiento, Elda Milena Malagón Hernández, Luz Adriana Hernández Vásquez, Alcides Julio Ariza Vargas, Josué Giraldo Cardona, Edilberto Blanco Cortés, Alexis Hinestroza, James Ricardo Barrero, Heliodoro de Jesús Durango, Rosalba Gavilar Novoa, Octavio Sarmiento Bohórquez, José Ignacio Reyes Gordillo, José Francisco Reyes Gordillo, Albeiro de Jesús Bustamante Sánchez, Alexandre de Jesús Galindo Muñoz, Pedro Nel Arroyave, Luis Carlos Vélez Garzón, Manuel Álvaro Fernández Pinzón, Nicolás Alberto Ossa Suaza, Omaira de Jesús Echavarría Pulgarín, Osfanol Torres Cárdenas, Leonardo Posada, Pedro Nel Jiménez Obando, José Rodrigo García Orozco, Pedro Luis Valencia Giraldo, Juan Jaime Pardo Leal, Orfelina Sánchez García, Pedro Sandoval, Luz Marina Ramírez, Francisco Eladio Gaviria Jaramillo, Carlos Gónima López, Elkin de Jesús Martínez, Carlos Kovacs Baptiste, Luis Eduardo Yaya Cristancho, José de Jesús Antequera Antequera, Gabriel Jaime Santamaría, Diana Stella Cardona Saldarriaga, Bernardo Antonio Jaramillo Ossa, Alfredo Manuel Florez García, Carlos Enrique Rojo Uribe, Rosa Mejía, Ofelia Rivera, Ramón de Jesús Padilla Arrieta, Julio César Uribe Rua, Pablo Emilio Córdoba Madrigal, León de Jesús Cardona Izasa, Julio Cañón López, Luz Marina Arroyave, María Concepción Bolívar Bedoya; Mario de Jesús Castrillon García; Gabriel de Jesús David Loaiza; Moisés Forero; Héctor Fabio Franco; Daniel Galindo; Gabriel Galindo; Hugo Alberto García Soto; Hermes Garzón; Orlando Gil; Sofronio de Jesús Hernández Gómez; Hoover Hernández; Ángel María Hurtado; Roberto Luis Jiménez Murillo; Luis Alberto Lopera Múnera; Marco Fidel Ortíz González; Jaime Pérez; Efraín Antonio Pérez Trujillo; Ruth Prada Peña; Marlene del Carmen Ramírez Rodríguez; Nidia Reyes Gordillo; Gustavo Ríos Gallego; Edilberto Rodríguez; Alberto Salazar; José Irian Suaza Jaramillo; Emilio Zúñiga James; David Galindo Ortiz.

[46] Against Marco Fidel Castro, Pablo Caicedo Siachoque, Álvaro Grijalba Beltrán, José Luis Grijalba Beltrán, Federico Grijalba Burbano, Javier Castillo, Segundo Epimenio Velasco Fajardo, Julio Serrano Patiño, Benjamín Artenio Arboleda Chavera, José Lisneo Asprilla Moreno, Vladimir Cañón Trujillo, Alfonso Miguel Lozano Barraza, Alcides Forero Hernández; Francisco Martínez Mena; Robinson Martínez Moya and Edison Rivas Cuesta.

[47] Against María Trinidad Torres Hernández, Adelana Solano Rivera, María Angélica Ortiz Castro, José Samuel Urrego Morera, Wilson Pardo García, Reina Luz Pulgarín Roldán, Jaime Caicedo Turriago, César Martínez Blanco, José Alirio Traslaviña León, Miguel Antonio Castañeda, Alba María Fuentes Robles, Ana Carolina Bohórquez Triana, Ciro Ferrer Bula, Aida Yolanda Avella Esquivel, Olga Judith Vélez Garzón, Mónica Sandra Agudelo, Luis Alexander Naranjo León, Diana Catalina Velásquez Torres, Jennifers Chico Vásquez and Magnely Vásquez Camacho.

Motta Motta, Imelda Daza, Rita Yvonne Tobón Areiza, Beatriz Helena Pereañez, Belarmino Salinas Rentería, José Domingo Ciro Buriticá, Rosmery Londoño Gil, Pedro Nel Arroyave, Rosalba Camacho and Martín Vásquez Arévalo;

i) To the rights to movement, protection of the family, personal integrity and life project, in relation to its duty of prevention (Articles 22, 17, 5 and 4 in relation to Article 1.1 of the American Convention) in the case in which the victims had to leave their homes due to the victimization scenario, to the detriment of Henry Cuenca Vega, Ana Carlina Bohórquez Triana, Rita Yvonne Tobón Areiza, Aida Yolanda Avella Esquivel, Beatriz Helena Pereañez, Belarmino Salinas Rentería, José Domingo Ciro Buriticá, Rosmery Londoño Gil, Pedro Nel Arroyave, Rosalba Camacho, Martín Vásquez Arévalo, Olga Judith Vélez Garzón, Chesman Cañón Trujillo, Jorge Guillermo Forero Hernández, Sofronio de Jesús Hernández Gómez, Alberto Trujillo, Isabel Trujillo and Nelly Trujillo;

j) Article 19 of the American Convention, in relation to the duty of prevention enshrined in Article 1(1) of the same instrument in cases in which children or adolescents were directly affected, with respect to Elda Milena Malagón Hernández, Luz Adriana Hernández Vásquez, Luis Carlos Vélez Garzón, Olga Judith Vélez Garzón, Luis Alexander Naranjo León and Cristian Rodrigo Barrera Palacios;

k) Article 19 of the American Convention, in relation to the duty to respect, enshrined in Article 1(1) of the same instrument in cases in which children or adolescents were directly affected, with respect to Leidy Marcela Palacios Romero, Cristian Rodrigo Barrera Palacios, Jennifers Chico Vásquez, Magnely Vásquez Camacho; David Galindo Ortiz, Diana Catalina Velásquez Torres;

l) To the right to freedom of association enshrined in Article 16 of the American Convention, in relation to the duty of prevention established in Article 1(1) of the same body of law, to the detriment of Rubén Darío Castaño, Froilán Gildardo Arango Echavarría, Argemiro Colorado Marulanda, Hildebrando Lora Giraldo, Electo Flórez Banquez, Carlos Evelio Conda Tróchez and Jorge Orlando Higuita Rojas;

m) To personal integrity (Article 5 in relation to Article 1(1) of the American Convention) with respect to the next of kin and close relatives who have demonstrated a link with any of the members of the Unión Patriótica that is fully determined and represented in the present case, and who have suffered psychological harm as a consequence of the facts delimited in the case submitted to the Court, and

n) To political rights, freedom of expression, the right of association and honor and dignity (Articles 23, 13, 16 and 11 of the American Convention), in cases of violations whose motive was associated with the victims' membership in the Patriotic Union, in relation to the duties to respect and guarantee.

71. The controversy persists with respect to all those alleged victims who were not expressly mentioned by the State in its acknowledgment and who form part of the universe of alleged victims determined by the Commission and the representatives.

72. Regarding the modalities of attribution of responsibility, the controversy subsists with respect to the duty to respect in relation to the violation of the rights to personal integrity and the life project in relation to its duty of prevention (Articles 5 and 4 in relation to Article 1.1 of the Convention), in cases in which threats occurred; to the rights to movement, protection of the family, personal integrity and the life project, in relation to its duty of prevention (Articles 22, 17, 5 and 4 in relation to Article 1.1 of the Convention) in the case in which the victims had to leave their homes because of the victimization scenario; to political rights, freedom of expression, the right of association and honor and dignity (articles 23, 13, 16 and 11 of the Convention) and to the right to freedom of association (article 16 of the Convention).

73. Regarding the rights to judicial guarantees, to judicial protection, to freedom of expression (Articles 8, 25 and 13 of the Convention) and to the right to the truth as an autonomous right with respect to the duty of the State to investigate and clarify the facts, and to publicly disseminate the information, the State's acknowledgment was very general and did not include a list of alleged victims. It is for this reason that the Court considers that the controversy on this point remains. In particular, the State excluded from its acknowledgment those alleged unfounded criminalizations, the allegedly stigmatizing statements and those violations derived from the loss of legal personality of the Unión Patriótica, and therefore the controversy subsists on these points.

B.4. Acknowledgement of responsibility for repairs

74. In the acknowledgment made before the Commission, the State underscored the progress made domestically in the comprehensive reparation of the Unión Patriótica, which included the creation of a collective reparation plan for the victims of the Unión Patriótica; the public act of acknowledgment of State responsibility carried out by then President Santos on September 15, 2016; the restitution of the legal status of the Unión Patriótica political party and its extension; the offering of material guarantees to the party, including support for the realization of its VI National Congress; measures in favor of the consolidation of historical memory; normative measures to give protection to the survivors, relatives and members of the Patriotic Union; the creation of a Committee for Risk Evaluation and Recommendation of Measures (CERREM) as well as a series of individual measures.

75. In the section on the acknowledgment made by the State in its answer to the Court, as well as in the brief extending the acknowledgment, no direct reference was made to reparations. In its response, the State referred to the reparations requested by the Commission and the representatives in a separate section, highlighting the actions taken by the State to ensure direct reparations in the domestic sphere.

76. Taking into account that the dispute subsists with respect to the determination of the victims and part of the factual framework, and that the parties have considered the measures taken by the State at the domestic level to be insufficient, the Court considers that the dispute subsists with respect to reparations and will resolve what is appropriate in the present Judgment.

B.5. Assessment of the recognition of responsibility

77. The Court, as in other cases[48] , values the State's acknowledgment of its international responsibility. It produces full legal effects, in accordance with Articles 62 and 64 of the Rules of Procedure. The Court considers, however, that the recognition has a limited character and agrees with the joint interveners in considering that the fractioned and casuistic nature of the recognition does not allow taking into account the general context of the case, as well as the systematic and generalized nature of the conducts carried out against the members and militants of the Unión Patriótica party. Likewise, this Court finds that most of the violations of the rights contained in the American Convention that the State recognized, to the detriment of 201 victims, were due to a failure in the duty of prevention. The State only acknowledged its responsibility for a breach of the duty to respect in 9 cases (*supra* para. 2).

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[48] *Case of Benavides Cevallos v. Ecuador. Merits, Reparations and Costs.* Judgment of June 19, 1998. Series C No. 38, para. 57, and *Case of Garzón Guzmán et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of September 1, 2021. Series C No. 434, para. 26.

78. It should be recalled that, in accordance with Articles 62 and 64 of the Rules of Procedure and in the exercise of its powers of international judicial protection of human rights, a matter of international public order that transcends the will of the parties, it is incumbent upon the Court to ensure that the acts of acceptance are acceptable for the purposes sought by the inter-American system. In this task, the Court is not limited to merely taking note of the acknowledgment made by the State, or to verify the formal conditions of the aforementioned acts, but must confront them with the nature and gravity of the alleged violations, the demands and interests of justice, the particular circumstances of the specific case and the attitude and position of the parties[49], in such a way that it can determine, as far as possible and in the exercise of its jurisdiction, the truth of what happened[50].

79. In this sense, the recognition cannot have the consequence of limiting, directly or indirectly, the exercise of the powers of the Court to hear the case that has been submitted to it[51] and to decide whether there was a violation of a right or freedom protected by the Convention[52]. Likewise, the recognition of State responsibility cannot be understood as a way of restricting the consequences of the latter and cannot seek to make the victims invisible or diminish the dimension of the facts.

80. Thus, this Court considers that numerous elements remain in controversy with respect to the determination of the factual framework, the universe of victims and the alleged violations. Taking into account the partial nature of the acquiescence, the Court considers it necessary to issue the present Judgment and to determine, in it, the facts that occurred and the human rights violations that were committed[53]. This makes it possible to settle the remaining controversies and to resolve the pertinent aspects of the allegations that were not expressly accepted by the State. In addition, it contributes to the reparation of the victims, to avoid the repetition of similar facts and to satisfy, in short, the purposes of the inter-American human rights jurisdiction[54]. The Court will also rule on the corresponding measures of reparation.

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[49] *Cf. Case of Kimel v. Argentina. Merits, Reparations and Costs.* Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of Huacón Baidal et al. v. Ecuador*. Judgment of October 4, 2022. Series C No. 466, para. 29.

[50] *Cf. Case of Manuel Cepeda Vargas v. Colombia, Preliminary Objections, Merits, Reparations and Costs.* Judgment of May 26, 2010. Series C No. 213, *supra,* para. 17, and *Case of Huacón Baidal et al. v. Ecuador*, *supra*, para. 29.

[51] Article 62(3) of the Convention states: "The Court has jurisdiction to hear any case concerning the interpretation and application of the provisions of this Convention that is submitted to it, provided that the States Parties to the case have recognized or recognize such jurisdiction, either by special declaration, as indicated in the preceding subparagraphs, or by special convention."

[52] Article 63(1) of the Convention establishes: "When it decides that there has been a violation of a right or freedom protected in this Convention, the Court shall order that the injured party be guaranteed the enjoyment of his right or freedom that was violated. It shall also order, if appropriate, that reparation be made for the consequences of the measure or situation that constituted the violation of those rights and that fair compensation be paid to the injured party.

[53] Without prejudice to the foregoing, in relation to the pleadings submitted by the representatives not expressly acknowledged by the State, but also not disputed, the Court recalls that Article 41(3) of the Rules of Procedure indicates that "[t]he Court may consider accepted [...] the claims that have not been expressly disputed". This Tribunal, therefore, will take this into account as a relevant element in the examination of the arguments referred to.

[54] *Cf. Case of Tiu Tojín v. Guatemala. Merits, Reparations and Costs.* Judgment of November 26, 2008. Series C No. 190, para. 26, and *Case of Movilla Galarcio et al. v. Colombia. Merits, Reparations and Costs*. Judgment of June 22, 2022. Series C No. 452, para. 40.

V PRELIMINARY EXCEPTIONS

81. The State presented four preliminary objections[55], which will be analyzed in the following order: a) the alleged lack of competence by reason of the person with respect to the Unión Patriótica political party; b) the alleged lack of competence by reason of time; c) the alleged lack of competence by reason of the subject matter to declare the existence of a crime of political genocide, and d) alleged duplication of international proceedings.

A. Alleged lack of jurisdiction by reason of the person with respect to the Unión Patriótica political party.

A.1. Arguments of the parties and observations of the Commission

82. The ***State*** argued that the representatives alleged that the Unión Patriótica's rights to legal personality, equality and political rights had been violated as a consequence of the suppression of its legal personality as a political party. On this point, it indicated that these allegations concern a legal person and not the members and militants of the party, for which reason it maintained that the Court lacks jurisdiction to hear the alleged violations suffered by the party.

83. The ***Commission*** emphasized that, "it did not declare the violation to the detriment of a legal person, but stressed that the State violated political rights, freedom of thought and expression, freedom of association and the principle of equality and non-discrimination, by virtue of the fact that the motive for the serious human rights violations, extermination and persecution sustained against the victims was their belonging to a political party and the expression of their ideas through it". He specifically noted that the acts perpetrated against the members of the Unión Patriótica "had the effect of disarticulating their political project to the point of generating the loss of the legal personality of the political party in 2002". He added that, according to the jurisprudence of the Court, the recognition of the rights of legal persons may directly or indirectly imply the protection of the human rights of the associated natural persons.

84. The common interveners of ***Reiniciar*** alleged that, in the present case, the state act analyzed is the withdrawal of the legal status by the National Electoral Council of the Unión Patriótica as a political party, which certainly implied a state act against a legal person, but with a severe impact on the exercise of the political rights of the collective of alleged victims in the case. They considered that the demonstration of the affectation of natural persons through state acts against legal persons is a matter that must be analyzed on the merits. On this point, they indicated that the relationship between the alleged victims and the Unión Patriótica "not only enables the analysis of the impact on their political rights as a consequence of the withdrawal of the legal person, but also constitutes the essential common thread that gave rise to the multiple forms of victimization they suffered". Thus, they requested that the preliminary objection be dismissed and that the Court declare that it has jurisdiction by reason of the person to rule on the related facts.

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[55] The State waived a preliminary objection of lack of jurisdiction by reason of place, which it had raised in its response, in a brief dated February 5, 2021. The same was ratified during the public hearing in its written closing arguments. Likewise, in its final written arguments, the State withdrew three preliminary objections that it had raised in its answer and which were related to: a) the improper exhaustion of domestic remedies with respect to some facts related to the case of Miguel Ángel Díaz; b) the failure to exhaust domestic remedies with respect to the exclusion of Miguel Ángel Díaz and his next of kin from the Unified Registry of Victims, and c) alleged lack of jurisdiction by reason of the place in the case of Sofronio de Jesús Hernández Gómez and Chesman Cañón Trujillo.

with the cancellation of the legal status of the Unión Patriótica as a political party, including the impact on the party and on the political rights of its members and militants.

85. The representatives of the ***Diaz Mansilla family*** and the joint intervenors of the ***CJDH and DCD*** did not comment on this preliminary objection.

A.2. Considerations of the Court

86. In relation to the allegations on this preliminary objection *ratione persona*, this Court notes that neither the joint intervenors nor the Commission requested that this Court declare that the human rights of the Unión Patriótica political party had been violated. Indeed, in this case, the alleged victims have been considered as members and sympathizers of the Unión Patriótica Party or as relatives of members and sympathizers of the Party *(supra* para. 1). On this point, the Commission, in its Merits Report, considered that "the motive for the serious human rights violations and systematic persecution against the alleged victims identified in this report, was their membership in a political party and the expression of the ideas proposed by it". In the Merits Report, the violation was not declared to the detriment of a legal person, but rather it was determined how the acts against that legal person allegedly influenced the violations of the rights of the persons who were members or sympathizers of the party. Thus, the Commission emphasized in its observations on the preliminary objections that the "State violated political rights, freedom of thought and expression, freedom of association and the principle of equality and non-discrimination by virtue of the fact that the motive for the serious human rights violations, extermination and persecution sustained against the victims was their membership in a political party and the expression of their ideas through it".

87. In the same way, the ***joint interveners of Reiniciar***, in their brief of requests and arguments, requested that the State of Colombia be held responsible for the violation of the "political rights, freedom of thought and expression and freedom of association [...] of all the persons on the illustrative list, for the set of violations to which they were subjected due to the exercise of those rights through the Unión Patriótica party".

88. Based on the foregoing, the Court observes that the alleged violations of the rights enshrined in the Convention are alleged to affect the members and sympathizers of the Unión Patriótica party and their relatives as natural persons, and therefore the preliminary objection of lack of jurisdiction filed by the State is inadmissible.

89. Without prejudice to the foregoing, the Court recalls that it has already established that Article 1(2) of the Convention establishes that the rights recognized in said instrument correspond to persons, that is to say, to human [beings56]. Likewise, the Court has noted in its jurisprudence that, in general, the rights and obligations attributed to moral persons are resolved in the rights and obligations of the natural persons that constitute them or of the individuals that constitute them.

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[56] *Cf. Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 207, para. 45; *Case of Granier et al (Radio Caracas Televisión) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of June 22, 2015. Series C No. 293, para. 19, and *Ownership of rights of legal persons in the inter-American human rights system (interpretation and scope of Article 1(2), in relation to Articles 1(1), 8, 11(2), 13, 15, 21, 24, 25, 29, 30, 44, 46 and 62(3) of the American Convention on Human Rights, as well as Article 8(1)(a) and (b) of the San Salvador Protocol).* Advisory Opinion OC-22/16 of February 26, 2016. Series A No. 22, para. 37.

acting on their behalf or representation[57]. Thus, the recognition of the rights of legal persons may imply, directly or indirectly, the protection of the human rights of associated natural persons[58].

90. In this sense, in order to admit which situations may be analyzed under the framework of the American Convention, the Court has examined the alleged violation of the rights of subjects as shareholders[59] and workers[60], in the understanding that such alleged violations are within the scope of its competence. On the other hand, the Court has already indicated that "political parties are vehicles for the exercise of the political rights of the citizens "[61], therefore, any infringement of political parties could affect the rights of individuals who are members or sympathizers of a political party. On the other hand, the Court considers it necessary, as it has already done in previous cases, to emphasize that the fact that a legal person is involved in the facts of the case does not imply, *prima facie,* that the preliminary objection is applicable, since the exercise of the right by a natural person or its alleged violation must be analyzed in the merits of the case[62].

B. Alleged lack of competence due to the time

B.1. Arguments of the parties and the Commission

91. The ***State*** alleged that the Court lacks jurisdiction to rule on 44 alleged victims[63] that appear in the list of alleged victims in the annex to the Commission's Merits Report. It indicated that the events that gave rise to the alleged violations of the Convention were committed before June 21, 1985, the date on which Colombia accepted the contentious jurisdiction of the Court and, furthermore, these are not events that constitute violations of a continuous and permanent nature.

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[57] *Cf. Case of Cantos v. Argentina. Preliminary Objections.* Judgment of September 7, 2001. Series C No. 85, para. 27; *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, *supra,* para. 54, and *Ownership of rights of legal persons in the inter-American human rights system, supra,* para. 111.

[58] *Cf. Ownership of rights of legal persons in the Inter-American human rights system, supra,* para. 111.

[59] *Ivcher Bronstein v. Peru. Merits, Reparations and Costs.* Judgment of February 6, 2001. Series C No. 74, paras. 123, 125, 138 and 156; *Case of Chaparro Álvarez and Lapo Íñiguez. Vs. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 21, 2007. Series C No. 170, paras. 173, 209 and 218; *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195, para. 400, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela, supra,* para. 19.

[60] *Cf. Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs.* Judgment of February 2, 2001. Series C No. 72, paras. 109, 110, and 130, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela, supra*, para. 19.

[61] *Granier et al. (Radio Caracas Televisión) v. Venezuela*, *supra,* para. 148, and *Ownership of rights of legal persons in the Inter-American human rights system, supra,* para. 115.

[62] *Granier et al. (Radio Caracas Televisión) v. Venezuela*, *supra,* para. 22.

[63] These persons are: Ariel Cardona Higuita; Javier de Jesús Marín; José Bladimir Bedoya Duque; Gustavo Alfonso; Arcenio Galvis Rodríguez; Miguel Julián Gómez Veleño; Mario Sandoval Rozo; Rudesindo Godoy Rodríguez; Israel Forero Castro; Alberto López Luis; José Óscar Real; José Molina; Israel Romero; Milciades Contento; José Dolores Belo; Álvaro Camacho Garzón; Humberto Gaitán; Gregorio Téllez; Arturo Mora Arciniegas; Dídimo Sánchez Trujillo; Abel Gallego; Fidelino Cantor; Giovanny Parra Pinzón; Melkin Barajas; Adelfa Tulia Campo de Vasco; Mario Marín Amaya; Jesús Eduardo Vasco Hincapié; Jesús Eduardo Vasco; Héctor Patiño Miranda; Elcira Chalá; Juan Evert Quintero González José Ricardo Lozada; María Villareal de Marchan Luis Eduardo Martínez Bello Rosalba Sambony; Ciserón Morales; Maruja Camargo Romero Armando Mahecha Martínez José Arturo Capera; Jorge Cárdenas; Andrés Gutiérrez; Aristides Cobo, and Manuel José Molina Martínez Joel Marín.

It indicated, however, that it recognized the competence of the Court to analyze the responsibility of the State in relation to Articles 8 and 25 of the Convention[64].

92. The ***Commission*** argued, in relation to violations of the Convention that are not of a permanent or continuous nature, that the Court has jurisdiction to analyze the actions or omissions of the State in the fulfillment of its duty to investigate that have occurred under the temporal jurisdiction of the Court. It also recalled that in the *case of Carvajal Carvajal et al. v. Colombia*, the Court had determined that the right to life had been violated based on indications of participation in the events by State agents that were not disproved by internal investigations. Finally, it emphasized that violations of the right to honor and dignity, political rights, personal integrity, freedom of thought and expression, freedom of association, and the right to equality and non-discrimination had been alleged, which had been perpetrated with respect to all the victims in the case, so that the Court would also have jurisdiction over those violations.

93. The ***joint interveners of the organization Reiniciar*** added to what the Commission had indicated that they agreed with the exclusion of the acts of homicide, attempted homicide and threats that occurred before June 21, 1985, but that they opposed the exclusion of the death of Manuel José Melina Martínez, since it occurred on the same day that the Colombian State accepted jurisdiction. Secondly, as an additional argument, they considered it important that the homicides, attempted homicides and threats that had been excluded from the jurisdiction, based on this preliminary objection, should in any case be considered as relevant background and context "for a better understanding of the case".

B.2. Considerations of the Court

94. In order to determine its temporal competence, in accordance with Article 62(1) of the American Convention, this Court must take into consideration the date of recognition of competence by the State, the terms in which it was given and the principle of non-retroactivity, provided for in Article 28 of the Vienna Convention on the Law of Treaties of 1969[65].

95. Colombia recognized the contentious jurisdiction of this Court on June 21, 1985 (*supra* para. 16) and in its interpretative declaration indicated that the Court would have jurisdiction "for facts subsequent to this acceptance" of the American Convention, made on that same date. Based on the foregoing and on the principle of non-retroactivity, the Court cannot exercise its contentious jurisdiction to declare a violation of conventional norms when the alleged facts, or the conduct of the State, are prior to such recognition of jurisdiction[66].

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[64] The State indicated, however, that this recognition of jurisdiction to hear the alleged violations of Articles 8 and 25 only applies in the alternative, in the event that the exceptions presented by the State with respect to the facts and the alleged victims are not successful.

[65] Article 28: The provisions of a treaty shall not bind a party in respect of any act or fact which took place prior to the date of entry into force of the treaty for that party or in respect of any situation which at that date ceased to exist, unless a different intention appears from the treaty or is otherwise established.

[66] *Cf. Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 16; *Case of Argüelles et al. v. Argentina. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2014. Series C No. 288, para. 24, and *Case of Perrone and Preckel v. Argentina. Preliminary Objections, Merits, Reparations and Costs.* Judgment of October 8, 2019. Series C No. 384, para. 19.

96. The Court observes that the acts of which the 44 persons mentioned by the State were allegedly victims are acts of homicide, attempted homicide, and threats and are of instantaneous consummation, 43 of which occurred prior to June 21, 1985.

97. Notwithstanding the foregoing, as acknowledged by the State (*supra* para. 32), this Court has also found that in the course of an investigation or judicial process, independent events may occur that could constitute specific and autonomous violations[67] . Therefore, the Court has jurisdiction to examine and rule on possible human rights violations with respect to an investigation process that occurred after the date of recognition of the Court's jurisdiction, even when the same event occurred prior to the recognition of the contentious jurisdiction[68].

98. The Court emphasizes that, as will be analyzed below (*infra* Chapter VIII.A), the facts of the instant case responded to a systematic plan of annihilation of the members of the UP, which developed over a period of more than two decades. This consideration will be taken into account in the analysis of the multiple violations denounced in the instant case.

99. Consequently, the Court considers that in the *instant case* it does not have jurisdiction *ratione temporis to* declare violations of the American Convention with respect to the facts that occurred prior to June 21, 1985, which do not constitute permanent or continuing acts to the detriment of the alleged victims mentioned by the State. The Court may, however, refer to the investigative proceedings carried out by the authorities on those facts. In effect, whatever the domestic criminal qualification, what is continuous is the violation of the Convention that continues to be committed at present, since the infraction that this Court hears about is that of international law, given that it does not criminally judge the officials, but rather the State for violation of the Convention[69]. Likewise, the Court will refer to facts prior to June 21, 1985 in order to refer to the factual framework of the case. By virtue of the foregoing, this Court considers that the preliminary objection *ratione temporis* is partially admissible.

100. On the other hand, the Court notes that, as pointed out by the joint intervenors of the organization Reiniciar, one of the persons mentioned by the State, Mr. Manuel José Molina Martínez, died on June 21, 1985, precisely the same day on which the State recognized the contentious jurisdiction of this Court. Therefore, by virtue of the foregoing, this Court considers that the preliminary objection *ratione temporis* does not apply to the facts that would have led to his death.

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[67] *Case of the Serrano Cruz Sisters v. El Salvador. Preliminary Objections.* Judgment of November 23, 2004. Series C No. 118, para. 84 and *Case of Herzog et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 15, 2018. Series C No. 353, para. 28.

[68] *Cf. Case of the Serrano Cruz Sisters v. Salvador, supra, para. 65*, and *Case of Herzog et al. v. Brazil*, *supra*, para. 28.

[69] *Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 134, and *Case of Members of the Chichupac Village and Neighboring Communities of the Municipality of Rabinal v. Guatemala. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 30, 2016. Series C No. 328, para. 24.

C. Alleged lack of subject matter jurisdiction to declare the existence of a crime of political genocide.

C.1. Arguments of the parties and the Commission

101. The ***State*** referred to the request of the Díaz Mansilla Family, in that it asked the Court to declare that Colombia "committed or encouraged innumerable crimes against humanity, all framed in a context of political genocide. He argued that the Court only has jurisdiction to declare States internationally responsible, but that they do not commit crimes or offenses. He also argued that the Court does not have jurisdiction to classify these crimes.

102. On the other hand, with respect to Reiniciar's request that the Court recognize the existence of political genocide and that the State be ordered to investigate, try and punish the facts of this case under this category, the State emphasized that this category does not exist in international law. It also alleged that, since the Admissibility Report, the Commission excluded the possibility of analyzing the allegation of genocide. In this way, he considered that the Commission excluded from the factual framework the considerations regarding political genocide, so that the representatives were not authorized to include it again in the discussion. Likewise, it considered that Article 29 of the Convention does not extend the Court's subject-matter jurisdiction to declare the existence of national crimes with effects in international law, and therefore does not enable the Court to declare the existence of the crime of "political genocide.

103. Finally, with respect to the subsidiary request of Reiniciar that, in the event that the facts of this case are not characterized as political genocide, they should be classified as a crime against humanity of extermination and the State should be ordered to investigate them, he emphasized that this request is not only inadmissible by virtue of the material jurisdiction of the Court, but also that the elements available to the Court are insufficient to make a characterization as requested by the representatives. In particular, he emphasized that there are no elements to establish the existence of a plan or policy of the State to commit the crime.

104. The ***Commission*** considered that the State's approach "does not have the character of a preliminary objection since it is a matter of value judgments on how to characterize the facts in a legal figure," and that the complexities pointed out by the State to qualify the conduct as a crime against humanity are issues that correspond to the merits of the case. It emphasized that "it has no 'pretension' beyond the fact that the case should be analyzed in accordance with the inter-American *corpus juris*, which is nourished by developments in public international law and international human rights law". He also pointed out that the Court has qualified conduct as crimes against humanity, without this implying that it is acting as a criminal court. Thus, it requested that the preliminary objection be dismissed.

105. The ***joint intervenors of Reiniciar*** clarified that it does not appear from their brief of requests and arguments that "the [...] Court has been asked to directly apply instruments of international criminal law or norms of domestic criminal law, as a source of attribution of responsibility to the State". They indicated that, on several occasions, the Court has directly qualified facts under the elements of international crimes, including crimes against humanity. Such a qualification would have, in the opinion of the representatives, "direct implications in the orders to the State in matters of investigation, including the adequate legal qualification of the facts at the domestic level". They further argued that the fact that the Commission excluded in its Admissibility Report the possible legal qualification of the facts as genocide does not imply that this debate cannot be reopened. To this effect, they pointed out the possibility of changing or varying the

legal qualification of the facts of a specific case. Thus, they requested that the preliminary objection be dismissed and that the Court "declare that it has jurisdiction over the subject matter to address their claims for characterization of the facts and determination of the specific implications on the obligations of investigation and punishment.

106. The ***representatives of the Díaz Mansilla family*** clarified that "at no time did they request that the operative part of the judgment contain declarations or condemnations regarding the commission of an international crime by the Colombian State. They argued that the Court is competent to use categories of international criminal law to analyze the facts of the present case. They argued that, in other cases of serious human rights violations, the Court has taken into account, within the analysis of the merits, that it is possible to characterize the facts as crimes against humanity, in order to make clear the scope of the international responsibility of the State.

107. Regarding the exclusion of the allegations related to political genocide because they were expressly excluded from the admissibility report, the representatives of the Díaz Mansilla family emphasized that "the existence or not of political genocide or another international crime is not a fact, it is an evaluation based on criminal legal categories of facts that were presented by the [Commission] in the Article 50 report". Thus, they argued that while the representatives cannot expand on the factual framework presented by the Commission, they can present their own legal assessments and considerations on that factual framework.

108. They added that the arguments presented by the State regarding the alleged complexity of characterizing the facts of the case as constituting a crime against humanity are not a matter of competence or admissibility that should be discussed at the preliminary objections stage. Thus, they requested that the preliminary objection be rejected.

109. The ***CJDH and DCD joint intervenors*** did not comment on this preliminary objection.

C.2. Considerations of the Court

110. In the instant case, the Commission, in its Admissibility Report, decided not to include the allegation of genocide advanced by the petitioners[70]. However, both the representatives of the Diaz Mansilla family and those of Reiniciar, in their respective briefs and arguments, requested the Court to classify the facts of the case under international standards as genocide or, failing that, as a crime against humanity. The State argued that, due to the exclusion made by the Commission since its Admissibility Report, the representatives are not entitled to re-include this allegation in the discussion, since they are limited by the factual framework included in the Merits Report.

111. On the other hand, although the representatives cannot modify the factual framework established by the Commission, the Court also recalls its constant jurisprudence according to which the possibility of changing or varying the legal qualification of the facts at issue in a specific case is permitted in the framework of a proceeding in the Inter-American System and that the alleged victims and their representatives may invoke the violation of rights other than those included in the Merits Report, as long as they abide by the

[70] *Cf.* Inter-American Commission on Human Rights. Report No. 5/97. Case 11.227. Admissibility. Members and Militants of the Unión Patriótica. Colombia. March 12, 1997. Paras. 24 and 25 (evidence file, folios 23632 to 23642).

facts contained in said document[71]. It is then necessary to analyze whether in the Admissibility Report the facts that support the allegations on the alleged commission of genocide were inadmissible or whether, on the contrary, the Commission only made an assessment on the legal qualification of certain facts.

112. In view of the foregoing, the Court notes that the Admissibility Report declared the "allegation of genocide" inadmissible, considering that "the facts alleged by the petitioners do not characterize, as a matter of law, that this case fits the current legal definition of the crime of genocide as set forth in international law "[72]. 72 Thus, it is clear that the foregoing analysis is limited to a *prima facie* legal qualification made by the Commission, but not to the admissibility of the facts. However, in order to analyze the possibility of the Court taking into account these allegations regarding the qualification of genocide or, subsidiarily, of crime against humanity, it is necessary to analyze the competence of the Court to make these qualifications.

113. The Court recalls that the object of its mandate is the application of the American Convention and other treaties that grant it jurisdiction. What corresponds to this Court is not to determine individual responsibilities73 , the definition of which falls to the domestic or international criminal courts, but to hear the facts brought before it and to qualify them in the exercise of its contentious jurisdiction, according to the evidence presented by the parties[74].

114. In cases of serious human rights violations, the Court has taken into account, in the analysis of the merits, that such violations can also be characterized or qualified as crimes against humanity, for having been committed in contexts of massive and systematic or generalized attacks against some sector of the population[75] , in order to clearly explain the scope of State responsibility under the Convention in the specific case and the legal consequences. In doing so, the Court does not, in any way, impute a crime to any natural person. In this sense, the need for the integral protection of the human being under the Convention has led the Court to interpret its

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[71] *Cf. Case of Five Pensioners v. Peru. Merits, Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparations and Costs*. Judgment of March 9, 2018. Series C No. 351, para. 267.

[72] *Cf.* Inter-American Commission on Human Rights. Report No. 5/97. Case 11.227. Admissibility. Members and Militants of the Unión Patriótica. Colombia. March 12, 1997. Para. 25 (evidence file, folios 23632 to 23642).

[73] *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections.* Judgment of June 26, 1987. Series C No. 1*,* para. 134, and *Case of Gómez Virula et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 21, 2019. Series C No. 393, para. 78.

[74] *Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of July 10, 2007. Series C No. 167, para. 87, and *Case of Gudiel Álvarez (Diario Militar) v. Guatemala. Merits, Reparations and Costs.* Judgment of November 20, 2012. Series C No. 253, para. 215.

[75] The Court has used the concept of crimes against humanity, war crimes or crimes under international law in the following cases: *Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs.* Judgment of September 22, 2006. Series C No. 153, paras. 82 and 128; *Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 26, 2006. Series C No. 154, paras. 93-104; *Case of La Cantuta v. Peru. Merits, Reparations and Costs.* Judgment of November 29, 2006. Series C No. 162, para. 225; *Case of Miguel Castro Castro Castro Prison v. Peru. Merits, Reparations and Costs.* Judgment of November 25, 2006. Series C No. 160, para. 404; *Case of Manuel Cepeda Vargas v. Colombia, supra,* para. 42; *Case of Gelman v. Uruguay. Merits and Reparations.* Judgment of February 24, 2011. Series C No. 221, para. 99; *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, Reparations and Costs.* Judgment of October 25, 2012. Series C No. 252, para. 286; *Case of Gudiel Álvarez et al ("Diario Militar") v. Guatemala, supra,* para. 215; *Case of Workers of the Hacienda Brasil Verde v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of October 20, 2016. Series C No. 318, paras. 248-306; *Case of Herzog et al. v. Brazil, supra*, paras. 211-232, and *Case of Órdenes Guerra et al. v. Chile. Merits, Reparations and Costs.* Judgment of November 29, 2018. Series C No. 372, para. 89.

The Court does not, however, imply an overreaching of its powers, since, it is reiterated, this respects the powers of the criminal jurisdictions to investigate, indict, and punish the natural persons responsible for such offenses. What the Court does, in accordance with conventional law[77] and customary law, is to use the terminology used by other branches of international law for the purpose of measuring the legal consequences of the alleged violations *vis-à-vis* State obligations[78].

115. The allegations regarding the insufficiency of the evidence to characterize the facts as genocide, and the application of the concept of political genocide, are elements that do not correspond to the examination of admissibility and may, if the Court deems it pertinent, be evaluated in the merits chapter. Consequently, the Court declares this preliminary objection inadmissible.

D. The alleged duplication of international procedures

D.1. Arguments of the parties and the Commission

116. The ***State*** alleged that some alleged victims in this case also appear as victims in petitions before the Commission for the same facts. It added that some alleged victims are also victims of cases that have already been decided by the Court or that have a Merits Report from the Commission. Therefore, it requested that, by virtue of the configuration of the exception of duplicity of proceedings in the form of lis pendens, since two international proceedings are ongoing, the Commission be ordered to exclude the alleged victims concerned from the case or from the petition before the Inter-American Commission on Human Rights. It referred to a) the processing of 15 cases before the Commission concerning 113 alleged victims of the case; b) a case with res judicata before the IACHR Court (*Cepeda Vargas v. Colombia case*); c) a case with a friendly settlement before the Commission, and d) 2 cases with a merits report before the Commission concerning 10 alleged victims.

117. The ***Commission*** indicated with respect to lis pendens that the State's argument is closely linked to the substantive determinations of the Court, since lis pendens requires compliance with the criterion of personal, material and legal identity, which is not possible without a substantive determination by the Inter-American Court. On the other hand, it indicated that the cases in process (15 cases) in which, according to the State, total or partial lis pendens was generated, were presented after the present case, some do not have a decision of admissibility, in the framework of processes in which the parties had the opportunity to pronounce themselves on all the aspects referred to the admissibility of said petitions and in effect, it appears in some cases that the State has presented the argument of duplicity with respect to the present case. It understood that the lis pendens ground could have an eventual effect in those cases, a matter that would be analyzed by the Commission in due course, but ultimately could not have consequences for the present case.

118. Regarding res judicata, the Commission indicated that the name Manuel Cepeda Vargas was not included in the lists of victims attached to the Merits Report. It expressed that it would use, to the extent pertinent, information and documentation that came from the

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[76] *Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations and Costs*. Judgment of September 15, of 2005. Series C No. 134, para. 115, and *Case of Cepeda Vargas v. Colombia*, supra, para. 42.

[77] *Cf.* Article 33.3.c. of the Vienna Convention on the Law of Treaties.

[78] *Cf. Case of Manuel Cepeda Vargas v. Colombia, supra*, para. 42.

case file insofar as it is relevant to the present case. On the other hand, it argued that there may be cases in which there is total or partial identity between a decision and a petition or case, and the Inter-American Court may rule on the aspects that do not constitute identity between the parties, object or legal basis. In this sense, after a detailed study of the cases referred to by the State, it understood that the factual basis and the object of those lawsuits did not fully coincide with the one in the present case, and therefore it would not be appropriate to establish international res judicata. The ***common interveners*** of ***Reiniciar*** and ***CJDH and DCD***, presented arguments in the same sense. ***Reiniciar*** indicated in relation to the cases that "have been definitively resolved by the Inter-American system" that they consider "it is appropriate to declare res judicata with respect to the persons referred to by the State". They added in relation to the case of *Cepeda Vargas v. Colombia*, that it was not their intention "to include the aforementioned cases in this proceeding".

D.2. Considerations of the Court

119. In relation to this preliminary objection presented by the State, this Court recalls that Article 46 of the Convention establishes that: 1: [...]
(c) the subject matter of the petition or communication is not pending in another international proceeding for settlement". Similarly, Article 47(d) of the American Convention provides that a petition shall be inadmissible when it is substantially the same as a previous petition or communication already examined by the Commission or another international organization[79]. In this regard, this Court has established that the phrase "substantially the same" means that there must be identity between the cases. For such identity to exist, three elements must be present, namely: the parties must be the same, the subject matter must be the same and the legal basis must be identical[80].

120. The Court notes that the State's allegations refer to two different cases. First, the State refers to several cases that are being processed before the Commission[81] , either at the stage of the initial petition, or at the admissibility stage, or at the merits stage, and whose victims and facts coincide with those presented in the instant case. Secondly, the State mentioned two cases in which international res judicata has been established: one case that effectively has a Judgment of this Court[82] , and another case that was the subject of a friendly settlement agreement before the Commission[83].

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[79] Article 47(d) of the American Convention establishes that: "The Commission shall declare inadmissible any petition or communication submitted under Articles 44 or 45 when: [...] (d) it is substantially the reproduction of a previous petition or communication already examined by the Commission or by another international organization".

[80] *Cf. Case of Baena Ricardo et al. v. Panama, supra,* para. 53, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 28.

[81] *Cf. Case C-11.690, Josué Giraldo Cardona-Comité Cívico de Derechos Humanos Del Meta (Members of the Meta Committee); P- 1885-12, Consuelo Guzmán de Arcila; P-1519-13, Golazo Massacre; C-13.004, Campamento Massacre; C-11.690, Josué Giraldo Cardona - Comité Cívico de Derechos Humanos del Meta (Members of the Meta Committee); C-13.032, Victims of Medio Atrato; C-12.325, Peace Community of San José de Apartadó; C-12.807, Jahel Quiroga Carrillo - Unión Patriótica; C-11,888, Alfredo Acero Aranda and others; P-1308-08, Félix Antonio Rodríguez and others; C-11,026-A, César Chaparro Nivia; C-12,998, Álvaro Enrique Rodríguez Buitrago and Others; C-12.638, José Antonio Romero Cruz and Others; P-550-13, La Balsita Massacre; C-13,150, Jenner Alfonso Mora Moncaleano and Others - Mondoñedo Massacre; and C-11,794, Olga Luz Echavarría and Eliecer Pérez Morales.*

[82] *Cf. Case of Manuel Cepeda Vargas v. Colombia*, *supra*.

[83] *Cfr. Report No. 38/15 of July 24, 2015- Petition 108-00 Settlement Report. Amicable - Segovia Massacre.*

Likewise, the State presented this exception in relation to two cases that have a Merits Report from the Commission[84].

121. With regard to the first assumption, in which the cases are being processed before the Commission, this Court understands that these are petitions that were presented after the instant case and that are in previous procedural stages. Therefore, it is reasonable to infer that the ground of lis pendens contained in Article 46(c) of the American Convention could not have an effect in the instant case since it refers to the admissibility of new petitions with respect to cases that are already being processed and not the other way around as suggested by the State in its argument. Consequently, the exception of international lis pendens does not apply in relation to these cases (*supra* note 75).

122. With regard to the other petitions and cases on which the objection of international res judicata presented by the State is based, the Court finds that there is an identity of parties, facts, legal basis and subject matter between, on the one hand, the instant case and, on the other hand, the three petitions that were already examined by the Commission (which have a merits report or a friendly settlement agreement), as well as by this Court in the case of *Cepeda Vargas v. Colombia.* Based on the foregoing, it is possible to conclude that these petitions are "substantially the same" as the present case. In addition, this Court notes that both the Commission and the joint intervenors of the organization Reiniciar indicated that the victims of the *Cepeda Vargas v. Colombia* case should not be included in the processing of the case (*supra* para. 118). With regard to the other three cases related to this exception of international res judicata, the joint intervenors of Reiniciar indicated that for the cases that "have been definitively resolved by the Inter-American system" it would be "appropriate to declare res judicata with respect to the persons referred to by the State" (*supra* para. 118).

123. For these reasons, the Court considers that the present preliminary objection is admissible in relation to the persons who were declared victims in those four cases that were analyzed by the Commission and the Court (*supra* para. 120). Without prejudice to the foregoing, the Court may refer to the content of that Judgment to contextualize the facts of the instant case.

VI PRELIMINARY CONSIDERATIONS

124. The State made allegations on alleged victims and facts that make up the present case, and on the representation of some alleged victims. The Court will address these allegations as preliminary considerations.

A. On facts related to alleged victims that are not included in the Merits Report

A.1. Arguments of the parties and observations of the Commission

125. The ***State*** requested that the request of the victims' representatives to include persons who were not mentioned in the Commission's Report on the Merits be declared inadmissible. It questioned the fact that the representatives of Reiniciar requested the inclusion of 15 alleged victims who were not mentioned in the Commission's Merits Report.

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[84] *Cf. Report No. 1/94 of February 1, 1994 - Case 10.473, Álvaro Garcés Parra, Carlos Gamboa Rodríguez, John Jairo Loaiza Pavas, Elida Anaya Duarte. Report No. 2/94 of February 1, 1994 - Case 10.912, Pedro Miguel González et al.*

unidentified victims in the list annexed to the Merits Report. He also added that the DCD and CJDH representation included another 23 persons.

126. The State argued that the Commission should have determined the victims in the Merits Report in accordance with the rule established in Article 35(1) of the Rules of Procedure of the Court and that, in this case, the exception provided in Article 35(2) does not apply. of the same Rules of Procedure is not applicable since the violations do not derive from a single victimizing event -as has occurred in massacre scenarios- and, neither are they closely connected to each other, due to geographical factors (different geographical areas of the country) or delimited temporal factors (they occurred over a broad period of more than 20 years) or due to the criminal structures that carried out the victimization. He added that the nature of the human rights violations was also different (torture, arbitrary detentions, attempted homicides, threats, violent deaths, among others), the *modus operandi* presented, as each of these has its own particularities, or the actors to whom responsibility is attributed (persons associated with drug trafficking, paramilitary groups, State agents). It added that the alleged victims whose inclusion is requested do not have facts related to their victimization in the factual platform defined in the Merits Report. Finally, the State indicated that the factual platform of the case as defined in the Merits Report is not sufficient to a) accredit the quality of victims of the persons who would be included; b) attribute international responsibility to the State and c) define the damages that could have been caused, in order to delimit the reparations.

127. The ***Commission*** requested the rejection of the State's argument. First, it argued that 8 persons on the list indicated by the State are mentioned in the Merits Report or in the lists annexed thereto. It added that the claim does not have the character of a preliminary objection since: a) its resolution requires the analysis of the evidence; b) the exception of Article 35.2 applies in the case taking into account the gravity of the facts, their massive dimensions and the multiplicity of serious human rights violations perpetrated; c) the facts are analyzed in the Merits Report with the same legal consequences for the rest of the victims who are not named; d) the difficulty in identifying the victims results from the nature and magnitude of the violations; and e) the Merits Report recommended to the State the creation, in consultation with the victims and their representatives, of a mechanism for identifying the next of kin of the executed and disappeared victims, which can be used to resolve discrepancies at this stage.

128. The representation of ***Reiniciar*** agreed with the Commission in questioning the nature of the preliminary exception for identical reasons and added that one of the victims is mentioned in the report, another appears with an error in his name, and the other 13 that it represents were reported with the petition filed in 1993 and that, due to an error derived from the size of the universe of victims, do not appear in the Report on the Merits. The joint representation of the ***CJDH and DCD*** opposed the State's claim, arguing in favor of the application of the exception to Article 35(2) and indicating that the 23 alleged victims questioned by the State are linked to facts included in the Merits Report.

A.2. Considerations of the Court

129. Regarding the State's allegations in relation to the alleged victims, the Court finds that they are related to the requirement set forth in Article
35.1 of the Rules of Procedure and the need for the Commission to identify the alleged victims of the case at the time of submitting the case.

130. In accordance with Article 35(1) of the Court's Rules of Procedure and the constant jurisprudence of this Court, the alleged victims must be identified in the Merits Report, issued in accordance with Article 50 of the Convention. However, Article 35(2) of the Rules of Procedure establishes that, when it is justified that it was not possible to identify some alleged victims because of massive or collective violations, this Court shall decide whether to consider them as such.

131. The State alleged that 38 alleged victims included in the lists of alleged victims submitted by the joint intervenors were not included in the annex to the Commission's Merits Report and that 3,719 alleged victims were not identified by the Commission in its list annexed to the Merits Report.

132. In order to respond to the State's allegations, it is necessary to determine whether the exceptions provided for in Article 35(2) of the Court's Rules of Procedure apply to the instant case.

133. The Court has evaluated the application of Article 35(2) of the Rules of Procedure based on the particular characteristics of each case[85] , and has applied it in massive or collective cases with difficulties to identify or contact all the alleged victims, for example, due to the presence of an armed conflict, displacement[86] or the burning of the bodies of the alleged victims[87] , or in cases in which entire families have disappeared, so there would be no one who could speak for them[88]. It has also taken into account the difficulty of accessing the area where the events occurred[89] , the lack of records regarding the inhabitants of the place and the passage of time, as well as the particular characteristics of the alleged victims in the case, for example, when they have formed family clans with

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[85] It should be noted that the Court has applied Article 35(2) of its Rules of Procedure in the following cases: *Case of the Río Negro Massacres v. Guatemala*. *Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 4, 2012. Series C No. 250; *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs*. Judgment of October 24, 2012. Series C No. 251; *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*; *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2013. Series C No. 270; *Case of the Campesino Community of Santa Barbara v. Peru, supra*; *Case of Workers of the Brasil Verde Farm v. Brazil*, *supra; Case of Members of the Chichupac Village and neighboring communities of the Municipality of Rabinal v. Guatemala*, *supra,* and *Case of Indigenous Communities Members of the Lhaka Honhat Association (Nuestra Tierra) v. Argentina. Merits, Reparations and Costs.* Judgment of February 6, 2020. Series C No. 400, para. 35. It has also rejected its application in the following cases: *Case of Barbani Duarte et al. v. Uruguay. Merits, Reparations and Costs*. Judgment of October 13, 2011. Series C No. 234; *Case of Defensor de Derechos Humanos et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 28, 2014. Series C No. 283; *Case of García y Familiares v. Guatemala. Merits, Reparations and Costs*. Judgment of November 29, 2012. Series C No. 258; *Case of Suárez Peralta v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 21, 2013. Series C No. 261; *Case of J. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 27, 2013*. Series C No. 275*; *Case of Rochac Hernández et al. v. El Salvador. Merits, Reparations and Costs*. Judgment of October 14, 2014. Series C No. 285; *Case of Argüelles et al. v. Argentina, supra*; *Case of Canales Huapaya et al. v. Peru, supra*; *Case of Flor Freire v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2016. Series C No. 315; *Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 30, 2016. Series C No. 329; *Case of Favela Nova Brasilia v. Brazil*. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 16, 2017. Series C No. 333*, supra,* para. 39, and *Case of Movilla Galarcio et al. v. Colombia, supra*, para.46.

[86] *Cf. Case of the Río Negro Massacres v. Guatemala, supra*, para. 48, and *Case of Favela Nova Brasília v. Brazil*, *supra*, para. 37.

[87] *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 50, and *Case of Favela Nova Brasil v. Brazil, supra,* para. 37.

[88] *Cf. Case of the Río Negro Massacres v. Guatemala, supra*, para. 48, and *Case of Favela Nova Brasília v. Brazil*, *supra*, para. 37.

[89] *Cf. Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia, supra*, para. 41, and *Case of Favela Nova Brasília v. Brazil*, *supra*, para. 37.

similar names and surnames90 , or in the case of migrants91. It has also considered the conduct of the State, for example, when there are allegations that the lack of investigation contributed to the incomplete identification of the alleged victims92 , and in a case of slavery93.

134. In the instant case, the Court takes note of the fact that the Commission indicated in its Merits Report that in this type of case there is an inherent difficulty in the nature and dimension of these cases, regarding the construction of a definitive list of victims, since it did not have information on the identification of all the victims.

135. In this regard, the Court considers that Article 35.2 of the Rules of Procedure is applicable in the instant case, because: (a) it involves multiple alleged human rights violations such as deprivations of the right to life, forced disappearances, threats, harassment, forced displacement, attempted homicide, arbitrary use of criminal law, political rights, to the detriment of thousands of persons; (b) the context of the case linked to a non-international armed conflict that lasted for several decades and which makes it difficult to gather information; (c) the extremely high number of alleged victims; d) the time during which the alleged human rights violations took place (23 years); e) the territorial extension in which the alleged violations would have taken place, which covers almost the entire Colombian national territory, and f) the difficulty in contacting the alleged victims or their relatives given precisely the nature of the alleged facts and the alleged situation of displacement in which they may find themselves.

136. The specific characteristics of the instant case allow this Court to conclude that there are reasonable grounds to justify the fact that the list of alleged victims included in the Commission's Merits Report may have possible inconsistencies in the identification of all the alleged victims. Therefore, the Court decides to apply Article 35(2) of its Rules of Procedure and considers the request of the joint intervenors to be admissible with respect to the inclusion of the 38 persons referred to as alleged victims in the case who were not mentioned in the Commission's Report on the Merits or in the annexed list of alleged victims sent together with said report.

B. Allegations on the lack of identification of alleged victims in the Merits Report

B.1. Arguments of the parties and observations of the Commission

137. The ***State*** indicated that 3,719 alleged victims should be excluded because they have not been identified. It alleged that, from the information provided by the representatives and the Commission, it is not possible to: a) identify the full names of the alleged victims, and b) their identification number. It added that with respect to 3620 victims, there is no information in the file that relates their names, surnames or identity documents, and of these there are 221 who, although factual summaries were provided, neither complete identification data nor evidentiary elements were provided that would allow their existence to be accredited.

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90 *Cf. Case of the Río Negro Massacres v. Guatemala, supra*, para. 48, and *Case of Favela Nova Brasília v. Brazil*, *supra*, para. 37.

91 *Cf. Case of Nadege Dorzema et al. v. Dominican Republic, supra*, para. 30, and *Case of Favela Nova Brasília v. Brazil*, *supra*, para. 37.

92 *Cf. Case of the Río Negro Massacres v. Guatemala, supra*, para. 48, and *Case of Favela Nova Brasília v. Brazil*, *supra*, para. 37.

93 *Cf. Case of Workers of the Brasil Verde Farm v. Brazil, supra*, para. 48, and *Case of Favela Nova Brasília v. Brazil*, *supra*, para. 37.

138. The ***Commission, as in the*** previous section, stated that since these are massive violations, there is a difficulty inherent to the nature and dimension of the case regarding the construction of a definitive list of victims and that the due individualization of alleged victims corresponds to the merits stage. The common interveners of ***Reiniciar*** argued that there are other ways to identify the victims not only with the identity number or cédula. They also suggested that the "mentions" made before the different authorities should be taken as an element to prove the identity of the alleged victims, to proceed to the practice and evaluation of the testimonial evidence and to carry out an integral evaluation of the whole file, so that in their opinion this exception should be dismissed as part of the merits study.

B.2. Considerations of the Court

139. It has been indicated in the previous section that, in accordance with the specific characteristics of the instant case, there are reasonable grounds to justify the fact that the list of alleged victims included in the Commission's Merits Report may have possible inconsistencies in the full identification of the alleged victims (*supra* para. 136). Similarly, the Court considered that it was appropriate to apply Article 35(2) of its Rules of Procedure in the instant case. In this regard, the Court dismisses the considerations raised by the State regarding the full identification of the alleged victims in the case and refers to the chapter on reparations in which the measures conducive to the identification of the alleged victims in this case will be determined (*infra* Chapter X).

C. Alleged victims for whom there is no factual basis or evidence to prove the existence of a human rights violation attributable to the State.

C.1. Arguments of the parties and observations of the Commission

140. The ***State*** presented a preliminary question in which it indicated with respect to the allegations related to 1793 alleged victims, that it only has the following information contained in the Commission's lists: name, ID number, alleged link with the UP, a generic characterization of the alleged violation, and the place and date of the facts. It indicated that, in these lists, therefore, fundamental elements for determining the international responsibility of the State were not described, such as: the perpetrator, the conditions of time, manner and place of the victimization, the link of the alleged violation with the victim's membership in the UP, or the existence or non-existence of criminal, contentious-administrative or disciplinary proceedings with respect to these facts. Therefore, it considered that those allegations should be excluded, with respect to those alleged victims, since no factual and evidentiary assumptions have been provided in the Merits Report or in the pleadings.

141. The State added that one of the main arguments for requesting the dismissal of 1793 victims is that the Commission attempts to remedy the absence of facts through the figure of representativeness by means of the so-called representative cases. In relation to this figure, the State alleged that: a) there are serious deficiencies in the methodology developed by the Commission for the selection of such cases, and b) other cases presented before the Court have been illustrative of patterns or contexts of victimization, without including all the victims of such context or pattern.

142. The ***Commission*** argued that it was not true that there was no factual determination regarding the individual victims in the annexes to the Merits Report. On the one hand, it pointed out that in the Report, it included a section of global determinations of the facts and alleged victims of the case, taking into account the information provided by the parties, in

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which stated that it has consolidated information on more than 6,000 persons, including a group of approximately 150 cases referred to by the petitioner as representative, for which there is more complete evidence to make detailed determinations.

143. Additionally, it noted that the lists of alleged victims in the annexes are an integral part of the Merits Report and constitute a factual determination based on the available information, even though they are not described in narrative form, since the evidence provided determined the type of violation, the date and place where it occurred, as well as the link with the Unión Patriótica. He added, in relation to the burden of proof, that the Court has indicated that, although as a general rule the party alleging a violation has the burden of proving it, this is only "in principle", taking into account that, unlike domestic criminal law, in proceedings on human rights violations, the defense of the State cannot rest on the impossibility of the plaintiff to provide evidence that, in many cases, cannot be obtained without the cooperation of the State.

144. The joint intervenors from the organization ***Reiniciar*** indicated that the Merits Report contains a factual and evidentiary analysis with respect to the victims who are not in the group of representative cases. The representatives of ***DCD and CJDH*** indicated that this is a matter relating to the merits and affirmed that the State bases its claim on its abusive conduct in sending partial information and hiding relevant information in its possession, and therefore requested that the State's request be dismissed.

C.2. Considerations of the Court

145. With regard to the alleged victims in the case for whom the State presented a consideration on the lack of factual and evidentiary grounds in the Merits Report or in the pleadings and motions briefs, this Court first notes that, in fact, of the original list annexed to the Merits Report of 5911 alleged victims in the case, there is only a factual platform covering 230 alleged victims, and that the other alleged victims are only mentioned in the list annexed to the Merits Report with the following data: name, ID number, alleged link with the UP, a generic characterization of the alleged violation, and the place and date of the facts.

146. Similarly, the Court notes that the Commission mentioned that it did not present individualized information on the totality of the alleged facts and only presented allegations with so-called representative cases. The Commission presented an account of representative cases that is based primarily on documentary evidence and the contents of each of the individualized case files relating to 101 facts and 230 alleged victims. The organization Reiniciar presented illustrative case summaries referring to another 403 alleged victims. The organizations CJDH and DCD developed facts related to another 45 alleged victims.

147. The State indicated that all victims for whom there is not at least a description of the fundamental elements to determine their international responsibility, such as: the perpetrator, the conditions of time, manner and place of the victimization, the link of the alleged violation with the victim's membership in the UP, or the existence or non-existence of criminal, contentious-administrative or disciplinary proceedings regarding these facts, should not be considered as alleged victims in the case, since no factual and evidentiary assumptions have been provided either in the Merits Report or in the pleadings.

148. In relation to these allegations, it is recalled that in the previous paragraphs it was indicated that the specific characteristics of the instant case allow this Court to conclude that there are reasonable grounds to justify the fact that the list of alleged victims included in the Commission's Merits Report may have possible inconsistencies for their full identification. Likewise, the Court considered that it was appropriate to apply Article 35(2) of its Rules of Procedure in the instant case. Indeed, it is extremely complex to determine precisely each of the alleged facts through which the alleged extermination of the Unión Patriótica political party was carried out (*infra* Chapter VIII.A). In this sense, taking into account the very specific circumstances of this case (*supra* para. 77), for this Court it is reasonable that the Commission or the joint interveners should not be required to specify each and every one of the circumstances in which the thousands of alleged victims in this case were involved. All of them would be part of the same succession of events that materialized in different ways that have in common the alleged extermination of the Patriotic Union and that took place over two decades in almost the entire Colombian territory. To the foregoing, it must be added, as recognized by the State (*supra* para. 17), that these events were not adequately investigated by the Colombian authorities.

149. In this regard, the names of the alleged victims listed in the annex to the Merits Report, as well as the representative cases (See Annex IV) could constitute a way of explaining and complementing the characteristics and specificities of this alleged extermination. Consequently, this Court dismisses the considerations raised by the State in relation to the alleged victims for whom no precise mention is made of a factual platform or evidence that would make it possible to prove the existence of a human rights violation attributable to the State. The Court refers to the chapter on reparations in which the measures leading to the identification of the alleged victims in this case will be determined (*infra* Chapter X).

D. Alleged new facts that were included by the joint interveners

D.1. Arguments of the parties and observations of the Commission

150. The ***State*** presented a preliminary question in which it requested the exclusion of the facts provided in the pleadings and motions with respect to 497 additional alleged victims, inasmuch as they expand without legal validity the factual platform defined in the Merits Report, and this despite the fact that factual elements were defined in the Merits Report with respect to those victims and the context. It indicated that this would mean limiting the case exclusively to the facts that address the violations perpetrated against 216 alleged victims. On the other hand, it requested the exclusion of 17 facts contained in the pleadings, arguments and evidence because, even so, the assumptions provided exceed those established by the Commission.

151. The ***Commission*** and the joint intervenors of ***Reiniciar*** reiterated their arguments on the applicability of Article 35(2) of the Rules of Procedure in this case, and also considered that the facts contained in the pleadings and arguments referred to by the State are explanatory and clarifying in nature insofar as they relate to the factual and legal characterizations of the facts contained in the Merits Report.

D.2. Considerations of the Court

152. Regarding new and supplementary facts, this Court recalls that the factual framework of the proceeding before the Court is constituted by the facts contained in the Merits Report submitted for the Court's consideration, and therefore it is not admissible to allege new facts.

other than those raised in the pleading, without prejudice to the presentation of those that may explain, clarify or dismiss those that have been mentioned in the complaint, or respond to the plaintiff's claims (also called "complementary facts")[94].

153. In the instant case, the Court notes that the joint intervenors presented facts that refer to 448 alleged victims that do not have a factual platform developed by the Commission in its Merits Report. In turn, of these 448 alleged victims, 397 were included in the list annexed to the Commission's Merits Report. On the other hand, the Court notes that the list annexed to the Merits Report on alleged victims (5911 names) contains information on the name, ID number, alleged link with the UP, a characterization of the alleged violation, and the place and date of the events.

154. On the other hand, in the previous section, it was indicated that taking into account the very specific circumstances of this case (*supra* para. 148), it is reasonable that the Commission or the joint interveners should not be required to specify each and every one of the factual circumstances of this case, since they would all constitute the same succession of events that materialized in different ways, which have in common the alleged extermination of the Unión Patriótica and which took place over two decades in almost all of Colombian territory. In this order of ideas, the names of the alleged victims that appear in the annex to the Merits Report, as well as the representative cases, could constitute a way of explaining and complementing the characteristics and specificities of this alleged extermination.

155. In view of the specific characteristics of this context, this Court understands that the facts developed by the representatives in their pleadings, arguments and evidence constitute complementary facts to the information contained in the annexed list of alleged victims submitted by the Commission, since they develop the information presented by the Commission. In this sense, this Court rejects the considerations raised by the State in relation to the new facts presented by the representatives.

E. On the representation of some alleged victims

E.1. Arguments of the parties and observations of the Commission

156. The ***State*** expressed that with respect to some of the alleged victims in the case there are serious irregularities in relation to their representation in the international proceedings. Specifically, it indicated that some of the powers of attorney of the persons represented by Reiniciar have neither a signature nor a fingerprint. He added that, in other cases, the powers of attorney have a different characterization of the event in the power of attorney than the one described in the lists annexed by the Commission to the Merits Report and, in other cases, the person who subscribes the power of attorney is referenced in the lists as a victim of homicide or as a victim of forced disappearance, the date of the alleged homicide and disappearance being prior to the date of the subscription of the power of attorney. Finally, there are persons who have expressly stated that they do not want to be represented by Reiniciar and they are still mentioned in the lists of persons supposedly represented by said organization. Therefore, he requested the Court to declare the improper representation of the alleged victims, in which this type of irregularities are present.

157. The ***Commission*** recalled, first of all, that this aspect does not constitute a preliminary question and that, in the cases in which it has been raised, the Inter-American Court has

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[94] *Case of I.V. v. Bolivia, supra,* para. 45*; Case of Casierra Quiñonez et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 11, 2022. Series C No. 450, para. 40, and *Case of "Five Pensioners" v. Peru*, *supra*, paras. 153 and 155.

dismissed such arguments. On the other hand, it considered that the possible inconsistencies in the powers of representation derived from the complexity of the case and the number of victims.

E.2. Considerations of the Court

158. In relation to these allegations, it should be noted that, in other cases, this Court established that the lack of powers of attorney refers to the legal representation of the persons named and is not an issue related to the nature of the alleged victims and that "the constant practice of this Court with respect to the rules of representation has been flexible" and that "it is not indispensable that the powers of attorney granted by the alleged victims to be represented in the proceedings before the Court comply with the same formalities regulated by the domestic law of the respondent State "[95.] Likewise, in cases of multiple victims in which the representatives did not have all the powers of representation nor did they have manifestations of will from all the alleged victims, it was considered that "it was expected that the representative organization would take into account in its applications and arguments the general interests of all the alleged victims identified" and the representatives were therefore requested to "inform the Tribunal in a timely manner whether they will represent other persons during these proceedings "[96].

159. In the present case, the Court notes that, in its communication of January 28, 2019, the Presidency of the Court resolved to designate (1) Corporación Reiniciar; (2) CJDH and DCD; and.
3) the Family and representatives of Miguel Angel Diaz Martinez, as common intervenors who will have autonomous participation, and with respect to the alleged victims who have not submitted power of attorney, it was indicated that they will be considered as represented by the aforementioned common intervenors.

