

## CHAPTER V<sup>1</sup>

### FOLLOW-UP ON RECOMMENDATIONS MADE BY THE IACHR IN ITS COUNTRY AND THEMATIC REPORTS

#### FOLLOW-UP ON RECOMMENDATIONS MADE BY THE IACHR IN THE REPORT TRUTH, JUSTICE AND REPARATION: FOURTH REPORT ON THE HUMAN RIGHTS SITUATION IN COLOMBIA

##### I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter “the IACHR” or “the Commission”) has paid special attention to the human rights situation in Colombia during the armed conflict and, considering its devastating consequences, has ascribed great value to the signing of the peace accords, which usher in new possibilities for strengthening the protection of human rights. The objective of this chapter is to follow up on the recommendations made in the report *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia* (hereinafter also “the report Truth, Justice and Reparation” or “the Report of the IACHR”), approved by the Commission on December 31, 2013. In December 2012, the IACHR made an onsite visit to Colombia and subsequently prepared the country report that is the subject of this follow-up; the Report was published in August 2014.

2. In Chapter V of its 2014 and 2015 annual reports the Commission followed up on the recommendations made by the IACHR in its Report. The Commission has considered that the State’s recognition that the recommendations of the report are generally aimed at offering “tools for overcoming the challenges for guaranteeing and protecting human rights” and that their “implementation will represent a positive change for the holders of rights” reflects the commitment taken on by the State to effectively address the problems and challenges identified, this being a necessary element for going forward decidedly in implementing the protections and guarantees required for the victims of human rights violations in Colombia.<sup>2</sup>

3. In addition, the IACHR recognizes what was noted by the State when it indicates that “there are innumerable obstacles and challenges to overcome,” but that “the Government of Colombia, as part of an unbending policy of the State will continue to redouble efforts to guarantee the human rights of all inhabitants of the national territory...,” as well as its openness to the commitment of the IACHR to continue working with the State to seek solutions.<sup>3</sup> The State also noted the importance of the report of the Commission in seeking to achieve a “positive transformation” on the situation of human rights in Colombia, in particular the recognition of fundamental issues such as the “peace talks,”<sup>4</sup> which ultimately concluded in the peace agreement.

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<sup>1</sup> In keeping with Article 17(2) of the Commission’s Rules of Procedure, Commissioner Enrique Gil Botero, of Colombian nationality, did not participate in the deliberations or decision on this chapter.

<sup>2</sup> IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 2.

<sup>3</sup> Republic of Colombia. Avances en la protección y garantía de los derechos humanos en Colombia (2013-2014) y seguimiento a las recomendaciones del IV Informe País de la IACHR: “Verdad, Justicia y Reparación.” Note S-GAIIID-14-094783, received December 29, 2014, pp. 4-5. IACHR. 2014 Annual Report. IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 2.

<sup>4</sup> Republic of Colombia. Avances en la protección y garantía de los derechos humanos en Colombia (2013-2014) y seguimiento a las recomendaciones del IV Informe País de la IACHR: “Verdad, Justicia y Reparación.” Note S-GAIIID-14-094783, received December 29, 2014, p. 5. IACHR, 2014 Annual Report. IACHR, [Chapter V - Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 2.

4. In this chapter the Commission recognizes the efforts made by the State to persevere to the signing of the peace agreement, initially signed August 24, 2016, and the subsequent renegotiation in light of the proposals put forth by the groups that had questioned the agreement and that called on voters to reject it in the referendum held October 2, 2016.<sup>5</sup> The Commission looked favorably upon the renegotiation going forward while respecting the effective pluralism needed in a democratic society, and likewise when a Final Agreement was reached to end the conflict with the FARC-EP (hereinafter “Final Agreement”) on November 12, 2016.<sup>6</sup>

5. In November 2016 the Permanent Council of the Organization of American States (OAS) adopted by acclamation a resolution supporting the peace process and the end of the armed conflict in Colombia.<sup>7</sup> After that session Colombian President Juan Manuel Santos met with the President of the IACHR, Commissioner James Cavallaro, and delivered the Agreement to him. Both authorities engaged in a dialogue on the peace process, the precarious state of the ceasefire, and implementation of the Agreement. The Commission expressed to Colombia its commitment to continue monitoring to ensure that the implementation of the agreement goes forward respecting and upholding inter-American human rights standards.<sup>8</sup>

6. In this regard the Commission reiterates that it maintains its conviction that consolidating peace is an essential requirement for the exercise of and respect for human rights. In addition, it takes into account the great challenge and responsibility that Colombia has ahead of it in implementing the agreement. In this understanding, the IACHR also maintains its commitment to attain peace in Colombia, thus it will continue offering its collaboration to the State and Colombian society as a whole in this effort, and it will monitor implementation of the Agreement within the scope of its competences with the aim of such implementation meeting inter-American standards in relation to truth, justice, and reparations in the transition to peace.<sup>9</sup>

7. In its report Truth, Justice and Reparation, and its follow-up reports, the Commission has analyzed the human rights situation in Colombia mindful in particular of the context of the continuation of the internal armed conflict and the impact it has had on the protection and exercise of rights. Through the IACHR’s constant monitoring of the human rights situation in Colombia it has found that due to the internal armed conflict, Colombia maintains particular complexities stemming from the violence, complexities that continue to be a part of the day-to-day lives of its inhabitants, and that hit the most vulnerable sectors of the population. At the same time, the IACHR has recognized and valued the important public policies furthered by the State in the area of human rights to address this complex reality and the impetus the Government has given to attending to the victims of human rights violations and protecting persons at risk, as well as the significant investment in human and financial resources in these areas.<sup>10</sup> This year it once again recognizes that effort by the State.

8. This analysis by the Commission has also taken into account that the Colombian armed conflict has undergone major transformations in terms of the dynamics and actors involved, in particular

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<sup>5</sup> IACHR. Press Release No. 122/16, [IACHR Welcomes the Signing of Agreement for the Construction of Peace in Colombia](#), August 29, 2016.

<sup>6</sup> See IACHR, Press Release No. 178/16, [IACHR Reaffirms its Support for the Peace Process in Colombia and Is Monitoring Compliance with Inter-American Standards](#), December 1, 2016.

<sup>7</sup> Organization of American States (OAS), [CP/DEC. 67 \(2096/16\) Support for the peace process and the termination of the armed conflict in Colombia](#), November 18, 2016.

<sup>8</sup> IACHR, Press Release No. 178/16, [IACHR Reaffirms its Support for the Peace Process in Colombia and Is Monitoring Compliance with Inter-American Standards](#), December 1, 2016.

<sup>9</sup> See IACHR, Press Release No. 178/16, [IACHR Reaffirms its Support for the Peace Process in Colombia and Is Monitoring Compliance with Inter-American Standards](#), December 1, 2016.

<sup>10</sup> See IACHR, 2015 Annual Report 2015, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), March 17, 2016, para. 14.

since the demobilization of the Autodefensas Unidas de Colombia (AUC) and in recent years with the progress of the peace process and the cease fire; and this year in particular with the subsequent signing of the Final Agreement and the efforts already made to implement it.

9. The Final Agreement was approved by the Senate and the House of Representatives of the Colombian Congress on November 29 and 30, 2016, respectively, with all votes in favor. Subsequently the Constitutional Court approved the mechanism that allows for fast-track treatment for adopting the statutes and the constitutional amendments needed for its implementation.<sup>11</sup> In its observations on the draft of this report<sup>12</sup> the State reported the approval of Law 1820 of December 30, 2016, “issuing provisions on amnesty, pardon, and special criminal justice treatment and other provisions,” aimed at regulating amnesties and pardons for political and related offenses and adopting special differentiated criminal justice procedures, especially for state agents who have been convicted, prosecuted, or accused of committing punishable conduct by reason of, on occasion of, or directly or indirectly related to the armed conflict.<sup>13</sup> The State reported that with a view to implementing that Law, the President of the Republic issued Decree 277 of 2017 on February 17, 2017 “Establishing the procedure for the effective implementation of Law 1820 of December 30, 2016.”<sup>14</sup> This report will set forth some considerations on the agreement under the section on transitional justice (see *infra* D).

10. On November 16, 2016, the Commission communicated to the State that it anticipated publishing a third follow-up report on the recommendations that were made in the report Truth, Justice and Reparation, in which it decided to place emphasis on the recommendations that are the main subject of this chapter. Accordingly, it requested information on the implementation of those recommendations.

11. In addition, on November 16 and 17, 2016, the Commission informed Colombian civil society organizations that it was preparing the third follow-up report on the recommendations made in its report Truth, Justice and Reparation and requested information they might consider relevant on compliance with the recommendations in the area of their experience.<sup>15</sup>

12. The State presented its response on December 16, 2016, and it expressed gratitude for the ongoing support of the Commission for the peace process, valuing its function of promoting and ensuring

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<sup>11</sup> Constitutional Court, [Comunicado 52](#), December 13, 2016, forwarded to the IACHR by communication from the Permanent Mission of Colombia to the OAS, December 14, 2016.

<sup>12</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia”](#), received February 28, 2017. Available in Spanish only.

<sup>13</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>14</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia”](#), received February 28, 2017.

<sup>15</sup> The organizations to which that communication was sent were: AFRODES, Movimiento Nacional de Víctimas de Crímenes de Estado (MOVICE), Grupo Interdisciplinario por los Derechos Humanos (GIDH), Colombia Diversa, Caribe Afirmativo, La Federación Colombiana de Periodistas (Fecolper), Comisión Intereclesial de Justicia y Paz (CIJP), Corporación Sisma Mujer, Women’s Link Worldwide, Red Nacional de Mujeres, Ruta Pacífica, Casa de la Mujer, Corporación Humanas Colombia, Organización Nacional Indígena de Colombia (ONIC), Corporación Colectivo de Abogados José Alvear Restrepo (CCAJAR), Consultoría para los Derechos Humanos y el Desplazamiento (CODHES), Asociación de Cabildos Indígenas del Norte del Cauca (ACIN), Humanidad Vigente, Fundación Nydia Erika Bautista, MINGA, Fundación Comité de Solidaridad con los Presos Políticos (FCSP), Proceso de Comunidades Negras (PCN), Reiniciar, Corporación Jurídica Libertad (CJL), Comisión Colombiana de Juristas (CCJ), Asociación de Familiares de Detenidos Desaparecidos (ASFADDES), Asociación Colectivo de Mujeres al Derecho, Fundación para la Libertad de Prensa (FLIP), Jesuit Refugee Service (JRS), Dejusticia, Coordinación Colombia Europa Estados Unidos (CCEEU), Consejo Regional Indígena del Cauca (CRIC), Santamaría Fundación, Action Program for Equality and Social Inclusion of the Universidad de los Andes, Corpjuridico, Comité Permanente de Derechos Humanos (CPDH), and Corporación Colectivo Orlando Fals Borda (Colectivo OFB).

inter-American human rights standards, which run through the entire Agreement.<sup>16</sup> The civil society organizations also presented information in response to the request from the IACHR.<sup>17</sup>

13. In producing this chapter the Commission has also taken into account the information noted in the previous paragraph, the information collected in the course of the IACHR's monitoring of the general human rights situation in Colombia until this Chapter, information received during public hearings<sup>18</sup>, the twice-yearly report of the OAS Mission to Support the Peace Process (MAPP/OAS), investigations conducted at its own initiative, input from the precautionary measures mechanism, and the requests for information under the power established at Article 41 of the American Convention on Human Rights (hereinafter "the American Convention"), as well as information from other public sources, and the decisions and recommendations of specialized international organizations, among others. In addition, as part of the process of preparing this document, the IACHR forwarded a copy of the preliminary draft to the State, in keeping with Article 59(10) of its Rules of Procedure, and asked it to submit its observations. On February 28, 2017, the IACHR received the observations of the State<sup>19</sup>, which, as relevant, were incorporated to this final version approved by the Commission on March 15, 2017.

14. In its observations the Colombian State noted that it welcomes the pronouncements of the Commission's support as Colombia faces the post-conflict scenario in the wake of the signing of the Final Agreement. In this regard, it reiterates its gratitude for the ongoing support of the Commission for the peace process and values the function it will play in promoting and guaranteeing inter-American human rights standards during the implementation of the Agreement.<sup>20</sup>

15. This chapter follows the structure used in the IACHR's on which it follows up. It is divided into nine sections for considering the measures adopted by the State to carry out the Commission's recommendations regarding: (A) the rights to life, humane treatment, and personal liberty; (B) mechanisms of protection; (C) impunity and obstacles to justice; (D) transitional justice applied to a still-extant armed conflict; (E) gains and setbacks in the area of military criminal justice; (F) mechanisms of reparation; (G) internal forced displacement; (H) economic, social and cultural rights; and (I) the groups especially hard-hit by the armed conflict. In each section the recommendations made by the Commission are recalled, and the main aspects of gains and setbacks identified by the IACHR are analyzed. Finally, the Commission presents its conclusions and reiterates the importance of the Colombian State fully carrying out the recommendations made in its report.

<sup>16</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>17</sup> Women's Link Worldwide and FLIP submitted a report to the IACHR on December 5, 2016, and December 6, 2016; the organization Fundación Nydia Erika Bautista submitted its alternative reports to the United Nations and documents to monitor and evaluate public policies, among others, on December 12, 2016; CCEEU, Acción Colectiva de Objetores y Objektoras de Conciencia (ACOOC), Colombia Diversa, CCJ, CPDH, CIJP, CCAJAR, Corporación Jurídica Yira Castro (CJYC), Corporación Reiniciar, Familiares Colombia, Equitas, Colectivo OFB, CJL, MOVICE, Corporación AVRE, FCSPP, JUSTAPAZ, Coalición contra la vinculación de niñas, niños y jóvenes al conflicto armado en Colombia (COALICO), Coalición Colombiana Contra la Tortura, Mesa por la Vida y la Salud de las Mujeres, Action Program for Equality and Social Inclusion (PAIIS) of the Universidad de Los Andes, Somos Defensores Program, Red Nacional de Mujeres, and Tierra Digna jointly presented their alternative reports to the United Nations, which were received on December 5, 2016; the organization Colectivo OFB submitted additional information on December 20, 2016.

<sup>18</sup> IACHR 2016 hearings on: [general situation of human rights in Colombia](#), [search for disappeared persons and excavations at La Escombrera in Medellín](#), [territory, human rights, and peace-building in the departments of Cauca and Córdoba](#), [human rights and peace process](#), and [gender perspective in the context of the peace process](#).

<sup>19</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia."](#) received February 28, 2017.

<sup>20</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia."](#) received February 28, 2017.

## II. FOLLOW-UP ON RECOMMENDATIONS

### A. Life, human treatment, and personal liberty

16. In its report Truth, Justice, and Reparation, the Commission made the following recommendations, among others, to the State:

- That it adopt, as soon as possible, the measures necessary to prevent State agents from committing violations of human rights and international humanitarian law. Those measures should include: (a) a serious, impartial, and effective investigation into all cases that involve alleged violations of human rights and IHL, as well as of all those persons who have planned, ordered, and/or perpetrated such acts; and (b) intensive training in human rights law and IHL.
- That it adopt the appropriate measures for the members of the security forces who are allegedly involved in cases of violations of human rights or IHL to be suspended from active duty until a final decision is issued in the disciplinary or criminal proceedings in such cases.
- That it adopt, as soon as possible, the measures necessary to dismantle the *Autodefensas* who did not participate in the collective demobilizations from 2003 to 2006, and to dismantle the armed groups that emerged after the demobilization of the paramilitary organizations or that continue to pursue the same objectives.
- That it adopt the measures necessary for having a registry with public access that is updated, unified, and vetted concerning persons who have been forcibly disappeared in Colombia, with information broken down by age, gender, ethnicity, and people, among others.
- That it adopt the relevant measures to guarantee the effectiveness of the Urgent Search Mechanism or any other mechanism that makes it possible to immediately recover disappeared persons.
- That it continue making progress in recovering the bodies of the disappeared, identifying them correctly, and appropriately delivering them to their next of kin.
- That it adopt the corresponding measures to ensure that extrajudicial executions are investigated in the competent jurisdiction, i.e. the regular jurisdiction. In addition, the Commission urges the State to give impetus to proceedings under way in cases of extrajudicial executions, and culminate them within a reasonable time, in keeping with the standards of due diligence in investigations.

17. In its report Truth, Justice and Reparation and in its follow-up chapters the IACHR has referred to the State's obligation to intensify its efforts to ensure that the security forces respect the standards applicable to the use of force and to perform a serious, impartial, and effective investigation of all the cases that involve alleged violations of human rights and international humanitarian law (IHL) and has repeatedly recommended intensive training and education in human rights and IHL for state agents.

18. In this respect, the State reported on the implementation of the Ministry of Defense's Policy on Human Rights and IHL, which it considers provides much stronger human rights guarantees given that it incorporates elements such as strengthening education on and a culture of respect for human rights and IHL in the Armed Forces and National Police and in the operational discipline of those same forces so as to comply with what is required by its international commitments in respect of human rights and international humanitarian law.<sup>21</sup>

#### 1. Right to life

19. The Office of the Attorney General (also referred to as FGN: Fiscalía General de la Nación) informed the IACHR that it has a cumulative figure of 2,500 proceedings for cases of "false positives." The Office of the Attorney General indicated that an internal study shows that of a total of 2,653 cases investigated of crimes attributable to members of the Armed Forces or National Police, 2,208 correspond to cases

<sup>21</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.



involving purported “false positives”<sup>22</sup>, committed against 3,185 individual victims and 645 victims classified as persons not identified. It indicated that although this unscrupulous practice by members of the Army was discovered by the authorities in 2008, the results of the investigations have come to light in the last four years.<sup>23</sup> The Office of the Attorney General indicated that it was able to individually identify the perpetrators of these crimes and bring them before judges, including officers, non-commissioned officers, and rank-and-file soldiers.<sup>24</sup>

20. Subsequently, the State reported that the Office of the Attorney General designed a strategy for investigating homicide cases in which state agents are implicated that looks into both the direct perpetrators of the forms of conduct and their superiors, including clarifying the possible responsibility of the unit commanders, that has made it possible to secure convictions of officers of varying ranks at the command of battalions that reported the deaths. It emphasized that the judgments related to the crimes of disappearance and/or homicide committed by state agents include a context analysis, and thus involve more than just an isolated investigation. It stated that as of January 31, 2016 the Office of the Attorney General reported 4,977 proceedings for homicides associated with the actions of the Armed Forces and National Police and that 1,199 members of those forces have been convicted.<sup>25</sup> It also reported that on February 28, 2017 the Office of the Attorney General had on record 2,193 with at least a preliminary investigation or indictment, and 520 cases with convictions of homicides associated with the action of the armed forces and National Police, which include the cases categorized as “false positives.”<sup>26</sup>

21. The latest United Nations figures indicate that for 2014 the rate of intentional homicides in Colombia was 27.9 individuals per 100,000 population.<sup>27</sup> President Juan Manuel Santos, for his part, announced on June 14, 2016, that Colombia had attained a homicide rate of 25.9 per 100,000 population in the previous 12 months, the lowest in the last 40 years.<sup>28</sup> The State had made a similar statement during the hearing on the general human rights situation held in April.<sup>29</sup> According to a report by the Ministry of Defense, the number of homicides fell from 13,343 in 2014 to 12,673 in 2015, mainly as a result of the implementation of bilateral de-escalation measures and the unilateral ceasefire decreed by the FARC-EP as of yearend 2014.<sup>30</sup> Also the IACHR has taken into account the information received about forced disappearances figures referenced paragraphs below (see infra II.A.3).

22. In March 2016 the Office of the UN High Commissioner for Human Rights (OHCHR) published its 2015 report on the human rights situation in Colombia in which it described a confidential official military communication from 2008 – the year in which the Ministry of Defense issued the Integral Policy on Human Rights in response to the extrajudicial executions known as “false positives” – that provides

<sup>22</sup> Cases of youths who were deceived with promises of work, were taken from their places of residence, and later ended up dead in false official operations against the guerrilla forces, with thousands of “recruits” being passed off as members of illegal armed groups. Office of the Attorney General, *Informe de Connotación FGN*. Eduardo Montealegre Lynett 2012-2016, p. 39. The IACHR was informed that they are persons who were executed by army service members, who altered the scene of the crime and changed the victims’ clothing in order to report that they were members of guerilla groups who had been killed in combat, supposedly with the aim of claiming economic and professional incentives, and in response to pressure from the government to show positive results in the fight against insurgent groups. See IACHR, [Admissibility Report No. 34/15](#), “Alvaro Rodríguez Buitrago et al, Vs. Colombia, July 22, 2015, para. 1.

<sup>23</sup> Office of the Attorney General, *Informe de Connotación FGN*. Eduardo Montealegre Lynett 2012-2016, p. 39.

<sup>24</sup> Office of the Attorney General, *Informe de Connotación FGN*. Eduardo Montealegre Lynett 2012-2016, p. 39.

<sup>25</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>26</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia.”](#) received February 28, 2017.

<sup>27</sup> U.N. Data, [World Statistics Pocketbook](#), July 2016.

<sup>28</sup> *El Tiempo*, [Así va el país en el reto de reducir el número de homicidios](#), June 14, 2016.

<sup>29</sup> IACHR, Hearing on the general situation of human rights in Colombia, April 5, 2016.

<sup>30</sup> CCEEU, *Observatorio de Derechos Humanos y Derecho Humanitario, Ejecuciones extrajudiciales en Colombia en 2015: continuidad y encubrimiento*, August 2016.

evidence of an order by the commander of the Army to incinerate confidential internal orders that defined the institutional incentives for persons killed (“*bajas*”) in combat and persons captured.<sup>31</sup>

23. In its observations on the draft of this report, the State reiterated that it does not share the content of the recommendation set forth in the second point which recommends that the State “(a)dopt the relevant provisions so that the members of the security forces allegedly involved in cases of violations of human rights and/or international humanitarian law be suspended from active service until such time as a final decision is issued in the disciplinary or criminal proceedings in question.” In this respect, it reiterates that both criminal and disciplinary proceedings in Colombia go forward under the principal of the presumption of innocence, and the provisions that regulate the career service for the Officers and Non-commissioned Officers of the Military Forces provide for their suspension from their duties and of their powers when requested by a competent criminal justice or disciplinary authority, ordered by Ministerial Resolution or by the order of the Force Commando, as the case may be.<sup>32</sup>

24. It should be clarified that the recommendation in question makes reference to suspending from active service those members of the security forces involved in cases of violations of human rights and/or international humanitarian law as a safeguard that seeks to prevent these officials from performing a function of direct control in the population, without this presupposing any prejudgment, and until the conclusion of the respective criminal or disciplinary proceedings, and the issuance of the respective decisions, in the context of due process.

25. The State also reported on 17 active disciplinary investigations that are ongoing, 77 investigations or preliminary inquiries with orders to archive, three investigations remanded on jurisdictional grounds, and 51 orders declining jurisdiction (*autos inhibitorios*) against public officials (including members of the armed forces and National Police) for cases of violations of human rights and/or international humanitarian law during the period 2013-2017, without any judgment with sanction. It reported that in the period 2015-2017 the Office of the Procurator General reported nine active disciplinary investigations that were ongoing, three investigations or preliminary inquiries with order to archive, four investigations remanded on jurisdictional grounds, and four orders declining jurisdiction against members of the armed forces and National Police for violations of human rights and/or IHL.<sup>33</sup>

26. In this respect, the Fundación Nydia Erika Bautista considers that there is a policy for zero vetting of military and judicial entities in cases of forced disappearance other than the so-called “false positives” and that there has been no progress on the part of the Office of the Procurator General of the Nation (also referred to as PGN: Procuraduría General de la Nación) in disciplinary investigations on the responsibility of public servants, both those with highest-level responsibilities and lower-ranking public servants. It considers that this constitutes discrimination by the Public Ministry against victims disappeared by state agents and paramilitary groups that acted with their acquiescence.<sup>34</sup>

27. The Fundación Progresar emphasizes that it did not find any record reflecting any type of disciplinary sanction for the inactivity of the investigative agencies, for delay in cases involving forced disappearance at the national level, or in the case of Norte de Santander, despite the large number of cases that have been reported. Regarding the Urgent Search Mechanism (MBU: Mecanismo de Búsqueda Urgente)

<sup>31</sup> OHCHR, Annual report of the United Nations High Commissioner for Human Rights. A/HCR/31/3/Add. 2, March 15, 2016.

<sup>32</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>33</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>34</sup> *Fundación Nydia Erika Bautista para los Derechos Humanos, Situación de las desapariciones forzadas en Colombia 2016*, 2<sup>o</sup> Alternative report to the Committee on Enforced Disappearances of the United Nations, Update, sent to the IACHR December 12, 2016.

the organization indicated that it has requested its activation in 27 cases, and in only four cases has some type of response been obtained.<sup>35</sup>

28. As regards the investigation of extrajudicial executions, the Council of State held the Ministry of Defense and the Army liable and ordered that compensation be paid to the family of María Margarita Giraldo Úsuga, who was detained and subsequently assassinated on December 23, 2007, by members of the 17<sup>th</sup> Army Brigade during a supposed operation against the FARC-EP, even though she belonged to the Peace Community of San José de Apartadó, which has been a beneficiary of precautionary measures issued by the IACHR. It also ordered that a public ceremony be held to recognize responsibility and for an apology by the Minister of Defense and the commanders of the Military Forces and the 17<sup>th</sup> Army Brigade. The judge who wrote the opinion indicated that:

It was not a matter of a false positive but a clear and flagrant repudiation and violation of international law by the Colombian State. The Peace Community of San José de Apartadó enjoys precautionary measures, in addition to reinforcement of these measures by the Constitutional Court. Therefore the Council of State hands down a ruling, for the first time, for violations of international humanitarian law in the Colombian internal conflict.<sup>36</sup>

29. In August 2016, the *Coordinación Colombia-Europa-Estados Unidos* (CCEEU)<sup>37</sup> noted that in certain cases that occurred in 2015 they identified new modalities of extrajudicial executions and means of covering them up.<sup>38</sup> It indicated that the modalities of extrajudicial executions seen in the last five years, should they persist and not be investigated, and if the persons responsible are not sanctioned, could come to constitute a new pattern of systematic violations. It argued that “false positives” are no longer the predominant modality, for they account for 24% of the cases (16 victims) in 2015 and most were perpetrated by the unlawful or excessive use of force (76%, with 39 victims).<sup>39</sup>

30. The CCEEU argued that 2015 was a year of transition towards ending the armed conflict in which “the practical cessation of the harshness of the armed conflict” made it possible to observe to what point the different modalities of extrajudicial executions were or were not connected to the conflict. Accordingly, it considers it alarming that the number of cases of extrajudicial executions for which state agents bear direct responsibility, despite having fallen, continues to be so high. It argued that despite the significant reduction in the intensity of the armed conflict, extrajudicial executions took the lives of at least 65 victims in 2015. Of these, 30% (20 victims) died in circumstances related to the armed conflict or in carrying out military or police actions related to it, and that 70% of the cases (45 victims) were executed outside of the situation of armed conflict, with tendencies or patterns which, if they do not come to a halt, may move

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<sup>35</sup> 27 inactive cases; 203 active cases; four cases submitted to other prosecutorial offices situated in the city of Bucaramanga and 39 cases in which information was not provided as to which prosecutorial office they are assigned or where they are located, and two cases with an early judgment on forced disappearance before the courts with the authority to look into them, in the department of Norte de Santander. *Fundación Progresar Capítulo Norte de Santander, Informe sobre la situación, magnitud e impunidad frente al delito de la desaparición forzada en el departamento de Norte de Santander Colombia*, sent to the IACHR by the Fundación Nydia Erika Bautista on December 12, 2016.

<sup>36</sup> WRadio. [Condanan a la Nación por muerte de habitante de zona protegida por la CIDH](#), May 3, 2016.

<sup>37</sup> The [CCEEU](#) is a platform that brings together 269 social and human rights organizations.

<sup>38</sup> To wit: (a) executions in the context of the armed conflict and executions not directly related to the armed conflict; (b) continuation of “false positives” cases; (c) extrajudicial executions in the modality of “false positives” which are not accorded significance internationally, and so do not receive adequate attention; (d) supposed military error; (e) deaths in custody or at a police station; (f) deaths supposedly due to hanging; (g) deaths under the pretext of health problems; (h) deaths due to beatings; (i) homicides at military or police roadblocks or checkpoints; (j) homicides in social protest actions; (k) deaths due to protests arising from or spontaneous reactions to arbitrary or excessive police procedures; (l) homicides with the use of weapons other than the official ones; (m) selective homicides with no known or publicized motivation; (n) homicide out of combat. CCEEU, *Observatorio de Derechos Humanos y Derecho Humanitario. Ejecuciones extrajudiciales en Colombia en 2015: continuidad y encubrimiento*, August 2016.

<sup>39</sup> CCEEU, *Observatorio de Derechos Humanos y Derecho Humanitario, Ejecuciones extrajudiciales en Colombia en 2015: continuidad y encubrimiento*, August 2016.



towards systematic patterns of violations.<sup>40</sup> Its report does not include extrajudicial executions perpetrated by paramilitary forces, who were responsible for 99 extrajudicial executions that constituted human rights violations and 89 intentional homicides of protected persons that constituted violations of IHL, according to the report of the *Centro de Investigación y Educación Popular* (CINEP) on the situation of human rights in 2015.<sup>41</sup>

31. It also indicated that despite the peace process with the FARC-EP, which has resulted in saving a significant number of lives and a change in the policy, there are still extrajudicial executions in several regions of the country in the form of deaths of civilians at the hands of the Police or National Army due to the unlawful use of force or as “false positives,” a situation that is aggravated by the efforts of the State aimed at concealing or diverting the responsibility of the state or para-state actors involved. It considered it equally alarming that the persons presumably responsible appear to be officials of the National Police, which has come to be the one most commonly cited for these human rights violations, with two-thirds of the cases documented (40 victims), which evidences not only high levels of corruption and illegitimacy in the police, and which suggests widespread “quick to the trigger” behavior (“*gatillo fácil*”) supported by impunity in most of these cases. It indicated that the National Army appears to be involved in one-third of the cases recorded.<sup>42</sup>

32. In this respect, in its observations on the draft of this report the State reiterates that Colombian law does not provide for a crime of “extrajudicial execution” as such. It indicates that the full array of actions known as extralegal executions is covered in the domestic legislation under the crime of aggravated homicide (*homicidio agravado*). It notes that homicides of a protected person (*homicidios en persona protegida*), for their part, occur in a context in which international humanitarian law applies when there are military operations in which a person is killed who: (a) does not participate directly in the hostilities because he or she is a member of the civilian population; (b) is a civilian in the hands of the adverse party; (c) is wounded, ill, or shipwrecked and has been placed *hors de combat*; (d) is part of the health or religious personnel; (e) is a journalist on mission or an accredited war correspondent; or (f) is a combatant who has laid down his or her arms due to capture, surrender, or another like cause. It maintains that none of these forms of conduct is or can be considered a “positive” result. The State further indicates that the evaluation of the operational results of the actions of the armed forces and National police revolves around performance of the constitutional mission and the strategic objective, which is to strengthen the rule of law as a necessary condition for the protection of each and every one of the inhabitants of Colombia.<sup>43</sup>

33. The State reports on its “Zero Tolerance” policy in the face of conduct that violates human rights or is in violation of international humanitarian law, with the adoption of measures and procedures to avoid and prevent violations. It indicates that any complaint or report lodged against a member of the armed forces or National Police is handled speedily and all the support that the judicial and administrative authorities may need is provided immediately so that they can clarify the possible violation of human rights or international humanitarian law.<sup>44</sup>

34. The State further indicates that the actions of the members of the National Police are also strictly in line with the provisions of domestic and international law related to the use of force and that those

<sup>40</sup> CCEEU, *Observatorio de Derechos Humanos y Derecho Humanitario*, Ejecuciones extrajudiciales en Colombia en 2015: *continuidad y encubrimiento*, August 2016.

<sup>41</sup> CCEEU, *Observatorio de Derechos Humanos y Derecho Humanitario*, Ejecuciones extrajudiciales en Colombia en 2015: *continuidad y encubrimiento*, August 2016

<sup>42</sup> CCEEU, *Observatorio de Derechos Humanos y Derecho Humanitario*, Ejecuciones extrajudiciales en Colombia en 2015: *continuidad y encubrimiento*, August 2016.

<sup>43</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>44</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

provisions are abided by, lest members face prosecution for serious criminal or disciplinary infractions. It notes that Law 1801 of June 29, 2016 “Issuing the National Code of Police and Community Coexistence” determines clearly the duty to act of the Police and its limits on the use of force, which is a guarantee of respect for human rights that guides the police service.<sup>45</sup>

35. The Commission takes note of the information provided by the State and values the increase in the number of proceedings initiated and convictions secured in extrajudicial execution cases. The IACHR reiterates once again that according to available figures the number of investigations, like the number of persons responsible who have been punished, is still limited in relation to the total number of cases. In addition, the challenges related to Law 1765 of 2015, which re-structured the military and police criminal justice systems, with respect to cases of human rights violations and infractions of IHL, will be addressed in the section on gains and setbacks in the military criminal justice system.<sup>46</sup>

## **2. The State’s obligations with respect to the violence of the *Autodefensas*, groups not demobilized, and other criminal groups**

36. In its reports the IACHR has referred to the dismantling of the *autodefensas* and has indicated that violence stemming from the failure to effectively and completely dismantle the armed structures of paramilitary groups continues to have a severe impact on the rights of the inhabitants of Colombia; thus the State also continues to have a duty to dismantle the *autodefensas* who have not demobilized, as well as the so-called “emerging criminal bands” (BACRIM: “*bandas criminales emergentes*”), which the State characterizes as “organized crime” structures “different in nature and scope” from the paramilitary groups<sup>47</sup>, or more recently also labeled by the State as Organized Armed Groups (GAO: Grupos Armados Organizados<sup>48</sup> and Organized Criminal Groups (GDO: Grupos Delictivos Organizados).<sup>49</sup>

37. The State has recognized the existence of these new forms of violence and organized armed groups and indicates that these are armed structures around the illegal business of drug-trafficking, lacking a political or ideological profile or any interest in counterinsurgency, that arose after the demobilization of the *autodefensas*, as a criminal expression of different actors to take advantage of a financial infrastructure based on drug-trafficking that was used by the groups of *autodefensas* and the drug cartels, whose main objective is profit. The State reported that it has taken legal and operational actions aimed at dismantling those new forms of criminal organization.<sup>50</sup>

38. In this respect, it reported on the Defense and Security Policy for 2015 to 2018 known as “Everyone for a New Country,” whose aim is to “combat the new and early expressions of crime and transnational organized crime that threaten security, citizen tranquility, and the transparent operation of the State, using the full capacities of the Armed Forces and National Police,” and on the issuance of Ministerial Directive 015 of 2016, which establishes that the Armed Forces and National Police shall take on organized armed groups (GAO) autonomously or in a coordinated fashion. The National Police, for its part, shall

<sup>45</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>46</sup> IACHR, Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation, May 17, 2015, para. 54.

<sup>47</sup> See IACHR, 2015 Annual Report, Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation, March 17, 2016, para. 16.

<sup>48</sup> Organized Armed Groups (GAO) are described by the State as those which under the direction of a command with responsibility exercise control over a territory such that they are able to carry out sustained and coordinated military operations. Directive 015-2016. Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>49</sup> Organized Criminal Groups (GDO) are described by the State as groups made up of three or more persons that exist for a certain time and that act in concert for the purpose of committing one or more serious offenses or offenses defined in the Palermo Convention, with a view to obtaining, directly or indirectly, an economic or other material benefit. The criminal reach of these groups is transnational. Directive 015-2016. Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>50</sup> Republic of Colombia, Nota S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

confront the criminal groups individually unless they request military assistance from the Armed Forces. The National Police will also be responsible for coordinating and performing the investigative and operational tasks against the organized criminal groups (GDO). It reported that since the outset of the current administration, in August 2014, some 20,000 members of these criminal bands have been “neutralized” (killed or arrested); at least 728 of such cases correspond to the first 11 months of 2016.<sup>51</sup>

39. In this respect, the CCEEU indicates that there is a “militarization of civilian life” and considers that with the prospect of the end of the internal conflict one perceives a resistance to the initiative to review and modify the doctrine of the Armed Forces. Directive 015 of 2016 is one example. It states that its practical purpose is to be able to use the maximum lethal force available against criminal bands (snipers, aerial strafing, bombardments, etc.) and its application to “the counterinsurgency war” has ended. It indicates that the classification of the organized armed groups (GAO) who are the target of the lethal force that is determined in the Directive is worrisome, for it includes groups such as the Ejército Popular de Liberación (EPL), the Ejército Revolucionario Popular Antisubversivo de Colombia (ERPAC), and the Urabeños, but under other names (the EPL “los Pelusos”; the ERPAC “Puntilleros”; and the Urabeños the “Gulf Clan”), “while several of the main paramilitary” groups such as “los Rastrojos”, “la Empresa”, “los Buenaventureños”, “los Paisas”, “Renacer” and “El Bloque Meta” do not appear in that list.<sup>52</sup>

40. In this respect, the State answered that Ministerial Directive 015 of 2016 is not only specifically in line with Colombian law, but also with international standards. It was issued in response to a new study and rethinking of the Ministerial policy and strategy not only to combat criminal groups but also to characterize them and conceptualize them as GAO and GDO. It notes that the Directive orients the members of the Military Forces and the National Police in the correct use and application of force in pursuing the GAO and GDO, to protect the population and ensure that the Constitution and the Law are upheld. It indicates that the armed forces and National Police contribute with their capacities to the termination of the armed conflict, the consolidation of peace, socioeconomic development, the defense of the national interests, and the improvement of public and citizen security, by maintaining an armed forces and National Police that are modern, strengthened, motivated, and operational.<sup>53</sup>

41. The Commission has also observed that 2016 accusations and threats directed against social leaders through leaflets signed by different groups and by the AUC persisted in several regions of the country, in particular the Caribbean Coast, because of their work on different issues related to the peace process, materialized in attacks and threats<sup>54</sup> (see *infra* II.I.8). In November the United Nations expressed concern over violent actions and assassinations in zones affected by the armed conflict directed against social leaders. It asked that the necessary measures be taken to avoid any worsening of the violence undermining confidence in the prospects for a stable and lasting peace.<sup>55</sup>

42. The continuity of these groups was observed during the so-called “armed strikes” staged by the Autodefensas Gaitanistas de Colombia in April and August, with which, in April for example, they were able to bring 36 municipalities and eight departments of the country to a standstill.<sup>56</sup> In this respect, the

<sup>51</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>52</sup> CCEEU, Alternative Report to the Seventh Report submitted by the State of Colombia to the Human Rights Committee of the United Nations (2010-2016), October 2016, p. 41.