160. Consequently, in accordance with the foregoing, the Court dismisses the considerations raised by the State regarding the representation of alleged victims in the case.

VII TEST

A. Admissibility of documentary evidence

161. This Tribunal received various documents presented as evidence by the Commission, the joint intervenors representing the alleged victims and the State, as well as those requested by the Court or its Presidency as evidence for a better resolution,

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[95] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*, supra, para. 33; *Case of Loayza Tamayo v. Peru. Reparations and Costs.* Judgment of November 27, 1998. Series C No. 42, para. 98; *Case of Castillo-Páez v. Peru. Reparations and Costs.* Judgment of November 27, 1998. Series C No. 43, paras. 65 and 66; *Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs.* Judgment of June 23, 2005. Series C No. 127, para. 94; *Case of Acevedo Jaramillo et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of February 7, 2006. Series C No. 144, para. 145; *Case of Vélez Loor v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2010. Series C No. 218, para. 54; *Case of Dominican and Haitian Expelled Persons v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 28, 2014. Series C No. 282, para. 88, and *Case of Vereda La Esperanza v. Colombia*, para. 36.

[96] *Case of Pacheco Teruel et al. v. Honduras. Merits, Reparations and Costs.* Judgment of April 27, 2012. Series C No. 241, para. 4, and *Case of Vereda La Esperanza v. Colombia*, *supra*, para. 36.

which, as in other cases, it admits on the understanding that they were presented in due time (Article 57 of the Rules of Procedure)[97].

162. With regard to the procedural opportunity to submit the annexes to the main pleadings, the Court reiterates that documentary evidence may be submitted, in general and in accordance with Article 57.2 of the Rules of Procedure, together with the briefs of submission of the case, of pleadings and motions or of defense, as appropriate, and evidence submitted outside these procedural opportunities is not admissible, except in the exceptions established in the aforementioned Article 57(2) of the Rules of Procedure (i.e., force majeure, serious impediment) or unless it is a supervening event, i.e., occurred after the aforementioned procedural moments[98].

A.1. Annexes to the parties' written closing briefs

163. The Court received documents attached to the final written arguments submitted by the State and by the joint intervenors representing the alleged victims[99]. With respect to the annexes submitted by the State to its final written arguments***, the joint intervenors of Reiniciar*** did not object to their admissibility, but rather made detailed and specific observations with respect to each of them, and even attached two documents detailing their observations. The ***State***, for its part, with respect to the annexes presented by the joint intervenors of the CJDH and DCD, specifically reiterated that

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[97] *Case of the Barrios Family v. Venezuela. Merits, Reparations and Costs.* Judgment of November 24, 2011. Series C No. 237, paras. 17 and 18, and *Case of the Massacre of Los Josefinos Village v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 3, 2021. Series C No. 442, para. 26.

[98] *Cf. Case of the Barrios Family v. Venezuela, supra*, para. 17, and *Case of Sales Pimenta v. Brazil. Exceptions Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 30, 2022. Series C No. 454, note 24.

[99] The State submitted three annexes to its final written arguments: 1) Matrix of the universe of victims that responds to the manual verification of the documents present in the international file regarding their individualization (prepared by the State of Colombia); 2) User's manual of the matrix of the universe of victims; and 3) Note sent by the National Executive Committee of the Unión Patriótica to the Special Jurisdiction for Peace regarding the alleged involvement of former President Virgilio Barco Vargas in the extermination plans against the political party. The common intervenors of Reiniciar attached three annexes to their written closing arguments: 1) Circular No. 003 of July 22, 2019 of the Attorney General of the Nation; 2) Auto 018 GSM 2021 of the Recognition Chamber of the SJP, and 3) Women of the Unión Patriótica: Claiming the right to be repaired. The joint interveners of the CJDH and DCD attached eight annexes to their written closing arguments: 1) Order of Opening of Instruction on November 27, 2019 by the 157th Specialized Prosecutor's Office against Human Rights Violations - Thematic Axis Disappearance and Forced Displacement. Criminal process filed: 1056557. "Masacre del Topacio"; 2) Electronic communication (Gmail), through which the Group of Search, Identification and Delivery of Missing Persons of the Attorney General's Office, informs the process of Delivery of Bodies to the Relatives of the Victims of the case known as the Topacio Massacre as of December 11, 2019 in the Municipality of San Rafael, Department of Antioquia; 3) Auto of December 2, 2020 issued by the 65th Administrative Court of Bogota, which rejects for caducity claim for direct reparation filed in June 2020 by relatives of victims of the Topacio massacre; 4) Communication of October 10, 2019, by means of which the Order of October 8, 2019 denying the request of Nelcy Elizabeth Jaramillo's attorney-in-fact (Alejandro Botero Villegas, lawyer of Derechos con Dignidad) to carry out a conventionality control with respect to the judgment Órdenes Guerra vs Chile, or, in its absence, to request an Advisory Opinion from the H. Inter-American Court of Human Rights regarding the possibility or limitation on the passage of time (statute of limitations) that victims of serious human rights violations have to file reparation actions in accordance with Articles 1, 2, 8 and 25 of the ACHR;
5) Request for provisional measure, in which the Constitutional Court is requested to - Order that the effects of the Unification Judgment of January 29, 2020, issued by the Council of State be left without effect, or provisionally suspended - until this Court issues a Unification Judgment in the present case - and/or - the Inter-American Court of Human Rights in the related case "Militantes de la UP Vs Colombia" (gmail delivery note); 6) Letter of November 3, 2020, informing the content of the Order of September 17, 2020 in which the request for provisional measures is rejected and informing the victims that the Constitutional Court has already issued Unification Judgment 312 of August 16, 2020; 7) Press release of the Constitutional Court, on the Unification Judgment 312 /2020, and 8) Justifications of vote and "clarification of vote" Unification Judgment of January 29, 2020. The common interveners of the Diaz Mansilla Family attached a series of payment vouchers not identified or individualized.

regarding annexes 1, 2 and 3, that the facts related to the Topacio massacre are not part of the factual framework of the present case; as for the remaining annexes, it considered that this was not the appropriate procedural moment to present these elements. With respect to the annexes presented by the joint interveners of Reiniciar, the State did not object to the evaluation of annexes 1 and 2, however, regarding annex 3, it objected to its evaluation since the document, as it indicated, "seems to include the conclusions of an expert consultancy, carried out by Reiniciar, which constitutes expert evidence that should have been requested from the ESAP". Finally, with respect to the annexes presented by the joint intervenors of the Diaz Mansilla Family, the State stated that it had no observations, however, it requested the Court that the table of expenses be evaluated based on relevance, necessity and the other criteria used by this Court. The ***Commission***, for its part, stated that it had no observations to make. The joint intervenors of ***DCD and CJDH***, as well as those of the ***Diaz Mansilla Family***, did not submit any observations. The Court admits the annexes submitted together with the final arguments of the parties as it considers them useful for the resolution of this case.

A.2. Surviving evidence

164. The ***State***, by communication of April 17, 2020, provided as supervening evidence Order No. 11 of 2020 by which the Chamber for the Recognition of Truth, Responsibility and Determination of Facts and Conduct (SRVR) of the Special Jurisdiction for Peace (JEP), by which the Unión Patriótica political party was accredited as a victim as a collective subject in Case No. 006 entitled "Victimization of members of the Unión Patriótica (UP) by agents of the State". In this regard, the ***Commission*** emphasized that the document does not refer to individual victims but to the Patriotic Union as a legal person, and therefore requested the Court to "assess [its] admissibility and relevance [...] in light of the statutory criteria." For their part, the ***joint intervenors*** of ***Reiniciar*** requested the Court to evaluate the information "in light of the Inter-American standards"; the joint intervenors of CJDH and DCD requested that said document be inadmissible or, failing that, admitted according to the specific considerations they made.

165. The ***joint interveners*** of ***DCD and CJDH***, by communication dated June 7, 2020, submitted as supervening evidence the Judgment of Unification of Jurisprudence of the Council of State of January 29, 2020. In this regard, the ***joint intervenors*** of ***Reiniciar*** and the ***Commission*** requested its admission.

166. The ***joint interveners*** of the Diaz Mansilla Family, by communication of July 18, 2020, requested the incorporation of a series of factual elements and the judgment of the Administrative Court of Cundinamarca of March 12, 2020 as supervening evidence. The ***State*** requested the inadmissibility of the claims made. The ***joint intervenors*** of the Corporación Reiniciar made no observations, and the joint intervenors of the CJDH and DCD requested that the request be rejected in its entirety.[100] For its part, the ***Commission*** considered that the judgment sent as supervening evidence should be admitted.

167. In addition, by communication of January 5, 2021, the ***State*** requested the admission of the Judgment of the Council of State of October 23, 2020 as surviving evidence, considering it fundamental to demonstrate the suitability and effectiveness of the remedy of direct reparation action in the specific case. Likewise, the ***joint intervenors*** of

[100] The joint intervenors of DCD and CJDH indicated that this document does not meet the exceptionality requirement since it is not of such a nature that the exercise of the Court's judicial function would be affected by the absence of such evidence.

Reiniciar, by communication dated January 12, 2021, requested the incorporation of a series of journalistic elements as supervening evidence. In this regard, in its final arguments, the ***State*** requested the inadmissibility of the journalistic elements presented by the joint interveners of Reiniciar inasmuch as it indicated that they are unfounded, openly refuted and controversial, and that said elements have already been sent by the Unión Patriótica to the Special Jurisdiction for Peace so that, within Case 006, it can analyze them if necessary. Likewise, on October 29, 2021, the State requested the incorporation into the case file of two pieces of evidence that refer to [supervening] facts[101].

168. ***The joint interveners of the CJDH and DCD,*** by communication of March 13, 2021, submitted supervening evidence and a request for evidence for a better resolution related to voluntary statements made by former members of the national army before the Special Jurisdiction for Peace in Case 04. The ***State*** objected to the evaluation of the evidence, indicating that it dealt with facts that are not part of the factual platform of the present case. The joint intervenors of the CJDH refuted the State's opposition to the evaluation of said evidence, alleging that it is based on extemporaneous arguments that seek the reiteration of a preliminary objection that it calls "new facts that should be excluded", as well as reiterating that they have previously provided evidence that allows them to affirm that the evidence in question does form part of the facts of the instant case. Likewise, the ***joint intervenors of Reiniciar*** expressed their disagreement with the State's allegations, stating that it is not sufficient to exclude alleged victims from the instant case. The ***Commission*** stated that it had no observations, and the remaining joint intervenors did not present observations.

169. ***The joint intervenors of the CJDH and DCD*** presented supervening evidence related, as they indicated, to the denial of justice to which the alleged victims have been subjected and which was even the object of recognition of international responsibility by the [State][102]. The ***State*** stated that it did not object to this evidence being evaluated in the instant case. On the other hand, the ***joint intervenors of the Diaz Mansilla Family*** expressed their support to the evaluation of such evidence, and highlighted its importance. On the other hand, the ***joint intervenors of Reiniciar*** and the ***Commission***, stated that they had no observations to make.

170. The ***joint interveners of Reiniciar***, by communication of August 6, 2021, submitted a press [article][103] as supervening evidence, and requested the Court to require the State, specifically the Commission for the Clarification of the Truth (CEV), as evidence to better resolve, the "transcription of the session called "Route of contribution to the truth and recognition of responsibilities: Salvatore Mancuso1 and Rodrigo Londoño speak with the Truth Commission," which was transmitted on August 4, 2021. The ***State*** requested that said press release be evaluated "within the scope that this Court has given to this type of evidentiary material," that is, that it be taken into account only to corroborate public or notorious facts. ***The joint intervenors of the CJDH and DCD*** stated that they had no observations to make, just as the ***Commission*** stated the possibility that the Court has to request such evidence, and emphasized that the same

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[101] It requested that the following evidence be incorporated: a) note from the Colombian Commission of Jurists ("CCJ") sent to the Inter-American Commission on Human Rights on October 14, 2021 on Case No. 13,004 (Campamento Massacre v Colombia), and b) note from the CCJ sent to the Commission on October 15, 2021 on Case No. 11,794 (Olga Luz Chavarría et al. v Colombia).

[102] The documentation corresponds to a judgment issued by the Third Section of the Council of State under the report of its President, Councilor Martha Nubia Velásquez Rico, under file number: 27001-23-33-000- 2014-00206-01 (63381), and issued on May 21, 2021.

[103] The article is titled "Salvatore Mancuso and Rodrigo Londoño recognized their responsibilities before the Victims", extracted from the web portal of the Truth Commission, dated August 4, 2021.

would be highly relevant for the eventual determination of the degree of responsibility of the State in the present case. The ***joint intervenors of the Diaz Mansilla Family***, on the other hand, did not submit any observations.

171. By communication of August 17, 2021, the ***State*** requested the incorporation of two documents as supervening evidence in the instant case[104]. The ***joint intervenors of Reiniciar*** requested that the information submitted by the State not be included as supervening evidence. For their part, the *joint intervenors of Rights with Dignity requested* that the evidence submitted by the State be admitted. The ***Commission*** observed that the judgment annexed by the State is supervening evidence and relevant to the instant case. The Commission also observed, with respect to Circular 005, also annexed by the State, that said evidence "does not refer to further progress in the investigation and punishment after decades of the facts" that gave rise to the instant case. On the other hand, the joint intervenors of the Diaz Mansilla Family did not submit any observations.

172. The ***joint intervenors of the CJDH and DCD***, in a communication dated September 8, 2021, requested the admission of new supervening evidence[105] . The ***State*** stated that it did not oppose the admission of documents 3 and 4 submitted by the joint intervenors; however, regarding document 2, it observed that said journalistic notes do not meet any of the conditions to be admitted as supervening evidence and therefore requested its rejection. The joint intervenors of Reiniciar and the ***Commission*** stated that they had no observations, and the joint intervenors of the Diaz Mansilla Family did not present any observations. On April 12, 2022, the joint intervenors of Reiniciar submitted evidence for a better resolution[106]. On April 19, 2022, the joint intervenors of CJDH and DCD, the Commission and the State submitted their observations on the supervening evidence submitted by the joint intervenors of Reiniciar. Likewise, the State submitted the information requested by the Court as evidence for a better resolution. On May 2, 2022, the joint intervenors of the Díaz Mansilla Family submitted "extensive and complementary documents "[107] and on May 5, 2022, the joint intervenors of the Díaz Mansilla Family, Reiniciar and the Commission submitted, respectively, their observations on the information submitted by the State on April 19 of this year. No observations were received from the joint intervenors of the CJDH and DCD. On April 6

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[104] The documents correspond to: 1) judgment of the Administrative Court of Cundinamarca dated May 28, 2021, whereby it ordered the granting of a measure of indemnification with respect to the Unión Patriótica Political Party, in order to compensate the affectation to the political rights caused to sympathizers, militants and leaders of the political organization, due to the cancellation of the legal status of the Party in 2002, and 2) Circular No. 0005 of the Attorney General's Office, issued on July 16, 2021, which clarifies the competence of the Attorney General's Office in cases related to forced appearances before the Special Jurisdiction for the Peace (JEP).

[105] They requested the admission of the following elements: 1) Decisions and hearing minutes of the Superior Court of Bogota regarding the indictment made by the Prosecutor's Office to General Mario Montoya Uribe; 2) four press releases that report on the inapplicability of Circular 005/2021; 3) Order issued by the Administrative Court of Cundinamarca rejecting the claim for direct reparation filed by the relatives of Mr. Hernando de Jesús Gutiérrez, and 4) Procedural request for an anticipated sentence and application of the statute of limitations filed by the legal defense of the State within the process of direct reparation filed by the relatives of Dr. Gabriel Jaime Jaime Santamaría Montoya, .

[106] They requested the admission of the judgment issued on February 22, 2022 by the Forty-seventh Circuit Court of Bogota within the divisive process that was advanced against the family home acquired between Mr. Miguel Angel Diaz and his wife, prior to his disappearance.

[107] The documents correspond to: 1) Judgment issued on April 27, 2022 by the Civil Chamber of the Superior Court of Bogota, whereby it denies the claims of Luisa Fernanda Diaz, daughter of the disappeared Miguel Angel Diaz and, 2) the challenge to the same filed before the Civil Cassation Chamber of the Supreme Court of Justice on April 29, 2022.

June 2022, the joint intervenors of the DCD submitted supervening evidence on the denial of access to justice for victims of the extermination of the Patriotic Union recognized by the Commission and the State[108]. On June 17, 2022, the Commission indicated that it had no observations on the information submitted by the DCD and CJDH joint intervenors on June 6. No observations were received from the joint intervenors of Reiniciar, the Díaz Mansilla family, and the State.

173. The ***Court*** recalls, with regard to the press releases submitted by the parties and the Commission together with their various briefs, that they may be assessed when they contain public and notorious facts or statements by State officials, or when they corroborate aspects related to the case, and therefore decides to admit the documents that are complete or that, at least, allow to verify their source and date of publication, and assesses them taking into account the body of evidence as a whole, the observations of the parties and the rules of sound criticism[109].

174. By virtue of the foregoing, the Court admits all the foregoing supervening evidence submitted by the common interveners and the State in accordance with Article 57(2) of the Rules of Procedure. The Court considers it appropriate to admit this documentation because it refers to facts supervening the submission of the pleadings and arguments, and of the answer, which are also relevant for the resolution of the instant case.

A.3. Test to better resolve

175. By Resolution of the President of the ***Court of*** December 18, 2020, the State was requested, as evidence to better resolve the case, to submit a series of documents. The State, by letters of January 29, 2021 and February 4, 2021, forwarded the requested documents. Likewise, on March 19, 2021, the State was requested to submit additional documentation for a better resolution. The ***State*** submitted the requested information on March 30, 2021.

176. Likewise, by letter from the Secretariat dated March 19, 2021, following instructions from the President of the ***Court***, the State was requested to forward the voluntary statements made by German Custodio Tovio Medrano and Juan Manuel Grajales García before the Special Jurisdiction for Peace in Case 04. The State, by letter of March 30, 2021, forwarded the requested statements.

177. In addition, through a note from the Secretariat dated August 10, 2021, following instructions from the President of the Court, the State was requested to send "a copy of the video and/or transcript of the session entitled "Route of contribution to the truth and recognition of responsibilities: Salvatore Mancuso and Rodrigo Londoño speak with the Truth Commission", transmitted and publicly disclosed on August 4, 2021, through several of the social networks of this mechanism that integrates the Integral System of Truth, Justice,

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[108] They requested the incorporation of the following elements: 1) Tutela action by way of fact filed by the Rights with Dignity Organization on December 16, 2021 against the judgment rendered by the Council of State by which it declared the expiration of the action for Direct Reparation filed by the relatives of Mayor Benjamín Artemio Arboleda Chaverra and the child Robinson Martínez Moya; 2) First instance tutela judgment by which the protection of the fundamental rights protected was denied and dated May 25, 2022; 3) Challenge to the first instance tutela judgment filed on April 18, 2022; 4)0020Sentence of second instance confirming the denial of protection dated May 26, 2022; 5) Record of delivery of the skeletal remains of Mayor Benjamín Artemio Arboleda Chaverra dated April 29, 2022 and, 6) Record of inspection of the corpse identified as Benjamín Artemio Arboleda Chaverra dated July 12, 2021, .

[109] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections, supra*, para. 146, and *Case of Ríos Avalos et al. v. Paraguay. Merits, Reparations and Costs*. Judgment of August 19, 2021. Series C No. 429, para. 19.

Reparation and Non-Repetition (SIVJRNR)". The State, by communication of August 18, 2021, sent the information requested by the Court. On March 7, 2022, the joint interveners of Reiniciar submitted evidence for a better resolution referring to the universe of alleged victims in this case[110]. On March 30, 2022, the Court requested the State to send information related to the universe of victims of the Unión Patriótica. On September 16, 2021,[1111] following instructions from the President of the Court, it requested the State to submit a series of databases related to the alleged victims in this case as evidence for a better resolution. The ***State***, by communication of September 24, 2021, submitted the information requested.

178. The ***Court*** determines that all of the foregoing is incorporated into the evidence file of the case inasmuch as it was requested by this Tribunal as evidence for a better resolution, by virtue of Article 57 of the Rules of Procedure.

A.4. Additional information submitted by the State and the parties

179. The ***State***, by communication of March 26, 2021, submitted information related to the *amicus curiae brief* filed by the Colectivo de Abogados José Alvear Restrepo (CAJAR), the Colombian Commission of Jurists (CCJ), the Corporación Jurídica Libertad (CJL), the Coordinación Colombia Europa Estado Unidos (CCEEU) and the Comité Solidaridad con Presos Políticos (CSPP), as part of the processing of the instant case. This information was brought to the attention of the Plenary of the Court and transmitted to the parties by letter from the Secretariat dated March 26, 2021.

180. In this regard, the ***Court*** notes that such information was not justified under any of the exceptions provided for in Article 57 of the Rules of Procedure, making it untimely and inadmissible.

181. On the other hand, on August 8, 2021, the ***joint interveners*** of the CJDH submitted new information provided by Mrs. Galia Forero in which she recounts facts related to the present case, as well as provides documentary evidence, and

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[110] They requested the incorporation of*:* a) Press release of the Truth Commission, published on March 4, 2022, and b) Corporación Reiniciar. Petition rights filed to date before the CEV and the JEP.

[111] The Court requested the State to submit the following: 1) The database, reports or documents with lists of alleged victims of victimization of sympathizers and members of the Patriotic Union of the Ombudsman's Office through which the statistical analysis of Chapter 5 of the Ombudsman's Report for the Government, Congress and the Attorney General of the Nation (1992) was prepared. Likewise, it is required to submit any other report prepared by the Ombudsman's Office that refers to the facts and alleged victims of victimization of sympathizers and members of the Patriotic Union; 2) The databases, reports or documents with lists of alleged victims of victimization of sympathizers and members of the Patriotic Union through which the National Center of Historical Memory (CNMH) prepared the Report of the Center of Historical Memory "Everything happened in front of our eyes. The genocide of the Patriotic Union 1984-2002". In addition, it is requested the remission of the reports and data of alleged victims of the Observatory of Memory and Conflict of the CNMH through which it documented the cases of 4,153 victims of the Patriotic Union murdered or disappeared or kidnapped. Likewise, it is required to submit any other report prepared by the National Center of Historical Memory (CNMH) that refers to the facts and alleged victims of victimization of sympathizers and members of the Patriotic Union; 3) The database of the Single Registry of Victims (RUV) that refers to the facts and alleged victims of victimization of sympathizers and members of the Patriotic Union; 4) The database, reports or documents with lists of alleged victims through which the Attorney General's Office, and in particular the National Directorate of Analysis and Contexts (DINAC), elaborated the statistical analysis alluding to the victimization of sympathizers and members of the UP. In addition, that the reports and data of alleged victims of the report of the Attorney General's Office of June 30, 2015, and of the official communication of the Specialized Prosecutor's Office 57 of June 24, 2016 related to the case filed 00123 be sent. Likewise, it is required to submit any other report prepared by DINAC and that refers to the facts and alleged victims of sympathizers and members of the Unión Patriótica, and 5) The database, documents or reports with lists of alleged victims of victimization of sympathizers and members of the Unión Patriótica regarding which there were or are disciplinary investigations prepared by the Attorney General's Office of the Nation.

request its inclusion in the file of the instant case. In this regard, the ***State*** stated that it did not oppose that said documentation be evaluated together with the rest of the evidentiary material submitted to the proceedings. The ***joint interveners*** of ***Reiniciar*** stated that they took note of Mrs. Galia Forero Mora's wish to be represented by the CJDH. The ***Commission*** stated that it had no observations to make, and the common interveners of the Diaz Mansilla Family, on the other hand, did not submit any observations. The Court considers it appropriate to admit this documentation because it refers to facts supervening the presentation of the brief of petitions and arguments, which are also relevant for the resolution of this case.

B. Admissibility of testimonial and expert evidence

182. This Tribunal considers it appropriate to admit the statements made before a notary public[112] and in a public hearing[113] to the extent that they are in accordance with the purpose defined by the Presidency in the Resolution by which it ordered to receive them and with the purpose of this case[114].

VIII
FACTS

183. In this chapter the Court will establish the facts that will be considered proven in this case, based on the evidence that has been admitted and according to the factual framework established in the Merits Report. In addition, the facts presented by the parties will be included.

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[112] Statements were received from Beatriz Elena Gómez Pereañez, José Antonio López Bula, Patricia Elia Ariza Flórez, Beatriz Elena Cabrales Sossa, René Alfredo Cabrales Sossa, Adela Solano Rivera, Martha Cecilia Garzón Cortés, Luis Alexander Naranjo León, Sandra Milena Arboleda Martínez, Naun Jesús Orrego Sossa, Yenny Paola García Méndez, Imleda Daza Cote, Luis Eduardo Betancur, María Teresa Areiza, Juan Jesús Arango Úsuga, Milton Milton Manuela Daza Cote, Luis Eduardo Betancur and José Antonio López Bula, Naun de Jesús Orrego Sossa, Yenny Paola García Méndez, Imleda Daza Cote, Luis Eduardo Betancur, María Teresa Areiza, Juan Jesús Arango Úsuga, Milton Manco Castro, Aníbal de Jesús Higuita Agudelo, Angélica Palacios, Ana Doris Ramírez, Luz Elena Santana Porras, Ana Ceneida Úsuga, Sol Patricia Avendaño, Luz Aleida de Jesús Higuita, Amaparo de Jesús Úsuga, William de Jesús Supúlveda Morales, Jaquelina Avendaño Sepúlveda, Elkin Durango, Hernando Úsuga, Nury de Jesús García David, Luz Elena Vásquez Ramírez, Consuelo de Jesús Jiménez Álvarez, Orbairo Cardona David, Alba Dolly Úsuga Manco, Liney Amparo Correa Correa, Sandra Cristina Pulgarín Úsuga, Rosa Angélica Posso Jiménez, patricia Graciano Posso, Ananias Guisao Guisao, Candida Rosa Córdoba Higuita, María Lucrecia Córdoba Higuita, María Esneda Londoño, Flor Magali David Espinal, Milton Manco Castro, Rubiola David Espinal, Conrado Emilio David Espinal, Wilson de Jesús David Espinal, Marleny Castaño Castaño, Ángel Eugenio Montoya Varelas, Yoly Migdony Durango Solís, Sara Alexandra Manco Durango, Gloria Emperatriz Guzmán Quiroz, María Amadulina Guzmán Quiroz, Dioselina Higuita de Úsuga, Lucila Úsuga Higuita, Efraín Úsuga Higuita, Ana Ofelia López Londoño, Wilson de Jesús Valderrama López, José Ilubin Valderrama, Rosalba Restrepo Guzmán, Luz Elena Vásquez Ramírez, Ana Elvia Duarte, Ana Debora Areiza Higuita, María Benilda Areiza, María Magdalena Muñoz, Luz Marina Cardona Úsuga, Simeón Torres Sepúlveda, María Isabellina Torres Cardona, Carlos Alberto Palacio, Wilmar Antonio Palacio, María Inés Palacio, Flor Emilse Rivera Arango, Aníal de Jesús Higuita Agudelo, María Rosalba Agudelo Areiza, María Rocío Castaño, Gabriela de Jesús Úsuga de David, Zoraida Mazo Vargas, María Yolanda Mazo Vargas, Nubia Rosa Úsuga David, Gustavo Andrés Espinal Úsuga, Iván Darío Ramírez Giraldo, Marta Oliva Ramírez Giraldo, Gloria Nelly Ramírez Giraldo, Liz Yomaira Nieves Pérez, Guillermo Antonio Gómez Martínez, Mario Enrique Simanca Mass, Benjamín Simanca Masa, Claudia Patricia Ocampo Ochoa, Oscar Darío Aguilar, Natalia Meza Altamiranda, Miladys Díaz, Clemencia Correa González, José Salomón Strusberg Rueda, Ramón Alberto Rodríguez Andrade, Leonardo Augusto Cabana Fonseca, Claudia Cecilia Puentes, Armando Novoa García, Claudia Martin, Clara Sandoval Villalba, Kimberly N. Trapp, Rainer Huhle, Jean d'Aspremont, Gustavo Cote, María Carmelia Londoño, René Urueña, Filippo Fontanelli, Julián Arévalo, and Fabián Salvioli.

[113] Statements were received from Aida Yolanda Avella Esquivel, María Eugenia Guzmán de Antequera, Gloria Mansilla de Díaz, Consuelo Arbeléz Gómez, Mónica Cifuentes, Daniel Eduardo Feirstein, Francisco Gutiérrez Sanín,

Juan Pablo Aranguren, Roger M. O'Keefe, Mark Freeman, Carlos Arévalo, María Camila Moreno, and Michael Reed-Hurtado.

[114] The objects of the declarations are set forth in the Resolution of the President of the Court dated December 18, 2020.

that make it possible to explain, clarify or dismiss this factual framework[115] and the acknowledgment of partial responsibility made by the State will be taken into account. The facts of the present case will be presented in the following order: a) Context; b) Global determinations of alleged victims; c) Facts presented as "representative cases" by the Commission; d) Facts related to Miguel Ángel Díaz Martínez and his family; e) Facts presented as "illustrative summaries" by the joint intervenors of Reiniciar; f) Facts presented by the joint intervenors of CJDH and DCD;
g) Facts regarding the legal status of the Unión Patriótica, and h) Facts reported by the State and the representatives regarding protection, investigation and reparation.

A. Context

184. The Court recalls that, in the exercise of its contentious jurisdiction, it has taken cognizance of various historical, social and political contexts that made it possible to situate the facts alleged to be in violation of the American Convention in the context of the specific circumstances in which they occurred. In some cases the context was taken into account for the determination of the international responsibility of the State[116]. For the Court, it is relevant to consider a contextual framework that allows for a better understanding and assessment of the evidence and the allegations in order to evaluate the possible State responsibility in the instant case.

185. Although the State acknowledged the existence of a context of systematic and generalized violence suffered by the members and militants of the Unión Patriótica (*supra* Chapter IV), this Court considers it important to take up elements of the climate of political violence experienced in Colombia since the 1980s (A.1), as well as the emergence of the Unión Patriótica Party (A.2) and the phenomenon of paramilitarism (A.3) in order to understand the climate of systematic violence against the members and militants of the Unión Patriótica (A.4).), as well as the emergence of the Patriotic Union Party (A.2.) and the phenomenon of paramilitarism (A.3.) in order to understand the climate of systematic violence against the members and militants of the Patriotic Union (A.4.) and, in this way, to contextualize the facts and allegations of this case.

A.1. Political Violence in Colombia since the 1980s[117]

186. According to expert witness Reed Hurtado, the political situation in Colombia during this period was marked by bipartisan confrontation and a highly irregular exercise of power, in which the national government resorted to the figure of a state of exception in a broad and extended manner. Likewise, during that period the doctrine of national security expanded, which implied the designation of "internal enemies" that had to be eradicated from the regions[118] . Thus, he stated that "the Colombian counterinsurgency effort of the 1980s and 1990s is marked by the war against a diffuse internal enemy, regularly associated with international communism. The UP militants were covered by this stigma "[119].

187. The bodies of the Inter-American Human Rights System have documented or reported on the situation of violence in Colombia in the context of the conflict.

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[115] *Cf. Case of "Five Pensioners" v. Peru, supra,* paras. 153 and 155, and *Case of Guzmán Albarracín et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of June 24, 2020. Series C No. 405, para. 43.

[116] *Cf., inter alia, Case of Miguel Castro Castro Castro Prison v. Peru, supra*, para. 202, and *Case of Bedoya Lima et al. v. Colombia. Merits, Reparations and Costs.* Judgment of August 26, 2021. Series C No. 431, para. 38.

[117]For the purposes of this case, the Court will refer to the political violence in Colombia since the 1980s, without prejudice to the fact that it originated in the 1940s.

[118] Expert testimony rendered before the Inter-American Court by Michael Reed-Hurtado at the public hearing

held on February 9, 2021.

[119] Expert testimony rendered before the Inter-American Court by Michael Reed-Hurtado at the public hearing held on February 9, 2021.

Colombian armed conflict since the 1980s. This Court has ruled in several cases related to events that took place in that context[120] . Similarly, in April 1980, the Inter-American Commission carried out an *on-site visit* and successive visits thereafter, until May 1981. In its Second Report on the Situation of Human Rights in Colombia, the Commission characterized the violence in the country and the violations of the right to life as marked "by a clear political orientation, since many of the victims have been persons who held political positions opposed to the Government or who had expressed their disagreement with it in public acts "[121]. In its 1996 Annual Report, referring to the situation in Colombia, it noted that attacks against persons working in the field of human rights, alternative political parties to the traditional ones and elected authorities at the local level continued in 1996[122] .

188. This political violence has also been documented by various national and international organizations. The United Nations Special Rapporteurs on torture and on extrajudicial, summary or arbitrary executions noted in their 1995 joint report on their visit to Colombia that political dissidence has been considered by traditional sectors and drug traffickers as a threat to their interests, and is perceived as a subversive activity not only by the military involved in counterinsurgency activities in rural areas, but also by a large number of civilian authorities and state institutions. Thus, catalogued as "guerrillas" or "internal enemies", many members of opposition political parties live under permanent threat and the alarming number of murders committed against them is really worrying[123].

189. According to the Commission's Third Report on the Situation of Human Rights in Colombia in 1999, political violence was also directed against political parties. Thus, paramilitary groups threatened certain candidates and political parties.

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[120] *Cf., inter alia, Case of Caballero Delgado and Santana v. Colombia. Merits.* Judgment of December 8, 1995. Series C No. 22; *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192; *Case of Cepeda Vargas v. Colombia, supra*; *Case of Rodríguez Vera et al (Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 14, 2014. Series C No. 287; *Case of 19 Merchants v. Colombia. Merits, Reparations and Costs*. Judgment of July 5, 2004. Series C No. 109; *Case of the "Mapiripán Massacre" v. Colombia, supra,* para. 4; *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140; *Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, supra*; *Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits and Reparations*. Judgment of November 30, 2012. Series C No. 259; *Case of Las Palmeras v. Colombia. Merits*. Judgment of December 6, 2001. Series C No. 90; *Case of Vereda La Esperanza v. Colombia, supra*; *Case of Villamizar Durán et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2018. Series C No. 364, *Case of Isaza Uribe et al. v. Colombia, supra*. 363, or *Case of Bedoya Lima v. Colombia, supra.*

[121] *Cf.* Inter-American Commission on Human Rights. Second Report on the Situation of Human Rights in Colombia, October 14, 1993.

[122] At that time, the Commission noted that non-governmental sources consider that 65% of political killings are the responsibility of the armed forces and paramilitary groups and that these sources estimate that the number of violations committed by the Colombian State security forces decreased in 1996, constituting approximately 8% to 18% of all political killings in which the assailants could be identified. While the number of political assassinations committed by State forces decreased, the number of such violations committed by paramilitary forces increased, and that, according to non-governmental sources, paramilitaries are responsible for 48% to 59% of extrajudicial killings for political reasons. He noted that the Ombudsman in Colombia has reported that paramilitary activity has increased by 62% since 1992. These statistics must be analyzed in the context of serious indications that link paramilitary killings with the complicity of individual soldiers and/or military units and tend to demonstrate that the Government has not adequately sought to control the paramilitaries. *Cf.* 1996 Annual Report of the Inter-American Commission on Human Rights, OEA/Ser.L/V/II.95. doc. 7 rev., March 14, 1997, p. 663.

[123] *Cf.* United Nations, Joint report on the visit to Colombia of the Special Rapporteur on the question of torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/1995/111, January 16, 1995.

warned residents in certain regions of the country to abstain from voting or participating in the elections. Likewise, the influence of paramilitary groups in the elections took on greater significance in the Atlantic Coast region, especially in Urabá, Córdoba, Magdalena and the south of the Department of Cesar. The interference of paramilitary groups almost completely prevented the registration of left-wing parties in the elections in the Urabá region where, in previous years, members of alternative parties such as the Unión Patriótica had gained notable political influence[124].

190. At the domestic level, the Colombian Constitutional Court has referred to the emergence of groups, movements and political parties as a result of the demobilization of former guerrilla members, as in the case of the creation of the Patriotic Union party. In this regard, it established that the emergence of minority groups, movements and political parties as a result of the demobilization of former guerrilla members "requires special protection and support from the State". It added that the institutionalization of the conflict, the laying down of arms and their replacement by the active exercise of political-democratic participation and the renunciation of violence as a method to achieve social change, are alternatives that must be guaranteed by all authorities to prevent the so-called "dirty war" from ending up closing the possibility of reaching a consensus that brings together all sectors of the population and allows for peaceful coexistence "[125].

A.2. Emergence of the Patriotic Union Party

191. This Court has already had the opportunity to refer to the emergence of this group. Thus, in the case Cepeda *Vargas v. Colombia,* it established that the Unión Patriótica (hereinafter also "UP"), was constituted as a political organization on May 28, 1985, as a result of a peace process between the National Secretariat of the Revolutionary Armed Forces of Colombia (hereinafter the "FARC") and the government of then President Belisario Betancur Cuartas, a pact known as the "Uribe Accords", signed on May 24, 1984. As part of the peace accords, the National Government undertook to grant the necessary guarantees and assurances so that the UP could operate under the same conditions as other political parties. The UP participated for the first time in elections in 1986. Between 1986 and 1994, the UP obtained considerable representation results in the Senate, the House of Representatives, Municipal Councils and Mayors and the National Constituent Assembly of 1990[126].

192. Organizationally, the UP was structured from its first congress onwards, in grassroots groups and movement leadership called "Juntas Patrióticas "[127].

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[124] *Cf.* Inter-American Commission on Human Rights, Third Report on the Situation of Human Rights in Colombia, OEA/Ser. L/V/II. 102 Doc. 9 rev. 1 of February 26, 1999, Chapter IX, Freedom of Association and Political Rights, E. Alternative Political Parties, paras. 36, 47 and 48.

[125] Decision issued by the Second Review Chamber of the Constitutional Court in case T-439 on July 2, 1992.

[126] *Case of Cepeda Vargas v. Colombia, supra,* paras. 74 and 75.

[127] According to the CNMH, among the participating political parties and organizations "were: (a) the FARC; (b) the Communist Party and organizations articulated by it such as the JUCO (Communist Youth), the Union of Democratic Women and the National Provivienda Central; (c) independent sectors of the Liberal and Conservative parties, including the MRL (Liberal Revolutionary Movement) and the Liberal Convergence and New Liberalism movements; d) regional organizations such as the Movimiento Camilo Torres, the Movimiento Causa Común, the Movimiento Firmes de Santander Youth Movement and the Frente Amplio del Magdalena Medio (which remained an ally until it joined the UP in October 1987); e) leftist sectors such as the Posadista Troskyist Party and the Bolivarian Movement; f) sectors of the armed insurgency such as ADO (which demobilized and joined the UP), as well as the Antonio Nariño and Simón Bolívar detachments of the ELN; and g) several trade union and popular organizations, among them the Unity Front of the

The UP was formed by the Union of Young Patriots (Unión de Jóvenes Patriotas, UJP). A leadership structure was formed, the National Patriotic Board, which included the representation of the political forces present in the UP, trade union entities, political leaders and representatives of the regions where the UP emerged. The National Board elected a National Coordinating Body of 15 members[128]. The legal status of the party was recognized on August 20, 1986 by Resolution No. 37 of the Electoral Council129. The UP certified, as of May 1986, 190,269 registered members with membership cards.[130] The organization of the UP was quite heterogeneous, with an unequal presence in the territory. Its presence was more marked in the rural territory, in the areas less integrated or recently integrated into the State[131].

193. As a consequence of its rapid rise in national politics, especially in some regions with a traditional guerrilla presence, an alliance arose between paramilitary groups and sectors of traditional politics, the security forces and business groups to counteract the UP's rise in the political arena.

194. In the framework of the weakening of the agreements between the guerrillas and the Government, in the V Plenary Session of the National Board held in February 1987, the UP announced the separation of the FARC from the political party. However, despite this official separation132 , claims by political leaders that assimilated the UP with the FARC[133] continued and multiplied, creating in the collective imagination the image that the UP was the political arm of the FARC and thus justifying actions by the forces of law and order and paramilitary groups against UP militants and leaders[134].

Magisterio, the CSTC (Central Sindical de Trabajadores de Colombia), several agrarian unions and JAC (Juntas de Acción Comunal)". *Cfr.* Report of the National Center of Historical Memory. "Everything happened in front of our eyes. El genocidio de la Unión Patriótica 1984-2002", 2018, p. 39 and 40 (evidence file, folio 446797).

[128] *Cfr.* Report of the National Center of Historical Memory. "Todo pasó frente a nuestros ojos. El genocidio de la Unión Patriótica 1984-2002", 2018, p. 43 (evidence file, folio 446804).

[129] *Cfr.* National Electoral Council. Resolution No. 37 of August 20, 1986, Art. 7 (evidence file, folios 21940 to 21946).

[130] The Historical Memory Construction Directorate of the CNMH reconstructed, within the framework of the research "Reconstruction of the historical memory of the Unión Patriótica case", the universe of victims of the UP for the years 1984-2002, based on the records of Reiniciar, the research of Roberto Romero Ospina "La Unión Patriótica. Expedientes contra el olvido" (The Patriotic Union. Files against oblivion) and information from national and regional press.

[131] *Cfr.* Report of the National Center of Historical Memory. "Todo pasó frente a nuestros ojos. El genocidio de la Unión Patriótica 1984-2002", 2018, p. 43 (evidence file, folio 446801).

[132] The then presidential candidate for the UP, Jaime Pardo Leal, made several pronouncements to separate the FARC from the UP. Of these efforts, the Ombudsman's Report for 1992 includes the following statement: "The Patriotic Union rejects the declarations of President Barco [...] We consider unacceptable the declarations of the president that the UP is the FARC.We consider unacceptable the President's statements to the effect that the UP is the party of the guerrillas, with which he implicitly justifies the actions of the Army and paramilitary groups with the system of assassination of UP militants and leaders (Report of the Ombudsman for the Government, Congress and the Attorney General of the Nation entitled "Study of cases of homicide of members of the Unión Patriótica and Esperanza, Paz y Libertad" of October 1992 - evidence file, folio 363088).

[133] The following statements of public officials are part of the evidence submitted by the Commission:
1) in September 1987, the then Minister of Government, stated for the magazine Semana, "[and] you know very well that the FARC were the armed wing of the Communist Party and that the Communist Party is today called UP"; 2) on October 27, 1988, following an attack on the UP headquarters in the municipality of Apartadó in Urabá Antioquia, the then Minister of Defense declared to the media: "well it would be that they had explosives in their headquarters"; and 3) on March 19, 1990, the then Minister of Government maintained during a debate in the Senate that "in the elections of March 11 the country voted against violence and defeated the political arm of the FARC, which is the Patriotic Union".

[134] Expert opinion before a notary public by Eduardo Cifuentes Muñoz dated January 8, 2010, in the context of the case of
Manuel Cepeda v. Colombia, incorporated into the present case file (evidence file, folios 365048 to 365089).

195. Except for the 1990 elections, the Patriotic Union participated in electoral processes between 1986 and 2000[135]. The UP participated in the 1986 and 1990 presidential campaigns with the candidacies of Jaime Pardo Leal and Bernardo Jaramillo, respectively. Jaime Pardo Leal was assassinated on October 11, 1987 and Bernardo Jaramillo on March 22, 1990. After Jaramillo's assassination, the Patriotic Union decided not to participate in the presidential elections of May 27, 1990 due to lack of guarantees. However, it was the result of the violence against the national leadership of the UP that precipitated a decline in its national influence, although it continued to play an important role at the local level[136] . In 2002, it did not present candidates for the elections, so on September 30, 2002, through resolution No. 5659, the National Electoral Council decided to suppress the UP's legal status[137] . Against this decision, the UP filed an action for annulment and reestablishment of rights before the Council of State, which decided to reestablish the party's legal status through a resolution of the Contentious Administrative Court of July 4, 2013[138].

A.3. The phenomenon of paramilitarism

196. As has been noted in other cases, in the framework of the fight against guerrilla groups and other groups considered as "internal enemies "[139] , the State promoted the creation of "self-defense groups" among the civilian population through a regulatory framework, whose main purpose was to assist the security forces in anti-subversive operations, for which they were granted permits to carry and possess weapons and logistical support.

197. Thus, in the *case* of *19 Comerciantes v.* Colombia[140] , this Court found that:

a) On December 24, 1965, the State issued Legislative Decree No. 3398 "whereby national defense is organized", which had a transitory validity, but was adopted as permanent legislation through Law 48 of 1968 (with the exception of articles 30 and 34). Articles 25 and 33 of the aforementioned Legislative Decree gave legal basis to the creation of "self-defense groups "[141].

b) On January 27, 1988, Colombia issued Legislative Decree 0180 "by which some norms of the Penal Code are complemented and other provisions are dictated to reestablish public order". This decree criminalized, *inter alia, the following* offenses

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[135] Cfr. Report of the National Center of Historical Memory. "Todo pasó frente a nuestros ojos. El genocidio de la Unión Patriótica 1984-2002", 2018, p. 60 (evidence file, folio 446818).

[136] *Cfr.* Report of the National Center of Historical Memory. "Todo pasó frente a nuestros ojos. El genocidio de la Unión Patriótica 1984-2002", 2018, p. 61 (evidence file, folio 446819).

[137] *Cfr.* Resolution of the National Electoral Council of September 30, 2002. Resolution No. 5659 (evidence file , folios 21940 to 21946).

[138] *Cfr.* Council of State, Fifth Section of the Council of State, Contentious-Administrative Chamber, Judgment of July 4, 2013 (evidence file, folios 155475 et seq.).

[139] On this notion, please refer to the expert opinion of Daniel Feierstein (evidence file, folios 393360 and following) and the expert opinion during the public hearing of Michael Reed.

[140] *Case 19 Comerciantes v.* Colombia, *supra,* para. 84.

[141] In the preamble to these regulations, it was stated that "the subversive action advocated by extremist groups to alter the legal order requires a coordinated effort by all the organs of public power and the living forces of the Nation" and, in this regard, the aforementioned Article 25 stipulated that "[a]ll Colombians, men and women, not included in the call to compulsory military service, may be used by the Government in activities and work with which they contribute [were] to the reestablishment of normality. Likewise, paragraph 3 of the aforementioned Article 33 provided that "[t]he Ministry of National Defense, through the authorized commands, may protect, when it deems it convenient, as private property, weapons that are considered to be for the exclusive use of the Armed Forces". The "self-defense groups" were legally formed under the protection of the aforementioned norms, and therefore had the support of the state authorities.

alia, the membership, promotion and direction of groups of hired killers, as well as the manufacture or trafficking of arms and ammunition for the exclusive use of the Military Forces or the National Police.

c) Subsequently, this decree was elevated to permanent legislation by Decree 2266 of 1991.

d) On April 19, 1989, Decree 0815 was issued, suspending the validity of paragraph 3 of article 33 of Legislative Decree 3398 of 1965, which empowered the Ministry of National Defense to authorize private individuals to carry arms for the private use of the Armed Forces. In the preamble of Decree 0815 it was indicated that "the interpretation of [Legislative Decree 3398 of 1965, adopted as permanent legislation by Law 48 of 1968, made] by some sectors of public opinion, has caused confusion as to its scope and purposes, in the sense that it could be taken as a legal authorization to organize armed civilian groups that happen to be acting outside the Constitution and the laws "[142].

e) By judgment of May 25, 1989, the Supreme Court of Justice declared the referred paragraph 3 of Article 33 of Legislative Decree 3398 of 1965 to be "unenforceable".

f) On June 8, 1989, the State issued Decree 1194 "by which Legislative Decree 0180 of 1988 is added to sanction new criminal modalities, as required by the reestablishment of public order "[143].

g) Subsequently, this decree was elevated to permanent legislation by Decree 2266 issued on October 4, 1991.

198. Mainly after 1985, it became notorious that many of these groups changed their objectives and became criminal groups, commonly called "paramilitaries", which developed first in the Magdalena Medio and then spread to other regions of the country[144].

199. Likewise, in several cases before this Court, it has been possible to prove, in different periods and geographical contexts, the existence of links between members of the security forces and the Armed Forces of Colombia and paramilitary groups, which would have consisted of concrete actions of support or collaboration, or omissions that allowed or facilitated the commission of serious crimes by non-State actors[145].

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[142] Decree 0815 of April 19, 1989. *Cf. Case 19 Comerciantes v. Colombia*, para. 84. g).

[143] In the preamble of this regulation it was stated that "the events that have been occurring in the country have shown that there is a new criminal modality consisting of the commission of atrocious acts by armed groups, wrongly called 'paramilitaries', constituted in death squads, gangs of hired killers, self-defense groups or private justice groups, whose existence and action seriously affect the social stability of the country, which must be repressed to achieve the reestablishment of public order and peace". This decree criminalized the promotion, financing, organization, direction, encouragement and execution of acts "tending to obtain the formation or entry of persons into armed groups of the commonly known as death squads, gangs of hired killers or private justice groups, mistakenly called paramilitaries". It was also criminalized the linking and belonging to such groups, as well as instructing, training or equipping "persons in tactics, techniques or military procedures for the development of criminal activities" of the referred armed groups. Likewise, it was stipulated as an aggravating circumstance for the above conducts that they were "committed by active or retired members of the Military Forces or the National Police or State security agencies".

[144] *Cf. Case of 19 Merchants v. Colombia, supra*, paras. 84(a) to 84(h); *Case of the Mapiripán Massacre v. Colombia*, *supra,* paras. 96.2 to 96.3 and *Case of Isaza Uribe et al. v. Colombia, supra*, para. 43.

[145] See in this sense the documentation and citation of information and its own jurisprudence, made by this Tribunal in the *Case of 19 Merchants v. Colombia, supra*; Case *of the "Mapiripán Massacre" v. Colombia,*

200. As noted by expert witness Eduardo Cifuentes, the existence of paramilitary groups was maintained and promoted by a permissive security policy, which materialized not only in public pronouncements that legitimized their existence, but also in the enactment of a legal framework that regulated their integration and granted facilities for their operation[146] , and even in the execution of joint operations with these structures[147]. This Court has already noted the existence of numerous cases of links between paramilitaries and members of the security forces, as well as omissive attitudes on the part of members of the security forces with respect to the actions of these groups[148].

201. Similarly, expert witness Michael Reed Hurtado noted that, although in 1989 there was a legal suspension of official support for paramilitary groups, in practice these groups continued to have the support of the military and local elites in the regions. He also noted that in the 1990s there was a relaunching of the official strategy of involving civilians in the conflict and in paramilitary activities with the National Strategy against Violence (1991)[149].

A.4. Systematic violence against members and militants of Unión Patriótica

202. According to the National Center for Historical Memory (CNMH), four periods can be identified in the process of victimization of the UP. The first runs from 1984 to 1988 and is characterized by a growing trend of violence that reached its critical moment in 1988. It coincides with the creation of the UP up to its threshold of political success as the third force in the legislative and presidential elections of 1986 and the local and regional elections of 1988. It is during this period that the greatest participation of agents of the UP is registered.

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supra; *Case of the Pueblo Bello Massacre v. Colombia, supra*; *Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, supra*, and *Case of Vereda La Esperanza v. Colombia, supra,* paras. 68-70, and *Case of Isaza Uribe et al. v. Colombia*, *supra.*

[146] Expert opinion before a notary public by Eduardo Cifuentes Muñoz of January 8, 2010, in the framework of the case *Manuel Cepeda v. Colombia, supra,* incorporated into the present case file (evidence file, folios 365048 et seq.). With respect to the regulations, mention can be made of Manual ECJ-3-101 of June 25, 1982, by which the General Command of the National Army ordered the creation of "self-defense boards". Likewise, in 1987, the General Command of the National Army issued the Counter-Guerrilla Combat Regulations EJC-3-10, which included the civilian population within the counterinsurgency forces. Subsequently, in 1993, the National Government approved Decree 535 by means of which it authorized the Special Private Security Services "Convivir" to be equipped with weapons for the private use of the military forces. Likewise, in 1994, Extraordinary Decree 356 was issued, which officially created the "special private security and surveillance services" (cf. *Case of the "Mapiripán Massacre" v. Colombia, supra*, paras. 96.2 to 96.18).

[147] The spokesmen of the UP and the Colombian Communist Party have denounced the existence of at least five extermination operations allegedly designed from high state spheres: The plans "Esmeralda" (1988) and "Retorno" (1993) would have had as an objective the disappearance of the UP branches in the departments of Meta, Caquetá and in the region of Urabá. Operation Condor" (1985) and the plans "Baile Rojo" (1986) and "Golpe de Gracia" (1992) were aimed at undermining the national leadership structures of the movement and assassinating or kidnapping its leaders elected to public corporations. See Yezid Campos Zornosa, El Baile Rojo, Grafiq Editores, Bogotá, 2003, pages 17 and 18. State entities, such as the Procuraduría General de la Nación, identified the existence of extermination plans against members of the Unión Patriótica, and the threats against Manuel Cepeda and other members of the UP leadership, as coming from extreme right-wing paramilitary sectors. (*Cf.* Evaluation report of the Second District Attorney's Office of Santafé de Bogotá, Exp. 143-6444, pp.6, 106 y 107). Similarly, expert witness Michael Reed Hurtado stated in his expert opinion that "the paramilitary activities and structures used to persecute the Patriotic Union (in its origins) were organized and promoted by state agents. They actively engage the Colombian State: this is not a problem of tolerance or omission. The activities and the structures were sponsored by the State: some of them are even *de jure* agents of the State, not only *de facto*.

[148] *Cf. Case of the "Mapiripán Massacre" 'v. Colombia, supra,* para. 96.19; *Case of the Pueblo Bello Massacre v. Colombia, supra,* para. 128; Case of the *Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 125.24, and *Case of Valle Jaramillo et al. v. Colombia, supra,* para. 76.

[149] Expert testimony rendered before the Inter-American Court by Michael Reed-Hurtado at the public hearing held on February 9, 2021.

of the State in a direct manner. A second period, from 1989 to 1994, is characterized by a decrease in violence, although it continues. The acts of violence in this period are centered on the local, regional and national leadership. Likewise, the main actor in the violence was the paramilitary groups. The turning point was the assassination of Senator Manuel Cepeda on August 9, 1994. The third period lasted from 1995 to 1997 and was characterized as the most violent, particularly in the region of Urabá, the last of the UP's bastions of political electoral success. Thus, the UP decided not to participate in the 1997 local and regional elections. This is precisely the period in which the role of paramilitary groups increased, with 83.5% of the cases attributable to them. The last period runs from 1998 to 2002 and is marked by an initial period of decreasing violence, followed by an upsurge in violence. This phase is distinguished by a greater prevalence of non-lethal violence, particularly forced displacement and threats[150].

203. One of the most visible forms of victimization of UP members and militants was the homicidal violence against its representatives in the national corporations. As mentioned, on October 11, 1987 and March 22, 1990, Jaime Pardo Leal and Bernardo Jaramillo, respectively, who were presidential candidates, were assassinated (*supra* para. 195). Four senators were also assassinated (Pedro Nel Jiménez Obando on September 1, 1986; Pedro Luis Valencia Giraldo, on August 14, 1987; Bernardo Jaramillo Ossa, on March 22, 1990; Manuel Cepeda Vargas, on October 9, 1994), four representatives to the Chamber (Leonardo Posa Pedraza, on August 30, 1986; Octavio Vargas Cuellardo, on August 14, 1987; Bernardo Jaramillo Ossa, on March 22, 1990; Manuel Cepeda Vargas, on October 9, 1994), four representatives to the Chamber (Leonardo Posa Pedraza, on August 30, 1986; Octavio Vargas Cuellar, on December 14, 1986; Henry Millán González, on September 7, 1993 and Octavio Sarmiento Bohórquez, on October 1, 2001), in addition to several people who held organizational positions such as Teófilo Forero, on February 27, 1989 and José Antequera, on March 3, 1989[151]. At the local level, fourteen sitting deputies were murdered between 1986 and 1997 (Carlos Julián Vélez, José Rafael Reyes Malagón, Pedro Malagón, José Rodrigo García Orozco, Carlos Kovacs Baptiste, Lui Antonio Pérez Sánchez in the department of Meta; Gabriel Jaime Santamaría Montoya and Sofronio Hernández in Antioquia; Sotero Escobar and Leonel Forero Hurtado in Arauca; Gerardo Cuellar and Arsenio Valencia Arias in Caquetá; Alexis Hinestroza Valois, Víctor Manuel Ochoa Amaya in Cesar; Alfonso Guillermo Cujavante Acevedo in Córdoba; Eduardo García in Risaralda and Carlos Enrique Rodríguez Celis in Santander)[152]. If we take all the acts of violence registered by the CNMH, of the total number of victims, 200 were mayors, 418 were councilors, 43 were deputies, 26 were congressmen and 2 were governors[153].

204. The violence against the UP did not end with the assassination of its political leaders. Between May 1984 and December 2002, the Observatory of Memory and Conflict of the National Center of Historical Memory (CNMH) documented 3,122 selective assassinations, 544 victims of forced disappearance, 478 victims of massacre killings, 4 kidnappings and 3 people in other forms of violence. The CNMH also took the data presented by Reiniciar, according to which 2,049 surviving victims of acts of violence such as threats, attempted homicide, torture, sexual violence and violation of guarantees were reported.

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150 *Cfr.* Report of the National Center of Historical Memory. "Todo pasó frente a nuestros ojos. El genocidio de la Unión Patriótica 1984-2002", 2018, pp. 110 to 114 (evidence file, folios 446868 to 446872).

151 *Cfr.* Report of the National Center of Historical Memory. "Todo pasó frente a nuestros ojos. El genocidio de la Unión Patriótica 1984-2002", 2018, p. 65 (evidence file, folio 446823).

152 *Cfr.* Report of the National Center of Historical Memory. "Todo pasó frente a nuestros ojos. El genocidio de la Unión Patriótica 1984-2002", 2018, pp. 66-67 (evidence file, folios 446824 to 446825).

153 *Cfr.* Report of the National Center of Historical Memory. "Todo pasó frente a nuestros ojos. El genocidio de

la Unión Patriótica 1984-2002", 2018, p. 177 (evidence file, folios 446935).

arbitrary detention or unfounded prosecutions, forced displacement and exile[154].

205. This prevalence of selective killings in the forms of victimization of the UP demonstrates, according to the CNMH, a strategy of violence with a high dose of selectivity. Thus, "when crimes are perpetrated every day, but with one, two or three victims, the mechanism obscures the dimensions, underpins impunity and denial, hinders their investigation, reduces their notoriety and minimizes or denies the facts "[155] . On the other hand, "the level of prevalence of selective assassinations and forced disappearances of those who exercised leadership and representative functions was aimed at leaving the UP leaderless and sought to cause the political movement to collapse due to the survival of a violence that killed or disappeared "[156].

206. Regarding the geographic dimension of the violence against the UP, the CNMH established a pattern of concentration, considering that almost half of the victims were concentrated in the regions of Ariari-Guayabero, Magdalena Medio and Urabá, which represented the three main bastions of political-electoral success for the UP[157].

207. With respect to the perpetrators of these crimes, it has been noted that they came from different groups. In the judgment in the *Manuel Cepeda case*, using evidence provided by the State itself, the Court was able to determine that the perpetrators came mainly from paramilitary groups; however, the direct and indirect participation of State agents (mainly members of the Army and Police)[158] was also proven. At the international level, the United Nations Special Rapporteurs on the question of torture and on extrajudicial, summary or arbitrary executions, indicated that those responsible for the acts of violence against members of the Unión Patriótica appeared to be in some cases paramilitary groups, hired killers under the orders of landowners and drug traffickers, as well as members of the State security forces[159] .

208. In relation to the above, the Recognition Chamber of the Special Jurisdiction for Peace indicated that it had identified "a set of facts for which the original sources attribute direct responsibility, as material authors of the facts, to state agents". Likewise, this entity affirmed that the "material and direct violence against members of the UP was massively executed by paramilitary groups, but that in a series of crimes committed by paramilitary structures against the UP militants, there were systematic contributions by state agents belonging to operational units of the Public Force". He added that "in acts of violence against Upecista militants there was a systematic contribution of state agents belonging to operative units of the Public Force.

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154 *Cfr.* Report of the National Center of Historical Memory. "Todo pasó frente a nuestros ojos. El genocidio de la Unión Patriótica 1984-2002", 2018, p. 106 (evidence file, folio 446864).

155 Report of the National Center of Historical Memory. "Everything happened in front of our eyes. The genocide of the Patriotic Union 1984-2002," 2018, p. 156 (evidence file, folio 446914).

156 Report of the National Center of Historical Memory. "Todo pasó frente a nuestros ojos. El genocidio de la Unión Patriótica 1984-2002", 2018, p. 183, (evidence file, folio 446914).

157 *Cfr.* Report of the National Center of Historical Memory. "Todo pasó frente a nuestros ojos. El genocidio de la Unión Patriótica 1984-2002", 2018, p. 116, (evidence file, folio 446874).

158 *Cf. Case of Manuel Cepeda Vargas v. Colombia, supra,* para. 78.

159 *Cf.* United Nations, Joint report on the visit to Colombia of the Special Rapporteur on torture, Mr. Nigel S. Rodley, and of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, E/CN.4/1995/111, 16 January 1995.

the Public Forces, even though the material execution of the crimes was carried out by paramilitary groups "[160].

209. According to the Database of the Observatory of Memory and Conflict of the CNMH, among the 2,967 cases in which the alleged perpetrator is recognized, 71.5% were perpetrated by paramilitary groups, 16.4% by State agents and 6.2% by State agents in joint action with paramilitary groups[161]. According to the CNMH "the participation of State agents was not restricted to direct actions perpetrated clandestinely or joint actions with paramilitary groups, but also to omission in the face of the actions of the paramilitary groups, which is reiterated time and again in the denunciations of the violence against the UP. Omissions that in many cases responded more to intentionality than to a limitation of resources to react "[162]. In the speech given by then President Juan Manuel Santos at an event with the Patriotic Union, it was recognized that "the State did not take sufficient measures to impede and prevent the assassinations, attacks and other violations, despite the clear evidence that this persecution was underway "[163].

210. All these data demonstrate the systematic character and the will to eliminate the UP as a political force. The Constitutional Court of Colombia, in its decision T-439-92, regarding a tutela action filed by a militant of the Patriotic Union party, established that:

> The alleged situation of threat is inseparable from the context experienced by this political group and its progressive elimination. The simple figures of deaths and disappearances of its militants or sympathizers during the years 1985 to 1992, provided by the Unión Patriótica to this Court, show in an irrefutable manner the objective dimension of the political persecution unleashed against it, without the State having taken sufficient measures to guarantee its special protection as a minority political party, systematically decimated in spite of its official recognition[164].

211. According to the Ombudsman in his report entitled "Study of cases of homicide of members of the Unión Patriótica and Esperanza, Paz y Libertad" of 1992, "there is a direct relationship between the emergence, activity and electoral support of the UP and the homicide of its militants and leaders in regions where the presence of these groups was interpreted as a risk to the maintenance of the privileges of certain groups "[165] . Likewise, as stated by expert witness Eduardo Cifuentes "the repetitive attack against the leaders with power of representation of the party, can be read as a message directed to its members to stop their possible future participation, to the social bases that offered support to the collectivity, and to the sectors or political parties allied to the UP, to distance themselves from the organization, imposing a political environment of discrimination, fear and

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[160] Special Jurisdiction for Peace, Recognition Chamber, Order No. 027 of February 6, 2019 (evidence file, folios 446574 to 446641).

[161] *Cfr.* Report of the National Center of Historical Memory. "Todo pasó frente a nuestros ojos. El genocidio de la Unión Patriótica 1984-2002", 2018, p. 147 (evidence file, folio 446905).

[162] Report of the National Center of Historical Memory. "Everything Happened in Front of Our Eyes. The genocide of the Patriotic Union 1984-2002," 2018, p. 149 (evidence file, folio 446907).

[163] Juan Manuel Santos. Speech given in Bogota on September 15, 2016. Available at the following link http://es.presidencia.gov.co/discursos/160915-Palabras-del-Presidente-Juan-Manuel-Santos-en-acto-con-la-Union-Patriotica.

[164] Decision issued by the Second Review Chamber of the Constitutional Court in case T-439 on July 2, 1992.

[165] Report of the Ombudsman to the Government, Congress and the Attorney General entitled "Study of cases of homicide of members of the Unión Patriótica and Esperanza, Paz y Libertad" of October 1992 (evidence file, annex 92 to the State's response, folio 363162).

[166] However, the persecution was not limited to party leaders, but was extended against the party's social base[167] , in order to create a generalized sense of fear and terror that could progressively reduce electoral support for the UP[168].

212. The political violence against the UP was also pointed out by the then United Nations High Commissioner for Human Rights, Mary Robinson, in her 1998 report presented to the Commission on Human Rights, where she underlined that "Colombian political activity has been characterized by a high degree of intolerance towards opposition parties and movements. The most dramatic example is the case of the Unión Patriótica, whose militants have been victims of systematic executions "[169].

213. This violence against members and sympathizers of the UP has been characterized as systematic by national and international organizations. Thus, in the judgment in the *Manuel Cepeda* case*,* reference was made to the following qualifications: the United Nations High Commissioner for Human Rights referred to the executions of UP militants as "systematic"; the Ombudsman described the violence against the leaders and militants of that party as "systematized extermination"; the Constitutional Court of Colombia as "progressive elimination"; the Inter-American Commission as "massive and systematic assassination"; the Attorney General's Office refers to "systematic extermination", and the National Commission for Reparation and Reconciliation as "extermination "[170]. The Prosecutor General's Office, applying the conceptual framework developed by its Directive 002 of 2016 "Whereby guidelines related to crimes against humanity are adopted" and taking into account the statistical analysis alluding to the victimization of sympathizers and members of the UP, for the case of the department of Meta, considered that "the crimes against sympathizers, members, militants and leaders of the Patriotic Union Party were not isolated acts, but on the contrary, they had a massive and generalized character "[171.]

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[166] Expert opinion before a notary public by Eduardo Cifuentes Muñoz dated January 8, 2010, in the context of the case of
Manuel Cepeda v. Colombia, incorporated into the present case file (evidence file, folios 365048 et seq.).

[167] The universe of victims reconstructed by Reiniciar's joint interveners, Roberto Romero Ospina's investigation and national and regional press information, shows that the Patriotic Union registered between 1984 and the end of 1989, 11681 acts of violence represented in homicides, massacres, forced disappearances and non-lethal violence such as threats, harassment and unfounded judicializations (Annex 2 of Reiniciar's ESAP, file of evidence).

[168] *Cf.* expert opinion before a notary public by Eduardo Cifuentes Muñoz of January 8, 2010, in the framework of the case of
Manuel Cepeda v. Colombia, incorporated into the present case file (evidence file, folios 365048 et seq.).

[169] United Nations. Report of the United Nations High Commissioner for Human Rights Mary Robinson, presented to the Commission on Human Rights at the 54th session on 9 March 1998 E/CN.4/1998/16, para. 58.

[170] *Case of Manuel Cepeda Vargas v. Colombia, supra,* para. 81, referring to: United Nations, Report of the United Nations High Commissioner for Human Rights on the Office in Colombia, E/CN.4/1998/16, of March 9, 1998; Report of the Ombudsman to the Government, Congress and the Attorney General entitled "Study of cases of homicide of members of the Unión Patriótica and Esperanza, Paz y Libertad" of October 2002; Judgment issued by the Second Chamber of Review of the Constitutional Court and T-439 of July 2, 1992, p. 14; Inter-American Commission on Human Rights, supra para. 14; Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights in Colombia, October 14, 1993 and Comisión Nacional de Reparación y Reconciliación, Primer Informe de Memoria Histórica titled "Trujillo, una tragedia que no cesa", Editorial Planeta, Bogotá, Colombia, September 2008.

[171] Office of the Attorney General of the Nation, National Directorate of Analysis and Context, Specialized Prosecutor's Office 57 FINAC, file #00123, June 24, 2016 (evidence file, annex 69 to the response, folio 36223232). In this same document it was indicated that "Although the crimes committed against members of the U.P. were a national phenomenon, there were several epicenters in which a greater affectation of violence against members of the UP was observed, among which can be highlighted [...], those corresponding to the departments of Antioquia, Meta, Santander, Cesar and Tolima" (evidence file, folio 362235).

214. Similarly, various domestic courts in Colombia have classified the acts committed against the UP in accordance with the provisions of the Colombian Criminal Code, which incorporates the concept of genocide against political groups[172] , crimes against humanity[173] and war crimes[174]. In the same sense, the qualification of "genocide" is shared by the Centro Nacional de Memoria Historia, which titled its 2012 publication "[e]verything happened in front of our eyes. Genocide of the Patriotic Union 1984-2002"[175].

215. Likewise, it should be recalled that on August 4, 2021, the former paramilitary chief Salvatore Mancuso, declared before the Truth Commission that "[w]hen the guerrilla decided to form the UP and began to get involved in political life and to campaign and participate in elections and succeeded in gaining access to councils, the enormous concern came from the State institutions, from the economic and industrial associations that Colombia would become another Cuba, that they would expropriate properties, economic sectors and establish a political model and put an end to those who opposed [...].]. The UP was not exterminated by the self-defense groups. Its great victimizer was the State and of course we had responsibilities "[176].

216. On the other hand, the Court notes that, through Auto No. 027 of February 6, 2019, the Chamber of Recognition of the Special Jurisdiction for Peace indicated that lethal violence "was prevalent against UP militants. The Chamber identified 5,733 unique victims of lethal violence (homicide or forced disappearance), mainly men. The magnitude of the victimization allows us to affirm that it was a massive and generalized violence". Similarly, "at least 857 victims of lethal violence, approximately 1 in 6 (16.5%), suffered some other form of victimization before or during the event in which they lost their lives. This subset of victims are those who present a pattern of victimization most consistent with a selectivity of violence "[177].

217. Finally, the Court notes that, recently, the Truth Commission and the Jurisdiction for Peace revealed figures of violence against the Patriotic Union, and indicated that, according to their investigation, there were at least 8,300 victims of the Patriotic Union, and that this constitutes "an unprecedented figure for what until now was considered the victimization of this political party "[178].

B. Facts presented by the Commission and by the joint intervenors

218. As indicated above, the Commission presented a list annexed to the Merits Report with 5911 alleged direct victims of the systematic violence against members and militants of the Unión Patriótica between 1984 and 2006, to which 871 relatives of direct victims of alleged forced disappearances and forced disappearances would be added.

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[172] *Cf.* Superior Court of Bogotá, Justice and Peace Chamber, Judgment of October 10, 2013 (evidence file, folios 214796 et seq.).

[173] *Cf.* Supreme Court of Justice, Criminal Cassation Chamber, Judgment of May 15, 2013 (file of evidence, folios 214796 et seq.).

[174] *Cf.* Superior Court of Bogotá, Justice and Peace Chamber, Judgment of October 10, 2013 (evidence file, folios 214796 et seq.).

[175] *Cf.* Centro Nacional de Memoria Historia, Todo pasó frente a nuestros ojos. Genocide of the Patriotic Union 1984-2002 (evidence file, folios 446759_to 447262).

[176] Truth Commission, News, Salvatore Mancuso and Rodrigo Londoño acknowledged their responsibilities before the victims, contributions to the truth, news, August 4, 2021 (evidence file, folios 446756 to 446759).

[177] Special Jurisdiction for Peace, Recognition Chamber, Order No. 027 of February 6, 2019 (evidence file, folios 446574 to 446641).

[178] Truth Commission, News, March 4, 2022 (evidence file, folios 446537 to 446539).

alleged extrajudicial executions. He informed that in the consolidated information, the following emerged
3,134 deprivations of the right to life of members and militants of the Unión Patriótica in the period between 1984 and 2006. During the same period, there were 514 disappearances, 224 alleged arbitrary detentions, 501 cases of threats and harassment, 1,600 forced displacements, 271 cases of attempted homicides, 17 cases of alleged unfounded prosecutions.

219. The Commission did not present individualized information on all the facts alleged by the petitioner, including the so-called representative cases. In total, it presented facts in which the circumstances of time, place and manner are on record, in relation to 101 facts and 230 alleged victims. In these representative cases, 161 persons were victims of homicides, 14 of forced disappearances, 15 of unfounded prosecutions, 17 of attempted homicides, 9 of threats, 5 of injuries and 17 of forced displacements. In turn, the joint interveners presented additional facts that refer to 448 alleged victims. These alleged alleged victims are listed in Annex I, while the relatives of the executed or disappeared persons mentioned by the Commission are listed in Annex II.

220. On the other hand, as mentioned in the Chapter on Preliminary Considerations, the Court dismissed the State's objections related to the alleged victims for whom no precise mention is made of a factual platform or evidence that would make it possible to prove the existence of a human rights violation attributable to the State. There are 5461 alleged victims in this hypothesis. On that occasion, reference was made to the chapter on reparations in which the measures leading to the identification of the alleged victims in this case will be determined. These alleged victims are mentioned in Annex III.

221. The particular facts related to the deprivations of the right to life, forced disappearances, forced displacements, threats, torture and other violations of personal integrity and personal liberty that were presented by both the Commission and the representatives are set forth in Annex IV to this Judgment.

C. Facts related to investigations and legal proceedings

222. Within the framework of the present process, information was provided related to the investigations on the acts of violence and threats suffered by the militants and members of the Patriotic Union. According to the information submitted by the Attorney General's Office on June 30, 2015, it reported thirty-four cases of crimes against militants and sympathizers of the Patriotic Union, which after being prioritized were declared crimes against humanity, by Resolution of October 16, 2014 issued by the National Directorate of Analysis and Context. These entities, as expressed by the State, have joined efforts and as a result of this have obtained free versions in which criminal alliances have been recognized in the homicides committed.

223. As of March 31, 2015, the National Directorate of Specialized Prosecutors for Human Rights and International Humanitarian Law and the National Specialized Directorate for Transitional Justice reported the existence of 705 open investigations in which members of the UP are registered as victims, of which, for 2014, 520 cases were in the preliminary or inquiry stage and 154 in instruction or investigation.

224. In a press release dated July 23, 2013, the Attorney General's Office disclosed information according to which the National Unit for Human Rights and International Humanitarian Law had delivered a report to the United Nations High Commissioner for Human Rights on the occasion of her visit to Colombia, in which it stated that

that the Prosecutor General's Office has reached 265 convictions for the UP case and that they have "709 open cases under investigation" and that "these crimes generated 1313 victims "[179].

225. There is no additional information available regarding these 265 convictions in the international proceedings to establish whether they relate to the alleged victims in this case or whether they are final.

226. It should be noted that there is information indicating that, in September 2012, a group of people filed a criminal complaint for genocide against the Patriotic Union before the Attorney General's Office. Likewise, it appears from the file that on January 26, 2017, Reiniciar filed a criminal complaint for the crime of genocide for political reasons provided for in Article 101 of the Criminal Code in force in Colombia. The Commission does not have any information on the follow-up given to these complaints, nor on their progress and/or results.

227. As of March 31, 2015, the National Directorate of Specialized Prosecutor's Offices for Human Rights and International Humanitarian Law and the National Directorate Specialized in Transitional Justice reported that there were 705 open investigations that registered members of the Patriotic Union as victims.

228. The Peace Strategy Group of the Specialized Directorate against Human Rights Violations of the FGN identified that, in cases related to the UP, 244 sentences have been handed down, of which 2 correspond to Law 100 of 1980, 162 to Law 600 of 2000, 71 to Law 906 of 2004 and 2 to Law 975 of 2002.

229. The State indicated that it registers a total of 372 convicted persons, of which 30 belong to the Public Force, 251 are part of paramilitary groups, 6 are part of the FARC and 85 do not register any links. It added that through Resolution No. 0651 of 2017, a working group was formed for the elaboration of the context and investigation of the criminal acts related to the UP, which will serve as input for the macro imputation that was carried out in 2018.

230. The State presented a list of the victims with respect to whom there are ongoing investigations for the acts perpetrated against them. It indicated that there are 1,273 victims that coincide with the alleged victims presented by Reiniciar and that are identified in the following categories: a) national leader; b) regional leader; c) militants; d) sympathizers; e) person without active participation; f) victim without links to the UP, and g) indirect victims. He indicated that, since the investigations are ongoing, the facts, the perpetrators and the responsibility have not yet been proven.

231. It is an uncontroversial fact that, in the Peace Agreement signed between the National Government and the FARC-EP of November 24, 2016, the State undertook to guarantee the non-repetition of the crimes committed with respect to the Patriotic Union. In this regard, it was provided that the National Government would take all measures, including those agreed in the agreement and any other that may be necessary, to ensure that no political party or movement in Colombia would be victimized again and that what happened with the Unión Patriótica would never be repeated. Thus, it was pointed out that the report and recommendations of the Commission for the Clarification of Truth, Coexistence and Non-Repetition; the results of the Unit for the Search for Persons Reported Missing in the Context and Due to the Conflict; the acknowledgements of responsibility; the judicial truth and the decisions that the

[179] *Cf.* Press release of the Attorney General's Office of July 23, 2013 (evidence file, folios 22079 et seq.).

Special Jurisdiction for Peace; and also reparation measures, including collective reparation measures.

D. Facts regarding the Patriotic Union's legal status

232. On August 20, 1986, the National Electoral Council recognized the Unión Patriótica political party as a legal entity and ordered its registration, taking into account that it complied with the legal requirements for legal [recognition180].

233. On September 30, 2002, the National Electoral Council determined the loss of legal status of the Patriotic Union for not meeting the requirements established in Law 130 of 1994, which establishes the loss of legal status of political parties and movements "when in an election they do not obtain through their candidates at least 50,000 votes or do not reach or maintain representation in Congress [...]", taking into account the results of the elections of March 10 and May 26, [2002181]. The Patriotic Union did not participate in the 2002 elections.

234. A representative of the UP filed an appeal for reconsideration against the previous decision, arguing that they were unable to comply with the requirement of Law 130 of 1994 due to circumstances of fortuitous event and force majeure derived from the persecution and extermination to which the members and militants of the party have been [subjected182].

235. On November 20, 2002, the National Electoral Council confirmed the decision of September 30, 2002, considering that "the fact that the Unión Patriótica Political Party was found to be in breach of the first cause of article 4 of Law 130 of 1994 for reasons of force majeure or fortuitous event has no influence, since, as it was stated, it is not disputed that the political group was legally responsible for not having obtained the fifty thousand votes or not having reached representation in Congress "[183.]

236. On July 4, 2013, the Fifth Section of the Contentious Administrative Chamber of the Council of State, in resolving two lawsuits, decreed the partial nullity of the decision of September 30, 2002 regarding the loss of legal personality of the UP, and the complete nullity of the decision of November 20, 2002, and as a consequence indicated that the UP maintains its legal [personality184]. In its considerations, the Chamber considered that:

> [...] the CNE, in determining whether the Unión Patriótica Political Party was entitled to apply numeral 1 of Article 4 of Law 130 of 1994 to extinguish its legal personality, was constitutionally and legally required to evaluate the factual situation that governed the events of the state of force majeure suffered by the party, with respect to its real capacity for political participation [...] this content of the administrative acts sued evidences the treatment of the CNE, detached from the prevailing reality, of the special situation it was facing and that the UP presented to it....] this content of the administrative acts sued evidences the treatment that, detached from the prevailing reality, the CNE gave to the situation of special consideration that it faced and that the UP presented to it,

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180 *Cf.* Resolution 37 of the National Electoral Council of August 20, 1986 (evidence file, folios 21947 et seq.).

181 *Cf.* Resolution 5659 of the National Electoral Council of September 30, 2002 (evidence file, folios 21940 and following).

182 *Cfr*. Cited in the Decision of the Fifth Section of the Contentious Administrative Chamber of the Council of State of July 4, 2013 (evidence file, folios 155478 et seq.).

183 Cited in the Decision of the Fifth Section of the Contentious Administrative Chamber of the Council of State of July 4, 2013 (evidence file, folios 155495 et seq.).

[184] *Cfr*. Decision of the Fifth Section of the Contentious Administrative Chamber of the Council of State of July 4, 2013 (evidence file, folios 155504 et seq.).

> because it qualified the extermination of the group of militant persons, for reasons of political intolerance, as a "foreseeable", "knowable" fact [...][185].
>
> [...] the file contains documentary evidence of the situation of extermination to which the militants and sympathizers of the UP had been subjected [...] the members of the Unión Patriótica party were victims of persecution for political reasons that occurred in the country, when unknown hands decided to exterminate its militants and affiliates with the clear purpose of undoing the party [...][186].

237. By virtue of the above decision, on September 24, 2013, the National Electoral Council reestablished the legal personality of the UP and authorized the registration of the members of the National Patriotic Board and the National Executive Committee of the Patriotic Union[187].

238. On December 13, 2013, the Ministry of the Interior created the Committee of Electoral Guarantees for the Unión Patriótica political party with the purpose of "evaluating the current electoral conditions in which the party finds itself, in order to advance actions tending to guarantee participation in future electoral contests under conditions of equality, recognizing the condition of victims, militants, family members and survivors of the UP within the framework of Law 1448 of 2011"[188].

239. On March 9, 2014, elections were held in the national territory for the Congress of the Republic, without the Patriotic Union having managed to obtain representation in Congress or to reach the percentage of votes required to maintain its legal personality[189].

240. On April 1, 2014, the Ministry of Interior submitted for consideration of the National Electoral Council a concept of the Chamber of Consultation and Civil Service of the Council of State in which this body considered that "for the effectiveness of the judgment of the Council of State of July 4, 2013, the electoral threshold cannot be applied to the Patriotic Union in the 2014 parliamentary elections "[190] and requested that its decision be attached to the concept of the Council of State[191].

241. On November 26, 2014, the National Electoral Council decided that the Patriotic Union would retain its legal personality until 2018, by inapplying the legal electoral threshold required to retain the legal personality of the party, taking into account that "the impossibility of registering enough candidates to the Congress of the Republic, to carry out in equal conditions an appropriate dissemination of its political project", is due to facts beyond the

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[185] *Cfr*. Decision of the Fifth Section of the Contentious Administrative Chamber of the Council of State of July 4, 2013 (evidence file, folios 155507 et seq.).

[186] *Cfr*. Decision of the Fifth Section of the Contentious Administrative Chamber of the Council of State of July 4, 2013 (evidence file, folios 155503 et seq.).

[187] *Cfr.* Resolution 2576 of the National Electoral Council of September 24, 2013 (evidence file, folios 21947 et seq.).

[188] *Cfr.* Resolution 2012 of the Minister of the Interior of December 13, 2013. According to said decision, the Committee of Electoral Guarantees is formed by: 1. The Minister of the Interior or his delegate, who will preside over it.
2. The Vice Minister for Participation and Equal Rights; 3. The Vice Minister of Political Relations; 4. The Director of the National Protection Unit or his delegate; 5. A representative of the Unión Patriótica Political Party, designated by the President of the Party (evidence file, folios 21988 et seq.).

[189] *Cfr*. Resolution 3594 of the National Electoral Council of November 26, 2014 (evidence file, folios 21993 et seq.).

[190] *Cfr*. Resolution 3594 of the National Electoral Council of November 26, 2014 (evidence file, folios 21993 et seq.).

[191] *Cf.* State's written submission of observations of September 6, 2017 (evidence file, folios 22046 et seq.).

political organization. It considered, among other facts, that the right to party financing was recognized a little more than 3 months before the electoral debate[192].

242. Through Resolution 2246 of August 10, 2018, the National Electoral Council maintained the legal personality of the coalition formed by the Unión Patriótica political party, MAIS (Movimiento Alternativo Indígena Social), and ASI (Alianza Social Independiente) in a conditional manner the personality until there is regulation in relation to coalition political parties. This allowed it to participate in the electoral contest as a coalition[193]. Additionally, through Resolution 3287 of July 23, 2019, the National Electoral Council approved the change of name, bylaws and logo of the Patriotic Union, and the merger with the Colombia Humana party[194]. On September 17, 2021, the Constitutional Court ordered the National Electoral Council to recognize the legal status of the political movement Colombia Humana[195].

IX
FUND

243. In the chapter on the facts, as well as in Annex IV of the facts of this Judgment, it was proven that the systematic violence against the members and sympathizers of the Unión Patriótica was manifested through acts of different nature such as forced disappearances, massacres, extrajudicial executions and murders, threats, attacks, various acts of stigmatization, improper prosecutions, torture, forced displacements, among others. These acts constituted a form of systematic extermination against the Unión Patriótica political party and its members and militants, with the participation of State agents and the tolerance and acquiescence of the authorities (*supra* paras. 202 et seq.).

244. Next, this Court will rule on the alleged violations of the rights contained in the American Convention that are related to the different forms in which the violence against the Unión Patriótica and its members and members manifested itself, and which evidence the systematic, massive and generalized nature of this violence with the purpose of exterminating the political party, its members and its militants. To this end, this chapter will be developed in the following order: 1) the international responsibility of the State in the present case; 2) the political rights in relation to personal integrity, freedom of thought and expression and freedom of association; 3) the rights to recognition as a person before the law, to life, to personal integrity, to personal liberty, to freedom of movement and residence, the rights of the child and Article 1.b of the Inter-American Convention on Forced Disappearance of Persons (hereinafter also "CIDFP"), for the alleged executions, disappearances, torture, arbitrary detentions, threats, harassment and displacement against members and militants of the Unión Patriótica; 4) the right to honor and dignity for the statements made by public officials against the members and militants of the Unión Patriótica; 5) the rights to personal integrity, personal liberty, to judicial guarantees, to honor and dignity and to judicial protection, due to the alleged unfounded criminalization, stigmatization and alleged torture against members and militants of the Patriotic Union in the case known as "la chinita" and in the case of Andrés Pérez Berrío and Gustavo Arenas Quintero; 6) the rights to judicial guarantees, judicial protection and the duty to investigate alleged acts of torture (Articles 8 and 25.1 of

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192 *Cfr*. Resolution 3594 of the National Electoral Council of November 26, 2014 (evidence file, folios 21993 et seq.).

193 *Cfr*. Resolution 2246 of the National Electoral Council of August 10, 2018.

194 *Cfr*. Resolution 3287 of the National Electoral Council of July 23, 2019.

195 *Cf*. Colombian Constitutional Court, Decision SU316/21 September 16, 2021.

American Convention, Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter also "CIPST") and Article 1b of the CIDFP); 7) the rights to judicial guarantees, to judicial protection of private property and to equality before the law to the detriment of Miguel Ángel Díaz Martínez and his next of kin, and 8) the right to personal integrity with respect to his next of kin.

IX.1
THE INTERNATIONAL RESPONSIBILITY OF THE STATE IN THE PRESENT CASE

245. In the instant case, both the Commission and the joint interveners presented arguments related to different ways of attributing responsibility to the State for acts contrary to international obligations that allegedly affected members and activists of the Unión Patriótica. Taking into consideration that this is a cross-cutting issue in all the pleadings, before entering into the particular analysis of each of the rights allegedly violated to the detriment of the alleged victims in the case, the Court will now make general considerations on the international responsibility of the State in the instant case.

A. Arguments of the parties and the Commission.

246. The ***Commission*** and the ***joint interveners*** pointed out that the recognition of responsibility made by the State (*supra* Chapter IV) is related, for the most part, to the failure to comply with the duty to guarantee in its component of prevention and protection of the rights to recognition as a person before the law, to life, to personal integrity, to personal liberty, to judicial guarantees, to freedom of expression, to freedom of association, to freedom of movement and residence, to political rights, and to judicial protection. They considered that the controversy over the direct responsibility of the State for failure to comply with the duty to respect, as a consequence of the direct actions of its agents and/or assumptions of joint action, acquiescence or collaboration with illegal armed groups, particularly paramilitary groups, remains in dispute.

247. The Commission understood that, from the totality of the available information, including the contextual information, the evidence referred to in the factual determinations on the individual cases, the pronouncements of international organizations, the reports of state authorities such as the Ombudsman's Office and the Attorney General's Office, the rulings of high Colombian judicial authorities referred to in this report, including the Constitutional Court and the Council of State, as well as information gathered in the framework of the Justice and Peace Law, clear patterns can be identified, the rulings of high Colombian judicial authorities referred to in this report, including the Constitutional Court and the Council of State, as well as information gathered in the framework of the Justice and Peace Law, it is possible to identify clear patterns of state participation both directly and through acts of acquiescence, tolerance and collaboration.

248. The joint intervenors of the ***Diaz Mansilla Family*** and ***Reiniciar requested*** the Court, in the analysis of the present case and the measures of reparation and guarantees of non-repetition that it may indicate, to apply the interpretation clause according to which rights recognized by Conventions ratified by the State party may not be limited. They pointed out that, in this case, the State in the exercise of its sovereignty has ratified the Convention on the Prevention and Punishment of the Crime of Genocide (CPSDG) since 1959, with the obligations it contracted therein, but also in 2000, under the principle of autonomy and sovereignty of the State, it protected political groups by establishing the crime of genocide in the criminal code and including political groups therein. He added that all the patterns of victimization and extermination have been shown to bear a similarity to

the crime of genocide. The ***Commission*** did not present arguments on this point.

249. For its part, the ***State*** indicated that the theory of attribution of international responsibility presented in the pleadings before the Court does not take into account the multiple complexities of the case and that it is also contrary to international law and international human rights law. It requested that the claim of attribution of responsibility by action that does not take into consideration the elements of each specific case be dismissed and that the scope of the international responsibility of the State in each case be analyzed, in light of the elements of the international file, in accordance with its acknowledgement of responsibility and the considerations presented with respect to the cases named as representative by the Commission. On the other hand, it reiterated what was already mentioned in the chapter on preliminary objections regarding the lack of jurisdiction of the Court to declare that the State committed an international crime of genocide, and considered that this type of qualification cannot be included in the operative part of the judgment.

B. Considerations of the Court.

250. It should be recalled that, in the chapter on facts and Annex IV on facts of this Judgment, the Court referred to acts of violence directed against leaders and members of the Patriotic Union of various kinds that took place over more than two decades and that occurred in different parts of Colombian territory. These acts were carried out by state actors and third parties with the tolerance, collaboration, acquiescence or lack of prevention by the authorities. It has also been verified that this violence has been characterized as systematic and that it constituted a form of "extermination" and mass murder (*supra* paras. 212-217).

251. Similarly, these acts against members of the UP were accompanied by statements by high-ranking authorities that associated the Unión Patriótica with the FARC guerrilla groups and that could have legitimized, contributed to, and encouraged violence, including violence by non-State actors (*supra* paras. 194 et seq.). On this last point, it should be recalled that this Court has established in other cases that violence, fueled by hate speech, can give rise to hate crimes[196].

252. Likewise, in the chapter on facts, it was indicated that this systematic extermination was aimed at eliminating the UP as a political force and that there is a direct relationship between the emergence, activity and electoral support of the UP and the killing of its militants and leaders in regions where the presence of these groups was interpreted as a risk to the maintenance of the privileges of certain sectors (*supra* paras. 202 to 217).

253. It should be recalled that the State partially acknowledged its responsibility for those events and that on September 15, 2016, President Juan Manuel Santos acknowledged that "the persecution of the members of the UP was [...]a tragedy that led to its disappearance as a political organization and caused untold damage to thousands of families and to our democracy [...] and that the State did not take sufficient measures to prevent and deter the murders, attacks and other violations, despite the clear evidence that this persecution was underway" (*supra* para. 17). It also indicated that on August 4, 2021 former paramilitary leader Salvatore Mancuso declared that the "great victimizer" of the UP had been the State (*supra* para. 215). In turn, the Constitutional Court of Colombia, in its judgment T-439 of July 2, 1992, affirmed that the number of deaths and disappearances of the militants of the Patriotic Union "clearly shows the objective dimension of the political persecution unleashed against it, without the State having taken the necessary measures" (supra para. 215).

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[196] *Cf. Case of Azul Rojas Marín v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of March 12, 2020. Series C No. 402, para. 93, and Advisory Opinion OC-24/17, *supra*, para. 47.

sufficient to guarantee their special protection" (*supra* para. 210). In the same sense, the Ombudsman noted that "there is a direct relationship between the emergence, activity and electoral support of the UP and the murder of its militants and leaders in regions where the presence of these groups was interpreted as a risk to the maintenance of the privileges of certain groups" (*supra* para. 211).

254. In this regard, it should be recalled that when it is a question of acts of power in which the State reveals a systematic decision or plan, active and omissive, in this case with the objective of annihilating a political group, which lasted for more than two decades, which implies carrying out multiple acts, in such cases, from the legal point of view, it is appropriate that the entire set be considered as a continuing act. For this Court, the entire systematic undertaking against the leaders and militants of the Unión Patriótica constitutes a crime against humanity, because it is clear that the actions and omissions or acquiescence of the State undertaken for the purpose of annihilating a human group of any nature always constitute a crime against humanity (*supra* para. 98).

B.1. General aspects

255. With regard to the responsibility of the State for an international wrongful act, it should be recalled that, since its first judgment in a contentious case, the Inter-American Court has indicated that Article 1(1) is fundamental to determine whether a violation of the human rights recognized by the Convention can be attributed to a State Party. In effect, this article places upon the States Parties the fundamental duties of respect and guarantee, in such a way that any impairment of the human rights recognized in the Convention that can be attributed, according to the rules of international law, to the action or omission of any public authority, constitutes an act imputable to the State that engages its responsibility under the terms of the Convention itself[197] .

256. Thus, this Court has indicated that the international responsibility of the State may be based on acts or omissions of any power or organ of the State that violate the American Convention, and is generated immediately with the international wrong attributed[198]. In turn, this Court has indicated that an internationally wrongful act exists when a conduct consisting of an action or omission a) is attributable to the State under international law, and b) constitutes a breach of an international obligation of the State[199].

257. On the other hand, in order to determine whether a violation of the rights enshrined in the Convention has occurred, it is not necessary to determine, as in domestic criminal law, the culpability of the perpetrators or their intent. Nor is it necessary to identify individually the agents to whom the acts of violation are attributed. It is sufficient to demonstrate "that there have been actions or omissions that have allowed the perpetration of these violations or that there is an obligation of the State that has been breached by it "[200].

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[197] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 164, and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 23, 2018. Series C No. 359, para. 93.

[198] *Cf. Case of the Pueblo Bello Massacre v. Colombia, supra,* para. 112, and *Case of Pavez Pavez v. Chile. Merits, Reparations and Costs.* Judgment of February 4, 2022. Series C No. 449, para. 105.

[199] Similarly, United Nations, General Assembly, Responsibility of States for internationally wrongful acts, A/RES/56/83, January 28, 2002, article 2.

[200] *Cf. Case of the Pueblo Bello Massacre v. Colombia, supra*, para. 112, and *Case of Alvarado Espinoza et al. v. Mexico. Merits, Reparations and Costs.* Judgment of November 28, 2018. Series C No. 370, para. 168.

258. Regarding the content of the obligations to respect under Article 1(1) of the Convention, this Court indicated that "under Article 1(1), any form of exercise of public authority that violates the rights recognized by the Convention is unlawful. In this sense, in any circumstance in which an organ or official of the State or of a public institution unduly injures one of such rights, there is a failure to comply with the duty of respect enshrined in that article "[201]. This conclusion is independent of whether the organ or official has acted in contravention of provisions of domestic law or exceeded the limits of its own competence, since it is a principle of international law that the State is responsible for the acts of its agents carried out in their official capacity and for their omissions even if they act outside the limits of their competence or in violation of domestic [law202] . Similarly, according to the articles on State responsibility, conduct of a person or entity exercising elements of governmental authority is attributable to the State, provided that, in the case in question, the person or entity is acting in that [capacity203].

259. In the same vein, this Court has indicated that, as a general rule, and in accordance with Article 7 of the ILC Articles on State responsibility, any conduct, including *ultra vires* acts, of an organ of the State or of a person or entity empowered to exercise elements of governmental authority shall be considered an act of the [State204] . This rule has only one exception, and that is when that organ or person is not acting in that capacity, i.e., when the person acts within its capacity as a private [entity205]. Likewise, the most widely accepted criterion in international law to determine to what extent an act of a State organ or a person or entity empowered to exercise powers of public authority can be attributed to the State requires that it be established whether the said act was executed as an exercise of authority or as an apparent exercise of State [authority206].

260. A violation of the human rights protected by the Convention may engage the international responsibility of a State Party for a breach of the duty to respect contained in Article 1(1) of the Convention either because the violation is perpetrated by its own agents or - even if at first they are not directly attributable to the State because they are committed by a private individual - when the unlawful act was committed with the participation, support or tolerance of State [agents207].

261. Regarding the content of the obligation to guarantee under Article 1(1) of the Convention, the Court pointed out that it implies the duty of the States Parties to organize the entire governmental apparatus and, in general, all the structures through which the exercise of public power is manifested, in such a way that they are capable of assuring

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[201] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 169, and *Case of Pavez Pavez v. Chile, supra*, para. 106.

[202] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, supra, para. 170, and *Case of Pavez Pavez v. Chile, supra*, para. 106.

[203] *Case of Pavez Pavez v. Chile, supra*, para. 106. Also, Article 7 of the ILC Articles on State Responsibility. See also Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986.

[204] *Cf. Case of Villamizar Durán et al. v. Colombia*, *supra*, 75 and *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 28, 2018. Series C No. 371, para. 165, and *Case of Pavez Pavez v. Chile*, *supra*, para. 107. Also, United Nations, General Assembly, A/RES/56/83, Responsibility of States for internationally wrongful acts, December 12, 2001.

[205] *Cf. Case of Villamizar Durán et al. v. Colombia, supra,* 75 and 139, and *Case of Pavez Pavez v. Chile*, *supra*, para. 107.

[206] *Case of Villamizar Durán et al. v. Colombia, supra,* 75 and 140, and *Case of Pavez Pavez v. Chile*, *supra*, para. 107.

[207] *Cf. Case of Pavez Pavez v. Chile*, *supra*, para. 108.

The free and full exercise of human rights must be guaranteed by law. As a consequence of this obligation, States must prevent, investigate and punish any violation of the rights recognized by the Convention and also seek the reestablishment, if possible, of the violated right and, if necessary, the reparation of the damages caused by the violation of human rights[208].

262. These obligations are also applicable to acts of non-State actors. Specifically, the Court has indicated that the international responsibility of the State may arise from the attribution to it of acts that violate human rights committed by third parties or individuals[209]. The *erga omnes* obligations of States to respect and guarantee the norms of protection, and to ensure the effectiveness of rights, project their effects beyond the relationship between their agents and the persons subject to their jurisdiction, since they are manifested in the positive obligation of the State to adopt the necessary measures to ensure the effective protection of human rights in inter-individual relations[210].

263. Specifically, regarding the duty to prevent, the Court has indicated that "a State cannot be responsible for any violation of human rights committed between private persons within its jurisdiction. In effect, the *erga omnes* nature of the conventional obligations of States to guarantee does not imply an unlimited responsibility of the States against any act or deed of private individuals[211], since their duties to adopt measures of prevention and protection are conditioned by a) whether the State had or should have had knowledge of a situation of risk; b) whether said risk was real and immediate, and c) whether the State adopted the measures that could reasonably be expected to avoid the occurrence of said risk[212].

264. On the other hand, this Court has repeatedly held that the State has the legal duty to "reasonably prevent human rights violations, to seriously investigate with the means at its disposal the violations that have been committed within the scope of its jurisdiction in order to identify those responsible, to impose the appropriate sanctions and to ensure adequate reparation to the victim "[213.] 213 This includes, among other measures, "establishing an effective system of justice capable of investigating, punishing and providing reparations for the deprivation of life by State agents or private individuals.

265. Likewise, this Court emphasized that investigating cases of violations of the right to life is a central element in determining the international responsibility of the State and that this obligation arises from the guarantee of Article 1(1) of the Convention. If, in contexts of serious human rights violations, important shortcomings in the investigation of facts that are perpetuated in the

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[208] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 166, and *Case of Pavez Pavez v. Chile*, *supra*, para. 109.

[209] *Cf. Case of the Pueblo Bello Massacre, supra,* para. 113, and *Case of Pavez Pavez v. Chile*, *supra*, para. 110.

[210] *Cf. Case of the "Mapiripán Massacre", supra,* para. 111, and *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 6, 2019. Series C No. 375, footnote 148.

[211] *Cf. Case of the Pueblo Bello Massacre*, *supra*, para. 117, and *Case of Pavez Pavez v. Chile*, *supra*, para. 110.

[212] *Cf. Case of González et al ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 16, 2009. Series C No. 205, para. 284, and *Case of Luna López v. Honduras. Merits, Reparations and Costs*. Judgment of October 10, 2013. Series C No. 269, para. 124.

[213] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 174, and *Case of Digna Ochoa and next of kin v. Mexico Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 25, 2021. Series C No. 447, para. 142.

[214] *Cf. Case of the Pueblo Bello Massacre v. Colombia,* para. 120, and *Case of Digna Ochoa and next of kin v. Mexico, supra*, para. 142.

impunity, this will mean that the obligation to protect the right to life will not be fulfilled[215]. In the same sense, the absence of effective mechanisms for investigating violations of the right to life and the weakness of the justice systems to address such violations, in certain contexts and circumstances, can lead to generalized situations or serious patterns of impunity, thus encouraging and perpetuating the repetition of violations[216].

266. In sum, and in accordance with the foregoing, in order to determine the international responsibility of the State, what is decisive is to determine whether a given violation of the human rights recognized by the Convention has taken place with the support or tolerance of the public authority or whether the latter has acted in such a way that the transgression has been carried out in the absence of any prevention or with impunity. In short, the question is to determine whether the violation of human rights is the result of a State's failure to comply with its duty to respect and guarantee those rights, as imposed by Article 1(1) of the Convention.[217] The Court has to determine whether the violation of human rights is the result of a State's failure to comply with its duty to respect and guarantee those rights.

B.2. Attribution of State responsibility in the present case

267. The Court notes that, in the instant case, the international responsibility of the State is alleged for a plurality of facts which could be attributed to the State in different ways (*supra* para. 183 et seq.). First, several facts involve the direct actions of State agents, especially the Police or the Army. Secondly, a very significant part of the acts of violence are attributed to private individuals or non-State actors, who were members of paramilitary groups or hired killers associated with them. These facts would involve the responsibility of the State either for failure to respect, or for acts of acquiescence, tolerance or collaboration of State agents, or for failure to guarantee by not having prevented these acts of violence or not having investigated them. On the other hand, it is alleged that the State would be directly responsible for the acts of these individuals because they acted under the protection of a regulatory framework through which the State promoted and created self-defense groups among the civilian population to assist the Public Forces in anti-subversive operations (*supra* para. 196). Finally, it has also been argued that this reading of the State's responsibility must necessarily be made in light of the context of systematic violence against members and militants of the UP.

268. For its part, the State acknowledged its international responsibility for failure to comply with the obligation to guarantee in its prevention and protection component with respect to Articles 4, 5, 3, 7, 7, 13, 16, 22, 23, 8 and 25 of the Convention, in relation to Article 1(1) of the same instrument (*supra* Chapter IV). For some facts, it recognized its responsibility for a breach of the duty to respect rights. On this last point, the Court warns that the recognition of State responsibility cannot be understood as a way of limiting the consequences of the latter, and that it cannot be intended to make the victims invisible or to diminish the dimension of the facts (*supra* para. 79).

269. In the opinion of this Court, in order to properly carry out any analysis of the possible responsibilities that may be attributed to the State in connection with the

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215 *Cf. Case of Baldeón García v. Peru*. *Merits, Reparations and Costs.* Judgment of April 6, 2006. Series C No. 147, para. 97, and *Case of Digna Ochoa and next of kin v. Mexico, supra*, para. 143.

216 *Cf. Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22 , 2009. Series C No. 202, para. 179, and *Case of Digna Ochoa and next of kin v. Mexico, supra*, para. 143.

217 *Cf*. *Case of Velásquez Rodríguez v. Honduras. Merits, supra,* para. 173, and *Case of Pavez Pavez v. Chile,*

supra, para. 111.

factual platform of the case, it is convenient to channel the analysis of each fact bearing in mind the context of systematic violence against the members and militants of the Patriotic Union.

270. Regarding the importance of the context, and without prejudice to the foregoing, it should be recalled that this Court has repeatedly stated that State responsibility, whether for acts of third parties or acts of State agents, must be determined in accordance with the particularities and circumstances of each case, and that a general situation or a context of human rights violations against certain groups of persons is not sufficient. It is also necessary that in the specific case the obligations of the State are violated in the circumstances of the case[218].

271. In turn, circumstantial evidence, indications and presumptions of human rights violations can be used as long as consistent conclusions about the facts can be inferred from them.[219] In the same sense, it is not necessary to have an absolute correspondence between the different elements of these contexts and the facts of the case in order for them to be taken into account when analyzing a specific case. In the same sense, it is not necessary that there be an absolute correspondence between the different elements of these contexts and the facts of the case in order for them to be taken into account when analyzing a specific case. The extent to which these patterns or contexts can be used as evidence, presumptions or circumstantial evidence in conjunction with the rest of the body of evidence must be assessed on a case-by-case basis.220 Similarly, this Court indicated that, for an international tribunal, the criteria for evaluating evidence are less formal than in domestic legal systems and that international jurisprudence has upheld the power of the courts to freely evaluate the evidence, although it has always avoided providing a rigid determination of the *quantum* of evidence necessary to support the judgment[221]. On the other hand, as regards the requirement of proof, different gradations are recognized, depending on the nature, character and seriousness of the dispute[222].

272. On this point, it is worth recalling what this Court has repeatedly pointed out, in that it is not in the nature of a criminal court in which the criminal responsibility of individuals can be determined[223] . Thus, under Article 1(1) of the Convention[224] , in order to establish that a violation of the rights recognized therein has occurred, it is not necessary to determine, as occurs in domestic criminal law, the guilt of the perpetrators or their intent, nor is it necessary to prove beyond reasonable doubt or to identify individually the agents to whom the violation is attributed.[225] For this Court, it is not necessary to establish that a violation of the rights recognized in the Convention has occurred, as occurs in domestic criminal law, the guilt of the perpetrators or their intentionality.

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[218] *Cf. Case of Yarce et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 22, 2016. Series C No. 325, para. 180, *Case of López Soto et al. v. Venezuela. Merits, Reparations and Costs.* Judgment of September 26, 2018. Series C No. 362, para. 148; *Case of Díaz Loreto et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 19, 2019. Series C No. 392, para. 67, and *Case of Omeara Carrascal et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 21 , 2018. Series C No. 368, para. 179.

[219] *Cf. Case of Velásquez Rodríguez v. Honduras, supra,* para. 130, and *Case of Díaz Loreto et al. v. Venezuela, supra*, para. 68.

[220] *Case of Díaz Loreto et al. v. Venezuela, supra,* para. 68.

[221] *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4. para. 127.

[222] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra,* para. 127.

[223] *Cf. Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, para. 37, and *Case of Casierra Quiñonez et al. v. Ecuador, supra*, para. 111.

[224] *Cf. Inter alia, Case of "Five Pensioners" v. Peru, supra*, para. 63; *Juridical Condition and Rights of Undocumented Migrants.* Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 76, and *Case of Casierra Quiñonez et al. v. Ecuador*, *supra*, para. 111.

[225] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, para. 75, and *Case of Casierra Quiñonez et al. v. Ecuador*, *supra*, para. 111.

The Court must be convinced that acts or omissions attributable to the State have occurred and that there is an international obligation of the State that it has failed to comply with[226].

273. In the instant case, the chapter on the facts indicated that in Colombia there was a context of systematic violence against the members and militants of the Unión Patriótica aimed at their extermination that lasted for more than two decades. This violence was carried out by different State and non-State actors, and manifested itself in various forms (*supra* para. 208). At the same time, the investigations into these acts of violence were not effective and they are characterized by high levels of impunity that operated as a form of tolerance by the authorities (*supra* para. 205).

274. The Court notes that there are cases in which the authorship of the deaths is attributed to State agents, especially the Police and the Army, some of which were acknowledged by the State itself (See Annex IV and *supra* para. 207).

275. In relation to the actions carried out by non-state actors and in particular by the paramilitaries against members and militants of the UP, through various judgments, this Court has been able to prove, in different periods and geographic contexts, the existence of links between members of Colombian state actors and paramilitary groups. According to the findings in those cases, this link would have consisted of: a) concrete actions of collaboration, tolerance, acquiescence, support or collaboration[227] , or b) omissions that allowed or facilitated the commission of serious crimes by non-State actors228 . The link between the security forces and paramilitarism in Colombia has been a notorious and undeniable fact and is supported by several international, national and official sources of the Colombian State, including its Judiciary (*supra* Chapter VIII.A.4). Likewise, these links, as have been analyzed and confirmed by this Court in several of its Judgments, have various manifestations, which may operate concurrently in many cases.

276. The links between paramilitarism and the security forces are also reflected in patterns of joint action that emerge from the analysis of the specific cases in which the Court has established this situation. For example, direct responsibility has been attributed to the Colombian State in cases in which paramilitary groups have committed serious human rights violations in highly militarized areas, in circumstances that could not have occurred without the collaboration of the security forces. This collaboration in many cases has taken the form of deliberate omissions and in other cases concrete actions to facilitate the perpetration of the act by paramilitaries have been demonstrated.

277. In addition to the foregoing, in some scenarios and during a certain time frame, the actions carried out by the paramilitaries against the members and militants of the UP could be attributable to the State to the extent that until 1989, when the Supreme Court of Justice ruled on the unconstitutionality of Decree 3398 (*supra* para. 197), they acted under the legal auspices of the State. Therefore, within the framework of that normative provision,

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[226] *Cf. Case of Velásquez Rodríguez v. Honduras, supra,* paras. 127 and 128, and *Case of Casierra Quiñonez et al. v. Ecuador*, *supra*, para. 111.

[227] Case of the Mapiripan Massacre v. Colombia, supra para. 123; Case of the Rochela Massacre v. Colombia. Merits, reparations and costs. Judgment of May 11, 2006. Series No. 163, paras. 82, 93, 101(a); Case of the Ituango Massacres v. Colombia. Preliminary Objection, supra, paras. 125.57, 125.86 and 132; Case of Manuel Cepeda Vargas v. Colombia, supra, para. 114 and 124; Case of Vereda La Esperanza v. Colombia, supra, para. 166-168, Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, supra, para. 247.

[228] Cf. Case of 19 Comerciantes v. Colombia, supra, 79 and 86(c), and Case of Isaza Uribe et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 20, 2018. Series C No. 363, para. 45.

During that period, it can be considered that the paramilitary groups exercised powers of public authority, so that their actions could make the State directly responsible for a breach of the duty to respect without any further analysis of the participation of a State actor or the State's obligation to prevent.[229]

278. In accordance with the evidence and information available, including the contextual information (*supra* Chapter VIII.A), the evidence referred to in the factual determinations on the individualized cases (See Annex IV), the pronouncements of international organizations, the reports of State authorities such as the Ombudsman's Office and the Attorney General's Office, the rulings of the high Colombian judicial authorities referred to including the Constitutional Court and the Council of State, as well as information gathered in the framework of the Justice and Peace Proceedings (*supra* para. 247), it is possible to conclude that there are clear patterns of State participation both directly and through acts of acquiescence, tolerance and collaboration in the acts of systematic violence against members and militants of the UP.

279. In addition to the foregoing, as indicated in the chapter on facts:

a) the vast majority of cases of disappearances or deaths by murder were preceded by repeated threats and intimidation against the alleged direct victims and/or their relatives, many of which are directly attributed to state agents, again with special incidence of the Army;

b) in other cases, the threats continued later against surviving family members who either witnessed or reported the events;

c) Several acts of violence against UP members and militants are related to public denunciations of serious human rights violations committed by the security forces or paramilitary groups;

d) A very significant part of the violence is attributed to members of paramilitary groups or hired killers associated with them. Several of the members of these groups later declared in judicial proceedings that their actions were part of a collaboration with the security forces;

e) Several paramilitary groups have had links with organized State structures, for example between specific Army Brigades in certain areas of the country and certain periods, such as the case of the Army Brigades in the Urabá area of Antioquia and Chocó, in Antioquia in general, in Meta and in Santander;

f) numerous events in the present case are part of these patterns of joint actions between the security forces and paramilitarism, and

g) in many of the cases it is described that the events took place near an Army Brigade or a Police post, and that the direct perpetrator of the event was able to escape easily without any pursuit.

280. The proven direct intervention of state authorities in multiple events, added to the serious nature of the violation of the duty of prevention, can only lead to the conclusion of a general violation of the duty of respect by the State.

281. This Court understands that these breaches of the State's duty to guarantee contributed significantly to the fact that the events related to the extermination of the

[229] In the same sense, *Cf. Case of 19 Merchants v. Colombia, supra*, para. 124, and *Case of the La Rochela Massacre v. Colombia, supra*, para. 101.

UP could be carried out for such a long period of time, in several geographical areas, and with such a significant number of victims.

282. In the facts of the case, it was possible to verify the situation of generalized lack of protection in which the members and militants of the Unión Patriótica found themselves for more than two decades. In fact, it is clear that in several cases the state authorities were aware of the imminent risk for the members and militants of the Patriotic Union, as they were informed by the alleged victims and their relatives; as well as by the proven context of persecution and extermination that was even referred to by the same governmental entities in multiple reports.

283. In relation to the foregoing, it should be recalled that the Constitutional Court established the special duty of protection that the State had from the outset with respect to the UP, taking into account that its emergence as a political party occurred through a peace agreement with an armed group, in the framework of a commitment by the Government to grant the necessary guarantees so that it could participate in politics under the same conditions as other political parties (*supra* para. 231).

284. Given that the State assumed a commitment for the sake of peace (*supra* para. 231) and it is obvious that it failed to comply with it, the violation of the duty to respect and guarantee is particularly serious in this case and is projected negatively into the future, as a difficulty for the viability of any similar process of pacification, by sowing a cloak of doubt about the seriousness of the State's commitment in this type of negotiations. In this sense, the State had, by virtue of what was established in the Peace Accords, a reinforced duty of prevention and protection towards the members of the Patriotic Union.

285. On this point, it should be reiterated that the Constitutional Court of Colombia indicated in its judgment T-439-92 that "the simple figures of deaths and disappearances of its militants or sympathizers during the years 1985 to 1992, supplied by the Patriotic Union to this Court, show convincingly the objective dimension of the political persecution unleashed against it, without the State having taken sufficient measures to guarantee its special protection as a minority political party, systematically decimated in spite of its official recognition" (*supra* para. 210).

286. On the other hand, as has been analyzed in other cases,[230] the particular circumstances presented *above demonstrate the* relationship between the duty to guarantee the rights contained in the Convention and the duty to investigate. In effect, as has been indicated, a fundamental part of the State's lack of response was a consequence of its sustained ineffectiveness in seriously and diligently investigating the repeated acts of violence and the situation of impunity in which these acts of violence were found. This situation resulted in the State's failure to clarify in time the causes of the growing phenomenon of persecution, to unravel the criminal structures involved and the different perpetrators, and to effectively identify the sources of risk in order to set in motion its entire state apparatus to dismantle them and prevent the continuation of the extermination that was occurring under its jurisdiction.

287. With respect to the duty to investigate the acts of violence against militants and members of the UP, this Court was able to confirm that in several cases the Colombian authorities undertook investigations, determined responsibilities, and made reparations to the victims. Notwithstanding the foregoing, the sustained failures to comply with the duties of prevention, protection, and investigation for a period of more than two decades, when

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[230] *Cf. Case of Vicky Hernández et al. v. Honduras. Merits, Reparations and Costs*. Judgment of March 26, 2021. Series C No. 422, and *Case of Carvajal Carvajal et al. v. Colombia. Merits, Reparations and Costs*. Judgment of March 13, 2018. Series C No. 352.

the State had knowledge from the beginning of what was happening against the members and militants of the UP (*supra* para. 243), operated as important elements for the continuation of these acts, which in most cases remained in impunity.

288. In this sense, for this Court, these failures in the duty to prevent or investigate, in this case, had effects that extend beyond an omission constituting indirect responsibility on the part of the State and operated as a form of generalized and structural tolerance of the acts of violence against the members of the UP, which allowed them to continue to occur. Thus, in the particular circumstances of the case, they formed part of the general context that made possible the transgression of the duty to respect. Likewise, taking into account the systematicity and seriousness of these breaches of the duty to investigate and prevent, it could be considered that they reached such a degree that they implied a state conduct that favored impunity, to the point of constituting a form of systematized tolerance of the acts of violence against the members and militants of the UP.

289. In accordance with the foregoing, in the annexes containing the lists of Victims (Annexes I, II and III), all the persons indicated as members and militants of the Unión Patriótica, and their relatives according to the lists of the Commission and the joint interveners, were included, without the need for an individualized verification of the acts of violation for each of them, taking into account that in the preceding chapters the Court:

a) was able to prove the existence of a plan for the systematic extermination of UP militants and members carried out by State actors and/or third parties with the tolerance or acquiescence of the State (*supra* para. 243);

b) established that in the instant case the application of the exception provided for in Article 35(2) of the Rules of Procedure to include more alleged victims than those indicated by the Commission in the Merits Report was justified (*supra* paras. 128 to 132). The Court based this application on the fact that these are multiple human rights violations that occurred in the context of a systematic extermination of the members, militants and sympathizers of the Unión Patriótica political party, which also took place in the context of a non-international armed conflict that lasted for several decades and which makes it difficult to gather information;

c) declared inadmissible the State's arguments regarding the failure to determine a factual platform or individualized evidence for each victim (*supra* paras. 145-149). In this regard, it indicated that, taking into account the specific circumstances of this case, it was reasonable that neither the Commission nor the joint intervenors should be required to specify each and every factual circumstance relating to the thousands of victims in this case, since they would all be facts constituting a single undertaking that materialized in different ways, that have in common the extermination of the members, militants and sympathizers of the Patriotic Union and that took place over two decades in almost the entire Colombian territory (*supra* para. 148);

d) considered that the names of the victims contained in the annex to the Merits Report, as well as the representative cases, may constitute a way of explaining and complementing the characteristics and specificities of this extermination (*supra* para. 149);

e) emphasized that these facts were not adequately investigated by the Colombian authorities (*supra* para. 148), and

f) in ruling on the attribution of responsibility of the State, explained the reasons why in this case the State incurred in a violation of the duty to respect the human rights of all the members, militants and sympathizers of the UP indicated by the Commission and the representatives, without the need for an individualized finding of violations for each of them (*supra* paras. 217 et seq.).

290. In accordance with the foregoing, this Court considers that there are various elements that allow it to conclude that in this case there is international responsibility of the State for failure to comply with its duty to respect the human rights of the members and militants of the Unión Patriótica, even in situations in which it has only been possible to prove a failure to comply with the duty of prevention and/or investigation. In the determination of the attribution to the State of the facts that violated international obligations, there is an overlapping of forms of direct responsibility arising from the direct participation of State agents and non-State actors, at different moments of the acts of violence against the members and militants of the Patriotic Union, as well as from various mechanisms of tolerance, acquiescence and collaboration, in the terms set forth *above (supra* paras. 215 and 216*)*.

291. In the following paragraphs, the Court will analyze the violations alleged in the present case based on the general framework and the conclusions of this chapter regarding the international responsibility of the State for a breach of the duty to respect.

IX.2
POLITICAL RIGHTS,[231] FREEDOM OF THOUGHT AND [EXPRESSION232] AND FREEDOM OF ASSOCIATION233

292. Taking into account the allegations of the parties and the Commission, this chapter will jointly analyze the alleged violation of political rights in relation to freedom of thought and expression and freedom of association. The Commission additionally alleged a violation of equality and non-discrimination in conjunction with the above violations. However, neither the Commission nor the representatives presented a specific argument on this point, so this Court will not analyze this right in this chapter.

A. Arguments of the parties and of the Commission

293. The ***Commission*** recalled that the acts committed against the alleged victims identified in this case were perpetrated because of their membership and participation in the Unión Patriótica political party and that the State was not only aware of this persecution, but actively intervened. He emphasized that the acts perpetrated against them had the effect of disarticulating their political project to the point of generating the loss of the legal personality of the political party in 2002, which was recovered on July 4, 2013 when the Council of State referred that the National Electoral Council should have considered that the real capacity for political participation was affected by the situation of extermination to which the militants and militants of the UP were being subjected for political reasons.

294. The Commission emphasized that the members and militants of the Unión Patriótica, the victims in this case, were subjected to constant terror and fear in the context of an extermination that took place over a very long period of time and resulted in the death of the victims.

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231 Article 23 of the American Convention.

232 Article 13 of the American Convention.

[233] Article 16 of the American Convention.

The State failed to protect them and tolerated and acquiesced in the extermination of thousands of victims, under the watchful eye of a State that failed to protect them. By virtue of the foregoing reasons, it concluded that the State violated the rights established in Articles 5, 13, 16, 23 and 24 of the Convention, to the detriment of all the persons identified in the lists of Victims.

295. The joint intervenors presented similar arguments to the Commission in relation to the victims they represent. In addition, regarding the cancellation of the legal status of the Unión Patriótica, the ***joint intervenors of Reiniciar*** argued that the suppression of the legal status of the UP was "a forceful blow against this movement as part of the systematic extermination plan conceived in 1984. They considered that this decision concretized the legal elimination of the UP as a party, complementing "the physical elimination of its members [...] together with the dispersion of the political organizational force of the UP through threats and forced displacement," which affected the political rights of the members and militants of this party.

296. The ***State*** partially recognized its responsibility (*supra*) in relation to political rights, freedom of expression and the right of association. It specified that the recognition was limited to its obligation to protect, in cases where "(i) the motive for the violations with respect to the victims in this case was associated with the victims' membership in the Unión Patriótica in a context of systematic violence;
(ii) that in the context of the complex scenario of victimization against the Unión Patriótica, the victims were subjected to a climate of stigmatization that exacerbated the violence against them, and (iii) that the State did not adopt the necessary and sufficient measures to prevent, mitigate and impede the acts of harassment against the political organization, despite the evidence of violence against the militants and sympathizers of the Unión Patriótica". On the other hand, he argued that the decision of the Electoral Council by which it was determined the suppression of the personhood of the Patriotic Union was annulled by judgment of the Council of State. He added that, as a measure of reparation for the electoral periods in which the party could not participate in the elections, it was recognized as a legal entity until 2018.

B. Considerations of the Court

297. Before continuing with the analysis and referring to the specific allegations, it should be recalled that in the chapter on the facts, reference was made to the systematic violence, persecution and extermination of members and activists of the UP, which were based on their membership in that political party, as well as on the expression of their ideas through it. It was seen in the chapter on facts that it was carried out by State and non-State actors, and developed in four major stages from 1984 to 2002.[234] The following is a brief summary of the facts.

298. The targets of the violence were their representatives in national and local corporations and their political leaders. It was indicated in the chapter on facts that, from

[234] The chapter on facts indicated that it developed as follows: a) The first period from 1984 to 1988, characterized by violence with an increasing trend and coincides with the creation of the UP up to its threshold of political success as the third force in the legislative and presidential elections of 1986 and the local and regional elections of 1988. It is during this period that the greatest direct participation of State agents is registered; b) A second period goes from 1989 to 1994 and is characterized by a decrease in violence, although it is maintained. The acts of violence in this period are centered on local, regional and national leaders. Likewise, the main actor of violence will be the paramilitary groups; c) The third period extends from 1995 to 1997 and is characterized as the most violent period, particularly in the region of Urabá, the last of the UP's bastions of political electoral success. Thus, in 1997 the UP decided not to participate in the 1997 local and regional elections. This was also the period in which paramilitary groups played an increasingly important role, and d) The last period, from 1998 to 2002, was marked by an initial

period of decreasing violence, followed by an upsurge in violence. This period is distinguished by a greater prevalence of non-lethal violence, particularly forced displacement and threats (*supra* para. 201).

According to the CNMH, of the total number of victims registered in its databases, 200 were mayors, 418 were councilors, 43 were deputies, 26 were congressmen and 2 were governors (*supra* para. 203). Similarly, acts of selective violence were recorded against grassroots militants and sympathizers of the Unión Patriótica party. Thus, the Observatory of Memory and Conflict of the CNMH documented 3,122 selective murders, 544 victims of forced disappearance, 478 victims of murders in massacres, 4 kidnappings and 3 persons in other forms of violence (*supra* para. 204).

299. According to the CNMH report "Todo pasó frente a nuestros ojos. El genocidio de la Unión Patriótica 1984-2002" (*supra* para. 205), the level of prevalence of selective assassinations and forced disappearances of those who exercised leadership and representative functions was aimed at leaving the UP leaderless and sought the collapse of the political movement due to the continuation of violence that killed or disappeared.

300. Similarly, according to the CNMH's Memory and Conflict Observatory database, among the 2,967 cases in which the alleged perpetrator is recognized, 71.5% were perpetrated by paramilitary groups, 16.4% by State agents and 6.2% by State agents in joint action with paramilitary groups. According to the CNMH "the participation of State agents was not restricted to direct actions perpetrated clandestinely or joint actions with paramilitary groups, but also to omission in the face of the actions of paramilitary groups, which is reiterated time and again in the denunciations of violence against the UP. Omissions that in many cases responded more to intentionality than to a limitation of resources to react".

301. In turn, in the speech given on September 15, 2016 by then President Juan Manuel Santos in an act in which he made an acknowledgement of responsibility with respect to what happened with the Unión Patriótica, it was recognized that "the State did not take sufficient measures to impede and prevent the murders, attacks and other violations, despite the clear evidence that such persecution was underway" (*supra* para. 17).

302. In addition, in the chapter on facts it was recalled that the Colombian Ombudsman, in his Report entitled "Study of cases of homicide of members of the Patriotic Union and Hope, Peace and Liberty" of 1992, indicated that "there is a direct relationship between the emergence, activity and electoral support of the UP and the homicide of its militants and leaders in regions where the presence of these groups was interpreted as a risk to the maintenance of the privileges of certain groups". Likewise, it is worth reiterating what was pointed out by expert witness Eduardo Cifuentes, in that "the repetitive attack against the leaders with power of representation of the party, can be read as a message directed to its members to stop an eventual future participation, to the social bases that offered support to the collectivity, and to the sectors or political parties allied to the UP, to trace a distance with the organization, imposing a political environment of discrimination, fear and rejection". However, the persecution was not limited to the leaders of the party, but was extended against its social base, in order to create a generalized feeling of fear and terror that could progressively reduce the electoral support for the UP.

303. In order to address the allegations related to political rights in relation to personal integrity, freedom of thought and expression and freedom of association, in the context of the acts of systemic violence against the members of the UP, this Court will first analyze the relationship between political rights, personal integrity, freedom of thought and expression and freedom of association, and then establish how these alleged violations were configured in the specific case. Subsequently, the particular case of the loss of the legal status of the party and its relation to the infringement of the aforementioned rights will be analyzed.

B.1. The interrelationship between the alleged rights violations

304. This Court has recognized the relationship between political rights, freedom of expression and freedom of association, and that these rights, together with the right of assembly, make the democratic game possible[235].

305. The Court has pointed out, in relation to the protection of political rights, that representative democracy is one of the pillars of the entire system of which the Convention forms part, and constitutes a principle reaffirmed by the American States in the Charter of the Organization of American States (hereinafter "OAS Charter")[236]. In this sense, the OAS Charter, the constitutive treaty of the organization to which Colombia has been a party since July 12, 1951, establishes as one of its essential purposes "the promotion and consolidation of representative democracy with respect for the principle of non-intervention "[237] .

306. The relationship between human rights, the rule of law and democracy was embodied in the Inter-American Democratic Charter[238] . This legal instrument is a rule of authentic interpretation of the treaties to which it refers, since it reflects the interpretation that the OAS Member States themselves, including the States Parties to the Convention, make of the norms pertaining to democracy in both the OAS Charter and the Convention.[239] The Inter-American Democratic Charter is an authentic interpretation of the treaties to which it refers, since it reflects the interpretation that the OAS Member States themselves, including the States Parties to the Convention, make of the norms pertaining to democracy in both the OAS Charter and the Convention.

307. The Democratic Charter expressly states that "[t]he peoples of the Americas have the right to democracy and their governments have the obligation to promote and defend it. In this sense, it is recognized that "democracy is essential for the social, political and economic development of the peoples of the Americas "[240.] Likewise, the Democratic Charter establishes that "the effective exercise of representative democracy is the basis of the rule of law and the constitutional regimes of the Member States of the Organization of American States "[241]. Such is the fundamental role that the States of the region have given to representative democracy that the Democratic Charter establishes a system of guarantees for the exercise of representative democracy.

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[235] *Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 6, 2008. Series C No. 184, para. 140 and *Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 5, 2015. Series C No. 302, para. 160.

[236] *Cf. The Expression "Laws" in Article 30 of the American Convention on Human Rights.* Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 34 and *Case of Petro Urrego v. Colombia. Exceptions Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 8, 2020. Series C No. 406, para. 90.

[237] Article 2.b of the Charter of the Organization of American States.

[238] *Cf.* OAS. Inter-American Democratic Charter. Adopted at the first plenary session of the OAS General Assembly, held on September 11, 2001 during the Twenty-Eighth Session, Articles 3 and 4. The Inter-American Juridical Committee has held that "the Inter-American Democratic Charter was conceived as a tool to update, interpret and apply the fundamental Charter of the OAS in matters of representative democracy, and represents a progressive development of International Law". CJI/RES. 159 (LXXV-O/09).

[239] Recitals 2 and 4 of the Preamble to the Convention state the following: "Reaffirming its purpose to consolidate in this Hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man; [...] Considering that these principles have been enshrined in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, which have been reaffirmed and developed [...]". In this sense, the Charter could also be categorized as an agreement between the States Parties to both treaties on the application and interpretation of those instruments (Art. 31.3.a) of the Vienna Convention on the Law of Treaties: "Together with the context, account shall be taken of the following:
a) any subsequent agreement between the parties concerning the interpretation of the treaty or the application of its provisions". *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of February 8, 2018. Series C No. 348, para. 114, and *La figura de la reelección presidencial indefinida en Sistemas*

Presidenciales en el contexto del Sistema Interamericano de Derechos Humanos. Advisory Opinion OC-28/21 of June 7, 2021. Series A No. 28, para. 53.

[240] Inter-American Democratic Charter, Article 1.

[241] Inter-American Democratic Charter, Article 2.

The OAS shall adopt a collective resolution whereby, when "there is an alteration of the constitutional order that seriously affects the democratic order" of a state, other states or the Secretary General may request the immediate convocation of the Permanent Council, and if it is found that "there has been an interruption of the democratic order in a Member State and that diplomatic efforts have been unsuccessful, it shall, in accordance with the OAS Charter, take a decision to suspend that Member State from the exercise of its right to participate in the OAS by a two-thirds affirmative vote of the Member States "[242].

308. Therefore, the democratic principle inspires, radiates and guides the application of the American Convention in a cross-cutting manner. It constitutes both a guiding principle and an interpretive guideline. As a guiding principle, it articulates the form of political organization chosen by the American States to achieve the values that the system seeks to promote and protect, among which is the full enjoyment of human rights[243]. As an interpretative guideline, it provides clear guidance for its observance through the division of powers and the proper functioning of the democratic institutions of the States Parties within the framework of the rule of law[244].

309. The effective exercise of political rights constitutes an end in itself and, at the same time, a fundamental means for democratic societies to guarantee the other human rights provided for in the Convention.[245] Moreover, in accordance with Article 23 of the Convention, their holders, i.e., citizens, must not only enjoy rights, but also "opportunities. Moreover, in accordance with Article 23 of the Convention, its holders, i.e., citizens, must not only enjoy rights, but also "opportunities". This last term implies the obligation to guarantee, through positive measures, that every person who formally holds political rights has the real opportunity to exercise them246. Political rights and their exercise promote the strengthening of democracy and political pluralism. Therefore, the State must provide the conditions and mechanisms so that these rights can be exercised effectively, respecting the principle of equality and non-discrimination. Political participation may include broad and diverse activities that people carry out individually or organized, with the purpose of intervening in the designation of those who will govern a State or who will be in charge of the direction of public affairs, as well as influencing the formation of State policy through mechanisms of direct participation or, in general, to intervene in matters of public interest, such as the defense of democracy[247].

310. On the other hand, freedom of expression, particularly in matters of public interest, "is a cornerstone in the very existence of a democratic society "[248]. Without an effective guarantee of freedom of expression, the democratic system is weakened and pluralism and tolerance are undermined; the mechanisms for citizen control and denunciation may become inoperative and, in short, a fertile ground for the entrenchment of

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[242] Inter-American Democratic Charter, Articles 20 and 21.

[243] *Cf. The denunciation of the American Convention on Human Rights and the Charter of the Organization of American States and its effects on State obligations in the area of human rights.* Advisory Opinion OC-26/20 of November 9, 2020. Series A No. 26*,* para. 72.

[244] *Cf. The denunciation of the American Convention on Human Rights and the Charter of the Organization of American States and its effects on State obligations in the area of human rights (Interpretation and scope of Articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3.l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States).* Advisory Opinion OC-26/20 of November 9, 2020. Series A No. 26*,* para. 72.

[245] *Case of Castañeda Gutman v. Mexico, supra*, para. 143 and *Case of Petro Urrego v. Colombia, supra*, para. 93.

[246] *Cf. Case of Yatama v. Nicaragua, supra*, para. 195, and *Case of Petro Urrego v. Colombia, supra*, para. 93.

[247] *Cf. Case of Yatama v. Nicaragua, supra*, para. 195, and *Case of Petro Urrego v. Colombia, supra*, para. 93.

[248] *Compulsory Membership in an Association of Journalists (arts. 13 and 29 American Convention on Human Rights).* Advisory Opinion OC-5/85, November 13, 1985. Series A No. 5, para. 70, and *Case of Carvajal Carvajal et*

al. v. Colombia, supra, para. 174.

It must be guaranteed not only with respect to the dissemination of information or ideas that are favorably received or considered inoffensive or indifferent, but also with respect to those that are ungrateful to the State or any sector of the population[250]. Likewise, Articles 3 and 4 of the Inter-American Democratic Charter highlight the importance of freedom of expression in a democratic society, establishing that "[t]he essential elements of representative democracy are, inter alia, respect for human rights and fundamental freedoms" and "[t]he transparency of government activities, probity, government accountability in public administration, respect for social rights, and freedom of expression and of the press are fundamental components of the exercise of democracy.