<sup>53</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia”](#), received February 28, 2017.

<sup>54</sup> El País, [La guerra sucia vuelve a sobrevolar Colombia, los asesinatos de líderes sociales golpean al país en el inicio de la implementación de los acuerdos con las FARC](#), December 12, 2016.

<sup>55</sup> United Nations, [Comunicado de la ONU en Colombia sobre violencia y asesinatos en zonas afectadas por el conflicto](#), November 21, 2016.

<sup>56</sup> W Radio, [Paro armado de las Autodefensas Gaitanistas llegó a Medellín](#), April 1, 2016; Contagio Radio, [Autodefensas Gaitanistas de Colombia anuncian paro armado](#), August 16, 2016; CCEEU, Alternative Report to the Seventh Report submitted by the State of Colombia to the Human Rights Committee of the United Nations (2010-2016), October 2016.

CCEEU considers that groups identified as paramilitary are an obstacle to attaining peace, for they continue their practices of intimidating human rights defenders, social leaders, and persons claiming lands; they threaten to occupy the regions that the guerrilla forces will in effect be relinquishing when they lay down their weapons, which would seriously endanger the communities that live in those areas. It indicates that these obstacles also become a risk going forward, considering the FARC's concern over the lack of security guarantees for its members when they return to civilian life, and the fear of massive assassinations targeting them.<sup>57</sup>

43. Civil society organizations have also indicated that they have monitored the situation of the communities belonging to the collective territory of Curvaradó and the criminal proceedings against several of the perpetrators of the forced displacement of these communities. As a result of the visits to the communities these organizations evidenced the situation of vulnerability and the lack of protection to which the men, women, and children of Curvaradó are subjected. Even though there are criminal sanctions against military officers, politicians, businesspersons, and state agents responsible for the displacement of these communities, they note that the State did not guarantee the conditions of return, including the security and the effective participation of all persons in the process of restitution of the collective territory of Curvaradó.<sup>58</sup> In addition, the residents of Cañamanso in Curvaradó denounced in August 2016 the persistence of paramilitaries after the demobilization and attacks and death threats against the inhabitants who are claiming their lands.<sup>59</sup>

44. The State, for its part, reported that after the process of demobilization of the AUC, which resulted in the reinsertion of approximately 32,000 paramilitaries, some of their members were recidivists, committing new crimes, and forming new groups with persons who did not demobilize and with members of guerrilla structures, which may or may not have demobilized. It indicates that these GDO positioned themselves in strategic areas for carrying out criminal activities, specialized in drug trafficking and related activities, with no type of political ideology and with the sole objective of obtaining financing from sources in the criminal economy. The State indicates that in certain cases, such as the Clan del Golfo and the Autodefensas Gaitanistas de Colombia, dissident factions of the EPL or Pelusos; and dissidents of the ERPAC or Puntilleros, the level of hostilities and organization reached a level such that, in keeping with the objective criteria of international humanitarian law, they were catalogued by the National Security Council as GAO and in that connection there was a reworking of the policy and strategy for fighting and reducing those threats. It emphasizes that calling them paramilitary groups or "successors" to the paramilitary groups is mistaken and suggests recognizing a political position that is not real.<sup>60</sup>

45. In this respect, the State reported that in the municipality of Carmen del Darién in Chocó, the Victims Unit has been advancing in designing the Plan for Return and Relocations and joint actions with the Mayor's Office, which have resulted in the prioritization of different communities that have been victims of forced displacement.<sup>61</sup>

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<sup>57</sup> CCEEU, Alternative Report to the Seventh Report submitted by the State of Colombia to the Human Rights Committee of the United Nations (2010-2016), October 2016.

<sup>58</sup> *Avocats Sans Frontières* (ASF) – Canada, [Aportes para el Examen relativo al séptimo informe periódico de Colombia ante el Comité de derechos humanos de Naciones Unidas](#), September 29, 2016, para. 46.

<sup>59</sup> ASF, [Aportes para el Examen relativo al séptimo informe periódico de Colombia ante el Comité de derechos humanos de Naciones Unidas](#), September 29, 2016, para. 47.

<sup>60</sup> Republic of Colombia, Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia," received February 28, 2017.

<sup>61</sup> Republic of Colombia, Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia," received February 28, 2017.

### 3. Forced disappearance, persons gone missing, and Search Mechanism

46. In relation to searching for persons who have been forcibly disappeared or who have gone missing, the State reported that it has made significant efforts, including establishing and starting up the activities, since 2000, of the Commission to Search for Disappeared Persons (CBPD: Comisión de Búsqueda de Personas Desaparecidas) as a high-level permanent inter-institutional agency in charge of supporting and promoting the investigation into the crime of forced disappearance, which includes civil society participation. It indicated that during its 16 years it has succeeded in implementing major actions to effectively search for persons who have been forcibly disappeared.<sup>62</sup>

47. In the hearing on human rights and the peace process, held in December, the organizations indicated that from 1970 to November 2016 more than 60,000 persons were disappeared in Colombia, that this has not translated into a real, effective, and lasting response by the State to fight impunity, and that there is a lack of results in locating the remains or determining the whereabouts or fate of the victims. They indicated that impunity in the results of the Office of the Attorney General is 99% and in the Office of the Procurator General 100%. They indicated that there are notable differences between the figures of the National Registry of Disappeared Persons and Unidentified Corpses (hereinafter “RND”: Registro Nacional de Desaparecidos y Cadáveres sin identificar) and those found in other state records, which is one of the main obstacles to designing and implementing actions to address this issue. They are concerned that the Unit for the Search of Disappeared Persons (UBPD) does not have constitutional rank, autonomy, or independence. They raised disappearances in the area of the border with Venezuela, where it is reported that bodies are currently being left. In addition, they indicated that female victims, both women and girls, appear with signs of sexual violence, and that approximately 18,000 victims are categorized as “no information.”<sup>63</sup>

48. The Commission received information about research that indicates that the pattern of forced disappearances has changed in recent years. In contrast to the last two decades, in which they were felt in particular by the civilian population, they are now committed very selectively, against urban and rural social leaders, politicians, victims, displaced persons, exiles, and women in cases that include sexual violence. The organization indicated that most of the victims were members of indigenous communities, Afro-descendants, peasants, threatened trade unionists, teachers, victims of forced displacement, threats, and exile, as well as members of victims’ organizations, social leaders, attorneys, members of political organizations, students, and trade unionists, there being clear expressions of the victimization of certain social and political sectors, and related to social origin as well, and the attendant obstacles to respecting the rights to life, liberty, and integrity that the transition to the post-conflict period will face.<sup>64</sup>

49. On the circumstances surrounding the current forced disappearances, it was informed that the total defenselessness of the victims, who are at risk everywhere, whether on their way home or to work, and in social activities.<sup>65</sup> It identifies a series of structural problems such as the failure of the State to

<sup>62</sup> IACHR, [Hearing on human rights and peace process](#), December 5, 2016.

<sup>63</sup> IACHR, [Hearing on human rights and peace process](#), December 5, 2016.

<sup>64</sup> It indicates that the places hardest hit by this practice are: Cundinamarca (Bogotá and Gachancipá), Nariño (Tumaco), Risaralda (Pueblo Rico), Antioquia (Anorf) 3 cases in different incidents, Puerto Berrío, Cauca, Suárez with 5 victims in related incidents, Toribío with two victims in the same incident, López de Micay, Santander de Quilichao, Jambaló, Caloto, and Popayán. Also in Nariño, La Guajira, Valle del Cauca (Buenaventura, Cali-El Cerrito), Chocó (banks of the San Juan), Quindío (Barragán, Buenavista), Magdalena (Santa Marta), Atlántico (Soledad) and Puerto Parra (Santander). Fundación Nydia Erika Bautista para los Derechos Humanos, Situación de las desapariciones forzadas en Colombia 2016, 2<sup>nd</sup> Alternative report to the Committee on Enforced Disappearances of the United Nations, Update, sent to the IACHR on December 12, 2016.

<sup>65</sup> After forced displacement or exile, victims have been disappeared upon their return to the regions of origin: disappearances in militarized zones or with the presence of military and paramilitary groups; went out to work and never returned; taken by hooded men; forced disappearances during massacres; forced disappearances during paramilitary incursions, with negligence on the part of the Army; disappeared and assassinated; by armed men who were moving about in classy automobiles; members of the opposition after threats; after questioning by members of the police; in areas under the control of government forces; displaced persons disappeared after coming forward for military service; taken off a vessel by armed groups in front of witnesses, disappeared by Army troops; trade unionist facing threats; after participating in cooperative or organizational activities; after reports of death threats and/or forced displacement; women disappeared with sexual violence; and the disappearance of a man, after the disappearance of an indigenous woman who was found dead with signs of sexual violence. *Fundación Nydia Erika Bautista para los Derechos Humanos, Situación de las*



recognize forced disappearances as a massive atrocity, which results in an inadequate inter-institutional response; the permanent inaction of the Commission to Search for Disappeared Persons in its duty to design public policies, which has led to its weakening and loss of legitimacy in the eyes of the victims; the lack of a popular will to investigate and punish forced disappearances by the Attorney General and the Procurator General that has provoked serious discrimination and impunity; the failure to apply the National Search Plan to specific cases, the absence of any impact evaluation in relation to the 5,500 cases turned over to the Commission to Search for Disappeared Persons, and the failure to develop indicators, measurement tools, or monitoring protocols for determining its effectiveness, with the attendant detrimental impact on the main institutional strategy for finding victims in time to save their lives and allowing for an increase in the loss of remains; the failure to complete tasks and meet deadlines, introducing delays into the location of victims and the work of the Genetic Data Bank; the non-existence of disciplinary control over judicial and prosecutorial authorities, which has contributed to the alarming rate of impunity; ineffectiveness in the duty to determine the universe of victims, which has impeded search efforts, identifying patterns in their true dimensions, and the adoption of strategies; and the lack of political will to achieve inter-institutional coordination, which has impeded progress in cases, has contributed to delays in criminal investigations, and has placed a dual burden on victims' backs.<sup>66</sup>

50. The Commission was informed that, for example, of the 273 cases of forced disappearance with which an organization works and which are duly registered and systematized, the organization has not been able to obtain a judicial response throughout the time it has been monitoring them, with cases dating from 1999, which as of 2016 have not had a final judgment in a single case, and that more than 90% of these cases are in the stage of inquiry or preliminary investigation. Some have even been archived or designated as inactive by resolution of the Office of the Attorney General, under the argument that they will be reopened when new evidence is found or when the family members add them to the record, which implies shifting the burden of proof.<sup>67</sup>

51. As for the recommendation to establish a registry, with public access that is up-to-date, unified, and vetted, of persons who have been forcibly disappeared, the State reported on the different mechanisms it has, among them the RND; whose strengthening is still a major challenge. It reported that the historical data on persons disappeared in Colombia from 1983 to May 2016 in the RND contains information on 110,833 cases, which corresponds to the consolidated figure of the cases of persons who presumably suffered forced disappearance, disappearances that may have occurred in the context of human trafficking, kidnapping, or forced recruitment, or persons who may have gone missing in the context of a natural disaster, cases in which one must verify the identity, involving persons not reported as disappeared but which correspond to corpses not identified that have been exhumed nationally; and cases for which there is no information about the possible circumstances surrounding the disappearance. The State indicated that as regards presumably forcible disappearances, the RND includes 23,441 cases (21.15%), in which men account for the largest share of victims (88.72%).<sup>68</sup>

52. The International Committee of the Red Cross (ICRC) noted that in Colombia almost 80,000 persons are reported as missing, according to the official records of the Information System Network of Missing Persons and Corpses (SIRDEC: Sistema de Información Red de Desaparecidos y Cadáveres), while according to the Single Registry of Victims (RUV: Registro Único de Víctimas) there are approximately

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*desapariciones forzadas en Colombia* 2016, 2<sup>nd</sup> Alternative report to the Committee on Enforced Disappearances of the United Nations, sent to the IACHR December 12, 2016.

<sup>66</sup> *Fundación Nydia Erika Bautista para los Derechos Humanos, Situación de las desapariciones forzadas en Colombia* 2016, Second alternative report to the Committee on Enforced Disappearances of the United Nations, sent to the IACHR December 12, 2016.

<sup>67</sup> Of the 273 cases it accompanies it indicates that there are 27 inactive cases; 203 active cases; four cases forwarded to other prosecutorial offices situated in the city of Bucaramanga, and 39 cases in which no information was provided on the prosecutorial office to which it is assigned or where they are located, and two cases with early judgment on forced disappearance before courts with the authority to hear them, in the department of Norte de Santander. *Fundación Progresar Capítulo Norte de Santander, Informe sobre la situación, magnitud e impunidad frente al delito de la desaparición forzada en el departamento de Norte de Santander* 'Colombia, sent to the IACHR by the *Fundación Nydia Erika Bautista* December 12, 2016.

<sup>68</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

160,000 victims of forced disappearance, 46,000 of whom are the persons disappeared, and the rest their next-of-kin.<sup>69</sup>

53. The State noted that the RND includes the information on cases of disappearance that have occurred nationwide since 1938 and has presumptively classified disappearance (including forced disappearance, disappearance due to human trafficking, kidnapping, or forced recruitment, as the result of a natural disaster or unidentified corpses buried by the State and records without information), and its main objective is to identify corpses and search for persons, while the RUV of the Victims Unit also has information on direct and indirect victims of forced disappearance in Colombia, but “fulfills only the purpose of serving as a technical tool for identifying the population that has suffered harm” in the terms of the Victims Law.<sup>70</sup>

54. As regards the lack of a unified registry of disappeared persons, the Commission has also received information from civil society. It was noted that to date there is not a well-defined universe of victims of forced disappearance and that the existing records in the different state institutions are not accessible to the public for direct consultation by the family members of the victims of forced disappearance, who can only access the consolidated statistics, and who with the SIRDEC can only make follow-up consultations on the cases if they have the number of the identification papers or the number with which the case was recorded in the system, but that the information remains unchanged over time, without any permanent updating, if it is not unified, and if it depends on the input of information by each state office or institution.<sup>71</sup>

55. It is considered that there has been no response to the recommendations of the IACHR to establish a registry with public access that is kept up-to-date, unified, and vetted, and that the absence of such a registry in those conditions directly affects the actions aimed at achieving a response in the search to find the victims alive, and in those cases in which the person is not found alive, an efficient and effective response exhuming, identifying, and handing the corpses of persons who were forcibly disappeared in a dignified manner to the next-of-kin.<sup>72</sup> It was also indicated that it has been a challenge to find official statistical information that reflects a true unified figure on this offense and cites the different figures recorded by the state institutions, which contrast sharply with one another.<sup>73</sup>

56. As regards consolidating the figure, the State reported that it took actions<sup>74</sup> to further the work of updating, consolidating, vetting, and disseminating figures and statistics on forced disappearance of the Office of the Attorney General. With this purpose in mind, the Bureau of Transitional Justice issued Resolution 0045 of 2017 and formed the Internal Working Group for the Consolidation of Figures on Forced Disappearance in the context and by reason of the internal armed conflict.<sup>75</sup>

57. As regards the effectiveness of the Urgent Search Mechanism (MBU), the State noted that from the creation of the RND in 2007 up to June 3, 2016, 1,607 MBUs have been reported, with 556 cases of

<sup>69</sup> ICRC, *Opinión: Colombia no podrá aprender de sus errores si se olvida de los desaparecidos*, June 17, 2016.

<sup>70</sup> Republic of Colombia, *Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”* received February 28, 2017.

<sup>71</sup> *Colectivo OFB*, communication to the IACHR, December 20, 2016.

<sup>72</sup> *Colectivo OFB*, communication to the IACHR, December 20, 2016.

<sup>73</sup> *Fundación Progresar Capítulo Norte de Santander, Informe sobre la situación, magnitud e impunidad frente al delito de la desaparición forzada en el departamento de Norte de Santander* Colombia, sent to the IACHR by the *Fundación Nydia Erika Bautista* on December 12, 2016.

<sup>74</sup> FGN, Resolution 3481 of 2016. Republic of Colombia, *Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”* received February 28, 2017.

<sup>75</sup> Republic of Colombia, *Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”* received February 28, 2017.

disappearance of women and 1,051 of men. At the hearing on the search for disappeared persons at the dump known as La Escombrera in Medellín the State reported that in 2016, as of June 3, 2016, 19 MBUs were activated and that nine requests were made for their activation. The Office of the Attorney General reported that from 2011 to 2016, 238 persons have been found alive using the MBU.<sup>76</sup> In that regard, it was noted that the MBU has been activated in fewer than 10% of the cases reported as forced disappearances.<sup>77</sup>

58. With respect to recovering corpses, the State reported that from 2008 to 2016, the National Office of the Prosecutor Specialized in Transitional Justice, pursuant to the National Plan to Search for Disappeared Persons and the Inter-institutional Protocol for the Dignified Conveyance of Corpses of Disappeared Persons, of the National Commission to Search for Disappeared Persons, has been able to locate, alive, 640 persons reported as disappeared; find 5,263 clandestine graves; and exhume 8,455 corpses, of which 3,495 have been identified and turned over to the next-of-kin, 338 in 2016.<sup>78</sup>

59. The Commission received information about Office of the Attorney General Resolution 03481-2016 “By means of which guidelines are established on the processes of search, exhumation, identification, and delivery of disappeared persons,” and about the fact that it is situated in the already-existing National Bureau of the Prosecutor Specialized in Transitional Justice, which is established in Law 975 of 2005, the Law on Justice and Peace. The organization is concerned about the possible approach applied by a Bureau created to address the cases under the responsibility of the paramilitary groups – involving persons who have availed themselves of a specific system of transitional justice – when the purported responsibilities for forced disappearances involve members of the Armed Forces and security agencies of the State. It is also concerned that this Bureau already has a large number of unresolved cases that involve the responsibilities of paramilitary groups in 28,652 incidents to be documented, 11,727 active proceedings on different types of offenses. It notes that this Bureau has 3,464 unidentified corpses, exhumed from 2006 to April 30, 2016, 1,472 of which are in laboratories undergoing procedures to identify them. In this respect, it explains that to grasp the significance of this accumulation of proceedings and unidentified corpses, one must understand that from 2005 to 2015, of 6,569 corpses exhumed; only 3,105 were identified and turned over to the next-of-kin.<sup>79</sup>

60. In this respect, the State reported that the Resolution referred to determined that the activities aimed at the search work are centralized in the Bureau of Transitional Justice of the Office of the Attorney General; and that it is also in charge of seeing to the adequate implementation of the National Search Plan, the Inter-institutional Protocol for the Dignified Conveyance of Corpses of Disappeared Persons, and the International Consensus on Minimum Principles and Standards for Psychosocial Work in Exhumation Processes and Forensic Investigations in Cases of Enforced Disappearance, Arbitrary or Extrajudicial Executions. It indicated that to date 5,272 clandestine graves have been found, 8,464 corpses have been recovered, 3,921 corpses have been identified and turned over, and there are 1,565 corpses with a possible identification and 1,782 unidentified corpses. It noted that to go forward in the search for disappeared persons, a change has been made to the methodology of work of what is now the Internal Working Group on Search, Identification, and Conveyance of Disappeared Persons at the Bureau of Transitional Justice, giving priority to orientation and documentation of the corpses that are found in laboratories and deposits, as well as turning over to their loved ones. It indicated that the investigation and prosecution of crime continues to be responsibilities of each competent Bureau (Dirección).<sup>80</sup>

<sup>76</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>77</sup> *Colectivo OFB*, communication to the IACHR, December 20, 2016.

<sup>78</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>79</sup> *Colectivo OFB*, communication to the IACHR, December 20, 2016.

<sup>80</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

61. The State also reported that as a measure of satisfaction and guarantee of non-repetition it has accompanied many efforts to dignify the memory of the victims and to grasp the magnitude of the crime of disappearance, such as publishing, in November 2016, the report *“Hasta encontrarlos. El drama de la desaparición forzada en Colombia”* [“Until they are found: The drama of forced disappearance in Colombia”], produced by the National Center for Historical Memory (CNMH: Centro Nacional de Memoria Histórica), which documents forced disappearances in Colombia since 1970.<sup>81</sup>

62. As for the investigations into forced disappearance, it indicated that in the Justice and Peace jurisdiction 112 of those availing themselves of it were convicted in relation to 1,150 incidents and 1,485 victims for forced disappearances that occurred presumably in the years prior to the demobilization of the *Autodefensas*. It also indicated that from 2012 to 2016 the regular jurisdiction handed down 270 judgments of liability, and that the Office of the Attorney General is engaged in a process of vetting databases.<sup>82</sup>

63. It also reported on the actions taken by the Office of the Attorney General, the National Institute of Forensic Medicine and Forensic Sciences, the Unit for Integral Attention and Reparation for Victims (hereinafter the “Victims’ Unit”) and the Ministry of Interior, based on its regular mandate and its mandate to implement the Immediate Humanitarian Measures contained in Communiqué #62 of the Negotiating Parties, in which they agreed: (i) to implement some immediate initial humanitarian measures to search for, locate, identify, and hand over in a dignified manner the remains of persons considered disappeared in the context of and due to the internal armed conflict, and (ii) the creation of the UBPD, in October 2015.<sup>83</sup>

64. In this respect, the State reported on the implementation of Special Humanitarian Plans by the ICRC and the Institute of Forensic Medicine with the support of the Office of the Attorney General to accelerate the identification and handing over of victims and those who have died in the course of operations by the Armed Forces and National Police who were buried without being identified in cemeteries located in the areas most impacted by the conflict. The results of such efforts from October 2015 to November 2016 are 621 corpses exhumed, of which 65 have been turned over to the next-of-kin.<sup>84</sup>

65. Also, the Commission received information noting that from November 2015 to November 2016, implementation of the immediate measures of the Humanitarian Agreement included the dignified turning over to the next-of-kin of approximately 75 corpses, fully identified, which shows that these humanitarian measures in the context of the peace process have helped generate a political will on the part of the relevant institutions.<sup>85</sup>

66. The civil society organizations that participated in the hearing on the search for the disappeared and excavations at “La Escombrera” in Medellín, held in April 2016, indicated that from 2002 to 2010 the “democratic security” policy was implemented in Colombia, promoting military operations throughout the national territory, and that during 2002 a total of 19 of these operations were carried out in the area known as Comuna 13 of Medellín. They noted that from 2002 to 2004, 130 persons were disappeared from Comuna 13; and that even though this had been reported, their cases have remained in impunity for 14 years. Two years after the issuance of the judicial order to halt the dumping of rubble at the La Escombrera dump, the order has not been carried out. In the agreement reached by the State and the FARC-EP to search for persons, they affirmed the urgency of putting humanitarian measures in place and forming the UBPD.<sup>86</sup>

<sup>81</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>82</sup> As a result of that vetting, on record are: 74,831 investigations in relation to 82,505 victims; indictment or beginning the investigation in 10,518 investigations; and 2,937 cases with a resolution or a bill of indictment. Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>83</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>84</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>85</sup> *Colectivo OFB*, communication to the IACHR, December 20, 2016.

<sup>86</sup> IACHR, [Hearing on the search for disappeared persons and excavations at the La Escombrera in Medellín](#), April 5, 2016.

67. They also argued that experiences such as the search at La Escombrera should be analyzed so that the mistakes of the past are not repeated and to ensure that forensic involvement for judicial purposes makes it possible to find the victims and clarify the facts. They also considered that the humanitarian plans and the special plans for searching for disappeared persons provided for in the agreement have to be organized in relation to specific regions and must be coordinated with the search plans that the organizations have presented to the government, as in the case of the victims of forced disappearance in Medellín.<sup>87</sup>

68. After the hearing the State sent additional information. The Commission, exercising its powers set out at Article 41 of the American Convention, requested additional information from the State following up on that hearing and on the corresponding investigations, among other specific questions.<sup>88</sup> In its response the State noted the actions taken in 2015 and reported that during the first six months of 2016 four meetings were held to organize the drawing up of the Integral Search Plan and the Forum for civil society recommendations on the Integral Search Plan and the Technical Committee, and stated its commitment to strengthen the plan<sup>89</sup> and putting together a plan for psychosocial care for the victims.<sup>90</sup>

69. The Commission also received information from civil society organizations regarding the results of applying a methodology for search, exhumation, identification, and dignified turnover of mortal remains of persons buried without being identified in the cemeteries of the *Llanos Orientales* (eastern plains) region, implemented as of 2010 in an effort based on inter-institutional cooperation with the Office of the Attorney General and Office of Forensic Medicine. Of the 2,292 bodies buried, 830 have already been identified and approximately 110 families have been notified.<sup>91</sup> The Office of the Attorney General also reports that of all the bodies buried, 1,017 have been exhumed. In the context of this investigation, activities were organized on two days, with the Office of the Attorney General, for turning over 79 corpses fully identified, from the five cemeteries in the region, to the next-of-kin. On December 17, 2015, 29 bodies identified in the context of the agreement in the peace process on searching for disappeared persons were turned over to next-of-kin.<sup>92</sup> The Office of the Attorney General also made a pronouncement along the same lines, and estimates that there are 464 bodies at the Cemetery of La Macarena, 160 of which have already been exhumed; there are 617 at the cemetery in Villavicencio, and 571 in the cemetery at San José del Guaviare. It indicated that it has been possible to identify 897 of the more than 1,000 corpses exhumed.<sup>93</sup>

70. In addition, regarding the project to search for unidentified persons in municipal cemeteries under the responsibility of the Ministry of Interior, in August, it was informed that the Ministry reported that: “to date it has located the records of 28,810 unidentified persons buried in 318 cemeteries. Of this total, 24,482 correspond to persons not identified (NN) and 4,328 to persons identified whose remains have not been claimed.” Whereas on November 16, 2016 it reported: “To date, during the last five years, the program ‘Search for disappeared persons in cemeteries’ has found the records of 29,212 persons buried in a total of 333 cemeteries assessed.”<sup>94</sup>

71. In light of the foregoing the Commission values the efforts made by the State in relation to its obligation to search, identify, and turn over the remains of disappeared persons to their next-of-kin. In particular, it values the creation, through the Peace Accords, of the UBPD as the mechanism for facilitating the

<sup>87</sup> IACHR, [Hearing on the search for disappeared persons and excavations at the La Escombrera in Medellín](#), April 5, 2016.

<sup>88</sup> IACHR, Request for information from the State, May 23, 2016.

<sup>89</sup> Republic of Colombia, MRREE. Note No. S-GAIID-16-057111, June 23, 2016.

<sup>90</sup> Republic of Colombia, MRREE. Note No. S-GAIID-16-057111, June 23, 2016.

<sup>91</sup> Request for hearing from the Colectivo OFB, Corporación Avre, and Colectivo Psicosocial Colombiano – COPSICO, January 20, 2016.

<sup>92</sup> Request for hearing from the Colectivo OFB, Corporación Avre and Colectivo Psicosocial Colombiano – COPSICO, January 20, 2016.

<sup>93</sup> BBC Mundo, [Colombia busca a sus desaparecidos con exhumaciones en varios cementerios del país](#), February 22, 2016.

<sup>94</sup> Colectivo OFB, communication to the IACHR, December 20, 2016.



rights of the next-of-kin of victims of forced disappearance to the truth and to receive the corpses of their deceased family members so as to bury them in keeping with their beliefs. In this regard, the Commission highlights the need for the UBPD to ensure the participation of the family members of the disappeared and that their input and wishes be given consideration.<sup>95</sup>

72. The Commission reiterates to the State its obligations in relation to undertaking a serious, impartial, and effective investigation of all cases that involved purported violations of human rights and IHL and urges it to continue to impart intensive training in human rights and IHL to its agents. It also maintains its recommendation to adopt measures so that the members of the security forces who are purportedly involved in cases of violations of human rights and/or IHL be suspended from active duty until a final decision is issued in the relevant disciplinary or criminal proceedings.

73. The Commission adds that it does not yet have data that reflect the existence of a unified registry with a single figure for the number of victims of forced disappearance in Colombia and it reiterates the need for a registry that is accessible to the public, up-to-date, unified, and vetted on persons who have been forcibly disappeared, with disaggregated information; and it maintains its recommendation for the State to adopt measures to ensure the effectiveness of the Urgent Search Mechanism or any other mechanism that makes it possible to immediately recover the persons disappeared; and that it continue to make progress in recovering the corpses, identifying them, and adequately turning them over to their next-of-kin. The IACHR also considers it fundamental for the State to step up its efforts to establish truth and justice with respect to the serious violations in the context of the conflict in this stage, after the signing of the Final Agreement.

## **B. Mechanisms of protection**

74. In its report Truth, Justice and Reparation, the Commission made the following recommendations, among others, to the State:

- It urges the State to implement the measures necessary to guarantee, in the processes of risk assessment, assignment of protection schemes, and review of their suitability, the adequate participation, communication and coordination with the persons protected by the protection program as well as the beneficiaries of precautionary measures requested by the IACHR and provisional measures ordered by the Inter-American Court.
- It encourages the National Protection Unit and competent authorities to actually apply the different differential approaches in all their procedures at this time. To that end, ongoing training of all the staff involved will be necessary, along with a periodic review of the processes implemented.
- It urges the State to redouble its efforts to investigate the facts that lead persons to enter and remain in the protection programs for the purpose of establishing as matter of State policy that investigations will be pursued as a preventive measure.

75. Since its 2013 country report, the IACHR has highlighted the importance of the protection programs that Colombia has been implementing to guarantee the rights of persons at risk. In particular, the Commission has recognized the efforts made by the State to protect a large number of persons, the implementation of material measures of protection, and the creation of specific normative frameworks, among other actions that reflect a solid commitment by the State to protect persons who are at risk in Colombia. In 2016, the Commission has continued providing special follow-up to the protection program, implemented primarily through the National Protection Unit (UNP: Unidad Nacional de Protección), with the aim of contributing to the development of an integral policy for protecting persons at risk, from a human rights perspective.

76. Following up the actions taken during 2016 to carry out the recommendations of the IACHR on implementing material measures of protection, the State has noted that as of June 2016 the UNP “has adopted measures to guarantee the rights to life, security, and human treatment for 8,138 persons, among

<sup>95</sup> See IACHR, [The Right to Truth in the Americas](#), OEA/Ser.L/V/II.152 Doc. 2, August 13, 2015, Ch. II.A.

them political leaders, human rights defenders, trade union activists, representatives of ethnic groups, members of the Medical Mission, journalists, victims, and public officials, among others.”<sup>96</sup> As regards the protection of indigenous leaders the State affirms that it is providing measures of protection for 327 defenders who are representatives of indigenous peoples. In particular, the State has noted that in the course of 2016 the budget of the UNP came to US\$ 151 million. In this respect, the Commission recognizes the actions implemented by the State to protect a large and growing number of persons at risk – among them beneficiaries of precautionary and provisional measures of the inter-American system – as well as the endowment of considerable economic resources so that the program can perform its functions.

77. Regarding the development of the protection program during 2016, the IACHR has continued receiving information on a large number of protection schemes that have been implemented and risk assessments performed; actions for adopting a “Protocol for Attention to Cases of Journalists and other Media Workers”<sup>97</sup>; actions aimed at modernizing various procedures carried out by the UNP; and meetings to coordinate measures of protection; among other important actions.

78. Nonetheless, the IACHR has continued receiving information on major delays in the risk assessments and in implementing material measures of protection.<sup>98</sup> In particular, information has been received on the excessive bureaucratization of the administrative procedures that the UNP is implementing, including deadlines considered unreasonable for submitting information, failure to communicate the results of the risk assessments, and major difficulties faced by users of the program when making requests to obtain a response through the program for providing services by telephone.<sup>99</sup>

79. In this respect, the State considers it “inappropriate to address this issue based on the premise that a rapid risk assessment is an adequate risk assessment, for some cases take more time to obtain the result of the assessment due to the need to consult various sources of information.” It also indicated that while the risk assessments are being conducted, human rights defenders are covered by preventive measures taken by the National Police. It maintained that the protection mechanism operates adequately, so much so that of the 64 human rights defenders assassinated in 2016, reported by the United Nations, none was undergoing a risk assessment or had a request for measures of protection lodged with the UNP.<sup>100</sup>

80. It also noted that in cases of imminent and exceptional risk, an expeditious procedure is provided for. The Director of the UNP may adopt, without needing a risk assessment, and considering a differential approach, provisional measures of protection for the users of the Program and it will report these to the Committee on Risk Assessment and Recommendations of Measures (CERREM), for it to recommend definitive measures, as the case may be. The Program will make an initial assessment of the risk to which the petitioner is exposed, immediately ordering that the risk assessment be performed.<sup>101</sup>

<sup>96</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016, p. 14.

<sup>97</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016, p. 66.

<sup>98</sup> IACHR, resolution granting precautionary measures to the “Members of the Junta de Acción Comunal of the rural community of Rubiales with respect to Colombia” (MC 382-12), December 17, 2016; Luis Ernesto Olave, report submitted in the context of Precautionary Measures (MC 113-14), of September 25 and October 27, 2016; FLIP. May 11, 2016. [Preocupación de la FLIP por hechos en el esquema de protección del periodista Javier Osuna](#); El Espectador. May 11, 2016. [Preocupación por seguridad de periodista que investigó hornos crematorios de paramilitares](#); CM&. May 11, 2016. [Flip pide garantías para periodista que investigó hornos crematorios de paramilitares](#)

<sup>99</sup> *Casa de la Mujer*, report submitted in the context of Precautionary Measures for Ana Angélica Bello and others (MC 1-10), October 11, 2016.

<sup>100</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia”](#), received February 28, 2017.

<sup>101</sup> Art. 2.4.1.2.9 of Decree 1066 of 2015. Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia”](#), received February 28, 2017.

81. Also of major concern to some human rights organizations are the unwarranted delays in reinforcing measures of protection in urgent situations or when faced with the need for one to travel to areas in the interior of Colombia.<sup>102</sup> For example, persons requesting precautionary measures on behalf of the “Members of the *Consultoría para los Derechos Humanos y el Desplazamiento*” (CODHES) stated that Mr. Jorge Rojas has faced several problems when traveling to the department of Córdoba due to the lack of suitable measures of protection and the absence of effective coordination by the State. In this respect, they indicated that several of his trips had been made in private vehicles that were not adequate for ensuring his protection.<sup>103</sup>

82. The Commission considers it particularly important for the State to redouble its efforts to ensure effective protection, through the protection mechanism, for the beneficiaries. As has been noted on previous occasions by the IACHR, the evaluation of the effectiveness of the State’s protection mechanism and the programs implemented in this respect also depends on their effectiveness when it comes to diminishing the situations of risk faced by the beneficiaries of the current program.

83. In this respect the State answered that it is provided that one of the commitments of the protected person is “to report with at least 24 hours lead time on any travel that would require institutional coordination in different parts of the country.”<sup>104</sup> It also indicated that the UNP has sought alternatives for meeting the needs of the protected persons in their movements to the different regions.

84. As regards the implementation of a differential approach, the State has indicated that it is carrying out a series of special procedures and guidelines aimed at determining whether a person requires the application of a differential approach. If it is determined that a special approach is needed, “it is considered that the persons being assessed are more vulnerable” and, therefore, this fact “directly impacts the scheme established for the purpose.”<sup>105</sup> In order to implement those procedures at present there is a specific protocol for risk assessment in cases of indigenous populations and cases in which a differential gender approach needs to be applied.<sup>106</sup> In addition, the State noted that the UNP has a procedure for verifying the measures corresponding to each approach “such that measures are adopted in keeping with each situation, even if not in the already-established set of measures.”<sup>107</sup> For example, the State affirmed that supplemental measures of protection have been implemented such as: (i) psychosocial support and education measures for minor children, in cases of women; (ii) strengthening the *guardias indígenas*, or indigenous guards, by procuring rubber boots, vests that identify them as members of the guard, staffs of command, and camping tents, among other things; and (iii) measures of protection have been implemented for the Afro-Colombian communities who live in territories far from urban zones, such as boats with outboard motors so as to be able to respond easily to an emergency, and all-terrain vehicles; among other actions.

85. The Commission lauds such initiatives, considering them tools for addressing the particular situation of risk that certain sectors of the population who are at risk and vulnerable may face and who require special attention mindful of their specific needs for protection. Without prejudice to the benefits of the protocols and procedures established<sup>108</sup>, in the context of private working meetings on precautionary

<sup>102</sup> IACHR, resolution granting precautionary measures to “Luis Ernesto Olave Valencia” with respect to Colombia (MC 113-14), November 1, 2016; and IACHR, resolution granting precautionary measures to the “Members of the Junta de Acción Comunal of the rural community of Rubiales with respect to Colombia” (MC 382-12), December 17, 2016.

<sup>103</sup> CEJIL, report submitted in the context of the precautionary measures for the members of CODHES, August 4, 2016.

<sup>104</sup> Paragraph 7 of Article 2.4.1.2.48 of Decree 1066 of 2015. Republic of Colombia, Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,” received February 28, 2017.

<sup>105</sup> CEJIL, report submitted in the context of the precautionary measures for the members of CODHES, August 4, 2016.

<sup>106</sup> CEJIL, report submitted in the context of the precautionary measures for the members of CODHES, August 4, 2016.