311. The Court has previously indicated, with respect to the content of freedom of thought and expression, that those who are under the protection of the Convention have the right to seek, receive and impart ideas and information of all kinds, as well as to receive and know the information and ideas disseminated by others[252]. Therefore, freedom of expression has both an individual and a social dimension and requires, on the one hand, that no one be arbitrarily impaired or prevented from expressing his or her own thoughts and therefore represents a right of each individual; but it also implies, on the other hand, a collective right to receive any information and to know the expression of the thoughts of others[253].

312. In addition, the Court reiterates that there is a coincidence in the different regional systems of human rights protection and in the universal system, regarding the essential role that freedom of expression plays in the consolidation and dynamics of a democratic society. Without effective freedom of expression, materialized in all its terms, democracy fades, pluralism and tolerance begin to break down, the mechanisms of citizen control and denunciation begin to become inoperative and, in short, the fertile ground for authoritarian systems to take root in society begins to be created[254].

313. In this regard, the Court has indicated that the first dimension of freedom of expression "is not limited to the theoretical recognition of the right to speak or write, but also includes, inseparably, the right to use any appropriate means to disseminate thought and make it reach the greatest number of addressees. In this sense, the expression and dissemination of thoughts and ideas are indivisible, so that a restriction of the possibilities of dissemination represents directly, and to the same extent, a limit to the right to express oneself freely[255].

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[249] *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 2, 2004. Series C No. 107, para. 116 and *Case of Urrutia Laubreaux v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 27, 2020. Series C No. 409, para. 77.

[250] *Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs.* Judgment of February 5, 2001. Series C No. 73, para. 69 and *Case of Lagos del Campo v. Peru. Exceptions Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2017. Series C No. 340, para. 117.

[251] *Case of Palacio Urrutia et al. v. Ecuador. Merits, Reparations and Costs. Judgment of November 24, 2021.* Series C No. *446,* para. 88 and *Case of Moya Chacón et al. v. Costa Rica*. *Preliminary Objections, Merits, Reparations and Costs.* Judgment of May 23, 2022. Series C No. 451, para. 64.

[252] *Cf. Case of Kimel v. Argentina, supra*, para. 53 and *Case of Urrutia Laubreaux v. Chile, supra*, para. 76.

[253] *Compulsory Membership in an Association of Journalists (Arts. 13 and 29 American Convention on Human Rights), supra*, para. 30 and *Case of Urrutia Laubreaux v. Chile, supra*, para. 76.

[254] *Cf. Case of Herrera Ulloa v. Costa Rica, supra*, para. 116, and *Case of Urrutia Laubreaux v. Chile, supra,* para. 77.

[255] *Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile, supra,* para. 65, and *Case of Palacio Urrutia et al. v. Ecuador*, *supra,* para. 98.

314. With respect to the second dimension of the right to freedom of expression, that is, the social dimension, it should be noted that freedom of expression is a means for the exchange of ideas and information among people; it includes their right to try to communicate their points of view to others, but also implies the right of everyone to know the opinions, stories and news of others. For the common citizen, knowledge of the opinion of others or of the information available to others is as important as the right to disseminate one's own[256].

315. Likewise, the Court has understood that both dimensions are equally important and must be guaranteed simultaneously in order to give full effect to the right to freedom of thought and expression in the terms of Article 13 of the Convention[257].

316. Finally, with respect to freedom of association, Article 16.1 establishes the right of individuals to associate freely for ideological, religious, political, economic, labor, cultural, sports or any other purposes. The right of association is characterized by enabling individuals to create or participate in entities or organizations for the purpose of acting collectively in pursuit of the most diverse purposes, as long as these are legitimate[258]. The Court has established that those who are under the jurisdiction of the States Parties have the right to associate freely with other persons, without the intervention of the public authorities limiting or hindering the exercise of said right; it is the right to associate with the purpose of seeking the common realization of a lawful end, and the correlative negative obligation of the State not to pressure or interfere in such a way as to alter or distort said purpose[259]. The Court has also observed that freedom of association also gives rise to positive obligations to prevent attacks against it, to protect those who exercise it, and to investigate violations of this freedom; these positive obligations must be adopted even in the sphere of relations between individuals, if the case so warrants[260].

B.2. The configuration of the State's responsibility in the alleged violations

317. The State acknowledged its responsibility for failure to comply with its duty of prevention and protection in relation to political rights, freedom of expression and the right of association (see *supra*). However, in Chapter IX.1 this Court concluded that the State was responsible for a violation of the rights of the leaders and members of the Unión Patriótica for failure to respect (*supra* para. 290). This Court considers that the State is also responsible for the violation of freedom of expression, the right of association, and the political rights of the leaders and members of the UP in the following terms.

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[256] *Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile, supra*, para. 65, and *Case of Palacio Urrutia et al. v. Ecuador*, *supra*, para. 98.

[257] *Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile, supra*, para. 67, and *Case of Urrutia Laubreaux v. Chile, supra*, para. 80.

[258] *Cf. Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 6, 2009. Series C No. 200, para. 169 and *Case of Former Workers of the Judiciary v. Guatemala. Preliminary Objections, Merits and Reparations*. Judgment of November 17, 2021. Series C No. 445, para. 111.

[259] *Cf. Case of Baena Ricardo et al. v. Panama, supra*, para. 156, *and Case of Lagos del Campo v. Peru, supra*, para. 155.

[260] *Cf. Case of Huilca Tecse v. Peru. Merits, Reparations and Costs.* Judgment of March 3, 2005. Series C No. 121, para. 121, and *Case of Lagos del Campo v. Peru, supra*, para. 155.

1) On the duty of respect for the violation of political rights in relation to personal integrity, freedom of thought and expression and freedom of association

318. This Court has recognized that when a violation of the right to life, integrity or personal liberty attributable to the State has the objective of impeding the legitimate exercise of another right protected in the Convention, such as political rights, freedom of expression or association, a violation of these rights is also configured[261]. In this way, it must be determined, in general terms, whether the alleged violations of personal integrity, life and personal liberty were intended to impede the progress and development of the Unión Patriótica party and whether these actions were derived not only from a failure to comply with the duty of protection on the part of the State, but also from actions directly attributable to the State, thus failing to comply with its duty to respect.

319. This Court emphasizes that this is a case of high factual complexity, involving events that occurred over long periods of time and with a multiplicity of actors. However, as already demonstrated in the previous chapters and in the recognition of State responsibility, in the commission of the violations of the victims' rights there was, in many cases, an intervention by State agents. Likewise, in the case of *Manuel Cepeda Vargas v. Colombia,* this Court was able to confirm, with respect to the situation of violence against the members and militants of the UP, that:

> The perpetrators of the crimes came from different groups, among the most important of which were the paramilitaries, although state agents also participated directly and indirectly in the crimes. The data provided by the State reports that state agents (mainly members of the Army and the police) were the second most important perpetrators of violence against the UP. The Ombudsman noted that paramilitary or self-defense groups had turned the UP, unable to directly confront the guerrillas, "into the visible part and military objective of their strategy" and, on the other hand, that in "isolated cases there has been complicity of members of the security forces with paramilitary groups or hired killers, as a phenomenon that demonstrates intolerance or the generally mistaken identification of the political work they carry out".[262] The Ombudsman also noted that the UP had not been able to directly confront the guerrillas, and that in "isolated cases there has been complicity of members of the security forces with the paramilitary groups or hired killers, as a phenomenon that demonstrates intolerance or the generally mistaken identification of the political work they carry out.

320. This Court also notes that, throughout the conflict, there are a series of indications that allow us to affirm that one of the main motives for the commission of the violations against the victims in this case was their membership and participation in the Unión Patriótica political party.

321. In the case of *Manuel Cepeda Vargas v. Colombia*, this Court referred to a report by the Ombudsman in which he had found that "there is a direct relationship between the emergence, activity and electoral support of the UP and the murder of its militants and leaders in regions where the presence of this party was interpreted as a risk to the maintenance of the privileges of certain groups· 263 Thus, since 1985, several of its leaders and representatives were victims of homicides or attacks, among them, the

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[261] *Cf. Case of Huilca Tecse v. Peru, supra*, paras. 66-79, and *Case of Isaza Uribe et al. v. Colombia, supra,* para. 145.

[262] *Case of Manuel Cepeda Vargas v. Colombia, supra*, para. 78. Reference is made to the following sources with respect to this data: Report of the Ombudsman for the Government, Congress and the Attorney General of the Nation entitled "Estudio de casos de homicidio de miembros de la Unión Patriótica y Esperanza, Paz y Libertad" of October 1992 (evidence file, folios 363054 et seq.) Departamento Administrativo Nacional de Estadística (DANE) and "Base de datos sobre conflicto y violencia política", Datos DANE procesados por CERAC, Bogotá, January 31,

2008. (Not in the evidence file in this case, but in the Cepeda case).

[263] *Cf.* Report of the Ombudsman for the Government, Congress and the Attorney General of the Nation entitled "Study of cases of homicide of members of the Unión Patriótica and Esperanza, Paz y Libertad" of October 1992, (evidence file, folio 363162).

presidential candidates Jaime Pardo Leal and Bernardo Jaramillo Ossa, as well as senators, representatives to the Chamber of Deputies, municipal mayors and councilmen[264].

322. This systematic and structural violence had a chilling effect on the militants and members of the UP. In effect, this Court, in the case of *Manuel Cepeda Vargas v. Colombia,* considered that the violations of the rights of Mr. Cepeda, a candidate of the party, had "intimidating and intimidating effects for the group of people who were members of his political party or sympathized with its ideology. The violations in this case transcended to the readers of the column of the weekly Voz, to the sympathizers and members of the UP and to the voters of that party "[265].

323. On the other hand, both the Commission and the representatives alleged that, through actions perpetrated by state agents, a stigmatization of the members of the UP was being consolidated in order to exclude them from the democratic game, thus affecting their political rights, their freedom of expression and assembly. In effect, evidence of stigmatizing statements by public officials describing the UP as "the armed wing" of the FARC, as a party that combined armed struggle and politics, was provided to the file (*supra* para. 194). These types of statements had an influence on the public imagination, which, in turn, influenced the violent actions against UP members and militants. As mentioned in the First Historical Memory Report: "this extermination, which began in 1986, was based on the premise that the Patriotic Union was the political arm of the FARC in order to justify the legitimacy of a counterinsurgency action that went beyond the combatants and extended to political parties and movements considered to be related to the guerrillas.

324. This victimization through stigmatization also deepened the intimidating effect among party members and militants, which hindered their participation in the democratic game and, therefore, the exercise of their political rights. In this way, the expert witness Eduardo Cifuentes argued that:

> The repetitive attack against the leaders with power of representation of the party can be read as a message directed to its members to stop their eventual future participation, to the social bases that offered support to the collectivity, and to the sectors or political parties allied to the UP, to distance themselves from the organization, imposing a political environment of discrimination, fear and rejection[267].

325. In this sense, the Court considers that this climate of victimization and stigmatization did not create the necessary conditions for the militants and members of the Patriotic Union to fully exercise their political rights of expression and assembly. Their political activity was hindered by both physical and symbolic violence against a party that was labeled as an "internal enemy" and whose members and militants were subjected to homicides, forced disappearances and threats.

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[264] *Cf.* Report of the Ombudsman to the Government, Congress and the Attorney General entitled "Study of cases of homicide of members of the Unión Patriótica and Esperanza, Paz y Libertad" of October 1992 (evidence file, folios 363054 et seq.).

[265] *Case of Manuel Cepeda Vargas v. Colombia, supra*, para. 178.

[266] First Historical Memory Report of the National Commission for Reparation and Reconciliation, Trujillo, una tragedia que no cesa, cited by the Commission in its Merits Report, note 38 (merits file, folio 499).

[267] Expert opinion rendered before a notary public (affidavit) by expert witness Eduardo Cifuentes Muñoz on January 7, 2010 in the framework of the case *Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of May 26, 2010. Series C No. 213, incorporated into the evidence file by means of the resolution of the President of January 28, 2021 (evidence file, folio 365059).

2) On the right to personal integrity of Unión Patriótica's leaders and activists

326. The State acknowledged its responsibility for violation of the duty to protect the right to life in cases in which members and militants of the UP were killed, the right to personal liberty and personal integrity in cases of forced disappearance, as well as personal integrity in cases in which there were attacks on the lives of the victims, cases of threats and cases in which the victims had to leave their territory (*supra* Chapter IV). It also acknowledged the possible existence of patterns in all these violations, although it considered that the domestic jurisdiction was best suited to define the scope of these responsibilities.

327. These actions and omissions in the State's duty to protect created a climate of victimization and stigma against members and militants of the UP. The extension, both in time and in the number of victims, of this context of victimization of UP members and militants, due to the fact that they belonged to this party, could have affected their psychological and moral integrity. In effect, as established by the CNMH, "given the naturalization of political violence and the preponderance of the stigma against the UP in public opinion or the imaginary of society, the victims are once again victimized and held responsible for the violations they themselves suffered.

328. Thus, the Court considers that the physical and psychological integrity of the members and militants of the UP was affected by the stigmatization created by their membership in that political group.

3) The loss of the party's legal status

329. As established *above*, the recognition of the rights of legal persons may imply, directly or indirectly, the protection of the human rights of associated natural persons[269]. In the same way, the effects on legal persons may imply, directly or indirectly, the violation of the human rights of natural persons. In this sense, this Court has already analyzed the possible violation of the right to property of certain persons in their capacity as shareholders or partners of legal persons.270 Likewise, this Court has indicated that restrictions to freedom of expression frequently materialize through state or private actions that affect not only the legal person that constitutes a media outlet, but also the plurality of natural persons, such as its shareholders or the journalists who work there, who carry out acts of communication through the same and whose rights may also be violated.271

330. Similarly, just as the media are vehicles for freedom of expression, and trade unions are instruments for the exercise of the right to freedom of expression, so the media are vehicles for freedom of expression, and trade unions are instruments for the exercise of the right to freedom of expression.

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[268] Centro Nacional de Memoria Histórica (CNMH), "Todo pasó frente a nuestros ojos. Genocidio de la Unión Patriótica 1984-2002", 2018, p. 369 (evidence file, folio 214014).

[269] *Cf. Ownership of rights of legal persons in the Inter-American Human Rights System, supra,* para. 111.

[270] *Cf. Case of Ivcher Bronstein v. Peru, supra*, paras. 119-131, and *Case of Chaparro Álvarez and Lapo Íñiguez. Vs. Ecuador, supra*, paras. 173 and 218.

[271] *Cf. Case of Granier et al. (Radio Caracas Televisión) v. Venezuela, supra,* para. 151, and *Ownership of rights of legal persons in the Inter-American Human Rights System, supra*, para. 117.

of association of workers[272] , political parties are vehicles for the exercise of the political rights of citizens. Consequently, actions that prescribe or limit the actions of parties can affect the political rights not only of their members and militants, but of the entire citizenry. Likewise, as vehicles of political rights, States must develop measures to protect political parties, particularly opposition parties.

331. Indeed, this Court has already emphasized that the voices of the opposition are essential for a democratic society, without which it is not possible to reach agreements that address the different visions prevailing in a society. Therefore, the effective participation of individuals, groups, organizations and opposition political parties in a democratic society must be guaranteed by the States, through adequate regulations and practices that enable their real and effective access to the different deliberative spaces on equal terms, but also through the adoption of the necessary measures to guarantee their full exercise, taking into account the situation of vulnerability in which certain social sectors or groups find themselves[273].

332. As stated by the Commission, the UP was conceived as "a political alternative to the traditional power structure and as a channel for manifestations of civil and popular protest, as well as a political mechanism for the possible reassimilation of demobilized members of the FARC into civilian life". Its creation was one of the main points of the pact known as the "Uribe Accords" in which the Government committed itself to grant the necessary guarantees and assurances so that the UP could operate under the same conditions as the other political parties[274] . The UP was then a main actor both in the perspective of ending the internal conflict and representing a part of the population in the Colombian democratic life. The Commission stressed that "the Patriotic Union became a political and social force that transcended the traditional marginality of the Colombian left, which although far from disputing the traditional hegemony of the liberal and conservative parties in the direction and administration of the State, in the field of popular mobilization it stood out as one of the most important organizations "[275].

333. It is evident to this Court that the actions taken against the members and militants of the UP had an effect on its popular support and electoral results. This was explained by expert witness Eduardo Cifuentes in his testimony given in the *Manuel Cepeda v. Colombia case* before this Court:

> [The acts of violence carried out selectively against the representatives of the UP were accompanied by crimes perpetrated against members of the communities or social sectors that belonged to or supported the political project in the different regions of the country. The motive for these acts of harassment was to educate and repress. With this mechanism, a generalized sensation of fear and terror was instilled, which was able to reduce the number of people killed.

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[272] *Cf. Case of Baena Ricardo et al. v. Panama, supra*, para. 156, and *Case of Lagos del Campo v. Peru, supra*, para. 157.

[273] *Cf. Case of Manuel Cepeda Vargas v. Colombia, supra*, para. 173. Similarly, *Cf. Case of Yatama v. Nicaragua, supra*, para. 201; *Juridical Condition and Rights of Undocumented Migrants, supra*, para. 89, and *Juridical Condition and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 46. Also, ECHR, *Case of Ozdep (Freedom and Democracy Party) v. Turkey,* No. 23885/94. Judgment of December 8, 1999, para. 41.

[274] *Cf.* Ombudsman of Colombia, Jaime Córdoba Triviño. Report for the Government, Congress and the Attorney General of the Nation. Case study of the homicide of members of the Unión Patriótica and Esperanza Paz y Libertad. Office of the Ombudsman of Colombia, 1992 (evidence file, folio 363086).

[275] Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights in Colombia OEA/Ser.L/V/II.84 Doc. 39 rev. 14 October 1993, Chapter VII.

progressively increased popular and electoral support for the UP, initially in the areas of main support and later at the national level[276].

334. In this same case, the Court determined that there was a pattern of systematic violence, recognized by both national and international organizations, which reflected the intention to attack and eliminate their representatives, members and even sympathizers[277]. Similarly, this Court has recognized the chilling effect that attacks and violations against association leaders have on other associates[278].

335. All these factors contributed to the low results obtained by the UP in the elections of March 10 and May 26, 2002, which led the National Electoral Council to determine the loss of legal personality of the Patriotic Union for not complying with the requirements established in Law 130 of 1994[279]. Although this Court has recognized the possibility of establishing requirements for political participation280 , these cannot be disproportionate or arbitrary. In the present case, it is legitimate to consider that the inability of the UP to obtain the necessary results to maintain its personality was closely linked to the circumstances of persecution and extermination to which its militants, sympathizers and members were subjected, so it can be considered that it could fall within a cause of force majeure.

336. Thus, the Court considers that the withdrawal of the legal status of the Patriotic Union was an arbitrary decision, since it did not take into account the particular circumstances that affected the real capacity of the party to mobilize electoral forces. Consequently, by not allowing the participation of this group in the elections held since 2002, the State affected the political rights of the members and militants of this group and, taking into account the role of the opposition political parties in the strengthening of democracy, of the citizens in general.

337. With respect to the foregoing, it should be recalled, as indicated in section B.1 of this Chapter, that the Democratic Charter establishes that "the effective exercise of representative democracy is the basis of the rule of law and the constitutional systems of the Member States of the Organization of American States. 281 In this sense, the effective exercise of political rights constitutes an end in itself and, at the same time, a fundamental means that democratic societies have to guarantee the other human rights provided for in the Convention282 . Moreover, according to Article 23 of the Convention, its holders, i.e., citizens, must not only enjoy rights, but also "opportunities". The latter term implies the obligation to ensure through positive measures that every person who is formally a political rights holder has

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[276] Opinion rendered before a notary public by expert witness Eduardo Cifuentes Muñoz on January 7, 2010 in the *Case of Manuel Cepeda Vargas v. Colombia, supra*, incorporated into the record of this case (evidence file, folio 365 to 517).

[277] *Cf. Case of Manuel Cepeda Vargas v. Colombia, supra,* para. 81.

[278] *Cf.* for example, the effects on freedom of association of the forced disappearance of a union leader (*Case of Isaza Uribe et al. v. Colombia, supra*, para. 145).

[279] Indeed, Article 4 of Law 130 of 1994 states: "Loss of legal personality. Political parties and movements shall lose their legal status when they are involved in one of the following causes:
1. When in an election they do not obtain through their candidates at least 50,000 votes or do not reach, or maintain, representation in Congress, according to the previous article". The results of the elections of March 10 and May 26, 2002 were taken into account.

[280] *Cf. Case of Yatama v. Nicaragua, supra*, paras. 195-100, and *Case of Petro Urrego v. Colombia, supra*, para. 94.

[281] Inter-American Democratic Charter, Article 2.

[282] *Cf. Case of Castañeda Gutman v. Mexico, supra*, para. 143, and *Case of Petro Urrego v. Colombia, supra*, para. 93.

the real opportunity to exercise them. In their collective dimension, political rights and their exercise promote the strengthening of democracy and political pluralism[283]. For this reason, the State must provide the conditions and mechanisms so that such rights can be effectively exercised. For these reasons, the Court considers that the withdrawal of the legal personality of the Unión Patriótica also affected the collective dimension of political rights.

338. Notwithstanding the foregoing, this Court takes into account that, subsequently, in 2013, this situation was remedied thanks to the declaration of partial nullity of the resolution of the National Electoral Council, by the administrative judge[284]. This measure, together with subsequent actions developed by the National Electoral Council allowed the Patriotic Union to participate in the subsequent elections, either individually, in coalition or merging with other parties (*supra* para. 242).

4) Conclusion

339. In view of the acknowledgment of responsibility made by the State, and the considerations set forth above, this Court concludes that the State is responsible for the violation of the rights to freedom of expression, freedom of association and political rights, contained in Articles 13, 16 and 23 of the American Convention, in relation to Article 1.1 of the same instrument to the detriment of the victims recognized in this Judgment (Annexes I and III).

IX.3
THE RIGHTS TO RECOGNITION AS A PERSON BEFORE THE LAW[285], TO LIFE[286], TO PERSONAL INTEGRITY[287], TO PERSONAL LIBERTY[288], TO FREEDOM OF MOVEMENT AND RESIDENCE[289], TO THE RIGHTS OF THE CHILD[290] AND THE INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS, DUE TO THE ALLEGED EXECUTIONS, DISAPPEARANCES, TORTURE, ARBITRARY DETENTIONS, THREATS, HARASSMENT AND DISPLACEMENT OF MEMBERS AND MILITANTS OF THE UNIÓN PATRIÓTICA.

A. Arguments of the parties and the Commission.

340. The ***Commission*** alleged that the acts of violence against members and militants of the UP included murders, disappearances, threats to life and personal integrity, displacements and attempted homicides. It noted that the available information demonstrates

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[283] *Cf. Case of Yatama v. Nicaragua, supra,* paras. 192 and 195, and *Case of Petro Urrego v. Colombia, supra* para. 93.

[284] The administrative judges considered that the CNE "in determining whether the Political Party UNION PATRIOTICA should apply numeral 1 of article 4 of Law 130 of 1994 to extinguish its legal personality, was constitutionally and legally required to evaluate the factual situation that governed the events of the state of force majeure suffered by the party, with respect to its real capacity for political participation" (Decision of the Administrative Chamber of the Council of State of July 4, 2003, Section 5, Section 5, Section 5, Section 5, Section 5 of Law 130 of 1994). (Decision of Section Fifth Section of the Contentious Administrative Chamber of the Council of State of July 4, 2003).

[285] Article 3 of the American Convention.

[286] Article 4 of the American Convention.

[287] Article 5 of the American Convention.

[288] Article 7 of the American Convention.

[289] Article 22 of the American Convention.

[290] Article 19 of the American Convention.

that in several of the cases many of these violations were interrelated. In addition, it considered the victims' links to the UP to be proven.

341. Specifically on the individualization of the victims, the Commission indicated that it had consolidated information on more than 6,000 persons, including a group of approximately 150 cases referred to by the petitioner as representative, for which there is more complete evidence to make detailed determinations, as was done in the respective section of this report regarding the violations analyzed in this section. Without prejudice to these more detailed determinations, the Commission observed that both the periodic information presented and the consolidated information includes the basic elements that allow linking the facts regarding the totality of victims both with the referred representative cases and with the context widely documented as an extermination that, undoubtedly, exceeds a few hundred cases. This information includes the type of violation, the date and place where it occurred, as well as the link with the Unión Patriótica. The Commission also reiterated on this point that the State did not support a denial that these events occurred, nor did it investigate them adequately, as will be analyzed below.

342. The Commission emphasized that the information shows that there were individual and collective assassinations, the latter in several cases carried out against populations classified as supporters of the guerrillas or of leftist political tendencies. It also alleged that there were cases of collective assassinations directed against specific groups of people and entire families linked to the party. Among these collective cases, the Commission alleged that there is information of people who survived the attacks by chance. Additionally, it highlighted that in several cases of assassinations it was reported that the bodies had signs of torture. Likewise, he added that in several of these collective cases, children were victims of violent actions against their relatives, militants of the Patriotic Union; in some cases they were present at the time the murders were committed and in others they were killed together with their relatives. On the other hand, he alleged that practically all the cases of attempts against life, disappearances and displacements were preceded by general threats against members of the Patriotic Union in certain departments or municipalities, as well as specific threats against the alleged victims in particular.

343. In relation to the attribution of responsibility to the State for these acts, it recalled that in the instant case, this responsibility arose from a failure to comply with its duty to respect the human rights of the members and militants of the Unión Patriótica. This responsibility arises both from situations of direct participation of State agents, as well as from various mechanisms of tolerance, acquiescence and collaboration in relation to acts committed by private individuals or paramilitary groups.

344. By virtue of the foregoing considerations, it concluded that the Colombian State is responsible for the violation of the rights to recognition as a person before the law, to life, to personal integrity, to personal liberty, to special protection for children, and to freedom of movement and residence established in Articles 3, 4, 5, 7, 19 and 22 of the American Convention, in relation to the obligations to respect and guarantee established in Article 1.1 of the same instrument; and for the violation of Article I a) of the CIDFP, to the detriment of the members and militants of the Unión Patriótica who are identified in the List of Victims annexed to the merits report.

345. The ***joint intervenors of Reiniciar*** presented similar allegations to the Commission and concurred in its conclusions. The organizations ***CJDH and DCD*** concurred with the Commission, presented additional information to several cases contained in the Merits Report, presented specific allegations regarding the events that occurred in the rural areas, and presented specific allegations regarding the events that took place in the rural areas.

of Dabeiba, in the massacres of La Balsita, Acandí and Topacio, as well as in relation to other victims of alleged violations that occurred in Antioquia in which the responsibility of the State would have been established.

346. The representatives of the ***Diaz - Mansilla family*** presented specific allegations regarding the disappearance of Miguel Angel that would violate their rights to recognition as a person before the law, to life, to physical integrity and to personal liberty, provided in Articles 3, 4.1, 5.1, 7 and 11 of the American Convention, in relation to Article 1.1 of the same, and Article I.a of the CIDFP. They also presented allegations related to the rights to personal integrity and freedom of movement and residence of their family members (due to the threats received and the need to move).

347. For its part, the ***State*** made a partial acknowledgment of responsibility. However, it disputed the theory of attribution of responsibility used by the Commission. It argued that in the present case, the facts defined in the factual platform established by the Commission in the Merits Report are not sufficient to prove a situation of acquiescence, tolerance and collaboration with respect to the facts included by the Commission, nor are they sufficient with respect to the vast majority of the so-called representative cases. On the other hand, the State argued that the attempt to extend the declaration of the State's international responsibility by action to the list of 6,500 alleged victims, based exclusively on the analysis carried out in the representative cases, is inappropriate, since, as already mentioned, the breach of the duty to respect can only be attributed after an analysis of each specific case.

348. On the other hand, he affirmed that the mere proof of a general context is not sufficient to attribute responsibility to the State. In this regard, he recalled that the violence against the UP had very diverse causes and was exercised by different actors.

349. The State indicated that after reviewing the files of the representative cases, these can be divided into several groups: a) those in which no action attributable to agents of the State is alleged; b) those in which, although the participation of public authorities in the human rights violation is alleged, there is not sufficient evidence to support this assertion; and c) those in which the State extended its recognition of responsibility by action, since there is evidence in the international file that demonstrates this responsibility.

350. The State requested that the claim of attribution of responsibility by action that does not take into consideration the elements of each specific case be dismissed and that the scope of the State's international responsibility in each case be analyzed, in light of the elements of the international file, in accordance with its acknowledgement of international responsibility and with the considerations presented with respect to the cases designated as representative by the Commission.

B. Considerations of the Court.

351. First of all, it should be recalled that the State acknowledged its international responsibility with respect to facts involving 219 victims that appear in the list annexed to the Commission's Merits Report (*supra* Chapter IV). This acknowledgment made by the State refers to:

a) violation of the right to life (Article 4 of the Convention) in relation to the duty of prevention to the detriment of 138 persons who were executed[291];

b) violation of the right to life (Article 4 of the Convention) in relation to the duty to respect to the detriment of 5 persons who were executed[292];

c) violation of the rights to recognition as a person before the law, to life, to personal integrity and to personal liberty (Articles 3, 4, 5 and 7 of the Convention) in relation to its duty of prevention to the detriment of 16 persons who were disappeared[293];

d) violation of the rights to recognition as a person before the law, to life, to humane treatment and to personal liberty (Articles 3, 4, 5 and 7 of the Convention) in relation to their duty to respect, and also with respect to Article 1.a. of the American Convention on forced disappearance to the detriment of 2 persons who were disappeared[294];

e) violation of the right to personal integrity and life plan (articles 4 and 5 of the Convention) in relation to its duty of prevention with respect to cases in which

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[291] These persons are: Dionisio Calderón, Rubén Darío Castaño, Javier Sanabria Murcia, José Rafael Reyes Malagón, Darío Henao Torres, Octavio Vargas Cuellar, Leonel Forero Hernández, José Antonio Quiroz Rivero, José Francisco Ramírez Torres, Fernando Bahamón Molina, Fidel Antonio Ardila Parrado, Demetrio Aldana Quiroga, José Vicente Cárdenas Rodríguez, Luis Jesús Reátiga, Gerardo Cuellar, Froilán Gildardo Arango Echavarría, Argemiro Colorado Marulanda, Pedro Julio Herrera Marín, José Yesid Reyes Panqueva, Luis Alberto Ardila Parrado, Hildebrando Lora Giraldo, Alfonso Guillermo Cujavante Acevedo, Hernando de Jesús Gutiérrez, José Antonio Riveros Sanabria, Néstor Henry Rojas Rodríguez, Alirio Zaraza Martínez, Electo Flórez Banquez, Carlos Evelio Conda Tróchez, Gildardo Castaño Orozco, Teófilo Forero, Rosalba Camacho, Martin Vásquez Arévalo, María Leonilde Mora Salcedo, Antonio Sotelo Pineda, José Antonio Toscano Triana, Luis Alberto Cardona Mejía, Jorge Orlando Higuita Rojas, Alejandro Cárdenas Villa, Gustavo Walberto Guerra Doria, Guillermo Antonio Callejas Ríos, Armando Calle Ángel, Horacio Forero Páez, Bladimiro Escobar Morales, Dally Vásquez Camacho, Elizabeth Vásquez Camacho, Josefina Vásquez Camacho, Jairo Alfredo Urbina Lacouture, Carlos Julio Vélez Rodríguez, Norma Garzón de Vélez, Dilmas Elkin Vélez Rodríguez, Henry Cuenca Vega, María Mercedes Méndez de García, William Ocampo Castaño, Rosa Tulia Peña Rodríguez, Henry Millan González, Otoniel Casilimas Cantor, Eixenover Quintero Celis, Efraín Ángel Arévalo, Luis Eduardo Cubides Vanegas, Marcelino José Blanquicet Castro, Marceliano Medellín Narváez, Carmelo Durango, Pedro Malagón Sarmiento, Elda Milena Malagón Hernández, Luz Adriana Hernández Vásquez, Alcides Julio Ariza Vargas, Josué Giraldo Cardona, Edilberto Blanco Cortés, Alexis Hinestroza, James Ricardo Barrero, Heliodoro de Jesús Durango, Rosalba Gavilar Novoa, Octavio Sarmiento Bohórquez, José Ignacio Reyes Gordillo, José Francisco Reyes Gordillo, Albeiro de Jesús Bustamante Sánchez, Alexandre de Jesús Galindo Muñoz, Pedro Nel Arroyave, Luis Carlos Vélez Garzón, Manuel Álvaro Fernández Pinzón, Nicolás Alberto Ossa Suaza, Omaira de Jesús Echavarría Pulgarín, Osfanol Torres Cárdenas, Leonardo Posada, Pedro Nel Jiménez Obando, José Rodrigo García Orozco, Pedro Luis Valencia Giraldo, Juan Jaime Pardo Leal, Orfelina Sánchez García, Pedro Sandoval, Luz Marina Ramírez, Francisco Eladio Gaviria Jaramillo, Carlos Gónima López, Elkin de Jesús Martínez, Carlos Kovacs Baptiste, Luis Eduardo Yaya Cristancho, José de Jesús Antequera, Gabriel Jaime Santamaría, Diana Stella Cardona Saldarriaga, Bernardo Antonio Jaramillo Ossa, Alfredo Manuel Florez García, Carlos Enrique Rojo Uribe, Rosa Mejía, Ofelia Rivera, Ramón de Jesús Padilla Arrieta, Julio César Uribe Rua, Pablo Emilio Córdoba Madrigal, León de Jesús Cardona Izasa, Julio Cañón López, Luz Marina Arroyave, María Concepción Bolívar Bedoya; Mario de Jesús Castrillon García; Gabriel de Jesús David Loaiza; Moisés Forero; Héctor Fabio Franco; Daniel Galindo; Gabriel Galindo; Hugo Alberto García Soto; Hermes Garzón; Orlando Gil; Sofronio de Jesús Hernández Gómez; Hoover Hernández; Ángel María Hurtado; Roberto Luis Jiménez Murillo; Luis Alberto Lopera Múnera; Marco Fidel Ortíz González; Jaime Pérez; Efraín Antonio Pérez Trujillo; Ruth Prada Peña; Marlene del Carmen Ramírez Rodríguez; Nidia Reyes Gordillo; Gustavo Ríos Gallego; Edilberto Rodríguez; Alberto Salazar; José Suaza Jaramillo; James Emilio Zúñiga; and David Galindo Ortíz.

[292] Antonio Palacios Urrea, Camilo Palacios Romero, Blanca Palacios Romero, Yaneth Palacios Romero, and Rodrigo Barrera Vanegas.

[293] These individuals are Marco Fidel Castro, Pablo Caicedo Siachoque, Álvaro Grijalba Beltrán, José Luis Grijalba Beltrán, Federico Grijalba Burbano, Javier Castillo, Segundo Epimenio Velasco Fajardo, Julio Serrano Patiño, Benjamín Artenio Arboleda Chavera, José Lisneo Asprilla Moreno, Vladimir Cañón Trujillo, Alfonso Miguel Lozano Barraza, Alcides Forero Hernández; Francisco Martínez Mena; Robinson Martínez Moya, and Edison Rivas Cuesta.

[294] These individuals are Miguel Ángel Díaz Martínez and Faustino López Guerrero.

an attack aimed at depriving the victims of their lives was generated and was not consummated, which concerned 20 persons[295];

f) violation of the right to personal integrity and to a life plan (Articles 4 and 5 of the Convention) in relation to its duty to respect with respect to the cases in which an attack aimed at depriving the victims of their lives was generated and was not consummated, which concern 3 persons[296];

g) violation of the right to personal integrity and to a life plan (Articles 4 and 5 of the Convention) in relation to its duty of prevention in relation to 10 persons who were threatened[297];

h) violation of the rights to movement, protection of the family, personal integrity and life plan (Articles 4, 5, 17 and 22 of the Convention), in relation to its duty of prevention, to the detriment of 19 persons who were forcibly displaced[298];

i) the violation of the rights of the child (Article 19 of the Convention), in relation to its duty of prevention, in the 10 cases in which children or adolescents were directly affected[299], and

j) the violation of the rights of the child (article 19 of the Convention), in relation to its duty to respect, in the 2 cases in which children or adolescents were directly affected[300].

352. With respect to the foregoing, this Court has already considered that the dispute on those points had ceased, and therefore will not refer to them in its considerations (*supra* para. 22) and finds that the State is responsible for the violation of those rights to the detriment of those persons in the modalities of attribution of international responsibility that were recognized by the State. Accordingly, the Court finds that the facts that were acknowledged by the State fall within the context of systematic violence against militants and members of the Unión Patriótica, which was described in the chapter on the Facts of this Judgment (*supra* Chapter VIII.A).

353. However, in Chapter IX.1, this Court concluded that the State was responsible for a violation of the rights of the leaders and members of the Unión Patriótica due to a lack of the duty to respect (*supra* para. 290). The Court considers that the State is also responsible for a violation of the right to recognition of the personality of the leaders and members of the Patriotic Union (supra para. 290).

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[295] These individuals are María Trinidad Torres Hernández, Adelana Solano Rivera, María Angélica Ortíz Castro, José Samuel Urrego Morera, Wilson Pardo García, Reina Luz Pulgarín Roldán, Jaime Caicedo Turriago, César Martínez Blanco, José Alirio Traslaviña León, Miguel Antonio Castañeda, Alba María Fuentes Robles, Ana Carolina Bohórquez Triana, Ciro Ferrer Bula, Aida Yolanda Avella Esquivel and Olga Judith Vélez Garzón, Mónica Sandra Agudelo, Luis Alexander Naranjo León, Diana Catalina Velásquez Torres; Jennifers Chico Vásquez, and Magnely Vásquez Camacho.

[296] These persons are María Belarmina Romero Cruz, Leidy Marcela Palacios Romero, Cristian Rodrigo Barrera Palacios, Cristian Rodrigo Barrera Palacios, María Belarmina Romero Cruz and Leidy Marcela Palacios Romero.

[297] These persons are Hernán Motta Motta, Imelda Daza, Rita Yvonne Tobón Areiza, Beatriz Helena Pereañez, Belarmino Salinas Rentería, José Domingo Ciro Buritica, Rosmery Londoño Gil, Pedro Nel Arroyave, Rosalba Camacho, Martín Vásquez Arévalo, José Domingo Ciro Buritica, Rosmery Londoño Gil, Pedro Nel Arroyave, Rosalba Camacho and Martín Vásquez Arévalo.

[298] These persons are Henry Cuenca Vega, Ana Carlina Bohórquez Triana, Rita Yvonne Tobón Areiza, Aida Yolanda Avella Esquivel, Beatriz Helena Pereañez, Belarmino Salinas Renteria, José Domingo Ciro Buritica, Rosmery Londoño Gil, Pedro Nel Arroyave, Rosalba Camacho, Martín Vásquez Arévalo, Olga Judith Vélez Garzón, Chesman Cañón Trujillo; Jorge Guillermo Forero Hernández; Sofronio de Jesús Hernández Gómez; Alberto Trujillo; Isabel Trujillo, and Nelly Trujillo.

[299] These individuals are Elda Milena Malagón Hernández, Luz Adriana Hernández Vásquez, Luis Carlos Vélez Garzón, Olga Judith Vélez Garzón, Luis Alexander Naranjo León, Cristian Rodrigo Barrera Palacios, Jennifers Chico Vásquez; Magnely Vásquez Camacho; David Galindo Ortíz, and Diana Catalina Velásquez Torres.

[300] These persons are Leidy Marcela Palacios Romero and Cristian Rodrigo Barrera Palacios.

The Court has also ruled that the violations of the right to life, personal integrity, personal liberty, freedom of movement and residence, the rights of the child and the Inter-American Convention on Forced Disappearance of Persons, due to the executions, disappearances, torture, arbitrary detentions, threats, harassment and displacement against members and militants of the UP to the detriment of the persons mentioned in Annexes I and III of this Judgment.

354. Next, this Tribunal will refer to some of the allegations related to the alleged violations in the following order: B.1) On the alleged executions and massacres; B.2) On the alleged forced disappearances; B.3) On the alleged threats; B.4) On the alleged torture; B.5) On the alleged forced displacements; B.6) On the girls and boys; B.7) On women victims of the systematic extermination of the Unión Patriótica, and B.8) On journalists victims of the systematic extermination of the Unión Patriótica.

B.1. On the alleged executions and massacres

1) General Aspects

355. This Court has established that the right to life plays a fundamental role in the American Convention, as it is the essential presupposition for the exercise of the other rights. The observance of Article 4, related to Article 1(1) of the American Convention, not only presupposes that no person shall be arbitrarily deprived of his life (negative obligation), but also requires States to adopt all appropriate measures to protect and preserve the right to life (positive obligation)[301] in accordance with the duty to guarantee the full and free exercise of the rights of all persons under their jurisdiction[302].

356. Consequently, States have the obligation to guarantee the creation of the conditions required to prevent violations of this inalienable right and, in particular, the duty to prevent their agents from violating it. This active protection of the right to life by the State involves not only its legislators, but all State institutions and those who must safeguard security, whether they are its police forces or its armed forces[303].

357. Regarding the right to personal integrity, this Court recalls that the Convention expressly recognizes in Article 5 that everyone has the right to respect for his physical, mental and moral integrity, and provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment[304]. The Court has established that the violation of personal integrity is a type of violation that has different connotations of degree and whose physical and psychological consequences vary in intensity according to endogenous and exogenous factors that must be demonstrated in each concrete situation[305].

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[301] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra,* para. 144, and *Case of Olivares Muñoz et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of November 10, 2020. Series C No. 415, para. 85.

[302] *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs*. Judgment of November 25 of 2003. Series C No. 101, para. 153, and *Case of Olivares Muñoz et al. v.* Venezuela, *supra*, para. 85.

[303] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra*, paras. 144 and 145, and *Case of Ruiz Fuentes et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 10 , 2019. Series C No. 384, para. 100.

[304] *Cf. Case of Ximenes Lopes v. Brazil. Merits, Reparations and Costs*. Judgment of July 4, 2006. Series C No. 149, para. 126, and *Case of Petro Urrego v. Colombia, supra,* 141.

[305] *Cf. Case of Loayza Tamayo v. Peru, supra,* para. 57, and *Case of Petro Urrego v. Colombia*, *supra*, para. 141.

358. The Court has established that alleged violations of other articles of the Convention, in which children are alleged victims, must be interpreted in light of the *corpus iuris* of children's rights. This implies that Article 19, in addition to granting special protection to the rights recognized in the American Convention, establishes an obligation on the part of the State to respect and ensure the rights recognized for children in other applicable international instruments[306]. In this framework, the State must assume its special position of guarantor with greater care and responsibility, and must take special measures aimed at this purpose[307]. It should be recalled that the Court has pointed out that "the special vulnerability of children is even more evident in a situation of internal armed conflict, [...] since they are the least prepared to adapt or respond to such a situation and, sadly, they are the ones who suffer disproportionately from its excesses "[308].

2) Analysis of some facts of this case

a) Jaime Londoño González

359. In the case of Jaime Londoño González, who, according to the Commission, was the victim of an extrajudicial execution by the security forces in the department of Caquetá, the Court notes that there are two versions of the events that led to his death (See Annex IV). On the one hand, one version maintains that while he was in a discotheque with his family, a man threw a chair at Mr. Jaime Londoño González, who reacted by firing shots into the air with the weapon he had for his protection. According to this version of events, upon leaving, the police searched his family, Mr. Londoño was taken aside, asked to lie down, asked to stand up again and was shot. He was then transferred to the municipality of Belén de los Andaquíes, but died there. This version of the facts is the one sustained by his daughter Rosmery Londoño Gil and Mr. Octavio Collazos Calderón.

360. On the other hand, this Court observes that, according to the investigation conducted by the Attorney General's Office, the evidence collected points to a different version of the facts. Thus, the testimonial evidence indicated that Mr. Londoño's death occurred due to a fight that started over a chair in a bar. This version indicates that it was Mr. Londoño who took a chair without permission and upon doing so a person complained to him, and Mr. Londoño proceeded to shoot him and his brother, causing the death of the person who complained to him. The relatives of the people who were killed by Mr. Londoño's shots went out to look for a policeman to stop him. The version indicates that Mr. Londoño, upon seeing the National Police officers, proceeded to shoot at them, so in defense the policemen shot him, causing his death[309].

361. In turn, this Court notes that none of the versions mentioned herein are contained in a judicial decision. In this sense, this Court lacks the evidence to determine whether or not in the specific case there was or was not a liability.

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[306] *Cf. Case of Gelman v. Uruguay, supra*, para. 121, and *Case of Employees of the Fire Factory in San Antonio de Jesus and their next of kin v. Brazil, Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 15, 2020. Series C No. 407, para. 178.

[307] *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs*. Judgment of July 8, 2004. Series C No. 110, paras. 124, 163 to 164, and 171; *Case of Cuscul Pivaral et al. v. Guatemala, supra,* para. 132, and *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 60.

[308] *Case of the Mapiripán Massacre v. Colombia, supra*, para. 156, and *Case of Coc Max et al (Xamán Massacre) v. Guatemala. Merits, Reparations and Costs.* Judgment of August 22, 2018. Series C No. 356, para. 115.

[309] Illustrative summaries *(*Exhibit file, folios 124-186 et seq.).

The State's international responsibility or to determine which of the two versions of the facts is the one that is in accordance with the truth of what happened. Nor do we have concrete elements to determine, even if we accept the version of the confrontation, whether the use of force by the public force was legitimate, necessary and proportional. Consequently, the Court will not rule on the alleged violation of the right to life to the detriment of Mr. Jaime Londoño González.

b) Other alleged facts of executions

362. Taking into account the information provided by the representatives on the alleged perpetrators of the facts and their possible connection with the security forces, and the evidence presented by them, as well as the lack of controversy on the part of the State, for this Court there is sufficient evidence in addition to the general context (*supra* Chapter VIII.A) to conclude that the State is also responsible for the violation of the right to life due to a breach of the duty to respect, in the terms of Article 1(1) of the American Convention, of the extrajudicially executed persons listed in Annexes I and III.

363. Finally, with regard to the case of José Irian Suaza Jaramillo, who was recognized by the State as a victim of a violation of the right to life, the Court does not have facts that account for the circumstances in which his death occurred, neither in the Commission's report on the merits nor in any of the representatives' briefs. In the table of alleged victims sent by the Commission, it is only indicated that this person was a militant and died on November 24, 1987 in the city of Medellín in a massacre (it is not indicated which one). By virtue of the State's acknowledgment, this Court recognizes José Irian Suaza Jaramillo as a victim of extrajudicial execution and includes him in Annex I of the victims in the instant case.

B.2. On the alleged forced disappearances

364. The Court has developed in its jurisprudence the pluriofensive nature of forced disappearance, as well as its permanent or continuous nature, which lasts as long as the whereabouts of the disappeared person are not known or his remains are not identified with certainty[310].

365. In this sense, the analysis of the forced disappearance must cover the totality of the facts presented for the consideration of the Court. Only in this way is the legal analysis of the forced disappearance consistent with the complex human rights violation that it entails[311], with its permanent nature and with the need to consider the context in which the facts occurred, in order to analyze its prolonged effects over time and comprehensively approach its consequences, taking into account the inter-American and international *corpus iuris* of protection[312].

366. On the other hand, the Court reiterates, as it has done in previous cases, that it must apply an assessment of the evidence that takes into account the gravity of the attribution of international responsibility to a State and that, without prejudice to this, is capable of creating the

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[310] *Cf., inter alia*, *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, paras. 155-157, and *Case of Alvarado Espinoza et al. v. Mexico, supra*, para. 165.

[311] *Case of Heliodoro Portugal v. Panama*. *Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 12, 2008. Series C No. 186, para. 112, and *Case of Alvarado Espinosa et al. v. Mexico. Merits, Reparations and Costs.* Judgment of November 28, 2018. Series C No. 370, para. 166.

[312] *Cf. Case of Goiburú et al. v. Paraguay, supra*, para. 85, and *Case of Alvarado Espinosa et al. v. Mexico*, *supra*, para. 166.

conviction of the truth of the alleged facts, especially given the nature of the protected legal interests on which the clarification of these facts depends. To this end, in cases of forced disappearance of persons, the use of circumstantial evidence, indications and presumptions to demonstrate the concurrence of any of the elements of forced disappearance is legitimate and of special importance, since this specific form of violation is characterized by the suppression of any element that would make it possible to prove the detention, whereabouts and fate of the victims[313]. In accordance with this criterion, the Court attributes a high probative value to witness statements, within the context and circumstances of a case of enforced disappearance, with all the difficulties that derive from it, where the means of proof are essentially indirect and circumstantial testimonies due to the very nature of this crime, added to relevant logical inferences[314] , as well as its link to a general practice of disappearances[315].

367. In this sense, the Court has indicated that, even if there is a context of systematic and widespread practice of forced disappearance, in order to determine the occurrence of an enforced disappearance, the existence of other elements is required to corroborate that the person was deprived of his or her liberty with the participation of State agents or by private individuals acting with the authorization, support or acquiescence of the State. Thus, this Court has determined that "the mere proof of the practice of disappearances is not sufficient, in the absence of any other evidence, even circumstantial or indirect, to demonstrate that a person whose whereabouts are unknown was a victim of it.

368. By virtue of the foregoing, the Court will now determine, based on the various pieces of evidence in light of the aspects disputed by the parties and the Commission, whether the constituent elements of forced disappearance are satisfied in the instant case. Namely: a) the deprivation of liberty; b) the intervention or acquiescence of state agents in the facts, and c) the refusal to acknowledge the detention or failure to provide information and to disclose the fate or whereabouts of the person concerned, and then arrive at the general conclusion.

369. The Commission presented information and evidentiary documentation on the circumstances of manner, time and place, in relation to 10 cases representing 18 alleged disappeared victims. In turn, the State acknowledged its responsibility for the forced disappearance of these 18 persons, although for 16 of them it indicated that this acknowledgment was for a failure in its duty to prevent (*supra* Chapter IV).

370. Taking into account the information provided by the representatives on the alleged perpetrators of the facts and their possible connection with the security forces, and the evidence presented by them, as well as the lack of controversy on the part of the State, for this Court there is sufficient evidence in addition to the general context (*supra* Chapter VIII.A) to conclude that the State is also responsible for a violation of the rights to recognition as a person before the law (Article 3 of the American Convention), life (Article 4 of the American Convention), personal integrity (Article 5 of the American Convention), and personal liberty (Article 7 of the American Convention), in relation to its obligation to respect contained in Article 1(1) of the same instrument, to the detriment of the victims.

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[313] *Cf. Case of Velásquez Rodríguez v. Honduras, Merits, supra*, para. 131, and *Case of Alvarado Espinosa et al. v. Mexico*, *supra*, para. 169.

[314] *Cf. Case of Velásquez Rodríguez v. Honduras, Merits, supra*, para. 130, and *Case of Alvarado Espinosa et al. v. Mexico*, *supra*, para. 169.

[315] *Cf.* Case of *Fairén Garbi and Solís Corrales v. Honduras. Merits*. Judgment of March 15, 1989. Series C No. 6, para. 15, and *Case of Alvarado Espinosa et al. v. Mexico*, *supra*, para. 169.

[316] *Cf. Case of Fairén Garbi and Solís Corrales v. Honduras, supra,* para. 157, and *Case of Alvarado Espinosa et al. v. Mexico*, *supra*, para. 170.

persons who suffered an enforced disappearance listed in Annexes I and III.

B.3. On the alleged torture

371. The Court has repeatedly stated that "torture and cruel, inhuman or degrading treatment or punishment are strictly prohibited by international human rights law. The absolute prohibition of torture, both physical and psychological, belongs today to the domain of international *jus cogens* "[317] . This prohibition subsists even in the most difficult circumstances, such as war, threat of war, the fight against terrorism and any other crimes, state of siege or emergency, internal commotion or conflict, suspension of constitutional guarantees, internal political instability or other emergencies or public [calamities318] . According to the jurisprudence of the Inter-American System, for a conduct to be qualified as torture, the following elements must concur:
a) a) it is an intentional act committed by an agent of the State or with its authorization or acquiescence; b) it causes severe physical or mental suffering; and c) it is committed with a specific aim or [purpose319].

372. According to the information contained in the facts of the present case and which refers to facts developed by the Commission (See Annex IV): (a) the body of Mr. Francisco Eladio Gaviria Jaramillo was found in the neighboring municipality of Envigado, inside a sack, bound hand and foot with barbed wire and with clear signs of torture; (b) Diana Estella Cardona Saldarriaga was found lifeless, with signs of torture, with several bullet wounds to the head and chest, on the outskirts of the city of Medellín, inside a car; c) the body of Otoniel Casilimas Cantor was found in the municipality of La Mesa, Cundinamarca, with signs of torture (he was burned, his hands were crushed, his tongue and penis were cut, and his nails were removed); d) Luis Eduardo Cubides was detained by the National Army and handed over to paramilitaries who tortured him to death; e) Marceliano Medellín was taken down a road to a pasture and his body was found there with his head covered by a plastic bag, with signs of torture, and with multiple gunshot wounds; f) Mr. Edilberto Blanco was found on the side of the road leading to the village of Mampuján, in the municipality of María La Baja, department of Bolívar and "showed signs of torture in different parts of his body and two gunshot wounds"; g) Pedro Nel Arroy was found in the village of Mampuján, in the municipality of María La Baja, department of Bolívar and "showed signs of torture in different parts of his body and two gunshot wounds; and g) Pedro Nel Arroyave was found near the CAI of Choachí, with signs of torture and with his hands tied.

373. The Court finds that, in all these cases, the State is responsible for these acts, for a breach of the duty to respect. Consequently, the Court concludes that the State is also responsible for the acts of torture against these persons in violation of Article 5(2) of the American Convention.

374. The joint interveners from Reiniciar and the CJDH and DCD presented arguments with illustrative cases related to different people who had allegedly been tortured. These persons do not have facts developed by the Commission. The State did not present specific facts in relation to these persons outside of the preliminary objections and preliminary issues raised. In this regard, it should be recalled, as does the State, that the Court

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[317] *Case of Maritza Urrutia v. Guatemala. Merits, Reparations and Costs.* Judgment of November 27, 2003. Series C No. 103, para. 92; and *Case of Bedoya Lima v. Colombia, supra,* para. 100.

[318] *Case of Lori Berenson Mejía v. Peru. Merits, Reparations and Costs.* Judgment of November 25, 2004. Series C No. 119, para. 100, and *Case of Azul Rojas Marín v. Peru, supra*, para. 140.

[319] *Cf. Aso Bueno Alves v. Argentina. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 164, para. 79, and *Case of Guzmán Albarracín et al. v. Ecuador, supra,* para. 99.

may presume as true the facts on which the State has not pronounced itself, as long as they are reasonably derived from the body of evidence in the case.

375. In order to establish State responsibility for these violations, the Court takes into account the information provided by the representatives on the alleged perpetrators of the acts and their possible connection with the security forces, and the evidence presented by them, as well as the lack of controversy on the part of the State, for this Court there is sufficient evidence that adds to the general context (*supra* Chapter VIII.A) to conclude that the State is also responsible for the acts of torture, in violation of Article VIII.
5.2 of the American Convention, in relation to its obligation to respect contained in Article 1.1 of the same instrument, to the detriment of the following persons: 1) German Emilio Torres; 2) Campo Elías Ávila; 3) José Roque Oyola Camacho; 4) Aquilino Oyola Camacho; 5) Egidio Matoma Cupitra; 6) Lorenzo Useche Díaz; 7) José Miguel Conde Arteaga; 8) Marco Aurelio Osario Manco; 9) Marino de Jesús Higuita Ramírez; 10) Jorge Édgar Carvajal Jiménez;
11) Víctor Hugo Giraldo Hernández; 12) María Luisa Parra Nosa; 13) Roque Arnulfo Carvajal Agudelo; 14) Malambo Otavo José Rubiel; 15) Diomedes Playonero Ortiz; 16) Freddy Conde Conde Conde; 17) Carlos Julio Torres; 18) Richard Luis Castro Puche; 19) Blanca Elcy Vargas Gómez;
20) José Darío Rodríguez Vásquez; 21) Fabiola Ruíz Bolaños; 22) Luis José Lozano Laguna;
23) Martha Lucia García; 24) Guelmer Porras García; 25) Carmen Prada González; 26) Víctor Julio Soacha; 27) Ignacia Tamara Castro; 28) Edín Hoyos Lascarro; 29) Leonardo Álvarez; 30) Delgado Morales Eriberto; 31) Jesús Arcadio Vélez Giraldo; 32) Nicanor Arciniegas Niño; 33) Aguilar Carrillo Gilberto; 34) Mónica Pulgarín Úsuga; 35) Gilberto Moreno Quejada; 36) Domingo Colón Moreno; 37) Orlando Manuel Galindo Ramos; 38) Nicolás Suárez; 39) José De Jesús Serna Serrano; 40) Ramón Antonio Correa Amaya; 41) Angulo Rodríguez Pedro; 42) Camacho Izquierdo Isaac; 43) Conde Torres José Joaquín; 44) Cubillos Torres Javier; 45) Cubillos Torres Wilder; 46) Fandiño Rafael Peña; 47) González Ibarra Jorge Elíecer; 48) Márquez Chamorro César Tulio; 49) Márquez Chamorro José Rafael; 50) Morales Isnardo; 51) Mosquera Mosquera Ciprían Cornelio; 52) Ñustez Morales Uldarico; 53) Oyola Camacho Aquilino; 54) Quiróz Hinestroza Alcira Rosa; 55) Salas Osorio Gonzalo José; 56) Silva Germán, and 57) Vargas Pinto Gilberto, which are mentioned in Annexes I and III of this Judgment.

B.4. On arbitrary arrests, attempted homicides, injuries, threats and harassment

376. The Inter-American Court has pointed out that, in accordance with the provisions of Article
7.1 of the Convention, the protection of liberty safeguards "both the physical liberty of individuals and personal security, in a context where the absence of guarantees may result in the subversion of the rule of law and in the deprivation of detainees of the minimum forms of legal protection "[320].

377. Regarding the duty to guarantee the right to personal liberty, the Court has indicated that the State must prevent the liberty of individuals from being impaired by the actions of State agents and private third parties, as well as investigate and punish acts that violate this right[321].

378. Similarly, the Court has recalled that "in certain contexts, States have the obligation to adopt all necessary and reasonable measures to ensure the

[320] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra note,* para. 53, and *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 26, 2010. Series C No. 220, para. 80.

[321] *Cf. Case of González et al. "Campo algodonero", supra,* para. 247, and *Case of Gudiel Álvarez et al ("Diario Militar") v. Guatemala, supra,* 277.

right to life, personal liberty and personal integrity of those persons who are in a situation of special vulnerability, especially as a consequence of their work, as long as the State is aware of a real and immediate risk against them and whenever there are reasonable possibilities of preventing or avoiding that risk "[322]. On the other hand, it is the responsibility of the State authorities that become aware of a situation of special risk to identify or assess whether the person subject to threats and harassment requires protection measures or to refer to the competent authority to do so, as well as to provide the person at risk with timely information on the available measures[323] .

379. Furthermore, in relation to threats and harassment aimed at hindering complaints or investigations related to human rights violations, this Court has said that "to guarantee due process, the State must provide all necessary means to protect justice operators, investigators, witnesses and victims' relatives from harassment and threats aimed at hindering the process, preventing the clarification of the facts or covering up for those responsible for them "[324].

380. In order to establish State responsibility for these violations, the Court takes into account the information provided by the Commission and by the representatives on the alleged perpetrators of the acts and their possible connection with the security forces, and the evidence presented by them, as well as the lack of controversy on the part of the State. For this Court, there is sufficient evidence in addition to the general context (*supra* Chapter VIII.A) to conclude that the State is also responsible for the threats, illegal detentions and harassment, as well as for the injuries or attempts on the lives of the members and militants of the UP. Consequently, the State is responsible for a violation of the right to personal integrity contained in Article 5(1) of the American Convention, in relation to its obligation to respect contained in Article 5(2) of the American Convention.
1.1 of the Convention, to the detriment of the persons named in Annexes I and III, and also of the right to personal liberty, contained in Article 7 of the American Convention, in relation to its obligation to respect contained in Article 1.1 of the same instrument, to the detriment of the persons who were arbitrarily detained, to the detriment of the persons named in Annexes I and III.

B.5. On the alleged forced displacements

381. This Court has indicated that the right of movement and residence, established in Article 22(1) of the Convention, is an indispensable condition for the free development of the individual. This article contemplates, *inter alia,* the following: a) the right of those who are lawfully within a State to move freely within it and to choose their place of residence, and b) the right to enter, remain in and leave the territory of the State.

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[322] *Case of the Human Rights Ombudsman et al. v. Guatemala, supra*, para. 141, and *Case of the Xucuru Indigenous People and its members v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 5, 2018. Series C No. 346, para. 174.

[323] *Case of Vélez Restrepo and Family Members v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 3, 2012 Series C No. 248, para. 201, and *Case of Alvarado Espinoza et al. v. Mexico, supra,* para. 276.

[324] *Case of Myrna Mack Chang v. Guatemala, supra*, para. 199, and *Case of Digna Ocho and next of kin v. Mexico, supra*, para. 118.

without unlawful interference. Thus, the enjoyment of this right does not depend on any particular objective or motive of the person wishing to move or stay in a place[325].

382. Along these lines, the right to freedom of movement and residence includes "the right not to be forcibly displaced within a State Party thereto. In accordance with their obligations to respect and guarantee, States are obliged to refrain from actions and omissions that may generate situations of forced displacement, as well as to adopt all positive measures to reverse and adequately respond to situations of forced displacement that have been caused both by State actions and by non-State actors.

383. Likewise, the Court has pointed out that the right of movement and residence may be violated by *de facto* restrictions if the State has not established the conditions or provided the means to exercise it.[327] The right of movement and residence may be affected when a person is a victim of threats or harassment and the State does not provide the necessary guarantees for him to move and reside freely in the territory in question. On the other hand, the right of movement and residence may be affected when a person is the victim of threats or harassment and the State does not provide the necessary guarantees so that he or she can move and reside freely in the territory in question, even when the threats and harassment come from non-State actors.328 The Court has also noted that the right of movement and residence may be violated by de facto restrictions if the State has not established the conditions or provided the means to exercise it.

384. The Guiding Principles on Internal Displacement in order to define the content and scope of Article 22 in the context of Colombian internal displacement define internally displaced persons as all persons or groups of persons who have been forced or obliged to flee their place of habitual residence, as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, human rights violations or natural or human-made disasters, and who have not crossed an internationally recognized state border[329]. Colombian law has established a definition similar to that of the guiding principles330.

385. Finally, the Court has indicated that the lack of an effective investigation of violent acts may propitiate or perpetuate exile or forced displacement[331]. Furthermore, it should be recalled, as the State does in its Brief in Response, that the Court may presume as true the facts on which the State has not pronounced itself, as long as they are reasonably derived from the body of evidence in the case.

386. In order to establish State responsibility for these violations, the Court takes into account the information provided by the representatives on the alleged perpetrators of the events and their possible connection with the security forces, and the evidence presented by the representatives, as well as the lack of controversy on the part of the State, for this Court there is sufficient evidence in addition to a general context (*supra* Chapter VIII.A) to conclude that

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[325] *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 206, and *Case of Indigenous Communities Members of the Lhaka Honhat Association (Nuestra Tierra) v. Argentina, supra*, footnote 178.

[326] *Cf. Case of the "Mapiripán Massacre" v. Colombia, supra*, para. 188, and *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia, supra,* para. 219.

[327] *Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 15, 2005. Series C No. 124, paras. 119 and 120, and *Case of Members of the Chichupac Village and neighboring communities of the Municipality of Rabinal v. Guatemala, supra*, para. 174.

[328] *Cf. Case of Valle Jaramillo et al. v. Colombia, supra*, para. 139, and *Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs.* Judgment of March 8, 2018. Series C No. 350, para. 309.

[329] United Nations Guiding Principles on Internal Displacement, Principle 2.

[330] *Cfr.* Law 387 of 1997, article 1.

[331] *Cf*. *Case of the Moiwana Community v. Suriname, supra,* paras. 119 and 120, and *Case of Palacio Urrutia et al. v. Ecuador, supra,* para. 145.

that the State is also responsible for a violation of the right to movement and residence contained in Article 22 of the American Convention, in relation to its obligation to respect contained in Article 1(1) of the same instrument, to the detriment of the persons who suffered forced displacement and who are mentioned in Annexes I and III.

B.6. About children

387. The Court has established that alleged violations of other articles of the Convention, in which children are alleged victims, must be interpreted in light of the *corpus iuris* of children's rights. This implies that Article 19, in addition to granting special protection to the rights recognized in the American Convention, establishes an obligation of the State to respect and ensure the rights recognized for children in other applicable international instruments[332]. It should be recalled that the Court has pointed out that "the special vulnerability of children is even more evident in a situation of internal armed conflict, [...] since they are the least prepared to adapt or respond to such a situation and, sadly, they are the ones who suffer disproportionately from its excesses "[333], for which reason, in such contexts, they must be provided with adequate care and appropriate measures must be adopted to facilitate the reunification of temporarily separated families[334].

388. Similarly, the Court recalls that the Convention on the Rights of the Child provides in Article 2 that States Parties "undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians or other persons responsible for him or her before the law, and to this end shall take all appropriate legislative and administrative measures". In addition, Article 3 provides that States "shall ensure that institutions, services and facilities responsible for the care or protection of children meet the standards established by competent authorities, particularly with regard to the safety, health, number and competence of their staff, as well as the existence of adequate supervision". Likewise, Article 6 of the same instrument establishes that States Parties "recognize that every child has the inherent right to life" and that they "shall ensure to the maximum extent possible the survival and development of the child".

389. The Court considers it necessary to draw attention to the particular consequences of the brutality with which the acts were committed to the detriment of the children in the instant case. Thus, the Court highlights the fact that the continuation over time of the acts of violence that were directed against the members of the Unión Patriótica particularly affected the children of said community.

390. Likewise, it is on record that at least seven girls and four boys[335] were victims of extrajudicial executions or survived massacres against members of the Unión Patriótica (See Annexes I and IV). The Court observes that it was incumbent upon the State to respect and protect the children, who were in a situation of greater vulnerability than the victims.

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[332] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra,* para. 19, and *Case of V.R.P., V.P.C. et al. v. Nicaragua, supra,* para. 42.

[333] *Case of the Mapiripán Massacre v. Colombia, supra*, para. 156, and *Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia, supra,* para. 327.

[334] *Cf. Case of the Santo Domingo Massacre v. Colombia, supra*, para. 238, and *Case of the Los Josefinos Village Massacre v. Guatemala, supra,* para. 89.

[335] Namely, the children Giraldo García Freddy, Hernández Vásquez Adriana, Jennifers Chico Vásquez, Jhon Mario Giraldo Gutierrez, Liza Magnely Vásquez, Mora Estrada Jaime Luis, Olga Judith Vélez Garzón, Palacios Romero Leidy Marcela, Vásquez Camacho Elizabeth, Vásquez Camacho Josefina, and Vélez Garzón Luis Carlos.

vulnerability and risk of seeing their rights affected. In view of the foregoing, the Court concludes that the State is responsible for the violation of Article 19 of the American Convention to the detriment of these persons.

391. On the other hand, this Court notes that Annex III does not contain the ages of the persons who were victims of these events, and therefore, in accordance with the provisions of the chapter on reparations (*infra* Chapter X), once the age minority of the persons found in these annexes has been proven, this Court considers that they are also victims of a violation of Article 19 of the Convention.

B.7. On women victims of the systematic extermination of the Patriotic Union

392. The Court notes that a significant number of the direct victims of the systematic extermination of UP members and militants are women. In turn, some of the facts presented by the representatives and the Commission refer to sexual violations against women militants of the Unión Patriótica (See Annex IV). On this point, the CNMH referred to rape as one of the forms of victimization of UP members in the context of the extermination of this political party (*supra* para. 204).

393. In this regard, this Court has indicated that during armed conflicts women and girls face specific situations that affect their human rights, such as acts of sexual violence, which is often used as a symbolic means to humiliate the opposing party or as a means of punishment and repression. The use of state power to violate the rights of women in an internal conflict, in addition to affecting them directly, may have the objective of having an effect on society through these violations and of teaching a message or lesson. In particular, rape constitutes a paradigmatic form of violence against women whose consequences even transcend the person of the victim[336].

394. Similarly, gender-based violence, i.e. violence directed against a woman because she is a woman or violence that affects women disproportionately, is a form of discrimination against women, as has been pointed out by other international human rights protection bodies, such as the European Court of Human Rights and the Committee of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter also "CEDAW"). Both the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belem do Para" (hereinafter also "Convention of Belem do Para") (preamble and article 6) and the CEDAW (preamble) have recognized the link between violence against women and discrimination. In the same sense, the Convention of Belem do Para affirms that "violence against women is an offense against human dignity and a manifestation of historically unequal power relations between women and men".

395. On the other hand, the Court has considered that the severe suffering of the victim is inherent to rape, and in general terms, rape, like torture, pursues, among others, the purposes of intimidating, degrading, humiliating, punishing or controlling the person who suffers it. In order to classify rape as torture, the intentionality, the severity of the suffering and the purpose of the act must be considered, taking into account the specific circumstances of each case[337] . In view of the above, the Court

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[336] *Cf. Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 30, 2010. Series C No. 215, para. 119, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico, supra*, para. 183.

[337] *Case of Fernández Ortega et al. v. Mexico, supra,* para. 128, and *Case of Azul Rojas Marín et al. v. Peru, supra,* para. 160.

has considered the sexual violations described in the facts of the case to constitute a form of torture (See Annexes I and IV).

B.8. On journalists who were victims of the systematic extermination of the Patriotic Union

396. On the other hand, the Court notes that several of the facts presented by the representatives and the Commission refer to direct victims of the extermination of the UP who were journalists by profession (See Annex IV).

397. On this point, it should be recalled that this Court has indicated that the professional practice of journalism "cannot be differentiated from freedom of expression; on the contrary, both are evidently intertwined, since the professional journalist is not, and cannot be, anything other than a person who has decided to exercise freedom of expression in a continuous, stable and remunerated manner "[338] . Furthermore, it is recalled that freedom of expression has an individual and a social dimension, from which it has derived a series of rights that are protected by this [article339] . This Court has affirmed that both dimensions are equally important and must be fully guaranteed simultaneously in order to give full effect to the right to freedom of expression, in the terms set forth in Article 13 of the [Convention340].

398. The Court has emphasized that freedom of expression, particularly in matters of public interest, "is a cornerstone of the very existence of a democratic society. Without an effective guarantee of freedom of expression, the democratic system is weakened and pluralism and tolerance are undermined; the mechanisms of citizen control and denunciation may become inoperative and, in short, a fertile ground for authoritarian systems to take [root341].

399. Likewise, the Court has pointed out that violations of Article 13 of the American Convention range from excessive restriction of freedom of expression to its total [suppression342]. One of the most violent forms of suppressing the right to freedom of expression is through homicides against journalists and social communicators. This type of violence against journalists can even have a negative impact on other journalists who must cover events of this nature, who may fear suffering similar acts of [violence343]. On the other hand, the Court highlighted, in the *case of Bedoya Lima et al. v. Colombia*, the need for the protection of women journalists against all types of violence and the particular risk that

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[338] *Cf. Advisory Opinion OC-5/85, supra,* paras. 72-74; *Case of Fontevecchia and D`Amico v. Argentina. Merits, Reparations and Costs.* Judgment of November 29, 2011. Series C No. 238, para. 46, and *Case of Moya Chacón and another v. Costa Rica, supra*, para. 66.

[339] *Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile, supra*, para. 74; *Case of Palacio Urrutia et al. v. Ecuador, supra*, para. 97, and *Rights to freedom of association, collective bargaining and strike, and their relation to other rights, with a gender perspective (interpretation and scope of Articles 13, 15, 16, 24, 25 and 26, in relation to Articles 1.1 and 2 of the American Convention on Human Rights, Articles 3, 6, 7 and 8 of the Protocol of San Salvador, Articles 2, 3, 4, 5 and 6 of the Convention of Belem do Para, Articles 34, 44 and 45 of the Charter of the Organization of American States, and Articles II, IV, XIV, XXI and XXII of the American Declaration of the Rights and Duties of Man).* Advisory Opinion OC-27/21 of May 5, 2021. Series A No. 27, para. 133.

[340] *Cf. Case of Ivcher Bronstein v. Peru, supra,* para. 149, and *Case of Moya Chacón et al. v. Costa Rica, supra,* para. 62.

[341] *Cf. Advisory Opinion OC-5/85, supra,* para. 70; *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194, para. 105, and *Case of Moya Chacón et al. v. Costa Rica, supra,* para. 65.

[342] *Case of Palamara Iribarne v. Chile*. *Merits, Reparations and Costs.* Judgment of November 22, 2005. Series C No. 135, para. 68, and *Case of Vélez Restrepo and next of kin v. Colombia, supra*, para. 139.

[343] *Cf. Case of Vélez Restrepo and family members v. Colombia, supra*, para. 148, and *Case of Carvajal Carvajal et al. v. Colombia, supra,* para. 175.

It indicated that when adopting measures for the protection of journalists, States should apply a strong differential approach that takes into account gender considerations, conduct a risk analysis and implement protection measures that consider the risk faced by women journalists as a result of gender-based violence[344].

IX.4
RIGHT TO HONOR AND DIGNITY DUE TO STATEMENTS MADE BY PUBLIC OFFICIALS AGAINST MEMBERS AND MILITANTS OF THE PATRIOTIC UNION[345]

A. Arguments of the parties and of the Commission

400. The ***Commission*** alleged that the members and militants of the Patriotic Union have been stigmatized by both state agents and non-state actors as "political arm of the FARC", "FARC collaborators", "FARC terrorists", "guerrilla allies", "FARC ideologues" at least between 1986 and 2013, that is, continuously over a period of more than 26 years. It indicated that the stigmatization against the members and militants of the UP, affected both the honor and the individual reputation of the alleged victims, as well as the image of the political organization and restricted the individual and collective projection of the alleged victims in the social sphere. In addition, it considered that the stigmatization aggravated the persecution against the members of the Unión Patriótica, and that it was this persecution and extermination that led to the loss of legal status of the political party in 2002 (as recognized by the Fifth Section of the Contentious Administrative Chamber of the Council of State in 2013 when it restored such status). The Commission concluded that the State violated Article 11 of the Convention, to the detriment of all the persons identified as alleged victims in the case.

401. The organizations ***Reiniciar and CJDH and DCD*** presented similar arguments to the Commission. The ***representatives of the Diaz Mansilla family*** presented autonomous arguments on the violation of this right and the right to honor and good name to the detriment of Miguel Angel.

402. The ***State*** referred to this point in the chapter on acknowledgment of responsibility, and indicated that it was limited to cases in which the motive was associated with the victims' membership in the UP in a context of systematic violence; to those in which, in the context of the complex scenario of victimization against the UP, the victims were subjected to a climate of stigmatization that exacerbated the violence against them, and that the State did not adopt the necessary and sufficient measures to prevent, mitigate and impede acts of harassment against the militants and sympathizers of the UP.

B. Considerations of the Court.

403. In the present case, both the representatives and the Commission indicated that the accusations and stigmatization against the members and militants of the Unión Patriótica by high-ranking public officials affected both the honor and the individual reputation of the alleged victims, as well as the image of the political organization and restricted the individual and collective projection of the alleged victims in the social sphere.

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344 *Cf. Case of Bedoya Lima et al. v. Colombia, supra*, para. 91.

345 Article 11 of the American Convention.

404. It should be recalled that the State recognized its responsibility for a violation of the right to honor and dignity, limiting it to cases where, "in the context of the complex scenario of victimization against the Unión Patriótica, the victims were subjected to a climate of stigmatization that exacerbated the violence against them," and that the State did not adopt the necessary and sufficient measures to prevent, mitigate and impede the acts of harassment against the activists and sympathizers of the Unión Patriótica (*supra* Chapter IV).

405. However, in Chapter IX.1, this Court concluded that the State was responsible for a violation of the rights of the leaders and members of the Patriotic Union due to a breach of the duty to respect (*supra* para. 290). The Court considers that the State is also responsible for a violation of the right to honor and dignity of the leaders and members of the UP in the following terms.

406. With regard to the statements of high-ranking public officials, this Court recalls that in other cases it has pointed out that in a democratic society it is not only legitimate, but sometimes a duty of the State authorities to pronounce on matters of public interest. However, in doing so, they are subject to certain limitations in that they must reasonably, although not necessarily exhaustively, verify the facts on which they base their opinions, and should do so with even greater diligence than is due to private individuals, due to their high position, the broad scope and possible effects that their expressions may have on certain sectors of the population, as well as to prevent citizens and other interested persons from receiving a manipulated version of certain facts[346] . In addition, they must bear in mind that as public officials they have a position of guarantor of the fundamental rights of individuals and, therefore, their statements may not disregard these[347] or constitute forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute to public deliberation through the expression and dissemination of their thoughts. This duty of special care is particularly accentuated in situations of greater social conflict, alterations of public order or social or political polarization, precisely because of the set of risks that they may imply for certain persons or groups at a given moment[348].

407. Along the same lines, in the *case of Manuel Cepeda Vargas v. Colombia*, the Inter-American Court found that Mr. Iván Cepeda was the object of public accusations by the then President of the Republic, accusing him, among other things, of "being a human rights fraudster and of using the protection of the victims of human rights violations to ask for money abroad" and indicated that "the situation of stigmatization that falls upon the relatives of Senator Cepeda Vargas has exposed them to continue receiving and receiving threats in the search for the clarification of the facts. These circumstances have been exacerbated even more by the long time that has elapsed, without having clarified all the responsibilities regarding the facts "[349.] Likewise, in the *case of the Gómez Paquiyauri Brothers v. Peru*, the Inter-American Court indicated that "it is proven that the alleged victims were treated as "terrorists", subjecting them and their families to the

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[346] *Cf. Case of Kimel v. Argentina, supra*, para. 79, and *Case of Villamizar Durán et al. v. Colombia, supra*, para. 154.

[347] *Cf. Case of Apitz Barbera et al ("Corte Primera de lo Contencioso Administrativo") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 5, 2008. Series C No. 182, para. 131, and *Case of Villamizar Durán et al. v. Colombia, supra*, para. 154.

[348] *Cf. Case of Perozo et al. v. Venezuela, supra*, para. 139, and *Case of Villamizar Durán et al. v. Colombia, supra,* para. 154.

[349] *Case of Manuel Cepeda Vargas v. Colombia, supra*, para. 209.

hatred, public contempt, persecution and discrimination, thus constituting a violation of Article 11 of the American Convention "[350].

408. In turn, at the domestic level, the Constitutional Court of Colombia has indicated that:

> In a country with the complexities of Colombia, the public denial by the State, without sufficient evidence, of a crime, a threat or harassment against a person or group of persons who, as independent journalists or human rights defenders, investigate or question the State itself, becomes an autonomous violation of the fundamental right to dignity, honor and truth of the threatened persons. Additionally, it constitutes a violation of society's right to collective memory. It could even constitute a serious omission of the duty to guarantee and protect the fundamental rights threatened. But even in certain extreme situations, when such manifestations incite violence against vulnerable persons or groups, this conduct may constitute a direct violation of the right to personal security and related rights of these persons. In these cases, if the public official caused damage, the State must make reparations and recover damages from the perpetrator[351].

409. With respect to this allegation, this Court finds, first, that the State acknowledged in a generic manner its responsibility for a violation of the right to honor and dignity against members of the Unión Patriótica who were subjected to a climate of stigmatization that occurred in the context of a scenario of victimization against that political party (*supra* Chapter VIII.A). On the other hand, there is no doubt about the context of systematic violence against members and activists of the Patriotic Union (*supra* Chapter VIII.A), nor that, from the mid-1980s until 2013, numerous public officials issued a series of statements linking the Patriotic Union and the Communist Party with the FARC (*supra* para. 202).

410. Thus, in 1986 a former defense minister stated in a public communiqué that "the real enemy" was the Patriotic Union and "its armed wing" the FARC; between 1987 and 1993 numerous public officials issued a series of statements linking the Patriotic Union and the Communist Party to the FARC (*supra* para. 194).

411. Similarly, various state bodies recognized that the stigmatization against members and militants of the Patriotic Union had an impact on the violence unleashed against them. The Justice and Peace Chamber in its judgment of October 31, 2013 against a former paramilitary commander known as "HH" indicated that "the violence exercised against the UP was mainly associated with the fact that the perpetrators identified or linked its members with the Revolutionary Armed Forces of Colombia" and that between 1987 and 1993 "numerous public officials publicly stated that the UP and the PCC had a direct link with the armed actions of the FARC, which stimulated actions of segregation, discrimination and stigmatization against them "[352].

412. Likewise, the Ombudsman indicated that the violence against the Patriotic Union was linked to its identification with the FARC[353]. For its part, the First Historical Memory Report stated that "this extermination, which began in 1986, was based on the premise that the Patriotic Union was the political arm of the FARC in order to justify the legitimacy of a political action against it.

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[350] *Case of the Gómez Paquiyauri Brothers v. Peru*, *supra*, para. 182.

[351] Constitutional Court of Colombia. Decision T-1037 of 2008.

[352] Judgment of the Superior Court of Bogotá, Justice and Peace Chamber of October 30, 2013, para. 966 (evidence file, folios 7 et seq.).

[353] Ruling T-959/06 of 06/20/06: Ruling of October 31, 2012 of the Superior Court of Bogotá in the framework of the proceedings against "H.H" (evidence file, folios 7 et seq.).

counterinsurgency that went beyond the combatants and extended to the political parties and movements that were considered to be related to the guerrillas "[354].

413. On this point, it should be recalled that in the *Cepeda Vargas v. Colombia case*, this Court found that statements by public officials linking the Patriotic Union and the Colombian Communist Party with the FARC, at a time when both parties "were considered internal enemies under the national security doctrine," placed the members of the Patriotic Union in a position of greater vulnerability and increased the level of risk they were already [at355].

414. In accordance with the foregoing, this Court agrees with what has been expressed by the Commission and the representatives, and understands that the State not only failed to prevent attacks against the reputation and honor of the alleged victims, but that, through its officials, and in particular its high authorities, it contributed and participated directly in them, aggravating the situation of vulnerability in which they found themselves and generating a factor to promote attacks against them.

415. In turn, as has been indicated, this victimization through stigmatization deepened the intimidating effect among party members and militants, which hindered their participation in the democratic game and, therefore, the exercise of their political rights, as well as the full exercise of their political rights of expression and assembly (*supra* para. 323).

416. In the plan of systematic violence against the members of the political party, the stigmatization as enemies and guerrillas, or other analogous, is much more than a simple slanderous affectation of honor, since it is close to a true typical conduct of public instigation to commit crimes.

417. Based on the foregoing, this Court concludes that the State violated the right to honor and dignity contained in Article 11 of the Convention, to the detriment of the persons identified in Annexes I and III.

IX.5
RIGHTS TO PERSONAL [INTEGRITY356], [PERSONAL] LIBERTY357, TO [JUDICIAL] GUARANTEES358, TO HONOR AND [DIGNITY359] AND TO [JUDICIAL] PROTECTION360, DUE TO THE ALLEGED UNFOUNDED CRIMINALIZATION, STIGMATIZATION AND ALLEGED TORTURE AGAINST MEMBERS AND MILITANTS OF THE UNIÓN PATRIÓTICA IN THE CASE KNOWN AS "LA CHINITA" AND IN THE CASE OF ANDRÉS PÉREZ BERRÍO AND GUSTAVO ARENAS QUINTERO.

A. Arguments of the parties and the Commission.

418. The ***Commission*** referred to the alleged undue criminalization of several of the alleged victims in this case. In general, the Commission referred to the information according to which there had been a plan in the region of Urabá directed by military authorities, groups, and other groups.

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[354] First Historical Memory Report of the National Commission for Reparation and Reconciliation, Trujillo, una tragedia que no cesa, cited by the Commission in its Merits Report, footnote 38 (merits file, folio 499).

[355] *Case of Manuel Cepeda Vargas v. Colombia*, *supra*, para. 85.

[356]Article 5 of the American Convention.

[357] Article 7 of the American Convention.

[358] Article 8 of the American Convention.

[359]Article 11 of the American Convention.

[360]Article 25 of the American Convention.

paramilitaries with the tolerance of civil and judicial authorities, to prevent the continuity of the Patriotic Union in the local governments of the region, which included the improper use of criminal law. He referred to two cases in particular, the case related to the "La Chinita" neighborhood, and the case of Andrés Pérez Berrío and others.

419. Regarding the first, he indicated that 32 members of the Unión Patriótica were criminally prosecuted for allegedly having participated in a massacre that occurred on January 23, 1994 in the Barrio La Chinita, in Apartadó, Antioquia. He alleged that there are several elements that allow for the conclusion that this was a case of undue criminalization. It emphasized that the arrests included several candidates, took place on the eve of elections and, as denounced by the Communist Party, were aimed at "removing the Patriotic Union from the political scene at any cost "[361].

420. The Commission concluded that, given that the criminal proceeding was a case of misuse of power, the detentions that resulted from it were arbitrary. It also noted that the process was annulled by the Supreme Court of Justice in 2005, that is, more than 10 years after the beginning of the process, and the preclusion orders that ordered the release of the defendants were issued in 2006, 11 years after the beginning of the process, so that the victims were unduly prosecuted for an unreasonable period without an effective remedy to resolve the human rights violations committed during the process. The Commission considered that the seriousness of the facts for which the alleged victims were improperly prosecuted, accompanied by a discrediting discourse against them, which continued even after the process was definitively closed, also affected their right to honor and reputation.

421. With regard to the Andrés Pérez Berrío case, the Commission recalled that Andrés Pérez Berrío, then mayor of the municipality of Chigorodó for the Unión Patriótica, as well as other officials of the municipal administration, alleged that they were detained and improperly subjected to criminal proceedings for the murder of Gabriel Ortega, a pre-candidate for mayor of Chigorodó for the UP. The Commission alleged that there were a series of irregularities in the process that demonstrate that there were insufficient elements to initiate criminal proceedings against the alleged victims. It concluded that the detentions that resulted from this process and kept the alleged victims deprived of their liberty for more than eleven months were arbitrary, and generated the social disrepute of the alleged victims, so that the process also affected their right to honor and dignity. Finally, it alleged that torture or cruel treatment took place in the context of both [proceedings362].

422. In view of the foregoing, the Commission found that the State violated the rights established in Articles 7(3), 8(1), 11 and 25(1) of the American Convention, in relation to Article 1(1) of the American Convention.

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[361] Second, it noted that in annulling the proceedings by means of the cassation decision of June 20, 2005, the Supreme Court of Justice indicated that serious violations of due process were committed in the process, and that it indicated that the prosecutor's office acted with "disregard for the rights and guarantees of the accused," that its actions "were not merely circumstantial," and that none of the actions of the regional prosecutor's office can be viewed in isolation, but rather as part of a conception of fundamental rights that is at odds with a social and democratic State governed by the rule of law. Third, the Commission emphasized that on January 31, 2006, the 20th Prosecutor's Office of Medellín, in its decision to close the investigation, expressly recognized that this was a case of undue criminalization.

[362] It alleged that: a) the alleged victims were detained and transferred to the 115iciembreros Voltígeros facilities and remained detained inside a truck, where they were constantly insulted and could only leave to go to the bathroom, and b) the weather conditions were extreme and the food was deficient. In addition, specifically, in the context of the Chinita massacre trial, Alcira Rosa Quiroz Hinestroza, Luis Enrique Ruiz Arango and Luis Aníbal Sánchez Echavarría stated that they were subjected to ill-treatment or torture (insults, death and rape threats, electrocutions, beatings, pins under their fingernails, asphyxiation, psychological torture to obtain information, among others). On the other hand, in the context of the trial for the death of Gabriel Ortega, several people (Andrés Pérez Berrío and Mario Urrego González) also denounced having been subjected to torture in a similar pattern,

of the same instrument, to the detriment of the persons subject to criminal proceedings identified in the present case, in the proceedings of the massacre of La Chinita and the proceedings for the death of Mr. Gabriel Ortega . Likewise, the State violated Articles 1, 6 and 8 of the IACPPT.

423. ***Reboot*** and ***Rights with Dignity and Human Rights Law Center*** presented similar allegations to the Commission and concurred in their conclusions.

424. The ***State requested the*** Court to declare that: a) although there was an international wrongful act; b) it has ceased; c) it was declared by the domestic organs, and d) there are adequate and effective remedies under domestic law for the alleged victims of the case to obtain reparation. Therefore, it requested the Court to refrain from declaring the responsibility of the State and the reparations that may be due.

B. Considerations of the Court

425. The Court notes that the Commission and the representatives refer to undue criminalization proceedings that took place against members and militants of the Unión Patriótica for three different events: a) the events related to the massacre of La Chinita, b) the proceedings for the death of Mr. Gabriel Ortega in which Mr. Andrés Pérez Berrío and other persons were prosecuted, and c) the Gustavo Arenas Quintero case. On the other hand, the State did not dispute that these undue criminalizations had taken place, but asserted that this unlawful act had ceased, that reparations had been made in the case of some of the alleged victims, and that the others had the possibility of filing administrative remedies against the State, for which reason the Court should not declare the State responsible for these facts. In relation to the alleged acts of torture, it is up to the Court to determine, in accordance with the evidence submitted, whether these extremes are proven.

B.1. Alleged violations of the rights to personal liberty, to judicial guarantees, to judicial protection, and to honor and dignity

426. This Court recalls that, in general terms, States have the power and - for some crimes - the duty to investigate those who violate the law within their territory. This implies the promotion and promotion of criminal proceedings against those allegedly responsible for criminal acts[363]. In effect, the obligation to investigate "not only derives from the conventional norms of international law that are mandatory for States Parties, but also from domestic legislation that refers to the duty to investigate ex officio certain unlawful conduct "[364] . Thus, it is up to the States Parties to provide, in accordance with the procedures and through the bodies established in their Constitution and laws[365] , which unlawful conduct shall be investigated ex officio and to regulate the regime of criminal action in domestic proceedings, as well as the rules that allow the offended or injured parties to denounce or exercise criminal action and, where appropriate, to participate in the investigation and in the process. To demonstrate that a certain remedy is adequate,

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[363] *Cf. Case of Perozo et al. v. Venezuela, supra*, paras. 298 and 299.

[364] *Case of García Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2007. Series C No. 168, para. 104, and *Case of Guzmán Albarracín et al. v. Ecuador, supra*, para. 178.

[365] *Cf. The Expression "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 32, and *Case of Villaseñor Velarde et al. v. Guatemala. Merits, Reparations*

and Costs. Judgment of February 5, 2019. Series C No. 374, note 192.

such as a criminal investigation, it will be necessary to verify that it is suitable to protect the legal situation that is supposedly infringed[366].

427. On the other hand, States also have the obligation to adopt all necessary measures to prevent investigations from subjecting to unjust or unfounded trials persons who legitimately exercise their rights or demand respect for and protection of human rights. Thus, when referring to the concept of misuse of power, the Court has indicated that the motive or purpose of a particular act of the State authorities becomes relevant for the legal analysis of a case, since a motivation or purpose other than that of the law and the system of justice that grants the State authority the power to act, may demonstrate whether the action can be considered arbitrary or a misuse of power.[367] The Court has also indicated that the State authorities are under an obligation to take all necessary measures to avoid, through investigations, subjecting to unjust or unfounded judgments those persons who legitimately exercise their rights or demand the respect and protection of human rights.

428. With regard to the facts linked to the proceedings in the cases related to "la Chinita," the case of Andrés Pérez Berrio et al. (trial for the murder of Gabriel Ortega), and the case of Gustavo Arenas Quintero, the State indicated that these facts constituted a violation of the rights to personal liberty (Article 7), judicial guarantees (Article 8), and access to justice (Article 25), in relation to the duty to respect contained in Article 1(1) of the Convention. It indicated that all of the above violations are attributable to the State of Colombia, inasmuch as they were committed by State agents such as the Office of the Attorney General of the Nation, organs of the ordinary justice system, and agents of the Public Forces who executed the arrests. Therefore, the two requirements for the existence of an international wrongful act were met, namely, the violation of an international obligation, and that it be attributable to the State.

429. In this regard, first, it should be reiterated that the inter-American system shares with the national systems the competence to guarantee the rights and freedoms set forth in the Convention, and to investigate and, if necessary, judge and punish the violations that occur; and second, that if a specific case is not resolved at the domestic or national level, the Convention provides for an international level in which the main organs are the Commission and the Court. In this sense, the Court has indicated that when an issue has been resolved in the domestic order, according to the provisions of the Convention, it is not necessary to bring it before the Inter-American Court for approval or confirmation. This is based on the principle of complementarity, which informs the inter-American human rights system across the board, which is, as expressed in the Preamble of the American Convention, "adjuvant or complementary to the [protection] offered by the domestic law of the American States.

430. Furthermore, this Court has indicated that the aforementioned complementary nature of international jurisdiction means that the system of protection established by the American Convention does not replace national jurisdictions, but rather complements them.[369] In this way, the State is the principal guarantor of the human rights of individuals, and therefore, if an act occurs that violates those rights, it is the State that must resolve the matter. In this way, the State is the main guarantor of the human rights of individuals, and therefore, if an act violates those rights, it is the State that must resolve the matter.

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[366] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 64, and *Case of Perozo et al. v. Venezuela, supra*, para. 299.

[367] *Cf. Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 23, 2013. Series C No. 266, para. 173, and *Case of San Miguel Sosa and others v. Venezuela, supra*, para. 121.

[368] *Cf. Case of Las Palmeras v. Colombia, supra,* para. 33, and *Case of Professors of Chañaral and other*

municipalities v. Chile. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 10, 2021. Series C No. 443, para. 204.

[369] *Case of Tarazona Arrieta et al. v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 15, 2014. Series C No. 286*, para. 137, and *Case of Casierra Quiñonez et al. v. Ecuador, supra*, para. 93.

at the domestic level and, if necessary, make reparations, before having to respond before international instances[370]. In this sense, recent jurisprudence has recognized that all authorities of a State Party to the Convention have the obligation to exercise a control of conventionality, so that the interpretation and application of national law is consistent with the State's international human rights obligations[371].

431. It follows from the foregoing that in the inter-American system there is a dynamic and complementary control of the conventional obligations of the States to respect and guarantee human rights, jointly between the domestic authorities (primarily obliged) and the international instances (in a complementary manner), so that the decision criteria, and the protection mechanisms, both national and international, can be shaped and adequate to each other[372]. Thus, the jurisprudence of the Court shows cases in which, in accordance with international obligations, the domestic organs, instances or courts have adopted adequate measures to remedy the situation that gave rise to the case[373]; have already resolved the alleged violation[374]; have ordered reasonable reparations[375], or have exercised an adequate control of conventionality[376]. In this sense, the Court has pointed out that State responsibility under the Convention can only be demanded at the international level after the State has had the opportunity to recognize, in its case, a violation of a right, and to repair by its own means the damage caused[377].

432. In relation to the allegations of the Commission and the representatives regarding the proceedings in the cases related to "la Chinita," the case of Andrés Pérez Berrio et al, and the case of Gustavo Arenas Quintero, the Court finds that the violations in relation to a) the detentions, and b) judicial guarantees and judicial protection have already ceased, since in the case of the Chinita case by means of the judgment of the Supreme Court of Justice and the resolutions of the Prosecutor's Office, and in the other two cases by means of the resolutions of preclusion, the alleged victims were released and the proceedings against them were terminated.

433. On the other hand, the Court notes that 13 victims and/or relatives of victims of improper prosecutions in relation to these events filed appeals for direct reparation before the Colombian administrative jurisdiction. In four cases these appeals were resolved in their favor and are still pending; in seven other cases these appeals are still pending.

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[370] *Cf. Case of Acevedo Jaramillo et al. v. Peru. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*, para. 66, and *Case of Casierra Quiñonez et al. v. Ecuador, supra*, para. 93.

[371] *Cf. Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs.* Judgment of December 1, 2016. Series C No. 330, para. 93, and *Case of National Federation of Maritime and Port Workers (FEMAPOR) v. Peru.* Preliminary Objections, Merits and Reparations. Judgment of February 1, 2022. Series C No. 448, para. 99.

[372] *Cf. Case of the Santo Domingo Massacre v. Colombia, supra*, para. 143, and *Case of Vera Rojas et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 1, 2021. Series C No. 439, para. 139.

[373] *Cf. Case of Tarazona Arrieta et al. v. Peru, supra,* paras. 139-141, and *Case of Vera Rojas et al. v. Chile, supra*, para. 139.

[374] See, for example, *Case of Amrhein et al. v. Costa Rica, supra*, paras. 97-115, and *Case of Vera Rojas et al. v. Chile, supra*, para. 139, para. 104.

[375] See, for example, *Case of the Santo Domingo Massacre v. Colombia, supra,* paras. 334-336, and *Case of Vera Rojas et al. v. Chile, supra*, para. 139.

[376] See, for example, *Case of Gelman v. Uruguay, supra*, para. 239, and *Case of Vera Rojas et al. v. Chile, supra*, para. 139.

[377] *Cf. Case of the Santo Domingo Massacre v. Colombia, supra,* para. 143, and *Case of Vera Rojas et al. v. Chile, supra*, para. 139.

The remaining victims did not file appeals, and in two cases the claim was denied and the case was closed[378]. The rest of the victims of these events did not file appeals.

434. In relation to this last point, the State indicated that the victims did not go to request reparation and that this is attributable solely to the victims and their representatives, and therefore, since the remedy was available, the State would not be liable. In this regard, the Court understands that this argument of the State could be admissible, and eventually subject to an analysis, if it had been presented as a plea of preliminary objection for non-exhaustion of domestic remedies. However, in the merits stage of the case, it is not up to the Court to determine whether the available and effective remedies were exhausted by the alleged victims to determine the State's responsibility. In this sense, for this Court, it could not be concluded that the wrongful act that ceased and was recognized by the State was also repaired by the mere existence of the effective remedy that was not pursued.

435. On the other hand, this Court understands that neither can there be a hypothesis of reparation on the part of the State when there is a favorable first instance judgment that is not final. Regarding the victims who have appeals pending resolution, or those for whom the appeals were denied and the cases archived, this Court understands that these cannot be interpreted as hypotheses of reparation by the State when there is a favorable first instance judgment that is not final.

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[378] They are detailed below: a) on October 29, 2013 the Contentious Administrative Court declared the Superior Council of the Judiciary and the Attorney General's Office jointly and severally liable for the unjust deprivation of liberty of Gustavo Manuel Arcia. On June 21, 2017 after the first instance judgment was appealed, a conciliatory agreement was approved between the plaintiffs and the Attorney General's Office; b) Mr. Francisco Eluber Calvo Sánchez filed a direct reparation action for the unjust deprivation of his freedom before the Administrative Court of Antioquia in 2007 instance that decided to grant the claims filed by him, however, the judgment was appealed, so today it is before the Council of State and as of September 17, 2019 to the office for judgment; c) Mr. Nelson Campo Núñez filed an action for direct reparation for the unjust deprivation of his freedom filed before the Administrative Court of Antioquia in November 2007 and that in 2012, by referral of the Court, the case reached the Council of State, which issued a judgment on September 26, 2016 declaring the State to be patrimonially liable; d) Oscar de Jesús Lopera Arango filed an action for direct reparation for the unjust deprivation of his freedom and the unfounded judicialization, which was filed before the Administrative Court of Antioquia. In 2012, a judgment was issued partially granting the claims of the lawsuit. In October 2012, a conciliatory hearing was convened; e) Elizabeth López Tobón filed a direct reparation action for the unjust deprivation of her freedom, which was resolved by the Administrative Court of Antioquia and is still in second instance proceedings. On June 27, 2018, the process was accumulated by the Council of State together with other related lawsuits; f) Gonzalo de Jesús Peláez Castañeda filed a direct reparation action against the Attorney General's Office, Superior Council of the Judiciary, Ministry of Defense and National Army. On December 7, 2012, a judgment was issued accepting the plaintiffs' claims. g) Alcira Rosa Quiroz Hinestroza filed an action for direct reparation for the unjust deprivation of her liberty, which was granted on July 23, 2012 by the Administrative Court of Antioquia, although it was appealed by the Prosecutor's Office and the Superior Council of the Judiciary. The process, as of April 2013, is in charge of the Council of State and on September 17, 2019, the accumulation of this was decreed; h) Luis Enrique Ruiz Arango filed a direct reparation action for the unjust deprivation of his freedom which was resolved by the Administrative Court of Antioquia in January 2013. In a judgment of December 18, 2012, the Administrative Court declared the State responsible for the unjust deprivation of liberty; i) Luis Aníbal Sánchez Echavarría filed an action for direct reparation for the arbitrary deprivation of his liberty and the unfounded judicialization. On May 30, 2013, the Administrative Court of Antioquia declared jointly and severally liable the Superior Council of the Judiciary and the Attorney General's Office for the unjust deprivation of liberty of Mr. Luis, a decision that was appealed, so it is now before the Council of State and last June 28, 2018 its accumulation was decreed;
j) in the case of Andrés Pérez Berrío, the Council of State, by judgment of July 24, 2013, declared the Attorney General's Office of the Nation financially liable for the unjust deprivation of liberty; k) Milton Guillermo Nieto Triana filed an action for direct reparation for the unjust deprivation of his freedom and the unfounded judicialization, which was filed before the Administrative Court of Antioquia and has been filed since December 3, 2002, and l) Yomar Enrique Hernández Pineda filed an action for direct reparation before the Administrative Court of Antioquia for the arbitrary deprivation of his liberty and the violation of his judicial guarantees, which was denied in the first instance, and is currently before the Council of State for a decision on appeal.

reparation by the State even when there is a favorable judgment of first instance that is not final.

436. Regarding the cases in which the State recognized, ceased and remedied the violation of the rights to personal liberty, to judicial guarantees, to judicial protection due to the facts of undue judicialization, the Court concludes that the same were remedied by the domestic authorities. Therefore, the State is not responsible for the violation of the rights to judicial guarantees (Article 8 of the Convention); to judicial protection (Article 25 of the Convention), to personal liberty (Article 7 of the Convention), to honor and dignity (Article 11 of the Convention), and to psychological integrity (Article 5 of the Convention) to the detriment of Gustavo Manuel Arcia, Francisco Eluber Calvo Sánchez, Nelson Campo Núñez, and Andrés Pérez Berrío.

437. As for the other victims, that is, those who have not received reparations, who did not file an action for reparations, or who only have a favorable first instance decision, the State acknowledged that the facts of unfounded criminalization led to a violation of the rights to personal liberty (Article 7), judicial guarantees (Article 8) and access to justice (Article 25), in relation to the duty to respect contained in Article 1(1) of the Convention. In this sense, this Court finds the State responsible for a violation of these rights to the detriment of Albeiro de Jesús Bustamante Sánchez; María Mercedes Úsuga de Echavarría; Milton Guillermo Nieto; Alexander de Jesús Galindo Muñóz; Oscar de Jesús Lopera Arango; Alcira Rosa Quiroz Hinestroza; Elizabeth López Tobón; Gonzalo de Jesús Peláez Castañeda; Luis Aníbal Sánchez Echavarría; Luis Enrique Ruiz Arango; Yomar Enrique Hernández Pineda; Cipriano Antonio Ruiz Quiroz; Mario Urrego González; Melquisedec Espitia; and Gustavo Arenas Quintero.

438. In addition to the above, the Commission and the representatives alleged a violation of the rights to dignity and honor due to the same facts.

439. With respect to the foregoing, this Court recalls that Article 11 of the Convention recognizes that everyone has the right to respect for his or her honor, prohibits any unlawful attack on honor or reputation, and imposes on States the duty to provide the protection of the law against such attacks. In general terms, the right to honor relates to self-esteem and self-worth, while reputation refers to the opinion that others have of a [person379]. The Court has found this right to be violated in cases where it was proven that the State had subjected individuals or groups of individuals to hatred, stigmatization, public contempt, persecution or discrimination through public statements by public [officials380].

440. Furthermore, the Court has established that a judicial proceeding does not, in and of itself, constitute an illegitimate affectation of a person's honor or dignity. The process serves the purpose of resolving a controversy, even if this could indirectly and almost inevitably cause discomfort to those who are subject to prosecution. To hold otherwise would exclude the settlement of disputes through litigation. On the other hand, the sanction applied at the end of a trial is not necessarily aimed at undermining those values of the person, in other words, it does not necessarily entail or aim at discrediting the [defendant381].

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[379] *Cf. Case of Tristán Donoso v. Panama*. *Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193, para. 57, and *Case of Moya Chacón et al. v. Costa Rica, supra,* para. 73.

[380] *Cf. Case of Miguel Castro Castro Castro Prison v. Peru, supra*, paras. 358 and 359, and *Case of Andrade Salmón v. Bolivia, supra*, para. 183.

[381] *Cf*. *Case of Cesti Hurtado v. Peru. Reparations and Costs*. Judgment of May 31, 2001. Series C No. 78, para. 177, and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 133.

441. Notwithstanding the foregoing, this Court notes that these improper prosecutions, which were acknowledged by the State, are part of a broader context of acts of violence, stigmatization, discrediting and discrediting of the members and leaders of the Unión Patriótica political party, who were systematically accused of aiding the guerrillas (*supra* para. 342). In this context, for this Court, these improper procedures, which were accompanied by detentions that in some cases lasted for extended periods of time, produced violations of rights that extend beyond the spheres of the rights to due process and personal liberty.

442. In this regard, this Court finds that due to the improper prosecutions carried out by the Colombian authorities, the State is also responsible for a violation of the rights to dignity and honor contained in Article 11 of the American Convention to the detriment of Albeiro de Jesús Bustamante Sánchez; María Mercedes Úsuga de Echavarría; Milton Guillermo Nieto; Alexander de Jesús Galindo Muñóz; Oscar de Jesús Lopera Arango; Alcira Rosa Quiroz Hinestroza; Elizabeth López Tobón; Gonzalo de Jesús Peláez Castañeda; Luis Aníbal Sánchez Echavarría; Luis Enrique Ruiz Arango; Yomar Enrique Hernández Pineda; Cipriano Antonio Ruiz Quiroz; Mario Urrego González; Melquisedec Espitia, and Gustavo Arenas Quintero.

B.2. Concerning the alleged violations of personal integrity and the alleged acts of torture

443. The Court notes that allegations were presented regarding the harm caused by these trials and deprivations of liberty to the personal integrity of some of the defendants who claimed to have been subjected to ill-treatment and torture, namely: a) Alexander de Jesús Galindo Muñoz; b) Oscar de Jesús Lopera Arango; c) Gonzalo de Jesús Peláez Castañeda; d) Luis Enrique Ruiz Arango; e) Luis Aníbal Sánchez Echavarría, and f) Andrés Pérez Berrío. In turn, the Commission indicated that María Mercedes Úsuga de Echavarría was the victim of an attack against her integrity while in detention, although it did not refer to alleged acts of torture. For its part, the State clarified that its acknowledgement of responsibility in relation to the improper prosecutions did not include the alleged acts of torture or ill-treatment that some of them had suffered.

444. With regard to the case of Alexander de Jesús Galindo Muñoz, this Court notes that it was alleged that after the arrest, the alleged victim was taken to the Carepa Battalion (XVII Brigade), where he was tortured and a bag was placed over his head and he was accused of being a guerrilla fighter. The evidence supporting these allegations consists of statements made by his partner, Mrs. Gloria Patricia Ochoa Acosta before Reiniciar on March 3, 2009 (See Annex IV).

445. In the case of Oscar de Jesús Lopera Arango, it was indicated that he was beaten and that his head was covered with a plastic bag. The evidence supporting these allegations consists of statements made by the alleged victim (See Annex IV).

446. Regarding Gonzalo de Jesús Peláez Castañeda, it was indicated that he was transferred to the XVII Brigade of the National Army, based in the municipality of Carepa, and that, once he arrived, he was taken to a subway room where he was threatened and psychologically tortured to obtain information about FARC guerrillas. The evidence supporting these allegations consists of statements made by the alleged victim (See Annex IV).

447. As for Luis Enrique Ruiz Arango, it was alleged that members of the Army forcibly broke into his house, captured him and took him to the Voltígeros Battalion. According to his statement, the alleged victim was tortured in those facilities and was threatened not to denounce (See Annex IV).

448. In relation to Luis Aníbal Sánchez Echavarría, it was indicated that after his arrest he was transferred to the village of Nueva Colonia, Antioquia, where he was subjected to torture. According to his statement, he was beaten, pins were inserted in his fingernails, he was beaten, his toenails were stomped on and his body weight was unloaded with the heels of the military boots of his captors (See Annex IV).

449. Regarding Andrés Pérez Berrío, it was alleged that while in the 17th Brigade of the Army to which he was taken after his detention, he was the victim of torture consisting of insults, blows to the abdomen and immersion of his head in a toilet (See Annex IV). Pérez Berrío stated that the torture was brought to the attention of the Prosecutor in an investigation, at which the Prosecutor became upset and confronted the alleged victim with the agent. The evidence supporting these allegations consists of statements made by the alleged victim (See Annex IV).

450. Regarding the alleged attempt against María Mercedes Úsuga de Echavarría while she was in prison, it was alleged that she suffered attempts against her integrity that did not materialize (people who claimed to be family members sought to see her in person, but given the suspicions that her integrity was compromised, they were not allowed to visit her). The evidence supporting these allegations consists of statements made by the alleged victim (See Annex IV).

451. With regard to these allegations of torture, this Court notes that the evidence in the case file is the statements of the alleged victims. Likewise, the Court notes that: a) the State acknowledged that the alleged victims were subjected to improper proceedings and were illegitimately deprived of their liberty for prolonged periods of time;
b) during those periods during which these persons were deprived of their liberty, they were under the control of the State; c) this is framed in a context of systematic acts of violence against the militants and members of the Unión Patriótica, several of which were carried out by members of the security forces; d) the State has not yet carried out any investigation into these alleged acts of torture, and e) the State did not provide any evidence or allegations to dispel any doubt about the ill-treatment that these persons may have received. For this Court, it is reasonable to presume that, in the course of these improper proceedings, and the consequent deprivations of liberty, the victims who were helpless before the State's criminal prosecution apparatus were also helpless before any act of violence against them by the authorities.

452. In this sense, in accordance with the particular characteristics of this case, for this Court, there is sufficient evidence and elements of proof to presume that the State is also responsible for the acts of torture that the alleged victims allege to have received during their detention. Therefore, the State is responsible for a violation of Article
5.2 of the Convention, to the detriment of Alexander de Jesús Galindo Muñoz; Oscar de Jesús Lopera Arango; Gonzalo de Jesús Peláez Castañeda; Luis Enrique Ruiz Arango; Luis Aníbal Sánchez Echavarría, and Andrés Pérez Berrío. It should be recalled that the Court lacks jurisdiction to declare the violation of Articles 1 and 6 of the ICPAT since this instrument was ratified by Colombia after the time when these acts of torture took place.

453. Taking into consideration the same evidence and elements of proof contained in the case file (See Annex IV), the Court finds that the State is also responsible for a violation of the right to humane treatment contained in Article 5(1) of the Convention to the detriment of María Mercedes Úsuga de Echavarría for the attempts on her life that she allegedly suffered while she was deprived of her liberty.

454. Finally, it should be recalled that Articles 8 and 25 of the Convention imply that victims of allegations of torture must have effective judicial remedies which must be substantiated in accordance with due process of law. In accordance with these duties, once

the State authorities have knowledge of the act, they must "initiate

ex officio and without delay, a serious, impartial and effective investigation "[382] by all available legal means and aimed at determining the truth and the prosecution, capture, trial and eventual punishment of all those intellectually and materially responsible for the facts, especially when State agents are or may be involved.383 In addition, in relation to acts of torture, Article 8 of the Inter-American Convention against Torture establishes that the "authorities shall proceed ex officio and immediately to conduct an investigation into the case" when "there is an ex officio and immediate investigation of the case". Furthermore, in relation to acts of torture, Article 8 of the Inter-American Convention against Torture establishes that the "authorities shall immediately and ex officio proceed to conduct an investigation into the case" when "there is a complaint or well-founded reason to believe that an act of torture has been committed within [the] jurisdiction of the [State]".

455. In the instant case, there is no evidence that the facts of torture indicated by the Commission and the representatives had not initiated an investigation from the moment the authorities became aware of these allegations, that is, at least during the processing of the instant case before the Commission. Therefore, for this Court, the State is responsible for a breach of the duty to investigate the alleged acts of torture, contained in Articles 8 and 25 of the Convention, to the detriment of: a) Alexander de Jesús Galindo Muñoz; b) Oscar de Jesús Lopera Arango; c) Gonzalo de Jesús Peláez Castañeda; d) Luis Enrique Ruiz Arango; e) Luis Aníbal Sánchez Echavarría, and f) Andrés Pérez Berrío. Likewise, the State is also responsible for a violation of Article 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of these same persons.

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[382] *Cf*. *Case of the "Mapiripán Massacre" v. Colombia, supra*, paras. 219, 222 and 223, and *Case of the*

Massacre of Aldea Los Josefinos v. Guatemala, supra, para. 104.

[383] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case of Guachalá Chimbo et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of March 26, 2021. Series C No. 423, para. 200.

IX.6
THE RIGHTS TO JUDICIAL GUARANTEES, JUDICIAL PROTECTION AND THE DUTY TO INVESTIGATE ALLEGED ACTS OF TORTURE (ARTICLES [8384] AND 25.[1385] OF THE AMERICAN CONVENTION, ARTICLES [1386], [6387] AND [8388] OF THE CIPST AND ARTICLE [1B389] OF THE CIDFP).

A. Arguments of the parties and of the Commission

456. The ***Commission*** indicated that, according to the information reported, as well as based on the proven facts, the investigations carried out by the State have been incipient and insufficient. It warned that the most recent investigative [efforts390] were initiated and implemented long after the occurrence of most of the grave human rights violations declared. He argued that such efforts show a more recent willingness to clarify and punish the extermination against the Unión Patriótica, but for the purposes of the State's international responsibility, it has been materializing over the years. He emphasized that, although the duty to investigate is one of means and not of result, the number of sentences mentioned is very low if contrasted with the magnitude of the criminal act found. A continuous violation of fundamental rights that extended through various regions of the Colombian territory; that took the lives and injured the integrity of thousands of people, and that occupied an extensive period of recent history.

457. It also referred generically to the comprehensiveness of the cases and concluded that: the State did not demonstrate that it had investigated with due diligence, including the gathering of evidence conducive to the clarification of the facts because: a) in relation to the

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[384] Article 8 of the American Convention.

[385] Article 25.1 of the American Convention.

[386] Article 1 of the IACPPT: "The States Parties undertake to prevent and punish torture in accordance with the terms of the present Convention".

[387] Article 6 of the ICPAT: "In accordance with the provisions of article 1, States parties shall take effective measures to prevent and punish torture within their jurisdiction.//States Parties shall ensure that all acts of torture and attempts to commit such acts are offences under their criminal law and shall provide for severe penalties for such acts which take into account their grave nature. // Equally, States Parties shall take effective measures to prevent and punish, in addition, other cruel, inhuman or degrading treatment or punishment within their jurisdiction".

[388] Article 8 of the IACPPT: "The States Parties shall guarantee that any individual who alleges he has been subjected to torture within their jurisdiction shall have the right to have his case examined impartially // Furthermore, where there is an allegation or substantial grounds for believing that an act of torture has been committed within their jurisdiction, the States Parties shall ensure that their respective authorities proceed, ex officio and without delay, to investigate the case and to initiate, as appropriate, the relevant criminal proceedings.//Once the domestic legal system of the respective State and the remedies provided by it have been exhausted, the case may be submitted to international instances whose competence has been accepted by that State".

[389] Article 1b of the Inter-American Convention on Forced Disappearance of Persons establishes: "to punish within the scope of its jurisdiction the perpetrators, accomplices and accessories to the crime of forced disappearance of persons, as well as the attempt to commit the same [...]".

[390] According to the information provided by the State in 2014, of all the victims identified in this report, more than two decades after the events occurred, there are only 705 open cases and the progress of the proceedings is really negligible, since, according to the table provided by the State, there were 520 cases in the preliminary stage, 154 in the investigation stage and 28 cases with an indictment. In other words, more than 70% of the open cases are in the primary stage of investigation and a very low percentage have advanced to preliminary investigation and indictment. In relation to sentences, in June 2014, in the referred table the State indicated that there were 111 cases with sentences, of which 76 were anticipated sentences; 11 corresponded to acquittals, and 69 to orders or resolutions of preclusion. Then, in November 2017, the State indicated that there were 244 sentences, of which 205 were convictions, 16 acquittals, 1 of acceptance of charges, and 24 had other means

investigations opened in the Prosecutor's Office, it is found that most of them are at a preliminary stage, so the Commission understands that the investigations have not advanced due to the absence of sufficient evidence to move the process forward, and b) with respect to the acts of violence of the victims that are not registered in the databases of the Prosecutor's Office, the Commission notes that the State's omission has been even greater, since it has not even recognized such acts of violence, nor has it deployed its institutional apparatus to investigate them, despite the knowledge that it has had of them.

458. Regarding the duty to explore the lines of investigation, it found that, although the State currently refers to some lines of investigation that involve different actors in the commission of the acts of violence against members and militants of the UP, when the threats began to be presented and the investigations were initiated, the possible participation of third parties and State agents was not exhaustively analyzed, even though there were allegations that involved them. In addition, it considered that the State did not advance actions aimed at unraveling the criminal structures that participated in the acts of violence against members and militants of the Patriotic Union.

459. Likewise, it alleged that the reasonable time period had been violated in most of the investigations. It added that it did not find a valid justification for the State to have systematically failed, in a case of the magnitude of the instant case, to identify those responsible for the facts, to prosecute and punish them, and to take measures to protect the persons who were victims of threats before the perpetrators made an attempt on their lives. Therefore, it understood that the responsibility of the State is not limited to procedural inactivity for not promoting the corresponding judicial processes, but rather, seen in conjunction with the dimension of the criminality and the way in which the serious acts of violence operated, the absence of investigation implies tolerance and acquiescence with the same criminal activity that it failed to investigate, unravel and dismantle, and which, to this day, has not been precisely identified, as the State itself maintains to date.

460. In view of the foregoing, it concluded that the State is responsible for the violation of the rights to judicial guarantees and judicial protection established in Articles 8(1) and 8(2) of the Constitution.
25.1 of the American Convention, to the detriment of the members and militants of the Unión Patriótica identified in the List of Victims annexed to the Merits Report. It also found that the State is responsible for the violation of the obligations established in Article 1b of the IACPPF and in Articles 1, 6 and 8 of the IACPPT.

461. The organization ***Reiniciar*** presented similar allegations to the Commission and concurred in its conclusions.

462. The ***DCD and CJDH*** organizations agreed with the Commission and added generically that, in addition to the above, the current regulatory framework of the JEP under which the facts of the UP are being investigated is inconsistent with the right of access to justice of the alleged victims of the case to the extent that the investigations would be selective, the penalties that would be imposed would not be proportional, and would also cover only those most responsible.

463. The ***representatives of the Diaz - Mansilla family*** presented specific allegations regarding the violation of the rights to judicial guarantees and judicial protection: the lack of investigation, prosecution and punishment for the forced disappearance of Miguel Angel Diaz Martinez and the alleged refusal of the Colombian State to search for him. They indicated that during the investigations they only sought to determine the criminal and disciplinary responsibility of one of the perpetrators, the investigations lost sight of logical lines of investigation related to the participation or knowledge of the facts by members of the security forces, the possibility of the existence of a pattern of macro-criminality was not

contemplated, and that the State did not consider the possibility of the existence of a pattern of macro-criminality.

related to the persecution and extermination of members and sympathizers of the UP and the PCC, the criminal investigation process did not lead at any time to obtain a version of the facts from the investigated/convicted party. Furthermore, they indicated that, to date, thirty-five years after the events occurred, the Diaz Mansilla family does not know the truth about what happened. They added that there was also no effort by the Colombian State to investigate, judge and punish those who recurrently harassed and threatened the Díaz Mansilla family, until driving them into exile.

464. The ***State*** referred to this point in the chapter on acknowledgment of responsibility. It should be recalled that it also alleged that: (a) a deliberate omission by the State in terms of investigation, prosecution and punishment has not been proven, (b) the actions carried out by the domestic judicial bodies do not reflect the configuration of a deliberate omission, (c) the obstacles presented in the investigation, prosecution and punishment are not due to permissive conduct by Colombia, but to an overflow of institutional capacity, derived from the complexity of the domestic context, and (d) although it is still insufficient, the State has made some important progress, which cannot be ignored or disregarded.

465. He also referred to the complex Colombian transitional justice model and the conformity of its principles with international law, which is based on the principles of restorative justice, the centrality of victims' rights, the effective participation of victims, and the principle of conditionality. He also indicated that in the legislative and constitutional framework that has supported the SJP and the Justice and Peace System, in compliance with the previously mentioned standards, it has been conceived as a guiding parameter the duty of the State to analyze the cases, not in isolation, but jointly, in order to identify common characteristics and, from a global perspective, to clarify the existence of complex criminal structures that perpetrated the human rights violations. This model has highlighted the progress of this model in the attribution of responsibilities from Justice and Peace, the attribution of responsibilities from the Special Jurisdiction for Peace, in the investigation of international crimes. On the other hand, he referred to the articulations between these mechanisms with extrajudicial mechanisms such as the Truth Commission or the National Center for Historical Memory.

B. Considerations of the Court.

466. In accordance with the American Convention, the States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), which must be substantiated in accordance with the rules of due process of law (Article 8(1)), all within the general obligation of the States themselves to guarantee the free and full exercise of the rights recognized by the Convention to all persons under their jurisdiction (Article 1(1)). The right of access to justice must ensure, within a reasonable time, the right of the alleged victims or their next of kin to have everything necessary done to know the truth of what happened and to investigate, prosecute and, where appropriate, punish those responsible[391]. The Court has also indicated that the duty to investigate is an obligation of means and not of results, but it requires that the investigating body pursue the intended result; that is to say, it must carry out all those actions that are necessary to achieve the desired result.

[391] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections, supra*, para. 91, and *Case of Sales Pimenta v. Brazil, supra*, para. 106.

necessary actions and inquiries, by the legal means available, to achieve the determination of the truth[392].

467. Furthermore, the Court considers that compliance with the duty of States to investigate and punish serious human rights violations, such as those in the instant case, is not only an international obligation, but also provides essential elements for consolidating a comprehensive policy on the right to the truth, access to justice, effective measures of reparation and guarantees of non-repetition. Thus, judicial proceedings aimed at clarifying what happened in contexts of systematic human rights violations can provide a space for public denunciation and accountability for the arbitrary acts committed; they foster society's confidence in the rule of law and in the work of its authorities, legitimizing their actions; they enable social reconciliation processes based on the knowledge of the truth of what happened and the dignity of the victims, and, ultimately, they strengthen collective cohesion and the rule of law[393].

468. With regard to the allegations related to the rights to judicial guarantees and judicial protection in the framework of the investigations into the acts of violence against the members and militants of the Patriotic Union, it should be recalled that the State acknowledged its international responsibility (*supra* Chapter IV). However, in Chapter IX.1 This Court concluded that the State was responsible for a violation of the rights of the leaders and members of the Unión Patriótica for failure to comply with the duty to respect (*supra* para. 194). The Court considers that the State is also responsible for a violation of the rights to judicial guarantees and judicial protection in the following terms.

469. In the chapter on facts (*supra* para. VIII.C), reference was made to the state of several investigations and proceedings underway for the systematic violence against members and militants of the Patriotic Union (Unión Patriótica). On the other hand, it was mentioned that different domestic courts in Colombia have qualified the acts committed against the UP as genocide (in accordance with the provisions of the Colombian Criminal Code, which incorporates the concept of genocide against political groups), as a crime against humanity or war crimes[394].

470. With regard to the facts and victims to which the State's acknowledgment refers, this Court understands that it refers only to the facts related to the victims that the State acknowledged as such. Furthermore, the Court interprets, in accordance with the State's allegations, that this acknowledgment refers to the due diligence of the investigations, to the duty to clarify the facts and to the duty to publicly disseminate information on the results of the investigations in relation to those facts (*supra* para. 21).

471. In addition, the Court observes that this clear lack of investigation and criminal prosecution of the facts has had a direct effect on the investigation of the multiple and serious human rights violations that took place against the militants and members of the UP, also preventing, up to now, a differentiated analysis of the facts.

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[392] *Cf. Case of Velásquez Rodríguez v. Honduras*. Merits, *supra*, para. 177; *Case of the Serrano Cruz Sisters v. El Salvador, supra*, para. 83, and *Case of Vicky Hernández et al. v. Honduras, supra,* para. 103.

[393] See also, United Nations, Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Doc. A/HRC/27/56, 27 August 2014, para. 22, and Report of the Secretary-General, The rule of law and transitional justice in conflict and post-conflict societies, Doc. S/2004/616, 3 August 2004, para. 39.

[394] *Cf.* Superior Court of Bogotá, Justice and Peace Chamber, Judgment of October 10, 2013 (evidence file, folios 214796 et seq.).

The impact that these violations had on the different groups in vulnerable situations, such as the children and women in this case, which also makes the specific violations committed against these groups invisible.

472. On the other hand, in response to the allegations that the investigations into the acts against the members and militants of the UP were not carried out within a reasonable time, this Court recalls that the evaluation of the reasonable time must be analyzed in each specific case, in relation to the total duration of the proceedings[395]. Thus, four elements have been considered to analyze whether the guarantee of reasonable time was complied with, namely: a) the complexity of the case, b) the procedural activity of the interested party, c) the conduct of the judicial authorities, and d) the impact on the legal situation of the alleged victim[396]. In the present case, taking into account the particular characteristics of the case, an analysis of the cases as a whole of the reasonable time period will be made.

473. Regarding the first element, this Court has taken into account various criteria to determine the complexity of a case. Among them are: a) the complexity of the evidence[397]; b) the plurality of parties to the proceedings[398] or the number of victims[399]; c) the time elapsed since the alleged criminal act has been known400; d) the characteristics of the remedy contained in the domestic legislation[401], or d) the context in which the facts occurred[402]. In the instant case, the proceedings regarding the acts of systemic violence against the members and militants of the Unión Patriótica are highly complex due to the diversity of actors involved in those acts, because the violence was often carried out with the support of State actors, and also because it was carried out by non-State actors with extensive macro-criminal structures (*supra* Chapter VIII.A).

474. Regarding the second element, it is up to the Court to evaluate whether the interested parties made interventions that were reasonably required of them in the different procedural stages[403]. In the instant case, although it is true that the acts of violence were not always reported to the authorities, it is also true that, as has been seen in several of the cases, this corresponded to a well-founded fear on the part of the victims and their next of kin of reprisals against them by the armed actors who controlled those areas and very often threatened them and forced them to move (See Annex IV).

475. Regarding the third element, the Court has understood that, since the judicial authorities, as the authorities in charge of the process, have the duty to direct and channel the judicial proceedings

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395 *Cf. Case of Suárez Rosero v. Ecuador, supra*, para. 71, and *Case of Sales Pimenta v. Brazil*, *supra*, para. 107.

396 *Cf. Case of Genie Lacayo v. Nicaragua. Merits, Reparations and Costs.* Judgment of January 29, 1997. Series C No. 30, para. 78, and *Case of Sales Pimenta v. Brazil*, *supra*, note 180.

397 *Cf. Case of Genie Lacayo v. Nicaragua, supra*, para. 78, and *Case of Sales Pimenta v. Brazil*, *supra*, note 180.

398 *Cf. Case of Acosta Calderón v. Ecuador. Merits, Reparations and Costs.* Judgment of June 24, 2005. Series C No. 129, para. 106, and *Case of Sales Pimenta v. Brazil*, *supra*, note 180.

399 *Case of Furlán and family members v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2012. Series C No. 246, para. 156, and *Case of Sales Pimenta v. Brazil*, *supra*, note 180.

400 *Mutatis mutandis, see Case of Heliodoro Portugal v. Panama, supra*, para. 150, and *Case of Villamizar Durán and others v. Colombia, supra*, para. 107.

401 *Cf. Case of Salvador Chiriboga v. Ecuador. Preliminary Objection and Merits*. Judgment of May 6, 2008. Series C No. 179, para. 83, and *Case of Sales Pimenta v. Brazil*, *supra*, note 180.

402 *Cf. Case of Furlán and family members v. Argentina, supra*, para. 156, and *Case of Sales Pimenta v. Brazil*, *supra*, note 180.

403 *Cf. Case of Fornerón and daughter v. Argentina, supra,* para. 69, and *Case of Díaz Loreto et al. v. Venezuela, supra,*

para. 117.

in order not to sacrifice justice and due process in favor of formalism[404]. This Court notes that in the majority of cases the investigation took a long time to be initiated despite the fact that the authorities were aware of the facts that had occurred. In turn, decades or even decades after the facts occurred, several investigations are still in the initial stages or there is no news of them (See Annex IV and *supra* Chapter VIII.A).

476. With regard to the effect generated by the duration of the proceedings on the legal situation of the persons involved, the Court considers that these facts should have been investigated more quickly by the authorities to the extent that:
a) b) the impact of the lack of investigation has been seen, and to what extent an environment of impunity generates new human rights violations in a context in which the members and militants of the Unión Patriótica were being exterminated (*supra* Chapter VIII.A). In sum, the omissions and delays in the proceedings prevented the fulfillment of the preventive function of the State's obligation to investigate serious human rights violations.

477. According to the foregoing, although this Court notes that the proven facts refer to 256 convictions against those responsible for acts against UP militants and members and 709 proceedings that are underway in advanced stages, and even though it notes that in several cases judicial decisions have been reached in a more meager period of time (See Annex IV), these recognized acts of violence have not reached a judicial determination within a reasonable period of time, and furthermore, in most of the cases for which there is an account of the facts, the initiation of the investigation violated the principle of a reasonable period of time.

478. In addition to the foregoing, with regard to the cases that were not recognized by the State and for which this Court found that it was appropriate to declare the State responsible, this Court finds that there is no updated information or data on those investigations. In this sense, this Court concludes that the rights to judicial guarantees and to judicial protection, contained in Articles 8 and 25 of the American Convention, in relation to Article 1(1) of the same instrument, were also violated, to the detriment of the victims indicated in Annexes I and III, and the next of kin mentioned in Annexes I and III.
II. Likewise, the State violated the right to the truth as an autonomous right with respect to the State's duty to investigate and clarify the facts, and to publicly disseminate the information to the detriment of those same persons.

479. With respect to the foregoing, it should be recalled that this Court has indicated that every person, including the next of kin of the victims of serious human rights violations, has the right to know the truth. Furthermore, throughout its jurisprudence, this Court has emphasized the dual dimension of the right to the truth, which takes the form of an individual right to know the truth for the victims and their next of kin, as well as a right of society as a whole. Consequently, the victims' next of kin and society must be informed of everything that happened in relation to such violations. As this Court has held, although the right to know the truth has been fundamentally framed within the right of access to justice, it is not limited to procedural or judicial truth, and the truth is that this right to the truth has autonomy, since it has a broad nature and its violation can affect different rights contained in the American Convention, depending on the context and circumstances.

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[404] *Cf. Case of Myrna Mack Chang v. Guatemala, supra*, para. 211, and *Case of Maidanik et al. v. Uruguay. Merits and Reparations*. Judgment of November 15, 2021. Series C No. 444, para. 210.

The right to judicial guarantees and judicial protection, recognized by articles 8 and 25 of the treaty[406] , or the right of access to information, protected by article 13[407].

480. Likewise, this Court has indicated that, in cases of forced disappearance, part of the right to the truth is the "right of the victim's next of kin to know what the victim's fate was and, if applicable, where his remains are located. As the United Nations High Commissioner for Human Rights has pointed out, "[t]he right to the truth entails having full and complete knowledge of the acts that took place, the persons who participated in them and the specific circumstances, in particular the violations perpetrated and their motivation "[409] . 409 In this sense, it is relevant that, depending on the case, the inquiries aimed at determining what happened are carried out, for example, considering a gender perspective, or the political motivations that the human rights violations may have had.

481. On the other hand, in relation to the allegation of the Commission and the representatives according to which "as a whole," the absence of investigation implies tolerance and acquiescence with the same criminal activity that was not investigated, this Court notes that they did not indicate precisely in which of the specific cases this form of attribution of responsibility materialized. For this Court, it is reasonable to infer that, in several cases, the actions of the authorities in charge of the investigations operated as a form of deliberate acquiescence to cover up for the perpetrators of the facts; however, in several other cases it could be proven that the authorities in charge of the criminal prosecution of the investigation of the facts were able to reach determinations on the responsibilities and perpetrators of the facts (See Annex IV).

482. Accordingly, this Court lacks the evidence to make a general finding of deliberate omissions on the part of all the State authorities responsible for investigating these events. At the outset, this Court notes that the judicial proceedings in the framework of jurisdictions such as the special Justice and Peace jurisdiction served as a basis for several members of the paramilitary groups to present versions and statements that were widely used in the framework of these proceedings by the representatives and the Commission when presenting the facts of the different cases (See Annex IV and *supra* Chapter VIII.A).

483. On the other hand, for this Court, with regard to the logical lines of investigation, in several cases, particularly in more remote times, most of them were focused on the determination of individual responsibility without a systemic crime perspective. Notwithstanding the foregoing, in more recent times, and as recognized by the Commission, there has been a sophistication of the hypotheses of investigation both in the ordinary justice system and in the special jurisdiction of Justice and Peace, as well as in the Special Jurisdiction of Justice and Peace.

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[405] *Case of the Los Josefinos Village Massacre v. Guatemala*, *supra*, para. 114; *Case of Maidanik et al. v. Uruguay*, *supra*, para. 176; *Case of Vereda La Esperanza v. Colombia, supra*, para. 220, and *Case of Omeara Carrascal et al. v. Colombia, supra*, para. 256.

[406] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra, para.* 181; *Case of Guachalá Chimbo et al. v. Ecuador, supra*, para. 213, and *Case of Maidanik et al. v. Uruguay, supra*, para. 176.