<sup>107</sup> CEJIL, report submitted in the context of the precautionary measures for the members of CODHES, August 4, 2016.

<sup>108</sup> UNP. Protocol of risk assessment for indigenous population and Ministry of Interior, Resolution 805 of May 14, 2012, by which the specific protocol with a gender and women’s rights approach to which Article 50 of Decree 4912 of 2011 is issued. Attached to

measures civil society organizations that work with women's groups, indigenous peoples, and Afro-descendants have continuously noted the need to reinforce the application of the differential approach in the different procedures carried out by the UNP.<sup>109</sup> Among other examples, the following shortcomings have been noted: (i) that the risk assessments not take into account different contexts, for example, with respect to the situation of displaced women or the level of literacy of some of them<sup>110</sup>; (ii) that no collective risk assessment is made with respect to the family groups of the women or the organizations to which they belong<sup>111</sup>; and (iii) that no consideration is being given to the need for culturally appropriate measures, in keeping with the needs that the indigenous communities consider appropriate in their territories, for example, by creating mixed protection committees, ongoing trainings for members of the Armed Forces and National Police, and the use of Community Defenders (Defensor Comunitario)<sup>112</sup>; among other actions.

86. Mindful of these considerations, the Commission urges the State to redouble its efforts to implement differential approaches in light of the principle of coordination and context analysis. In this respect, the IACHR recalls that the need to implement integrally the differential approaches should be addressed taking into consideration the needs of each group, the possible impact of the dynamics of the conflict, and the particular situations of risk and factors related to the location of different communities in the interior or in rural zones of Colombia.

87. In relation to the investigation into the facts that lead persons to enter and remain in the protection programs, the State has argued that it persists in its commitment to speed up the investigations so as to prosecute the persons responsible for threats to the life and integrity of the persons who are at risk. In this respect, it has reported that at the Mesa Nacional de Garantías (National Roundtable on Guarantees) several significant gains have been made to identify a universe of cases in urgent need of investigation and, as measures of prevention, ceremonies have been held to acknowledge the work of human rights defenders, mainly in the departments of Cauca and Sucre.<sup>113</sup>

88. It also reported that the Office of the Attorney General created, in August 2016, an Elite Group whose objectives are: (i) to consolidate the information in cases of investigations that are carried out by the institution related to crimes against trade union activity, (ii) to develop and give impetus to strategies for furthering the investigations, and (iii) to follow up on cases. It also indicated that it has undertaken the investigative work taking into account: (i) the identification of common criminal patterns, (ii) criminal prosecution not only of the individual but of the criminal organization, and (iii) holding working sessions among prosecutors to analyze in detail the political, social, and geographic context in relation to similar or concordant criminal acts.<sup>114</sup>

89. On the issue of investigations, the IACHR observes with concern that the State did not provide detailed or consistent information regarding specific progress in the investigations in relation to the large number of persons protected by the protection mechanism, some of whom are beneficiaries of

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Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,"](#) received February 28, 2017.

<sup>109</sup> Working Meetings on Precautionary Measures held in 2016, in relation to the following matters: Ana Angélica Bello and others (MC 1-10); Members of CAVIDA (MC 70-99); Yomaira Mendoza and others (MC 140-14); Embera Katio of the Upper Sinú (MC 180-01); Claudia Julieta Duque and her daughter (MC 339-09); among others.

<sup>110</sup> *Casa de la Mujer*, report submitted in the context of Precautionary Measures for Ana Angélica Bello and others (MC 1-10), October 11, 2016.

<sup>111</sup> *Casa de la Mujer*, report submitted in the context of Precautionary Measures for Ana Angélica Bello and others (MC 1-10), October 11, 2016.

<sup>112</sup> CCJ, report submitted in the context of the precautionary measures for the Embera Katio Indigenous People of the Upper Sinú (MC 180-01), January 20, 2016.

<sup>113</sup> Republic of Colombia, Note S-GAII-16-109909 of December 2, 2016, received December 16, 2016, p. 80.

<sup>114</sup> Paragraph 7 of art. 2.4.1.2.48 of Decree 1066 of 2015. Republic of Colombia, Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia," received February 28, 2017.

precautionary and provisional measures of the inter-American system; in particular, it did not provide such information on the short-, medium-, and long-term measures that the authorities are taking to establish as state policy that investigations are to be pursued as a measure of prevention. The Commission considers that the failure to investigate the facts giving rise to the situations of risk continues to have a cumulative effect seen in the constant increase of beneficiaries in the protection program, and an effect on the powers to review decisions made on protection.

### C. Impunity and obstacles in the area of justice

90. It is report Truth, Justice and Reparation, the Commission make the following recommendations, among others, to the State:

- That it redouble its efforts to overcome the grave situation of impunity in cases of serious human rights violations and breaches of international humanitarian law.
- That it implement the relevant measures to endow the justice system with the human, financial, technological, and any other resources needed for it to adequately perform its functions.
- That it foster the articulation, coordination, and reciprocal feedback of the various judicial mechanisms entrusted with investigating cases of serious human rights violations and breaches of international humanitarian law.
- That it clarify the human rights violations perpetrated by State agents and persons who have demobilized from the *Autodefensas*, and determine on a case-by-case basis and in detail the nature and action of the illegal armed groups that came about after the demobilization of paramilitary organizations and their possible connections with State authorities.

91. The Commission has reiterated that the serious situation of impunity for serious violations of human rights and international humanitarian law for all the actors in the conflict in Colombia, as well as the failure to clarify the dynamics, scope, composition, and structure of the *autodefensas*, those that did not demobilize, and the illegal armed groups that came about after the demobilization of paramilitary organizations, still constitute systematic obstacles not only to ensuring the rights of victims, but also to getting detailed and precise information so as to be able to characterize these groups, dismantle the ties on which they depend, and adopt the relevant policy and legal measures to confront them.

92. The State reported, regarding its efforts to overcome impunity, that the new restructuring of the Office of the Attorney General seeks to accord greater importance to the functions of inter-institutional strategy and coordination, centralizing, unifying, and consolidating all aspects related to providing services to the users and victims in terms of the aspects related to the processes of restorative justice. It indicated that efforts have been made for harmonious articulation, coordination, and collaboration between the Office of the Attorney General and the Special Indigenous Jurisdiction in order to ensure the effective exercise of the rights of indigenous peoples, through guidelines and roadmaps that give effect to the exercise by each of its respective jurisdiction.<sup>115</sup>

93. As regards the measures adopted to fund the justice system, the State referred to Law 1743 of 2014 and its regulation, of 2015, which it considers could lead to an increase in the resources earmarked to the judiciary on the order of \$668 billion pesos annually. In addition, it indicated that in 2016 work has been done on the construction of the Ten-Year Plan of the Justice System (2017-2027) to promote the coordination, efficiency, effectiveness, and modernization of the administration of justice, to establish the policies, proposals, actions, and goals that express the purposes of the State in respect of justice for the next decade. The State also referred to a series of mechanisms such as: a cell phone application for free legal consultations that strengthens access to justice, the project to expand and strengthen the supply of justice services for training judicial officers on the rights of persons with disabilities, and the training plan of the judicial branch, among others.<sup>116</sup>

<sup>115</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>116</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.



94. The Commission noted that the CCEEU, for its part, reported to the Human Rights Committee of the United Nations that during his term the former Procurator General, Alejandro Ordóñez Maldonado, not only did not investigate human rights violations in which public officials were involved, but intervened actively on behalf of those who have committed human rights violations in several cases. The CCEEU indicated that this happened in the criminal proceedings concerning the responsibility of the former director of the DAS, José Miguel Narváez, for the assassination of humorist Jaime Garzón Forero, and in the case of Colonel Edilberto Sánchez Rubiano, former chief of the B2 (Army intelligence), in events related to the persons disappeared from the Palace of Justice. It noted that in these two proceedings high-level military commanders were convicted by the criminal justice system, although the Office of the Procurator General, notwithstanding the abundant evidence against them, asked that they be absolved.<sup>117</sup>

95. In this respect, the State reported that Col. Sánchez Rubiano was removed by a disciplinary judgment of October 24, 1990, and that in the case of the assassination of Mr. Garzón the Office of the Procurator General conducted two disciplinary proceedings that were archived in 2002 and 2004.<sup>118</sup> Subsequently, it was reported that the following disciplinary investigations are before the Office of the Procurator General against public servants for ties to illegal groups, during the 2009-2017 period: 17 active, 77 ordered archived, three remanded on jurisdictional grounds, 51 orders denying jurisdiction (*autos inhibitorios*) and 13 judgments.<sup>119</sup>

96. It indicated that the Office of the Procurator General, from January 1, 2006 to April 11, 2016, conducted 519 disciplinary proceedings, against public officials for ties to paramilitary groups, which include investigations in cases of homicide, threats, electoral coercion, and financing of political campaigns, among others. Of these proceedings, 50% have to do with mayors' offices, governors' offices, municipal councils, departmental legislatures, and the Congress of the Republic, and 15% have to do with members of the military and police forces.<sup>120</sup>

97. In the hearing about the general human rights situation held in April the organizations indicated that in Colombia paramilitary activity persists and has increased; they also identified a lack of clear strategies for effectively dismantling this phenomenon. They reported what they consider a lack of activity and investigative diligence on the part of the Office of the Attorney General against paramilitary groups, which they say stands in sharp contrast to the notable activity to establish the responsibility of members of the guerrilla forces; as well as a high rate of impunity in cases of sexual violence.<sup>121</sup> They indicated that according to the Office of the Human Rights Ombudsperson (Defensoría del Pueblo), there is a presence of these armed structures in at least 27 of Colombia's 32 departments, and in 2016 there were attacks in 14 of these regions.<sup>122</sup> They reported that many of these regions coincide with the zones that were prioritized for

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<sup>117</sup> CCEEU, Alternative Report to the Seventh Report submitted by the State of Colombia to the Human Rights Committee of the United Nations (2010-2016), October 2016.

<sup>118</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,"](#) received February 28, 2017.

<sup>119</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,"](#) received February 28, 2017.

<sup>120</sup> CCEEU, Alternative Report to the Seventh Report submitted by the State of Colombia to the Human Rights Committee of the United Nations (2010-2016), October 2016.

<sup>121</sup> IACHR, Hearing on the general situation of human rights in Colombia, April 5, 2016. Requested by CCJ, CIJP, CJL, CCAJAR, CPDH, and CCEEU.

<sup>122</sup> Santander, Putumayo, Antioquia, Arauca, Atlántico, Cauca, Chocó, Córdoba, Cundinamarca, Meta, Norte de Santander, Sucre, and the south of Bolívar and Buenaventura. IACHR, Hearing on the general situation of human rights in Colombia, April 5, 2016. Requested by CCJ, CIJP, CJL, CCAJAR, CPDH, and CCEEU.

implementing the measures agreed upon in Havana, on which a successful post-agreement period will depend.<sup>123</sup>

98. Also the Commission has been informed of sustained concerns about the definition of forced disappearance adopted in Article 165 of Colombia's Criminal Code; the definition is at odds with the International Convention for the Protection of All Persons from Enforced Disappearance and the Inter-American Convention on Forced Disappearance of Persons, when it addresses the question of responsibility for forced disappearances by state agents or by private persons with the authorization, support, or acquiescence of the State. It indicated that in Article 165 of the Criminal Code, responsibility for forced disappearances is first borne by private persons, and when there is participation of state agents this is considered aggravating conduct, yet the State's primary responsibility is set aside.<sup>124</sup> It was noted: "The Colombian State has failed to adapt its legislation to ensure that the criminal liability of the superior is expressly and fully incorporated in the Criminal Code."<sup>125</sup>

99. In light of the foregoing considerations, the Commission reiterates once again that the serious situation of impunity in relation to the commission of serious violations of human rights and IHL by all actors in the conflict in Colombia, as well as the failure to clarify the dynamics, scope, composition, and structure of the *autodefensas*, those that have not demobilized, and the illegal armed groups that came about after the demobilization of the paramilitary organizations, are systematic obstacles not only for guaranteeing the rights of the victims, but also for having detailed and specific information to characterize these groups, dismantle the arms that feed them, and adopt the relevant political and legal measures to confront them.<sup>126</sup> In this regard, it considers that implementation of the Special Jurisdiction for Peace represents an opportunity for the State to effectively implement the recommendation that goes to this section.

#### **D. Transitional justice in the armed conflict**

100. In its report Truth, Justice and Reparation the Commission's recommendations to the State included, among others:

- That it adapt the Legal Framework for Peace and the enabling laws (*leyes estatutarias*) that derive from them to the international human rights standards noted in this report.
- That it adopt the corresponding measures so that serious human rights violations and breaches of international humanitarian law, such as forced disappearances, torture, sexual violence, and recruitment of children and adolescents are prioritized by the Committee on Prioritization or other measures aimed at ensuring the application of due diligence to investigate, clarify, prosecute and punish them.

101. The report Truth, Justice and Reparation and the follow-up chapters have taken into account the normative mechanisms of transitional justice designed by the State, and on this occasion the Commission also takes into account the transitional justice mechanisms created by the Final Agreement in relation to the general standards on judicial guarantees and judicial protection, offering considerations on their application in light of international human rights law and IHL, mindful of the complementary nature of these two areas of international law. This analysis is done around the relevant international obligations of the State in keeping with the consistent case-law of the organs of protection of the inter-American system and the normative points of reference of IHL applicable to it.

<sup>123</sup> IACHR, Hearing on the general situation of human rights in Colombia, April 5, 2016. Requested by CCJ, CIJP, CJL, CCAJAR, CPDH, and CCEEU.

<sup>124</sup> *Colectivo OFB*, communication to the IACHR, December 20, 2016.

<sup>125</sup> Coeuropa with contributions from MOVICE, Equitas, CJL, CSPP, Mujeres Caminando por la Verdad, CCJ, Familiares Colombia, Corporación AVRE, and Colectivo OFB. Alternative report on the situation of forced disappearances in Colombia, submitted to the Committee on Enforced Disappearances of the United Nations in the context of sessions held in October 2016.

<sup>126</sup> IACHR, Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation, May 7, 2015, para. 95.

102. In that framework, the Commission has reiterated that: (i) overcoming impunity is essential for attaining justice and preventing the repetition of human rights violations; (ii) in any framework for transitional justice one component for establishing a lasting peace is that it be applied as a system of incentives useful for attaining truth, justice, and reparation for the victims, and that in designing normative mechanisms the international obligations of the State for guaranteeing these components should be fully observed, in their application and scope; and (iii) it is essential, if the peace accords and the transitional justice provisions are to facilitate the transition of Colombian society towards a stable and lasting peace, that they be developed in harmony with those obligations, and that they offer real possibilities of implementation.<sup>127</sup>

103. The CCEEU also considers that the internal armed conflict persists in Colombia, along with the effects of the hostilities on the civilian population. It notes that the paramilitary groups have not been dismantled and that they continue their practices of serious human rights violations, with assaults mainly directed against the civilian population through threats, homicides, assassination attempts, and sexual violence.<sup>128</sup> The CCEEU also finds it worrisome that in addition, in 2016 the ELN stepped up its actions: it carried out what they call an “armed strike” (“*paro armado*”) in February, blocking roads, burning vehicles, harassing several population centers with explosives, and kidnapping civilians (among them a well-known woman journalist in May)<sup>129</sup>, and they blew up transmission towers throughout the country.<sup>130</sup> In addition, the ELN is said to have assassinated civilians and members of the national security forces and also to have bombed the Caño Limón-Coveñas pipeline in July. In response to the acts of violence President Santos is said to have ordered intensified operations to fight the ELN.<sup>131</sup> Several kidnappings perpetrated by the ELN were reported, among them the kidnapping of attorney Melissa Trillos, in April in Ocaña; she was found on May 16 by Army troops at a location in the district of Guamalito, in El Carmen (Norte de Santander).<sup>132</sup> In addition, the ELN called for another armed strike in the departments of Arauca, Boyacá, Casanare, Santander, Norte de Santander, Vichada, and Nariño from September 12 to 14, ordering the inhabitants of those localities not to leave their homes, under threat of death.<sup>133</sup> The IACHR takes into accounts this conflict persistence into its analysis.

## 1. The mechanisms implemented up to the Final Agreement, progress and challenges

104. First, the Commission has closely monitored the transitional justice system established with the Law on Justice and Peace (Law 975 of 2005) and the process of demobilization of the AUC from the beginning in 2003 and for the next 13 years, through various reports on its results, achievements, and challenges.<sup>134</sup>

105. This year the Deputy Attorney General of the Nation informed the Secretariat about the results in the Justice and Peace jurisdiction, which, through the strategy of prioritization, focused on

<sup>127</sup> IACHR, 2015 Annual Report, Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation, March 17, 2016, para. 20.

<sup>128</sup> CCEEU, Alternative Report to the Seventh Report submitted by the State of Colombia to the Human Rights Committee of the United Nations (2010-2016), October 2016.

<sup>129</sup> See IACHR, Press Release No. R70/16, Office of the Special Rapporteur Expresses Concern over the Situation of Three Journalists Reported Missing in Colombia, May 25, 2016.

<sup>130</sup> CCEEU, Alternative Report to the Seventh Report submitted by the State of Colombia to the Human Rights Committee of the United Nations (2010-2016), October 2016.

<sup>131</sup> LatinNews, Colombia's Santos orders intensified operations against ELN, June 6, 2016.

<sup>132</sup> El Tiempo, [ELN dejó en libertad a secuestrado en Chocó](#), May 16, 2016.

<sup>133</sup> LatinNews, Colombia braces for ELN 'armed strike', September 12, 2016.

<sup>134</sup> See Report on the Demobilization Process in Colombia. OEA/Ser. L/V/II.120 Doc. 60, December 13, 2004, Follow-up on the Demobilization Process of the AUC in Colombia: Digest of published documents (2004-2007), IACHR; and Statement by the Inter-American Commission on Human Rights on the Application and Scope of the Justice and peace Law in Colombia (2006), and annual reports of the IACHR.

investigating eight macro-structures in 2015 and 2016.<sup>135</sup> In addition, the State reported that it is committed to strengthening the Justice and Peace proceedings and those conducted under Law 1424 of 2010, without presenting any further information in this respect.<sup>136</sup>

106. In May the Mission to Support the Peace Process in Colombia of the OAS (MAPP/OAS) released its evaluation. It found that 10 years after the issuance of the Law on Justice and Peace and in light of its case-law, and despite the gaps in that law<sup>137</sup>, the institutional and judicial apparatus has contributed significantly to the dismantling of the military structures of the AUC, and to giving visibility to thousands of victims. It emphasized that the same mechanism has also been applied to hundreds of demobilized guerrilla fighters.<sup>138</sup> The MAPP/OAS indicated that as of the issuance of Law 1592/12, which amended Law 975/05, and the application of investigative mechanisms based on the Office of the Attorney General constructing macro-criminal patterns, there has been an exponential increase in the number of judgments handed down as of August 2015 by the different chambers of the Justice and Peace jurisdiction, for a total of 34 judgments<sup>139</sup>.

107. An organization evaluated the level of impunity in the Justice and Peace jurisdiction, in its report submitted to the United Nations, and indicated that in that jurisdiction the State has obtained “nothing more than the confession in 7,020 cases,” but that “only 3,125 identified corpses have been turned over physically and there have been only 39 symbolic turnovers to family members”; so 82,050 persons remain disappeared nationally “without any kind of truth or justice,” which means that in 91.45% of the cases there has been no judicial response. It considers that the jurisdictions (transitional and regular) have not contributed to reducing the practice of forced disappearances, for the figures reflect that forced disappearances are on the rise, with some departments seeing an increase in the number of cases, such as Norte de Santander (which borders Venezuela). Nor does it consider that the Justice and Peace jurisdiction has contributed effectively to ensuring victims’ access to the truth of what has happened, to clarifying the facts, to the identification and dignified turning over of bony remains to the next-of-kin, and to integral reparation for the harm suffered, since based on the official figures the vast majority of the cases have not met with any response.<sup>140</sup>

108. The Commission notes that the CCEEU considers that the criminal proceedings against the 4,408 paramilitaries who came forward to avail themselves of the alternative penalties under the Justice and Peace jurisdiction have gone nowhere, such that many of them are leaving prison, having served the time of the penalty without the criminal proceedings having concluded. As of June 30, 2016, 193 of the persons who availed themselves of the Justice and Peace jurisdiction have been released, 34 of them for having completed their sentence and 159 for having replaced the measures of confinement by others that do not entail deprivation of liberty (although in these cases the proceedings have not concluded and the judgments have not been imposed).<sup>141</sup> It reported that more than half of those who availed themselves of the Justice and

<sup>135</sup> Office of the Attorney General, *La Fiscalía del Siglo XXI: un camino hacia la modernización. Informe de gestión de cuatrienio 2012-2016*. Short version. Eduardo Montealegre Lynett, p. 161.

<sup>136</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>137</sup> Law 1592/12, published in Diario Oficial No. 48,633, regulated by Decree 3011/13. By means of which are introduced amendments to Law 975/05 “by which provisions are issued for the reincorporation of members of armed groups organized outside the law, that contribute effectively to the attainment of national peace, and other provisions are issued for humanitarian agreements” and other provisions are issued. MAPP/OAS. Twenty-first Half-Yearly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), May 27, 2016.

<sup>138</sup> MAPP/OAS, Twenty-first Half-Yearly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), May 27, 2016.

<sup>139</sup> MAPP/OAS, Twenty-first Half-Yearly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), May 27, 2016.

<sup>140</sup> *Fundación Progresar Capítulo Norte de Santander, Informe sobre la situación, magnitud e impunidad frente al delito de la desaparición forzada en el departamento de Norte de Santander*, Colombia, sent to the IACHR by the *Fundación Nydia Erika Bautista* on December 12, 2016.

<sup>141</sup> CCEEU, Alternative Report to the Seventh Report submitted by the State of Colombia to the Human Rights Committee of the United Nations (2010-2016), October 2016.

Peace benefits have been excluded from them.<sup>142</sup> In this respect, it should be recalled that the exclusion of some who had sought to avail themselves of Law 975 of 2005, the delay in the procedures, and the situation of those who applied to avail themselves of that law and were not ratified have been monitored by the IACHR and is the basis for recommendations to the State.<sup>143</sup>

109. That organization argues that of the 18 paramilitary chiefs who were extradited, five have been excluded from the benefits of the Justice and Peace jurisdiction for having failed to contribute to the truth, among other reasons.<sup>144</sup> The CCEEU argues that the extradition of the main paramilitary commanders to the United States and the large number of persons who sought to avail themselves of the procedure who were excluded from it show the lack of a commitment to clarify the truth and the lack of specific tools with which to pressure the persons who demobilized from the AUC to collaborate with a view to revealing the truth.<sup>145</sup>

110. In this respect, already in 2008 the IACHR had stated its views on the negative impact on victims' rights of the government's decision to extradite paramilitary leaders to the United States<sup>146</sup>; the Commission also indicated that the justification for the extraditions raised questions as to the conditions for acceding to the benefits established for persons seeking to avail themselves of the Justice and Peace jurisdiction. It considered that the natural consequence of the failure to carry out the commitment not to commit new crimes should be exclusion from the benefits and being turned over to the regular jurisdiction, and that in the case of the persons extradited priority was given to drug-trafficking proceedings abroad, with the promise of future application of the Law on Justice and Peace, which was not consistent with the logic of access to procedural benefits.<sup>147</sup> Eight years later, it has been found that upon completing their sentences for drug-trafficking in the United States, the persons extradited have not been returned to Colombia for the promised application of the Law on Justice and Peace, thereby perpetuating the violations of the victims' rights.<sup>148</sup>

111. The Commission notes that the CCEEU also emphasizes the lack of security guarantees for those who tell the truth in the Justice and Peace jurisdiction and indicates that this has led many paramilitaries to refuse to speak, for fear of reprisals against them and their family members and the failure to implement tools for keeping track of the demobilized persons, whether or not they availed themselves of

<sup>142</sup> For example, in April 2016 the Office of the Attorney General asked that former paramilitary members Mario Jaimes Mejía, alias "El Panadero" and Alejandro Cárdenas Orozco, alias "J.J." be excluded from the benefits of the Justice and Peace jurisdiction after they were convicted on March 18 of the crimes of kidnapping, torture, and rape, against journalist Jineth Bedoya. CCEEU, Alternative Report to the Seventh Report submitted by the State of Colombia to the Human Rights Committee of the United Nations (2010-2016), October 2016.

<sup>143</sup> See IACHR, 2014 Annual Report. IACHR, [Chapter V Follow-up Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia](#), May 7, 2015, para. 72; 2011 Annual Report, Chapter IV Colombia, para. 87; 2010 Annual Report, Chapter IV Colombia, para. 64.

<sup>144</sup> CCEEU, Alternative Report to the Seventh Report submitted by the State of Colombia to the Human Rights Committee of the United Nations (2010-2016), October 2016.

<sup>145</sup> CCEEU, Alternative Report to the Seventh Report submitted by the State of Colombia to the Human Rights Committee of the United Nations (2010-2016), October 2016.

<sup>146</sup> "In April, 2008, the Supreme Court issued a decision on the impact of extradition upon the enforcement of the Law of Justice and Peace.... the Court indicated that members of illegal armed groups should not be extradited before the process of reparation of victims has been completed. Specifically, it said that '... there are higher reasons for examining the legitimacy of an extradition which may ultimately abridge the rights of victims, inasmuch as it would prevent fulfillment of the constitutional purposes of the criminal proceeding, in that it affects the legitimate expectations that propel the victims of punishable conduct to seek to uphold their right to the truth, justice, and reparation, whereas the extradition of a demobilized combatant to face charges abroad for less serious offenses than those to which they are confessing before the Colombian courts, ends up being a form of impunity.'" Chapter IV of the Annual Report of the IACHR (2008), Colombia, para. 31.

<sup>147</sup> IACHR, Chapter IV of the Annual Report of the IACHR (2008), Colombia, para. 38. See IACHR Hearing on extraditions of paramilitaries and victims' rights in, October 23, 2008. See IACHR, Press Release No. 21/08, IACHR expresses concern about extradition of Colombian paramilitaries, May 14, 2008.

<sup>148</sup> El Tiempo, [Los exparas extraditados que hacen 'conejo' a la justicia colombiana](#), November 20, 2016; El Tiempo, [Preocupa que caso del 'Tuso' Sierra se repita con otros jefes paras](#), May 13, 2014.



the procedures available in the Justice and Peace jurisdiction, to prevent them from engaging in new criminal activity. In addition, it underscores that no mechanism has been established to verify that those who have been released for having served the penalty effectively become reincorporated into civilian life. It also indicates that the instigators, financiers, and those who benefited politically and economically from paramilitarism, persons who have made it possible for such conduct to remain in impunity and for these same sectors to promote the reorganization of the paramilitary structures, have not been punished.<sup>149</sup>

112. The State, for its part, reported on how the change in methodology and the introduction of the policy of prioritization have made it possible to advance more quickly in the investigations. It noted that from 2006 to 2012, 26,838 acts were attributed to 206 applicants, of which 49,915 persons were victims. It indicated that after introducing this policy and placing the investigation in context, and documenting patterns of macro-criminality, from 2013 to 2017, 55,725 acts have been attributed to 1,193 applicants, of which 161,098 persons were victims.<sup>150</sup> It indicated that the investigation using patterns of macro-criminality and context analysis has made it possible to convict 191 applicants in 49 judgments handed down by the Justice and Peace Courts.

113. It also reported that at the Bureau of Transitional Justice of the Office of the Attorney General, a Group has been established entrusted with investigating third-person financiers and collaborators of the paramilitary groups, by which investigations are going forward in the regular justice system against those persons who had ties to paramilitary groups, which makes possible a comprehensive analysis of the facts investigated in the context of the Justice and Peace courts and the acts committed by the collaborators.<sup>151</sup>

114. Mindful of the information and analysis in the foregoing paragraphs, the Commission reiterates that the grave situation of impunity in Colombia in relation to the commission of serious human rights violations and breaches of IHL persists. Mindful that the Justice and Peace jurisdiction remains as the only judicial forum for the administration of justice for crimes committed by paramilitary groups, the Commission maintains its consideration to the effect that the State should move forward decidedly to overcome this situation, taking into account its relevant international obligations.<sup>152</sup>

## 2. The mechanisms provided for in the Final Agreement

115. Second, the Commission has been monitoring the new transitional justice system created through the accords set forth in the Final Agreement. In April the Commission addressed the State through the powers of Article 41 of the Convention and requested information on progress implementing the peace accords already announced in terms of public policies and domestic legislation, in particular of the Agreement on Victims of the Conflict – Integral System of Truth, Justice, Reparation, and Non-Repetition (hereinafter “Integral System”), including the Special Jurisdiction for Peace (JEP: Jurisdicción Especial para la Paz), and the Agreement on Political Participation; the actions taken to create the UBPD; the resources anticipated being allocated for inter-institutional coordination between the regular criminal jurisdiction, the indigenous jurisdiction, the military criminal jurisdiction, and all other related state institutions, and the special

<sup>149</sup> CCEEU, Alternative Report to the Seventh Report submitted by the State of Colombia to the Human Rights Committee of the United Nations (2010-2016), October 2016.

<sup>150</sup> The State indicates that this implies a ratio of 207% in relation to acts attributed, 322% of victims affected, and 507% of the persons availing themselves of the Justice and Peace courts accused, comparing the results of the first six years in which the Law on Justice and Peace was in force and the last four years. Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>151</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>152</sup> IACHR, [2015 Annual Report, Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation,](#) March 17, 2016, para. 112.

jurisdiction for peace; and on the actions taken to implement those accords regionally. In May the State presented a detailed response on the Integral System of the agreement before it was signed.<sup>153</sup>

116. In this analysis the Commission takes into account that with the approval of the Final Agreement the State has assumed a major commitment to all Colombians that represents the starting point for the arduous task it now faces of implementing this new system of transitional justice made up of multiple components at the center of which, as the State has indicated, are victims' rights, in keeping with the State's obligations in relation to truth, justice, and reparation.

117. As regards the Integral System, in December the State reported that it is made up of different judicial and extrajudicial mechanisms with the aim of achieving the greatest possible satisfaction of victims' rights, ensuring accountability for what happened, guaranteeing juridical security, and contributing to attaining a situation of coexistence, reconciliation, non-repetition, and the transition from the armed conflict to peace. It indicated that the extrajudicial mechanisms are: the UBPD, the Commission for the Clarification of the Truth, Coexistence, and Non-Repetition, and the measures of integral reparation for building peace.<sup>154</sup>

118. In this regard, the Commission values the creation of both extrajudicial mechanisms, as noted above with respect to the UBPD (*supra* II.A.3). As regards the Truth Commission, the Commission welcomes its creation as a mechanism for facilitating the truth of what happened for Colombian society as a whole and as a tool of the State in the context of carrying out its obligation to make integral reparation to the victims. In addition, it should be emphasized that the success of the work of the Truth Commission is directly tied to the participation or involvement of society in these processes, which is why "consultation with the victims' groups is a priority,"<sup>155</sup> accordingly the IACHR highlights the need to articulate campaigns for dissemination and awareness-raising, and to establish adequate channels of participation and communication with the victims and society in general in the face of processes such as this.<sup>156</sup> The Commission reiterates, moreover, that the transparency of the mandate of the Truth Commission as regards its function, aim, purpose, and scope of the investigation, period of time, and investigative powers is essential for ensuring its legitimacy and efficacy.<sup>157</sup> The Commission considers it important that the victims' expectations and perspectives be adequately valued and taken into consideration, so as to favor citizen participation and trust, and to contribute to maintaining clarity as to the expected results of the work of the Truth Commission.<sup>158</sup>

119. The State also informed that the judicial mechanism will be the JEP, which will have jurisdiction over conduct committed in the context of and because of the armed conflict prior to the signing of the Final Agreement. The JEP will seek to satisfy victims' right to justice; to fight impunity; to carry out the State's duty to investigate, prosecute, and punish; and to adopt decisions that confer full juridical security on those who participated directly or indirectly in the armed conflict.<sup>159</sup>

<sup>153</sup> Republic of Colombia. Ministry of Foreign Relations Note MRREE No. S-DVAM-16-048571, May 23, 2016.

<sup>154</sup> Republic of Colombia, Note S-GAIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>155</sup> IACHR, [The Right to Truth in the Americas](#), OEA/Ser.L/V/II.152 Doc. 2, August 13, 2015, para. 182. See ICTJ, [En busca de la verdad: elementos para la creación de una comisión de la verdad eficaz](#), 2013, p. 19. Along the same lines Principle 6 of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity establishes: "To the greatest extent possible, decisions to establish a truth commission, define its terms of reference and determine its composition should be based upon broad public consultations in which the views of victims and survivors especially are sought. Special efforts should be made to ensure that men and women participate in these deliberations on a basis of equality. In recognition of the dignity of victims and their families, investigations undertaken by truth commissions should be conducted with the object in particular of securing recognition of such parts of the truth as were formerly denied." United Nations, Commission on Human Rights, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, February 8, 2005.

<sup>156</sup> IACHR, [The Right to Truth in the Americas](#), OEA/Ser.L/V/II.152 Doc. 2, August 13, 2015, para. 182.

<sup>157</sup> IACHR, [The Right to Truth in the Americas](#), OEA/Ser.L/V/II.152 Doc. 2, August 13, 2015, para. 184.

<sup>158</sup> IACHR, [The Right to Truth in the Americas](#), OEA/Ser.L/V/II.152 Doc. 2, August 13, 2015, para. 184.

<sup>159</sup> Republic of Colombia, Note S-GAIID-16-109909 of December 2, 2016, received December 16, 2016.

120. It indicated that the Integral System will include the participation of the victims and communities impacted, as well as those who committed crimes in the context and by reason of the armed conflict. It indicated that this system will be applied in a differentiated manner, according equitable and simultaneous treatment to: (i) state agents who have committed crimes in the context of and by reason of the armed conflict, beginning with recognition of their role as guarantors and the presumption that they exercise a legitimate monopoly over the use of arms; (ii) members of guerrilla groups that sign a Final Peace Agreement with the Government – their participation will be conditioned on the laying down of arms; (iii) third-party civilians who, having participated indirectly in the armed conflict may have had some responsibility; and (iv) those who without forming part of the illegal armed groups have had a non-coerced relationship of financing or collaborating with these groups and in the context of such a relationship have committed crimes.<sup>160</sup>

121. In addition, the State reported that even though members of the groups of *autodefensas* who demobilized have been held accountable in the proceedings in the Justice and Peace jurisdiction and the regular justice system, the conduct of financing or collaborating with the groups of *Autodefensas* that did not result from coercion shall be under the jurisdiction of the JEP with respect to those persons whose participation was determinant in the most serious and representative crimes. It also indicated that the victims will participate in all mechanisms and instances of the Integral System as an essential guarantee for satisfying their rights to truth, justice, reparation, and non-repetition.<sup>161</sup>

122. The State further noted that as a contribution to the construction of memory and as symbolic reparation all the armed actors, including the Armed Forces and National Police and the FARC-EP, will recognize the grave nature of the crimes they committed in public ceremonies where they will apologize for their direct acts or omissions and for the actions of their members.<sup>162</sup>

123. The Commission has consistently monitored the major efforts made by the State with respect to the peace process; in carrying out its mandate it has also received information from civil society in its different expressions in relation to concerns about this process, its level of acceptance, and the challenges entailed in its implementation. For example, during the hearing held in June on territory, human rights, and peace-building in the departments of Cauca and Córdoba, the organizations that requested the hearing noted that there might not be acceptance of the peace process in those departments.<sup>163</sup> In addition, it was argued that those departments have been the epicenter of the armed confrontation among the government forces, paramilitary groups, and guerrilla fronts, resulting in a humanitarian and human rights crisis.<sup>164</sup>

124. At the same time, as regards the guarantees of security and social integration for future former combatants of the FARC-EP, the Commission notes that in May concern was expressed over the capacity of groups characterized as “neo-paramilitary” groups to control the population by means of threats and attacks, especially during the armed strike of March 31 and April 1 called by the illegal armed group Autodefensas Gaitanistas de Colombia.<sup>165</sup> It was also noted that it is possible that some of the zones in which the FARC-EP has operated may come to be “occupied by paramilitaries” and emphasis has been placed on the need for the State to guarantee the life and respect the political rights of those who demobilize.<sup>166</sup>

<sup>160</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>161</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>162</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016.

<sup>163</sup> IACHR, [Hearing on territory, human rights, and peace-building in the departments of Cauca and Córdoba](#), June 13, 2016.

<sup>164</sup> IACHR, [Hearing on territory, human rights, and peace-building in the departments of Cauca and Córdoba](#), June 13, 2016.

<sup>165</sup> PBI, [Las personas defensoras de derechos humanos empezaron el año haciendo frente a serias agresiones en su contra](#), May 9, 2016.

<sup>166</sup> Notas Obreras, [Proceso de paz, ventajas y engaños](#), June 14, 2016, ver también InSight Crime, [Urabeños reclutan a disidentes de proceso de paz con FARC en Colombia](#), 27 de enero de 2017.

125. In this respect, the State reported that it has recognized that there is possibility that some of the zones in which the FARC-EP have operated will be taken by other illegal armed groups, thus the armed forces and National Police have deployed actions to ensure the presence and control of the State in those zones left by the FARC, and in general throughout the national territory. It indicated that in 2017 the “Military Strategy Plan for Stabilization and Consolidation Victory” came into force; its main objective is to increase the presence of the State in the areas of influence of the FARC. It indicated that joint, coordinated, and inter-institutional operations have been strengthened for the purpose of neutralizing the structures of the Organized Armed Groups, the persistent threat, and the phenomena of crime that affect the population and national security. It also noted that the National Police has developed strategies with the aim of deploying its institutional offer to help maintain conditions of citizen security and coexistence, accordingly 2,218 agents are deployed at the central, regional, and local levels; and that it designed the Model for Peace-building and the Integral Plan for Peace-building, which involves taking action at three levels, institutional, sectoral, and inter-institutional.<sup>167</sup>

126. The CCEEU perceives four main threats to the sustainability of the peace process: (i) the phenomenon of paramilitarism and the systematic attacks on social leaders and human rights defenders; (ii) the risk of some members of the FARC joining other illegal groups; (iii) the lack of knowledge and appropriation of the accords among the urban and rural population; and (iv) the risk of failure to comply with or implement the accords by the current or future administrations.<sup>168</sup>

127. The MAPP/OAS considers that the sustainability of the process requires addressing several challenges in the local implementation of the accords; in continuing the peace policies in place; and also in addressing mounting social conflicts, particularly related to issues such as social and political exclusion, unmet basic needs, the social and environmental impacts of extractive activity, the lack of social infrastructure, and the concentration of landholdings and disputes over territories, among others.<sup>169</sup> It indicated that many of the actions should be geared to replacing, refurbishing, funding, and building basic social infrastructure by improving services, expanding coverage, and establishing mechanisms of coordination, but above all by deploying, in the territories, a set of rapid and effective interventions aimed at strengthening the presence of the State and at the same time contributing to rebuilding social and human capital.<sup>170</sup>

128. The State forwarded to the IACHR the draft law by which provisions are issued on amnesty, pardon, and special criminal justice arrangements, introduced to the national Congress on December 13, 2016, and approved as Law 1820 of December 30, 2016, whose objective is to regulate the amnesties and pardons for political and related offenses, as well as to adopt special differentiated criminal justice arrangements for all those who have participated directly or indirectly in the armed conflict.<sup>171</sup>

129. Title II on amnesties, pardons, and other special criminal justice arrangements establishes three regimes: (i) amnesty as a matter of law, (ii) amnesties or pardons established by the Amnesty Chamber; and (iii) conditional release. Those mechanisms may be applied to Colombians and foreigners who have been perpetrators or participants in political or related offenses, attempted or consummated, so long as it is presumed that they belonged to or collaborated with the FARC-EP. Such arrangements would not apply to those who have committed any of the following offenses:

<sup>167</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>168</sup> CCEEU, Alternative Report to the Seventh Report submitted by the State of Colombia to the Human Rights Committee of the United Nations (2010-2016), October 2016.

<sup>169</sup> MAPP/OAS. Twenty-first Half-Yearly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), May 27, 2016.

<sup>170</sup> MAPP/OAS. Twenty-first Half-Yearly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), May 27, 2016.

<sup>171</sup> Art. 1 of the proposed legislation.

crimes against humanity, genocide, serious war crimes (i.e. any breach of international humanitarian law committed systematically), hostage taking or other serious deprivation of liberty, torture, extrajudicial executions, forced disappearance, rape and other forms of sexual violence, parental kidnapping of minors, forced displacement, in addition to the recruitment of minors, all in keeping with the provisions of the Rome Statute; common crimes not related to rebellion shall not be susceptible to special judicial arrangements.<sup>172</sup>

130. The project establishes amnesty as a matter of law for political offenses and indicates that these are “rebellion,” “sedition,” “uprising” (“*asonada*”), “conspiracy,” and “beguilement, usurpation, and illegal retention of command” and related offenses.<sup>173</sup> It establishes the following criteria on related offenses: (a) those offenses related specifically to the development of the rebellion committed on occasion of the armed conflict, such as deaths in combat compatible with international humanitarian law and the apprehension of combatants in military operations; or (b) those offenses in which the passive subject of the conduct is the State and its constitutional regime in force; or (c) such conduct aimed at facilitating, supporting, financing, or concealing the development of the rebellion.

131. In addition, Title III on mechanisms of differentiated special treatment for state agents provides for a regime of liberty and another involving deprivation of liberty and three types of social treatment: (a) the mechanism of waiving criminal prosecution, (b) the benefit of conditioned and anticipated transitional liberty, and (c) deprivation of liberty at a military or police unit. Such treatment does not apply to those state agents who have committed crimes against humanity, genocide, serious war crimes, hostage-taking or other serious deprivation of liberty, torture, extrajudicial executions, forced disappearance, rape and other forms of sexual violence, parental kidnapping of minors, forced displacement, in addition to recruitment of minors, all in keeping with the provisions of the Rome Statute; nor do they apply to those who have committed offenses not related directly or indirectly to the armed conflict, or who have committed offenses against the service, discipline, interests, and honor and security of the Armed Forces or National Police set forth in the Military Criminal Code.<sup>174</sup>

132. In view of the adoption and approval of the Final Agreement and in the face of the efforts made by the State to implement a new, more comprehensive transitional justice system, the Commission takes this opportunity to reiterate what was already indicated in its report on the 2004 demobilization process:

Some states affected by internal armed conflicts and their consequences have issued amnesty laws when implementing mechanisms for achieving peace and national reconciliation. Nonetheless, the granting of amnesties and pardons should be limited to punishable conduct in the nature of political crimes or common crimes linked to political crimes insofar as, having a direct and close relationship with the political criminal conduct, they do not constitute serious violations under international law. Those responsible for committing such crimes should not benefit unduly from grounds of exclusion from punishment, such as the prescription of the crime and prescription of the punishment, the granting of territorial or diplomatic asylum, the refusal to extradite a person for the commission of crimes punished by international law, or the granting of amnesties or pardons.<sup>175</sup>

133. In this regard, the IACHR has consistently established that while the adoption of provisions aimed at giving amnesties to those responsible for the offense of rising up in arms against the State may be a

<sup>172</sup> Statement of Motives and Article 22 of the bill.

<sup>173</sup> Statement of Motives and Article 14 of the bill.

<sup>174</sup> Articles 45, 46, and 50 of the bill.

<sup>175</sup> IACHR, [Report on the Demobilization Process in Colombia](#). OEA/Ser. L/V/II.120 Doc. 60, December 13, 2004, para. 37.



useful tool in the context of efforts to achieve peace, both the amnesty laws and similar legislative measures that impede or consider concluded the investigation and prosecution of crimes under international law impede access to justice and render ineffective the obligation of the states party to respect the rights and freedoms recognized in the Convention and to guarantee their free and full exercise.<sup>176</sup>

134. Both the Inter-American Court of Human Rights and the Commission have established that amnesty provisions, statutes of limitation, and grounds for excluding liability aimed at impeding the investigation and punishment of those responsible for serious human rights violations such as torture, summary, extralegal, or arbitrary executions, and forced disappearances, all prohibited for violating non-derogable rights recognized by international human rights law, are inadmissible.<sup>177</sup> The Court concluded that on being incompatible with the American Convention, such amnesty laws lack legal effect and could not constitute an obstacle to investigating, identifying, or punishing those responsible for violations of rights enshrined in the American Convention.<sup>178</sup>

135. Having said this, and taking into consideration the Amnesty Law in question, the Commission notes, in principle, that its articles are limited to giving amnesty to, pardoning, or according special treatment to those who have committed political or related offenses. In this respect, according to the Ministry of Defense, the new legislation on Special Differentiated Criminal Justice Treatment for State Agents, could benefit 5,500 members of the armed forces and National Police convicted of or investigated for crimes committed in the context of the armed conflict.<sup>179</sup> It was reported that more than 3,500 members of the military who are being tried for relatively minor offenses crimes could benefit from application of the waiver of criminal prosecution, and provisions on release and transfer to military units can be applied to them. Those who avail themselves of the opportunity and comply with the conditions of truth, justice, and reparation could go free if they have already served at least five years detained, while the case is reviewed. It was reported that the Special Jurisdiction for Peace allows for the review of the cases of members of the military who consider they have been unfairly convicted.<sup>180</sup> In this respect, it was indicated that lawyers for these members of the military convicted in the regular jurisdiction and sentenced for up to 56 years in prison have already expressed their interest in availing themselves of the Special Jurisdiction for Peace and that in the event that their liability is reiterated, the maximum sentence would be 20 years, thereby reducing the longer sentences previously imposed in the regular justice system.<sup>181</sup>

136. In this regard, the Commission continues to have concerns with respect to how the different criminal jurisdictions would interact with the Special Jurisdiction for Peace, in particular with respect to state agents who have been convicted and the possibility of their judgments being overturned by this new jurisdiction.<sup>182</sup>

137. As regards the sanctions provided for in the proposed law, it should be noted that the IACHR has recognized the possibility of imposing attenuated sanctions in contexts of transitional justice, as in the

<sup>176</sup> IACHR, [Report on the Demobilization Process in Colombia](#), OEA/Ser. L/V/II.120 Doc.60, December 13, 2004, para. 38.

<sup>177</sup> I/A Court HR, Barrios Altos Case (Chumbipuma Aguirre et al.), Judgment of March 14, 2001, Series C No. 75, para. 41. In this regard, see IACHR, Application before the I/A Court HR case of Barrios Altos v. Peru, para. 181. IACHR, Annual Report 1992-1993 [Report No. 28/92 Vs. Argentina](#), October 2, 1992; [Report No. 29/92 Vs. Uruguay](#), October 1992 and [Report on the demobilization process in Colombia](#), OEA/Ser.L/V/II.120 Doc. 60, December 13, 2004, para. 39.

<sup>178</sup> I/A Court HR, Barrios Altos Case (Chumbipuma Aguirre et al.), Judgment of March 14, 2001, Series C No. 75, para. 44 and IACHR, [Report on the Demobilization Process in Colombia](#), OEA/Ser. L/V/II.120 Doc.60, December 13, 2004, para. 39.

<sup>179</sup> El Tiempo, [Generales \(r\). listos para levantar la mano ante Justicia para la Paz](#), January 17, 2017, published at the webpage of the OHCHR.

<sup>180</sup> El Tiempo, [Generales \(r\). listos para levantar la mano ante Justicia para la Paz](#), January 17, 2017, published at the webpage of the OHCHR.

<sup>181</sup> El Tiempo, [Generales \(r\). listos para levantar la mano ante Justicia para la Paz](#), January 17, 2017, published at the webpage of the OHCHR.

<sup>182</sup> IACHR, [Chapter V Follow-up on Report on Truth, Justice and Reparation: Fourth report on the human rights situation in Colombia](#), May 7, 2015, para.141.

Justice and Peace proceedings.<sup>183</sup> In this respect, the IACHR has noted that the attenuated penalty should be applied as part of a system of incentives useful for the truth, for individually identifying and punishing those responsible, and for making reparation to the victims; in addition, the attenuated sanction should be proportional to the legal interest affected.<sup>184</sup> In this regard, the IACHR reiterates the need for the authorities to rigorously enforce the requirements that condition access to an attenuated sentence, and to preserving it; and that contribute to developing a diligent and exhaustive investigation of the grave human rights violations subject to this legal regime, so that the imposition of reduced sanctions results from obtaining the full truth, and not depend exclusively on the confession of the accused.<sup>185</sup>

138. The Commission will be observing the application of said Law by the judicial officers of the JEP in the context of respect for human rights and the provisions of IHL, and shall continue to follow the decisions that emanate from that jurisdiction.

139. The Commission also calls on the state institutions to ensure that in this new process of demobilization, as well as in implementing the Integral System, they take into account, as relevant, the recommendations issued by the IACHR in its reports related to the process of demobilization of the AUC and the implementation of the transitional justice arrangement created with the Law on Justice and Peace, from 2004 on.<sup>186</sup> It also calls on the State to review the lessons learned from the Colombian State's vast experience in terms of the achievements and challenges of that arrangement, with a view to better implementing a functional, articulated, participatory, and effective Integral System that is effectively organized around victims' rights.

## **E. Gains and Setbacks in Military Criminal Justice**

140. In its report Truth, Justice, Reparation, the Commission recommended, among other things, for the State to:

- Take into account the points raised about Legislative Act 02 of 2012, and that it is incompatible with international obligations in the area of investigation and punishment for human rights violations, particularly with regard to any future legislative bills, which may be introduced on this subject matter.

141. The Commission has been following the military criminal and police justice reform. In its 2015 report, the IACHR expressed its concern that the reform implemented under Legislative Act 01 of 2015 established that international humanitarian law could be exclusively applied to punishable conduct committed during armed conflict and stressed the need for a comprehensive interpretation of both bodies of law: international human rights law as well as international humanitarian law.<sup>187</sup> The Commission notes that the State failed to submit any information on this recommendation.

142. The constitutionality of this reform was challenged by civil society organizations, on the grounds that it ignores the existing complementarity between human rights and IHL that is required during

<sup>183</sup> IACHR, [Statement by the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia](#) (2006), para. 41 and IACHR, [Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia](#), OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013, para. 254.

<sup>184</sup> IACHR, [Statement by the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia](#) (2006), para. 38 and I/A Court HR, Case of the Rochela Massacre v. Colombia, May 11, 2007, Series C No. 163, para. 196.

<sup>185</sup> *Cfr.* IACHR, Statement by the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia (2006), paras. 3, 38 and 41.

<sup>186</sup> IACHR, [Report on the Demobilization Process in Colombia](#). OEA/Ser. L/V/II.120 Doc.60, December 13, 2004, Follow-up on the Demobilization Process of the AUC in Colombia: Digest of published documents (2004-2007), IACHR; and Statement by the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia (2006).

<sup>187</sup> IACHR, 2014 Annual Report. [Chapter V Follow-up of Recommendations Issued by the IACHR in the Report Truth, Justice and Reparation](#), para. 139.

the investigation, prosecution and sanction of serious human rights violations, it excludes the application of human rights in the investigation and conviction of crimes committed by members of the public security forces in the context of the armed conflict, and it grants unjustified privileges to the military and police.<sup>188</sup> The Commission further noted in its report of last year that “it is precisely in situations of internal armed conflict when these two branches of international law (international human rights law and IHL) converge and are mutually reinforcing”<sup>189</sup> and that “both bodies are of concurrent application and complement each other.”<sup>190</sup>

143. In response to a challenge brought by the organizations, in February 2016, the Constitutional Court found the law valid and established parameters for the interpretation thereof. The Court held that international human rights law must serve as the frame of reference to assess punishable conduct of members of the public security forces and did not endorse the application of prosecutorial discretion when crimes are committed by members of these forces.<sup>191</sup> The Court established that complementary and converging application of international human rights law and IHL is a defining element of the Constitution.<sup>192</sup> As such, it ordered that guidelines be established for interpretation in order to bring the content of the reform in line with the State’s international obligation to respect and protect human rights and thus make it clear that “explicit reference to international humanitarian law, as the legal framework applicable in investigations that are conducted against members of the public [security] forces for acts associated with the armed conflict, cannot exclude converging and complementary application of international human rights law.”<sup>193</sup>

144. Additionally, prior to the time the Court ruled on the constitutional reform, Congress approved Law 1765 of 2015,<sup>194</sup> which restructured military and police criminal justice. In its follow-up report last year, the Commission expressed regret that the reform entered into force, without taking into account the recommendation regarding the need to ensure that human rights violations are properly investigated and punished, respecting the right of victims to trial in a competent and independent jurisdiction; and it called for the State to harmonize its normative framework with the international standards that have been reiterated by the IACHR.<sup>195</sup>

145. Civil society organizations note that this law included: (i) an increase in the number of offenses falling under the jurisdiction of military criminal justice; (ii) authorization of the investigation and prosecution of civilians by military criminal courts, specifically civilians performing jobs in said jurisdiction, in violation of Article 213 of the Political Constitution, which establishes that “in no instance may civilians be investigated or prosecuted by military criminal justice;” (iii) assignment of duties of judicial police to members of the public security forces, through the creation and establishment of the Technical Investigation Corps [CTI] of the Military and Police Criminal Justice system, when these duties are clearly established in the Constitution as falling “under the responsibility and functional subordination of the FGN [Office of the

<sup>188</sup> See IACHR, 2015 Annual Report, [Chapter V. Follow-up on the Recommendations made by the IACHR in the Report Truth, Justice and Reparation](#), March 17, 2016, para. 123.

<sup>189</sup> IACHR, 2015 Annual Report, Chapter V [Follow-up on the Recommendations made by the IACHR in the Report Truth, Justice and Reparation](#), March 17, 2016, para. 137.

<sup>190</sup> IACHR, 2015 Annual Report, [Chapter V Follow-up on the Recommendations made by the IACHR in the Report Truth, Justice and Reparation](#), March 17, 2016, para. 137.

<sup>191</sup> Constitutional Court, [Comunicado N°7](#) Release No. 7 of February 24, 2016. Case File D-10903- [Sentencia 084/16](#). [Judgment 084/16]. See CCJ [Sentencia sobre fuero penal militar: un compromiso irrestricto de la Corte Constitucional con los derechos humanos](#), [Judgment on military criminal jurisdiction: unconditional commitment of the Constitutional Court to human rights], February 27, 2016.

<sup>192</sup> IACHR, [Chapter V Follow up on the Recommendations Issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 135 et seq.

<sup>193</sup> Constitutional Court, [Comunicado N°7](#) Release No. 7 of February 24, 2016. Case File D-10903- [Sentencia 084/16](#). [Judgment 084/16]. See CCJ [Sentencia sobre fuero penal militar: un compromiso irrestricto de la Corte Constitucional con los derechos humanos](#), [Judgment on military criminal jurisdiction: unconditional commitment of the Constitutional Court to human rights], February 27, 2016.

<sup>194</sup> [Ley 1765 de 2015](#) [Law 1765 of 2015], of July 23, 2015.

<sup>195</sup> IACHR, [Chapter V Follow up on the Recommendations Issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 142.

Attorney General of the Nation]; (iv) violation of judicial independence, because most of the officials of the military criminal justice system are required to be members of the military, with senior officers being assigned to the highest level military court positions; (v) application of prosecutorial discretion by the Office of the Military Prosecutor to military members; (vi) violation of the rights of victims, due to lack of representation by a civilian party, as a consequence of the transition to an adversarial criminal justice system. All parties to a criminal trial are members of the public security forces in the new procedure, and the military prosecutor represents the victims' interests. The law also provides for the transfer of ongoing criminal proceedings, which involve members of the public security forces and have not reached the trial stage (that is, almost all cases), from civilian courts to the military criminal justice system.<sup>196</sup>

146. The organizations filed a challenge to the constitutionality of the aforementioned law, on the grounds that it entails major departures from national and international legal provisions and precedents prohibiting human rights and international humanitarian law violations from being heard by military criminal courts.<sup>197</sup> In ruling on the challenge, the Constitutional Court decided,<sup>198</sup> "to find practically all of the provisions that had been challenged for violating constitutional principles and recommendations of international human rights bodies consistent with the Constitution."<sup>199</sup> One concern of the CCEEU is that, based on this reform, homicide in all of its forms will fall under the jurisdiction of military criminal justice, as was claimed in the challenge, and therefore, the military will have jurisdiction over "false positives;" and over crimes against the protection of information and data, such as wire taps conducted by military intelligence agencies. The CCEEU also voiced its concern that through interpretation and enforcement of said law, any type of human rights and IHL violation would fall under military jurisdiction, inasmuch as military courts are granted jurisdiction in ambiguous and general terms to hear "crimes against the civilian population." It believes that in ruling in this way, the Court not only upholds that these offenses fall under the jurisdiction of military justice, but it also provides for the creation of a CTI within the military and police justice system, made up of military members, who would perform the duties of judicial police and investigators of human rights violations, which would be heard by the military justice system, based on the jurisdiction set forth under Law 1765 of 2015. The CCEEU further contended that the Court did not uphold the application of prosecutorial discretion for military members, but did uphold military members involved in these crimes entering into plea bargaining agreements with their military justice peers, without requiring an effective contribution of the defendant to aid in dismantling the criminal structure involved in the crimes.<sup>200</sup>

147. The CCEEU further claimed that despite this decision of the Court about concurrent and simultaneous application of IHL and IHRL, senior military officers still argue that, depending on the adversary they face, either IHRL or IHL apply, as provided for under Directive 015 of 2016 of the Ministry of Defense, which orders combating the GAOs [Organized Armed Groups] under IHL, allowing for bombing and qualifying such groups for the maximum lethal force available to be used in pursuing them.<sup>201</sup>

148. On this score, the Commission views as positive that the Constitutional Court has explicitly held that complementary and convergent application of international human rights law and IHL is a defining element of the Constitution and that it has not upheld the application of prosecutorial discretion for crimes committed by members of the public security forces.<sup>202</sup> Notwithstanding, based on the foregoing, the

<sup>196</sup> CCEEU, Alternative Report to the 7<sup>th</sup> Report submitted by the State of Colombia to the United Nations Human Rights Committee (2010-2016), October 2016, pg. 15.

<sup>197</sup> CCEEU, Alternative Report to the 7<sup>th</sup> Report submitted by the State of Colombia to the United Nations Human Rights Committee (2010-2016), October 2016, pg. 15.

<sup>198</sup> Constitutional Court, [Comunicado No. 29](#) [Release No. 29], of July 13, 2016. Case File D-11158 Judgment C-372/16.

<sup>199</sup> CCEEU, Alternative Report to the 7<sup>th</sup> Report submitted by the State of Colombia to the United Nations Human Rights Committee (2010-2016), October 2016, pg. 15.

<sup>200</sup> CCEEU, Alternative Report to the 7<sup>th</sup> Report submitted by the State of Colombia to the United Nations Human Rights Committee (2010-2016), October 2016, pg. 15.

<sup>201</sup> CCEEU, Alternative Report to the 7<sup>th</sup> Report submitted by the State of Colombia to the United Nations Human Rights Committee (2010-2016), October 2016.

<sup>202</sup> See Constitutional Court of Colombia, [Sentencia C-326/16](#) [Judgment C-326/16] of June 22, 2016.

Commission continues to be concerned about how this law will be interpreted in practice and that enforcement of the law could run counter to the State's obligation to investigate, prosecute and punish human rights violations in civilian criminal courts.<sup>203</sup>

## F. Reparation Mechanisms

149. In its report Truth, Justice, Reparation, the Commission recommended, among other things, for the State to:

- Continue moving forward in the implementation of Law 1448 and take the necessary measures to adequately address the challenges, which have been identified.
- Ensure, in practice, implementation of a differential approach for women, children and adolescents, persons with disabilities, indigenous peoples, Afro-descendants, lesbian, gay, bisexual, trans and intersex persons, human rights defenders, among others.
- Ensure effective participation of victims in the bodies set forth in Law 1448, and take into account their expectations, in determining appropriate measures of reparation.

150. In its Report and follow-up chapters, the Commission has closely monitored implementation of Law 1448 on Victims and Restitution of Lands and the State submitted an extensive and detailed response to the recommendations. The State reported that as of November 1, 2016, registration on the RUV [Single Registry of Victims] numbered 8,268,758, of which 7,970,190 are victims of the armed conflict (49% are women, 30% are under 18 years of age, 8% are over 60 years of age, 2.2% are indigenous, and 9% are black or Afro-Colombians). As of January 1, 2017, a total of 8,320,874 persons were registered in the RUV, of whom 8,022,919 are victims of the armed conflict.<sup>204</sup> In all 88.29% of the victims were victims of forced displacement, i.e. 7,083,118 persons.<sup>205</sup> The State reported that 6,301,558 persons are receiving assistance and reparation from the Victims' Unit. It noted that 79.8% of the total are victims of forced displacement (7,011,027 persons), 11.3% are victims of homicide, 3.6% are victims of threats, and 1.9%, of forced disappearance.<sup>206</sup>

151. As for individual reparations, the State reported that 46,833 compensation payments were awarded in 2016 for a total value of 325.417 billion Colombian pesos (the equivalent of USD \$108 million).<sup>207</sup> It also noted that from January 1, 2015 to August 31, 2016, the Victims' Unit successfully completed 302,101 Care, Assistance and Comprehensive Reparation Plans (PAARI), at the time of awarding reparation, 182,572 of which were drawn up in 2016. Of the total 400,938 PAARIs completed at the time of reparation, 55% are for women and 45%, for men.<sup>208</sup>

152. The State reported that 342 groups entitled to collective reparation (*sujetos de reparación colectiva* or SRC) are being processed (178 ethnic groups and 164 non-ethnic groups) and that the total

<sup>203</sup> IACHR, [Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia](#), OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013, para. 440.

<sup>204</sup> Victims Unit. [RUV as of January 1, 2017](#).

<sup>205</sup> Victims Unit. [RUV as of January 1, 2017](#).

<sup>206</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016.

<sup>207</sup> 46,792 compensation payments granted through administrative procedures totaling 324.657 billion Colombian pesos (the equivalent of USD \$102 million) and 41 compensation payments awarded in the framework of Justice and Peace judgments totaling 742 million pesos (the equivalent of USD \$233,550). Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016.

<sup>208</sup> When reparation was awarded, more than 10% of PAARIs were for persons belonging to ethnic groups: 14,078 indigenous, 30,399 black or Afro-Colombian communities, and 220 gypsy groups. Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016.



number of collective reparation cases is 545, including those in the process of assessment and registration.<sup>209</sup> It noted that of the 178 ethnic SRCs being processed, 37 communities are officially engaged in the prior consultation stage and three of them have a Comprehensive Collective Reparation Plan in place (at the implementation stage). Additionally, in May 2016, 287 measures of satisfaction were implemented with 118 groups entitled to collective reparation, including sites and initiatives, commemorations and restoration of practices of communities affected by the internal armed conflict, among other measures.<sup>210</sup>

153. Regarding collective reparation for groups and organizations, the State reported that as of June 2016, five plans were approved,<sup>211</sup> with three plans in the process of being formulated: *Periodistas, Movimiento Sindical y Asociación de Familiares de Detenidos Desaparecidos* (ASFADDES) [‘Journalists, Union Movement and Association of Family Members of Detained and Disappeared Persons’], and two plans in the listing phase. Additionally, it explained in detail several measures implemented to boost organizational strength in order to bring back the presence of organizations in the territory.<sup>212</sup>

154. As for the recommendation to implement a differential approach, the State reported in detail about implementation of a variety of measures, strategies, models and guidelines by its institutions involving a differential approach to gender, disability, LGBT persons and ethnic membership. It also explained in detail several steps that have been taken in compliance with the recommendation for victims to effectively participate in measures set forth under Law 1448, such as strengthening and training of the Office of Public Prosecution on the Effective Participation Protocol, assessing performance of management and the strengthening process of the departmental participation committees, among other strategies implemented in order to make participation more effective in the processes of reparation of victims, particularly women, indigenous, Afro-descendants, child and adolescent victims.<sup>213</sup>

155. With regard to land restitution processes, the State reported that, as of August 22, 2016, a total of 93,686 requests for restitution have been received, filed by 63,023 landholders and encompassing 78,107 properties; 54% of the requests have been approved by the Ministry of National Defense as safe properties for return and/or relocation of victims; and that the administrative procedure has been completed in 36,717 cases, with a finding of either registered, not registered or denial of request. Of the 16,525 registered requests, 12, 447 cases are before the Land Restitution Judges, who have issued 2,000 judgments benefiting 23,236 persons and ordering the restitution of 189,424 hectares of land.<sup>214</sup>

156. Civil society organizations, in turn, have reported that reparation programs “fall short in responding to the dimension of the phenomenon of violence stemming from the armed conflict in Colombia” and that collective reparation policy “presents major failures in the area of coordination between the different institutions that participate in its implementation.” They assess that after five years of enforcement of Law 1448, there is no real land restitution policy because of: (i) a lack of protections to exercise the right to restitution amidst a constant climate of threats and assaults against land claimants and government officials; (ii) the macro and micro focused restitution processes, which render the right of restitution useless to the majority of the victims of unlawful land dispossession; (iii) difficulties in administrative proceedings, which violate the principles of speedy and effective process; (iv) a lack of institutional capacity to meet victims’

<sup>209</sup> When reparation was awarded, more than 10% of PAARIs were for persons belonging to ethnic groups: 14,078 indigenous, 30,399 black or Afro-Colombian communities, and 220 gypsy groups. Republic of Colombia, Note S-GAII-16-109909 of December 2, 2016, received on December 16, 2016.

<sup>210</sup> Republic of Colombia, Note S-GAII-16-109909 of December 2, 2016, received on December 16, 2016.

<sup>211</sup> For the *Instituto Popular de Capacitación* (IPC), *Red Nacional de Iniciativas Ciudadanas por la Paz* (REDEPAZ), *Asociación Nacional de Usuarios Campesinos de Colombia* (ANUC), *Concejales y Diputados y Asociación Nacional de Mujeres Campesinas, Indígenas y Negras de Colombia* (ANMUCIC). Republic of Colombia, Note S-GAII-16-109909 of December 2, 2016, received on December 16, 2016.

<sup>212</sup> Republic of Colombia, Note S-GAII-16-109909 of December 2, 2016, received on December 16, 2016.

<sup>213</sup> Republic of Colombia, Note S-GAII-16-109909 of December 2, 2016, received on December 16, 2016.

<sup>214</sup> Republic of Colombia, Note S-GAII-16-109909 of December 2, 2016, received on December 16, 2016.

demand for justice, which does not bode well for the new restitution jurisdiction; and (v) the absence of authorities' capacity and willingness to abide by court orders.<sup>215</sup>

157. In this respect, the State reports that for many households that were victims of the armed conflict, the reparation mechanism of administrative compensation has had a positive impact on their lives. It indicated that the National Plan of Assistance, Attention, and Integral Reparation for Victims has been adjusted and updated by the Victims Unit to improve it. It noted that in the four years of implementation of Law 1448 of 2011, 50% of the claims that have been received have been processed. Moreover, it indicated that the first survey was conducted on the land restitution process, and the intention of the displaced population to return, which shows that when there is already a favorable judgment the victims do return.<sup>216</sup>

158. In its report released in March 2016, the Office of the United Nations High Commissioner for Human Rights (OHCHR) recounted that as of late 2015, the Land Restitution Unit had reported receiving 87,119 applications to be added to the registry of unlawfully dispossessed lands, 42,325 (49%) of which were addressed in "micro focused" zones, where the Ministry of Defense have authorized the locations as safe for the process to get underway. 30,593 (35%) of the applications were completed; 11,374 (13%) are being heard by judicial officials; and 3,160 (4%), involving some 20,000 persons, have been settled. 51% of these claims are located outside of these areas and have not been processed because the State has still been unable to ensure adequate security for officials and victims. Partial processing of requests for restitution is discouraging to claimants. In November, the Constitutional court ordered the Government to design a plan within a period of six months to address all claims by 2021, the statutory deadline for completion of the entire process.<sup>217</sup>

159. The State, for its part, on recognizing that difficulties have come up in the land restitution processes, indicated that it is working to overcome these challenges, mindful of what has been established by the Constitutional Court in relation to the drawing up of a Plan that includes a consensus-based assessment of the number of properties dispossessed and applications in the Land Restitution Unit (URT); with specific time periods not more than the 10 years provided for in Law 1448 of 2011. It indicated that the Land Restitution Unit is constructing the methodology for carrying out the order of the Constitutional Court.<sup>218</sup>

160. The OHCHR noted that, despite the State's efforts, collective reparation policy has not served its main purposes of redressing collective damages; providing tools to turn around inequality, violence, stigmatization, distrust and grief; and providing opportunities to rebuild memories, the social fabric and identity, and to put back into place what is required to prevent repetition of the same violations in the affected communities. Difficulties in coordinating restoration of the territorial rights with other collective rights of indigenous peoples and Afro-Colombians were also identified. Only 24 of a total of 153 indigenous and Afro-Colombian communities in the process of obtaining collective reparation are in the phase of prior consultation.<sup>219</sup>

161. In view of the foregoing, the Commission recognizes the efforts made by the State to comply with the recommendations laid out in this section and the progress achieved in the subject matter in order to implement Law 1448 with a differential approach and allow for greater participation of the victims. However, the Commission notes the challenges it has identified in implementation of Law 1448 and effective

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<sup>215</sup> CCEEU, Alternative Report to the 7<sup>th</sup> Report submitted by the State of Colombia to the United Nations Human Rights Committee (2010-2016), October 2016.

<sup>216</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,"](#) received February 28, 2017.

<sup>217</sup> OHCHR, Annual Report of UNHCHR. A/HCR/31/3/Add. 2, March 15, 2016.

<sup>218</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,"](#) received February 28, 2017.

<sup>219</sup> OHCHR, Annual Report of UNHCHR. A/HCR/31/3/Add. 2, March 15, 2016.

implementation of a Comprehensive System and, consequently, the IACHR maintains its recommendations regarding the overall existing framework of the reparations mechanism in Colombia.

## G. Forced Displacement

162. In its report Truth, Justice, Reparation, the Commission recommended, among other things, for the State to:

- Adopt the necessary measures to prevent forced displacement, including instances attributed to illegal armed groups subsequent to the demobilization of paramilitary organizations.
- Implement the appropriate measures to ensure the protection and security of persons returning to the territories from which they were displaced, including demining of territories. Additionally, take a differential approach to displaced person prevention and protection policies.
- Move forward in the prosecution of cases of forced disappearance, in order to help to raise awareness about them. Groups especially affected by the armed conflict [Translator's note: sentence cut off in original; check]

163. Throughout the internal armed conflict in Colombia, the forced migration of millions of persons has been one of the major consequences of the armed struggle and strategies of parties in the conflict. The continuation of the humanitarian crisis as a result of forced displacement poses, in the judgment of the IACHR, one of the main challenges in the field of human rights faced by Colombia at the present time and for decades to come. In this regard, the Colombian State has underscored, and the IACHR agrees with this statement, that the end of the internal armed conflict will represent an essential contribution to the prevention of forced displacement.<sup>220</sup>

164. In 2016, the Commission has continued to receive reports on incidents of forced displacement in Colombia among indigenous peoples, Afro-descendant communities, social leaders and human rights defenders and LGTB persons, as a consequence of the armed conflict or as a result of the use of violence by illegal armed groups.

165. With regard to the adoption of measures aimed at preventing forced displacement, civil society organizations reported to the IACHR that prevention measures have failed to stop displacement, as demonstrated by the fact that Colombia is the country with the highest population in the world of internally displaced persons as a consequence of human rights and international humanitarian law violations. According to the United Nations High Commissioner for Refugees (UNHCR), in late 2015, Colombia ranked number one worldwide in the number of internally displaced persons.<sup>221</sup>

166. As of January 1, 2017, there were 8,320,874 persons registered on the RUV (Single Registry of Victims), 8,022,919 of which are victims of the armed conflict<sup>222</sup>. 88.29% of these people were victims of forced displacement or, in numeric terms, 7,083,118 individuals<sup>223</sup>.

167. As for the figures of the RUV, the Internal Displacement Monitoring Centre (IDMC) has written that the Colombian State, to its credit, maintains a sophisticated and detailed account of the country's displaced population. The data in the latest iteration of its registry for internally displaced persons, part of the national victims' registry administered by the country's victims unit, are disaggregated by age, sex, provenance, and resettlement location. However, the IDMC notes that the registry is, primarily, intended as a tool to facilitate the government's provision of victims' reparations, in accordance with Law 1448 of 2011. As

<sup>220</sup> IACHR, [Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia](#), December 31, 2013, para. 533.

<sup>221</sup> UNHCR, Global Trends Forced Displacement in 2015: Forced to Flee, pg. 30.

<sup>222</sup> Victims Unit, [RUV as of January 1, 2017](#).

<sup>223</sup> Victims Unit, [RUV as of January 1, 2017](#).

such, it does not take into account people who are no longer displaced, whether because they have achieved a durable solution, or because they have died. According to the IDMC, no registration mechanism is currently in place to make it possible to know if the number of displaced persons is decreasing or rising. Anecdotal evidence suggests that many people displaced by the armed conflict have resettled in the country's cities, but it is impossible to gauge with any certainty how many of the total number of IDPs who fled their homes from 1996 to 2016 are still displaced.<sup>224</sup>

168. Civil society organizations also reported that the frequency of incidents of forced displacement attests to the ineffectiveness of prevention measures, which have not been focused on the causes of this problem. They underscore that statistics, in many instances, do not reflect that internal displacement is prompted by interests of private actors, who use displacement as a tool to help them to usurp and appropriate *campesino*, Afro-descendant and indigenous territories, where plans are afoot to implement large-scale mining or energy, extensive livestock grazing, agroindustry or infrastructure works projects.<sup>225</sup>

169. According to information published in the press, CODHES asserted that “the continuation of the militarization of the territories of ethnic communities” continues to be one of the determining factors of displacement, as well as “the actions of post demobilization paramilitary groups (GPD) intending to maintain control over the population and expand their dominance into potential territorial gaps that would be left by the FARC; the action of the FARC during the period without a truce [in force]; and the action of the other subversive groups disproportionately affect Afro and indigenous communities.”<sup>226</sup>

170. On this topic, in its Concluding Observations on the Seventh Periodic Report of Colombia, the United Nations Human Rights Committee voiced its concern over reports that internal displacement continues to take place, including mass displacements, for several reasons, such as activities of illegal armed groups arising from the demobilization of paramilitary organizations and implementation of megaprojects. In this regard, it was recommended that the State continue with and step up efforts to: prevent internal displacement; provide care, assistance and timely and adequate comprehensive reparation; and ensure in practice that returns and relocations are conducted in safety and that the safety is sustainable.<sup>227</sup>

171. The Commission also received information on persistent barriers blocking access to the RUV and to assistance programs, especially for victims of paramilitary groups.<sup>228</sup> Under judgment T-441 of 2012, the Constitutional Court emphasized the obligation to register all victims of the armed conflict in the RUV, without discriminating by perpetrator of the displacement.<sup>229</sup>

172. In 2016, the Commission continued to receive reports of mass displacement.<sup>230</sup> According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), despite the decrease in highly visible violence detected from January to August 2016, social control, intimidation, restriction of movement continue affecting the civilian population in Colombia. According to official information, 17,976 internally displaced persons were registered during the first eight months of 2016. Based on prior trends, OCHA estimated that once the registry was updated, the figure of internally displaced persons for the first half of

<sup>224</sup> Internal Displacement Monitoring Centre (IDMC), Global Report on Internal Displacement 2016, p. 41.

<sup>225</sup> CCEEU, Alternative Report to the 7<sup>th</sup> Report submitted by the State of Colombia to the United Nations Human Rights Committee (2010-2016), October 2016, p. 92.