[407] *Cf. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil, supra*, para. 200, and *Case of Maidanik et al. v. Uruguay, supra*, para. 176.

[408] *Case of Velásquez Rodríguez*, *supra,* para. 181, and *Case of Maidanik et al. v. Uruguay, supra,* para. 177.

[409] *Case of Maidanik et al. v. Uruguay, supra*, para. 177, and United Nations. Human Rights Council (2009) Report of the Office of the United Nations High Commissioner for Human Rights. The Right to the Truth. Document E/CN.4/2006/91, para. 59.

The Peace Commission (JEP), which addresses criminality against members and militants of the UP in a systemic way.

484. Finally, with regard to the allegations related to the Special Jurisdiction for Peace (JEP) scheme, in particular those referring to the prioritization and selection of crimes and perpetrators, or to the proportionality of the penalties provided for in that scheme, this Court finds that this jurisdiction, which analyzes the cases as a whole seeking to identify common characteristics and clarify the existence of complex criminal structures that perpetrated the human rights violations, is only at the beginning of the investigations into the events of the Patriotic Union through cases 005 and 006. In this sense, the Court lacks the elements to pronounce on the effectiveness of this jurisdiction or on whether or not it violated the rights to judicial guarantees and judicial protection.

485. Without prejudice to the foregoing, this Court recalls that in the case of *Vereda la Esperanza v.* Colombia*,410* it indicated with respect to the prioritization of crimes and perpetrators that the need to use the mechanism of rationalization of the criminal action called "prioritization" is in accordance with what has been established by different international entities, such as the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition;411 the MAPP-OAS412 or the Inter-American Commission itself.[413] *The Court also recalls that in the case of Vereda la Esperanza v. Colombia,410* the Court has indicated the need to use the mechanism of rationalization of the criminal action called "prioritization.

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[410] *Case of Vereda La Esperanza v. Colombia*. *Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2017. Series C No. 341, para. 228.

[411] In this regard, the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition indicated that in "countries in transition, whether emerging from authoritarian rule, conflict or a combination of both, are characterized by the commission of a large number of crimes involving possibly several thousand people and leaving behind a huge number of victims. There are cases where, at the beginning of a transition, it may be impossible to prosecute and punish those responsible, especially given the credibility, capacity and resource constraints that judiciaries almost inevitably face in the aftermath of repression or conflict, particularly in contexts where institutionalization is weak." Report *A/HRC/27/56*, United Nations, 27 August 2014.

[412] The Mission to Support the Peace Process in Colombia indicated that the Prosecutor General's Office should direct its efforts and teams of prosecutors to the investigation of macro-criminal phenomena, according to legally established prioritization and selection criteria, and, in any case, from this very moment, in accordance with the current investigation criteria, direct efforts to the study of those cases that respond to the above-mentioned guidelines. Among those that should be prioritized, of course, the trials of those most responsible, the investigation of the blocks for cases or massacres committed. Although the law is made to favor whoever submits to it, it is necessary to take care of any aspect that favors impunity. The way society perceives each decision and the reaction of the victims are key to the success of a transitional justice process. Diagnosis of Justice and Peace in the framework of transitional justice in Colombia, 2011. MAPP-OAS.

[413] In Chapter IV of its 2011 Annual Report on Colombia, citing the MAPP-OAS, it indicated that "it is necessary to radically change the strategy for investigating international crimes based on the adoption of selection and prioritization criteria. Similarly, in the Fourth Report on the Situation of Human Rights in Colombia in 2013, it stated that "the concept of prioritization would be, in principle, consistent with the importance and need to achieve judicial clarification of the responsibility of the most important leaders". Annual Report 2011, Chapter IV, Colombia, para. 91 and Annual Report of the Inter-American Commission on Human Rights, 2013: Truth, Justice and Reparation:

Fourth Report on the Situation of Human Rights in Colombia, paras. 45 and 45.

IX.7
RIGHTS TO JUDICIAL GUARANTEES[414] , TO JUDICIAL PROTECTION[415] , TO PRIVATE PROPERTY[416] AND TO EQUALITY BEFORE THE LAW[417] TO THE DETRIMENT OF MIGUEL ÁNGEL DÍAZ MARTÍNEZ AND HIS FAMILY MEMBERS.

A. Rights to judicial guarantees, to judicial protection and to private property to the detriment of Miguel Ángel Díaz Martínez and his family members.

A.1. Arguments of the Commission and the parties

486. The ***representatives of the Diaz Mansilla family*** alleged that, in the context of the executive process initiated in 1996 for the non-payment of the installments of the mortgage loan that Miguel Angel Diaz and his wife had subscribed for the purchase of their home and that culminated with the auction of 50% of the property, the rights to judicial guarantees, to judicial protection and to private property were violated. In effect, they argued that none of the judicial instances "took into account the condition of vulnerability to which they were thrown by the forced disappearance of their husband and father, which left Mrs. Gloria María Mansilla de Díaz as head of the family in charge of three daughters and suffering harassment of various kinds for belonging to the UP and for looking for her husband". They added that the authorities that decided the tutela action filed against the decision to foreclose half of the real estate were ruthless in refusing to review the merits, giving precedence to the application of a term established by jurisprudence. They concluded that, with these decisions, the State not only violated their rights to judicial guarantees and judicial protection, but also affected their right to property and to fully enjoy their right to family housing.

487. The ***Commission*** did not express an opinion on this point.

488. The ***State*** argued that the rights of the alleged victims were not violated in the executive process, since it was carried out in accordance with due process and judicial protection. They emphasized that Mrs. Gloria Mansilla had the opportunity to file exceptions to the claim, and that measures were taken to protect the rights of Miguel Ángel Díaz, which allowed the statute of limitations on his debt to be declared. They indicated that, in this case, the appeal of the judgment of the Second Civil Court was not exhausted and that all the decisions were duly motivated. They also indicated that the FNA did not act contrary to the principle of solidarity, since the default in the payment of the obligation began even before the disappearance, and the proceeding was suspended on the basis of a payment agreement entered into between the FNA and Mrs. Gloria Mansilla, which was not complied with by the latter.

489. On the other hand, with respect to the tutela action filed, the State argued that it was resolved within a reasonable period of time and that the decision to deny the protection was motivated by the fact that the plaintiff allowed a period of more than six months to elapse between the date of the decisions under attack and the filing of the tutela action, for which reason it was considered that it did not comply with the principle of immediacy. He added that the appeal of the tutela was also resolved in a timely and reasoned manner. In view of the lack of manifest affectation of Mrs. Mansilla's rights, the State requested that its responsibility not be declared for

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414 Article 8 of the Convention.

415 Article 25 of the Convention.

416 Article 21 of the Convention.

417 Article 24 of the Convention, in relation to articles 1.1. and 2 of the Convention.

violation of judicial guarantees and judicial protection and, consequently, that there was no violation of the right to property.

A.2. Considerations of the Court

490. The representatives alleged that the Colombian judicial system, through multiple decisions that did not take into account the situation of vulnerability in which the relatives of a victim of forced disappearance found themselves, incurred in a violation of their judicial guarantees and judicial protection. In this way, we proceed to analyze the different acts and procedures followed in the framework of the internal process that led to the auction of half of the property of the Diaz Mansilla family in order to study if the conventional guarantees of due process a) were respected, to, subsequently, study the tutela action in order to analyze if the Diaz Mansilla family had an effective judicial recourse b) and, finally, to analyze the alleged affectation of the right to property c).

1) Judicial guarantees in the executive process followed with respect to the property of Miguel Angel Diaz Martinez and Gloria Maria Mansilla.

491. Article 8 of the Convention contains the guidelines of due process of law, which is composed of a set of requirements that must be observed in the procedural instances, so that individuals are in a position to adequately defend their rights before any type of act of the State that may affect them[418].

492. According to Article 8(1) of the Convention, in the determination of the rights and obligations of all persons, whether criminal, civil, labor, fiscal or of any other nature, "due guarantees" must be observed to ensure, depending on the procedure in question, the right to due process. Failure to comply with one of these guarantees entails a violation of said conventional provision[419].

493. In the instant case, the representatives did not allege a precise violation of the guarantees of due process, but rather argued that, by not taking into account the special situation of vulnerability in which the Díaz Mansilla family found themselves as a result of the forced disappearance of Mr. Miguel Ángel Díaz, judicial guarantees were generally affected. Therefore, this Court will analyze the executive process followed to analyze whether the rights to be heard were respected and, in particular, to present the arguments related to the special condition of vulnerability, and whether the different authorities duly motivated their rulings in light of the arguments presented by the parties.

494. The record shows that on October 2, 1996, the National Savings Fund (FNA) initiated an executive proceeding against Miguel Ángel Díaz and Gloria Mansilla for breach of a loan[420] that they had subscribed with said Fund for the purchase of a house[421]. The Court emphasizes, in the first place, that the executive process was initiated by the

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[418] *Judicial Guarantees in States of Emergency (arts. 27.2, 25 and 8 American Convention on Human Rights).* Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 27 and *Case of Urrutia Laubreaux v. Chile, supra*, para. 100.

[419] *Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs.* Judgment of September 19, 2006. Series C No. 151, para. 119, and *Case of Urrutia Laubreaux v. Chile, supra*, para. 101.

[420] *Cfr.* Statement of claim filed by César Augusto Vega on behalf of the FNA on October 2, 1996 (evidence file, folios 158327 and following). The payment order was effectively notified to Mrs. Gloria Mansilla on October 23, 1996 (evidence file, folio 158347).

[421] *Cf.* Public Deed Number 836 of sale and mortgage granted before Marta Sofía Mantilla, Notary 16 of Bogotá, dated June 25, 1979 (evidence file, folios 158294 et seq.).

failure to pay dues as of October 15, 1983[422] , that is, even before the disappearance of Mr. Miguel Angel Diaz.

495. Likewise, in 1997, the process was suspended at the request of the defendant together with the plaintiff, in order to reach a payment agreement.[423] It was not until five years later, in 2002, that the process was resumed and the seizure of the real estate was carried out.[424] The defendant informed the court of the condition of the forcibly disappeared Mr. Miguel Ángel Díaz and requested the application of "legal and jurisprudential benefits" for this situation.425 Therefore, an order was issued for the seizure of the real estate. The defendant informed the court of the condition of forced disappearance of Mr. Miguel Ángel Díaz and requested the application of "the legal and jurisprudential benefits" for this situation[425] and therefore proceeded to order his summons[426] and Mrs. Gloria Mansilla de Díaz was requested to inform if she has had news of the survival or death of Mr. Miguel Ángel Díaz or if the respective process for presumed death was advanced427. Mrs. Mansilla responded to this request on November 28, 2005[428]. In view of this situation, the Court ordered the appointment of a guardian *ad litem* to Mr. Miguel Ángel Díaz[429]. The curator had the opportunity to respond to the claim and oppose the exception of prescription[430]. By means of a writ dated July 10, 2006, the Court ordered the parties to file closing arguments[431]. Only the plaintiff's pleadings are in the file[432].

496. On October 27, 2006, the judgment of the mortgage foreclosure process was issued, where the Second Civil Court of the Decongestion Circuit of Bogota, by reasoned resolution, ordered "to continue the execution with respect to the Defendant Gloria Mansilla, and the exception proposed in favor of the defendant Miguel Angel Diaz will be declared proven, and therefore, in his case, the termination of the process will be decreed, with the consequences that in both cases, the defendant and the Defendant will be declared as the defendant.

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[422] Brief filed by César Augusto Vega on behalf of the FNA on October 2, 1996 (evidence file, folio 158327).

[423] The plaintiff's attorney and Mrs. Gloria María Mansilla jointly requested a suspension for six months, taking into account that they were taking steps before the General Directorate of the FNA (evidence file, folio 158349), which was decreed by the Court on February 10, 1997 (evidence file, folio 158350). Although the suspension was decreed for six months as of January 16, 1997, the process was not resumed until June 21, 2002 at the request of the claimant (evidence file, folio 158362).

[424] *Cfr.* Secretary of the Twenty-sixth Civil Court of the Circuit of Bogotá, Despacho Comisorio No. 294 de Diligencia de Secuestro, October 30, 2002 (evidence file, folio 158373). The seizure of the property was carried out on May 28, 2003 (Inspección Octava A. distrital de Policía, Acta de Diligencia de Secuestro de Inmueble, May 28, 2003, evidence file, folio 158387).

[425] Written document dated September 2004 presented by Gloria Mansilla de Díaz in which she informs about the situation of forced disappearance of Miguel Ángel Díaz Martínez and grants special power of attorney to his lawyer (evidence file, folio 158392).

[426] Request for summons filed by the Attorney of the FNA, undated document *(*evidence file, folio 158419) and Court twenty-six of the Circuit of Bogotá, document dated February 8, 2005 ordering the summons (evidence file, folio 158420), which was published in the newspaper *El Nuevo Siglo (*evidence file, folio 158422). Due to the fact that in this first summons the second last name of the summoned party was not included, the publication was repeated (evidence file, folio 158433).

[427] *Cf.* Twenty-sixth Circuit Court of Bogotá, Injunction of August 2, 2005 (evidence file, folio 158426).

[428] Written statement dated November 28, 2005 submitted by Gloria Mansilla de Díaz *(*evidence file, folio 158431).

[429] *Cf.* Twenty-sixth Circuit Court of Bogotá, official letter of March 1, 2006 (evidence file, folio 158438).

[430] Written statement filed on April 6, 2006 by the guardian of Miguel Angel Diaz before the 26th Civil Judge of the Circuit of the City of Bogota (evidence file, folios 158440 and following).

[431] *Cf.* Twenty-sixth Civil Court of the Circuit, official letter of July 10, 2006 (evidence file, folio 158446).

[432] Arguments of conclusion presented by the attorney of the FNA, undated document (evidence file, folio 158447).

cases arise "[433]. Thus, the public sale of the property was decreed so that with its proceeds Mrs. Mansilla de Díaz's obligations could be cancelled434. The plaintiff filed an appeal against this judgment[435]. Within the framework of the appeal process, the Civil Chamber of the Superior Court of the Judicial District issued an official letter requesting information on the situation of forced disappearance of Mr. Miguel Ángel Díaz Martínez436. By means of a judgment of November 20, 2007, the Civil Chamber of the Superior Court of the Judicial District, in a reasoned manner, confirmed the first instance judgment and set May 12, 2011 as the date of the auction437.

497. This Court notes that Mrs. Mansilla de Díaz had, throughout the process, legal assistance, since she had a legal representative appointed in the process438. The Court also notes that, despite the foregoing, Mrs. Mansilla de Díaz did not file appeals against the judgments issued or against the appraisal presented for the auction of the property.[439] It was not until May 11, 2011 that Mrs. Mansilla's attorney filed a motion for nullity of the proceedings in the execution process as of the first instance judgment.440 On August 5, 2011, Mrs. Mansilla's attorney filed a motion for nullity of the proceedings in the execution process as of the first instance judgment.[440] On August 5, 2011, Mrs. Mansilla's attorney filed a motion for nullity of the proceedings in the execution process as of the first instance judgment. On August 5, 2011, Mrs. Mansilla de Díaz's attorney requested the suspension of the auction because she was in the process of accessing the benefits contemplated in Law 986 of 2005441. Likewise, on September 23, 2011, it was informed that the First Family Judge, in the framework of the process of declaration of absence, had appointed his wife, Gloria María Mansilla de Díaz as Provisional Curator of the assets of Miguel Ángel Díaz Martínez and requested the immediate suspension of all proceedings in the executive process442. The suspension requests and the nullity motion were denied by the Court by reasoned resolutions443.

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[433] Juzgado Segundo Civil del Circuito de Descongestión de Bogotá, Sentencia de 26 de octubre de 2006, radicación 1996-17849 (evidence file, folio 158452).

[434] Juzgado Segundo Civil del Circuito de Descongestión de Bogotá, Sentencia de 26 de octubre de 2006, radicación 1996-17849 (evidence file, folio 158453).

[435] Written document of illegible date presented by the legal representative of the FNA before the Superior Court of Bogotá (evidence file, folio 158496).

[436] *Cf.* Order of the Civil Chamber of the Superior Court of the Judicial District of August 8, 2007 (evidence file, folio 158502).

[437] *Cfr.* Civil Chamber of the Superior Court of the Judicial District, Judgment of November 20, 2007, Radiation 1996 07849 01 (evidence file folios 158526 and following). In this judgment only one point of the judgment was modified to clarify that the auction would be held to cover Mrs. Gloria Mansilla's share of the debt.

[438] By means of a letter dated September 2004, Mrs. Díaz Manilla informed the Court that she conferred broad and sufficient power of attorney to Mr. Geminiano Pérez Seña (evidence file, folio 158392). By means of an undated document, Mrs. Diaz Mansilla's attorney-in-fact, Mr. Geminiano Orlando Perez Seña, substituted his power of attorney to Mr. Jorge Ignacio Salcedo Galan (evidence file, folio 158490).

[439] *Cfr.* Official letter from the Twenty-sixth Circuit Court of Bogotá dated February 16, wherein, since no objection was filed against the appraisal presented, the Court approved the appraisal presented (evidence file, folio 158476).

[440] *Cfr.* Brief filed on May 11, 2011 before the Twenty-sixth Civil Judge of the Circuit within the framework of the mortgage process of Fondo Nacional del Ahorro Vs. Miguel Ángel Díaz and Gloria María Mansilla, radicación 96'17849 (Exhibit file, folio 158550).

[441] *Cfr.* Coadjutant filed by the attorney-in-fact of Gloria María Mansilla to the Twenty-sixth Civil Judge of the Circuit on August 2, 2011 (evidence file, folio 158572).

[442] Brief filed on September 23, 2011 before the Twenty-sixth Civil Judge of the Circuit (evidence file, folio 158574).

[443] *Cfr.* Twenty-sixth Circuit Civil Judge, resolution of September 22, 2011 referring to the request for suspension of auction. (evidence file, folio 158577); Twenty-sixth Circuit Civil Judge, resolution of January 13, 2012 rejecting the nullity motion (evidence file, folios 158581 et seq.); Twenty-sixth Circuit Civil Judge, resolution of April 25,

2012 rejecting the request for suspension of the proceedings (evidence file, folios 158584 et seq.).

498. On January 30, 2012, the provisional guardian of Miguel Ángel Díaz Martínez requested the suspension of the executive process based on the provisions of Article 14 of Law 986 of 2005[444]. By order of April 25, 2012, the Court did not grant the suspension request, arguing that the assets of Miguel Ángel Díaz Martínez were not being pursued in the process. This decision was appealed by the petitioner on May 9, 2012, and by order of December 13, 2012, the Court confirmed the denial reiterating the reasoning of the *a quo*.

499. Thus, this Court considers that, throughout the execution process, the parties were duly represented, they were given ample opportunity to be heard and the situation of the forced disappearance of Mr. Díaz Martínez was taken into account, since a guardian was appointed to represent his interests in the process. Likewise, the resolutions and sentences were duly motivated and at all times the condition of Mr. Díaz Martínez was taken into account and the legal consequences in the process for his forced disappearance were deduced.

500. On the other hand, the Court notes that the exception proposed for prescription in favor of the defendant Miguel Ángel Díaz was declared proven. In this sense, the execution process only referred to the debt contracted by Mrs. Gloria Mansilla de Díaz, being that the debt of Miguel Ángel Díaz Martínez was declared time-barred due to his disappearance. Therefore, there is no violation of the judicial guarantees in the executive process followed against Miguel Ángel Díaz Martínez and Gloria Mansilla de Díaz.

2) The tutela action as an effective judicial remedy

501. This Court has indicated that Article 25(1) of the Convention contemplates the obligation of the States Parties to guarantee, to all persons under their jurisdiction, a simple, prompt and effective judicial remedy against acts that violate their fundamental rights[445]. Taking into account the above, the Court has indicated that, in the terms of Article 25 of the Convention, it is possible to identify two specific obligations of the State. The first is to enshrine in law and ensure the due application of effective remedies before the competent authorities to protect all persons under its jurisdiction against acts that violate their fundamental rights or that entail the determination of their rights and obligations. The second is to guarantee the means to enforce the respective decisions and final judgments issued by such competent authorities, so that the rights declared or recognized are effectively protected[446]. The right established in Article 25 is intimately linked to the general obligation of Article 1(1) of the Convention, by attributing protection functions to the domestic law of the

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[444] This article adds the following subsection to article 170 of the Code of Civil Procedures: "The executive proceedings against a kidnapped person originated by the default caused by the captivity, and those that are in progress at the time of the entry into force of this law, shall be suspended immediately, being legally empowered the curator of assets of the kidnapped person to request the suspension to the competent judge, For which it will be sufficient to demonstrate compliance with the requirements referred to in Article 3 of this law, and to accredit his quality of curator and to accredit his quality of curator, whether provisional or definitive, with the authentic copy of the judicial order designating him. This suspension shall have effect during the time of captivity and shall be maintained for an additional period equal to this, which may in no case exceed one year counted from the date on which the debtor regains his freedom. Any judge who acts in contravention of the provisions herein shall be guilty of misconduct.

[445] *Cf. Case of Mejía Idrovo v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 5, 2011. Series C No. 228, para. 95 and *Case of Cuya Lavy et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 28, 2021. Series C No. 438, para. 170.

[446] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra,* para. 237, and *Case of Cuya Lavy et al. v. Peru*, *supra,* para. 170.

States [Parties447]. In light of the foregoing, the State has the responsibility not only to design and enshrine in law an effective remedy, but also to ensure the proper application of that remedy by its [judicial] authorities448 .

502. With specific reference to the effectiveness of the remedy, this Court has established that the meaning of the protection of the article is the real possibility of access to a judicial remedy so that a competent authority, capable of issuing a binding decision, may determine whether or not there has been a violation of a right that the person claiming has and that, if a violation is found, the remedy is useful to restore to the interested party the enjoyment of his right and to repair [it449]. This does not imply that the effectiveness of a remedy is evaluated on the basis of whether it produces a favorable result for the [claimant450].

503. Regarding the requirements for the admissibility of a judicial claim, this same Court has indicated that for reasons of legal security, for the correct and functional administration of justice and the effective protection of the rights of individuals, States can and should establish budgets and criteria for the admissibility of domestic remedies, judicial or otherwise. Thus, although these domestic remedies must be available to the interested party and must effectively and reasonably resolve the issue raised, as well as eventually provide adequate reparation, it should not be considered that the domestic organs and courts must always and in any case resolve the merits of the matter brought before them, regardless of the verification of the formal requirements of admissibility and admissibility of the particular remedy [sought451].

504. In the present case, the allegations of the representatives of the Diaz Mansilla family regarding the alleged violation of Article 25 in the tutela proceeding attempted by Mrs. Gloria Mansilla de Diaz, are focused on the fact that the judicial authorities that decided the tutela action refused to review and ponder the way to apply a jurisprudential term that conditioned the admissibility of the tutela, without taking into account the special situation of vulnerability in which Mrs. Mansilla de Díaz and her family found themselves as a consequence of the forced disappearance of Mr. Miguel Ángel Díaz.

505. In effect, Mrs. Mansilla de Díaz together with her daughters, through an attorney-in-fact, filed a tutela action against the decision-making bodies of the executive process and the FNA, considering that their fundamental rights to due process, equality and memory were [violated452]. The Civil Cassation Chamber of the Supreme Court decided to deny the tutela action considering, mainly, that the daughters of the Díaz Mansilla couple lacked standing to request the protection of their fundamental rights, since they had not been

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447 *Case of Castillo-Páez v. Peru. Merits.* Judgment of November 3, 1997. Series C No. 34, para. 83, and *Case of Cuya Lavy et al. v. Peru*, *supra,* para. 170.

448 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra,* para. 237. and *Case of Cuya Lavy et al. v. Peru*, *supra,* para. 170.

449 *Judicial Guarantees in States of Emergency (arts. 27.2, 25 and 8 American Convention on Human Rights).* Advisory Opinion OC-9/87 of October 6, 1987. Series A, No. 9, para. 24; *Case of Castañeda Gutman v. Mexico, supra*, para. 100, and *Case of Pavez Pavez v. Chile*, *supra*, para. 157.

450 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra*, para. 237, and *Case of Pavez Pavez v. Chile*, *supra*, para. 155.

451 *Cf. Case of Dismissed Workers of the Congress (Aguado Alfaro et al.) v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 24, 2006. Series C No. 158, para. 126, and *Case of López et al. v. Argentina. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 25, 2019. Series C No. 396, para. 211.

452 As referred to in the recitals of Constitutional Court of Colombia, Second Chamber of Review, tutela action against judicial rulings in mortgage foreclosure proceedings, Judgment T-031/16 of February 8, 2016 (evidence file, folio 158596 et seq).

The Court also found that the petitioner did not satisfy the requirement of immediacy, since more than 20 months elapsed between the last reproached pronouncement within the mortgage process and the filing of the tutela petition, and that the available judicial instruments were not exhausted within the executive process[453]. This argument was confirmed by the Labor Cassation Chamber of the Supreme Court on November 26, 2014[454] and, subsequently, by the Constitutional Court[455]. Against this judgment, the Díaz Mansilla family attempted an appeal for annulment, which was also denied[456].

506. In all the resolutions, the denial of the tutela action was expressly motivated, considering the non-compliance with the immediacy criterion as the main reason for its inadmissibility. Indeed, the tutela action is regulated by Article 86 of the Constitution, which establishes, in its first paragraph: "Every person shall have tutela action to claim before the judges, at any time and place, through a preferential and summary procedure, by himself or by anyone acting on his behalf, the immediate protection of his fundamental constitutional rights, whenever these are violated or threatened by the action or omission of any public authority" (emphasis not in the original)[457]. From this article, the requirement of immediacy in the filing of tutela actions has been deduced. In this regard, the Constitutional Court itself has explained:

> [T]he requirement to file the tutela action within a reasonable period of time is due to the need to (i) protect the rights of third parties that may be violated by the filing of the tutela; (ii) prevent this constitutional mechanism from becoming a source of legal insecurity and (iii) avoid the use of the amparo as a supplementary tool for one's own negligence in the enforcement of rights[458].

507. There is no express term in the domestic legal system for filing a tutela, so it is up to the tutela judge to verify in each specific case whether the term was reasonable and proportionate. As a general parameter, some rulings have established a term of six months; however, circumstances that justify the inactivity of the plaintiff may be taken into account[459]. In order to make this examination, the Constitutional Court itself has established that "the personal circumstances of the plaintiff, his diligence and real possibilities of defense and the emergence of third party rights "[460] must be taken into account. In particular, in the case of tutelas aimed at challenging judicial rulings in the context of

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[453] Civil Cassation Chamber of the Supreme Court of Justice of Colombia, Judgment of September 18, 2014.

[454] Labor Cassation Chamber of the Supreme Court of Justice of Colombia, Judgment of November 26, 2014.

[455] Constitutional Court of Colombia, Judgment T-031/16 of February 8, 2016 (evidence file folios 158590 et seq.).

[456] Constitutional Court of Colombia, Full Chamber. Auto 510/17 resolving request for nullity of Judgment T-031 of 2016, October 3, 2017 (evidence file, folios 158635 et seq.).

[457] Political Constitution of Colombia (1991) (evidence file, folio 360999).

[458] Constitutional Court of Colombia, Fifth Chamber of Review of Tutelas, Judgment T-118/15 of March 26, 2015 (cited by Constitutional Court of Colombia, Judgment T-031/16 of February 8, 2016, file of evidence folio 158617).

[459] The Constitutional Court has established the following rules to determine whether there is a justified delay: "(i) that there is a valid reason for the inactivity of the plaintiff; (ii) that there is a causal link between the late exercise of the action and the violation of the rights of the interested party; and (iii) that the justified inactivity does not violate the essential core of the rights of third parties affected by the decision or constitutionally protected assets of equal importance. (iv) Exceptionally, if the basis for the tutela action arises after the occurrence of the action violating the fundamental rights, in any way, its exercise must be made within a period not too far from such situation" (Constitutional Court of Colombia, Judgment T-719/13 of October 17, 2013, cited by Constitutional Court of Colombia, Judgment T-031/16 of February 8, 2016, file of evidence folio 158618).

[460] Constitutional Court of Colombia, Judgment T-031/16 of February 8, 2016 (evidence file,folios 1585617).

In these cases, the Constitutional Court has reiterated that "the prudential term in these cases to resort to the tutela action is delimited by the fact that the registration of the order approving the auction has not been made, since from that moment on the rights of third parties acquiring in good faith are consolidated "[461].

508. In the specific case, the Constitutional Court endorsed the decision of the Civil Chamber of the Supreme Court, confirmed by the Labor Chamber, to declare inadmissible the tutela filed by Mrs. Gloria María Mansilla and her daughters, considering that the same did not satisfy the requirement of immediacy, having been filed 1 year, 8 months and 5 days after the last decision in the executory process and after the registration of the order approving the award of the auction. The Court did not limit itself to applying the deadline, but went on to examine the possible justifications for this delay, thus arguing:

> However, it could be argued that despite the fact that a wide margin of time elapsed between the date of the decisions in question and the time when the amparo action was filed, the delay in resorting to this protection mechanism is justified and reasonable due to the status of victims held by the plaintiffs both for the disappearance of their husband and father and for the threats that forced them to go into exile. However, although this Court understands the difficulties faced by the plaintiffs, it does not evidence the existence of a causal link between such circumstances and their inability to file the tutela action in a timely manner to challenge the decisions issued in the executive proceeding against them[462].

509. As mentioned *above* (*supra* para. 503), this Court finds it reasonable that there are admissibility requirements for the filing of domestic remedies. In the instant case, it is observed that the requirement of immediacy was applied to the case in a well-founded manner, taking into account the special situation of the plaintiff. In the opinion of the Court, the conclusions reached by the tutela judges are not manifestly arbitrary or unreasonable. Likewise, the tutela action filed by Mrs. Gloria Mansilla was resolved within the legal terms, was subject to a second instance and was reviewed by the Constitutional Court. Thus, this Court does not consider that there has been any violation to the judicial guarantees of Mrs. Gloria Maria Mansilla and her daughters.

3) The alleged violation of the right to property

510. From the analysis of the allegations presented by the representatives of the Diaz Mansilla family, it is clear that the alleged violation of the right to property is closely linked to the analysis of the alleged violations to due process and access to justice in the framework of the executive judgment. In effect, they alleged that part of the family home of Miguel Ángel, his wife and daughters, "was auctioned off, and even in the highest judicial instances of Colombia this decision was confirmed without taking into account the situation of special vulnerability in which the family of Miguel Ángel Díaz found itself". However, in the opinion of this Court and as explained *above,* it was not demonstrated that in this process, which culminated with the auction of half of the property of the Diaz Mansilla family, the guarantees of due process or the right to access to justice were violated. Likewise, it was demonstrated that throughout the process the situation of forced disappearance of Mr. Miguel Ángel Díaz was taken into account. Consequently,

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[461] Constitutional Court of Colombia, Fourth Chamber of Review, Judgment T-265/15 of May 7, 2015 (cited by Constitutional Court of Colombia, Second Chamber of Review, acción de tutela contra providencias judiciales en proceso ejecutivo hipotecario, Judgment T-031/16 of February 8, 2016, evidence file folio 158619).

[462] Constitutional Court of Colombia, Second Chamber of Review, tutela action against judicial rulings in mortgage

foreclosure proceedings, Ruling T-031/16 of February 8, 2016 (evidence file folio 158623).

this Tribunal considers that the right to property of Mrs. Gloria Mansilla Díaz and her daughters was not violated in this case[463].

B. Right to equality before the law to the detriment of Miguel Ángel Díaz Martínez and his family members.

B.1. Arguments of the Commission and the parties

511. The ***representatives of the Diaz Mansilla family*** argued that the State's decision to exclude victims whose victimizing events occurred before January 1, 1985 from the administrative reparations program created by Law 1448 of 2011, implied an unjustified differential treatment, especially with respect to those persons whose rights were affected in time frames close to that date but who do not fall within it. In effect, this law established that the victims of the conflict whose victimization occurred before January 1, 1985 only have access to the measures of truth, symbolic reparation and guarantees of non-repetition that the law establishes for the entire Colombian society without receiving any individual or collective benefits. The disappearance of Miguel Ángel Díaz Martínez occurred on September 5, 1984 and, despite the continuing nature of his violation, he was excluded from the application of the individual and collective reparation measures established by the above-mentioned law.

512. They also added that the Special Administrative Unit for the Comprehensive Reparation of Victims notified the Díaz Mansilla family on November 22, 2016, that both Mr. Miguel Ángel Díaz and his family would not be included in the Single Registry of Victims (RUV), for which reason they alleged that there was differential treatment derived from the application of a law. They concluded that the State violated Article 24 of the ACHR in relation to Articles 1.1 and 2 of the same to the detriment of Miguel Ángel Díaz Martínez, Gloria María Mansilla de Díaz, Ángela Ivette, Luisa Fernanda and Juliana Días Mansilla, Blanca Martínez de Díaz, Pedro Julio Díaz Fonseca, Samuel and Martín Ortega Díaz, Ainara Ohiane and Ixmucané Mahecha Días and Rodrigo Orlando and María del Pilar Días Martínez[464] and considered that the administrative reparations program in Colombia is contrary to the Convention for having a time limit.

513. The ***Commission*** did not express an opinion on this point.

514. The ***State*** alleged that, despite the failure of the alleged victims' representatives to exhaust adequate and effective remedies, the Victims' Unit, of

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[463] It should be recalled at this point that on April 13, 2022, the joint intervenors of the Diaz Mansilla family requested the adoption of provisional measures related to the auction of the real property of Gloria Mansilla. On this point, in accordance with Articles 54(3) of the American Convention on Human Rights, 5(3) of the Statute of the Court and 17(3) of its Rules of Procedure, according to which all matters relating to provisional measures are within the competence of the Court in office, composed of Titular Judges, this composition of the Court lacks jurisdiction to rule on the aforementioned request since its functions ended on December 31, 2021. To that extent, said request will be resolved by the current composition of the Court (*supra* para. 12.b).

[464] The Court finds that Blanca Martínez de Díaz, Pedro Julio Díaz Fonseca, Samuel Ortega Díaz, Martín Ortega Días, Ainara Ohiane Mahecheca Díaz, Ixmucané Mahecha Díaz are not among the alleged victims identified in the Commission's Merits Report. Likewise, in the declaration request for the application for registration in the Single Registry of Victims submitted by Mrs. Gloria Días Mansilla, only the names of Gloria María Mansilla de Díaz, Juliana Díaz Mansilla, Luisa Fernanda Díaz Mansilla, Ángela Ivette Díaz Mansilla and Miguel Ángel Díaz Martínez were listed (Declaration for the Application for Registration in the Single Registry of Victims, given at the Colombian Consulate in Madrid, Spain, on September 28, 2016 -evidence file, folio 158991-). Finally, the representatives did not demonstrate how these persons were affected by the non-application of Law 1448 of 2011 and by the non-registration in the Sole Registry of Victims. Thus, this Court will only consider the alleged violations of Article 24 in relation to Articles 1(1) and 2 of the American Convention with respect to Miguel Ángel Díaz Martínez, Gloria Mansilla de Díaz, Juliana Díaz Mansilla, Luisa Fernanda Díaz Mansilla and Ángela Ivette Díaz Mansilla.

After an exhaustive verification of the case, it decided to issue a new administrative act in which it ordered the inclusion of Mrs. Manilla Díaz and her family nucleus in the RUV, due to the forced disappearance of Mr. Miguel Ángel Díaz Martínez.

515. With respect to the argument that Law 1448 of 2011 is unconstitutional by defining a time limit on the application of the Administrative Program, the State argued that the Colombian Constitutional Court has already conducted an internal review of the provision and concluded that the time limitation does not violate the right to equality. In this way, it considered that, in practice, the representatives, by alleging the unconstitutionality of Law 1448 of 2011, are demanding that the IACHR Court review a matter on which the highest Constitutional Court has already ruled and whose decision does not reflect a manifest or evident violation of the ACHR. It added that there is no international obligation by virtue of which States must adopt administrative mechanisms nor that this is the only way to redress victims of massive human rights violations and that practice shows that the implementation of administrative programs has always been measured by the definition of time limits. It also argued that this Court has already endorsed the Victims Law and that the eventual exclusion from the RUV does not imply that protection cannot be accessed in the domestic legal system.

B.2. Considerations of the Court

516. In relation to these allegations, this Court finds that, as the State reported in its response, as a result of the proceedings initiated in the Inter-American System, the Victims Unit carried out, ex officio, a verification of the application filed by Mrs. Gloria María Mansilla de Díaz and proceeded on November 6, 2019, to include Mrs. Mansilla de Díaz and her next of kin in the Single Registry of Victims, for the forced disappearance of Mr. Miguel Ángel Díaz Martínez[465].

517. By virtue of the foregoing, this Court considers that the State is not responsible for the violation of the right to equality before the law, established in Article 24 in relation to Articles 1(1) and 2 of the American Convention, to the detriment of Miguel Ángel Díaz Martínez, Gloria Mansilla de Díaz, Juliana Díaz Mansilla, Luisa Fernanda Díaz Mansilla and Ángela Ivette Díaz Mansilla.

C. Conclusion

518. In light of the foregoing, this Court considers that Colombia did not violate the rights to judicial guarantees, to judicial protection or to property, or the right to equality before the law, contained in Articles 8, 21, 24 and 25 of the Convention, in relation to Article 1(1) of the same body of law, to the detriment of Miguel Ángel Díaz Martínez and his next of kin.

[465] *Cfr.* Technical Directorate of Registration and Information Management of the Unit for the Comprehensive Attention and Reparation to Victims, Resolution No. 2016-226629 of November 6, 2019 (evidence file, folios 364123 et seq.).

IX.8
THE RIGHT TO PERSONAL INTEGRITY WITH RESPECT TO FAMILY MEMBERS (ARTICLE 5.[1466] OF THE AMERICAN CONVENTION)

A. Arguments of the parties and the Commission.

519. The ***Commission*** considered that the human rights violations suffered by the victims in this case affected their next of kin, and therefore considered that they in turn are victims for the harm they suffered to their psychological and moral integrity. The organization ***Reiniciar*** presented similar arguments to the Commission and concurred in its conclusions.

520. ***The representatives of the Diaz Mansilla family*** presented arguments on the rights of children and the trans-generational impact of the forced disappearance and persecution. They indicated that the State has failed to comply with its obligations in relation to the children, sons and daughters of the disappeared, tortured and assassinated leaders, militant sympathizers of the UP, who were victims of internal forced displacement and exile, as is the case of the Diaz Mansilla family, violating their rights to personal integrity, movement and residence, equality and family, in addition to the others stated throughout this brief. They added that the State has failed to comply with its obligations in relation to the children, grandsons and granddaughters, of the disappeared, tortured and assassinated leaders, militant sympathizers of the UP, who have been victims in a new generation, of the impacts of the conditions of displacement and orphanhood, because of the forced disappearances of their parents, as well as the denial of access to justice, to the clarification of the facts, to the truth and to the possibility of having a reliable account of what happened to their grandparents, as is the particular case of Miguel Angel Diaz and his 4 grandchildren.

521. The ***State*** referred to this point in the chapter on acknowledgment of responsibility (*supra* Chapter IV).

B. Considerations of the Court.

522. In the Chapter on acknowledgment of responsibility, the Court considered that the controversy over the alleged violations of Articles 5 had ceased with respect to the next of kin and close relatives who had accredited a link with any of the members of the Unión Patriótica that is fully determined and represented in the present case, and who had suffered psychological harm as a consequence of the facts delimited in the case before the Court (*supra* Chapter IV).

523. It should be recalled that it is possible to declare the violation of the right to integrity of family members of victims of certain human rights violations, applying a *rebuttable* presumption with respect to mothers and fathers, daughters and sons, husbands and wives, and permanent partners, provided that this corresponds to the particular circumstances of the case. In relation to immediate family members, it is up to the State to rebut this presumption[467]. Likewise, this presumption is also applicable to the sisters and brothers of the victims, unless proven otherwise by the specific circumstances of the case[468].

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[466] Article 5(1) of the American Convention.

[467] *Cf. Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 119, and *Case of Movilla Galarcio et al. v. Colombia*, *supra*, para. 174.

[468] *Cf. Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala, supra*, para. 253, and *Case of Díaz Loreto et al. v. Venezuela*, *supra,* para. 136.

524. In this Judgment, the international responsibility of the State was determined for a violation of the rights to juridical personality, to life, to personal integrity, to personal liberty, to the detriment of the victims of forced disappearances and extrajudicial executions listed in Annex I of this Judgment. Therefore, in accordance with the foregoing and with the acknowledgement of responsibility made by the State, the Court also understands that the State is responsible for a violation of the right to humane treatment contained in Article 5(1) of the Convention, to the detriment of the next of kin of the victims of forced disappearance and executions, who were identified by the Commission in its list of victims' next of kin. The next of kin of these persons are expressly mentioned in Annex II.

X REPAIRS[469]

525. Based on the provisions of Article 63(1) of the American Convention[470], the Court has indicated that any breach of an international obligation that has caused damage entails the duty to make adequate reparation, and that this provision reflects a customary rule that constitutes one of the fundamental principles of contemporary international law on State responsibility[471].

526. Reparation of the damage caused by the breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of the reestablishment of the previous situation. If this is not feasible, as occurs in most cases of human rights violations, the Court will determine measures to guarantee the violated rights and repair the consequences produced by the violations[472]. Therefore, the Court has considered the need to grant various measures of reparation, in order to compensate the damages in a comprehensive manner, so that in addition to monetary compensation, the measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition have special relevance for the damages caused[473]. Likewise, taking into account the context in which the facts occurred in the instant case, the reparations ordered by the Court and implemented by the State must have a transformative vocation of the situation, so that they have not only a restitutive but also a corrective effect[474].

527. This Court has established that reparations must have a causal nexus with the facts of the case, the violations declared, the damages proven, as well as the measures

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[469] Application of Article 63(1) of the American Convention.

[470] Article 63(1) of the American Convention establishes that: "[w]hen it decides that there has been a violation of a right or freedom protected in [the] Convention, the Court shall order that the injured party be guaranteed the enjoyment of his right or freedom that was violated. It shall also order, if appropriate, that the consequences of the measure or situation that led to the violation of those rights be remedied and that fair compensation be paid to the injured party.

[471] *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Sales Pimenta v. Brazil*, *supra*, para. 135.

[472] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, para. 26, and *Case of Sales Pimenta v. Brazil*, *supra*, para. 136.

[473] *Cf. Case of the Dos Erres Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Sales Pimenta v. Brazil*, *supra*, para. 136.

[474] *Cf. Case of González et al. ("Campo Algodonero") v. Mexico, supra*, para. 450, *Case of Atala Riffo and girls v. Chile. Merits, Reparations and Costs*. Judgment of February 24, 2012. Series C No. 239, para. 267.

requested to repair the respective damages. Therefore, the Court must observe such concurrence in order to pronounce properly and in accordance with the [law475].

528. In consideration of the violations declared in the previous chapters, the Court will proceed to analyze the claims presented by the Commission and the joint interveners of the representatives of the victims, as well as the observations of the State to them, in light of the criteria established in its jurisprudence in relation to the nature and scope of the obligation to make reparations, with the purpose of ordering the measures aimed at repairing the damages [caused476].

A. Injured Part

529. This Court reiterates that an injured party, in the terms of Article 63(1) of the Convention, is considered to be a person who has been declared the victim of a violation of a right recognized therein. This Court considers as "injured party" the persons listed in Annexes I, II and III of the victims of this Judgment, with respect to whom a violation was declared to their detriment, taking into account what is explained in paragraph 289 of the Judgment. Such persons shall be creditors and beneficiaries of the measures of reparation ordered by the Court in this chapter.

530. The Court has formed three Victims Annexes to this Judgment:

a) Annex I lists all direct [victims477] for whom there is proof of identity and kinship;

b) Annex II lists the victims of violations of the rights contained in Articles 5, 8 and 25 of the American Convention who are relatives of the victims mentioned in Annex [I478].

c) Annex III includes all those victims for whom the Court was not provided with evidence to corroborate their full names and identity numbers. The Court recognizes the difficulty of providing such evidence in this proceeding, due to the complexity of this case because of the serious and multiple human rights violations committed to the detriment of a large number of victims and aspects such as the different geographic locations and the length of time in which the violations occurred.

531. The Court notes that both the Inter-American [Commission479] and the joint intervenors of the [representatives480] requested that the Court order the creation of a "mechanism" that would allow for the creation of a "mechanism" to

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[475] *Cf. Case of Ticona Estrada et al. v. Bolivia*. *Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Sales Pimenta v. Brazil*, *supra*, para. 136.

[476] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra*, paras. 25 and 26, and *Case of Pavez Pavez v. Chile*, *supra*, para. 164.

[477] This list includes victims of forced disappearances, extrajudicial executions, torture, forced displacement , threats, injuries, attempted homicides, and unfounded prosecutions.

[478] This list was prepared taking into account the lists of family members annexed to the Merits Report.

[479] The Commission's request focuses on the mechanism to be created to be dedicated, in consultation with the victims and family members, to the identification of "family members of the executed and disappeared victims [who] are not included in the List of Victims of the merits report" so that "they may be beneficiaries of reparations. It clarified that this mechanism "does not seek to expand the universe of victims", but rather "to complete the lists of relatives of persons already declared as victims".

[480] The joint interveners of Reiniciar requested the creation of a "tripartite mechanism (victims, representatives, State)" that, among other things, would be in charge of "establishing a search and identification plan for those victims and relatives of victims who have not yet been identified and who are part of the illustrative list of the universe of victims". The representatives of the Diaz Mansilla family argued that a mechanism should be designed to

search for and identify more direct victims or more relatives of victims, in addition to the persons included by the Commission in the Merits Report. The Commission also noted that this mechanism could be used to "resolve possible discrepancies in the Lists of Victims annexed to [its] merits report, as well as situations in which objective and substantiated information arises that could cast doubt on the existence of a person or his or her link to the Unión Patriótica."

532. The Court considers it inappropriate to accede to such requests regarding the claim to expand the number of victims in the framework of this international proceeding, beyond the persons included in the lists of the Commission and the representatives of the victims and the powers of representation provided by the latter (*supra* para. 529). Notwithstanding the foregoing, the State may accept the existence of additional victims.

533. However, the Court considers it necessary to verify the identity and/or kinship of the persons included in Annexes II and III of Victims (*supra* para. 530.b and 530.c), so that said persons can be considered beneficiaries of the reparations ordered in this Judgment, as long as it is possible to do so. To this end, the Court orders that, within six months from the date of notification of this Judgment, a "commission to verify the identity and/or kinship of the victims listed in Annexes II and III of the Judgment" (*infra* para. 537) be formed and put into operation.

534. The persons included in the aforementioned Annexes II and III will not have to prove, in any way, the violation[481] before said commission. The function of said commission is not to determine the quality of victims, but only to verify identity and/or kinship. This does not preclude that, if there is reliable evidence that proves that any of these persons should not be considered victims, such evidence may be provided by the State to the aforementioned commission (*infra* para. 537).

535. The persons included in the referred Annexes II and III shall only have to provide to the referred commission the proof that accredits:

a. the identity of the victims appearing in this annex without indicating their identification document number or with incomplete data on their name and surname;

b. identification in cases where the victims were minors at the time of the events, which should include the age of the victim for purposes of differentiated monetary compensation (*infra* para. 626.g), and

c. the kinship of the relatives of the direct victims of the violations of the right to life due to forced disappearance and/or extrajudicial execution (only spouses or partners, children, mother and father, and siblings)[482.]

536. For the purposes indicated in the preceding paragraph, evidence may be provided such as: identity documents, declarations, death certificates, declarations of absence, or any other suitable means that adequately proves the identity, name and address of the person or company.

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for the identification of "the other victims of the genocide of the Patriotic Union and the Colombian Communist Party who, without being included in the Commission's Merits Report, have suffered violations of their rights related to the facts of this case. The Centro Jurídico de Derechos Humanos y Derechos con Dignidad did not make a specific request, but warned that, due to the difficulties of this case, it is possible that "there may be undetermined but determinable victims.

[481] It is the fact that has been indicated in the list of victims of the Commission's Report on the Merits and/or the written applications and arguments of the joint interveners.

[482] The relationship relationship established in the list in Annex II was based on the information provided by the Commission in its lists annexed to the Merits Report.

and kinship relationship. This evidence will be evaluated by the referred commission using a flexible standard of proof, in such a way that diverse means of proof can be used.

537. The aforementioned "commission to verify the identity and/or kinship of the victims listed in Annexes II and III of the Judgment" shall be made up of three persons, and shall have the necessary human, technical and logistical resources to assist them in their work. This commission shall have to establish the mechanisms or bases for its proper functioning according to the terms established in this Judgment, and the expenses involved in its functioning shall be borne by Colombia. The State and the joint intervenors of the representatives of the victims[483] shall each elect a member of the commission. The third member shall be appointed by this Court, for which purpose the State and the joint intervenors[484] shall each propose two candidates. Within three months of notification of this Judgment, the parties must inform this Court of the names of the persons they have each chosen as members of this commission and submit the resumes of the candidates they propose to the Court for the election of the third member. Once this Court or its Presidency informs the parties of this last designation, this commission shall be officially constituted and shall be granted a period of two weeks to inform this Tribunal and the joint intervenors of the representatives of the victims and the State of the physical and e-mail addresses to which the persons listed in Annexes II and III or their representatives may submit the documentation indicated in paragraph 535 in order to properly accredit their identity and/or kinship. In the event that during the period of operation of this commission there should be any objection regarding any of the three members of the commission, the Inter-American Court shall make the final decision on the matter. The Court or its Presidency will also establish a date from which the persons listed in Annexes II and III or their representatives will have 12 months to submit the documentation. As the information on the victims is submitted, the commission will forward it to the State, which will have a non-renewable period of 60 calendar days in which to provide evidence that tends to exclude any of the persons listed in Annex III from the status of victim. If the commission considers that such request for exclusion is correct, it shall refer the case to this Court, which shall decide, in the final instance.

538. The commission shall make the respective findings as the documentation is presented by the victims or their representatives, and all the evidence shall be evaluated within a maximum period of six months, counted from the business day following the day on which the victim or representatives present the evidence. As the commission establishes the identity and/or kinship of the victims in Annexes II and III, it shall notify the State so that it may make reparations in their favor. The commission shall also inform the Inter-American Court on a quarterly basis of the findings that have been made, so that it can assess the compliance with this Judgment.

539. The controversies that arise at the time of evaluating the evidence provided to make the corresponding findings must be resolved by the commission. However, in the exercise of its powers of supervision of this Judgment, the Court reserves the right to pronounce, on an exceptional basis, on possible problems of a general nature that may arise with respect to the operation of this commission, and/or

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[483] The three intervening parties must agree to jointly appoint a single member of the committee.

[484] The three interveners must agree to jointly nominate two persons.

controversies shared by a generality of victims, which should be exposed and communicated to this Tribunal exclusively through the "commission for the ascertainment".

540. The provisions of this section do not exclude that those persons who have also suffered possible violations as members, militants and sympathizers of the Unión Patriótica and their relatives, who are not included in Annexes I, II and III of the victims of this Judgment, may claim their rights in accordance with domestic law.

B. Preliminary reparations considerations

B.1. On the actions carried out by the State to make reparations to the victims of the Unión Patriótica

541. The ***State*** argued that one of the reasons it submitted this case to the Court was its disagreement with the Commission's assessment of the progress achieved through the measures adopted during the search for a friendly settlement[485] and the mechanisms implemented to provide full reparations to the victims of the UP, as well as with the concept of reparations in the context of transitional justice that the Commission has attempted to impose on the case[486].

542. Regarding the mechanisms implemented for the comprehensive reparation with a transformative vocation for the Unión Patriótica victims, the State referred to the following six mechanisms:

a) the commitment and offer made to said political party to develop a collective and comprehensive reparation plan for the victims of the UP, within the framework of the provisions of Law 1448 of 2011 *("Victims and Land Restitution Law"*), as well as the commitment acquired by the State with respect to the Unión Patriótica in the framework of the Final Agreement for the Termination of the Conflict and the Construction of a Peace to "develop a Special Reparations Plan, as well as to make the necessary adjustments and reforms to guarantee the participation of the victims, individually and collectively considered, and the non-repetition of what happened "[487];

[485] Regarding the measures adopted for the friendly settlement, the State highlighted the creation of a "Mixed Commission" and the work it carried out, with which the following advances were achieved: (i) the creation of a common and provisional database of victims; (ii) the creation of sub-units in the 26 sections of the Prosecutor's Office designated exclusively to promote the investigations into the events, and (iii) the design of a Special Protection Program for leaders, members and survivors of the UP and the PCC.

[486] In this sense, it pointed out that, in a case "with clear collective effects" and which is framed in a context of transitional justice, the Commission intends to give prevalence to individual reparations, as well as to judicial reparations, since it considers that the administrative reparation program created by Colombia to remedy massive human rights violations that occurred in the context of the conflict, would not enjoy the same suitability and degree of satisfaction for the victims as judicial reparations.

[487] However, it affirmed that the Unión Patriótica had not yet expressed its interest and its willingness to enter the special collective reparation program, for which reason it is not registered as a subject of collective reparation in the Sole Registry of Victims. He affirmed that once the Unión Patriótica makes the declaration process before the Public Prosecutor's Office for the subsequent entry into the Sole Registry of Victims, the particularities of the collective reparation route will be agreed with its representatives, respecting the specific characteristics of the political party. It assured that the formulation and approval of the Integral Plan of Collective Reparation will address the implementation of actions within the measures of satisfaction, rehabilitation and guarantees of non-repetition that find a causal link between the collective damage and the measures formulated. Additionally, it indicated that peace education and conflict resolution actions would be implemented.

b) the celebration of a public act of acknowledgement of responsibility on September 15, 2016, by the then President of the Republic for what happened with UP[488];

c) the implementation of various measures aimed at strengthening the Patriotic Union and promoting a democratic opening, among which are: the creation, in 2013, of the "Committee of Electoral Guarantees for the Patriotic Union", in order to evaluate the conditions in which the party found itself and to advance actions to guarantee its participation in future electoral contests under equal conditions; the restitution and extension until 2018 of the legal status of the UP and "material guarantees" for projects or congresses, as well as for "the [p]romotion of a democratic opening" through "a series of mechanisms" found in the Peace Agreement between the National Government and the FARC-EP, among which is the "creation of the statute of the opposition "[489];

d) the implementation of various measures for the deconstruction of paradigms, the consolidation of historical memory and the non-repetition of facts[490];

e) the strengthening of protection measures for survivors, victims and relatives of the UP, through measures such as: the creation, via decree, of a "Special Program of Integral Protection for leaders, members and survivors of the Patriotic Union and the Colombian Communist Party", as well as the improvements made to it by means of subsequent additions also made by decree[491]; the inclusion and qualification of the survivors of the UP and the PCC as objects of protection by the National Protection Unit[492] and the protection currently provided by it to candidates of the UP[493]; the follow-up of the protection measures approved for both the UP and

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[488] It noted that the event was attended by members and survivors of the Unión Patriótica and was the result of a process of consultation with the petitioner organization. The State affirmed that this act of recognition, which was widely disseminated to the public, should be considered a measure of satisfaction and a guarantee of non-repetition.

[489] He argued that the purpose of this statute is to grant more guarantees to members of the opposition and avoid the repetition of events such as those that occurred with the Patriotic Union. He also stated that said statute conceived a series of rights for political groups declared in opposition such as: a) additional financing for the exercise of the opposition; b) access to State social communication media or that make use of the electromagnetic spectrum; c) access to information and official documentation; d) the right to reply, and e) the participation in plenary boards of the plenary of the public corporations of popular election.

[490] In this regard, it mentioned measures such as: the support it provided for the broadcasting of radio spots at the regional and national level, aimed at the construction of memory, the non-repetition of the facts and reiterating that the party is a completely legitimate expression of democracy; the work carried out by the Victims Unit in relation to the production of the audiovisual program "Reparar para seguir" (Repair to continue) about the Unión Patriótica.

[491] He mentioned that this program, created by Decree 978 of 2000, contemplates measures such as: the creation of security schemes, offering self-protection courses, protection to headquarters and residences, transfers within the country or abroad and the relocation of its members in the national territory. Subsequently, Decree 2958 of 2010 added measures such as: a) support for transportation; b) offer of housing in order to reestablish the conditions altered by the risk situation;
c) training workshops and events to strengthen the organizations of both victims and survivors; d) implementation of mechanisms for psychosocial care, being a tool that favors their life projects, adjusted to their situation, and e) physical and psychological rehabilitation for survivors of attacks against their person and as a result have a disability. Through Decree 2096 of 2012, the Special Program of Integral Protection for leaders, members and survivors of the Union Patriotic and the Communist Party was unified.

[492] He indicated that this Unit is in charge of the articulation, coordination and execution of the protection service for people determined by the National Government, who due to their conditions are in a situation of extraordinary or extreme risk of suffering damages .

[493] He informed that the National Protection Unit currently has 731 protected persons under its charge. Of these protectees, he informed that the protection measures approved and implemented in favor of the candidates of the Union of Presidents of the Republic of Panama.

the PCC through the Committee for Risk Evaluation and Recommendation of Measures (CERREM)[494] and the establishment of different duties to specific entities, such as the Ministry of Housing for the delivery of measures for the reestablishment and rehabilitation in favor of the members of the UP and the PCC, such as assistance for the undertaking of productive projects, and the Ministry of Health, for the advancement of different policies aimed at an adequate medical and psychological provision of some of the beneficiaries of the program, and

f) the progress in the investigation of the facts related to members of the UP, which are aimed at unraveling the patterns of macro-criminality[495], as well as in the prosecution and conviction of more than three hundred perpetrators in cases related to the UP[496].

543. Additionally, the ***State*** indicated that in the 2016 Peace Agreement it committed to guaranteeing the non-repetition of the crimes committed against the UP, and that it would take all measures, including those agreed in the agreement and any others that might be necessary, to ensure that no political party or movement in Colombia would be victimized again and that what happened to the Unión Patriótica would never be repeated. It also specified that the Commission for the Clarification of the Truth, Coexistence and Non-Repetition, the Unit for the Search of Persons Disappeared due to the conflict and the Special Jurisdiction for Peace will contribute to the purpose of recognizing, clarifying and encouraging the rejection of what happened.

544. Although the ***Commission*** valued and highlighted these advances in its Merits Report, it also stated the reasons why it "considered that [...] they are still insufficient", among which it stated that the measures are "incipient [...] to fully address the reparation that corresponds to each of the victims [...], since they do not start from the basis of the magnitude of the damage that [was] evidenced". The ***joint intervenors*** submitted observations on some of the measures already adopted by the State and expressed their position regarding the granting of reparations by the Court in this case. In particular, the ***joint intervenors of Reiniciar*** argued that "none of the few measures adopted by the State in the case of the UP has been part of a true State policy to remedy the damage caused, keeping due coherence among themselves in order to be effective and thus restore the rights of the victims of the Unión Patriótica. They also added that "the integral reparation to the victims of the Unión Patriótica must have

These were discussed in the electoral security committee and consisted of 12 armored vehicles, 5 conventional vehicles, 31 protection men, 39 bulletproof vests and 32 cellular phones.

[494] It noted that this committee was created by National Decree 2096 of 2012, and that it is made up of, among others, the National President of the Patriotic Union, the President of Reiniciar and the Director of the Colombian Commission of Jurists, petitioners in the present case, and that its functions are to deliberate and determine the protection measures to be implemented for each particular case.

[495] He detailed that the Attorney General's Office on June 30, 2015 reported thirty-four cases of crimes against militants and sympathizers of the Patriotic Union, which after being prioritized were declared as crimes against humanity, by Resolution of October 16, 2014 issued by the National Directorate of Analysis and Context and that these entities, have joined efforts and as a result of this have obtained free versions in which criminal alliances have been recognized in the murders committed. It also reported that, by March 31, 2015, the National Directorate of Specialized Prosecutors for Human Rights and International Humanitarian Law and the National Directorate Specialized in Transitional Justice reported the existence of 705 open investigations where members of the UP are registered as victims, of which, for the year 2014, 520 cases were in preliminary or inquiry stage and 154 in instruction or investigation.

[496] It indicated that it recorded a total of 372 convictions, of which 30 belong to the security forces, 251 are part of paramilitary groups, 6 are part of the FARC and 85 have no links.

an individual and collective component, in view of the violation derived from the violations".

545. The ***Court*** values positively the advances that the State has implemented so far, which constitute important steps towards the reparation of the victims of the Unión Patriótica. However, taking into consideration the nature of the violations declared in the instant case, the context in which they occurred and the time that has elapsed since they occurred, it is evident that these actions are not sufficient to affirm that there has been integral reparation for the victims in the instant case. For this reason, the Court, in use of its powers to order reparations, will rule on additional measures to be adopted by the State for this purpose. This does not prevent this Court from taking into account, within the analysis that will be made below, those actions that the State has already implemented to assess the need and relevance of certain measures of reparation.

B.2. On the remedy of direct reparation action available in the contentious-administrative jurisdiction

546. As for the State's allegation regarding the contentious-administrative jurisdiction, the Court reiterates that its decision may be taken into account with respect to the obligation to fully redress a violation of rights[497] , and it is considering it in the section of this chapter corresponding to compensatory damages (*infra* paragraphs 630 to 632).

B.3. On other remedies available domestically in the administrative process

547. On the other hand, the ***State*** requested the Court not to order reparations that in the domestic sphere can be effectively caused and granted through judicial and administrative mechanisms. Regarding the latter, it argued that comprehensive reparation to victims through administrative channels "is regulated and developed by Law 1448 of 2011" (also called the "Victims and Land Restitution Law"), which aims to "provide measures of attention, assistance and comprehensive reparation to all victims of the armed conflict." It argued that this is "the most appropriate way to be used in contexts of transitional justice, when trying to overcome massive human rights violations", and that it is in accordance with "international parameters" for the reparation of victims. In this sense, the State argued that the administrative reparations program, enshrined in the aforementioned law, is a "suitable way to guarantee the right to reparation of the victims in the case", mainly for "those [whose] rights have been violated, and said violations are attributable to the State, exclusively in relation to the duty to guarantee. In general, the ***Commission*** valued the efforts made by the State in terms of reparations for the victims in this case, but also considered them "incipient" and "insufficient" to fully repair the magnitude of the damage caused to the victims in this case. It also considered that "the mechanisms of administrative reparation differ from judicial reparation, which is characterized by determinations of the individual damage caused to the victims". In this respect, the ***joint intervenors*** explained the reasons why they considered that the reparation of the victims that the State

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[497] *Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations and Costs.* Judgment of September 15, 2005. Series C No. 134, para. 214, and *Case of Rodríguez Vera et al (Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 14, 2014. Series C No. 287, para. 548.

The mechanisms of Law 1448 of 2011 do not allow for the comprehensive reparation of the various damages suffered by the victims in this particular case, and for which the mechanisms of said law have shown few results and progress to ensure that the victims of the armed conflict have effective access to their rights to truth, justice and comprehensive reparation.

548. This Court has already stated that, although in principle reparation measures have individual ownership, this situation may change when States are forced to make massive reparations to numerous victims, far exceeding the capacities and possibilities of domestic courts. Administrative reparations programs thus appear as a legitimate way of addressing the obligation to make reparations possible. In addition, in contexts of massive and serious human rights violations, these reparation measures must be conceived together with other truth and justice measures, and comply with certain requirements[498]. The Court has recognized and valued in other cases against Colombia the progress that the Victims and Land Restitution Law has represented in terms of reparations at the domestic level for victims of the armed conflict[499]. In relation to the State's request, the Court notes that some of the aspects of this program could be in line with the claims of the victims. Nevertheless, within the framework of its powers and autonomy to determine reparations in the cases before it, the Court will examine the claims requested and order the measures of reparation it deems pertinent. The State may implement such reparations through the reparation programs established at the domestic level, as long as they are in accordance with the measures ordered in this Judgment[500].

C. Obligation to investigate the facts and identify, prosecute and, if appropriate, punish those responsible.

549. The ***Commission*** considered that the State must "[i]nitiate, continue or reopen the corresponding criminal and disciplinary investigations for the totality of the human rights violations" declared in the instant case, in order to "clarify the facts completely, identify all possible responsibilities [of the different State and non-State actors involved] and impose the corresponding sanctions in a manner proportional to their seriousness". It indicated that such investigations must be carried out "with due diligence, in an effective manner and within a reasonable period of time". In addition, it held that "the State must ensure that the internal investigation mechanisms contribute to a complete clarification of the extermination of the Unión Patriótica".

550. The ***joint interveners of Reiniciar*** emphasized the importance of the "judicial clarification of the genocide against the Unión Patriótica" and requested that the Court order the State to "initiate, continue or reopen the corresponding criminal and disciplinary investigations for all of the human rights violations declared in the

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[498] Related, among others, to its legitimacy -especially, based on the consultation and participation of the victims-. The Court has also considered the following aspects: their adoption in good faith; the level of social inclusion they allow; the reasonableness and proportionality of the pecuniary measures; the type of reasons given for making reparations by family group and not individually; the criteria for distribution among members of a family, and parameters for a fair distribution that takes into account the position of women among family members. *Cf. Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia, supra,* para. 470, and *Case of Yarce et al. v. Colombia, supra*, para. 326.

[499] *Cf. Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia, supra*, para. 472; *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, supra*, para. 551; *Case of Yarce et al. v. Colombia, supra*, para. 327, and *Case of Vereda La Esperanza v. Colombia, supra*, para. 265.

[500] *Cf. Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, supra*, para. 551.

The "investigation must be carried out diligently, effectively and within a reasonable time in order to clarify the facts completely, identify all possible responsibilities and impose the corresponding sanctions in proportion to their seriousness; effectively investigate all the facts and background information related to the extermination of the members and militants of the Unión Patriótica, including the plans to intimidate and assassinate its members, determining and making visible the patterns of systematic violence against the community; determine the group of persons involved in the planning and execution of the events, including civilian authorities, military commanders and intelligence services; articulate coordination mechanisms between the different state bodies and institutions with investigative powers, to achieve coherent and effective investigations; remove all obstacles that impede the due investigation of the facts in the respective processes in order to avoid the repetition of what happened". They also considered that it should be declared that "the State may not apply amnesty laws or argue statutes of limitation, non-retroactivity of criminal law, res judicata, or the no bis *in idem* principle, or any similar exclusion of liability, to excuse itself from this obligation". They added that "this reparation order must be addressed to all competent national authorities, that is to say, not only to the Special Jurisdiction for Peace, but also to the Ordinary Justice and the Justice and Peace system, taking into account the scope of the competences of each one".