<sup>226</sup> Diario Las Américas, [Colombia es el país con el mayor número de desplazados internos](#), [‘Colombia is the country with the highest number of internally displaced persons’], June 20, 2016.

<sup>227</sup> Human Rights Committee, Concluding Observations on the seventh periodic report of Colombia. November 17, 2016, paras. 30-31.

<sup>228</sup> CCEEU, Alternative Report to the 7<sup>th</sup> Report submitted by the State of Colombia to the United Nations Human Rights Committee (2010-2016), October 2016, p. 88.

<sup>229</sup> CCEEU, Alternative Report to the 7<sup>th</sup> Report submitted by the State of Colombia to the United Nations Human Rights Committee (2010-2016), October 2016, p. 88.

<sup>230</sup> Mass displacement events involve more than 50 displaced individuals or 10 displaced families in the same event.

2016 would likely reach 89,392 individuals for that period. According to OCHA, during the first 8 months of 2016, thirty-two mass displacement events were reported, which led to the displacement of 8,273 IDPs. 92% of these displacements were a consequence of armed clashes between different State and non-State actors; 3%, a consequence of post demobilization armed group operations, 4%, other actors; and 1%, the ELN.<sup>231</sup>

173. By way of example, the Commission notes with concern that on November 16, 2016, at least 180 people, which included 35 children, were displaced from the settlements of lower La Quina and San Roque, of the municipality of San Calixto, as a result of the presence of a vehicle with the initials EPL written on it, loaded with explosives and placed in the main thoroughfare; and because of fighting between the Army and alleged members of this non-State armed group.<sup>232</sup>

174. Civil society organizations noted that normative gains to prevent and address forced displacement, such as Law 387 of 1997, have not always translated into effective policies. Consequently, the displaced population has had to resort to social protest and seek special judicial relief (*tutela*) and, therefore, many assistance and protection efforts are the result of court decisions.<sup>233</sup>

175. Additionally, in reference to the legal precedents set by the Constitutional Court on the subject of forcibly displaced persons, Judgment T-025 of 2004 and the follow-up orders to the judgment, civil society organizations claim that the most troubling degree of non-compliance is still with court orders in the areas of displacement prevention; the right to truth, justice and reparation; the rights to land and housing and to earning an income, as dictated in order 008 of 2009 and order 219 of 2011.<sup>234</sup>

176. In its observations on this chapter the State reported that the Constitutional Court declared for the first time that the unconstitutional state of affairs has been overcome in relation to two components: (i) registration, after considering that Colombia has a registry of the displaced population that makes it possible to make gradual process identifying that population; and (ii) participation, on verifying that the country's displaced population has scenarios of participation which, despite the difficulties that persist, are progressively and in a sustained manner moving towards the effective enjoyment of this right.<sup>235</sup>

177. The Commission also learned that, in accordance with Law 1448 of 2011, victims of forced displacement and other human rights abuses committed prior to 1985 are precluded from benefitting from land restitution or from monetary compensation, and can only benefit from symbolic reparation. Victims of human rights abuses committed from 1985 to 1991 are entitled to monetary compensation, but not to land restitution.<sup>236</sup>

178. For its part, the State reported to the Commission that, through the Ministry of the Interior, it is moving forward in formulating the policy for the prevention of violations of the right to life, humane treatment and the security of persons, groups and communities. This policy is being developed in two phases: a conceptual framework phase and a formulation methodology phase. A diagnostic assessment,

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<sup>231</sup> Office for the Coordination of Humanitarian Affairs (OCHA), Colombia: *Humanitarian Snapshot (January - August 2016)*. August 8, 2016, p. 1.

<sup>232</sup> OCHA, Colombia – Mass displacement municipality of San Calixto (Norte de Santander). Flash Update No. 1. November 17, 2016, p. 1.

<sup>233</sup> CCEEU, Alternative Report to the 7<sup>th</sup> Report submitted by the State of Colombia to the United Nations Human Rights Committee (2010-2016), October 2016, p. 85.

<sup>234</sup> CCEEU, Alternative Report to the 7<sup>th</sup> Report submitted by the State of Colombia to the United Nations Human Rights Committee (2010-2016), October 2016, p. 88.

<sup>235</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,"](#) received February 28, 2017.

<sup>236</sup> CCEEU, Alternative Report to the 7<sup>th</sup> Report submitted by the State of Colombia to the United Nations Human Rights Committee (2010-2016), October 2016, p. 86.



alternative solutions design, the strategic framework of the policy and the programmatic framework thereof are also being discussed. At the present time, a draft Decree on this subject is awaiting the signatures of the Ministers and Administrative Department Directors, whose institutions are responsible for the policy.<sup>237</sup>

179. Additionally, the State has reported that the Ministry of the Interior is making progress in the implementation of Comprehensive Prevention and Protection Plans (PIPP, from its Spanish language initials), which must be taken over by the authorities of the territory and officers of the Territorial Committees on Transitional Justice, as provided under Law 1448 of 2011. In this way, the Territorial Action Plans (PAT) and the Comprehensive Prevention and Protection Plans (PIPPs) – become guidelines for policy action and management so that the institutions of the victims’ assistance system, coordinated at the territorial level by the Transitional Justice Committees, are able to focus on a few attainable, measurable goals, which are accessible to all institutions and help to restore the rights of the victims.<sup>238</sup>

180. In particular, regarding the right to movement and residence, as recognized in Article 22.1 of the American Convention, the bodies of the Inter-American human rights system have construed that right as also encompassing States’ obligation to not carry out actions which lead to the internal displacement of individuals nor aid third parties in the perpetration of acts that cause internal displacement.<sup>239</sup>

181. Additionally, the Commission reminds the State that, in a context of internal displacement, it has four main duties: (i) the obligation to prevent displacement; (ii) the obligation to protect and assist displaced during displacement; (iii) the obligation to provide and facilitate humanitarian assistance; and (iv) the obligation to facilitate the return, resettlement and reintegration of internally displaced persons in safety.<sup>240</sup>

182. In this respect, the State reported that through its institutions it maintains permanent articulation and coordination with the mechanisms of the public policy for protection, promotion, respect and guarantees for human rights, as well as prevention of violations and the observance of international humanitarian law<sup>241</sup>, and that it has a series of instruments for preventing forced displacement such as the PIPP, urgent prevention, and protection of persons, groups, and communities.

183. The Commission recognizes the measures that the Colombian State has been implementing in order to prevent internal displacement. Nonetheless, the Commission notes with concern that internal displacement is still taking place, including mass displacements, as a consequence of several things, such as the activities of illegal armed groups, who emerged from the demobilization of paramilitary organizations and the implementation of megaprojects. In this regard, the Commission recommends the State to continue to implement and reinforce measures aimed at preventing forced displacement.

<sup>237</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016, pg. 30.

<sup>238</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016, pg. 31.

<sup>239</sup> See, *inter alia*, IA Court of HR, Case of the Massacre of Santo Domingo v. Colombia. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012, Series C No. 259, para. 255; Case of Vélez Restrepo and Family Members v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 3, 2012, Series C No. 248, para. 220; Case of Valle Jaramillo v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008, Series C No. 192, para. 138; Case of the Massacres of Ituango v. Colombia. Judgment of July 1, 2006, Series C No. 148, para. 206; and Case of the Massacre of Mapiripán v. Colombia. Judgment of September 15, 2005, Series C No. 134, para. 168.

<sup>240</sup> IACHR, Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. December 31, 2015, para. 119.

<sup>241</sup> Intersectoral Early Warning Commission (CIAT: Comisión Intersectorial de Alertas Tempranas), Early Warning System (SAT: Sistema de Alertas Tempranas), Intersectoral Commission for the Prevention of Recruitment, use, and sexual violence against children and adolescents by illegal Organized Armed Groups (CIPRUNA), National Commission for Action against Mines (CINAMAP), and the National Network of Observatories. Republic of Colombia, Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,” received February 28, 2017.

184. In its report Truth, Just and Reparation, the Commission also recommended that the Colombian State implement the appropriate measures to ensure the protection and safety of persons returning to the territories from where they were displaced. It also recommended application of a differential approach in prevention and protection policies of displaced persons.

185. On this score, civil society organizations have claimed that the perpetrators of forced displacement have focused on victims who bring claims for restitution of land, which was unlawfully dispossessed from them, and on territorial rights defenders of rural communities, among others. According to civil society organizations, acts of violence against displaced persons are part of the complex strategies intended to intimidate the displaced population in order to keep it from seeking reparation for damage and restitution of land.<sup>242</sup> This type of act was noted by the Office of the United Nations High Commissioner for Human Rights, when he asserted that ‘frequent death threats against land activists and related impunity should be firmly addressed.’<sup>243</sup>

186. Civil society organizations also emphasized that no policy was in place to fulfill the obligations of voluntariness, safety and dignity in returns and resettlements, in the area of protection of the rights of persons during displacement. The absence of total safety in the return process is especially troubling, particularly because return is usually the only option offered to the displaced population.<sup>244</sup> In providing further detail, the organizations noted that “precariousness or the absence of safety in return locations manifests itself in acts of accusations of returnees as being collaborators with guerrilla groups; threats; homicides; militarization of communities; the civil population being caught in the middle of fighting; the presence of land mines, limiting freedom of movement.”<sup>245</sup>

187. Civil society organizations added that the safety mechanisms in place for the return of displaced persons also pose problems of coordination between the Victims’ Unit, local authorities, the Transitional Justice Committees and the public security forces, with regard to safety assessments.<sup>246</sup>

188. In addressing protection measures for the displaced population, the Colombian State reported to the Commission that, in June 2015, the Victims’ Unit set into motion a process to improve procedures and concrete steps to be followed and taken by National System for Comprehensive Victim Assistance and Reparation (SNARIV), on the issue of accompaniment of the returning and relocated population.<sup>247</sup>

189. The State also reported that Military Forces carried out 836 accompaniment operations at return and resettlement events. As of May 31, 2016, a total of 891 (historical) safety opinions were issued in the Transitional Justice Committees, 640 of which were approved, thus making 528 of them workable.<sup>248</sup>

190. Additionally, the State claimed that the Anti-Land Mine Directorate of the Office of the President of the Republic reports that from 2004 until October 31, 2016, the results of humanitarian demining operations, conducted by the Military Forces and OCDH-accredited civilian humanitarian demining

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<sup>242</sup> CCEEU, Alternative Report to the 7<sup>th</sup> Report submitted by the State of Colombia to the United Nations Human Rights Committee (2010-2016), October 2016, pp. 93-94.

<sup>243</sup> UN Human Rights Council, 28<sup>th</sup> session, Report of the OUNHCHR in Colombia, A/HRC/28/3/Add.3, January 23, 2015, para. 40.

<sup>244</sup> CCEEU, Alternative Report to the 7<sup>th</sup> Report submitted by the State of Colombia to the United Nations Human Rights Committee (2010-2016), October 2016, pp. 95-96.

<sup>245</sup> CCEEU, Alternative Report to the 7<sup>th</sup> Report submitted by the State of Colombia to the United Nations Human Rights Committee (2010-2016), October 2016, p. 96.

<sup>246</sup> CCEEU, Alternative Report to the 7<sup>th</sup> Report submitted by the State of Colombia to the United Nations Human Rights Committee (2010-2016), October 2016, p. 96.

<sup>247</sup> Republic of Colombia, Note S-GAII-16-109909 of December 2, 2016, received on December 16, 2016, p. 32.

<sup>248</sup> Republic of Colombia, Note S-GAII-16-109909 of December 2, 2016, received on December 16, 2016, p. 34.

organizations, are as follows: eight municipalities free of any suspect device; 22 municipalities undergoing operations; 5,390 devices destroyed over a total of 2,733,660.63 m<sup>2</sup> of cleared area.<sup>249</sup>

191. The State also reported that as regards return, the Land Restitution Unit establishes security as a very important variable for guaranteeing the sustainability of the land restitution process. It indicated that the existence of security guarantees makes it possible not only to further implementation of the registry of dispossessed lands, but also to carry out each of the phases of the administrative process aimed at achieving legal and material restitution of the lands and the voluntary return of the families benefited, and that in 2016 the macro-focus on the entire national territory was achieved. It noted that having got past this situation, both the Land Restitution Unit and the Ministry of National Defense have focused on the specific analysis of the zones where there are applications for land restitution, focusing specifically on the areas in which it is to intervene.<sup>250</sup>

192. The Commission recalls that, in keeping with its obligations emanating from international human rights law and IHL, it is the duty of the Colombian State to ensure the protection of internally displaced persons from attacks, threats, forced recruitment, cruel, inhuman and degrading treatment, as well as other human rights violations. It is the duty of the State to ensure the protection of the physical safety and freedom of movement of internally displaced persons. Attacks or other acts of violence against internally displaced persons, who do not take part in hostilities, are prohibited. As for land mines, it is the duty of the State to take special protection measures to prevent mines from placing the safety and lives of internally displaced persons in jeopardy.

193. In this same vein, while the Commission recognizes the efforts put forward by the Colombian State, it cannot help but to express its concern over the situation of particular risk faced by people returning to the territories from where they were displaced, particularly as a consequence of threats and other forms of violence, as well as the indiscriminate effects of landmines. Based on the foregoing, the Commission urges the Colombian State to reinforce measures aimed at protecting the displaced population returning to their territories. Furthermore, the Commission recommends the State to ensure the right of every displaced person to make a reasoned and voluntary decision about the durable solution that is in his or her best interest and will prove to be safe and meet his or her needs.

194. The Commission also recommended the Colombian State to move forward in prosecuting cases of forced displacement, in order to help raise awareness of the problem and prevent recurrence of this crime.

195. The Commission has received information about impunity underlying gross human rights and IHL violations, such as forced displacement, committed by different actors of the conflict and post-demobilization paramilitary organizations. This remains an obstacle to ensure victims' right to the truth, justice and reparation.

196. On this score, civil society organizations reported to the IACHR that impunity for the crime of forced displacement and crimes against the life of displaced persons is a constant that perpetuates the occurrence of this type of violation. The organizations stated that despite the issuing of a host of resolutions, directives and internal memoranda by the Office of the Attorney General (FGN) over the past years, the results of investigations into forced displacement have not substantially improved and, therefore, levels of impunity remain high for the crime of forced displacement, making conditions ripe for forced displacement to be repeated.<sup>251</sup>

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<sup>249</sup> Republic of Colombia, Note S-GAII-16-109909 of December 2, 2016, received on December 16, 2016, p. 34.

<sup>250</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,"](#) received February 28, 2017.

<sup>251</sup> CCEEU, Alternative Report to the 7<sup>th</sup> Report submitted by the State of Colombia to the United Nations Human Rights Committee (2010-2016), October 2016, pp. 97-98.

197. As to the prosecution of cases of forced displacement, the Colombian State reported to the Commission that the Office of the Attorney General of the Nation is implementing a system of criminal investigation into the crime of displacement based on strategic management of the workload, consideration of criminal phenomena, analysis as a procedure for the systematic and interdisciplinary study of the factors and elements linked to the crime, and on reenactment of context of the crime. Under this framework, the National Directorate of Analysis and Context (DINAC) of the FGN implemented a methodology to identify macro criminal patterns, through examination of practices and *modus operandi* of criminal organizations.<sup>252</sup>

198. In this same vein, the State added that the Office of the Attorney General has conducted an analysis of judgments, which does not necessarily purport to be exhaustive, but reflects the use of tools for analysis of situations and cases, taking into account the criteria of prioritization and context analysis.<sup>253</sup> Subsequently, it indicated that more than half of the judgments handed down for this offense are related to the displacement of approximately 4,000 persons, attributable to the actions of the FARC and the groups of Autodefensas in Riosucio, department of Chocó, in late 1996, and Operation Génesis in February 1997, for which 180 investigations were joined that had been scattered across different offices of the Office of the Attorney General at the national and regional levels; 15 guilty judgments were handed down for the crime of displacement against members of the 57<sup>th</sup> Front of the FARC. In the context of that case, 14 convictions were handed down against those responsible for and/or beneficiaries of the exoduses and the appropriation of the collective territories of the black communities<sup>254</sup>; and the results are as follows:

Judicial Activity Displacement <sup>255</sup>		
2010 - 2016	Ordinary Jurisdiction	Justice and Peace
Judgments	339	31
Convictions	661	96

199. In view of the broad scope of the issue of displacement in Colombia, the Commission urges the Colombian State to make its best efforts to investigate, prosecute and punish the crime of forced displacement. The Commission notes that the failure to conduct effective investigations into events that lead to internal displacement contributes to perpetuating the vulnerability of the victims and repetition of this type of crime.

## H. Economic, Social and Cultural Rights

200. In its report Truth, Justice, Reparation, the Commission recommended, among other things, for the State to:

- Continue to adopt measures to reduce poverty and extreme poverty.

201. In its report Truth, Justice and Reparation, the Commission noted that the context of protracted internal armed conflict coexists with a situation of sustained economic growth. This has led to a situation of unequal distribution of wealth, making Colombia the country with the second most unequal

<sup>252</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016, pp. 34-35.

<sup>253</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016, pp. 34-35.

<sup>254</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,"](#) received February 28, 2017.

<sup>255</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016, p. 35.

distribution of income in Latin America in 2011, according to data from the Economic Commission for Latin America and the Caribbean (ECLAC). In this regard, the Commission has recognized that even though Colombia has been experiencing solid economic development over the past years, there has not been concomitant improvement in the lives of all Colombians, particularly certain groups living in a special situation of vulnerability, who continue to face obstacles to full enjoyment of their civil, political, economic, social and cultural rights.<sup>256</sup>

202. In this respect, the State emphasized that the country has experienced a reduction in the indicators of inequality that is reflected in a Gini index of 0.522 for 2015. It indicated that this evolution may also be observed in the annual statistical review published by ECLAC in 2016, in which Colombia has less inequality in income distribution than other countries of the region.<sup>257</sup>

203. The State reported that significant normative progress has been made in 2016 to reduce poverty and extreme poverty. Firstly, Law 1785 of June 21, 2016 was approved, “whereby a network to overcome extreme poverty called *Red Unidos* [‘United Network’] is established and other provisions are issued;” and subsequently, Law 1804 of August 2, 2016 was approved, “whereby the State policy is established for the comprehensive early childhood development known as *De Cero a Siempre* [‘From (age) Zero Forever’] and other provisions are issued.” Additionally, under Law 1785 of June 21, 2016, the network to fight extreme poverty *Red Unidos* went from being a government social program to becoming a State policy. This Law establishes the guidelines that have been implemented in *Red Unidos*, such as family and community accompaniment or support, management and coordination of social assistance offerings and strengthening of territorial agencies. According to the State, its objective is to ensure assistance to the homes and communities living in extreme poverty using a proven and efficient model, which not only seeks to accompany each family, but also to provide prioritized access to the assortment of social assistance offered by the State.<sup>258</sup>

204. The State reported to the Commission that based on the vision of the 2014-2018 National Development Plan “*Todos por un Nuevo País*” [‘Everyone for a New Country’], the Government is guiding public policies on poverty reduction and equity building toward inclusion, social promotion and equal opportunity for everyone regardless of their provenance, ethnic group, age or disability. In particular, the State noted that as of December 2015, 27.8% of the Colombian population was living below the poverty line, which means that the poverty rate decreased by 0.7% from the rate in 2014 (28.5%) or, in terms of individuals, 171,000 people emerged from poverty over the past year. This rate was 24.1% in urban centers and 40.3% among the dispersed population of rural areas; that is to say, over the course of this year, around 102,000 people living in rural areas left their situation of poverty behind. The decrease in extreme poverty nationwide was 0.2%. The nationwide extreme poverty rate in 2014, was 8.1% while, in 2015, it dropped to 7.9%. That means that nearly 24,000 people came out of extreme poverty in Colombia.<sup>259</sup>

205. The State also reported on poverty indicators, noting that inequality in income distribution (measured through the Gini coefficient) has presented a downward trend over the past 10 years. Since 2005, it has decreased by 0.035 points with annual average decreases of 0.01 points. By 2015, the Gini coefficient posted a value of 0.522 nationwide, representing a decrease of 0.016 points as compared to 2014. The coordinated effort between different sectors to achieve inclusive development has helped the labor market to perform well; thus, in September 2016, the unemployment rate was 8.5% and this rate was achieved along with a labor participation rate of 64.2% and an employment rate of 58.7%. In the same month of 2015, the unemployment rate was 9.0%, while the employment rate was 58.7% and the labor participation rate, 64.5%.

<sup>256</sup> IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013, paras. 595-596.

<sup>257</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>258</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016, p. 37.

<sup>259</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016, p. 36.



Overall and nationwide, September 2016 completes six consecutive periods of single digit unemployment rates.<sup>260</sup>

206. Despite significant progress, it has been noted that there continues to be a high level of unpaid debt in Colombia. Based on conclusions of the United Nations Development Program (UNDP), residing in a rural area in Latin America and the Caribbean reduces the likelihood of emerging from poverty by income level in most countries of the region. The UNDP notes that this effect is notably high in countries such as Colombia, where “rural residency is associated with a lower likelihood of emerging from poverty by income level, which ranges between approximately 17 to 27 percentage points; this shows persistent inequality in access to opportunities between rural and urban areas.”<sup>261</sup>

207. In Colombia, 13 million people live in poverty as measured by income level (27.8% of the national population).<sup>262</sup> It has been noted that disaggregating those numbers shows a situation of social inequality, because 40.3% of the rural population lives in poverty. The Departments of Chocó, La Guajira, Cauca, Córdoba, Magdalena and Sucre continue to be the Departments with the highest poverty rates in Colombia.<sup>263</sup> Inequality in Colombia also manifests itself in land holding: 77.6% of land belongs to 13.7% of owners, based on a survey conducted by the Dean of Economics of the University of the Andes.<sup>264</sup> In that investigation it is also indicated that in the “Atlas de la Distribución de la Propiedad Rural en Colombia” (“Atlas of Distribution of Rural Property in Colombia”) for 2012, the distribution of rural property and its evolution in recent decades has been an issue of constant debate in Colombia, and that the interest in examining the concentration of rural property has not been accompanied, in general, by solid and rigorous figures that make it possible to establish with certainty the dynamics of the land markets and the distribution of property.<sup>265</sup>

208. During 2016, the IACHR continued to closely follow implementation of the precautionary measures granted on December 11, 2015 on behalf of children and adolescents in the communities of Uribía, Manaure, Riohacha and Maicao of the Wayúu People, in the Department of la Guajira (see *infra* III.3). The request for precautionary measures was about the risk to the beneficiaries because of a lack of access to drinking water, as well as the state of malnutrition of the children of the community.<sup>266</sup> The Office of the Procurator General of the Nation (PGN) issued a report in 2016 about the aforementioned situation, stressing the seriousness thereof and included several recommendations to the different State agencies. Among other conclusions of the report, the PGN noted that “the dimension of the aforementioned humanitarian and social problem reveals that there is no justification whatsoever for the State to continue to put off the solutions that this territory of Colombia needs” and that “it is a debt to the country, to keep it from remaining in a situation of extreme poverty and in systematic violation of rights.”<sup>267</sup>

<sup>260</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016, pg. 37.

<sup>261</sup> UNDP, *Informe Regional sobre desarrollo humano para América Latina y el Caribe: Progreso Multidimensional: Bienestar más allá del ingreso*, [‘Human Development Report for Latin America and the Caribbean: Multidimensional Progress: Wellbeing beyond Income’], June 14, 2016, pp. 69 and 70.

<sup>262</sup> Diario El Espectador, *La pobreza colombiana*, [‘Colombian Poverty’] October 18, 2016.

<sup>263</sup> Diario El Espectador, *La pobreza colombiana*, [‘Colombian Poverty’] October 18, 2016.

<sup>264</sup> BBC Mundo Noticias, *¿Cuáles son los países más desiguales de América Latina?*, [‘What countries are the most unequal in Latin America?’], March 9, 2016.

<sup>265</sup> Republic of Colombia, *Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”* received February 28, 2017.

<sup>266</sup> IACHR, MC 51/15 – Children and adolescents of the Uribía, Manaure, Riohacha and Maicao communities of the Wayúu People, Department of la Guajira, Colombia, December 11, 2015. In accordance with Article 25 of its Rules of Procedure, the Commission requests the State to adopt the necessary measures to preserve the lives and personal integrity of the children and adolescents of the communities listed above. In particular, to ensure the availability, accessibility and quality of health care services, with a comprehensive and culturally adequate approach, in order to address child malnutrition, as well as to take immediate steps so that the beneficiary communities are able to have, as soon as possible, access to drinking water and food in sufficient quality and quantity.

<sup>267</sup> PGN, *La Guajira: Pueblo Wayúu, con hambre de dignidad, sed de justicia y otras necesidades insatisfechas*, [‘La Guajira: Wayúu People, with hunger for dignity, thirst for justice and other unmet needs’], Conclusions, Bogotá, June 2016, p. 127.

209. The IACHR appreciates the advancements it has reviewed but, at the same time, takes note of the pending challenges and, therefore, calls on the State to step up its efforts to combat poverty and extreme poverty and, in particular, the situation of economic vulnerability of the Afro-descendant population.

## **I. The groups especially impacted by the armed conflict**

### **1. The invisibility of Afro-descendent, Raizal and Palenquero persons**

210. In its report *Truth, Justice and Reparation*, the Commission made the following recommendations, among others, to the State:

- Adopt urgent measures to conquer the structural discrimination that the Afro-Colombian population endures, as well as positive measures to eliminate racial discrimination and guarantee that Afro-descendent persons are able to exercise their rights on an equal footing with the rest of the population.
- Have specialized personnel and financial resources for the forthcoming population census, and make certain that appropriate channels are in place to enable civil society to participate and thereby ensure that the categories used in the self-identification questions are properly assembled. The question on self-identification should be among the first questions asked on the basic questionnaires.
- Adopt programs to compile disaggregated statistics on the Afro-descendant population, distinguishing men from women, girls from boys.

211. In its report *Truth, Justice and Reparation*, the Commission noted its concern regarding situations such as the poverty and exclusion of the Afro-Colombian population; the failure to clarify the human rights violations perpetrated against Afro-Colombians and the obstacles to the effective enjoyment of their collective property rights to the land, among others.<sup>268</sup> The IACHR noted that the disparities between the social and economic conditions of Afro-descendents and the rest of the population in Colombia are closely tied to the social exclusion suffered historically by this population<sup>269</sup>, which it considers entails a situation of racism and structural discrimination.<sup>270</sup> In this respect, the Commission noted that the mere promulgation of laws without any practical effect does not guarantee the full enjoyment and exercise of rights, and emphasized that Colombia has been a pioneer in the constitutional recognition, and recognition in the case-law, of the rights of Afro-descendent persons and individuals, and the implementation of affirmative action measures. This notwithstanding, the Commission observed that these policies had not been implemented to a significant degree, and that the Afro-descendent population in Colombia is still experiencing a situation of extreme inequality and invisibility, and repeatedly faces violations of the fundamental rights to dignity, property, non-discrimination, and even the right to life.<sup>271</sup>

212. In its report to the IACHR the State reported on the implementation of various campaigns against discrimination and racism, as well as training plans for public servants, judicial officers, and citizens in general, and regional plans for meetings for society to become more aware of the country's cultural and ethnic diversity. As one fundamental component for the fight against discrimination, the State reported on the work of the Observatory against Discrimination and Racism, which from 2015 to 2016 has received 27 complaints on which it is following up. It also indicated that the Office of the Attorney General undertook 300 investigations for acts of racism or discrimination and harassment on grounds of race, religion, political

<sup>268</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, OEA/Ser.L/V/II, December 31, 2013, para. 616.

<sup>269</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, OEA/Ser.L/V/II, December 31, 2013, para. 619.

<sup>270</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, OEA/Ser.L/V/II, December 31, 2013, para. 621.

<sup>271</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, OEA/Ser.L/V/II, December 31, 2013, paras. 663 and 664.

ideology, or national, ethnic, or cultural origin, 199 of which correspond to racial discrimination; in 101 of those situations, the victims are members of Afro-descendent peoples. It noted that of these investigations three have already reached the trial phase, and there has been one conviction.<sup>272</sup>

213. As regards the recommendation to adopt programs aimed at compiling disaggregated statistics, distinguishing between men and women, boys and girls, with respect to the Afro-descendent population, and the question on self-identification, the IACHR is pleased to learn that the State reports that through the National Administrative Department of Statistics (DANE: Departamento Administrativo Nacional de Estadística) the differential approach has been included for ethnic groups in the census form and in some activities related to census operations, as an exercise for preparing the 18<sup>th</sup> National Population Census and the Seventh Housing in 2016; in addition, DANE included a question on self-identification in its surveys and records on vital statistics.<sup>273</sup>

214. Without prejudice to the foregoing, the IACHR shares the concern expressed by the Human Rights Committee of the United Nations in November 2016 in relation to the reports that note that Afro-Colombian and indigenous persons continue suffering discrimination despite the measures adopted by the State to fight it; and on the allegations regarding the awarding of permits for exploiting resources on territories of indigenous peoples, which in some cases are said to have had a negative impact on their way of life.<sup>274</sup>

215. With respect to the procedures for land restitution and collective reparation for violations that occurred in the context of the armed conflict, the Commission has received worrisome information on the status of the implementation of Decree Law 4635 of 2011, which enables Afro-descendent peoples to claim their territorial rights. As of 2016, five years after the adoption of this law, Colombia's special jurisdiction on lands had only issued one judgment of restitution of territorial rights for Afro-Colombian communities, the case of the Consejo Comunitario Renacer Negro in Timbiquí, Cauca.<sup>275</sup> In addition, very few cases have gone forward in the administrative stage of the restitution process, and very few legal actions have been filed for Afro-Colombian collective territorial claims by the Land Restitution Unit, compared to the dimensions of the dispossession of territories that the Afro-Colombian communities have suffered.<sup>276</sup> The Commission also notes that with regard to procedures for collective reparation, the Victims Unit has indicated that the area of reparations for ethnic minorities requires greater attention by the public authorities.<sup>277</sup>

216. It should be noted that in its observations on the draft of this report the State indicated that the Land Restitution Unit has adopted 10 precautionary measures, and has registered 13 territories of black communities in the Registry of Lands Dispossessed and Forcibly Abandoned, and 13 territories of black communities are in the process of characterization of territorial impacts. It indicated that the universe of territorial impacts on the Afro-descendent populations has not been totally established, which implies that it is a process that is moving forward in a gradual and differential manner in each of the cases.<sup>278</sup>

217. In addition, the IACHR received information from the Proceso de Comunidades Negras (PCN) with respect to acts of excessive use of force by the Mobile Anti-riot Squadron (ESMAD) and reports of threats to the lives and personal security of members of the Movilización de Mujeres por la Vida y el Territorio

<sup>272</sup> Republic of Colombia, Note S-GAII-16-109909 of December 2, 2016, received December 16, 2016, p. 42.

<sup>273</sup> Republic of Colombia, Note S-GAII-16-109909 of December 2, 2016, received December 16, 2016, p. 43.

<sup>274</sup> United Nations, Human Rights Committee, [Observaciones finales sobre el séptimo informe periódico de Colombia](#), CCPR/C/COL/CO/7, November 17, 2016, para. 42.

<sup>275</sup> Verdad Abierta, [Para donde va la restitución de tierras a indígenas y afros?](#) July 24, 2016.

<sup>276</sup> Verdad Abierta, [Ponen barreras a restitución de tierras de los afros?](#) May 6, 2016.

<sup>277</sup> RCN Radio, [Alán Jara, director de la Unidad de Víctimas visitó Chocó](#) August 12, 2016.

<sup>278</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia"](#), received February 28, 2017.

Ancestral and the Asociación de Consejos Comunitarios del Norte del Cauca (ACONC) in the context of the national mobilization of the Cumbre Agraria and the Marcha por la Vida y los Territorios Ancestrales carried out April 25, 26 and 27, 2016, in the municipality of Santander de Quilichao. According to this information, worrisome situations have come up in the context of the mobilization for the defense of life and the ancestral territories of 41 Afro-Colombian community councils. Specifically, the IACHR has received information on alleged assaults by a Mobile Anti-riot Squadron that resulted in at least four demonstrators injured, including children.<sup>279</sup>

218. In this respect, the State indicated that in Colombia there are provisions in force applicable to those responsible for the use of force and “the measures for keeping tabs on and protecting human rights,”<sup>280</sup> which includes the activity of surveillance and accompaniment of social mobilizations. It reported that 99% of the police personnel of the ESMAD have taken the training course in crowd control and training in human rights, and that no official is involved in police procedures of the ESMAD without first having undergone such training. It added that in the event of any transgression of their functional duties, the competent jurisdiction would undertake the corresponding investigations.<sup>281</sup>

219. In February 2016 the IACHR condemned the serious situation of the Afro-descendent human rights defenders who have been assassinated for exercising leadership pressing their communities’ claims, defending and protecting the human rights of Afro-Colombians, especially the right to their territories.<sup>282</sup> In November the Commission lamented the increase in the number of assassinations of human rights defenders in the last months of 2016 and noted with concern the greater vulnerability of Afro-Colombian leaders to this violence.<sup>283</sup>

220. Information was also received on threats directed against Francia Márquez, a member of the mobilization of women to Care for Life and the Ancestral Territory, which occurred after the mobilization of the Community Councils of Northern Cauca in April. The PNC indicated that Alexa Leonor Mina and Mery Yain Mina, relatives of Ms. Márquez and one of the leaders from the region who was threatened were sought out by unknown persons, which called attention to the situation of permanent risk to the communities and the leaders of the community councils and organizations of the region.<sup>284</sup> The IACHR also received information on the kidnapping of Tulio Antonio Hurtado Ibarguen, President of the Asociación de Minereros Afros de Nóvita (ASOMIAFRON), on May 14 by members of the ELN; he was released 48 hours later.<sup>285</sup>

221. In this respect, the State reported that within the strategy implemented for cases of homicides of human rights defenders in the Office of the Attorney General, in all, nine homicides of Afro-descendent leaders were committed in 2015 and 2016, in three of which it has been possible to identify and

<sup>279</sup> Proceso de Comunidades Negras (PCN), [Santos dialoga con represión contra la gente Negra del Norte del Cauca](#), April 26, 2016.

<sup>280</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>281</sup> Law 600 of 2000 (Code of Criminal Procedure), Law 734 of 2000 (Single Disciplinary Code), Law 1015 of 2006 (Disciplinary Regime for the National Police), Law 1098 of 2006 (Code on Childhood and Adolescence), Law 1474 of 2011 (Provisions aimed at strengthening the mechanisms of prevention, investigation, and punishment of acts of corruption and effectiveness in the oversight of the conduct of public affairs) and Law 1564 of 2012 (General Code on Procedure). Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>282</sup> IACHR, Press Release No. 021/16, IACHR Condemns Killings and Threats Directed against Human Rights Defenders in Colombia, February 25, 2016.

<sup>283</sup> IACHR, Press Release No. 160/16, IACHR Condemns the Increase in Killings of Human Rights Defenders in Colombia, November 2, 2016.

<sup>284</sup> PCN, Asociación de Consejos Comunitarios del Norte del Cauca (ACONC) and Consejo Nacional de Paz Afrocolombiano (CONPA), [Alerta sobre amenazas a lideresas y líderes del Norte del Cauca](#), April 28, 2016.

<sup>285</sup> El Tiempo. [ELN dejó en libertad a secuestrado en Chocó](#); Federación Minera del Chocó. [Comunicqué to public opinion](#), May 14, 2016.

prosecute the persons responsible. Seven arrest warrants were obtained, six of which were executed; six persons are being held in pretrial detention, and five persons have been convicted. It also reported that an investigation is under way into the crime of abuse of authority for an arbitrary and unjust act in relation to the events that impacted Ms. Francia Márquez.<sup>286</sup>

222. The IACHR also expresses its concern about the scant official information available in 2016 with respect to the human rights situation of Afro-descendants, and Afro-descendent women in particular. In this respect the Commission has expressed its concern about the situation of structural inequality the Afro-descendent population in the region faces, and in particular the situation of women, adolescent females, and girls, due to the persistence of norms and institutional practices that impede the full exercise of their human rights. The Commission has indicated that Afro-descendent women are among the most marginalized social groups of the region; one of the main challenges they face is the institutional violence they suffer at the hands of public and judicial authorities.<sup>287</sup> In April 2016, acts involving the excessive use of force by the ESMAD were reported, and there were reports of threats against the life and personal security of members of the Mobilization of Women for Life and Ancestral Territory and of the ACONC in the context of the March for Life and Ancestral Territories undertaken by 41 Afro-Colombian Community Councils in April 2016 in the municipality of Santander de Quilichao (Cauca).<sup>288</sup> Accordingly, the IACHR calls on the State of Colombia to investigate and compile, with due diligence and without delay, information on the human rights situation of Afro-descendent persons and Afro-descendent women in particular.

223. As regards political participation, this year it has been reported that the seats constitutionally set aside for the black, Raizal, and Palenquero communities in the House of Representatives (*la circunscripción especial*) continue to be the subject of a legal dispute; as of this writing a decision is expected from the National Electoral Council (CNE: Consejo Nacional Electoral) on the various legal actions taken alleging irregularities in the process by which the representatives were elected.<sup>289</sup> The IACHR is concerned about the delay in the resolution of those actions; meanwhile, the members of these communities do not have political representation in the House.

224. Mindful of this information the Commission reiterates its recommendations to reinforce the adoption of urgent measures aimed at overcoming the situation of structural discrimination that affects the Afro-descendent population, as well as positive measures to eliminate racial discrimination and ensure that Afro-descendent persons are able to exercise their rights in equal conditions as the rest of the population.

## 2. Violence against Children and Adolescents

225. In its report *Truth, Justice and Reparation*, the Commission made the following recommendations, among others, to the State:

- Conduct the necessary investigations to obtain full and truthful information on the children and adolescents recruited by illegal armed groups and then informally separated.
- Ensure equal treatment of children and adolescents demobilized and adopt appropriate mechanisms for their full reintegration into civilian life, including specific measures for demobilized girls.

<sup>286</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia"](#), received February 28, 2017.

<sup>287</sup> IACHR, Press Release No. 040/16, IACHR Urges States to Adopt Measures to Protect the Rights of Afro-Descendent Women, March 21, 2016.

<sup>288</sup> Contagio, [ESMAD deja varios heridos en marcha de comunidades negras en Cauca](#), April 25, 2016; El País, [Marcha de comunidades afro terminó en enfrentamientos con el ESMAD](#), April 24, 2016; ONIC, [Población civil, entre ellos menores, sufren arremetidas del ESMAD en Santander de Quilichao, Cauca](#), April 26, 2016.

<sup>289</sup> La Última, [Vanessa Mendoza ad portas del Congreso de las República por negritudes](#), November 29, 2016. See [Semana, Consejo de Estado anula elección de congresista afro Moisés Orozco](#), July 14, 2016.



226. The IACHR has repeatedly stated that the recruitment and use of children and adolescents in the context of the armed conflict is one of the matters of most concern to the IACHR due to the seriousness, systematic nature, and invisibility of this violation of the rights of the child. The IACHR ascribes value to the agreement reached by both sides in 2016, in the context of the peace dialogues between the Government and the FARC-EP, to identify and separate all children from the ranks of the FARC-EP, and to begin this process. The IACHR, as it did in its previous report, also salutes the progress made by the Colombian State in recognizing the special vulnerability of children and adolescents in the context of the armed conflict, and in particular those who are or have been used by non-state armed groups.

227. On May 15, 2016, the delegations of the Colombian State and the FARC-EP reached an agreement for all boys and girls under the age of 15 to leave the camps of the FARC-EP, which also committed to drawing up a roadmap for the exit of all other adolescents under 18 years of age, and to creating a special integral program to provide them with services.<sup>290</sup> On September 2 it was announced that on September 10 the children and adolescents would begin leaving the FARC-EP camps, in keeping with the agreements reached in Havana.<sup>291</sup> According to the joint communiqué the State and the FARC-EP identify as a shared purpose the integral protection of the rights of children and adolescents involved in the armed conflict, who are recognized as victims of the conflict.

228. The parties agreed to establish a technical panel led by the Office of the Human Rights Ombudsperson and the Office of the Presidential Adviser for Human Rights, with the participation of UNICEF, IOM, and Colombian society through the Coalición contra la vinculación de niños, niñas y jóvenes al conflicto armado en Colombia (COALICO), the Asociación Nacional de Zonas de Reserva Campesina (ANZORC), and Comunidades Construyendo Paz en los Territorios (CONPAZ), the objective being for this technical panel to draw up a proposed protocol for the exit of the children and adolescents from the FARC-EP camps and a transition plan for receiving these children and adolescents, as well as a draft Special Program for integral attention and restitution of rights, to be put before the parties for their consideration. Once the Final Agreement is signed, and without prejudice to the results of the plebiscite held on October 2, the parties, based on the draft presented by the technical panel, approved a protocol for exit that made it possible to begin the process of children and adolescents leaving FARC-EP camps in September.<sup>292</sup>

229. On September 10, 2016, the first 13 children and adolescents left; as provided for in the protocol, they were received by a team made up of the ICRC and two representatives of the organizations of the technical panel, and taken to a temporary welcome center operated by UNICEF with the support of the OIM. It was guaranteed that two Defensoras de Familia, or women family defenders, would be present to receive the children and adolescents; such persons are guarantors of the rights of children and adolescents according to Colombia's legal provisions on the protection of children. It was agreed that the ICRC would perform a preliminary assessment of their physical and mental health at the point where the children and adolescents exit, and would also verify their identities and their basic personal information, leaving a record thereof in the exit document.<sup>293</sup>

230. According to the State, UNICEF<sup>294</sup> selected the temporary welcome center mindful of the requirements established by Colombian law and the issuance of the center's operating license. Upon their

<sup>290</sup> Delegation of the National Government and FARC-EP, [Comunicado Conjunto 70. Havana, Cuba, May 15, 2016](#).

<sup>291</sup> Delegation of the National Government of Colombia and FARC-EP, [Comunicado Conjunto 96. Havana, Cuba, September 2, 2016](#).

<sup>292</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016, pp. 44 and 45. Announced in [Comunicados Conjuntos 96](#) and [97](#), of September 2 and 6 respectively. Coalición contra la vinculación de niños, niñas y jóvenes al Conflicto Armado en Colombia (COALICO), [Comunicado Público: Acuerdo histórico en proceso de paz con las FARC-EP prioriza a los niños y las niñas en el camino a la paz](#), July 1, 2016.

<sup>293</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016, pp. 44 and 45. Delegation of the National Government and the FARC-EP [Comunicado Conjunto 97](#), September 6, 2016. ICRC, [Colombia: proceso de salida de niños, niñas y adolescentes de campamentos de las FARC-EP](#), September 10, 2016.

<sup>294</sup> UNICEF, [Los niños que salgan de las Farc tendrán el acompañamiento de UNICEF](#), May 17, 2016; UNICEF, [UNICEF reitera su apoyo para acompañar la salida de todos los niños, niñas y adolescentes de las FARC-EP y su reincorporación en sus familias y](#)

arrival at the center a second medical and psychological assessment was done of each child to identify any situation that would call for specialized care. In addition, the State reports that it has closely watched the operation of the center to ensure the well-being of the children, at the same time as it has coordinated with the entities concerned to re-establish the rights of the children and adolescents. The children and adolescents are to reside in this temporary welcome center until the competent institutions decide the places and modalities for carrying out the process of reincorporation and social inclusion, in light of the particular circumstances of each child and adolescent.<sup>295</sup>

231. As regards the immediate measures of care and re-establishment of rights provided to this first group of children and adolescents who were separated in September, it is reported that a special initiative was organized to secure identification from the National Registry for the purpose of all of the children and adolescents having their identification papers. Health care is provided through the local or departmental government in which each temporary center is located, and the health authorities at the national and local/regional level are making progress in signing them up for the general social security system so that when they return to their families they will have access to this service. As regards their right to education, efforts have been coordinated with the Ministry of National Education for an official skills evaluation to establish the schooling of each child and adolescent so as to be able to place them in the education system under flexible arrangements that take into account their age and level of schooling; the offer of skills training is being coordinated through the National Learning Service (SENA: Servicio Nacional de Aprendizaje). In addition, the Office of the Human Rights Ombudsperson (Defensoría del Pueblo) has reportedly taken statements from them so that they can be included in the Single Registry of Victims and so can accede to the integral reparation provided for in the Victims Law for this case. The State and the Victims Unit have committed to expediting inclusion in the registry and implementation of the components of integral reparation.<sup>296</sup> Subsequently, the State has reported that in December 2016 the 13 adolescents left the transitory place and at present their process of reincorporation and social inclusion in their families and communities is going forward.<sup>297</sup>

232. The parties agreed that the processes of separating the children and adolescents from the FARC-EP and providing services to them are governed by a series of guiding principles that are based on recognition of the rights of the children and adolescents and their best interests, dignity, and privacy. For the process of restitution of rights and social reintegration priority is given to the modality of family reintegration, so long as the families constitute scenarios in which their rights are guaranteed, and to reintegration in the community, in their own communities or in culturally similar communities, to the extent possible, and in the shortest time possible. The children and adolescents are recognized to have a right to participate in the decisions that affect them, and in implementing the programs designed to provide for their care, with guarantees being provided for integral protection including security guarantees. A differential approach is considered based on gender, ethnicity, and age, with special attention to the rights of girls<sup>298</sup>, as well as a holistic vision that involves the participation of the communities and inclusion of the families in support programs.

233. In addition, in order to contribute to and support the work of the Family Defenders (Defensoras de Familia) in charge of the children and adolescents separated from the FARC-EP, a technical support committee was established made up of the Office of the Presidential Adviser for Human Rights, the Director of the Colombian Institute for Family Well-being (ICBF: Instituto Colombiano de Bienestar Familiar),

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[comunidades](#), August 25, 2016; UNICEF, [UNICEF confirma que el primer grupo de niñas y niños fueron recibidos en buen estado de salud, en primera fase de entrega de FARC – EP](#), September 10, 2016; UNICEF, [UNICEF recibe segundo grupo de niños y niñas en buenas condiciones de salud en entrega de FARC – EP](#), September 10, 2016.

<sup>295</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016, pp. 44 and 45.

<sup>296</sup> Information provided by the State, Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016, pp. 44 and 45.

<sup>297</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>298</sup> Delegation of the National Government of Colombia and the FARC-EP [Comunicado Conjunto 97](#), September 6, 2016.

UNICEF, IOM, and the organizations that are part of the technical panel, in addition to the presence of the Office of the Human Rights Ombudsperson. In that context the State reports that the committee has met on four occasions and has made progress on a document of observations and recommendations for the Family Defenders.<sup>299</sup>

234. The IACHR salutes the State's efforts in the context of the Program of Specialized Attention for Children and Adolescent Victims of Illicit Recruitment who have been separated from illegal organized armed groups, led by the ICBF, whose objective is to contribute to the integral protection of children and adolescents victims of recruitment through measures to re-establish rights and contribute to integral reparation, including legal and psychosocial support, with a view to facilitating access to the rights to truth, justice, and reparation.<sup>300</sup> The IACHR is also pleased to note that in this context the ICBF is updating its approach to children and adolescents separated from illegal groups, and is adopting a Technical Guideline to that end.<sup>301</sup>

235. With respect to the legal treatment for children and adolescents who were in the ranks of the FARC-EP, according to the agreements reached in Havana, the children and adolescents under 14 years of age may not be found criminally liable at all. Adolescents ages 14 to 18 years who leave the FARC-EP camps will be granted the benefit of pardon for rebellion and related offenses where there is no impediment in Colombian law. With respect to "those minors who were prosecuted for or convicted of non-amnestiable or non-pardonable offenses," the agreements establish that "their situation will be studied in a subsequent phase," it being agreed that after the signing of the Final Agreement the National Government commits to taking the measures necessary for them to "be at the disposition of the Special Jurisdiction for Peace to examine their responsibilities." In addition, it is provided that any action before the judicial authorities shall be through trusted attorneys and avoiding the direct intervention of the minors covered by these measures.<sup>302</sup> This last measure is understood to have the objective of preventing greater harm and re-victimization of the children and adolescents involved in the conflict. In this respect, the IACHR underscores that the children and adolescents who were drawn into, incorporated, and used in the structures of non-state armed actors are primarily victims, and that the legal treatment accorded them should be in keeping with this view.

236. Even recognizing the gains in separating children and adolescents from the ranks of the FARC-EP, the IACHR is concerned about the lack of information identifying all children and adolescents incorporated in the structures of the FARC-EP, in addition to the need to compare that information with the data available in other records such as data from the Office of the Attorney General, from the Single Registry of Victims, and the information from the Office of the Human Rights Ombudsperson.<sup>303</sup> According to the information published in media outlets, the FARC-EP stated that it had 21 members in its ranks under 15 years of age, yet the number ages 15 to 18 is not known. As it indicated above, the IACHR recalls the importance of ensuring the formal separation of all the children and adolescents from the ranks of the FARC-EP, and warns that any informal separation of children and adolescents would violate the obligations to protect children and adolescents in armed conflicts. In this respect, the Colombian State has informed the IACHR that "it is absolutely committed to guaranteeing the exit of all children and adolescents who may be in the FARC-EP, [and] for this reason it promoted commitments on the part of this group to secure the exit of all minors still in it," indicating that as announced by the National Government, in early February 2017 the FARC undertook a process of identifying and turning over lists to the Office of the Presidential Counselor for Human

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<sup>299</sup> Republic of Colombia, Note S-GAIID-16-109909 of December 2, 2016, received December 16, 2016, p. 46. This is one of the commitments reached by the parties in the Havana negotiations, Delegation of the National Government of Colombia and FARC-EP [Comunicado Conjunto 97](#), of September 6, 2016.

<sup>300</sup> Republic of Colombia, Note S-GAIID-16-109909 of December 2, 2016, received December 16, 2016, pp. 46 to 51.

<sup>301</sup> [Resolution No. 1525 of February 23, 2016](#).

<sup>302</sup> Delegation of the National Government of Colombia and FARC-EP, [Comunicado Conjunto 96, Havana, Cuba, September 2, 2016](#).

<sup>303</sup> UPI, [Colombia's FARC releases 13 child soldiers in first phase of peace deal](#), September 12, 2016.

Rights for the purpose of identifying all children and adolescents who are in the group at present.<sup>304</sup> The IACHR values these important steps but has not had access to more detailed information about the number of children and adolescents included in these lists or whether the State is taking any measure to compare this information with other available data.

237. The State also reported that in February 2017 it was agreed that children and adolescents would be turned over before April 1; these children will be transferred to 10 transitional places where they will be received and taken in that will be previously defined in the framework of the National Council on Reincorporation (Consejo Nacional de Reincorporación). In view of this, that same month the guidelines were approved for the Integral Program for caring for children who leave the FARC, which is called “Differential Life Path” and includes the protocol for leaving the organization, the temporary actions to provide care at the transitional places, and the process of re-establishing rights, reincorporation, and social inclusion.<sup>305</sup>

238. The IACHR also recognizes, as it did in its 2015 Annual Report, the efforts made by the State to prevent the incorporation, use, and exploitation of children and adolescents by non-state armed actors active in the conflict, such as the ELN, and armed groups that arose from the demobilization of the paramilitary organizations that have a direct relationship with the armed conflict, and to secure their separation. Nonetheless, the IACHR has received information indicating that cases persist in which children and adolescents are used and incorporated by these groups, though the exact and accurate figures on how many have been incorporated and used are very difficult to obtain.<sup>306</sup>

239. With regards to the difficulties highlighted by the IACHR in its report *Truth, Justice and Reparation*<sup>307</sup> or in its 2015 follow-up report<sup>308</sup> with respect to the barriers experienced by some children and adolescents to being treated as victims under Law 1448, specifically, with regards to the adolescents who are used by the criminal structures that have come about post-demobilization who are directly involved in the armed conflict, the State has provided specific information<sup>309</sup> indicating that they are being considered victims under Law 1448. In this respect, the State has reported to the IACHR that, pursuant to what was noted by the Constitutional Court in relation to the determination of victims of the armed conflict in the context of Law 1448 of 2011, the UARIV produced the updated version of the Manual of Criteria for Evaluation for inclusion of these children and adolescents in the Single Registry of Victims (RUV).<sup>310</sup> Nonetheless, the IACHR does not have information on the number of children and adolescents who may have separated from these structures and been covered under Law 1448 nor of the State’s estimate of the number of children and

<sup>304</sup> The State indicates that Decree 1753 was issued on November 3, 2016; it regulates the turning over of lists of persons by illegal armed groups who say they belong to it; in the case of minors, a separate list would be provided. Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>305</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>306</sup> See, United Nations, Observaciones Finales del Consejo de Derechos Humanos al Séptimo informe periódico de Colombia (CCPR/C/COL/7), November 17 2016, paras. 40 and 41. See also, UNICEF, Childhood in the Time of War: Will the children of Colombia know peace at last? March 2016. RCN Radio, [Ejército denuncia que el ELN emborracha a menores para reclutarlos](#), April 10, 2016. RCN Radio, [Fiscalía documenta más de 14 mil investigaciones contra el ELN por violaciones al DIH](#), February 2, 2016. RCN Radio, [Capturan a principal reclutador de menores del Clan Úsuga en Medellín](#), March 19, 2016. RCN Radio, [Personería cree que desaparecidos en Medellín pueden ser víctimas de reclutamiento forzado](#), February 24, 2016.

<sup>307</sup> IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II, December 31, 2013, paras. 689 to 691.

<sup>308</sup> IACHR, 2015 Annual Report, Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation, March 17, 2016, paras. 238 to 242.

<sup>309</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>310</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

adolescents in the ranks of these post-demobilization groups directly related to the conflict, in keeping with the parameters established by the Constitutional Court in Judgment 235 A of 2012. The State also notes that to be considered victims under Law 1448 persons must separate from the group before turning 18, but it does mention dispensing with this treatment of victims for persons who were forcibly recruited as children yet who did not separate before turning 18, treating them the same as those who joined as adults.<sup>311</sup> Based on the information provided by the State it appears that this equivalence in treatment operates without considering the elements of vulnerability that concur in the recruitment of children and adolescents, considering their process of development and the impact it could have on them as adults, even in their capacity to make decisions regarding leaving the group in the future.

240. The IACHR values the considerable progress made in protecting the children and adolescents most impacted by the armed conflict and recommends to the Colombian State that it continue making all necessary efforts to identify all the children and adolescents who have been recruited and to compare the data with the information in other registries in order to have the most complete and accurate information possible, to protect these victims of the armed conflict. The IACHR considers it crucial that the State continue making firm efforts to prevent the recruitment of children and adolescents and to strengthen the valuable efforts already under way aimed at the demobilization, rehabilitation, and social reintegration of the demobilized children and adolescents, increasing the coverage and sustainability of the interventions with special attention to the new armed structures that came about in the wake of the demobilization of the paramilitary groups that may be associated with the armed conflict.

### 3. Differentiated impact of the armed conflict and indigenous peoples in Colombia

241. It is report *Truth, Justice and Reparation*, the Commission made the following recommendations, among others, to the State:

- Intensify efforts to protect the effective enjoyment of the territorial rights of the indigenous peoples and their members as the first step toward safeguarding their fundamental rights in the context of the internal armed conflict, bearing in mind the singular importance that inter-American human rights law has attached to the territorial rights of indigenous peoples and because so many of the violations committed against them can be traced to the fact that much of the armed conflict is being fought on their ancestral territories and to the fact that economic interests are after the natural resources that those territories hold. Both factors have often left indigenous peoples dispossessed of their land.
- Prevent assaults and harassment against traditional indigenous authorities and leaders when the State has knowledge of a real and imminent risk; conduct a serious investigation of the facts brought to its attention; if appropriate punish the responsible parties and provide adequate reparation to the victims, regardless of whether the acts were the work of State agents or private parties.
- Take determined measures to return displaced indigenous peoples, communities and individuals through a process that ensures respect for traditional forms of participation and organization, security and, especially, protection of traditional indigenous authorities and leaders, and legal and material possession of the land so that the traditional use and exploitation of the territory and its management by the traditional authorities can be restored.
- Bring the process of forming, expanding and clearing the indigenous reserves to a swift conclusion, bearing in mind the inter-American standards on indigenous peoples' right to collective property.

242. In its report *Truth, Justice and Reparation* the Commission noted its concern over the existence of a close relationship between the occupations of indigenous territories, the increase in human rights violations through armed violence, forced displacement, the assassination of indigenous persons, and

<sup>311</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,"](#) received February 28, 2017.



the arrival of extractive enterprises.<sup>312</sup> The IACHR noted that the indigenous peoples of Colombia are frequent victims of assassinations and disappearances perpetrated by armed actors, or groups associated with them, often committed against traditional authorities, indigenous leaders both men and women.<sup>313</sup> The main consequence of the acute impact of the armed conflict on the indigenous peoples is the forced displacement of entire families and communities, whose magnitude and destructive impacts have been described by the IACHR in its annual reports, and they have merited the granting of precautionary measures.<sup>314</sup>

243. The State reported on the safeguard plans (*planes de salvaguarda*) of the Ministry of Interior, in consensus with the indigenous authorities of each people, and on the drawing up of a methodological approach that starts with a process of coordination and is adapted to the organizing processes and characteristics of each indigenous people. In this regard, the State reported that since August 2015 meetings have been held for the purpose of restoring the natural and cultural authorities of the Hitnú people, and the protocol was established for opening the sessions of the traditional authorities of that people. Similarly, the process of coordination was begun on the territorial rights component of the Awá ethnic safeguard plan in October 2015 and in 2016 progress is said to have been made on defining and drawing up, in coordination, the logical frameworks for the second phase of the governability component of that plan. Work was begun that seeks the organizational strengthening of the Nükak and Jiw peoples with the objective of assisting the local institutions and mestizo society to ensure the adequate handling of inter-ethnic and intercultural conflicts. Agreements were also signed with indigenous associations such as the SUMUYWAJAT to hold sessions for assessing the impact on Wayúu communities with a view to drawing up lines of action for 110 communities covered by a safeguard plan and 129 more in the municipality of Maicao, with priority assigned to those located along the border with Venezuela.<sup>315</sup>

244. The State also informed the IACHR about the protection of the indigenous population and leaders. The Government, through the UNP, provides measures of protection for 327 human rights defenders who represent indigenous communities. The Ministry of Interior has held Workshops for Territorial Strengthening on indigenous legislation. This activity is carried out with a differential approach in the context of the rights of indigenous peoples, identifying their culture, accompanied by uses, customs, traditions and potentials, and how they live, think, and carry out their day-to-day activities. In tandem with this policy, the National Police has ordered the permanent assignment of officers for liaison with the indigenous population with the objective of developing closer relations with the leaders of the indigenous marches, and to serve as mediators between the delegates of the Public Ministry and the indigenous authorities.<sup>316</sup> The IACHR recognizes the efforts of the Colombian State to address the situation of vulnerability facing several indigenous peoples of Colombia.

245. Without prejudice to the foregoing, this Commission observes that forced displacement and the illegal and improper appropriation of lands, through violence and intimidation, has been characteristic of the internal armed conflict in Colombia and continues to have particular impacts on indigenous, Afro-descendent, and peasant communities. Since its start-up in 2012 the process of restitution of lands illegally acquired or abandoned by force during the armed conflict to return them to their legitimate occupants continues, albeit very slowly. According to civil society organizations only one indigenous territory, with 50,000 hectares, and one Afro-descendent territory, with 71,000 hectares, have been the subjects of court judgments ordering that they be returned.<sup>317</sup>

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<sup>312</sup> IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II, December 31, 2013, para. 761.

<sup>313</sup> IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II, December 31, 2013, para. 762.

<sup>314</sup> IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II, December 31, 2013, para. 796.

<sup>315</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016, pp. 53-54.

<sup>316</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016, p.55.

<sup>317</sup> AI, [Annual Report – Colombia 2015/2016](#).

246. In the process of monitoring compliance with Judgment T-025 of 2004 the Constitutional Court has maintained the declaration of unconstitutional state of affairs in relation to the indigenous peoples and Afro-descendent population who are victims of forced displacement.<sup>318</sup> This situation is particularly serious for populations that are in the Pacific coast or areas proximate to it, given that various illegal armed groups dispute territorial control in those territories, as they are strategic corridors for taking illegal merchandise out of the country via the Pacific Ocean. According to information that is a matter of public knowledge, the effort by illegal armed groups to consolidate in the Pacific coast region, the consequent activity of the armed forces and National Police to counter them, and the lack of resources of the local authorities to attend to the population have provoked a silent humanitarian crisis in the region.<sup>319</sup>

247. The IACHR also takes note of the information reported to the effect that those indigenous and Afro-descendent leaders who assume leadership positions in the displaced communities that are calling for the return of their lands, or who report the presence of legal or illegal mining in their collective territories, have been victims of threats and even homicides in 2016.<sup>320</sup> Information has also been received on the campaign to discredit the land restitution process being waged by economic and political sectors in Colombia.<sup>321</sup>

248. As the Commission has noted in its report *Indigenous peoples, Afro-descendent communities, and natural resources: Human rights protection in the context of extraction, exploitation, and development activities*, the indigenous peoples have continuously reported the lack of consultation and prior, free and informed consent in the implementation of extractive projects.<sup>322</sup> In this respect these communities also reported that they have experienced consultation processes that have been irregular, subject to disinformation, led by companies, or in breach of agreements made with the communities.<sup>323</sup> In addition, several obstacles persist for the exercise of the right to prior consultation: structural racism, the vulnerability of the communities, the historical abandonment by the State, and the armed conflict, among others.<sup>324</sup>

249. The Commission shares the concern expressed by the Human Rights Committee of the United Nations in relation to the arguments on the awarding of permits for exploiting resources in territories of indigenous peoples, which in some cases have had a negative impact on their way of life. The Committee stated its concern with respect to the delay in adopting a law to guarantee that prior consultations would be conducted with the communities to obtain their prior, free and informed consent before adopting and applying any measure that might have a substantial impact on their way of life and culture.<sup>325</sup>

250. As noted in the section on economic, social and cultural rights, the IACHR has closely monitored the implementation of the precautionary measures issued in 2015 on behalf of children and adolescents of the communities of Uribí, Manaure, Riohacha, and Maicao of the Wayúu people in relation to

<sup>318</sup> Republic of Colombia, Constitutional Court, [Seguimiento al cumplimiento de la Sentencia T-025 de 2004](#).

<sup>319</sup> See El Tiempo, [El Pacífico, foco de desplazamiento graneado y silencioso en Colombia](#), April 22, 2016.

<sup>320</sup> ONIC, [A cuatro se incrementan los asesinatos del Pueblo Awá](#), August 29, 2016; ONIC, [Asesinato líder del Pueblo Awá a dos días de la firma del Acuerdo Final entre Gobierno Nacional y FARC – EP](#), August 29, 2016; UN News Center, [ONU expresa preocupación por abusos de derechos humanos en el Chocó, Colombia](#), May 12, 2016; OHCHR/UNHCR, [ONU Derechos Humanos rechaza amenazas contra defensores de derechos humanos afrocolombianos en Cauca](#), April 29, 2016; AI, [Annual Report – Colombia 2015/2016](#); HRW, [Columna de opinión: Defensores de derechos humanos y el proceso de paz](#), July 11, 2016.

<sup>321</sup> OHCHR/UNHCR, [Rechazamos campaña de desprestigio contra la restitución de tierras, Todd Howland](#), June 15, 2016.

<sup>322</sup> IACHR, *Indigenous peoples, Afro-descendent communities, and natural resources: Human rights protection in the context of extraction, exploitation, and development activities*, OEA/Ser.L/V/II.Doc. 47/15, December 31, 2015, p. 94.

<sup>323</sup> IACHR, *Indigenous peoples, Afro-descendent communities, and natural resources: Human rights protection in the context of extraction, exploitation, and development activities*, OEA/Ser.L/V/II.Doc. 47/15, December 31, 2015, p. 94.

<sup>324</sup> IACHR, *Indigenous peoples, Afro-descendent communities, and natural resources: Human rights protection in the context of extraction, exploitation, and development activities*, OEA/Ser.L/V/II.Doc. 47/15, December 31, 2015, p. 94.

<sup>325</sup> United Nations, Human Rights Committee, [Observaciones finales sobre el séptimo informe periódico de Colombia](#), CCPR/C/COL/CO/7, November 17, 2016, para. 42.

the lack of access to drinking water and the malnutrition affecting the children of the Wayúu community.<sup>326</sup> In 2016, and despite the development of several strategies by the State to address the situation as of 2015, including the Alianza por el Agua (Alliance for Water) and La Vida en La Guajira (Life in La Guajira)<sup>327</sup>, the IACHR received information about the deaths of 78 Wayúu children<sup>328</sup>; accordingly, the IACHR reiterates its appeal to the State to effectively implement those precautionary measures. During 2016, through its precautionary measures mechanism, the IACHR also received information of concern about the situation of malnutrition and lack of access to drinking water for breast-feeding mothers and pregnant women, as well as the high rate of maternal mortality and the lack of medical care.

251. Indigenous organizations indicate that while special note should be made of the efforts of the Office of the Human Rights Ombudsperson to address, promote, disseminate, and accompany the implementation of the laws (Decree 4633 of 2011) and to assist the indigenous victims of the armed conflict, one must not lose sight of the fact that the low institutional budgets and scant inter-institutional coordination have been the factors keeping the processes from effectively reaching the indigenous communities in the most remote regions of the country.<sup>329</sup>

252. To this is added the scant interest shown until now by some public institutions of the State of Colombia in facilitating the participation of the indigenous organizations or giving impetus to this process of collective attention and reparation for victims. Through the processes of the Permanent Roundtable for Coordination with Indigenous Peoples (MPC: Mesa Permanente de Concertación con Pueblos Indígenas) and the Cumbre Agraria, the indigenous movement has been demanding the creation of a Fund for Reparation of Victims who belong to the Indigenous Peoples and Communities. The commitment of the State and the indigenous peoples was to create this Fund with resources from both the national budget and other sources, similar to what is established in the Law on Victims and Land Restitution. This fund will have as its fundamental objective financing implementation of the agreements signed by the National Government and the Indigenous Peoples and Communities with regard to the effective implementation of Decree Law 4633 of 2011, and compliance with the orders of the Constitutional Court following up on Judgment T-025 of 2004, especially Order 004 of 2009 (indigenous population affected by the armed conflict), Order 092 of 2008 (women affected by the armed conflict), and Order 251 of 2008 (protection for children and adolescents displaced and affected by the armed conflict). As of July 2016 this commitment had not been carried out.<sup>330</sup>

253. In addition, they note that while in 2016 the Victims Unit, the Office of the Human Rights Ombudsperson, and municipal ombudspersons' offices have expanded the terms for the registration of ethnic origin for failure to abide by the time assigned in Decree Law 4633 of 2011, there are not yet teams or institutional infrastructure, expert personnel, or a budget for the urgent actions so as to be able to share and disseminate this law in the indigenous territories. In addition, the indigenous organizations identify a lack of institutional will on the part of the government with respect to issues such as coordination, issuance, and implementation, with the indigenous peoples, of the protocols for participation, humanitarian assistance, collective reparation, return and relocation; these continue to be put off or are taking a long time to be carried out.<sup>331</sup>

<sup>326</sup> IACHR, PM 51/15 – Children and adolescents of the communities of Uribía, Manaure, Riohacha and Maicao of the Wayúu people, in the department of the Guajira, Colombia, December 11, 2015. See also United Nations, Human Rights Committee, [Observaciones finales sobre el séptimo informe periódico de Colombia](#), CCPR/C/COL/CO/7, November 17, 2016, para. 42.

<sup>327</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia.”](#) received February 28, 2017.

<sup>328</sup> See RCN, [51 niños han muerto en La Guajira en 2016 por causas asociadas a la desnutrición](#), September 6, 2016 and EFE, [Denuncian la muerte por desnutrición de cinco niños indígenas en el norte de Colombia](#), December 12, 2016.

<sup>329</sup> Organización Wayúu Painwashi; Asociación Wayúu Araurayu; Asociación Akuaipa Waimakat – Affiliates of ONIC, [Documento de observaciones al Séptimo Informe Periódico de Colombia](#), July 25, 2015, para. 36.

<sup>330</sup> Organización Wayúu Painwashi; Asociación Wayúu Araurayu; Asociación Akuaipa Waimakat – Affiliates of ONIC, [Documento de observaciones al Séptimo Informe Periódico de Colombia](#), July 25, 2015, paras. 36-40.

<sup>331</sup> Organización Wayúu Painwashi; Asociación Wayúu Araurayu; Asociación Akuaipa Waimakat – Affiliates of ONIC, [Documento de observaciones al Séptimo Informe Periódico de Colombia](#), July 25, 2015, para. 42.

254. Mindful of this information, the Commission reiterates its recommendations to the State to further its efforts to protect the effective enjoyment of the right to territory of indigenous peoples and their members and to prevent the attacks on and harassment of traditional authorities, and men and women indigenous leaders at risk. The IACHR highlights the need for the State to consider the singular importance of recognition, by inter-American human rights law, of the territorial rights of indigenous peoples, and the central role of ancestral territories in the impairment of their rights by armed violence, economic interests, and dispossession.

255. The IACHR also echoes the recommendation of the Human Rights Committee of the United Nations to the State to continue and intensify its efforts to prevent and combat discrimination against indigenous persons; for those responsible for discriminatory acts to answer for their acts; and for indigenous persons to be able to fully enjoy their rights, in particular to the lands, territories, and natural resources they use or occupy. The State should see to the effective holding of prior consultations with the relevant ethnic communities to obtain their free and informed consent before adopting or carrying out any measure that may impact substantially on their way of life and culture.<sup>332</sup>

#### 4. Women in the context of the armed conflict

256. In its report *Truth, Justice and Reparation*, the Commission made the following recommendations, among others, to the State:

- To implement and strengthen measures to comply with the duty to act with due diligence to prevent, sanction and eradicate violence and discrimination against women, exacerbated by the armed conflict, including concrete efforts to fulfill its four obligations: prevention, investigation, sanction and reparation of the human rights violations of women.
- To implement dissemination measures and campaigns for the general public regarding the duty to respect the civil, political, economic, social, cultural, sexual and reproductive rights of women; the available services and resources for women who have experienced violations of their rights; and the judicial consequences for perpetrators.
- To design and adopt policies taking into account the specific needs of indigenous and Afro-Colombian women within the armed conflict in regard to health, education, justice and livelihoods. National policies designed to promote the rights of all women must consider the specific needs of indigenous and Afro-Colombian women and have an integral vision of how to address important issues such as health, education, and justice. National policies geared toward improving the situation of indigenous and Afro-Colombian groups must also include the specific needs of women.
- To ensure that the legal framework and the demobilization programs are compatible with the international principles and norms about the rights of victims to *Truth, Justice and Reparation* and, as such, address the specific needs of women.

257. The Commission noted in its report *Truth, Justice and Reparation* its grave concern for the suffering experienced by Colombian women because of the violence and discrimination aggravated by the armed conflict, and the importance of considering their specific needs in the State's response to the problem. The Commission indicated that Colombian women and girls impacted by the armed conflict cannot fully enjoy and exercise their rights enshrined in the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the American Convention on Human Rights, and other international instruments for the protection of human rights.<sup>333</sup>

<sup>332</sup> United Nations, Human Rights Committee, [Observaciones finales sobre el séptimo informe periódico de Colombia](#), CCPR/C/COL/CO/7, November 17, 2016, para. 43.

<sup>333</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, OEA/Ser.L/V/II, December 31, 2013, para. 860.

258. In particular, the State reported that in the context of the Inter-institutional Strategy to fight impunity and for integral attention to the victims of gender-based violence in the context of the armed conflict, in 2016 trainings have been carried out on access to justice and protection with a gender perspective, as well as sharing information about the protection programs of both the Office of the Attorney General and the UNP and workshops on self-protection for organizations of women and public servants in María la Baja, Mocoa, Cúcuta, Codazzi, and Arauca, in which approximately 182 public servants have participated. In addition, it reported that the Ministry of Interior, with the technical assistance of UNDP, designed the Guide to incorporate a Gender Approach in the Integral Prevention and Protection Plans (PIPP: Planes Integrales de Prevención y Protección) and in 2016, through the Ministry of Interior, the Guide has been distributed in various scenarios, including Technical Risk Assessment Groups, technical assistance sessions for drawing up the territorial development plans with the offices of the governor of four departments and their respective municipalities, CPDDHH, the Office of the Presidential Adviser for Women's Equity (CPEM), Ministries of Justice and Education, Office of the Ombudsperson for Women's Rights and Gender Matters, Victims Unit and UNP, and gender focal points of the National Institute of Forensic Medicine at the national level.<sup>334</sup> The State also indicated that in the course of 2016 the Ministry of Interior has provided technical and financial support for holding the workshops on prevention and protection geared to organizations of women and public servants entrusted with these issues, in the following prioritized municipalities: Mocoa, María La Baja, Cúcuta, and Arauca. More sessions are planned in Quibdó, Florencia, Barrancabermeja, Buenaventura, and Tumaco.<sup>335</sup>

259. In the area of investigation, the State reports the promulgation of the Protocol on Investigation and Prosecution of Sexual Violence by the Office of the Attorney General (Resolution 1774 of 2016); Resolution 1006 of 2016, establishing that the protection programs should adopt a human rights approach to women, with generational and ethnic perspectives, and ensuring harmonization with legislative gains and the principles and provisions of international human rights law and international criminal law. It also reports that of April 2016 cases of sexual violence presumably committed by members of the Armed Forces or National Police are being review; for this effort, a support group has been designated to analyze and give procedural impetus to such cases.<sup>336</sup> The IACHR recognizes the efforts reported by the State in relation to the situation of discrimination and violence that women suffer in Colombia.

260. The State also reported that the Ministry of Health and Social Protection is playing the lead role in designing the "Program for the prevention of sexual violence for women victims of the armed conflict and comprehensive care for its victims, 2017-2021," whose purpose is to comply with what was ordered by the Constitutional Court in Order 092 of 2008 and Order 009 of 2015. The State formed a mechanism for inter-institutional coordination made up of the Victims Unit, CPEM, the Ministry of Interior and the Ministry of Health and Social Protection, where several actions were defined for 2016. It also reported on the support provided for monitoring sexual and productive health care and mental health care for the victims of the armed conflict, for companies administering health benefits plans and health provider institutions.<sup>337</sup>

261. Without prejudice to the foregoing, the IACHR states its concern with respect to the information received on the persistence of violence against women and the obstacles to access to justice. In this regard, in March, the panel for follow-up on Orders 092 and 009 of 2015 issued its sixth report on the situation of impunity and sexual violence in which it concluded that obstacles persist that women victims of the sexual violence associated with the armed conflict face to accessing justice and obtaining protection and comprehensive health services. The report identifies these obstacles as originating in the lack of integral strategies for investigation and in the lack of an integral state policy that incorporates all the dimensions of the duty to act with due diligence; accordingly, it made recommendations to the State. It notes that the level of impunity exceeds 97% in all cases of sexual violence related to the armed conflict that were included in those

<sup>334</sup> Republic of Colombia, Note S-GAIID-16-109909 of December 2, 2016, received December 16, 2016, pp. 56-57.

<sup>335</sup> Republic of Colombia, Note S-GAIID-16-109909 of December 2, 2016, received December 16, 2016, p.57.

<sup>336</sup> Republic of Colombia, Note S-GAIID-16-109909 of December 2, 2016, received December 16, 2016, p.60.

<sup>337</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,"](#) received February 28, 2017.