551. The representatives of the ***Díaz Mansilla family*** considered that, in ordering this measure of reparation, it is relevant to take into account the "normative and institutional context" that would surround its fulfillment, in which "three parallel models of justice" currently coexist in Colombia with jurisdiction for crimes committed in the context of the internal armed conflict.[501] They specifically requested that the State continue with the "criminal investigation and link to it all the intellectual and material authors of the forced disappearance of Miguel Ángel Díaz Martínez and other members and sympathizers of the armed conflict. Specifically, they requested that the State be ordered to continue with the "criminal investigation and to link to it all the intellectual and material authors of the forced disappearance of Miguel Ángel Díaz Martínez and other members and sympathizers of the Unión Patriótica and the Communist Party", for which "the evidence requested by the victims, the contextual evidence prepared by the Prosecutor's Office itself and the lines of investigation that take into account the qualities of Miguel Ángel [Díaz, as well as] the applicable macro-criminality patterns and the determination of those most responsible for the genocide of the UP" must be taken into account. They also requested that the ordinary jurisdiction order the summoning of the non-combatant State agents and civilian third parties who allegedly determined the commission of the forced disappearance of Miguel Ángel Díaz Martínez and other members and sympathizers of the Unión Patriótica and the Colombian Communist Party "[502]. Additionally, they requested the Court to order the "adoption of all necessary security measures to preserve the physical and psychological integrity of the Díaz Mansilla family in their search for truth and justice" and for the "legal and technical team that accompanies the family. On the other hand, they also pointed out that it is necessary that the State "continue with the search for the truth" through the "extrajudicial mechanism of the Truth Commission".

552. The ***joint interveners from DCD and CJDH*** made specific requests for the investigation of the cases they represent, with respect to which they consider that there is "evident impunity, since all criminal proceedings remain open and the prosecution of those responsible has been deficient". Likewise, in general terms, they requested "to urge the State [...] so that through the Attorney General's Office it achieves the individualization and

[501] These are: the JEP, derived from the Final Peace Agreement; the justice system derived from the demobilization process of some paramilitary forces, called Justice and Peace; and the ordinary criminal justice system, all of which have certain limitations in terms of their investigative powers.

[502] In their brief of requests and arguments they had requested an order to continue with the investigation of the facts "from Case 06, opened [in 2019 before the Special Jurisdiction for Peace]", as well as that in this case certain state agents be called to give "voluntary testimony"; however, in their brief of final arguments they asked the Court "not to take into account and to dismiss such request outright".

prosecution of those responsible for each of the facts". They argued that this measure should be ordered following the jurisprudence of the Inter-American Court with respect to effective investigations and within a reasonable period of time; investigation of all those responsible; independent judge and prison sentences proportional to the legal right affected and/or sanctions in conditions that are compatible with the American Convention. They added that in cases of forced disappearance "the investigation must lead to the whereabouts and identification of the disappeared victims".

553. ***Colombia*** "reiter[ed] its commitment to the investigation, prosecution and punishment of these terrible events" and "consider[ed] it vitally important that the SJP and the organs of ordinary jurisdiction and justice and peace continue with their work of clarifying the facts and determining the responsibilities that may arise "[503].

554. This Court valued the progress made so far by the State in order to clarify the facts related to the instant case. Nevertheless, taking into account the conclusions of Chapter IX of this Judgment regarding the violations declared, the Court provides, in accordance with its jurisprudence[504] , that the State must initiate, promote, reopen, direct and continue, within a period of no more than two years, and conclude, within a reasonable time and with the utmost diligence, comprehensive and systematic investigations and the relevant proceedings, in order to establish the truth of the facts relating to serious human rights violations and determine the criminal responsibilities that may exist, and remove all *de facto and de jure* obstacles that maintain in impunity several of the facts related to this case.

D. Determining the whereabouts of missing victims

555. The ***Commission*** requested "[i]nvestigate the fate or whereabouts of the disappeared victims and, if applicable, adopt the necessary measures to identify and deliver the mortal remains to their next of kin".

556. The ***joint interveners of Reiniciar*** considered that the State should, in a "rigorous and constant" manner, proceed with the search for the missing persons in this case, as well as with finding them and identifying them. In this regard, they stressed "the importance that such searches be articulated with the protocols and guidelines for the search of persons reported missing that are being applied by the Unit for the Search of Persons Reported Missing, an institution derived from the peace agreements in Colombia and which is carrying out actions to support the determination of the whereabouts of persons in cases such as the present one".

557. The representatives of the ***Díaz Mansilla family*** referred to the various institutions in Colombia that "have functions related to the search for persons who are victims of forced disappearance" and the need to order that these institutions have "the necessary and sufficient budget allocations" for their proper functioning[505] and "adopt a direct, concrete, demonstrable and high-level commitment" to the search for these persons. Specifically, with regard to the search for Mr. Miguel Ángel Díaz Martínez, they requested that the State be ordered to "continue [its] search, through the U[nity of

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[503] He explained that to investigate this type of cases involving patterns of macro-criminality he has "the ordinary justice system", "the Justice and Peace mechanisms derived from Law 975 of 2005 and, more recently, [...] the mechanisms derived from the Integral System of Truth, Justice, Reparation and Non-Repetition (SIVJR)".

[504] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 174, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, supra*, para. 558.

[505] In their final arguments, they stated that "[t]hese allocations must include the necessary resources for the development and prioritization of a DNA data bank of the victims of forced disappearance of the UP, as well as for the collection of samples in the country and abroad.

Search for Persons Reported Missing] and the other institutions that it may provide for this purpose and that this only ends when it can give a reason for his fate or whereabouts". They indicated that in the event that he is found dead, it is necessary that his remains be "reliably identified and delivered to his relatives in a dignified manner and with the necessary psychosocial and financial care measures", as well as that "the expenses be covered in their entirety by the Colombian State". Additionally, they requested that, in agreement with the family, within this search process, "security measures be taken to preserve the physical and psychological integrity of the Díaz Mansilla family in the continuation of their efforts to find Miguel Ángel Díaz Martínez".

558. The ***joint interveners of DCD and CJDH*** considered it necessary that "the State adopt a criminal investigation plan aimed at searching for and determining the missing persons" and that, "[i]n the event that [...] they are found dead, the State must carry out all the tasks aimed at handing over the skeletal remains to the next of kin so that they can be buried in accordance with their religious beliefs.

559. The ***State*** "welcome[d] the victims' representatives to turn to State institutions [such as the Unit for the Search for Missing Persons] to channel their requests for reparations.

560. In the instant case, the international responsibility of the State for the forced disappearance of 521 victims included in Annexes I and III of this Judgment has been established. This Court emphasizes that several lustrums have elapsed since the disappearances that are the subject of this case, for which reason it is a just expectation of their next of kin that their whereabouts be identified, which constitutes a measure of reparation and, therefore, generates a correlative duty for the State to satisfy it.[506] This duty subsists as long as there is uncertainty as to the fate of the victims. This duty subsists as long as there is uncertainty about the final fate of the disappeared persons. Receiving the bodies of their loved ones is of utmost importance for their next of kin, as it allows them to bury them in accordance with their beliefs, as well as to close the mourning process they have been living throughout these years[507]. Additionally, the Court emphasizes that the remains of a deceased person and the place where they are found can provide valuable information about what happened and about the perpetrators of the violations or the institution to which they belonged[508].

561. Taking into account the foregoing, the Court considers it necessary for the State to carry out a rigorous search through the relevant channels, in which it should make every effort to determine, as soon as possible, the whereabouts of the disappeared victims whose fate is still unknown, which should be carried out systematically and with adequate and suitable human, technical and scientific resources and, if necessary, the cooperation of other States should be requested. For the aforementioned proceedings, a communication strategy should be established with the next of kin and a framework for coordinated action should be agreed upon to ensure their participation, knowledge and presence, in accordance with the relevant guidelines and protocols[509]. In the event that the relatives of the disappeared victims decide to participate in the search processes, the State should take measures of material and logistical support so that they can do so adequately. Likewise, without prejudice to the rehabilitation measure ordered in paragraph 574, in the event that during the search process the relatives of the disappeared victims decide to participate in the search process, the State must take measures of material and logistical support so that they can do so adequately.

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[506] *Cf. Case of Neira Alegría et al. v. Peru. Reparations and Costs.* Judgment of September 19, 1996. Series C No. 29, para. 69, and *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 204.

[507] *Cf. Case of the Dos Erres Massacre v. Guatemala, supra*, para. 245, and *Case of Rivera and Family v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 26, 2013. Series C No. 274, para. 250.

[508] *Cf. Case of the Dos Erres Massacre v. Guatemala, supra*, para. 245, and *Case of Munárriz Escobar et al. v.*

Peru, *supra*, para. 124.

[509] *Case of Contreras et al. v. El Salvador. Merits, Reparations and Costs.* Judgment of August 31, 2011. Series C No. 232, para. 191, and *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 206.

If there are risks to the physical or mental health of the relatives of the disappeared victims who participate in the search process, the State must provide them with comprehensive accompaniment[510].

562. If the victims or any of them are deceased, the mortal remains must be delivered to their next of kin, after reliable proof of identity, as soon as possible and at no cost to them. In addition, the State must cover funeral expenses, if applicable, by mutual agreement with the next of kin.[511]

E. Restitution Measures: to provide adequate conditions for victims who are still displaced or exiled to return to their place of residence.

563. The ***Commission*** considered that for those internally displaced and exiled victims who wish to return to their places of origin, the State must ensure conditions for them to do so safely.

564. The ***joint intervenors of Reiniciar*** also requested that the victims who so wish be guaranteed a "dignified return," and added that the State should cover the expenses generated by the return of the victims to the places from which they were displaced or exiled, as well as restitute "housing and/or land" or "guarantee another in equal or better conditions. For their part, the representatives of the ***Díaz Mansilla family*** requested that, since the members of this family are currently in Colombia or Spain, for the "reunification and recovery of [their] family life," the State be ordered to "cover in full the costs of an annual trip, for the next twenty years, for each of the family units[512] ", which should include "at least [...] an air ticket, one way, for the next twenty years, for each of the family units513 ", which should include "at least [...] an air ticket, one way, for the next twenty years, for each of the family units514 ".a round trip air ticket between the place of residence of the family nucleus and Colombia or between Colombia and the place of residence of the exiled family members, as well as the necessary expenses for transportation, lodging and food in Colombia or in the place of residence of the exiled family members, and the security guarantees necessary for this purpose".

565. Regarding Reiniciar's request, the ***State*** argued that "the Victims Law establishes the measures of return and relocation for all those persons who have been forcibly displaced, as well as the measure of land restitution. It also considered "inadmissible" the request of the representatives of the Diaz Mansilla family, due to the fact that "to date there has been no precedent in the System that grants this type of reparations", and that "the damage suffered has not been proven, and how the reparations requested [...] will restore the aforementioned damage".

566. In the present case, the Court found the State responsible for the violation of the rights of movement and residence to the detriment of the 1596 victims who suffered internal displacement or who had to emigrate outside Colombian territory due to threats and acts of violence against them or their families, which are indicated in Annexes I and III of this Judgment.

567. In order to contribute to the reparation of these victims, the Court orders that, on a one-time basis, the amount of US$15,000.00 (fifteen thousand United States dollars) be paid to the 1596 victims of forced displacement indicated in Annexes I and III.

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510 *Cf. Case of Guachalá Chimbo et al. v. Ecuador, supra*, para. 230.

511 *Cf. Case of Anzualdo Castro v. Peru, supra,* para. 185, and *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 206.

512 "[F]or Gloria María Mansilla de Díaz, for Ángela Ivette Díaz Mansilla, for Juliana Díaz Mansilla and her

children and, for Luisa Fernanda Díaz and her daughters".

America), as compensation fixed in equity for the loss of their homes or land. This does not exclude that these persons may make the relevant claims through internal land restitution mechanisms, such as those indicated by the State.

568. On the other hand, regarding the request of the representatives of the Diaz Mansilla family, this Court orders that, on a one-time basis, an amount of US$10,000.00 (ten thousand United States dollars) be given to the relatives of that family who have been declared victims and who reside in Spain[513] , which has been fixed in equity for the displacement they suffered.

F. Rehabilitation and Satisfaction Measures

F.1. Rehabilitation: health care for victims

569. The ***Commission*** requested that "the necessary physical and mental health care measures be provided for the rehabilitation of the victims who so request and, in any case, in agreement with them".

570. The ***joint intervenors of Reiniciar*** alleged that the multiple human rights violations caused "great suffering" to the victims and their families, and therefore requested "measures of psychosocial accompaniment and rehabilitation in individual and collective health. Specifically, they requested "the implementation of a comprehensive health program, which firstly affiliates the victims and their families to the contributory health system, to provide priority and specialized health care and attention, including medical and psychological treatment for as long as necessary, including the provision of medicines; to ensure that treatments are in accordance with the particular needs of each person, so as to include collective, family and individual procedures, as agreed with each of them after an individual assessment". Likewise, they requested that within the integral program to be adopted, the attention currently provided to 26 victims of the Unión Patriótica in condition of disability be reinforced.

571. The *representatives of the* ***Díaz Mansilla family*** referred to the "physical, psychological and psychosocial effects at different levels" and the various impacts of the forced disappearance of Miguel Ángel Díaz Martínez on their relatives. In this regard, they requested an order to "provide health care to all the victims and family members of the Díaz Mansilla family", "including physical, psychological, psychosocial and any other type of care necessary to advance in the recovery and full enjoyment of their health". They argued that this "should be provided free of charge[514] and include the provision of medicines. In particular, they requested that "special consideration be given to the health situation of Gloria María Mansilla de Díaz, who suffers from type 2 diabetes and, in addition, to establish that all these measures should be extended to Miguel Ángel Díaz Martínez, in the event that he is found alive". On the other hand, regarding the relatives of Mr. Díaz Martínez who are exiled in Spain (Ángela Ivette Díaz Mansilla, Juliana Díaz Mansilla, Samuel Ortega Díaz y Martín Ortega

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[513] These persons are: Ángela Ivette Díaz Mansilla, Juliana Díaz Mansilla, Samuel Ortega Díaz and Martín Ortega Díaz.

[514] Regarding free of charge, they requested the Court to take safeguards" in view of "the difficulties and barriers that the Colombian State maintains to grant genuinely free rehabilitation measures", since it "maintains that it is legitimate to charge contributions, moderating quotas and co-payments by the beneficiaries of a rehabilitation measure issued by the IACHR Court", with which in the ordered measure "the qualification of the service as 'free' would have no effect". Therefore, they requested that "the Colombian State be expressly ordered to refrain from charging contributions, moderating quotas or co-payments related to health services derived from compliance with

the judgment issued by the Court in the present case".

Díaz), requested that the State "provide a sum of US$7,500 for each one" which "will be specifically destined to defray the costs of treatment and rehabilitation".

572. The ***joint intervenors of DCD and CJDH*** argued that "[c]larly the facts of the case [...] have a direct impact on the emotional and psychological state of the victims", for which reason "in accordance with the jurisprudence of this [...] Court, the State must provide free comprehensive psychosocial care for the victims". In addition, they requested that "preferential access [...] to psychosocial treatment programs for the treatment of the traumatic consequences derived from the facts" be provided for the victims of the peasant population of the Municipality of Dabeiba, Antioquia and their families; for Luz Marina Ramírez Giraldo, victim of the case of violations against members of the Colombian Communist Youth; and for the victims of the case of systematic violations against active members of the Patriotic Union in the Municipality of Apartadó.

573. The ***State*** argued that these are requests that can be materialized based on the measures enshrined in Law 1448 of 2011. In this regard, it argued that this law "enshrines the Psychosocial Care and Comprehensive Health Program for Victims (PAPSIVI), which is led by the Ministry of Health, and is defined as the set of activities, procedures and interdisciplinary interventions for comprehensive psychosocial health care, with free access for all victims". Regarding this program, he highlighted other judgments of the Inter-American Court in which "it has recognized the scope achieved by the State, [...] has ordered measures for psychological health care, and has said that treatments can be carried out through the national health services, including through PAPSIVI".

574. Having established the violations and the damages suffered by the victims, as it has done in other cases,[515] the Court considers it necessary to order rehabilitation measures in the instant case, in order to provide comprehensive care for the physical, psychological and psychosocial suffering of the victims of the violations established in this Judgment. Therefore, the State is ordered to provide free of charge (without charge), through specialized public health institutions or specialized health personnel, and in an immediate, priority, adequate and effective manner, medical, psychological, psychiatric and/or psychosocial treatment to the victims who so request it, with prior informed consent, including the free supply of any medications that may be required, taking into account the ailments of each one of them. In the event that the State lacks them, it shall resort to specialized private or civil society institutions. Likewise, the respective treatments should be provided for as long as necessary and, as far as possible, in the centers closest to the places of residence of the victims in this case and, in any case, in a place accessible to such persons. In providing treatment, the particular circumstances and needs of each victim should also be considered, so that collective, family and individual treatment is provided, according to the needs of each victim and after an individual evaluation by a health professional[516].

575. This Court has already recognized and valued the achievements made by Colombia in terms of the increasing provision of health benefits for victims of the armed conflict[517]. Therefore, insofar as it is appropriate to the measure ordered, the Court considers, as it has

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[515] *Case of Barrios Altos v. Peru. Reparations and Costs.* Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45, and *Case of Mota Abarullo et al. v. Venezuela, supra*, para. 146.

[516] *Cf.* Case of *19 Comerciantes v. Colombia, supra,* para. 278, and *Case of Díaz Loreto et al. v. Venezuela*, para. 153.

[517] *Cf. Case of Yarce et al. v. Colombia, supra*, para. 340, and *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 215.

in other cases,[518] that the State may grant such treatment including through PAPSIVI. In the event that Colombia chooses to use the aforementioned program, it must ensure that it complies with all the criteria established by this Court to provide the rehabilitation measure to the victims (*supra* para. 574), in order to prevent objections such as those that have arisen in other cases[519] or obstacles of any kind[520] from arising during the compliance monitoring stage.

576. The victims who request this measure of reparation, or their legal representatives, have a period of six months from the date of notification of this Judgment to inform the State of their intention to receive the aforementioned treatment[521]. The Court emphasizes the need for the State and the joint interveners to make every effort to collaborate and provide the victims with all the information necessary to receive medical, psychological, psychiatric and/or psychosocial treatment, in order to move forward with the implementation of this measure in a consensual manner[522].

577. In addition, with respect to the relatives of Mr. Díaz Martínez who are living outside Colombia, taking into account the express request of their representatives and how it has proceeded in other cases with a similar situation,[523] the Court orders in equity that the State pay each of the following victims: Gloria María Mansilla de Díaz, Luisa Fernanda Mansilla, Pedro Julio Díaz Fonseca, Blanca Inés Martínez de Díaz, Rodrigo Orlando and María del Pilar Díaz Martínez, Ainara Ohiane and Ixmucané Mahecha Díaz, on a one-time basis, the sum of US$7.500.00 (seven thousand five hundred dollars of the United States of America) for medical, psychological or psychiatric treatment expenses, as well as for medication and other related expenses, so that they may receive such care in the place where they reside. Said amount shall be paid within one year from the date of notification of the Judgment.

F.2. Satisfaction

578. In general terms, ***the Commission*** held that both individual and collective measures of satisfaction should be "implemented, [...] designed with the participation and approval of the victims, including those that they and their families "consider appropriate for the historical vindication and reparation of the stigmatization to which they have been subjected". The ***joint intervenors*** of the victims' representatives made several specific requests for measures of satisfaction. The ***State*** specifically referred to some of these requests, in particular with respect to the realization of the public act of acknowledgment of responsibility. However, its general position with respect to the requests for measures of satisfaction for the commemoration of the victims or the events was that "they can be materialized from the measures enshrined in Law 1448 of 2011."

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[518] *Cf. Case of Yarce et al. v. Colombia, supra*, para. 340, and *Case of Omeara Carrascal et al. v. Colombia,* supra, para. 300.

[519] *Case of the Santo Domingo Massacre v. Colombia. Supervision of Compliance with Judgment.* Resolution of the Inter-American Court of Human Rights of November 22, 2018, and *Case of Yarce et al. v. Colombia. Supervision of Compliance with Judgment.* Resolution of the Inter-American Court of Human Rights of November 22, 2019.

[520] *Case of the Santo Domingo Massacre v. Colombia. Supervision of Compliance with Judgment.* Resolution of the Inter-American Court of Human Rights of November 22, 2018, and *Case of Yarce et al. v. Colombia. Supervision of Compliance with Judgment.* Resolution of the Inter-American Court of Human Rights of November 22, 2019.

[521] *Cf. Case of Rosendo Cantú and Another v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31 , 2010. Series C No. 216, para. 253, and *Case of Vereda la Esperanza v. Colombia*, para. 279.

[522] *Cf. Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, supra*, para. 568.

[523] *Cf. Case of the Dos Erres Massacre v. Guatemala, supra*, para. 270, and *Case of Carvajal Carvajal et al. v. Guatemala, supra*, para. 208.

1) Publication and dissemination of the Judgment

579. All common intervenors requested measures related to the publication and dissemination of the Judgment, parts of the Judgment or its official summary. ***Reiniciar*** requested to order "[p]ublication of the proven facts of the Judgment, the considerations related to the merits of the case and the operative part of the Judgment". The representatives of the ***Diaz Mansilla family*** requested the publication of the summary of the Judgment in "the Official Gazette", in "two Sunday newspapers of wide national circulation" and in "the *websites* and social networks (Facebook, Twitter and Instagram) of the Presidency of the Republic, the Ministry of National Defense, the Ministry of the Interior, the National Army and the National Police of Colombia". They also requested the publication "of the Judgment in its entirety" in those pages and that it be maintained for "at least two years". Likewise, they requested the broadcasting of "a television spot of at least fifteen minutes, once a week, for one year, on public television containing the sections of the IACHR Court's judgment in which the international responsibility of the State is determined". The ***CJDH and DCD*** requested that the State publish in a visible and accessible manner on the official *web* portal, preferably of the Judicial Branch, the full content of the judgment and that this publication remain for one year, as well as to publish the official summary of this Judgment in a newspaper of wide national circulation. It also requested that the official summary of the judgment be published in a radio station and a television station of national coverage at a time of high audience.

580. The Court orders, as it has done in other cases, that the State publish, within six months of notification of this Judgment: (a) the official summary of the present Judgment prepared by the Court, once only, in the official newspaper, in a legible and adequate font size; (b) the official summary of the present Judgment prepared by the Court, once only, in a newspaper of wide national circulation, in a legible and adequate font size; and (c) the present Judgment in its entirety, available for a period of one year, on an official *website.* The State shall immediately inform this Court once it proceeds to carry out each of the ordered publications, regardless of the one-year term to submit its first report provided for in operative paragraph 42 of the Judgment.

581. Also, within six months from the notification of the Judgment, the State shall publicize the Court's Judgment on the social media accounts (*Facebook*, *Instagram* and Twitter) of the Presidency of the Republic of Colombia, the Ministry of National Defense, the Attorney General's Office and the Ministry of Foreign Affairs of Colombia. The publication should indicate that the Inter-American Court has issued a judgment in this case declaring the international responsibility of Colombia and indicate the link where the full text of the judgment can be accessed directly. In order to ensure the widest possible dissemination and reach, the publication shall tag the social media accounts of the organizations representing the victims and the Patriotic Union Party, if any, and allow the publication to be shared. This publication shall be made in the month following the notification of the Judgment at least five times by each institution and during business hours, as well as remain published on their social media profiles.

582. In addition, this Court considers it appropriate, as it has ruled in other cases[524] , that the State publicize the official summary of the Judgment, through a television medium with national coverage, during prime time, only once within a period of six months from the date of notification of this Judgment. The State shall

[524] *Cf. Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, supra*, para. 573, and *Case of the Employees of the Santo Antônio de Jesus Fire Factory v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 15, 2020. Series No. C 407, *supra*, para. 278.

to give prior notice to the representatives, at least two weeks in advance, of the date, time and television medium in which the broadcasting will be made.

2) Public act of recognition of international responsibility

583. Both the Commission and all the joint intervenors of the victims' representatives requested that the State be ordered to carry out a public act of acknowledgment of international responsibility and public apology, in concert with the victims, in addition to the one carried out by the State in December 2016. The ***joint intervenors of Reiniciar*** requested that "pre[si]d by the President of the Republic." The representatives of the ***Díaz Mansilla family*** requested that a public act of recognition of responsibility for the disappearance of Mr. Díaz Martínez be carried out in "the Teatro Colón", in which "the highest authority of the Colombian Ministry of Culture be present and a plaque of memory be "instal[ed] inside the theater". The ***joint intervenors of DCD and CJDH*** stated that the State's acceptance "should [also] take place in a public scenario with the presence of the different media and the victims". In addition, they requested that various public acts of acknowledgment of international responsibility be ordered in relation to certain violations[525].

584. In this regard, the ***State*** asked the Court to evaluate the public act of acknowledgment of responsibility carried out on September 15, 2016, by the then President of the Republic, Mr. Juan Manuel Santos Calderón, with respect to the events that occurred against the militants and sympathizers of the Unión Patriótica. It expressed that it should be taken into account that this act "complied with the requirements established by [this] Court to be considered as a measure of satisfaction and a guarantee of non-repetition", as well as its contribution to the comprehensive reparation of the victims of the Unión Patriótica".

585. Although the Court values very positively the public act of acknowledgment of responsibility that was carried out at the domestic level and prior to the issuance of the Judgment in the instant case, the Court observes that it seems to have represented only a partial satisfaction for the victims, since the three interveners common to the victims' representatives agree that a new act is necessary for the State to acknowledge its international responsibility for the totality of the human rights violations related to the instant case.

586. Taking into account that the present Judgment includes more facts and human rights violations than those that would have been recognized by the State in the act carried out in December 2016 and the seriousness of these, as well as the request of the joint interveners regarding the need for Colombia to carry out a new act, in order for this type of measure to have full reparatory effect, the Court considers it necessary, as it has done in other cases,[526] in order to repair the damage caused to the victims and to prevent the repetition of events such as those in this case, to order the State to carry out a public act of acknowledgment of international responsibility in Colombia, in relation to all the facts of this case. Said act must make reference to the human rights violations declared in this Judgment. It shall also be carried out through a public ceremony in the presence of high-ranking State officials and the victims of the case. The State shall agree to

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[525] Namely: the violations committed to the detriment of: the 31 victims of the peasant population of the Municipality of Dabeiba, Antioquia; of the members of the Colombian Communist Youth in Medellin; of Luz Marina Ramirez Giraldo and regarding the case of systematic violations against active members of the Patriotic Union in the Municipality of Apartadó.

[526] *Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, para. 81, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, supra*, para. 576.

with the victims or their representatives the modality of compliance with the public act of acknowledgment of international responsibility, as well as the particularities that may be required, such as the place and date for its realization. For this purpose, the State has a period of one year from the date of notification of this Judgment.

3) Actions in commemoration of victims or events

a) Designation of a national day for the commemoration of the victims of the Patriotic Union.

587. The ***joint interveners of Reiniciar*** requested that October 11 of each year be declared, by means of a law, as the "National Day for the dignity of the victims of the genocide against the Unión Patriótica", in which the government "develop[s] activities and events aimed at recovering and disseminating the historical memory of the extermination against the Unión Patriótica and to dignify the victims and their families".

588. Taking into account the transcendence and magnitude of the human rights violations found in this case and the impact they have had on Colombian society, as well as what was stated by expert witness Clara Sandoval regarding the importance of "considering the establishment of a national day for the victims of the Unión Patriótica" to "memorialize what happened to them" and "to worship the plurality of political thought "[527], the State is ordered to guarantee the official designation of a national day in commemoration of the victims of the Unión Patriótica. For the choice of the day, the State is requested, to the extent possible, to take into account the proposal of Reiniciar, that it be established on October 11 of each year and that on that day, activities be carried out to disseminate the facts of this case, in order to avoid their repetition. Likewise, the Court considers that Colombia must include activities for the dissemination of this national day in public schools and colleges. The State must comply with this measure within one year of notification of this Judgment. The Court will supervise its compliance during the first two years of its execution.

b) Construction of monument and designation of public spaces in memory of the victims

589. The joint intervenors of the representatives of the victims have requested various measures in commemoration of the victims or the facts consisting of the erection of a monument, a plaque and/or the designation of public spaces. ***Reiniciar*** requested that Colombia be ordered to erect a monument in memory of the victims of the extermination of the Unión Patriótica that is appropriate and worthy of the magnitude of this case and, similarly, the CJDH and DCDH requested that Colombia be ordered to erect a monument in memory of the victims of the extermination of the Unión Patriótica that is appropriate and worthy of the magnitude of this case, ***CJDH and DCD*** requested the construction of a monument in a transited and cultural place and that it be commemorative and vindicative to reflect the struggle and significance of the Patriotic Union in Colombian history, as well as "to erect a monument in La Basita in order to preserve the historical memory of the events that occurred in that place and other nearby places in 1997". On the other hand, ***Reiniciar*** also requested to promote the creation of iconography, as well as the naming of "streets, parks and buildings" in commemoration of the victims and/or the facts of the case. Also, in its final written arguments it requested, based on requests for reparations made at the hearing by the declarants, that the placement of "[p]lacas commemorating the murdered councilmen" be ordered. Similarly, the

[527] He added that "[o]n that day, the public communication channels, such as radio and television, should produce

reports, documentaries or memory capsules that dignify the victims and the political work carried out by the Unión Patriótica party in the construction of peace and democracy. *Cf.* Expert opinion of Clara Sandoval, para. 118, (evidence file, folio 365446).

representatives of the ***Díaz Mansilla family*** requested the placement of a plaque in memory of Mr. Miguel Ángel Díaz at the Teatro Colón (*supra* para. 583).

590. In the opinion of this Court, in the instant case it is necessary that the State build a monument in memory of the victims[528] of the acts committed against members and militants of the Unión Patriótica. The choice of the appropriate public place where such monument will be located and its design must be agreed upon between the State, the victims and/or their representatives. Within six months from the notification of the Judgment, the State must communicate the place agreed upon for the construction of the monument. In the event that the parties have not reached an agreement within the aforementioned period, the Court shall decide on the site based on the proposals submitted by the State and the joint intervenors.

591. Additionally, the place where the monument is placed should have a plaque that also alludes to the context in which the violations occurred and expressly mentions that its existence is due to compliance with a reparation ordered by the Inter-American Court. This measure will contribute to raise awareness to avoid the repetition of serious acts such as those that occurred in this case and to keep alive the memory of the victims[529]. Colombia has a period of two years from the date of notification of this Judgment to complete the design and construction of the aforementioned monument.

592. Likewise, the State shall designate and/or place plaques in at least five places or public spaces to commemorate the victims in this case. The choice of the places and the victims to be commemorated must be agreed upon with the joint interveners of the representatives of the victims, for which purpose a period of six months from the date of notification of the Judgment is granted. If after this period the parties have not reached an agreement, the Court will decide based on the proposals submitted by the State and the common intervenors. To the extent possible, given that the facts of this case occurred in different parts of the Colombian territory, efforts should be made to ensure that these measures to commemorate the victims are implemented in locations other than the one where the monument is located. Colombia shall have a period of two years from the date of notification of this Judgment to implement these measures.

c) Production of an audiovisual documentary

593. The representatives of the ***Díaz Mansilla family*** requested that the State be ordered to finance the production, dissemination and distribution of a documentary on the life and work of Miguel Ángel Díaz Martínez and his contributions to peace and democracy in Colombia. In a similar vein, the ***joint intervenors of Reiniciar*** stated that the State should be required to implement other measures such as "[a] feature film and regional documentaries on the history of the genocide" and "[a] television series on the history of the Unión Patriótica".

594. Given the circumstances of this case, the Court orders, as it has done in other cases,[530] that the State make an audiovisual documentary on the violence and stigmatization against the Unión Patriótica, with mention of the facts and violations found in this Judgment, thus

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[528] *Cf. Case of Barrios Altos v. Peru. Reparations and Costs, supra,* paras. 44 and 45, and *Case of Vereda La Esperanza v. Colombia, supra*, para. 286.

[529] *Cf. Case of Myrna Mack Chang v. Guatemala, supra, para. 286, and Case of Vereda La Esperanza v. Colombia, supra*, para. 286.

[530] *Cf. inter alia*, *Case of Cepeda Vargas v. Colombia, supra*, paras. 228 and 229; *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 365; *Case of Rodríguez Vera et al (Disappeared from the*

Palace of Justice) v. Colombia, supra, para. 579, and *Case of Vicky Hernández et al. v. Honduras, supra*, para. 163.

as well as the context in which they occurred. These types of initiatives are significant both for the preservation of memory and satisfaction of the victims, as well as for the recovery and reestablishment of historical memory in a democratic society[531].

595. For the elaboration and production of this audiovisual documentary, the opinion of the common interveners of the representatives of the victims shall be taken into account, for which purpose, within four months from the notification of the Judgment, the State shall designate an interlocutor who shall be in charge of coordinating with the common interveners. The State shall be responsible for all the expenses generated by the production, projection and distribution of such video. The documentary video shall be shown on a national television channel and during prime time television audience, only once, which shall be communicated to the common interlocutors of the victims' representatives at least two weeks in advance. It shall also be placed on an official *website* of the State that is suitable for the dissemination of this type of documentaries. Likewise, the State shall provide the joint participants of the victims' representatives with 300 copies of the video of the documentary, so that they can distribute it among some of the victims, other civil society organizations and the main universities of the country for its promotion and subsequent screening with the final objective of informing the Colombian society about these facts. For the making of said documentary, its screening and distribution, the State has a period of two years, counting from the notification of this Judgment, and shall submit a report to the Court on the progress made in the compliance with this measure of reparation within one year from the notification of this Judgment.

G. Guarantees of non-repetition

G.1. National campaign to raise awareness of the violations committed against leaders, members and/or militants of the Unión Patriótica.

596. The ***Commission*** recommended that "[i]n view of the current context of implementation of the peace agreement in Colombia, [it] provide suitable mechanisms to ensure that serious human rights violations against individuals or political groups who wish to participate in political life do not recur," so that "they can join political activity with full guarantees to exercise this activity without stigmatizing discourse by state agents. In a similar sense, the ***joint interveners of Reiniciar*** requested that the State be ordered to "[i]mplement a public policy of a special line to dismantle the stigmatization to which the militants [and] members of the Unión Patriótica have been subjected, because of having emerged from a peace process between the National Government and the FARC guerrillas", which "must be aimed at recovering the good name, dignity, equality before the law, reputation and rights of the victims and of the persons closely linked to it, introducing cultural changes regarding the legitimacy of thinking differently". The ***State*** did not submit specific allegations in this regard.

597. In view of the serious human rights violations committed against the victims in this case, who were leaders, members and/or militants of the Unión Patriótica, the context of stigmatization and violence in which these violations occurred, as well as the consequences that this had at the time on the political participation of this party, the Court considers it appropriate to order, as a measure to prevent the repetition of these serious events in the future, that the State conduct a national campaign in public media with the aim of

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[531] *Cf. Case of Cepeda Vargas v. Colombia, supra*, paras. 228 and 229, and *Case of Rodríguez Vera et al (Disappeared from the Palace of Justice) v. Colombia, supra*, para. 579.

The aim is to raise awareness[532] in Colombian society of the violence, persecution and stigmatization to which the leaders, militants and members of the Patriotic Union were subjected for decades and in various parts of the national territory and the consequences that this had on the political participation of the party, as well as on the importance of adequate and equal conditions for the exercise of political participation in a democratic society. With this guarantee of non-repetition with a transformative vocation, the Court hopes not only to contribute to the deconstruction of imaginaries and stigmatizations that contributed to the violence against the members of the political party, but also to enable reconciliation, greater democratic openness and the non-repetition of similar events in the future. The State will have a maximum term of three years for its execution.

G.2. Academic forums on the Judgment in the present case and the violations against members of the Unión Patriótica

598. Likewise, the joint interveners have requested certain measures related to activities of an academic nature or the dissemination of material on the violations in this case and the context in which they took place. Specifically, ***Reiniciar*** requested the implementation, in public and private institutions of higher education, of "the Cátedra Unión Patriótica" so that, "through forums, conferences, workshops and other events", the case of extermination against the Unión Patriótica and its history can be pedagogically disseminated, dignify the victims and reflect on the guarantees of non-repetition for political reasons in the country, as well as compile, edit and publish "the presentations, discussions and conclusions of the aforementioned chair" in a print that can be disseminated and distributed "in libraries, universities, schools and academies in the country". For their part, the ***CJDH and DCD*** requested the inclusion in all basic education institutions in the country of a "compulsory lecture on the history of the political conflict in Colombia", in which the historical problems of the country in relation to the existence of a conflict are addressed, and the screening, in the main movie theaters of the country and with free access, of the documentary entitled "Albums of Memory and Visual Narratives of the Assassinated Leaders of the UP". The ***State*** indicated that in response to "the requests for the organization of [...] lectures to promote the construction of historical memory of what happened, it is noted that, within the framework of the Collective Reparation Program, it is possible to carry out actions aimed at satisfying this type of measure.

599. Taking into account the aforementioned requests, as well as the violations found in this Judgment, and the expert opinion rendered by expert witness Sandoval, in which she explained that as a guarantee of non-repetition in this case, an educational reflection on the memory of what happened to the victims of UP[533] should be ordered, the Court considers that in this case it is appropriate to order that, on a one-time basis, the State hold, in at least five public universities in different parts of the country, an academic forum on issues related to this case. The State shall be responsible for all the expenses generated by this forum, which shall last no less than one day; it shall include the participation of various guest speakers (including some of the victims in this case), make reference to this Judgment, and allocate a space for the projection of audiovisual material related to the facts, victims, human rights violations committed against members and activists of the Unión Patriótica and the context in which they occurred. The State shall take into account the proposals made by the

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[532] *Cf. inter alia*, *Case of Servellón García et al. v. Honduras.* Judgment of September 21, 2006. Series C No. 152, para. 201, and *Case of Nadege Dorzema et al. v. Dominican Republic, supra*, para. 272.

[533] *Cf.* expert opinion of Clara Sandoval rendered before a notary public, para. 119 (evidence file, folio 365447).

The Committee shall also invite them in due time so that they may participate in the forums, the speakers and the material to be shown, as well as invite them in due time so that they may participate in the forums. Likewise, in order to ensure a wide dissemination of the events, they should be transmitted using virtual media. The aforementioned forums must be held within a period of one year from the date of notification of the Judgment.

G.3. Protective measures for leaders, members and activists of the Unión Patriótica

600. The ***Commission*** indicated that it is necessary to "ensure the protection of [the] life, integrity and other rights [of members and militants of the UP] so that their participation in politics does not become a threat to them once again. To this end, it considered that the State must "[i]mplement mechanisms of non-repetition" aimed at "adapting and strengthening the protection mechanisms in their favor to ensure that they are in a position to duly respond to the present or supervening risk factors that they may face in the current context of the country as a consequence of belonging to or being linked to that particular group", and that "the adoption of measures [must have] the participation of members of the UP". The ***joint interveners of Reiniciar*** stated that it is necessary to "[m]aintain […] and strengthen the measures" of the "Special Program of Integral Protection for Leaders, Members and Survivors of the Patriotic Union and Communist Party" that was "agreed between the petitioners and the national government [...] and implemented" through Decrees of 2000, 2011 and 2012.

601. The ***State*** alleged that since 2000 "it has implemented a series of measures aimed at guaranteeing that the members of the Patriotic Union can continue with the exercise of their political vocation, increasingly improving their security guarantees". Among such measures, he referred to the creation of: (a) of a special comprehensive protection program specifically for leaders, members and survivors of the Patriotic Union and the Communist Party, the adjustments that have been made to this program since its creation in 2000 with subsequent decrees, and the scope that this program has had in terms of the number of protection schemes and persons benefiting from protection measures, even at times close to electoral junctures; b) the "Committee for Risk and Recommendation of Measures" (CERREM), which is the "body from which the timely implementation of the protection measures approved" to be implemented in favor of the beneficiaries is monitored, and which has among its members the National President of the Patriotic Union and the President of Reiniciar, and c) of the "Committee of Electoral Guarantees for the Patriotic Union Party", which has held between 2015 and 2017 working sessions with state institutions and representatives of the Patriotic Union on various issues, including "protection measures and security schemes in favor of members and militants of the UP".

602. The Court observes that the State has sought through various mechanisms to implement diverse measures to guarantee the security and protection of members and militants of the UP. The Court considers it relevant to maintain and strengthen the existing mechanisms; however, it does not have sufficient information as to the aspects that require improvement or strengthening. Therefore, within one year from the date of notification of the Judgment, the State, together with authorities of the Unión Patriótica, must submit a report to the Court in which they agree and specify which aspects of the existing protection mechanisms need to be improved or strengthened and how they will be implemented, in order to continue adequately guaranteeing the security and protection of leaders, members and militants of the UP so that they can carry out their political activities freely and without fear.

H. Other measures requested

603. The ***joint interveners of Reiniciar*** requested in their brief of requests and arguments the following restitution measures of a "collective" nature for the "[p]olitical reparation" of the Unión Patriótica party and its members and militants: (a) "maintaining the legal personality of the Unión Patriótica on a permanent basis," allowing it "s[ea] to be included with the political demographic spectrum of the country, without any conditions," and (b) "the restitution of six seats [in the Congress of the Republic], for four consecutive periods, distributed in three in the Senate and three in the House of Representatives, to reestablish the political representations that were truncated by the execution of the elected Congressmen who were murdered in the exercise of their functions." In their final written pleadings they added the request to grant "[c]ircunscription for the Patriotic Union at national and regional level for representation before the Council of the Republic, Departmental Assemblies and Municipal Councils", as well as the return of seats in these. Regarding the legal status of the Patriotic Union, the ***Commission*** considered that the State should be "urged to ensure that any future decisions it may have to make take into account the magnitude of the human rights violations [...] against the political party and their lasting effects". The ***State*** considered these requests "improper". On the one hand, it argued that "it is not possible to grant [these] measures" because "the Unión Patriótica does not have the status of victim before the Inter-American System" and, on the other, because "the alleged violation has been remedied", due to the fact that "measures have already been taken to guarantee the continuation of the political party in the public sphere". Among them, he mentioned the 2013 decision of the Council of State through which it resolved the annulment of the resolution of the National Electoral Council that suppressed the legal personality of the UP and granted recognition of this to the party until 2018; as well as other measures taken through the Committee of Electoral Guarantees to guarantee equal participation in future electoral contests, recognizing the status of victims of the militants, relatives and survivors of the UP in the framework of Law 1448 of 2011".

604. This Court observes that the cancellation of the legal status of the Unión Patriótica that was given at the time was remedied by decision of the Council of State and extended until 2018. Likewise, through the "Committee of Electoral Guarantees for the Unión Patriótica party" which was created by the State in 2013, and in which the President of said political party has the participation, there is the possibility of formulating action strategies tending to guarantee its participation in future electoral contests, within which the condition of victims of its members in the framework of the Victims Law 1448 of 2011 is taken into account. Therefore, the Court does not consider it pertinent to order measures such as those requested.

605. On the other hand, the representatives of the ***Diaz Mansilla family*** requested other restitution measures related to: (a) the return of 50% of the family home, which they lost by action and omission of the State, specifically due to an auction by a state financial entity and different national judges that did not take into account the rights, the applicable regulations for the protection of property and patrimony, b) the restitution of a property purchased by Miguel Ángel Díaz Martínez in Puerto Boyacá, on the day he was a victim of forced disappearance, in order to give it to the Communist Party and to build on it a space for political activities and for the memory of the genocide of said party. Regarding these requests, the ***State*** considered that "adequate and effective remedies were not duly exhausted" by the interested parties, and that "if there are requests for land restitution, these should be channeled through the internal mechanisms provided for by Law 1448".

606. The Court observes that the aforementioned requests of the Díaz Mansilla family for the restitution of real property lack a causal link with the facts and violations that have been taken as proven in this Judgment, for which reason it does not consider it pertinent to order the measures requested.

607. Regarding rehabilitation measures, in addition to what was requested (*supra* para. 570), the representatives of the *Diaz Mansilla family* considered that the State should be ordered to: (a) to carry out a technical-scientific analysis on the differential and transgenerational impact of the forced disappearance on children and adolescents in order to adapt the rehabilitation measures to be taken with respect to the grandchildren of Miguel Ángel Díaz Martínez and for those present in this case, and (b) the creation of a psychosocial assistance program for the relatives of persons disappeared in the context of the genocide and extermination of the Patriotic Union and the Colombian Communist Party.

608. On the other hand, regarding measures of satisfaction, additionally, the ***common interveners of Reiniciar*** requested in their brief of requests and arguments that the Ombudsman's Office, through district and municipal institutions, carry out a national inventory of the iconography and places that evoke the memory of the victims of the Patriotic Union to ensure their conservation and restoration. Also, in their final written arguments they included additional requests for measures of satisfaction of a general nature in relation to the "genocide" and/or the history of the Patriotic Union party[534]. The representatives of the ***Díaz Mansilla family*** also requested that the State be required to: a) adopt all possible actions so that the media that at the time favored the stigmatization of the Unión Patriótica rectify, and b) establish and grant ten scholarships for higher studies in a Colombian university for art and culture programs, called 'Beca Miguel Ángel Díaz Martínez' aimed at victims or relatives of victims of the genocide of the Unión Patriótica or the Colombian Communist Party. The ***CJDH and DCD*** requested "a donation of the amount determined by the Court in equity for the Fundación Museo Casa de Memoria Dabeiba 'Elkin González Velásquez' of the municipality of Dabeiba, Antioquia, in order to document and preserve the memory of the victims and the facts of the systematic victimization of the peasant population of that municipality".

609. In addition, with regard to guarantees of non-repetition, the representatives of the ***Diaz Mansilla family*** requested "education and training measures for state officials" from the security forces and intelligence agencies, personnel from public institutions that provide attention to victims and judicial operators, on different topics related to forced disappearance and economic, social and cultural rights. They also requested that Colombia be ordered to "open the archives of the now defunct Administrative Department of Security (DAS) to the relatives of the victims of forced disappearance and to civil society. The ***State*** did not agree with the latter request because they are part of the current investigations before the Special Jurisdiction for Peace[535]. On the other hand, the ***joint intervenors of DCD and CJDH*** requested that the State "decree [the State] measures to adapt its internal order to allow the victims to have access to effective remedies that will allow them to be effectively investigated, tried, and punished, as well as to have their cases investigated, tried and punished.

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[534] Namely: "[m]emory and truth seminars on the genocide"; "[m]urals throughout the country on the history of the Patriotic Union"; and "[p]ublication of a book that tells the story of the Patriotic Union", and "[p]rograms of special education for the victims of the Patriotic Union" and "spaces for political training".

[535] In this regard, it held that "the archives of the now defunct DAS are an integral part of the investigations of the [Special Jurisdiction for Peace]," which "in the framework of its investigations, decreed precautionary measures aimed at protecting the information contained in [those] archives. Therefore, it considered that ordering something such as that requested by these representatives "could constitute an interference in the affairs of the jurisdiction

itself, and affect its methodologies of investigation, trial and punishment".

proportionally to all those responsible for international or non-international crimes that are subject to the transitional regime of the SJP.

610. The representatives of the ***Diaz Mansilla family*** requested other guarantees of non-repetition related to "education and training measures for state officials" of the security forces and intelligence agencies, personnel of public institutions that provide attention to victims and judicial operators, on different topics related to forced disappearance and economic, social and cultural rights. They also requested that Colombia be ordered to "open the archives of the now defunct Administrative Department of Security (DAS) to the relatives of the victims of forced disappearance and to civil society. The ***State*** did not agree with this last request because they are part of the current investigations before the Special Jurisdiction for Peace[536]. On the other hand, the ***joint interveners of DCD and CJDH*** requested that the State "decree [the State] measures to adapt its internal order to allow the victims to have access to effective remedies that allow for the effective and proportional investigation, trial, and punishment of all those responsible for international or non-international crimes that are subject to the transitional regime of the SJP.

611. In relation to these requests for measures of rehabilitation, satisfaction and guarantees of non-repetition, the Court considers that the issuance of this Judgment and the reparations ordered in the respective sections are sufficient and adequate to remedy the violations suffered by the victims and does not consider it necessary to order such additional measures.

612. Finally, the Court does not rule on the additional requests made by the three joint intervenors in their final written arguments because they were not made at the appropriate procedural moment, which is the submission of the pleadings and motions brief[537]. These are new requests that do not relate to or complete the requests in their pleadings.

I. Compensatory allowances

I.1. General Arguments of the Parties and the Commission

613. The ***Commission*** considered that compensation should be paid for both material and non-material damages to the relatives of the murdered and disappeared victims, as well as to the "internally displaced and exiled" victims, "unfounded criminalization" and "threats against their life and personal integrity, including [those] survivors of attempted homicide". It held that for "adequate compensation" it should be taken into account if it concerns "persons and/or family nuclei that were victims of several violations", as well as taking into account for the total compensation "the violations derived from the denial of justice".

614. All the ***interveners in common with*** the representatives of the victims requested that the State be ordered to pay compensation for the material and non-material damages caused to the victims and their families and that they be ordered according to the following criteria

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[536] In this regard, it held that "the archives of the now defunct DAS are an integral part of the investigations of the [Special Jurisdiction for Peace]," which "in the framework of its investigations, decreed precautionary measures aimed at protecting the information contained in [those] archives. Therefore, it considered that ordering something such as that requested by these representatives "could constitute an interference in the affairs of the jurisdiction itself, and affect its methodologies of investigation, trial and punishment".

[537] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra*, para. 272, and *Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs.* Judgment of May 25, 2010. Series C No. 212, para. 277.

standards of the Inter-American Court, on an individual basis and recognizing the nature and gravity of the violations.

615. The ***State*** requested that: a) "attending to the principle of complementarity and subsidiarity," with respect to the victims who already obtained reparations at the domestic level in the administrative litigation venue[538] , the Court refrain from declaring new amounts of compensation; b) for those victims for whom a violation attributable to the State for breach of the duty to respect is verified and who have not resorted to the administrative litigation jurisdiction, the Court should grant reparations in accordance with the parameters and amounts established by the Council of State for similar cases, and c) for those victims for whom a violation is verified and that this is attributable to the State exclusively in relation to the duty to guarantee, their claims for reparations should be channeled through administrative channels, through the administrative reparations program established in Law 1448 of 2011[539].

I.2. Specific allegations on material damage

616. The ***joint intervenors of Reiniciar*** requested that the Court order, in equity, amounts for the compensation of material damages to the victims and relatives of the "illustrative list of the universe of victims", which include consequential damages[540] , loss of profits[541] and damage to family assets. They added that in the event that the Court decides to apply "the discount rule", for those victims or family members who have been compensated at the domestic level, only those amounts received in court and that the actual payment of compensation has been made should be taken into account.

617. The representatives of the ***Diaz Mansilla family*** argued that this family should be compensated for consequential damages for the expenses incurred during the more than thirty years of searching for Mr. Miguel Angel Diaz Martinez, as well as the loss of earnings corresponding to said victim. In particular, with respect to consequential damages, they considered that the Court should fix an amount in equity, "given the impossibility of proving a determined amount of expenses due to the long period of impunity, the different relocations of the family [...] and the efforts and dangers involved in the defense of human rights and the search for

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[538] It indicated that, of the victims identified in the Commission's Report on the Merits, "35 were detected who went to the administrative litigation jurisdiction [...], in the exercise of the action for direct reparation. In this regard, it "submitted a table showing a breakdown of each of the victims, the action they filed and the reparations ordered".

[539] *Colombia* referred to the "administrative compensation to victims related to the present case" indicating that as of the date of its response "a total of 256 administrative compensations to 216 victims have been recognized", which "may show [that] the administrative reparations program has already made significant progress in terms of compensation granted" and that "the administrative route should be evaluated [by the Court] and applied in cases such as the present one that are framed in transitional scenarios".

[540] They alleged that "[t]he victims and relatives of the Unión Patriótica suffered multiple and varied consequential damages" since "due to the violations [...] they were forced to leave their properties, abandoning their lands, crops, animals, goods, losing their means of subsistence and completely altering them forever". In this regard, they considered it necessary that "flexible criteria be applied to weigh the costs of this damage, taking into account the [...] time elapsed, the seriousness of the act and the level of impunity in the case" and that "as has already been done in other cases, [...] the seriousness of the violations" be taken into account.

[541] With respect to loss of earnings, they requested that "compensation in equity and for this harm be ordered for all the victims regardless of the violation [they had suffered], taking into account the different conditions that the victims had at the time of the events. Namely, for those who were "members of public corporations of popular representation, or who held a public office[,] it was requested [that] this condition be taken into account to determine the amount of compensation due"; for "[p]rofessionals or students who at the time of the facts were pursuing qualified studies and whose graduation was foreseeable, it was requested [that] the salary of a professional in the area studied be taken into account for its calculation"; for the other victims, [that] the minimum salary duly updated for the year of the judgment be taken as a basis".

victims of enforced disappearance in Colombia". However, taking as a reference other decisions of the Court in cases of forced disappearance, they estimated that "a compensation of US$5,000 for each of the victims who have participated in the search process would be adequate, that is, for Gloria María Mansilla de Díaz, Ángela Ivette, Luisa Fernanda and Juliana Díaz Mansilla and Blanca Martínez de Díaz and Pedro Julio Díaz Fonseca." Regarding the loss of earnings, they requested the Court to order the State to pay the amount of USD$288,000 for the income lost due to the forced disappearance of Miguel Ángel Díaz Martínez and explained the "formula" they used to calculate such amount[542]. In addition, they requested that the amount fixed by the Court for this concept be distributed among the victim's next of kin "in accordance with their wishes and, failing that, Colombian law".

618. The ***joint intervenors of DCD and CJDH*** requested compensation for loss of earnings, given that all the victims they represent "were engaged in some proven activity", as well as the payment of consequential damages due to "other material damages" incurred by the victims as a result of the violations. As regards loss of earnings, they requested that, to the extent possible, in order to determine such loss of earnings, "what has been proven in each case with respect to the income received by each of the victims should be taken into account, taking into account their occupational and professional profile, as well as the positions held and the related elements that have been proven "[543]. On the other hand, for the persons who were engaged in informal activities, they requested the Court "to apply the criteria it deems relevant regarding the income of the victims". In addition, for the victims of the systematic violence against the peasant population of Dabeiba, Antioquia[544] and of the systematic violations against active members of the Patriotic Union in Apartadó[545] , they requested that the State be ordered to pay each of the victims the sum of USD$45,000, and that these amounts be distributed following the criteria used by the Court in paragraph 597 of the judgment in the case of Rodríguez Vera et al. On the other hand, regarding consequential damages, they requested that this be determined "in equity", since "the occurrence of these events dates back an average of three decades, and in this sense, documentary proof of the expenses incurred by the victims is unfeasible". However, they noted that in the multiple statements made by the victims in the criminal proceedings, as well as in other evidence provided, "the economic vicissitudes of the victims, who had to change their lifestyle and start new jobs to support their families, are evident".

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[542] They took into account that Mr. Miguel Ángel Díaz Martínez was 33 years old at the time of his disappearance, and that at the time of the presentation of his brief of requests and arguments he would be 68 years old, which is "below the maximum probable life expectancy". They indicated that in order to calculate "the amount of US$360,000, the formula used by the Colombian Council of State to calculate the loss of earnings" was used and explained what this formula consists of. However, they indicated that, "in accordance with the jurisprudence of the IACHR Court, 25%, corresponding to personal expenses, must be subtracted from said amount, for a total of approximately US$288,000".

[543] They indicated that "[i]n any case, and regardless of the Court's criteria, they would provide evidence of the income of some victims, who, given their academic, professional and work training, earned different sums of money that deserve to be taken into account.

[544] They requested that, for loss of income, "Colombia be ordered to pay the amount of US$45.000 [...] in favor of each of the following persons: Milton Posso Jiménez, Luis Fernando Guisao Muñoz, Francisco Antonio Córdoba Higuita, Milton David Espinal, Pedro Juan Juan Montoya Varelas, Edgar de Jesús Manco, Luz Emida Guzmán Quiroz, Rosalba Úsuga Higuita, Luis Alfonso Valderrama López, Oscar Valderrama Cruz, José Agustín Espinal, Marco Fidel Duarte, Ricaurte Antonio Monroy Areiza, Luis Alveiro Avendaño Muñoz, Simón Torres Cardona, Reinaldo de Jesús Ramírez Duarte, Alejandro Higuita Mesa, Edilberto Antonio Areiza, Albeiro de Jesús Castaño Castaño, Luis Erley David Úsuga, Carlos Enrique Mazo Vargas, Gustavo de Jesús Espinal, [and] Hernando Guisao Muñoz". They also requested that these amounts "be allocated in accordance with the formula established by the [...] Court in paragraph 597 of the judgment [...] in the Rodríguez Vera et al. case".

[545] They requested that, for loss of income, "Colombia be ordered to pay US$45,000 [...] in favor of each of the following persons: Rodrigo José Sánchez Reyes, Sergio Alirio Ocampo Vargas, and Nubia Rosa Ochoa".

I.3. Specific allegations on non-pecuniary damage

619. The ***joint interveners of Reiniciar*** requested that a "fair compensation for non-pecuniary damage" be ordered in favor of the "relatives of the murdered" and "disappeared" victims and for "the victims and relatives who were internally displaced", "exiled", "criminalized in an unfounded manner", and "threatened against their life and personal integrity". They indicated that for the quantification of the amounts to be compensated for this damage, it should be taken into account, among others, that "the individual reparation of the non-pecuniary damage for the victims and next of kin of the Unión Patriótica is suitable [...] and is in accordance with the measures established by [this] Court": "[t]he cases of persons and/or family nuclei who were victims of several of the violations"; "the violations derived from the denial of justice"; "the difficulties of [some of] the victims[546] for their accreditation, given the context in which the violations occurred, the revictimization, the persecution and the degree of impunity, the intense suffering generated"; "those victims who were left in a situation of physical disability [....] due to attempts on their lives", and for the victims of forced displacement, they requested that "the entire family group that was forced to be displaced be covered". They also reiterated their consideration in the event that the Court decides to apply "the discount rule" to those victims already compensated at the domestic level.

620. The representatives of the ***Diaz Mansilla family*** request that compensation for non-pecuniary damages be ordered "in equity", making "a differentiation of the victim's family members according to their degree of closeness". In this sense, they requested US$100,000 for Miguel Ángel Díaz Martínez, US$80,000 for his spouse (Gloria María Mansilla Díaz), US$55.000 each for his daughters and siblings (Ángela Ivette, Luisa Fernanda, Juliana Díaz Mansilla, Blanca Martínez de Díaz, Pedro Julio Díaz Fonseca, Rodrigo Orlando Díaz Martínez and María del Pilar Díaz Martínez) and US$20,000 for his grandchildren (Samuel Ortega Díaz, Martin Ortega Díaz, Ainara Ohiane Mahecha Díaz and Ixmucané Mahecha Díaz). They added that these "[c]ompensations [are] consistent with the Court's decisions in cases of forced disappearance and that they take into account the level of knowledge, proximity and affectation by the facts".

621. The ***joint intervenors of DCD and CJDH*** requested that for non-pecuniary damages "the sum of USD 100,000 be ordered for each of the direct victims of homicide or forced disappearance [, which] should be distributed [...] in favor of the indirect victims as the [...] Court deems appropriate. They also considered that the indirect victims "should be compensated in equity with USD 80,000 for the permanent partners, spouses, parents and children and USD 40,000 for siblings and others", "due to the moral damage caused by the "suffering inherent to the factual situations presented, as well as the anxiety experienced due to the persecution and stigmatization to which they were subjected that represented the detriment of their conditions of dignified existence". These same amounts were requested with respect to the 31 direct victims of the systematic violence against the peasant population of Dabeiba, Antioquia. On the other hand, they requested that with respect to the victims of violations against members of the Colombian Communist Youth in the city of Medellín and systematic violations against active members of the Patriotic Union in Apartadó, the following compensations be ordered: a) USD$60,000 in favor of the direct victims "[547]; b) USD$35,000 for permanent partners, parents and children[548], and c)

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[546]These are "[r]eferred in chapter II of point E [of its brief of requests and arguments]".

[547] Namely: "Luz Marina Ramírez Giraldo, Rodrigo José Sánchez Reyes, Sergio Alirio Ocampo Vargas, and Nubia Rosa Ochoa".

Ochoa".

[548] Namely: "the permanent companion of Rodrigo José Sánchez, the father and mother of Luz Marina Ramírez Giraldo, and each of the sons and daughters of Rodrigo José Sánchez Reyes, Sergio Alirio Ocampo Vargas, and Nubia Rosa

Ochoa".

USD$20,000 for brothers and sisters[549].

I.4. Considerations of the Court

622. The Court has developed in its jurisprudence the concepts of material and non-material damages and the cases in which they should be compensated. Thus, this Court has established that material damage includes the loss or detriment of the victims' income, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a causal link with the facts of the case[550]. Likewise, international jurisprudence has repeatedly established that the judgment may constitute *per se* a form of reparation[551]. In addition, the Court has established in its jurisprudence that non-pecuniary damage may include both the suffering and affliction caused to the direct victim and his next of kin, the impairment of values that are very significant for the persons, as well as the alterations, of a non-pecuniary nature, in the conditions of existence of the victim or his family[552].

623. In the present case, the State has emphasized that the Court should take into account for compensation the parameters used domestically by the Council of State or the reparation program of Law 1448, as well as consider those cases in which the victims have already obtained reparation in the contentious-administrative jurisdiction.

624. For their part, the joint intervenors have requested that the majority of the compensation amounts for pecuniary and non-pecuniary damages be ordered by this Court in equity and indicated the criteria that should be taken into account to fix them. The ***joint intervenors of Reiniciar*** did not request a specific amount for these concepts, while the representatives of the Diaz Mansilla family and of the CJDH and DCD did indicate the amounts they were seeking, mainly for material damages and lost profits. In particular, regarding the loss of profits, the representatives of the Diaz Mansilla family indicated the amount they consider should be ordered with respect to Mr. Diaz Martinez and how they calculated such amount, although they did not provide evidence in this regard. For their part, the ***joint interveners of DCD and CJDH*** requested that, as far as possible, the activity they performed and/or the evidence in each case be taken into account; however, this Court was able to verify that they did not provide this information in a systematized manner. They provided isolated information as to the activity they performed that should be extracted from their brief of requests and arguments or from other evidence provided and income certificates for a very small number of victims, compared to the total number they represent.

625. Although the Court does not have sufficient elements to prove the loss of income and consequential damages suffered by the victims in this case, it is logical that, in cases such as the present one, the gathering of evidence to prove this type of material loss and its submission to the Court is a complex task. Moreover, it is clear that the human rights violations found in the instant case necessarily entail serious pecuniary consequences. On the other hand, the Court considers that as a result of the violations it has declared in this Judgment, it is presumed that these did produce serious non-pecuniary damage, since it is inherent to human nature that any person who suffers from

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549 Namely: "for each of the brothers and sisters of Luz Marina Ramírez Giraldo".

550 *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Guachalá Chimbo et al. v. Ecuador, supra*, para. 257.

551 *Cf. Case of El Amparo v. Venezuela. Reparations and Costs.* Judgment of September 14, 1996. Series C No. 28, para. 35, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 380.

552 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs, supra*, para. 84, and *Case of Guachalá Chimbo et al. v. Ecuador, supra*, para. 261.

a violation of their human rights experience suffering[553].

626. In view of the criteria established in the constant jurisprudence of this Court, the circumstances of the instant case, the entity, nature and gravity of the violations committed, the damage caused by impunity, as well as the suffering caused to the victims in their physical, moral and psychological spheres[554] , the Court considers it appropriate to fix in equity, the amounts indicated below, which must be paid within the term that the Court establishes for such purpose (*infra* paras. 632 and 647):

a) USD $55,000.00 (fifty-five thousand United States dollars), for material and non-material damages, for each of the victims of forced disappearance listed in Annex I of this Judgment, and for those identified by the Commission when the findings of Annex III are made (*supra* paras. 530 a and c);

b) USD $30,000.00 (thirty thousand United States dollars) in favor of the mothers, fathers, daughters and sons, spouses, and permanent partners, and USD $10,000.00 (ten thousand United States dollars) in favor of the sisters and brothers of the victims of forced disappearance, for non-pecuniary damages, in relation to the violations of their rights to personal integrity. These amounts are ordered with respect to the next of kin included in Annex II to be defined by the aforementioned commission for the verification of the identity and kinship of the listed victims (*supra* para. 530 b);

c) USD $35,000.00 (thirty-five thousand United States dollars), for material and non-material damages, for each of the victims of extrajudicial execution, indicated in Annex I of this Judgment, and for those who are identified by the Commission when the findings of Annex III are made (*supra* paras. 530 a and c);

d) USD $20,000.00 (twenty thousand United States dollars) in favor of the mothers, fathers, daughters and sons, spouses, and permanent partners, and USD $10,000.00 (ten thousand United States dollars) in favor of the sisters and brothers of the victims of extrajudicial execution, for non-pecuniary damages, in relation to the violations of their rights to personal integrity. These amounts are ordered with respect to the next of kin included in Annex II to be defined by the aforementioned commission for the verification of the identity and kinship of the listed victims (*supra* para. 530 b);

e) USD $20,000.00 (twenty thousand United States dollars), for material and non-material damages, for each of the victims of torture, indicated in Annex I of this Judgment, and for those identified by the Commission when making the findings in Annex III (*supra* paras. 530 a and c);

f) USD $5,000.00 (five thousand United States dollars), for material and non-material damages, for each of the victims of attempted violations of the right to life, violations of personal integrity, arbitrary detentions, threats and/or harassment and undue criminalization through criminal proceedings, indicated in Annex I of this Judgment, and for those identified by the Commission when making the findings in Annex III (*supra* paras. 530 a and c);

g) USD $10,000.00 (ten thousand United States dollars), for material and non-material damages, to each of the victims of the violation of the right to privacy.

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[553] *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 30, 2009. Series C No. 197, para. 176, and *Case of Members of the Chichupac Village and neighboring communities of the Municipality of Rabinal v. Guatemala, supra*, para. 324.

[554] *Cf. Case of Ticona Estrada et al. v. Bolivia, supra*, para. 109, and *Case of Members of the Chichupac Village and neighboring communities of the Municipality of Rabinal v. Guatemala, supra*, para. 327.

life who were minors (in addition to what was already established in paragraphs a) and c), indicated in Annex I of this Judgment, and for those who are identified by the commission when making the findings in Annex III (*supra* paras. 530 a and c);

h) USD $5,000.00 (five thousand United States dollars), for material and non-material damages, for each of the surviving victims of massacres or attempted homicides who were minors at the time of the events, indicated in Annex I of this Judgment, and for those who are identified by the Commission when the findings of Annex III are made (*supra* paras. 530 a and c);

i) USD $5,000.00 (five thousand United States dollars), for non-pecuniary damages, for each of the victims of forced displacement, as indicated in Annex I of this Judgment, and for those identified by the Commission when making the findings in Annex III (*supra* paras. 530 a and c), and

j) USD $5,000.00 (five thousand United States dollars), for pecuniary and non-pecuniary damages, for each of the victims of the violation of the rights to judicial guarantees and judicial protection, indicated in Annex I of this Judgment, and for those identified by the Commission when making the findings in Annexes II and III (*supra* paras. 530 a, b and c).