Orders by the Constitutional Court.<sup>338</sup> In addition, during the hearing on the general situation of human rights the parties that requested the hearing reported to the IACHR a high rate of impunity in cases of sexual violence.<sup>339</sup>

262. Civil society organizations indicate that gender violence is a widespread problem in Colombia. The lack of training and deficient implementation of protocols for responding to it pose obstacles to the women and girls who seek attention after acts of violence, which may impede timely access to essential medical services. In 2014, the government promulgated law 1719 to improve access to justice and protection for victims of sexual violence, yet a coalition of human rights organizations and women's organizations filed an action challenging the constitutionality of this law so that the Protocol of Health Care for Victims of Sexual Violence would become obligatory. In December 2015, by Judgment C-754 of 2015, the Constitutional Court declared unconstitutional the section of the Law that provided that use of the protocol in cases of sexual violence would be optional, thus guaranteeing the principle of progressivity in respect of health and the right to equality of women victims of sexual violence.<sup>340</sup>

263. The State, for its part, reported that the Ministry of Health and Social Protection has designed and implemented different strategies that address, together, the 15 steps included in the Protocol for Comprehensive Health Care for Victims of Sexual Violence, in order to comply with Resolution 459 of 2012. Among the main gains it noted several trainings, social mobilization to prevent gender violence, the development of capacities for human talent in health, intersectoral articulation and its strengthening in the territories, and public health surveillance of sexual violence.<sup>341</sup>

264. In this respect, it should be recalled that an investigation by the Office of the Attorney General concerning sexual violence in the FARC, published in August, has documented the seriousness of the problems of sexual violence in its ranks and an internal policy of tolerating such incidents.<sup>342</sup> That investigation documented 232 cases of children who were victims of sexual offenses committed by members of the guerrilla force, including 214 girls who suffered rape, forced sterilization, forced abortion, and other forms of sexual violence. Representatives of the United Nations have celebrated the breaking of the silence around the high level of sexual violence in the armed conflict, as well as the positive disposition and solid commitment to provide for the victims and offer them the justice and the support they deserve.<sup>343</sup>

265. In this regard, the Commission shares the concern expressed by the Human Rights Committee of the United Nations, as it has stated from time to time<sup>344</sup>, in relation to violence against women and sexual violence, which affects primarily women and girls, continuing to pose serious problems both in the context of the armed conflict and beyond, and the reports that there are high levels of impunity for such offenses.<sup>345</sup>

<sup>338</sup> See Kausa Justa, [CCJ: Acceso a la Justicia para Mujeres Víctimas de Violencia](#); see *Sexual Violence impunity associated with the armed conflict in Colombia. Executive summary. Report Presented to the IACHR*.

<sup>339</sup> IACHR. Hearing on the general situation of human rights in Colombia, April 5, 2016. Requested by CCJ, CIJP, CJL, CCAJAR, CPDH, and CCEEU.

<sup>340</sup> Constitutional Court of Colombia, [Judgment C-754 of 2015](#).

<sup>341</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia"](#), received February 28, 2017.

<sup>342</sup> HRW, Colombia: Sexual Violence By FARC Guerrillas Exposed, August 11, 2016.

<sup>343</sup> *UN News Service*, [Gender equality, women's empowerment central to Colombian peace process – UN officials](#), July 26, 2016; UN Women, Joint Statement by Phumzile Mlambo-Ngcuka and Zainab Hawa Bangura on the historic commitment by the Government of Colombia and FARC-EP at the Havana Peace Talks Table, July 26, 2016.

<sup>344</sup> IACHR, Violence and Discrimination Against Women in the Armed Conflict in Colombia, OEA/Ser.L/V/II. Doc 67, October 18, 2006, para. 91; and its follow-up report in the Annual Report of the IACHR (2009), [Ch.V.](#), paras. 18 ff.

<sup>345</sup> United Nations, Human Rights Committee, [Observaciones finales sobre el séptimo informe periódico de Colombia](#), CCPR/C/COL/CO/7, November 17, 2016, paras. 18 and 20.

266. In addition, the information received by that Committee indicates that despite the measures adopted by the Ministry of Health to ensure access to abortion in cases with some of the circumstances provided for in Judgment C-355 of 2006 of the Constitutional Court, some women faced obstacles in practice accessing a legal abortion, including health personnel invoking conscientious objection without making appropriate referrals to other qualified personnel, and their lack of adequate training; as well as numerous cases of abortions carried out clandestinely in unsafe conditions, endangering the life and health of the women.<sup>346</sup> In this regard, civil society organizations affirm that there are barriers to access to legal abortion, such as the obligation to criminally report the perpetrator of the offense, which gives rise to the exception, prejudices, and discouragement on the part of the health authorities or other state agents. As a result, the civil society organizations report that 450,000 illegal abortions continue to take place annually, which is one of the principal causes of maternal mortality.<sup>347</sup>

267. In this regard the State reported that the Ministry of Health and Social Protection has to in place set of processes aimed at reducing unsafe abortion, promoting the right to reproductive self-determination in the context of the rules in force on access to health services, which include, among others, women's right to comprehensive advisory services and to be given complete, accurate, and timely information about the voluntary interruption of pregnancy, and the guarantee that the service will be provided throughout the national territory, and reported on a series of actions taken to prevent and address mortality and morbidity stemming from pregnancy, and on the issuance of rules and regulations aimed at ensuring the provision of voluntary interruption of pregnancy, among others.<sup>348</sup>

268. The Committee on Enforced Disappearances of the United Nations recently noted the singular cruelty with which forced disappearances affect the human rights of women and children in Colombia. Women who are subjected to forced disappearance are particularly vulnerable to sexual violence and other forms of gender violence. The Committee also indicated that women who are family members of a disappeared person are particularly vulnerable to suffering serious adverse social and economic effects and to suffer violence, persecution, and reprisals as a result of their efforts to locate their loved ones.<sup>349</sup>

269. Mindful of this information, the Commission reiterates its recommendations to design and adopt policies that take into account the specific needs of women, with special emphasis on indigenous and Afro-Colombian women in the armed conflict in terms of health, education, justice, and economic matters. To this end national policies aimed at advancing the rights of all women should consider the specific needs of Afro-Colombian and indigenous women and have an integral vision as to how to address important aspects such as health, education, and justice. The State should also redouble its efforts to prevent, combat, and punish all acts of violence against women, and sexual violence, and offer the victims integral attention and reparation.

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<sup>346</sup> United Nations, Human Rights Committee, [Observaciones finales sobre el séptimo informe periódico de Colombia](#), CCPR/C/COL/CO/7, November 17, 2016, paras. 18 and 20.

<sup>347</sup> The Guardian, [Zika virus: the options facing pregnant women across Latin America](#), January 29, 2016; HRW, [Abortion: Colombia](#).

<sup>348</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia"](#), received February 28, 2017.

<sup>349</sup> United Nations, Committee on Enforced Disappearances, [Observaciones finales sobre el informe presentado por Colombia en virtud del artículo 29, párrafo 1, de la Convención](#), advanced unedited version approved by the Committee at its eleventh session (October 3 to 14, 2016), October 14, 2016, para. 42.

## 5. Journalists and social communicators

270. In its Truth, Justice, and Reparation Report, the Commission's recommendations for the State included the following:

- Continue to adopt adequate preventive mechanisms in order to avert violence against media workers, including the public condemnation of all acts of aggression, the training of public officials, particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines regarding respect for the right to freedom of expression.
- Compile detailed, disaggregated criminal statistics on violence against journalists and the criminal prosecution of these crimes.
- Carry out diligent, impartial, and effective investigations of the murders, attacks, threats, and acts of intimidation committed against journalists and media workers. This entails the creation of specialized units and special investigative protocols, as well as the identification and exhaustion of all possible case theories related to the professional work of the victim.
- Prosecute, under impartial and independent courts, within the standards established by international law, the persons responsible for the crimes committed in retaliation for the exercise of the right to freedom of expression, and make adequate reparation for their victims and family members.
- Adopt the necessary measures so that media workers in situations of risk who have been displaced or exiled can return to their homes in conditions of safety. If these persons cannot return, the State must adopt measures so that they can stay in their chosen place in conditions of dignity, with security measures, and with the necessary economic support to maintain their work and their family lives.

271. The Commission has repeatedly expressed concern at the murders of and attacks on journalists and social communicators for motives that could be related to the exercise of the right to freedom of expression<sup>350</sup> and has noted the chilling effect that these attacks have had. The Commission recalls that attacks against journalists and media workers are attacks on the right of societies and citizens to seek and receive information of all kinds.<sup>351</sup> In this regard, the Commission appreciates that in recent years, the number of murders connected to the journalism profession has declined, especially in 2016, in which no murders of journalists have been reported. The IACHR also appreciates the State's efforts to support the protection program. The IACHR has appreciated the actions taken by the Colombian State to protect the exercise of journalism by both prioritizing the process to provide collective reparations to journalists and formulating a public policy on freedom of expression. However, the IACHR and its Office of the Special Rapporteur are concerned that despite institutional efforts and support from civil society and other stakeholders, these efforts will not end up being implemented effectively, the result being that the rights of journalists are in practice left unprotected.<sup>352</sup> The Commission observes that a number of challenges persist with regard to freedom of expression, as described hereinafter. Violence against journalists and media workers remains latent, as do obstacles to investigating attacks on journalists and a failure to guarantee the exercise of journalism.

272. The Commission encourages the State to continue with its efforts, led by the FGN, to train its officials on human rights standards, in collaboration with the ILO and the IACHR's Office of the Special Rapporteur for Freedom of Expression. It also appreciates the creation of spaces in which civil society can cooperate and participate, such as the Inter-institutional Thematic Roundtable on Violence against Journalists, led by the National Sectional Office and the National Office on Public Policy and Planning of the

<sup>350</sup> IACHR, [Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia](#). OEA/SER.L/V/II. Doc. 49/13, December 31, 2013.

<sup>351</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Violence against journalists and media workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#) Official OAS documents; OEA/Ser.L 2013.

<sup>352</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016.

Attorney General of the Nation. The IACHR welcomes the creation of the Special Work Group for the Investigation of High-tech Threats against Journalists, Human Rights Defenders, and Others, as well as the adoption of Directive 0007 containing guidelines on interviewing journalists or calling them to testify. The IACHR and its Office of the Special Rapporteur welcome the State's announcement on the preparation of a "Protocol for Addressing Cases Involving Journalists and/or Social Communicators" to establish guidelines that must be followed by the National Protection Unit when it conducts risk assessments.<sup>353</sup>

## 1. Attacks on personal integrity, threats, and harassment against journalists and social communicators

273. In February, journalist Javier Gaviria from *la the Voice of Yopal [Voz de Yopal]* in Yopal, Casanare, reported that he had received death threats via his personal phone and at the station's phone. The journalist stated that the calls began after he reported the crimes allegedly committed by the director of the sports institute in that town. Also, Gaviria, along with other journalists in Yopal, had reported incidents of intimidation and stigmatization by the municipal mayor's office, which were allegedly in retaliation against the reports of the press regarding the problems of current mayor Jhon Jairo Torres.<sup>354</sup>

274. On March 28, journalists, politicians, public officials, and leaders of social organizations in the department of Cauca received a pamphlet via e-mail, signed by the Black Eagles [*Águilas Negras*], which contained death threats and in which they were given a week to leave the area. In the pamphlet, the leaders and journalists were accused of being subservient and supporters of the peace process, which referred to the peace negotiations underway between the government and the FARC guerrillas. Local authorities called for a security council meeting and the National Police announced that it was investigating the source of the pamphlet.<sup>355</sup>

275. On April 14, the newspaper *El Heraldo* and civil society organizations publicly denounced the intimidation allegedly by Galdino Orozco, the former mayor of the municipality Palmar de Varela, department of Atlántico, against journalist German Corcho, the editor of the newspaper in the city of Barranquilla. The journalist was investigating Orozco's alleged involvement in the murder of an attorney. The journalist contacted the former mayor to obtain his version of events, and after the call, Orozco contacted the journalist to intimidate him so that he would not publish the story.<sup>356</sup>

276. On April 15, unknown persons entered the home of journalist and human rights advocate Bladimir Sánchez and took his computer, hard drives and cameras. This equipment contained information about the journalist's sources, graphic material and information the journalist was using for a documentary on the human rights violations allegedly committed by national and multinational companies in the extractive industry in some regions in Colombia.<sup>357</sup>

<sup>353</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016.

<sup>354</sup> FLIP. February 16, 2016. [Desconocidos amenazan al periodista Javier Gaviria](#); Office of Municipal Ombudsperson of Yopal. February 15, 2016. [Personería rechaza amenazas en contra de periodistas y pide acción de las autoridades](#); *La Voz del Yopal*. February 15, 2016. [Periodista Javier Gaviria denuncia amenazas de muerte](#); *El Espectador*. March 1, 2016. [Periodistas de Casanare denuncian presiones por parte del alcalde "John Calzones"](#).

<sup>355</sup> W Radio. March 29, 2016. [Denuncian panfleto que amenaza a periodistas y líderes sociales en Cauca](#); Corporación Nuevo Arco Iris. March 29, 2016. ['Águilas Negras' amenazan a líderes y organizaciones sociales del suroccidente del país](#); *El País*. March 29, 2016. [Investigación panfleto que amenaza y comunicadores del Cauca](#); Contagio Radio. March 29, 2016. ['Águilas Negras' amenazan a organizaciones y líderes sociales del Cauca](#).

<sup>356</sup> Fundación para la Libertad de Prensa (FLIP). April 14, 2016. [Excalde intimida a periodista de El Heraldo para no publicar una noticia](#); *El Heraldo*/Youtube. April 14, 2016. ["No aceptaremos intimidaciones": Marco Schwartz, Director de EL HERALDO](#); *El Heraldo*. April 14, 2016. [Audio: Así fue la intimidación del exalcalde al periodista Germán Corcho](#); Caracol Radio. April 15, 2016. [El Heraldo rechaza intimidaciones a periodista de esa casa editorial](#).

<sup>357</sup> CCAJAR. April 18, 2016. [Robo de información sobre Pacific Rubiales a periodista Bladimir Sánchez](#); Fundación para la Libertad de Prensa. April 19, 2016. [Roban equipos del periodista y defensor de derechos humanos](#); Fecolper. April 18, 2016. [Robo de información y equipos al periodista independiente Bladimir Sánchez](#).

277. On May 21, journalist Salud Hernández-Mora, a columnist for the newspaper *El Tiempo* in Bogotá and a correspondent for *El Mundo* in Madrid, was reporting in the Catatumbo area in the department Norte de Santander when she was kidnapped by the Ejército de Liberación Nacional- ELN [National Liberation Army]. On May 20, the journalist was in the area conducting a series of interviews of peasant farmers in the Tarra municipalities when ELN guerrillas allegedly took her equipment, which contained information about her sources and important information about investigations she was working on. The following day, unknown persons approached her, asking her to go with them to get her equipment back, and then her trace was lost. She remained captive and under the power of ELN guerrillas for almost a week.<sup>358</sup>

278. On May 23, reporters for television stations *RCN* and *Caracol TV* and the *EFE* news agency went to the area to cover the incident and were kidnapped for several hours by ELN guerrillas. Journalist Diego Velosa from *Caracol TV*, his cameraman and the *EFE* reporter were released the same day, while journalist Diego D’Pablos and cameraman Carlos Melo from the *RCN* channel were kidnapped by the guerrilla group. The Office of the Special Rapporteur expressed its concern about this situation in a press release in which it reiterated the fundamental role of journalists in situations of armed conflict, as well as the obligation of the State to provide them with as much protection as possible so that they may continue to assert their right to the freedom of expression, so as to fulfill society’s right to be adequately informed.<sup>359</sup>

279. President Juan Manuel Santos ordered that the authorities work on finding the three journalists, and the government of Norte de Santander offered a reward of 100 million Colombian pesos (approximately US\$32,680) to anyone providing information so that the three reporters could be found. On May 26, the Minister of Defense confirmed that the journalists had been kidnapped by ELN guerrillas.<sup>360</sup>

280. On May 27, journalist Salud Hernández was released after she was turned over to representatives of the Catholic Church. The same occurred in the case of journalists Diego D’Pablos and Carlos Melo<sup>361</sup>. However, on July 11, Channel *RNC* reported that journalists Diego D’Pablos and Carlos Melo were threatened, presumably by ELN guerrillas.<sup>362</sup> Civil society organizations denounced the threats and asked the national government to guarantee the journalists’ safety.<sup>363</sup> Through its Twitter account, the ELN denied that the message sent to D’Pablos came from the armed illegal group.<sup>364</sup>

<sup>358</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. May 25, 2016. [Press release R 70/16 Office of the Special Rapporteur Expresses Concern over the Situation of Three Journalists Reported Missing in Colombia](#); CPJ. May 23, 2016. [Periodista desaparecida en Colombia](#); El Espectador. May 22, 2016. [Salud Hernández, retenida por la guerrilla en El Tarra, Norte de Santander](#); RSF. May 23, 2016. [RSF expresa su profunda preocupación por la desaparición de la corresponsal de “El Mundo” en Colombia](#); El País. May 23, 2016. [El Ejército de Colombia busca a la periodista española Salud Hernández-Mora](#); El Tiempo. May 27, 2016. [ELN libera a la periodista Salud Hernández-Mora](#); El Heraldó. May 27, 2016. [“Esto ha sido un secuestro”: Salud Hernández-Mora](#); El Colombiano. May 27, 2016. [“Esto ha sido un secuestro”: Salud Hernández](#); Publimetro. June 5, 2016. [Salud Hernández-Mora habló sobre su secuestro](#).

<sup>359</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. May 25, 2016. [Press Release R 70/16 Office of the Special Rapporteur Expresses Concern over the Situation of Three Journalists Reported Missing in Colombia](#); CPJ. May 24, 2016. [Dos periodistas desaparecen en Colombia mientras cubrían historia de periodista desaparecida](#); El País. May 24, 2016. [Desaparecen dos periodistas colombianos que investigaban el paradero de Salud Hernández-Mora](#); Noticias Caracol. May 24, 2016. [ELN retuvo a periodistas de Noticias Caracol y otros medios en el Catatumbo](#).

<sup>360</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. May 25, 2016. [Comunicado de Prensa R 70/16 Office of the Special Rapporteur Expresses Concern over the Situation of Three Journalists Reported Missing in Colombia](#); RSF. May 27, 2016. [RSF pide la liberación inmediata de los tres periodistas secuestrados](#); El Heraldó. May 27, 2016. [Gobierno responsabiliza al ELN por desaparición de Salud Hernández](#); El Tiempo. May 27, 2016. [Paso a paso del secuestro de Salud Hernández y los periodistas de RCN](#); BBC. May 23, 2016. [Fuerzas militares de Colombia buscan a la periodista española Salud Hernández-Mora](#).

<sup>361</sup> RSF. May 28, 2016. [RSF celebra la liberación de la periodista Salud Hernández-Mora y de sus compañeros colombianos](#); Caracol radio. May 27, 2016. [Liberan a Salud Hernández-Mora](#); CNN. May 27, 2016. [ELN libera a Salud Hernández-Mora y a los dos periodistas de RCN](#); NTN24. May 27, 2016. [ELN libera al periodista de RCN Noticias Diego D’ Pablos y al camarógrafo Carlos Melo](#).

<sup>362</sup> Noticias RCN. July 11, 2016. [RNC televisión y su sistema informativo denuncian](#); El Tiempo. July 11, 2016. [RCN denuncia amenazas a periodistas que fueron secuestrados por el Eln](#); El Espectador. July 12, 2016. [Periodistas de RCN fueron secuestrados y ahora están amenazados de muerte](#); Panampost. July 12, 2016. [Colombia: Periodistas liberados por ELN recibieron amenazas](#); Kienyke. July 12, 2016. [Periodistas que cubrían secuestro de Salud Hernández, reciben amenazas de muerte](#); Diario del Sur. July 11, 2016. [Periodistas Diego D’Pablos y Carlos Melo declarados objetivo militar](#); Diaro Las Américas. July 12, 2016. [Denuncian supuestas amenazas del ELN a periodistas colombianos exsecuestrados](#).

<sup>363</sup> Amnesty International (AI). July 12, 2016. [Colombia: Amenaza contra periodistas podría menoscabar más el proceso de paz con el ELN](#); Fundación para la Libertad de Prensa. July 11, 2016. [Corresponsales de RCN que fueron secuestrados por el ELN son declarados](#)



281. On August 4, journalist Victor Ballestas, cameraman David Romero and assistant cameraman Jorge Mercado from the Noctámbulo team from channel CityTV news were assaulted by members of the National Police, presumably to prevent them from covering a theft in the city of Bogotá.<sup>365</sup> According to the information available, on August 6 Ballestas and Romero went to the Office of Forensic Medicine to report the assaults, and when they did, members of the National Police allegedly threatened them to prevent them from filing the report.<sup>366</sup> In a public statement, the National Police said that it would open disciplinary investigations of the agents involved, denounced the officers' actions, and apologized to the entire journalism profession, and reaffirmed its commitment to defend the right to freedom of expression.<sup>367</sup> The mayor of Bogotá, Enrique Peñalosa, regretted the aggressive behavior of the members of the National Police.<sup>368</sup> Later, on August 26, Ballestas reported having received several intimidating messages via social networks.<sup>369</sup>

282. On August 16th, residents of the township of Puerto Cachicamo in the department of Guaviare prevented a team of journalists from the *Los Informantes* program of *Caracol TV* from reporting on forest deforestation. According to information in the public domain, upon arriving at Puerto Cachicamo, three members of the township's *Junta de Acción Comunal* [Community Action Board] allegedly prevented the journalists from recording in a public space and demanded a community permit. Later, Puerto Cachicamo some residents demanded that the journalists turn over the video and prevented them from leaving the area until they turned over their reporting material. The reporters did not comply with the request and were allegedly held for five hours, until, under pressure, they signed a document in which they stated that they had not been detained by area residents and that they had entered Puerto Cachicamo without the community's permission.<sup>370</sup>

283. On September 26, during the Presidential event for the signing of the Peace Agreement with the FARC, a member of Government security prevented a journalist and a photographer from *Revista Semana* [The Week Magazine], as well as other national media workers, from entering the place where the event was

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[objetivo militar](#); NTN24. July 11, 2016. ["Es obligación del Estado colombiano castigar a los responsables": Director de Human Rights Foundation a NTN24 sobre amenazas a periodistas de Noticias RCN](#).

<sup>364</sup> "El ELN desmiente públicamente a personas que de manera cobarde y a nombre de nuestra organización amenazan a Diego D'Pablos y Carlos Melo". @MiguelAtal\_ELN. July 11, 2016; Vanguardia. July 11, 2016. [Eln desmiente amenazas a periodistas de RCN](#); El Universal. July 11, 2016. [Eln desmiente amenazas a periodistas de RCN](#); Pulzo, July 12, 2016. [Periodistas de RCN recibieron amenaza, pero Eln niega ser autor](#); La Opinión. July 12, 2016. [Eln desmiente amenazas a periodistas de RCN](#); Publimetro. July 12, 2016. [RCN denuncia amenazas a periodistas que secuestró el Eln](#).

<sup>365</sup> "Equipo de #Noctámbulo fue víctima de una golpiza propinada por algunos uniformados durante cubrimiento de ciclovía nocturna #CityNoticias". Twitter account of Canal Citytv @CityTV. [August 5, 2016](#); El Tiempo. August 5, 2016. [Citytv pide investigar violencia contra periodistas del Noctámbulo](#); Fecolper. August 5, 2016. [La Fecolper rechaza agresión de la Policía Nacional al equipo periodístico de CITY TV](#); BluRadio. August 5, 2016. [A bolillo y patadas, policías agreden a periodista en Bogotá](#); Las 2 Orillas. August 5, 2016. [En video: hasta con un arma de fuego Policía habría agredido a periodistas de CityTV](#).

<sup>366</sup> FLIP. August 8, 2016. [Policías amenazaron a reporteros del Noctámbulo de CityTV](#); El Tiempo. August 5, 2016. [Procuraduría asume investigación por violencia a periodistas de Citytv](#); Diario Las Americas. August 5, 2016. [Policías agreden a periodistas de canal de televisión colombiano](#); CNN Español. August 5, 2016. [Indignación en Colombia por agresión de la policía a periodistas](#).

<sup>367</sup> Caracol. August 5, 2016. [Policía abre investigación por agresión a equipo periodístico de City TV](#); El Tiempo. August 5, 2016. [Procuraduría asume investigación por violencia a periodistas de Citytv](#); El Espectador. August 6, 2016. [Agresión de policías a periodistas de CityTV será investigada por la Procuraduría](#).

<sup>368</sup> "Lamento inexcusable comportamiento agresivo de algunos policías con equipo de CityTV anoche". Twitter account of Enrique Peñalosa @EnriquePenalosa. [August 5, 2016](#); Canal Capital. August 2016. [Equipo periodístico de city tv fue agredido por uniformados de la policía](#).

<sup>369</sup> FLIP. September 6, 2016. [Continúan las presiones contra los periodistas de City TV](#)

<sup>370</sup> FLIP. September 14, 2016. [Comunidad de Puerto Cachicamo, Guaviare, restringe la libertad de prensa](#); La Silla Vacía. September 19, 2016. [El doble filo de la participación social en el Acuerdo de Paz](#); Las2Orillas. September 12, 2016. ["Los Informantes" en el Guaviare: ¿Intento de secuestro o enfrentamiento con la comunidad?](#)

being held.<sup>371</sup> Also, the security agent allegedly assaulted photographer Andrés Roza from *Revista Semana* and broke his camera.<sup>372</sup>

284. The IACHR and the Office of the Special Rapporteur received information about alleged threats against and the persecution of journalist and human rights advocate Claudia Julieta Duque, stemming from the ongoing criminal case against three of the people involved in the illegal wiretapping and monitoring. On February 25, members of the European Parliament requested that the Colombian government guarantee the protection of the journalist and human rights advocate, and that it proceed with the investigations that aimed to arrest those involved in the crimes committed against the journalist, as they were currently at large.<sup>373</sup> For its part, the State reported that it continues attentive to the situation of the beneficiary, and has provided all the guarantees needed to protect her life, integrity, and safety.<sup>374</sup>

285. On November 13, journalist Lucy Flórez, a correspondent for Noticias Uno and Las Noticias de Telecaribe, was threatened via text message. Flórez received the message after capturing on video, along with her cameraman, the assistant to member of Congress Karen Cure --Katherine Contreras—entering the Hospital Cari of Barranquilla, where Enilce López, alias “La Gata,” was being held. On November 17 groups of journalists held a march in Barranquilla to demonstrate against the threat received by Flórez.<sup>375</sup>

286. On November 20, the news website Onda Opita publicly announced it would cease its operations and close its page due to threats received after it published an article reporting the alleged involvement of Neiva Mayor, Rodrigo Lara, in an act of corruption. In reaction to the article published on November 19, Mayor Lara had allegedly stated on his Facebook account that he rejected it for containing falsehoods and that he would resort to the competent authorities. Afterward, Onda Opita website received a direct message requesting in an intimidating way the removal of the article, while an unidentified man reportedly shouted a death threat in front of its facilities.<sup>376</sup>

287. Red de Comunicadores Populares del Sur (RECPSUR) publicly denounced that the mayor of San Vicente del Caguán, Humberto Sánchez, used his Facebook account to signal against it. On November 26, RECPSUR published on its Facebook account that the community had seen a group of people dressed in black allegedly identified as members of an illegal armed group. According to RECPSUR's statement, Mayor Sánchez used his Facebook account to challenge the professional approach of RECPSUR's journalistic team and accuse

<sup>371</sup> FLIP. September 27, 2016. [Periodista de Semana fue agredido por miembro de comunicaciones del gobierno.](#)

<sup>372</sup> “Vídeo - este “alto” funcionario no permite entrada y agrede a periodista. Esto no puede pasar”. Twitter @lcvelez. September 26, 2016. *Semana*. September 26, 2016. [Habla el fotógrafo agredido en Cartagena](#); YouTube. September 27, 2016. [Escolta del Presidente Santos agredió a periodista en Cartagena](#); El Universal. September 26, 2016. [Fotógrafo atacado y excluido en evento previo a la firma de la paz](#); Pulzo. September 26, 2016. [Retiran a golpes a prensa nacional de la firma de paz en Cartagena.](#)

<sup>373</sup> Equipo Nizkor. March 1, 2016. [Caso Claudia Julieta Duque: Un precedente mundial por la búsqueda de justicia](#); Caracol Radio. January 13, 2016. [Reanudarán juicio a José Miguel Narváez por tortura a Claudia Julieta Duque](#); El Heraldo/EFE. February 23, 2016. [Eurodiputados piden a Colombia que proteja a periodista Claudia Julieta Duque](#); Pacifista. March 3, 2016. [Así ha operado la justicia en el caso de la periodista Claudia Julieta Duque](#); FLIP. March 1, 2016. [Colombia: la FIP y NUJ respaldan a la periodista Claudia Julieta Duque en un juicio histórico](#); *Front Line Defenders*. September 27, 2016. [Estatus: Vigilancia y Intimidación](#); World Organization Against Torture. March 1, 2016. [Colombia: Caso Claudia Duque: Un precedente mundial por la búsqueda de justicia.](#)

<sup>374</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>375</sup> FLIP. November 16, 2016. [La periodista Lucy Flórez fue amenazada a través de un mensaje de texto](#); Emisora Atlántico. November 16, 2016. [Periodistas rechazan amenazas en contra de la corresponsal de Noticias Uno Lucy Flórez](#); El Heraldo. November 18, 2016. [Plantón en contra de amenaza a la periodista Flórez](#); La Libertad. November 17, 2016. [Periodistas protestan contra amenazas a su colega Lucy Florez](#); El Tiempo. November 17, 2016. [Periodistas de Barranquilla hacen plantón por amenazas a una colega Protestan en Barranquilla por amenazas a periodista](#); Caracol Radio. November 17, 2016. [Protestan en Barranquilla por amenazas a periodista: LaMetro Noticias. 16 de noviembre de 2016. Plantón de periodistas para rechazar amenazas de muerte a periodista Lucy Flórez.](#)

<sup>376</sup> FLIP. November 23, 2016. [Periodistas de Onda Opita fueron amenazados en Neiva](#); Onda Opita. No date. [Ante las amenazas, las presiones y las intimidaciones, hemos cerrado indefinidamente este portal de noticias. ¡hemos sido censurados!](#); Los Boyanos. November 23, 2016. [Periodistas del portal Onda Opita fueron amenazados en Neiva](#); Onda Opita/Facebook. November 20, 2016. [Comunicado a la opinión pública.](#)

them of "creating media and psychological terrorism, and panic in social media networks in an irresponsible way".<sup>377</sup>

288. The Office of the Special Rapporteur is concerned about the assaults and attacks against journalists by public officials and private citizens. Fecolper reported that in the first quarter of the year, 70 incidents of violence and assault against journalists had been recorded, which would represent an upward trend in cases of violence against reporters compared to the same quarter in 2015.<sup>378</sup> Among the cases of assault reported are those against journalists Jhon Jairo Jacome and Juan Pablo Bayona from the daily newspaper *La Opinión*,<sup>379</sup> journalists Shelly Camacho and Andrés Felipe López,<sup>380</sup> and journalist Luz Marina Rodríguez and cameraman Marcos Soto from *Nortevisión*<sup>381</sup>; and journalist Rubén Salazar and cameraman Gerardo Solano of Noticias RCN.<sup>382</sup> The State informed the IACHR that the cases are being investigated by the Office of the Attorney General.<sup>383</sup> In addition, the Fundación para la Libertad de la Prensa (FLIP) informed the IACHR that in its monitoring work it had on record 197 assaults directed against journalists and other media workers, 51 of which had been committed by state agents, among them 21 cases that had been perpetrated by members of the Police and Army.<sup>384</sup>

## 2. Investigations into crimes against journalists and social communicators due to their exercise of the right to freedom of expression

289. On March 4th, the Council of State ruled against the nation for the murder of journalist Efraín Alberto Varela Noriega, which occurred in Arauca in 2002. The Council of State established the responsibility of the State in the death of the journalist, as it found that there was proven cooperation and acquiescence of state agents that allowed for the attempt on the journalist's life by members of paramilitary groups. According to the decision, on the day of the murder the army removed the checkpoint and surveillance from the area through which the men from the illegal armed group called Autodefensas Unidas de Colombia, Arauca Victors' Front [*Frente Vencedores de Arauca*] who murdered Efraín Varela were to pass.

<sup>377</sup> Red de Comunicadores Populares del Sur (RECPSUR). November 26, 2016. [Comunicado: Intimidación y estigmatización contra la libertad de prensa](#); HSB Noticias. November 29, 2016. [Alcalde de San Vicente del Caguán amedrenta a medio de comunicación](#); "#Attention #ParamilitariesInSanVicente Residents of the Villa Norte neighborhood of San Vicente del Caguán report that last night a group of persons dressed in black, hooded, and with an arm band that had a visible logo of the AUC were patrolling the streets of the sector. The community asks for the institutional presence that guarantees the life and tranquility of the inhabitants and the permanent accompaniment of National and International Human Rights Organizations for the purpose of avoiding acts of violence in the sector. Breaking news!" Facebook account of Red de Comunicadores Populares del Sur @recpsur. November 26, 2016.

<sup>378</sup> Fecolper. May 3, 2016. [En aumento la violencia contra la prensa en 2016](#); El País. May 3, 2016. [Se disparan agresiones contra periodistas en Colombia](#).

<sup>379</sup> La Opinión. July 14, 2016. [Así se vive la lucha contra el contrabando en la frontera](#); FLIP. July 13, 2016. [Periodistas de La Opinión fueron agredidos por contrabandistas](#); El Tiempo. July 14, 2016. [Periodistas estuvieron bajo fuego](#).

<sup>380</sup> La Lengua Caribe. July 2, 2016. [Exalcalde de San Pelayo y actual Secretario de salud de Córdoba agrede a Periodistas de La Lengua Caribe](#); La Lengua Caribe. July 2, 2016. [Secretario de salud departamental, protagonista de agresión a periodistas de La Lengua Caribe](#); Fundación para la Libertad de Prensa. July 5, 2016. [Agresión de Secretario de Salud de Córdoba afecta a la prensa y los derechos de las periodistas](#).

<sup>381</sup> La Lengua. October 27, 2016. [Por agredir a periodistas denuncian a Concejal de Montería](#); Montería Radio 38 Grados. October 27, 2016. [Denuncian a Concejal de Montería por arrebatarle cámara a periodista](#); La Voz del Pueblo. October 27, 2016. [Periodistas Denuncian A Concejal De Montería Por Hurto Calificado](#); Fundación para la Libertad de Prensa. October 28, 2016. [Concejal de Montería retiene material periodístico del equipo informativo de Nortevisión](#).

<sup>382</sup> RCN Radio. October 10, 2016. [Equipo de RCN TV fue atacado cuando realizaba entrevista en Fundación Protectora de Animales](#); FLIP. October 11, 2016. [La FLIP rechaza las agresiones contra el equipo de RCN en Turbaco](#); Pulzo. October 11, 2016. [Lamentable agresión a periodistas de RCN TV en Turbaco, Bolívar](#); El Herald. October 11, 2016. [Agreden a periodistas de RCN Televisión en Turbaco](#); Semana. No date. [La agresión a periodistas de RCN y la cruzada por salvar 300 animales en Turbaco](#); Caracol. October 11, 2016. [Comunidad de Turbaco agrede equipo periodístico de canal del televisión privado](#).

<sup>383</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,"](#) received February 28, 2017.

<sup>384</sup> FLIP. Aportes de la FLIP al Tercer seguimiento sobre el cumplimiento de las recomendaciones informe Verdad, Justicia y Reparación. Sent by FLIP to the IACHR on December 6, 2016.

Furthermore, at the time of the events, a criminal defamation and slander complaint [*injuria y calumnia*] had been filed by the commander of Battalion Number 18 against Efraín Varela. On one of his programs, Varela had reported on an alliance between the paramilitaries in the area and several members of the Army. In the view of the Council of State, this report was the cause of the animosity that led to the actions taken by the members of the Army implicated in his death. Although the high court found that neither the journalist nor his family had reported the threats that he received to the authorities, it found that this did not exempt the State from responsibility and it was completely understandable that the victim would not trust the State.<sup>385</sup>

290. On September 14, 2016, the Council of State ruled against the nation for state responsibility in the murder of journalist and humorist Jaime Hernando Garzón Forero<sup>386</sup>. In the aforementioned judgment, the Council of State acknowledged that Garzón's murder was an extrajudicial execution committed by a paramilitary group with the acquiescence of the Colombian State, affirming that "members of the regular forces of the State allied with illegal groups—paramilitaries—in order to allow and cooperate with the criminal activities of these groups. This occurred in the crime against the well-known journalist Jaime Garzón, the execution of whom—as shall be seen—was abetted by members of the National Army."<sup>387</sup> Additionally, the Council of State concluded that "the extrajudicial execution of journalist Jaime Hernando Garzón Forero, which occurred in this context of generalized and systematic human rights violations, is a crime against humanity."<sup>388</sup> In the aforementioned ruling, the National Army and the Police were given two months to publicly acknowledge responsibility and ask forgiveness of Garzón's family. However, as of the drafting of this report, the Office of the Special Rapporteur has no knowledge of any official act conducted by the National Government to ask forgiveness for the crime against humanity.