627. The amounts awarded in favor of each of the victims of forced disappearance and extrajudicial execution (*supra* paras. 626. a. and 626. b.), must be settled in accordance with the following criteria:

a) fifty percent (50%) of the indemnity corresponding to each victim shall be divided, in equal parts, among the children of the victim; if one or more of the children are already deceased, the part corresponding to them shall be added to those of the other children of the same victim;

b) the other fifty percent (50%) of the compensation shall be delivered to the spouse or permanent partner of the victim at the beginning of the disappearance or at the time of the victim's death, as the case may be;

c) in the event that the victim had no children or spouse or permanent companion, what would have corresponded to the relatives located in that category shall be credited to the part that corresponds to the other category;

d) in the event that the victim has no children or spouse or permanent companion, the indemnity will be paid to his parents or, failing that, to his siblings in equal parts;

e) in the event that the victim had no children, spouse, partner, parents or siblings, the compensation shall be paid to the heirs in accordance with domestic inheritance law, and

f) the beneficiaries of the distribution of compensation mentioned in paragraphs a), b), c) and d) above shall have a period of 12 months from the date of notification of this Judgment to appear before the aforementioned commission for the verification of their identity and kinship.

628. The amounts ordered in favor of the victims of the remaining violations must be paid directly to each of them, and in the event that they have died or die before the respective amount is delivered to them, it will be delivered directly to their beneficiaries, in accordance with applicable domestic law. The State shall establish an expeditious procedure to facilitate the identification of the beneficiaries.

629. On the other hand, the Court takes note of the information provided by the State in its brief in response, regarding the fact that some of the victims who went to the contentious-administrative jurisdiction, and through a direct action for reparation, had obtained a judgment.

in which compensation amounts were [ordered555] , for which reason it considered that "in accordance with the principle of complementarity and subsidiarity, it is not appropriate to recognize additional sums in favor of the victims who have resorted to [said jurisdiction]". In this regard, this Court recalls that, if there are national mechanisms to determine forms of reparation, those procedures and results must be taken into account (*supra* para. 545).

630. As an annex to its response, the State provided a table indicating the names of the victims who filed a contentious administrative proceeding; the result of this proceeding in terms of the declaration of State responsibility; whether or not the decision issued by said jurisdiction is final; and the amounts of compensation that would have been ordered to certain next of [kin556]. The Court notes that this information does not provide sufficient elements to be able to ascertain with certainty the total number of victims in this case who have appealed to this jurisdiction. Likewise, this information does not allow us to know whether the compensation amounts ordered in this domestic jurisdiction have been effectively paid to the next of kin of the victims. There is also no information on the decisions of proceedings that at the time of the presentation of this appendix were pending before said jurisdiction.

631. It is for this reason that the Court considers it relevant in this case to make a general pronouncement in the sense that the State may deduct from the amounts of compensation ordered by the Court, corresponding to each family member, the amount that they have effectively received domestically for the same concept. In the event that the compensation awarded at the domestic level is greater than that ordered by this Court, the State may not request the return of said difference to the victims. Likewise, the State shall pay the full amount of the compensation ordered in this Judgment to those victims who have resorted to said jurisdiction and have not obtained a favorable decision or whose proceedings are still pending a decision.

632. The indemnities established in this Judgment shall be paid by the State within one year, counted as set forth below:

a) for those victims listed in Annex I, the one-year period shall begin to run from the date of notification of the Judgment, and

b) for the victims listed in Annex II and III who go before the aforementioned commission to establish identity and/or kinship (*supra* para. 537), the one-year period shall begin to run from the moment that the commission informs the State that the corresponding establishment has been made.

J. Costs and expenses

633. **Reiniciar** requested the Court to fix "in equity the costs and expenses of the proceedings that it has advanced before the Inter-American system as petitioner and representative of the victims". In order for such amount to be "reasonable", it suggested that the Court take into account:
a) the "lengthy processing of the case", which began on December 16, 1993; b) the "magnitude of the case, evaluated on the basis of the large number of victims [...], the multiple human rights violations and the totality of the individual and collective harm caused to them [...], as well as the damage to democracy in the country and in the hemisphere"; c) the "work of identifying more than six thousand victims, the creation of an illustrative universe of the case and the documentation of cases"; d) the "work of identifying more than six thousand victims, the creation of an illustrative universe of the case and the documentation of cases".], as well as the damage to the democracy of the country and of the hemisphere"; c) the "work of identifying more than six thousand victims, the creation of an illustrative universe of the case and the documentation of cases"; d) the "comprehensive

accompaniment of the 3.d) the "comprehensive accompaniment of the 3,186 victims who granted power of attorney"; e) the "work of identification of more than six thousand victims

[555] The State indicated in its response that of the victims "35 were identified as having appealed to the administrative litigation jurisdiction. In addition, in Annex 90 to said brief, it provided a table with "the Judgments and amounts of reparations with respect to [the] victims" who went to said jurisdiction.

[556] *Cfr.* Excel Table: Contentious Administrative Proceedings (Annex 90 to the response).

representation of Reiniciar and the general representation of all the victims through the power of attorney granted by the Unión Patriótica as the party to which all the victims belonged", and e) expenses for professional fees; attendance at hearings and working meetings before the Inter-American Commission[557]; documentation expenses (database, filing of folders, hiring of personnel); stationery, communications and airmail expenses, and the projection of future expenses in the proceedings before the Court. Despite having requested that this amount be fixed in equity, Reiniciar made an estimated calculation of the aforementioned expenses between 1993 and 2017 corresponding to a total of USD$754,990, plus whatever should be fixed in equity for the future expenses caused by the proceedings before the Court.

634. Additionally, ***Reiniciar*** indicated that the Colombian Commission of Jurists acted as co-petitioner in the processing of this case before the Inter-American Commission. It explained that this organization joined the proceedings in 1994 and that since 2012 it has not developed any activity related to the litigation and representation of the case and that, in 2018, after the Merits Report was communicated, it formally resigned from the representation. In its brief of requests, arguments and evidence, *Reiniciar* provided a communication in which the Colombian Commission of Jurists "leave[d] at the disposal of the [...] [Inter-American] Court that, in] equity [it] quantify the costs and expenses incurred by the Colombian Commission of Jurists in the more than 24 years of legal representation and legal advice in relation to the present case "[558].

635. The representatives of the ***Diaz Mansilla family*** requested that the family be reimbursed for certain expenses incurred during the more than thirty years that Miguel Angel Diaz Martinez has been missing. Namely: a) USD$3,000 for the legal representation of an attorney from 1984 to 1986 in the criminal investigation for the disappearance of Mr. Díaz Martínez[559]; b) USD$14,000 for the expenses of permanent counsel and legal representation of an attorney for a period of seven years[560]; c) US$35.000, estimated "in equity" for other "innumerable expenses [of the family] derived from their own representation actions", such as "humanitarian actions in the search for their loved one, transfers to the headquarters of the IACHR, actions to protect his life due to threats and multiple internal and international transfers", and d) USD$3.200 for expenses related to the "litigation before the Court" for "fees, transportation to a place with technical and biosecurity conditions for the representation team and the victims, transportation and food". In addition, they argued that the amounts previously "detailed [...] do not include those to be incurred by the victims and their

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[557] In this regard, they detailed that there were 13 hearings and 6 working meetings, which involved "air tickets Bogota-Washington DC-Bogota, food and lodging expenses".

[558] In that communication, the Colombian Commission of Jurists explained that the expenses it incurred related to: the filing of the initial petition of the case before the Inter-American Commission together with the organization Reiniciar; the recurrent documentation of the violations that continued to occur; the follow-up of criminal proceedings identified in the initial petition, the attendance to at least 11 hearings of the Inter-American Commission (10 in Washington and 1 in Bogotá); the numerous working meetings with the Colombian government (both in Washington and Bogotá), and the various tasks carried out during the stage of seeking a friendly settlement. They added that all these tasks were carried out on a regular basis with the participation of three permanent lawyers and the administrative support of their organization, and that for the documentation of the cases, two full-time investigative lawyers were hired for a total period of 13 months. *Cf.* Communication from the Colombian Commission of Jurists to Reiniciar, dated April 9, 2019 (evidence file, folios 156211 et seq.).

[559] They detailed that "since September 7, 1984 [they] hired the services of attorney Luis Antonio Cobo, to represent them in the criminal investigation into the disappearance of Miguel Ángel Díaz Martínez [, who] participated in the judicial proceedings such as hearings, reception and practice of evidence, preparation of briefs and pleadings, etc., until 1986".

[560] They indicated that in the period from "February 2011 to January 11, 2018" the lawyer Pedro Julio Mahecha exercised the legal representation of the family, during which time "he advanced countless procedural steps, preparation of memorials of evidence, participation in hearings, frequent meetings with the victims for the design of

strategies, which were carried out in Colombia and Spain".

representatives in the remainder of the processing of the case before the Court [and] this amount should consider the stage of compliance with the [S]entencia both at the national and international level", and therefore requested the Court "to fix in equity the amount of an additional UDS$7,000". Finally, they requested an estimate of UDS$10,000 for expenses incurred by the Justice and Peace Commission organization in the litigation before the Court, corresponding to "two members of Justice and Peace [who] together spent a substantial proportion of their time preparing, editing, reading material and discussing briefs relating to this case [and] incurred a number of administrative costs, such as photocopying, printing and so on". The ***joint intervenors for DCD and CJDH*** referred to the expenses that both organizations had incurred, up to the time of the submission of the pleadings, arguments and evidence, for the representation and litigation of this case[561]. As for the *CJDH,* they indicated that "the total value of the accompaniment to the victims of the Dabeiba cases amounts to $47,500 USD", which includes "personnel expenses that include fees to professionals who accompanied in the field [,] transportation[,] hours of work with some indirect victims in the city of Medellín[,] notary, copying and scanning expenses". Notwithstanding the foregoing, in their final arguments they requested that their costs and expenses be determined "in equity" and that the amount they receive be donated to the legal office of the University of Antioquia so that it may attend to the victims of the Unión Patriótica. With respect to Derechos con Dignidad, they indicated that they have incurred "expenses resulting from the judicial representation that they have provided to the victims who have granted them power of attorney [, which] has not been exclusive to the updates of the Inter-American System, but has also involved litigation in domestic law, especially in the criminal and contentious-administrative spheres. With respect to the *Rights with Dignity Organization*, they indicated that the total amount of expenses incurred by them for the representation of the cases in their charge amounts to USD$42,800.800 and presented a breakdown of this amount, which includes estimated items for: various trips within Colombia[562] ; notary and registration procedures for authentication of powers of attorney for at least 151 victims it represents and issuance of civil registries for the inter-American litigation; attorneys' fees for five years of domestic and international litigation; and administrative expenses and expenses for accompanying victims during the years of litigation. In addition, both organizations requested that an amount of USD$10,000 each be recognized for "future expenses" generated by the litigation of the case before the Court.[563]

636. The ***State*** requested that "the declared items and expenses be limited to the amounts proven by the representatives of the victims, provided that they are strictly related to the steps taken with respect to the case in question and their quantum is reasonable".

637. The Court reiterates that, in accordance with its jurisprudence, costs and expenses are part of the concept of reparation, since the activity carried out by the victims in order to obtain justice, both at the national and international levels, implies expenditures that must be

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[561] They emphasized that an important part of the expenses are due to transportation, since both organizations are based in Medellín and most of the cases are handled in Bogotá.

[562] To wit: approximately thirty trips to the city of Bogotá during four years; three trips to Acandí- Chocó for the representation of the Acandí massacre; at least five trips to Quibdó-Chocó for the direct reparation processes they have filed in the municipality of Quibdó; two trips to Riosucio-Chocó for the collection of powers of attorney that support their current legal representation; five trips to Puerto Nare where they represent three alleged victims, and one trip to San Rafael in order to convene the alleged victims of the Topacio Massacre.

[563] The Rights with Dignity Organization estimated that for the litigation before the Court it would require "the work of at least two lawyers of the Organization", as well as "the costs of airfare and travel expenses of two lawyers to the city of San Jose for the pertinent", and the CJDH estimated that in the future it would require "at least three lawyers [for] the litigation before the Court", for trips to take statements that are authorized by the Court before a notary public in Urabá Antioqueño; the travel of the principal representative from London to Costa Rica for the

public hearing and the coordination of the transfer of the experts for the same purpose.

compensated when the international responsibility of the State is declared by means of a condemnatory judgment. Regarding the reimbursement of costs and expenses, it is up to the Court to prudently assess its scope, which includes the expenses generated before the authorities of the domestic jurisdiction, as well as those generated in the course of the proceedings before the Inter-American System, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided that the *amount* is [reasonable564].

638. This Court has indicated that the claims of the victims or their representatives regarding costs and expenses, and the evidence supporting them, must be submitted to the Court at the first procedural moment granted to them, that is, in the pleadings and motions brief, without prejudice to such claims being updated at a later time, in accordance with the new costs and expenses incurred during the proceedings before this Court "[565.] Likewise, the Court reiterates that the submission of evidentiary documents is not sufficient, but that it is required that the parties make an argument that relates the evidence with the fact that is considered represented, and that, in the case of alleged economic disbursements, the items and justification of these are clearly [established566].

639. In the present case, only the ***common interveners of Reiniciar*** submitted evidence with their brief of requests and arguments, namely some receipts of the expenses they had incurred, which amount to approximately USD$24,[000567]. Taking into account the amount requested by said organization and the proofs of expenses submitted, the Court orders in equity the payment of a total of USD $500,000.00 (five hundred thousand United States dollars) for costs and expenses in favor of Reiniciar.

640. Additionally, taking into account the work performed by the Colombian Commission of Jurists as co-petitioner in this case before the Inter-American Commission between 1994 and [2017568]. This Court decides to fix, in equity, the amount of USD $100,000.00 (one hundred thousand United States dollars) for costs and expenses in favor of the Colombian Commission of Jurists.

641. On the other hand, the representatives of the Diaz Mansilla family and of the organizations CJDH and DCD, did not present any evidentiary support in relation to the costs and expenses they incurred. However, the Court recognizes that the litigation proceedings of this case in domestic and international instances necessarily involved pecuniary expenditures, which must be proportional to the number of persons represented and declared as victims in this [Judgment569]. Therefore, the Court considers it equitable to order, for costs and expenses, the payment of: a) USD $75,000.00 (seventy-five thousand United States dollars) for the Díaz Mansilla family; b) USD $75,000.00 (seventy-five thousand United States dollars) for the Díaz Mansilla family; c) USD $75,000.00 (seventy-five thousand United States dollars) for the Díaz Mansilla family.

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[564] *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs.* Judgment of August 27, 1998. Series C No. 39, para. 82*, and Case of Guevara Díaz v. Costa Rica. Merits, Reparations and Costs*. Judgment of June 22, 2022. Series C No. 453*, para. 112*.

[565] *Cf. Case of Garrido and Baigorria v. Argentina, supra*, para. 79, and *Case of Guachalá Chimbo et al. v. Ecuador, supra*, para. 270.

[566] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra,* para. 277, and *Case of Guachalá Chimbo et al. v. Ecuador, supra*, para. 270.

[567] These are mainly vouchers for tickets, transfers, travel expenses and document delivery. *Cf.* receipts of some of the expenses accredited by Reiniciar (evidence file, folios 156211 and subsequent).

[568] *Cfr.* Communication from Reiniciar to the Colombian Commission of Jurists of April 2, 2019 annex 19 to Reiniciar's brief of requests arguments and evidence).

[569] *Cf. Case of Amrhein et al. v. Costa Rica, supra*, para. 495.

(seventy-five thousand United States dollars) for the CJDH, and (c) USD 75,000.00 (seventy-five thousand United States dollars) for Rights with Dignity.

642. The aforementioned amounts (*supra* paras. 639 to 641) must be delivered directly to each representative organization and, in the case of the Díaz Mansilla family, they must inform the State, within three months of notification of this Judgment, of the person in said family to whom the reimbursement of expenses should be made. Said family shall determine whether it is appropriate to deliver part of the sum that has been recognized by this Court to the Justice and Peace Commission that has collaborated with them during the processing of this case. However, this will not be supervised by this Court. The State shall have a period of one year from the date of notification of this Judgment to reimburse the costs and expenses.

643. Additionally, during the stage of supervision of compliance with this Judgment, the Court may order the State to reimburse the victims or their representatives for the reasonable expenses incurred during this procedural [stage570].

K. Reimbursement of expenses to the Victims' Legal Assistance Fund

644. By Resolution of December 18, 2020, the Presidency of the Tribunal declared the application filed by the joint intervenors of the Diaz Mansilla family and the joint intervenors of the CJDH and DCD organizations to benefit from the Legal Assistance Fund to be admissible, and ordered that the financial assistance be allocated to cover the costs of the statements of Rainer Huhle and Clemencia Correa Gonzalez (proposed by the joint intervenors of the Diaz Mansilla family), Kimberley N. Trapp and Maria Teresa Areiza (proposed by the joint intervenors of the CJDH and DCD organizations), as far as the costs of formalizing the written statements were concerned. Trapp and María Teresa Areiza (proposed by the joint intervenors of the CJDH and DCD organizations) for the costs of formalizing the written statements, as long as such costs were reasonable.

645. A copy of the report on the expenditures made in application of said fund in the instant case, which amounted to the sum of USD$671.55 (six hundred and seventy-one United States dollars and fifty-five cents), was transmitted to the State and, in accordance with the provisions of Article 5 of the Rules of Procedure of the Court on the Operation of the said Fund, Colombia was granted a period of time to submit any observations it considered pertinent. The State submitted a brief on May 20, 2021, in which it stated that it had no observations to make. It falls to the Tribunal, in application of Article 5 of the Fund's Regulations, to assess the appropriateness of ordering the respondent State to reimburse the Legal Assistance Fund for the expenses incurred.

646. In view of the violations declared in this Judgment, the Court orders the State to reimburse the said Fund the amount of USD$671.55 (six hundred and seventy-one United States dollars and fifty-five cents), for the expenses incurred. This amount shall be reimbursed to the Inter-American Court within six months from the date of notification of this Judgment.

L. Modality of compliance with payment orders

647. The State shall pay the amounts set forth in paragraphs 567, 568, 577, 577, 626, and 639 to 641 of the Judgment for restitution, rehabilitation, indemnification, compensation, etc., as well as the amounts set forth in paragraphs 567, 568, 577, 626, and 639 to 641 of the Judgment.

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[570] *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs*. Judgment of September 1, 2010. Series C No. 217, para. 29, and *Case of Guachalá Chimbo et al. v. Ecuador, supra*, para. 271.

of material and non-material damages and the reimbursement of costs and expenses, directly to the persons and organizations indicated therein, within a period of one year counted according to the criteria established in paragraphs 627 to 632 of this Judgment, without prejudice to the possibility of advancing full payment within a shorter period of time, in the terms of the following paragraphs.

648. In the event that the beneficiaries have died or die before the respective amount is delivered to them, it will be delivered directly to their beneficiaries, in accordance with the applicable domestic law. The State shall establish an expeditious procedure to facilitate the identification of the beneficiaries.

649. The State shall comply with the monetary obligations by payment in United States dollars or its equivalent in local currency, using for the respective calculation the market exchange rate published or calculated by a relevant banking or financial authority on the date closest to the day of payment.

650. If for causes attributable to the beneficiaries or their successors in title it is not possible to pay the amounts determined within the indicated term, the State shall deposit such amounts in their favor in an account or certificate of deposit in a solvent Colombian financial institution, in dollars of the United States of America, and under the most favorable financial conditions permitted by law and banking practice. If the corresponding payment is not claimed after ten years have elapsed, the amounts shall be returned to the State with accrued interest.

651. The amounts assigned in the present Judgment as compensation for damages and as reimbursement of costs and expenses must be paid in full, without reductions derived from possible tax burdens.

652. In the event that the State incurs in arrears, including the reimbursement of expenses to the Victims' Legal Assistance Fund, it shall pay interest on the amount owed corresponding to the bank interest on arrears in the Republic of Colombia.

M. Measures to facilitate communication with victims and to facilitate the effective implementation of reparations

653. In order to improve direct communication between the State and the victims and their representatives, for the purposes of an agile and effective implementation of the reparations ordered in this Judgment, the Court orders the State, within one month of notification of this Judgment, to designate a State authority to act as liaison and interlocutor for such purposes and to provide its contact information.

654. The Court urges the Ombudsman's Office of Colombia, as it has done previously in other cases,[571] within the scope of its competence in the protection of human rights, to get involved and encourage the corresponding authorities to act to execute the reparation measures ordered in the Judgment. Its involvement may constitute a support for the victims at the national level and may be particularly important with respect to those reparations that are more complex to implement and those that constitute guarantees of non-repetition. Should the Court consider it appropriate during the stage of supervision of compliance with the Judgment, the Court may request the Ombudsman's Office to provide a

[571] Report of the Ombudsman's Office of the Republic of Colombia, entitled "Expanding the horizon of justice for victims. Report on the status of compliance with the judgments of the Inter-American Court of Human Rights against Colombia", presented on May 14, 20019 by the Ombudsman to the Plenary of the Inter-American Court of Human Rights.

report, pursuant to Article 69(2) of the Rules of Court, as "another source of information" other than that provided by the State as a party.

XI
RESOLUTIVE POINTS

655. Therefore,

THE

COURT

DECIDES,

Unanimously:

1. To accept the acknowledgment of international responsibility made by the State, in the terms of paragraphs 58 to 80 of this Judgment.

Unanimously:

2. Dismiss the preliminary objection for lack of jurisdiction on the ground of lack of personal jurisdiction, in accordance with paragraphs 86 to 90 of this Judgment.

By 3 votes to 2

3. To partially admit the preliminary objection for lack of jurisdiction by reason of time, in accordance with paragraphs 94 to 100 of this Judgment.

Dissenting Eugenio Raúl Zaffaroni and L. Patricio Pazmiño

Freire Unanimously:

4. Dismiss the preliminary objection of lack of jurisdiction in accordance with paragraphs 110 to 115 of this Judgment.

Unanimously:

5. To partially admit the preliminary objection for alleged duplication of international proceedings, in accordance with paragraphs 119 to 123 of this Judgment.

DECLARES,

Unanimously, that:

6. The State is responsible for the violation of the rights to freedom of expression, freedom of association and political rights recognized in Articles 13, 16 and 23 of the American Convention, in relation to the provisions of Article 1(1) of that Treaty, to the detriment of the persons mentioned in Annexes I and III, in the terms of paragraphs 297 to 339 of this Judgment.

7. The State is responsible for the violation of the right to life recognized in Article 4 of the American Convention, in relation to the provisions of Article 1(1) of that Treaty, to the detriment of the executed persons mentioned in Annexes I and III, in the terms of

paragraphs 355 to 363 of this Judgment.

8. The State is responsible for the violation of the rights to recognition as a person before the law, life, personal integrity, and liberty recognized in Articles 3, 4, 5, and 7 of the American Convention, in relation to the provisions of Article 1(1) of that Treaty and Article I. a) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of the disappeared persons mentioned in Annexes I and III, in the terms of paragraphs 364 to 370 of this Judgment.

9. The State is responsible for the violation of the rights of girls and boys recognized in Article 19 of the American Convention, in relation to the provisions of Article 1(1) of that Treaty, to the detriment of the girls and boys mentioned in Annexes I and III, in the terms of paragraphs 387 to 391 of this Judgment.

10. The State is responsible for the violation of the right to humane treatment recognized in Article 5(1) of the American Convention, in relation to the provisions of Article 1(1) of that Treaty, to the detriment of the persons mentioned in Annexes I and III, who were victims of attempted violations of the right to life and humane treatment, threats and/or harassment, in the terms of paragraphs 376 to 380 of this Judgment.

11. The State is responsible for the violation of the right to humane treatment recognized in Article 5(2) of the American Convention, in relation to the provisions of Article 1(1) of that Treaty, to the detriment of the persons mentioned in Annexes I and III who were victims of acts of torture, in the terms of paragraphs 371 to 375 of this Judgment.

12. The State is responsible for the violation of the right to personal liberty recognized in Article 7 of the American Convention, in relation to the provisions of Article 1(1) of that Treaty, to the detriment of the persons mentioned in Annexes I and III who were victims of illegal or arbitrary detentions, in the terms of paragraph 380 of this Judgment.

13. The State is responsible for the violation of the right to honor recognized in Article 11 of the American Convention, in relation to the provisions of Article 1(1) of that Treaty, to the detriment of the persons mentioned in Annexes I and III, in the terms of paragraphs 403 to 417 of this Judgment.

14. The State is responsible for the violation of the right to movement and residence recognized in Article 22 of the American Convention, in relation to the provisions of Article 1(1) of that Treaty, to the detriment of the persons mentioned in Annexes I and III who were victims of forced displacement, in the terms of paragraphs 381 to 386 of this Judgment.

15. The State is not responsible for the violation of the rights to personal integrity, personal liberty, judicial guarantees and judicial protection recognized in Articles 5, 7, 8 and 25 of the American Convention, in relation to the provisions of Article 1.1 of that Treaty, to the detriment of Gustavo Manuel Arcia, Francisco Eluber Calvo Sánchez, Nelson Campo Núñez and Andrés Pérez Berrío in the terms of paragraphs 426 to 436 of this Judgment.

16. The State is responsible for the violation of the rights to personal liberty, to judicial guarantees and to judicial protection recognized in Articles 7, 11, 8 and 25 of the American Convention, in relation to the provisions of Article 1.1 of that Treaty, to the detriment of Albeiro de Jesús Bustamante Sánchez; Milton Guillermo Nieto; María Mercedes Úsuga de Echavarría; Alexander de Jesús Galindo Muñoz; Oscar de Jesús Lopera Arango; Alcira Rosa Quiroz Hinestroza; Elizabeth López Tobón; Gonzalo de Jesús Peláez Castañeda; Luis Aníbal Sánchez Echavarría; Luis Enrique Ruiz Arango; Yomar Enrique Hernández Pineda; Cipriano Antonio Ruiz Quiroz; Mario Urrego González; Melquisedec Espitia; and Gustavo Arenas

Quintero, for the improper judicial proceedings to which they were subjected, in the terms of paragraphs 426 to 442, and 453 of this Judgment.

17. The State is responsible for the violation of the right to humane treatment, recognized in Article 5(2) of the American Convention, in relation to the provisions of Article 1.1 of that Treaty, to the detriment of Alexander de Jesús Galindo Muñoz; Oscar de Jesús Lopera Arango; Gonzalo de Jesús Peláez Castañeda; Luis Enrique Ruiz Arango; Luis Aníbal Sánchez Echavarría, and Andrés Pérez Berrío, for the torture they received in the context of the improper judicial proceedings to which they were subjected, in the terms of paragraphs 443 to 452 of this Judgment. Furthermore, the State is responsible for the violation of the right to humane treatment, recognized in Article 5(1) of the American Convention, in relation to the provisions of Article 1(1) of that Treaty, to the detriment of María Mercedes Úsuga de Echavarría for the attempts on her life that she allegedly suffered while she was deprived of her liberty, in the terms of paragraphs 450 and 453 of this Judgment.

18. The State is responsible for the violation of the rights to judicial guarantees and judicial protection, contained in Articles 8 and 25 of the American Convention in relation to the provisions of Article 1.1 of that Treaty, as well as Article 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of Alexander de Jesús Galindo Muñoz; Oscar de Jesús Lopera Arango; Gonzalo de Jesús Peláez Castañeda; Luis Enrique Ruiz Arango; Luis Aníbal Sánchez Echavarría, and Andrés Pérez Berrío, for a failure to investigate the alleged acts of torture against them, in the terms of paragraphs 454 and 455 of this Judgment.

19. The State is responsible for the violation of the rights to judicial guarantees and to judicial protection, contained in Articles 8 and 25 of the American Convention in relation to the provisions of Article 1(1) of that Treaty, to the detriment of the persons mentioned in Annexes I, II and III and, in the terms of paragraphs 466 to 485 of this Judgment. Furthermore, to the detriment of the persons named and of society in general, the State violated the right to know the truth, in the terms of paragraphs 478 to 480 of this Judgment.

20. The State is responsible for the violation of the right to humane treatment, recognized in Article 5(1) of the American Convention, in relation to the provisions of Article 1(1) of that Treaty, to the detriment of the relatives of the executed and disappeared persons mentioned in Annexes I and II, in the terms of paragraphs 522 to 524 of this Judgment.

21. The State is not responsible for the violation of the rights to judicial guarantees and judicial protection recognized in Articles 8 and 25 of the American Convention, in relation to the provisions of Article 1(1) of that Treaty, to the detriment of Miguel Ángel Díaz Martínez and his next of kin, in the terms of paragraphs 490 to 509 of this Judgment.

22. The State is not responsible for the violation of the right to property recognized in Article 21 of the American Convention, in relation to the provisions of Article 1(1) of that Treaty, to the detriment of Miguel Ángel Díaz Martínez and his next of kin, in the terms of paragraph 510 of this Judgment.

23. The State is not responsible for the violation of the right to equality and non-discrimination recognized in Article 24 of the American Convention, in relation to the provisions of Article 1(1) of that Treaty, to the detriment of Miguel Ángel Díaz Martínez and his next of kin, in the terms of paragraphs 516 and 517 of this Judgment.

AND PROVIDED,

Unanimously, that:

24. This judgment constitutes, by itself, a form of reparation.

25. The "commission to establish the identity and kinship of the victims listed in Annexes II and III" of this Judgment shall be established and put into operation, in the terms established in paragraphs 533 to 539 of this Judgment.

26. The State shall initiate, promote, reopen, direct and continue, within a period of no more than two years, and conclude, within a reasonable time and with the utmost diligence, comprehensive and systematic investigations, in order to establish the truth of the facts relating to the serious human rights violations in the instant case and determine any criminal liability that may exist, and shall remove all de facto and de jure obstacles that maintain the facts related to this case in impunity, in the terms established in paragraph 554 of this Judgment.

27. The State shall carry out a rigorous search in which it shall make every effort to determine, as soon as possible, the whereabouts of the disappeared victims whose fate is still unknown and who are mentioned in Annexes I and III, in the terms established in paragraphs 560 to 562 of this Judgment.

28. The State shall provide medical, psychological, psychiatric or psychosocial treatment to the victims who so request it, in the terms of paragraphs 574 to 576 of this Judgment.

29. The State shall carry out the publications and dissemination of this Judgment and its official summary indicated in paragraphs 580 to 582 of this Judgment.

30. The State shall make a public act of acknowledgment of international responsibility, in the terms of paragraphs 585 and 586 of this Judgment.

31. The State shall establish a national day in commemoration of the victims of the Unión Patriótica and shall carry out activities for its dissemination, including in public schools and colleges, in the terms of paragraph 588 of this Judgment.

32. The State shall build a monument in memory of the victims and the acts committed against the members, militants and sympathizers of the Unión Patriótica, in the terms of paragraphs 590 and 591 of this Judgment.

33. The State shall place plaques in at least five public places or spaces to commemorate the victims in this case, in the terms of paragraph 592 of this Judgment.

34. The State shall produce and disseminate an audiovisual documentary on the violence and stigmatization against the Unión Patriótica, in the terms of paragraphs 594 and 595 of this Judgment.

35. The State shall carry out a national campaign in public media in order to raise awareness in Colombian society regarding the violence, persecution and stigmatization to which the leaders, militants, members and relatives of the members of the Unión Patriótica were subjected, in the terms of paragraph 597 of this Judgment.

36. The State shall hold academic forums in at least five public universities in different parts of the country on topics related to the instant case, in the terms of paragraph 599 of this Judgment.

37. The State shall submit a report to the Court in which it agrees with the authorities of the Unión Patriótica on the aspects to be improved or strengthened in the existing protection mechanisms and how they will be implemented, in order to adequately guarantee the security and safety of the Patriotic Union.

protection of leaders, members and militants of the Unión Patriótica, in the terms of paragraph 602 of this Judgment.

38. The State shall pay the amounts set forth in paragraph 626 of this Judgment, as compensation for material and non-material damages; the amounts set forth in paragraphs 567 to 568 of the Judgment in order to contribute to the restitution of the victims of forced displacement; the amounts set forth in paragraphs 567 to 568 of the Judgment in order to contribute to the restitution of the victims of forced displacement; the amounts fixed in paragraph 577 in favor of certain members of the Díaz Mansilla family for medical, psychological or psychiatric treatment expenses, and the amounts fixed in paragraphs 639 to 641 for the reimbursement of costs and expenses, in the terms of paragraphs 642, 643 and 647 to 652 of this Judgment.

39. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Rights the amount spent during the processing of this case, as indicated in paragraphs 645 and 646 of this Judgment.

40. The State shall designate, within one month of notification of this Judgment, a State authority to act as liaison and interlocutor with the victims and their representatives and provide their contact details, in the terms of paragraph 653 of this Judgment.

41. To request the Ombudsman's Office of Colombia, in accordance with its competencies in the protection of human rights, to get involved and promote that the corresponding authorities act to execute the reparation measures ordered in the Judgment, in the terms of paragraph 654 of this Judgment.

42. The State shall, within one year of notification of this Judgment, submit to the Court a report on the measures adopted to comply with it, without prejudice to the provisions of operative paragraphs 25, 29 and 39 and paragraphs 537, 580, 590, 592, 595, 646 and 653 of this Judgment.

43. The Court will supervise full compliance with this Judgment, in exercise of its powers and in fulfillment of its duties under the American Convention on Human Rights, and will close this case once the State has fully complied with the provisions of the Judgment.

Judge Eugenio Raúl Zaffaroni announced his partially dissenting individual opinion, which was joined by Judge L. Patricio Pazmiño Freire. Judges Eduardo Ferrer Mac-Gregor Poisot and Ricardo C. Pérez Manrique announced their individual concurring vote, which was joined by Judge L. Patricio Pazmiño.

IACHR Court. *Case of Members and Militants of the Unión Patriótica v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 27, 2022.

IACHR Court. *Case of Members and Militants of the Unión Patriótica v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 27, 2022.

Elizabeth Odio Benito
President

L. Patricio Pazmiño

FreireEduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Manrique

ZaffaroniRicardo C. Pérez

Pablo Saavedra Alessandri
Secretary

Communicate and execute,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Secretary

PARTIALLY DISSENTING VOTE OF JUDGE
EUGENIO RAÚL ZAFFARONI

CASE OF MEMBERS AND MILITANTS OF THE PATRIOTIC UNION VS. COLOMBIA

JUDGMENT OF JULY 27, 2022
(Merits, Reparations and Costs)

Vice President Judge L. Patricio Pazmiño Freire adhered to the present vote of Judge Eugenio Raúl Zaffaroni.

1. I dissent from the enlightened opinion of the majority of the Court regarding the partial admission of the preliminary issue, since I understand that the general legal principle of indivisibility of single criminal offenses is applicable to the case.

2. Based on the premise that this Court only judges the conduct of the States, when a State is imputable to an enormous plurality of results injurious to fundamental legal rights such as life, physical integrity and the dignity of the human person, it may well deserve to be condemned for insufficient protection of those rights and, therefore, for violation of the norms of the ACHR.

3. In ordinary cases this conviction would be based on the violation of the duty of the respective State to prevent homicides and other crimes committed by its officials and for the failure to prosecute and, where appropriate, punish the officials or persons who committed them.

4. This is not the case of the matter of the present judgment, in which a program is proven as part of a government decision to annihilate a political party. No other can be the result of the extensive evidence gathered in the case and, especially, of the identity of the very numerous victims of the serious acts committed or tolerated by its officials.

5. However, the unity of intent (of willfulness or malice) is only the ontic presupposition of any claim of unitary consideration of a necessary unlawful act, but not sufficient to impose its devaluation as a single offense.

6. Thus, a state decision to eliminate a candidate for president, to seize his assets and to deprive his relatives of their pension rights, even if it had been adopted as a single decisional manifestation and even by a single state official, would not constitute a single offense, but three different offenses, since they lack a single unit of legal disvalue, given the absence of a figure that prohibitively contemplates them as a whole.

7. In the case that is the subject of this judgment, not only the unity of will or design is implicit in the factual (ontic) considerations, but also the unity of the legal disvalue, since annihilating a political party in the manner described above undoubtedly constitutes a crime against humanity.

8. There is no need to dwell here on the concept of a crime against humanity, since the judgment itself, by ruling out the statute of limitations, is taking for granted in the case the existence of an offense of this category, without any need for further explicit considerations.

9. At the normative or legal devaluation level, the prohibitions of homicide, torture, etc., lose their autonomy when a figure absorbs them, resulting in an apparent concurrence of prohibitions whose true nature is that of a mere superficial first impression, since the devaluation of the prohibition is not a legal one.

The prohibition of the crime against humanity encompasses precisely the description of all these prohibitions, that is to say, it encloses them conceptually, exhausting their antijuridical content.

10. In other words, it is technically what is known as a mere appearance of competition of offenses by absorption or conceptual exhaustion of the others (usually called apparent competition of criminal norms or types).

11. The State is not being condemned because its agents committed thousands of homicides and other crimes, but because they killed, tortured, disappeared and deprived thousands of people of their liberty in the execution of a crime against humanity consisting in the annihilation of a political party.

12. Jurisdiction is clearly a question of a procedural nature, as it is one of the fundamental chapters of any theory of the process. Therefore, a question of this nature, that is to say, belonging to a procedural regulation of the material law called substantive law, can in no way enable the division of an infringement that ontically and legally configures a unit for the material or substantive law.

13. In any case, and without detriment to what has just been pointed out, it is not sustainable that prior to the entry into force of the ACHR and the recognition of the jurisdiction of this Court, the State was authorized by conventional or customary international law to commit crimes against humanity, i.e., according to the national and international legal order, it was never lawful for the State to commit such crimes.

14. Consequently, the juridical unity of the devaluation of the material or substantive law does not result in the case either from the validity of the ACHR and even less from the recognition or admission of the jurisdiction of this Court.

15. As a general rule, it should be noted that when a crime against humanity is submitted to this Court for trial, this Tribunal cannot divide the fact according to the date of recognition of its jurisdiction by the State, because it would be granting autonomy to results that are part of the single crime against humanity, that is, it would be disarticulating the very concept of this category of crimes.

16. I understand, therefore, that in this case the separate consideration of the part of the single crime executed before the date as of which this Court has jurisdiction implies the disregard of the ontic unity or design, as much -and, above all- as of the legal unity of the unitary disvalue by the law in force prior to that moment.

17. This Court would lack jurisdiction only if the crime against humanity had been initiated, consummated and exhausted prior to the recognition of its jurisdiction, but it is competent to judge the indivisible act that continued to be committed at the time of its jurisdiction, since it cannot ignore the unity of the crime that prevents the division of its first part, by imposition of substantive law, which prevents it from altering or disregarding the very concept of crime against humanity as a unitary crime.

This is how I vote.

Eugenio Raúl Zaffaroni

Judge

L. Patricio Pazmiño Freire

Judge

Pablo Saavedra Alessandri
Secretary

JOINT REASONED VOTE OF JUDGES EDUARDO FERRER MAC-GREGOR POISOT AND RICARDO C. PÉREZ MANRIQUE

CASE OF MEMBERS AND MILITANTS OF THE PATRIOTIC UNION VS. COLOMBIA

JUDGMENT OF JULY 27, 2022
(Preliminary Objections, Merits, Reparations and Costs)

(Vice President Judge L. Patricio Pazmiño Freire joined this Reasoned Opinion of Judges Eduardo Ferrer Mac-Gregor Poisot and Ricardo C. Pérez Manrique)

I. INTRODUCTION: THE SOCIAL DIMENSION OF THE RIGHT TO THE TRUTH AND ITS IMPACT ON DEMOCRACY

1. The Judgment in the *Case of Members and Militants of the Unión Patriótica v. Colombia* (hereinafter "the Judgment")[1] is undoubtedly one of the most important decisions in the recent history of the Inter-American Court (hereinafter "the IACHR Court or the "Inter-American Court").

2. The case refers to the extermination of a political party, the Unión Patriótica, which occurred over several decades, throughout almost the entire Colombian territory, and with a number of victims exceeding six thousand people. The Inter-American Court was able to prove that the acts that characterized the extermination of the Unión Patriótica political party and its members, militants and sympathizers, were carried out with the participation of state agents, and with the tolerance and acquiescence of the authorities. In this sense, the Inter-American Court found that these acts were carried out by State actors and third parties who had the tolerance, collaboration, acquiescence or lack of prevention of the authorities[2].

3. In the Judgment, the Inter-American Court had the opportunity to address and reaffirm two important aspects of its jurisprudence. The first of these refers to the relevance of the *right to the truth* in contexts of serious human rights violations; and the second aspect is related to the impact of the annihilation of a political party on the survival of democracy.

4. With regard to the *first aspect*, the Inter-American Court indicated that, in the instant case, a fundamental part of the State's lack of response was the result of its sustained ineffectiveness in seriously and diligently investigating the repeated acts of violence and the situation of impunity in which those acts of violence were found. This situation resulted in the State's failure to clarify in time the causes of the growing phenomenon of persecution, to unravel the criminal structures involved and the different perpetrators, and to effectively identify the sources of risk in order to set in motion its entire state apparatus to dismantle them and prevent the continuation of the extermination that was occurring under its control.

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[1] *Case of Members and Militants of the Patriotic Union v. Colombia.* Judgment of July 27, 2022.

[2] *Cf. Case of Members and Militants of the Patriotic Union v. Colombia.* Judgment of July 27, 2022, paras. 207 and 481.

its jurisdiction[3]. In this sense, the Inter-American Court considered that the State had violated the *right to the truth* as an autonomous right with respect to the State's duty to investigate and clarify the facts, and to publicly disseminate the information[4]. Likewise, in the operative paragraphs, it declared that the State had violated the right to know the truth to the detriment of the victims of the case and, for the first time, to the detriment of "society in general "[5].

5. Regarding the *second aspect*, the Inter-American Court reaffirmed the intrinsic relationship between human rights, rule of law and democracy, in light of the *Inter-American Democratic* Charter[6]*.* It affirmed that the climate of victimization and stigmatization did not create the necessary conditions for the militants and members of the Unión Patriótica to fully exercise their political rights of expression and assembly. Their political activity was hindered by both physical and symbolic violence against a party that was labeled as an "internal enemy" and whose members and militants were subjected to homicides, forced disappearances and threats[7]. In this regard, the Court recalled the importance of the relationship between political rights, freedom of expression and freedom of association, and that these rights, together with the right of assembly, make the democratic game possible8. The Inter-American Court emphasized that the effective exercise of *representative democracy* is the basis of the rule of law and the constitutional regimes of the Member States of the Organization of American States, and that, in this sense, the effective exercise of political rights constitutes an end in itself and, at the same time, a fundamental means that democratic societies have to guarantee the other human rights provided for in the American Convention on Human Rights (hereinafter "the American Convention" or "the Pact of San José")[9.]

6. According to the *two aspects referred to*, either when referring to the right to the truth or when referring to the importance of political parties to preserve the good health of democracy through which the full enjoyment of human rights is guaranteed, the Inter-American Court addressed aspects that transcend the victims or even the same political party whose members were exterminated, to refer to a *general or collective dimension* of the rights contained in the Pact of San José that were violated in the particular circumstances of the case. In this

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[3] *Cf. Case of Members and Militants of the Patriotic Union v. Colombia.* Judgment of July 27, 2022, para. 286.

[4] *Cf. Case of Members and Militants of the Unión Patriótica v. Colombia.* Judgment of July 27, 2022, para. 487. Although the aforementioned right is not expressly contained in the American Convention, this does not prevent the Inter-American Court from examining an alleged violation in this regard and declaring its violation (See Concurring Vote of Judge Eduardo Ferrer Mac-Gregor Poisot, in the *Case of Rodríguez Vera and Others (Disappeared from the Palace of Justice) v. Colombia*. Judgment of November 14, 2014. Series C No. 287).

[5] *Cf. Case of Members and Militants of the Patriotic Union v. Colombia.* Judgment of July 27, 2022, Resolutive Point. 19.

[6] *Cf. Case of Members and Militants of the Unión Patriótica v. Colombia.* Judgment of July 27, 2022, para. 304, especially see section "B.1. The interrelation between the alleged violations of rights" (paras. 304-316).

[7] *Cf. Case of Members and Militants of the Patriotic Union v. Colombia.* Judgment of July 27, 2022, para. 325.

[8] *Cf. Case of Members and Militants of the Patriotic Union v. Colombia.* Judgment of July 27, 2022, para. 304.

[9] *Cf. Case of Members and Militants of the Patriotic Union v. Colombia.* Judgment of July 27, 2022, para. 307.

In this sense, it is relevant that the IACHR Court in the Judgment used the *Inter-American Democratic Charter* as a standard of authentic interpretation of the American Convention[10].

7. We are issuing this reasoned opinion precisely in order to further explore these two aspects addressed by the judgment. On the one hand, the collective nature of the right to the truth in a democratic society (*paras. 8 to 24*); and, on the other hand, the importance of guaranteeing human rights to the members, militants and sympathizers of a political party in a democratic system and its social impact (*paras. 25 to 34*), formulating some general conclusions (*paras. 35 to 38*).

II. THE COLLECTIVE NATURE OF LAW TO TRUTH IN A DEMOCRATIC SOCIETY

8. In the instant case, the Inter-American Court had the opportunity to continue with its jurisprudential line on the *right to the truth or to know the truth*, and in particular on the collective dimension of this right[11]. The Inter-American Court recalled that compliance with the duty of States to investigate and punish serious human rights violations, such as those in the instant case, is not only an international obligation, but also provides essential elements to consolidate a comprehensive policy on the right to truth, access to justice, effective measures of reparation and guarantees of non-repetition. Thus, judicial proceedings aimed at clarifying what happened in contexts of systematic human rights violations can provide a space for public denunciation and accountability for the arbitrary acts committed; they foster society's confidence in the rule of law and in the work of its authorities, legitimizing their actions; they enable social reconciliation processes based on the knowledge of the truth of what happened and the dignity of the victims; and, ultimately, they strengthen collective cohesion and the rule of law[12].

9. In turn, the IACHR Court reiterated that although the right to know the truth has been fundamentally framed within the right of access to justice, it is not limited to procedural or judicial truth, and the truth is that this right has autonomy, since it acquires a broad nature and its violation can affect different rights contained in the American Convention, depending on the context and particular circumstances, as is the case of the rights to judicial guarantees and judicial protection, recognized by Articles 8 and 25, the right of access to justice, and the right of access to justice.

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[10] Article 1 of the *Inter-American Democratic Charter* establishes that the peoples of the Americas have the right to democracy and their governments have the obligation to promote and defend it. The Judgment uses the *Inter-American Democratic Charter* to reaffirm the democratic principle and representative democracy, its relationship with the rule of law and the validity of fundamental rights and freedoms. *Cf. Case of Members and Militants of the Unión Patriótica v. Colombia.* Judgment of July 27, 2022, paras. 304, 305, 308, 335 and footnotes 227, 229, 230, 231, 232, 273.

[11] This has also been shared in general terms by the Inter-American Commission on Human Rights, stating that: "82. The Court has also indicated that the satisfaction of the collective dimension of the right to the truth requires the procedural determination of the fullest possible historical truth, which includes the judicial determination of the patterns of joint action and of all the persons who in various ways participated in said violations and their corresponding responsibilities. The fulfillment of these obligations is necessary to guarantee the integrity of the construction of the truth and the complete investigation of the structures in which the human rights violations are framed". IACHR, *Report on the Right to the Truth in the Americas*, OEA/Ser.L/V/II.152 Doc. 2, 13 August 2014, para. 82.

[12] *Cf. Case of Members and Militants of the Patriotic Union v. Colombia.* Judgment of July 27, 2022, para. 467.

information, protected by Article 13 thereof, or personal integrity as provided for in Article 5 of the American Convention[13].

10. In addition, it reiterated that, as the United Nations High Commissioner for Human Rights has pointed out, "[t]he right to the truth entails having full and complete knowledge of the acts that occurred, the persons who participated in them and the specific circumstances, in particular the violations perpetrated and their motivation. In this sense, it is relevant that, depending on the case, the inquiries aimed at determining what happened are carried out, for example, considering a gender perspective, or the political motivations that the human rights violations may have had.

11. Finally, the IACHR Court recalled its jurisprudential line referring to the dual dimension of the right to the truth, which takes the form of an individual right to know the truth for the victims and their next of kin, as well as a right of society as a whole. Accordingly, the victims' next of kin and society must be informed of everything that happened in relation to such violations[14].

12. In line with the collective component of the right to the truth, the Inter-American Court has indicated in the case of *Maidanik et al. v. Uruguay,* that "the investigation and knowledge of the truth of what happened during the period of the de facto regime [...] contribute to the clarification of the facts, the preservation of the historical memory and the determination of responsibilities "[15.] 15 In turn, in the case of the *Julien Grisonas Family v. Argentina, it recalled that "the proceedings of the Argentina, it* recalled that "judicial proceedings aimed at clarifying what happened in contexts of systematic human rights violations can provide a space for public denunciation and accountability for the arbitrary acts committed; they foster society's confidence in the legal system and in the work of its authorities, legitimizing their actions; they allow processes of social reconciliation based on knowledge of the truth of what happened and the dignity of the victims, and, in short, they strengthen collective cohesion and the rule of law "[16.]

13. On the other hand, with regard to the importance of criminal proceedings for the attainment of the right to know the truth in its two dimensions, in the *case of Herzog et al. v. Brazil*, the Court considered that judicial proceedings "play a significant role in the reparation of the victims, who go from being passive subjects with respect to the public authorities to persons who claim rights and participate in the processes 'in which the content, application and force of the law are defined'". The IACHR added that, in such cases, "the judicial processes bring with them a recognition for the victims as rights holders. Satisfying the right to the truth in this way empowers the victim, his next of kin, and the public in general to

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[13] See Concurring Vote of Judge Eduardo Ferrer Mac-Gregor Poisot, in the *Case of Rodríguez Vera and Others (Disappeared from the Palace of Justice) v. Colombia*. Judgment of November 14, 2014. Series C No. 287.

[14] *Cf. Case of Maidanik et al. v. Uruguay. Merits and Reparations*. Judgment of November 15, 2001. 2021. Series C No. 444, paras. 176-178, *Case of the Massacre of Los Josefinos Village v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 3, 2021. Series C No. 442, paras. 102 and 114, Case of Julien Grisonas Family v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 23, 2021. Series C No. 437, paras. 165 and 220, *Case of Omeara Carrascal et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 21, 2018. Series C No. 368, para. 256, Case of Vereda La Esperanza v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 341, para. 159, *Case of Herzog et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 15, 2018. Series C No. 353, para. 328, *Case of Vereda La Esperanza v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2017. Series C No. 341, para. 220, *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs*. Judgment of November 25, 2003. Series C No. 101, para. 274,

[15] *Case of Maidanik et al. v. Uruguay. Merits and Reparations*, para. 178.

[16] *Case of the Julien Grisonas Family v. Argentina*, para. 165.

seek and obtain all relevant information concerning the commission of the violation, and in cases such as the present one, the process by which the violation was officially authorized "[17].

14. This idea of the dual dimension of the right to the truth has been addressed by the United Nations system in several decisions and studies. Thus, the set of principles for the fight against impunity, updated by Diane Orentlicher, indicate in principle 2 in relation to the inalienable right to the truth that "[e]ach people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and motives that led, through massive or systematic violations, to the perpetration of those crimes "[18].

15. In turn, these same principles refer to the "duty to remember", indicating that "a people's knowledge of the history of its oppression is part of its heritage and should therefore be preserved by taking appropriate measures in the interest of the State's duty to remember to preserve archives and other evidence of violations of human rights and humanitarian law and to facilitate knowledge of such violations. Such measures should be aimed at preserving the collective memory from oblivion and, in particular, at preventing the emergence of revisionist and negationist theses.

16. Likewise, the revised final report on the question of impunity of perpetrators of human rights violations prepared by Louis Joinet states that the right to know the truth "is not only the individual right that any victim or his or her family members have to know what happened, which is the right to the truth. The right to know is also a collective right that is rooted in history, to prevent future violations from being repeated. On the other hand, the State has a "duty to remember" in order to protect itself against the distortions of history known as revisionism and negationism; indeed, a people's knowledge of the history of its oppression is part of its heritage and must therefore be preserved. Such are the main objectives of the right to know as a collective right "[20].

17. In the same vein, the 2007 Report on the Right to the Truth of the Office of the United Nations High Commissioner for Human Rights indicated that the right to the truth is "an individual right of both the victims and their families, but it also has a collective and social dimension. In the latter sense, the right to the truth is closely linked to the rule of law and the principles of transparency, accountability and good governance in a democratic society. It constitutes, along with justice, the

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[17] *Case of Herzog et al. v. Brazil*, para. 332.

[18] United Nations, Commission on Human Rights, Promotion and Protection of Human Rights, Report of Diane Orentlicher, impunity, Report of Diane Orentlicher, independent expert to update the set of principles for combating impunity, Updated set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, 8 February 2005, principles 2 and 4.

[19] United Nations, Commission on Human Rights, Promotion and Protection of Human Rights, Report of Diane Orentlicher, impunity, Report of Diane Orentlicher, independent expert to update the set of principles for combating impunity, Updated set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, 8 February 2005, principles 2 and 4.

[20] United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination. The Administration of Justice and the Human Rights of Detainees. Revised final report on the question of impunity for perpetrators of human rights violations (civil and political rights) prepared by Mr. L. Joinet in accordance with Sub-Commission resolution 1996/119. E/CN.4/Sub.2/1997/20/Rev.1 2 October 1997, para. 17.

memory and reparation, one of the pillars of the fight against impunity for serious human rights violations and breaches of international humanitarian law "[21]. Similarly, the 2006 study on the right to the truth by the Office of the United Nations High Commissioner for Human Rights establishes in relation to this right that "the concept of 'victim' can have a collective aspect" and that "the right to the truth can be understood as both an individual and a collective right", and that this right "has a social aspect", therefore, "society has the right to know the truth about past events involving the commission of heinous crimes, as well as the circumstances and reasons why they were perpetrated, in order to prevent their repetition in the future "[22].

18. On the other hand, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition stated that the "approach to the crimes committed is based on the pillars of transitional justice; without memory of the past, there can be no right to truth, justice, reparation or guarantees of non-repetition. For this reason, the processes of memory with respect to serious violations of human rights and international humanitarian law constitute the fifth pillar of transitional justice. It is an autonomous and at the same time cross-cutting pillar, since it contributes to the implementation of the other four, and represents a vital tool to enable societies to emerge from the logic of hatred and conflict, reparation and guarantees of non-repetition, and to initiate solid processes towards a culture of peace". It also indicated that "[t]he processes of memory contribute to democratic social commitment, encourage debates on the representation of the past, and make it possible to address the problems of the present in a relevant manner "[23].

19. Following this line, some high Courts in the region, such as the Constitutional Court of Peru, have stated: "The Nation has the right to know the truth about the unjust and painful facts or events caused by the multiple forms of State and non-State violence. Such right translates into the possibility of knowing the circumstances of time, manner and place in which they occurred, as well as the motives of the perpetrators. The right to the truth is, in this sense, an inalienable collective legal right "[24].

20. On this point it is worth recalling that the Constitutional Court of Colombia indicated in its decision C-370/06 on the Justice and Peace Law that "the collective dimension of truth, its minimum content includes the possibility for societies to know their own history, to elaborate a relatively reliable collective account of the events that have defined it and to have a memory of those events "[25]. 25 In another decision, the Constitutional Court itself stated that "knowledge about the past is fundamental in a transitional justice process not only as a materialization of a right, but also as a means of ensuring the right to a truthful and fair trial".

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[21] United Nations, Human Rights Council, The Right to the Truth, Report of the Office of the United Nations High Commissioner for Human Rights. A/HRC/5/7 of 7 June 2007, para. 83.

[22] United Nations, Commission on Human Rights, Study on the right to the truth, Report of the Office of the United Nations High Commissioner for Human Rights, E/CN.4/2006/91 of 9 January 2006, para. 54.

[23] United Nations, Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. Memorialization processes in the context of gross violations of human rights and international humanitarian law: the fifth pillar of transitional justice, A/HRC/45/45 of 9 July 2020, paras. 21 and 22.

[24] Constitutional Court of Peru, Judgment of March 18, 2004, Case 2488-2002-HC/TC.

[25] Decision C-370/06, Bogotá, D.C., May 18, 2006, para. 6.2.2.2.1.7.10.

The victims' right to the truth, but also as a fundamental component of a real reconciliation and the restoration of confidence in the legal system "[26].

21. It also held that in "the collective field, from the point of view of the right to the truth, if there are no collective efforts to remember, and no end is put to the dehumanization that laid the foundations for the atrocities, that society runs the risk of repeating them "[27]. On the other hand, the right to the truth in this collective dimension fulfills the purpose "so that communities that have suffered massive violations of their rights can reconstruct that painful past and incorporate it into their collective memory and their identity as a people". In particular, in processes of reconstruction of the collective fabric after a period of massive human rights abuses, society as a whole and the peoples in particular have the right to know the full reality of what happened and to be guaranteed the possibility of reconstructing an account of their own history, through the public disclosure of the results of the investigations, and implies the obligation to have a "public memory" regarding the findings of the inquiries into serious human rights [violations28].

22. Likewise, the Inter-American Court concluded that the right to truth had been violated to the detriment of the persons listed in the Judgment, militants and members of the Patriotic Union, as well as some of their relatives, and also *to the detriment of society in general*. This last point is a novelty in the jurisprudence of the Inter-American Court, since as mentioned (*supra* para. 4), by declaring "society in general" as a victim of the case for a violation of that right, for the first time, the Inter-American Court confers legal consequences to the collective dimension of the right to truth, an aspect that had been mentioned on several occasions throughout its jurisprudence, but without conferring it a concrete application.

23. In accordance with the foregoing, in considering *society* as *a* whole as victims in the case, we understand that the IACHR emphasized three elements that particularly characterize the facts of the present case:

a) on the one hand, the exceptional gravity of the facts, due to the magnitude of the violations, their continuity for more than two decades, their generalization in almost all the territories of the country, as well as the multiplicity of actors that participated in the materialization of this extermination;

b) on the other hand, the fact that the damage produced by these conducts transcends the group of more than six thousand victims, and constitutes a true collective damage to the whole society. This collective damage, in our opinion, lies both in the ignorance of the facts that were taking place, and in the generalization of a distorted discourse that justified these crimes by erroneously assimilating the victims to the guerrilla groups, and

c) third, the impact that the violation of the right to truth had on the normal functioning of democracy, which was ultimately undermined by the annihilation of a political party that represented part of the political sensibilities of the electorate and Colombian society.

24. In our view, these conclusions should be read in conjunction with the arguments related to the collective dimension of the violations of the rights to life, integrity, freedom of expression and freedom of association.

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[26] Judgment C-579-13, Bogotá, D.C., August 28, 2013 para. 6.1.2.2.2.
[27] Judgment C-579-13, Bogotá, D.C., August 28, 2013 para. 6.1.2.2.2.
[28] *Cfr*. C-017-18, Bogotá, D.C., March 21, 2018.

association, and to the political rights of the members and militants of the Unión Patriótica.

III. THE IMPORTANCE OF GUARANTEEING THE HUMAN RIGHTS OF MEMBERS, MILITANTS AND SYMPATHIZERS OF A POLITICAL PARTY FOR A DEMOCRATIC SYSTEM AND ITS SOCIAL IMPACT

25. The *Inter-American Democratic Charter* was used by the Inter-American Court to reaffirm the relationship between the rule of law, democracy and the observance of human rights.[29] In this sense, it addressed in detail the way in which the violations of the right to life and integrity of the members, militants and sympathizers of the Unión Patriótica political party were related to the right to freedom of association and the political rights that were thereby undermined. In this sense, the judgment states that when a violation of the right to life, integrity or personal liberty attributable to the State has the objective of preventing the legitimate exercise of another right protected in the American Convention, such as political rights, freedom of expression or association, a violation of these rights is also [configured30].

26. It is clear that one of the main motives for the commission of the violations against the victims in this case was their membership and participation in the Unión Patriótica political party. In addition, this systematic and structural violence had a chilling effect on the militants and members of the Unión Patriótica. Likewise, through actions perpetrated by state agents, a stigmatization of UP members was consolidated in order to exclude them from the democratic game, thus affecting their political rights and their freedom of expression and assembly.

27. In addition, as mentioned in the First Historical Memory Report, the extermination of members and militants of the Patriotic Union was based on the premise that this party was the political arm of the FARC as a justification to legitimize a counterinsurgency action that went beyond the combatants and extended to political parties and movements considered to be related to the [guerrillas31].

28. On this point, it is relevant what the IACHR Court stated in the case of *Perozo et al. v. Venezuela,* which precisely analyzed the impact of various statements made by high-ranking public officials in situations of high intensity social conflict or deep political polarization. The Inter-American Court has affirmed that in a democratic society it is not only legitimate, but sometimes a duty, for state authorities to make pronouncements on matters of public interest. However, in doing so, they are subject to certain limitations in that they must reasonably, although not necessarily exhaustively, verify the facts on which their opinions are based, and they must do so with even greater diligence than is due to private individuals, due to their high office, the broad scope and possible effects that their expressions may have on certain sectors of the population, as well as to prevent citizens and other interested persons from receiving a manipulated version of certain facts.

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[29] See *supra*, paras. 5 and 6, and particularly footnote 9, of this reasoned opinion.

[30] *Cf. Case of Members and Militants of the Patriotic Union v. Colombia.* Judgment of July 27, 2022, para. 318.

[31] *Cf. Case of Members and Militants of the Patriotic Union v. Colombia.* Judgment of July 27, 2022, para. 323.

29. In the same vein, it should be borne in mind that public officials have a position of guarantor of the fundamental rights of individuals and, therefore, their statements may not disregard these rights or constitute forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute to public deliberation through the expression and dissemination of their thoughts. This duty is particularly accentuated in situations of greater social conflict, alterations of public order or social or political polarization, precisely because of the set of risks that may imply for certain persons or groups at a given [time32].

30. In this regard, the Inter-American Court concluded that this climate of victimization and stigmatization did not create the necessary conditions for the militants and members of the Patriotic Union to fully exercise their political rights of expression and assembly. Their political activity was hindered by both physical and symbolic violence against a party that was labeled as an "internal enemy" and whose members and militants were subject to homicides, forced disappearances and [threats33].

31. The Court analyzed in detail the impact of the violations of the rights to life and integrity, together with accusations by public officials, on the violation of other rights contained in the American Convention. Thus, in its reasoning, the Inter-American Court assessed how these violations of the right to life and integrity of the members, militants and sympathizers of the Patriotic Union, amplified by the statements of high-ranking public officials, transcended the content of these to constitute a complex of violations of several other rights of these same persons.

32. However, from our point of view, the development of the IACHR Court was not limited to the intrinsic connection or interdependence between these rights, but also conferred *a collective dimension* to these affectations. Indeed, by recalling the relationship between political rights, freedom of expression and freedom of association, and that these rights, together with the right of assembly, make the democratic game [possible34] , it gave the contours of violations of a right that transcends or is projected beyond the universe of victims in the specific case.

33. Thus, for the I/A Court H.R., it was evident that the human rights violations to which the victims in the case were subjected *also affected the foundations of the democratic principle*. In this regard, it reiterated that the democratic principle inspires, radiates and guides the application of the American Convention in a cross-cutting manner, and constitutes both a guiding principle and an interpretative guideline. As a guiding principle, it articulates the form of political organization chosen by the American States to achieve the values that the system seeks to promote and protect, among which is the full enjoyment of human rights. In the same sense, the Inter-American Court paid particular attention to the fact that representative democracy is one of the pillars of the entire system of which the American Convention is a part, and constitutes a principle reaffirmed by the American States,[35] which is in accordance with the *Inter-American Democratic Charter*.

34. This last point is obvious from our perspective in order to understand the matrix of analysis of the IACHR Court in this case. Indeed, the cross-cutting reading of the

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[32] *Case of Perozo et al. v. Venezuela*, para. 151.

[33] *Cf. Case of Members and Militants of the Patriotic Union v. Colombia.* Judgment of July 27, 2022, para. 325.

[34] *Cf. Case of Members and Militants of the Patriotic Union v. Colombia.* Judgment of July 27, 2022, para. 304.

[35] *Case of Perozo et al. v. Venezuela*, para. 151.

Judgment in the *Case of Members and Militants of the Unión Patriótica vs. Colombia* allows us to conclude that at all times the Inter-American Court noted *the need to address the facts and their impact at the collective level*, not only for persons who identify in some way with the Patriotic Union, but also with Colombian society in general, which ultimately is the holder of the right to live in a representative democracy, especially when it is considered that this is one of the "pillars of the entire system of which the Convention forms part, and constitutes a principle reaffirmed by the American States "[36]. This is particularly important when one considers that the effective exercise of democracy in the American States constitutes, therefore, an international legal obligation and they have sovereignly agreed that such exercise is no longer only a matter of their domestic, internal or exclusive [jurisdiction37].

IV. CONCLUSION

35. The Judgment represents a point of maturity in the jurisprudential line on the right to the truth, in that it reaffirms the jurisprudential developments of the IHD Court on the autonomy of this [right38] , and at the same time deepens the *collective dimension* of this right. This is the first occasion in which it declares not only the individual violation of the right to know the truth to the detriment of more than six thousand victims, but also to the detriment of "*society in general* "[39].

36. In effect, the Inter-American Court understood that the collective dimension of the right to truth transcends the victims of the specific case, making society as a whole an injured party. While thousands of people were murdered and disappeared because of their ties to a political party for more than two decades, the authorities, either for lack of political will or because of tolerance or acquiescence, kept Colombian society in a lethargic state of complete indifference to events that attacked the very foundations of a democratic society. Moreover, they forced society to live in a climate of political violence that removed any possibility of free democratic debate. Hence the particular importance in this case of the social dimension of the right to truth and its impact on democracy.

37. In the same sense, in order to unveil the logic that transcends the specific circumstances of the case, the Inter-American Court focused on unraveling the connections between different rights that were violated as a result of the acts of violence against the members, militants and sympathizers of the Patriotic Union. In particular, the Inter-American Court systematically established the close link that was present in this case between the violations of the right to life and integrity of thousands of people, its legitimization from the discursive point of view of several State authorities, and on the other hand, the rights to freedom of expression, freedom of association, as well as political rights.

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[36] *Advisory Opinion OC-6/86, supra, para. 34, and Case of Petro Urrego v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 8, 2020. Series C No. 406, para. 90.* The foregoing is in accordance with the *Inter-American Democratic Charter*, which establishes that representative democracy is the basis of the rule of law and the constitutional regimes of the OAS member states, and that the strengthening of political parties is a priority for democracy (arts. 2 and 5).

[37] *Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs. Judgment of February 8, 2018. Series C No. 348, para. 114*.

[38] See Concurring Vote of Judge Eduardo Ferrer Mac-Gregor Poisot, in the *Case of Rodríguez Vera and Others (Disappeared from the Palace of Justice) v. Colombia*. Judgment of November 14, 2014. Series C No. 287.

[39] *Cf. Case of Members and Militants of the Patriotic Union v. Colombia.* Judgment of July 27, 2022, Resolutive 19.

38. We consider that the joint understanding of the violation of these rights to the detriment of more than six thousand victims, members, militants and sympathizers of the Unión Patriótica party, transcended the case and had a real *collective damage in the whole society*, substantially impacting the democratic principle and representative democracy in Colombia. Colombian society received an additional damage consisting in the establishment of a system of generalized political violence against those opponents who are identified as enemies of the homeland.

Eduardo Ferrer Mac-Gregor Poisot
Judge

RicardoC. Pérez Manrique
Judge

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri
Secretary