291. The State informed the IACHR that "in the case of Jaime Garzón, in 2015 it was possible to determine that the material perpetrators of the act were four deceased members of the defunct criminal gang 'La Terraza,' who were at the service of the Autodefensas Unidas de Colombia. Finally, the prosecutor in charge of the proceeded against 10 of the former officials of the DAS, who at the time took notice of the case and who were said to be implicated in diverting the investigations."<sup>389</sup> It also indicated that Army Colonel Jorge Eliécer Plazas Acevedo and former chief of the AUC Diego Fernando Murillo Jaramillo, alias "Don Berna," were investigated in relation to the proceeding.<sup>390</sup> On September 28 the Office of the Attorney General issued Resolution No. 048 of 2016, by virtue of which it declared that the assassination of journalist Jaime Garzón is a crime against humanity and, therefore, has no limitations period.<sup>391</sup> The Office of the Attorney General recognized that the homicide of Garzón occurred in a context in which human rights defenders were generally and systematically being persecuted, with the backing of the Colombian State.<sup>392</sup>

<sup>385</sup> Council of State. March 4, 2016. [Boletín del Consejo de Estado](#); Council of State. Chamber for Contentious-Administrative Matters. Third Section. Subsection B. Judge writing for the Council: Ramiro de Jesús Pazos Guerrero. Bogotá D. C., October 29, 2015. [Radicado 07001-23-31-000-2004-00162-01\(34507\)](#).

<sup>386</sup> Council of State. Chamber for Contentious-Administrative Matters. Third Section. Judge writing for the Council Hernán Andrade Rincón. Case 34,349. [File 25000232600020010182502](#).

<sup>387</sup> Council of State. Chamber for Contentious-Administrative Matters. Third Section. Judge writing for the Council Hernán Andrade Rincón. Case 34,349. [File 25000232600020010182502](#); El Tiempo. September 15, 2016. [Consejo de Estado condena a la Nación por homicidio de Jaime Garzón](#); Semana. September 14, 2016. [¿Por qué condenaron a la Nación por el homicidio de Jaime Garzón?](#); El País. September 14, 2016. [Consejo de Estado condenó a la Nación por el crimen de Jaime Garzón](#).

<sup>388</sup> Council of State. Chamber for Contentious-Administrative Matters. Third Section. Judge writing for the Council Hernán Andrade Rincón. Case 34,349. [File 25000232600020010182502](#); Pacifista. September 15, 2016. [Las cinco claves de la sentencia que condenó a la Nación por el asesinato de Jaime Garzón](#); W Radio. September 14, 2016. [Consejo de Estado condena a la Nación por homicidio de Jaime Garzón](#); El Espectador. September 14, 2016. [Condenan a la Nación por crimen de Jaime Garzón](#).

<sup>389</sup> Republic of Colombia, Note SAHD-16-109909 of December 2, 2016, received December 16, 2016. P. 68.

<sup>390</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia"](#), received February 28, 2017.

<sup>391</sup> FGN. September 28, 2016. Case 9987. [Resolution 048 of 2016](#); FGN. September 30, 2016. [Homicidio del humorista Jaime Garzón es de lesa humanidad: Fiscalía](#).

<sup>392</sup> CCAJAR. September 30, 2016. [La Fiscalía General de la Nación reconoce que crimen de Jaime Garzón es de lesa humanidad](#); FLIP. September 30, 2016. [Los asesinatos de Jaime Garzón, Mario Calderón y Elsa Alvarado ya son crímenes de lesa humanidad](#); El

292. As a result of the foregoing, on September 28 the Office of the Prosecutor General of the Nation issued Resolution 048-2016 whereby it declared that the murder of journalist Jaime Garzón is a crime against humanity, and therefore, imprescriptible.<sup>393</sup> The Office of the Prosecutor General recognized that Garzón's murder occurred in a context in which human rights defenders were being persecuted in a generalized and systematic fashion, under the auspices of the Colombian State.<sup>394</sup> The State informed the IACHR that "in the case of Jaime Garzón, in 2015 it was possible to determine that the material perpetrators of the act were four deceased members of the defunct criminal gang 'La Terraza,' who were at the service of the Autodefensas Unidas de Colombia. Finally, the prosecutor in charge of the proceeded against 10 of the former officials of the DAS, who at the time took notice of the case and who were said to be implicated in diverting the investigations."<sup>395</sup>

293. For its part, the FLIP has reported that the criminal investigations into crimes against journalists have yet implicate senior military officials, especially in cases involving the participation of members of illegal armed groups.<sup>396</sup> In its concluding observations on the seventh periodic report on Colombia, the UN Human Rights Committee expressed concern at the reports of acts of intimidation, threats, attacks, and murders perpetrated against journalists. It urged the State to redouble its efforts to guarantee timely and effective protection of journalists, as well as guarantee that crimes against journalists and social communicators are investigated quickly, exhaustively, and impartially, with those responsible brought to trial and punished.<sup>397</sup>

294. Another step toward administration of justice took place on March 30 with the capture in the United States of the former intelligence director of the defunct DAS, Enrique Alberto Ariza Rivas, who is allegedly responsible for the crime of the psychological torture of Claudia Julieta Duque. His deportation was granted. Ariza Rivas must appear before the Second Specialized Judge of Bogotá in continuation of the criminal proceeding brought against him.<sup>398</sup> Additionally, the Prosecutor subpoenaed former DAS officials as part of the investigation into the illegal surveillance of and acts of psychological torture against Duque. Emiro Rojas Granados (former DAS assistant director), William Alberto Merchan (formerly of the CTI, currently the director of Telemática), Carlos Sastoque (former detective with the so-called G-3 group) and Néstor Pachón Bermúdez (former DAS agent) were ordered to appear at a preliminary investigation hearing.<sup>399</sup> On

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Espectador. September 30, 2016. [El modus operandi contra Jaime Garzón y otras personas "incómodas"](#); Semana. September 29, 2016. [El caso de Jaime Garzón fue declarado crimen de lesa humanidad](#); W Radio. September 29, 2016. [Declaran crimen de Jaime Garzón como delito de lesa humanidad](#); El País. September 29, 2016. [Fiscalía declara crimen de Jaime Garzón como delito de lesa humanidad](#); Vanguardia. September 29, 2016. [Fiscalía declara crimen de Jaime Garzón como delito de lesa humanidad](#); RCN. September 29, 2016. [Fiscalía declara delito de lesa humanidad el crimen de Jaime Garzón](#).

<sup>393</sup> Office of the Attorney General. September 28, 2016. Case 9987. Resolution 048 of 2016. Available at: <https://www.colectivodeabogados.org/?La-Fiscalia-General-de-la-Nacion-reconoce-que-crimen-de-Jaime-Garzon-es-de-lesa>; Office of the Attorney General. September 30, 2016. [Homicidio del humorista Jaime Garzón es de lesa humanidad: Fiscalía](#).

<sup>394</sup> Colectivo de Abogados José Alvear Restrepo. September 30, 2016. [La Fiscalía General de la Nación reconoce que crimen de Jaime Garzón es de lesa humanidad](#); Fundación para la Libertad de Prensa (FLIP). September 30, 2016. [Los asesinatos de Jaime Garzón, Mario Calderón y Elsa Alvarado ya son crímenes de lesa humanidad](#); El Espectador. September 30, 2016. [El modus operandi contra Jaime Garzón y otras personas "incómodas"](#); Semana. September 29, 2016. [El caso de Jaime Garzón fue declarado crimen de lesa humanidad](#); W Radio. September 29, 2016. [Declaran crimen de Jaime Garzón como delito de lesa humanidad](#); El País. September 29, 2016. [Fiscalía declara crimen de Jaime Garzón como delito de lesa humanidad](#); Vanguardia. September 29, 2016. [Fiscalía declara crimen de Jaime Garzón como delito de lesa humanidad](#); RCN. September 29, 2016. [Fiscalía declara delito de lesa humanidad el crimen de Jaime Garzón](#).

<sup>395</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received December 16, 2016, p. 68.

<sup>396</sup> FLIP. FLIP's contribution to the third follow-up on compliance with the recommendations of the Truth, Justice, and Reparation report. Sent by the FLIP to the IACHR on December 6, 2016.

<sup>397</sup> UN. Human Rights Committee. [Concluding observations on the third periodic report of Colombia](#). CCPR/C/COL/CO/7. Approved during the session of November 11, 2016.

<sup>398</sup> El Espectador. April 11, 2016. [Capturan a exjefe de inteligencia del DAS, procesado por tortura psicológica a periodista: Equipo Nizkor](#). April 11, 2016. [Estados Unidos ordena deportación de Jefe de Inteligencia del DAS acusado por tortura en el caso de Claudia Julieta Duque](#).

<sup>399</sup> FLIP. May 11, 2016. [Cuatro exmiembros del Das fueron vinculados al caso de Claudia Julieta Duque](#); Equipo Nizkor. May 10, 2016. [Fiscalía llama a indagatoria a cuatro exfuncionarios del DAS por tortura psicológica en el caso de la periodista Claudia Julieta](#)



November 23, in compliance with an order of preventative detention, Rojas Granados and Pachón Bermúdez were taken into custody.<sup>400</sup> Despite this progress, the FLIP expressed concern at the delays that have plagued the trials of five DAS officials accused of psychologically torturing Duque. The FLIP recalled that in 2016, the hearing to open the trial of Ronal Rivera and Rodolfo Medina Alemán was repeatedly delayed, while the trials of José Miguel Narváez, Giancarlo Auqué, and Enrique Ariza Rivas have been suspended several times.<sup>401</sup>

295. The Office of the special Rapporteur notes the judgment issued on July 18 by the Sixth Specialized Court, convicting former DAS director José Miguel Narváez and sentencing him to seven years and eight months in prison for the crimes of aggravated criminal conspiracy, illegal intercept of communications, and illegal use of transmission and receiver equipment, committed against human rights defenders, politicians, and journalists who were critical of the government, including the director of weekly newspaper *La Voz*, Carlos Arturo Lozano, and journalists Hollman Morris and Juan Pablo Morris, with television program *Contravía*. The Sixth Specialized Court forwarded its judgment for use in the investigation of Senator Álvaro Uribe Vélez in connection with the persecution of human rights defenders, journalists, and members of the opposition during his administration.<sup>402</sup> On November 25, the Criminal Chamber of the Superior Court of Bogotá upheld the lower court's judgment and increased the prison term by nine months.<sup>403</sup>

296. In August, the Prosecutor Delegate before the Supreme Court of Justice filed charges against 12 DAS officials allegedly connected to the illegal surveillance of journalists, politicians, and human rights defenders through the so-called G-3 group. In the same filing, the Prosecutor closed its investigation of seven former DAS officials.<sup>404</sup> Although the IACHR appreciates the progress made in investigating the alleged illegal surveillance conducted by DAS officials, it urges the State to accept the recommendation of the United Nations Human Rights Committee to speed up its investigations of these incidents and ensure that everyone responsible is held accountable for their actions, as well as take effective measures to prevent illegal surveillance of journalists and social communicators from being repeated.<sup>405</sup>

297. On October 28, the Supreme Court of Justice upheld the verdict of guilt for the crime of criminal conspiracy in its ruling on a cassation appeal filed by Martha Inés Leal Ramos, Jackeline Sandoval Salazar, Hugo Daney Ortiz García, Jorge Armando Rubiano, Enrique Alberto Ariza Rivas, and José Alexander Velásquez Sánchez (former DAS officials) against the 2014 judgment of the Superior Court of Bogotá convicting them of the crimes of aggravated criminal conspiracy, illegal intercepted communications, illicit use of transmission and receiver equipment, and abuse of authority in the form of arbitrary and unjust acts

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[Duque](#); *Blu Radio*. May 10, 2016. [A indagatoria 4 exfuncionarios del DAS por presunta tortura contra periodista](#); *El Tiempo*. May 10, 2016. [Fiscalía vinculó a cuatro exagentes del DAS por tortura a periodista](#).

<sup>400</sup> *Caracol Radio*. November 29, 2016. [Otro ex subdirector del DAS capturado](#); *El Tiempo*. November 28, 2016. [Ordenan detención a exsubdirector y a un detective del DAS](#); *Blu radio*. November 28, 2016. [Capturan a exdirector del DAS por tortura psíquica contra Claudia Julieta Duque](#); *El Colombiano*. November 28, 2016. [Dos nuevos detenidos por tortura a la periodista Claudia Julieta Duque](#); *FGN*. November 29, 2016. [Capturados dos exfuncionarios del DAS por tortura psicológica a periodista](#).

<sup>401</sup> FLIP. August 18, 2016. [Múltiples dilaciones obstruyen juicios por tortura psicológica en caso Claudia Julieta Duque](#); *Pacifista*. March 3, 2016. [Así ha operado la justicia en el caso de la periodista Claudia Julieta Duque](#); *Cimac Noticias*. May 30, 2016. [Difícil acceso a la justicia para periodista Claudia Julieta Duque](#).

<sup>402</sup> *El Espectador*. July 26, 2016. [Condenan a José Miguel Narváez por interceptaciones ilegales en el DAS](#); *Caracol*. July 26, 2016. [Condenan a José Miguel Narváez por las chuzadas del DAS](#); *El Nuevo Siglo*. July 26, 2016. [Chuzadas: condenan a Narváez y piden investigar a Uribe](#); FLIP. July 31, 2016. [Después de la condena contra Narváez persiste impunidad en el caso DAS](#); *CCAJAR*. July 26, 2016. [Condenan a José Miguel Narváez por inteligencia ilegal y ordenan investigar al Expresidente Uribe](#).

<sup>403</sup> *El País*. November 25, 2016. [Ratifican la condena al exsubdirector del DAS Miguel Narvaéz por 'chuzadas' ilegales](#); *El Colombiano*. November 25, 2016. [En firme condena al exsubdirector del DAS José Miguel Narváez](#); *Vanguardia*. November 25, 2016. [Ratifican condena a exsubdirector del DAS. Miguel Narvaéz por 'chuzadas'](#).

<sup>404</sup> *El Universal*. August 31, 2016. [Llaman a juicio a doce exfuncionarios del DAS por "chuzadas"](#); *El Tiempo*. August 31, 2016. [Un nuevo capítulo por chuzadas ilegales del DAS en caso G3](#); *Red Más Noticias*. August 31, 2016. [A Juicio Exfuncionarios Del Das Por 'Chuzadas'](#); *El Nuevo Siglo*. August 31, 2016. [A juicio 12 exfuncionarios por chuzadas del DAS](#); *Semana*. November 25, 2016. [La apelación que le salió mal al ex subdirector del DAS](#); *CM&*. August 31, 2016. [A juicio 12 exfuncionarios del DAS por el escándalo de las 'chuzadas'](#).

<sup>405</sup> UN. Human Rights Committee. [Concluding Observations on the seventh periodic report of Colombia](#). CCPR/C/COL/CO/7. Approved during the session of November 11, 2016.

committed against Supreme Court judges, journalists, human rights defenders, and members of Congress who oppose the administration of Álvaro Uribe Vélez. In its ruling on the cassation appeal, the Supreme Court of Justice overturned the convictions for the crimes of abuse of authority in the form of arbitrary and unjust acts and illegal intercept of communications, finding that the requirement that a criminal complaint (*querrela*) be filed by the victims was not met in a timely fashion, preventing the Prosecutor from pursuing the criminal proceeding *ex officio*. As the criminal proceeding went forward without meeting the *querrela* requirement, the right to due process of the appellants was violated. Therefore, the Court amended the sentence, reducing the prison sentence of the former DAS officials from 105 months to 93 months. It also changed the suspension of their exercise of rights and public functions by eliminating the fine equivalent to two minimum monthly salaries.<sup>406</sup>

298. The IACHR received information indicating that the investigation into whether senior State officials participated in the surveillance—including former president Alvaro Uribe Vélez—remains pending. According to the information provided by civil society, a process has been ongoing in the Accusations Committee of the Chamber of Representatives (the body in charge of the investigation due to the immunities the former president enjoys as a senator) since 2010. Although the collection of a variety of evidence was ordered in 2012, it has so far not been carried out. Along these same lines, civil society indicates that the disciplinary investigations led by the Attorney General's Office have not had the expected results. So far, only 19 of the 40 public officials involved in the DAS surveillance have been dismissed or disqualified.<sup>407</sup>

299. The IACHR welcomes the creation of the Special Work Group for the Investigation of High-tech Threats against Journalists, Human Rights Defenders, and Others and hopes it receives decisive political backing from the State in the form of guaranteed provision of the staff and financial resources necessary to effectively and efficiently carry out its work and comply with its mandate to achieve the results expected. The IACHR sees this initiative as extremely important given the prevalence of threats that the target populations face year after year in Colombia.

300. The IACHR took note that the Attorney General of the Nation adopted Directive 0007 of 2016 establishing “guidelines for interviewing journalists or calling on them to testify in the context of an investigation and/or a criminal process.” Its purpose is to regulate and provide guidelines for prosecutors wishing to interview journalists and call on them to voluntarily provide information for investigations being conducted by prosecutors. The IACHR and its Office of the Special Rapporteur recognize that this initiative can be considered a good practice for States to comply with their obligations to protect journalism activity and meet the requirements of the right to freedom of expression.<sup>408</sup>

301. The IACHR reiterates its concern at prescription of criminal investigation and punishment of murders of journalists due to the passage of time, which took place for two cases in 2016.<sup>409</sup> According to the information available to the IACHR, almost all the cases of threats against and attacks on journalists remain in impunity. Civil society organizations have urged the State to take the measures necessary to investigate and

<sup>406</sup> CM&. October 28, 2016. [Rebajan condena a la ex subdirectora del extinto DAS, Martha Leal](#); El Universal. October 28, 2016. [Corte rebaja pena a Martha Leal por 'chuzadas del Das'](#); El Espectador. October 28, 2016. [Corte rebajó condena contra exdirectora de operaciones del DAS por "chuzadas"](#); CSJ. October 28, 2016. [Confirmada condena por caso DAS](#).

<sup>407</sup> CEEUU, Alternative report to the seventh report presented by the State of Colombia to the Human Rights Committee of the United Nations, sent to the IACHR on December 5, 2016.

<sup>408</sup> Attorney General of the Nation. May 3, 2016. [Citar a periodistas para pedirles que revelen sus fuentes está prohibido: Fiscalía General de la Nación](#); Attorney General of the Nation. Directive No. 0007 “Establishing guidelines for interviewing journalists or calling on them to testify in the context of an investigation and/or a criminal process.” March 27, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

<sup>409</sup> FLIP, January 5, 2016. [En la impunidad prescribe el caso del periodista Alfredo Antonio Matiz](#); FLIP, October 18, 2016. [Prescribe en la impunidad el asesinato del periodista Norvey Díaz Cardona](#).

punish those responsible for crimes against journalists.<sup>410</sup> Also, the judicial system's lack of resources has prevented it from conducting exhaustive and rigorous investigations into attacks on journalists.<sup>411</sup>

### 3. Protection Mechanism

302. The IACHR appreciates the efforts of the Colombian State to reduce violence against journalists by implementing a protection program, managed by the UNP.<sup>412</sup> According to the information available, the resources dedicated to protecting journalists and the beneficiaries of protection measures have increased over the last five years.<sup>413</sup> According to the information provided by the State, as of April 30, 2016, protection arrangements were granted to 129 journalists by the UNP, with Bogotá, Antioquia, Valle del Cauca, and Arauca being the departments with the greatest number of protected journalists.<sup>414</sup> According to the information available, between May and August, the UNP conducted training sessions and workshops to improve the skills and knowledge of public officials with regard to human rights, gender focus, and assessing risk to the indigenous population, among other things.<sup>415</sup> The IACHR also recognizes the UNP's efforts to incorporate differentiated focuses into the protection measures it provides to journalists. For example, the FLIP reported to the IACHR that the UNP dealt with the displacement of a journalist through the CERREM and decided to take action to supplement the security measures by providing psychosocial care to the journalist and her son.<sup>416</sup> The IACHR also received information on a risk assessment study conducted by the UNP for an indigenous journalist who was threatened by the FARC guerrillas. The assessment concluded that the protection must include security provided by bodyguards from the same indigenous people.<sup>417</sup>

303. The State informed the IACHR that in March 2016, it began preparing a "Protocol for Addressing Cases Involving Journalists and/or Social Communicators," which will establish the factors that must be taken into account at each stage of the process for assessing risk to journalists and social communicators. According to the information provided, the protocol has been drafted with the participation of civil society organizations, specifically the FLIP and Fecolper. Once it is validated and approved by the UNP Directorate and civil society organizations, the protocol will enter its final phase.<sup>418</sup>

304. The Commission has learned that by virtue of Decree 567 of April 8, 2016, the National Government eliminated its ground transportation subsidy aimed at benefiting protected individuals who do not have an automobile.<sup>419</sup> To replace it, the UNP implemented a help button: an electronic device that protected people can use to send an alert to the UNP when facing a risk to which the UNP would respond by monitoring their location and offering security. According to the information available, the UNP signed a direct contract with a private telecommunications company to implement the infrastructure needed for the help button to operate. Civil society organizations have reported a lack of clarity as to the scope of the protection provided by the UNP to protected journalists through the help button. They are concerned that the device may be used to monitor the location of protected people permanently and for other types of

<sup>410</sup> Inter-American Press Association (IAPA) April 11, 2016. [Resoluciones de la Reunión de Medio Año](#); *Human Rights Watch*. World Report 2016. [Colombia](#).

<sup>411</sup> FLIP. FLIP's contribution to the third follow-up on compliance with the recommendations of the Truth, Justice, and Reparation report. Sent by the FLIP to the IACHR on December 6, 2016.

<sup>412</sup> UNP. [2015 Annual Report](#).

<sup>413</sup> Fecolper, [Fecolper Report 2015. Annual report on violations of freedom of the press in Colombia](#). February 7, 2016, pg. 17.

<sup>414</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016, pg. 66.

<sup>415</sup> UNP. [Detailed report on the status of internal oversight](#). September 5, 2016.

<sup>416</sup> FLIP's contribution to the third follow-up on compliance with the recommendations of the Truth, Justice, and Reparation report. Sent by the FLIP to the IACHR on December 6, 2016.

<sup>417</sup> FLIP. FLIP's contribution to the third follow-up on compliance with the recommendations of the Truth, Justice, and Reparation report. Sent by the FLIP to the IACHR on December 6, 2016.

<sup>418</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016, pg. 66 and 67.

<sup>419</sup> Presidency of the Republic. Ministry for Internal Affairs. [Decree 567](#) of April 8, 2016.

surveillance, such as audio. In addition to not trusting the device, the protected journalists have expressed doubts as to the UNP's capacity to respond when alerts are received, especially in remote areas.<sup>420</sup>

305. Added to this, the FLIP reported a number of irregularities in the protection provided to journalist Javier Osuna, which could compromise his safety. According to the information available, the USB drive and cellular phone assigned to Osuna by the UNP for his protection were stolen. In April, Osuna asked the UNP to change one of his bodyguards, as certain questions and actions had led to mistrust. However, there were a number of irregularities in the procedure to change the bodyguard: rather than it being done quietly, the bodyguard had access to information on the replacement procedure.<sup>421</sup>

306. Civil society organizations insist that the implementation of arrangements for the protection of journalists continue to be plagued by irregularities. These include delays in implementing the measures and prevention strategies, reflected in the high numbers of attacks and threats against social communicators.<sup>422</sup>

#### 4. Program to provide collective reparations to journalists

307. On March 30, Fecolper publicly announced a project called "Strengthening the process to provide collective reparations to journalists through training, political involvement, and organizing of the country's journalists," which would provide discussion spaces for journalists on the forthcoming Plan to Provide Collective Reparations to Journalists.<sup>423</sup> The strengthening plan seeks to raise awareness as to the progress of and challenges faced by the Collective Reparations to Journalists Process and identify any improvements that must be made to it.<sup>424</sup>

308. On May 3, representatives of journalism associations such as the Antioquia Journalists Group and the Colombian Federation of Journalists publicly stated that the Victim Unit's Plan to Provide Collective reparations to Journalists is currently in the phase of assessing the damages suffered by journalists during the armed conflict.<sup>425</sup>

309. According to the information found in the VIII Report of the National Government to the Primary Committees of the Congress of the Republic 2016, the victims unit has included journalists in the initiative "*Participaz, la ruta de los derechos.*"<sup>426</sup> According to the information available, the Participaz initiative is a pedagogical and educational strategy that seeks to raise awareness as to the rights of the victims of the armed conflict, which is necessary to build peace. Participaz seeks to explain the rights and mechanism granted by the Victims and Last Restitution Act, and familiarize them with the National Comprehensive Victim Response and Reparation System. According to information submitted to the IACHR by the State, the plan to provide collective reparations to journalists is currently being drafted.<sup>427</sup>

<sup>420</sup> FLIP. August 3, 2016. [Flip pide que se aclare el alcance del botón de apoyo de la UNP](#); Equipo Nizkor. August 1, 2016. [Botones de pánico: de las 'chuzadas' del DAS a las escuchas ilegales de la UNP](#); IAPA. October 10, 2016. [Colombia - 72 General Assembly](#); Programa Somos Defensores. Report January - June 2016. [¿Este es el fin?](#); OACNUDH. August 3, 2016. [FLIP pide suspender implementación de los botones de pánico de la UNP a periodistas.](#)

<sup>421</sup> FLIP. May 11, 2016. [Preocupación de la FLIP por hechos en el esquema de protección del periodista Javier Osuna](#); El Espectador. May 11, 2016. [Preocupación por seguridad de periodista que investigó hornos crematorios de paramilitares](#); CM&. May 11, 2016. [Flip pide garantías para periodista que investigó hornos crematorios de paramilitares.](#)

<sup>422</sup> FLIP. [Annual Report 2015. Paz en los titulares, miedo en la redacción.](#) February 8, 2016. P. 28; Fecolper. [Fecolper Report 2015. Annual report on violations of freedom of the press in Colombia.](#) February 7, 2016, pg. 19.

<sup>423</sup> Fecolper. March 30, 2016. [Presentan proyecto para fortalecer el Proceso de Reparación Colectiva a Periodistas que se adelanta en Colombia.](#)

<sup>424</sup> Victims Unit. Undated. [Journalists.](#)

<sup>425</sup> Victims Unit. May 4, 2016. [Avanza plan de reparación colectiva a periodistas para fortalecer el gremio.](#)

<sup>426</sup> Victims Unit. [Comprehensive Reparations: A commitment to build a stable and durable peace. VIII Report of the National Government to the Primary Committees of the Congress of the Republic.](#) April 2016. Pgs. 57 - 64; Victims Unit. [Participaz.](#)

<sup>427</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016, pg. 22.

310. On October 13, Fecolper and the Congress of the Republic held a public hearing in Bogotá on the guarantees for the exercise of journalism and building peace in order to raise awareness regarding the armed conflicts' impact on journalists. During the public hearing, Senator Iván Cepeda announced he would submit a bill granting labor guarantees to journalists.<sup>428</sup>

## 5. Conclusion

311. Based on the information described herein, the IACHR reiterates its recommendation that the Colombian State continue to conduct diligent, impartial, and effective investigations into the murders, attacks, threats, and acts of intimidation committed against journalists and media workers and prosecute, in impartial and independent courts and pursuant to the standards established by international law, the persons responsible for the crimes committed in retaliation for the exercise of the right to freedom of expression, and make adequate reparation for their victims and family members.

312. The IACHR recommends that the State continue to adopt adequate preventive mechanisms in order to avert violence against media workers, including the public condemnation of all acts of aggression, the training of public officials, particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines on respect for the right to freedom of expression, and continue to collect detailed and disaggregated crime statistics on violence against journalists and the criminal processing of these crimes.

313. The IACHR recommends that the State continue to adopt effective protective measures to guarantee the safety of people who are particularly at risk when they exercise their right to freedom of expression. The State must continue to strengthen the “program for prevention and the protection of the rights to life, liberty, integrity and safety of persons, groups and communities,” and, toward doing so, guarantee its financial sustainability and speed up as much as technically possible the procedures for assessing risk and guaranteeing that the measures of protection and prevention adopted to benefit journalists and social communicators take the specific needs of this group of people into account. The IACHR recalls that the mechanism of protection must work in coordination with the authorities in charge of conducting the criminal investigations in order to prevent threats from continuing.

314. Finally, the IACHR urges Colombia to continue moving forward in the implementation of the program to provide collective reparations to journalists and media workers and in the adoption of public policy for journalists.

## 6. Discrimination against Lesbians, Gays, Bisexuals, and Trans, and Intersex persons

315. In its Truth, Justice, and Reparation report, the Commission's recommendations for the State included the following:

- Design and adopt the measures necessary to prevent acts of violence and discrimination against lesbian, gay, bisexual, trans, and intersex persons, to protect them from these abuses, and to act with due diligence when responding to these acts, whether committed by state agents, third persons, or armed groups, throughout the national territory.

316. In the context of negotiations to sign the Peace Accord in Colombia, important progress has been made toward recognizing the rights of lesbians, gays, bisexuals, and trans persons (hereinafter, LGBT persons). Even so, alarming public demonstrations have taken place to reject and roll back recognition of

<sup>428</sup> Colombian Association of University Communication Schools and Programs. October 12, 2016. [Public hearing: Guarantees for the exercise of journalism and building peace](#); consulting document on human rights and displacement. Undated. [Los desafíos de la reparación a periodistas](#); Senate of the Republic of Colombia. October 14, 2016. [Proyecto de ley buscará garantías laborales para los periodistas](#).



these rights. At the same time, according to information from civil society organizations, the high rates of violence against and attacks on LGBT persons continue. A number of deaths have been reported in which the alleged motive was sexual orientation and gender identity. Meanwhile, environments that are hostile and violent toward human rights defenders defending the rights of LGBT persons are increasingly common. Regarding the inclusion of a gender focus in the Accord, it was reported that it would seek to create the conditions for people with diverse gender identities to have equal access to the benefits of living in a country without an armed conflict.<sup>429</sup>

317. It should also be noted that in July 2016, following the 2015 decision from the Constitutional Court on equal adoption, the Legislative Branch put forward an initiative seeking to amend Article 44 of the Constitution via referendum to limit adoption to heterosexual couples.<sup>430</sup> The initiative was backed by 2.3 million signatures.<sup>431</sup> According to reports, in December 2016, the Senate of the Republic approved the referendum with 55 votes in favor and 25 against. Two votes remain pending in the Chamber of Representatives, plus review by the Constitutional Court.<sup>432</sup>

318. Another issue of concern in 2016 was the beginning of implementation of a judgment of the Constitutional Court ordering the Ministry of Education to revise school manuals to implement strategies for raising awareness on issues of sexual orientation and gender identity.<sup>433</sup> According to information received by civil society organizations, these implementation efforts gave rise to a wave of confrontations as a result of alleged disinformation campaigns<sup>434</sup> saying that this initiative of the government and the organizations defending the rights of LGBT persons was pursuing an agenda that would harm schoolchildren.<sup>435</sup> Regarding this, the Commission was informed that in August, mass demonstrations took place against the process to revise the manuals, objecting to the alleged promotion of “gender ideology.”<sup>436</sup> During the demonstrations, defenders of the human rights of LGBT persons were attacked.<sup>437</sup> In response to this situation, President Juan Manuel Santos said that the State is not promoting an alleged “gender ideology” in schools, nor would it be adopting the manual on sexual diversity proposed by the UN.<sup>438</sup> Furthermore, in the context of these campaigns, the media reported alarming information on threats against civil society organizations for the work they do defending the rights of LGBT persons.<sup>439</sup>

319. The State informed the Commission that in order to carry out the order of the Constitutional Court, the Ministry of National Education signed Association Agreement No. 753 of 2016 with UNICEF, the Comitato Internazionale per lo Sviluppo dei Popoli (CISP), UNFPA, and Proyecto Colombia Diversa.

<sup>429</sup> Caribe Afirmativo, [Mesa de diálogo entre gobierno y las FARC EP adopta enfoque de género](#), July 25, 2016; El Tiempo, [“Mesa de diálogos de La Habana anunciará enfoque de género en acuerdos](#), July 21, 2016; Instituto de Estudios sobre Conflictos y Acción Humanitaria, [Enfoque de género en el Acuerdo de paz en Colombia: un importante paso](#), July 26, 2016.

<sup>430</sup> El Espectador, [Referendo para prohibir la adopción gay llega al Congreso](#), July 20, 2016.

<sup>431</sup> El Espectador, [Referendo para prohibir la adopción gay llega al Congreso](#), July 20, 2016; RCN Radio, [Llega al Congreso proyecto de referendo para prohibir la adopción gay](#), July 20, 2016; La Nación, [Presentan proyecto de referendo para prohibir la adopción gay](#), July 21, 2016; Semana, [Senado aprueba el referendo de Viviane Morales](#), December 13, 2016.

<sup>432</sup> RCN Radio, [Llega al Congreso proyecto de referendo para prohibir la adopción gay](#), July 20, 2016.

<sup>433</sup> Colombia Diversa, [15 preguntas y respuestas que aclaran la polémica suscitada por los ajustes de Manuales de Convivencia en los colegios en Colombia](#)” August 9, 2016.

<sup>434</sup> El Espectador, [¿Qué hay detrás de falsas cartillas sobre educación sexual que achacan al Mineducación?](#), August 8, 2016; Colombia Diversa, [15 preguntas y respuestas que aclaran la polémica suscitada por los ajustes de Manuales de Convivencia en los colegios en Colombia](#). August 9, 2016.

<sup>435</sup> El Espectador, [Los temores detrás de la marcha por la familia](#), August 10, 2016.

<sup>436</sup> Sentido G, [La lucha por los derechos de los estudiantes LGBT en Colombia](#), August 15, 2016; El Tiempo, [Cartilla sobre discriminación sexual en colegios dividió al país](#), August 14, 2016.

<sup>437</sup> La Nación, [Agitador gay estuvo a punto de ser linchado en platón antiparody](#), August 10, 2016.

<sup>438</sup> El País, [Gobierno colombiano da marcha atrás en manual escolar sobre diversidad sexual](#), August 11, 2016; El Tiempo, [Santos dice que Gobierno no promueve 'la llamada ideología de género](#), August 11, 2016.

<sup>439</sup> La Nación, [Agitador gay estuvo a punto de ser linchado en platón antiparody](#), August 10, 2016.

Nonetheless, it noted that in keeping with the laws and regulations in force, the Secretariats of Education and the local committees known as Territorial Committees for Coexistence (Comités Territoriales de Convivencia) are directly responsible for orienting and accompanying the educational establishments in the annual process of review and adjustment of the Manuals for Coexistence (Manuales de Convivencia).<sup>440</sup> In this regard, the IACHR was informed that in the context of this Agreement 1,798 manuals for coexistence from all over the country were reviewed by the Ministry of Education and 189 workshops were held to provide technical assistance to 73 Secretariats of Education certified in the process of updating the manuals.<sup>441</sup>

320. Also, civil society organizations have reported a number of murders of and attacks on LGBT persons in Colombia. They have indicated that assaults by the police are ever more frequent in cities like Cartagena<sup>442</sup> and Barranquilla.<sup>443</sup> In March, it was reported that a trans woman known as Camelia Romero was stabbed in the throat by a man who was harassing her over her gender identity.<sup>444</sup> In May, it was reported that a well-known gay leader in Córdoba, Tetón Bolívar, was murdered, and his body was found with signs of violence from a machete.<sup>445</sup> In June, a homicide was reported of a trans woman named Paloma who participated in training, leadership, and mobilization of LGBTI persons who were victims of the armed conflict in La Guajira. Her body was found with signs of strangulation and several neck injuries.<sup>446</sup> In July, the homicide of Jessica García Molina was reported. A lesbian woman living on a sidewalk in the municipality of Cereté, Córdoba, Molina had reported being threatened and receiving calls from her neighbors, and protective measures were in place for her.<sup>447</sup> In August, the murder of a trans woman in the city of Barranquilla was reported, presumably for motives having to do with her gender expression.<sup>448</sup> That same month, the murder of a trans woman named Oriana Nicoll Martínez was reported in La Guajira. A trans woman and LGBT rights activist, she had been displaced from Medellín when she fled members of a paramilitary group in Sincelejo, Sucre.<sup>449</sup>

321. In addition to these murders, and despite the signing of the peace accord, reports persist of the circulation of pamphlets by armed groups in areas such as the Montes de María region, where, according to reports received by the IACHR, in June, a pamphlet circulated signed by the ELN guerrilla group warning that if the population did not leave the municipality within 72 hours, there would be “pain, blood, and mourning.”<sup>450</sup> A similar situation was reported in Magangué, Bolívar where on May 23, 2016, a pamphlet

<sup>440</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>441</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>442</sup> El Heraldo, [En la Costa han sido asesinadas 140 personas LGBT en ocho años](#), May 18, 2016; Caribe Afirmativo, [En Cartagena persisten las agresiones policiales a personas LGBTI](#) June 21, 2016; Caribe Afirmativo, [Dos policías agreden a una mujer trans en Cartagena](#), May 5, 2016; Caribe Afirmativo, [Por darse un beso, Policía de Cartagena agrede a una pareja del mismo sexo](#), June 3, 2016.

<sup>443</sup> Caribe Afirmativo, [En Barranquilla mujeres trans denuncian agresión por parte de la Policía](#), March 4, 2016; El Espectador, [Mujer trans denuncia que fue agredida en un CAI de la Policía en Cartagena](#), May 5, 2016.

<sup>444</sup> Caribe Afirmativo, [Hieren con arma blanca a una mujer trans en Coveñas, Sucre](#), March 7, 2016.

<sup>445</sup> Caribe Afirmativo, [Asesinan a dos hombres gay en Bolívar](#), May 15, 2016.

<sup>446</sup> Caribe afirmativo, [Caribe Afirmativo rechaza homicidio de una mujer trans en Riohacha](#), June 10, 2016.

<sup>447</sup> Caribe Afirmativo, [Asesinan a una mujer lesbiana en Córdoba](#), July 27, 2016.

<sup>448</sup> El Espectador, [En un hecho de intolerancia, hombres asesinan a mujer trans en Barranquilla](#), August 8, 2016; Caribe Afirmativo, [Asesinan a una mujer trans en Barranquilla](#), August 7, 2016.

<sup>449</sup> Caribe Afirmativo, [Asesinan en Riohacha a una lideresa trans víctima del conflicto](#), August 18, 2016; El Espectador, [Mujer trans, víctima del conflicto, es asesinada en Riohacha](#), August 18, 2016; Al Día, [El dramático final de Oriana, la mujer trans brutalmente asesinada en un hotel](#), August 19, 2016.

<sup>450</sup> Caribe Afirmativo, [Amenazan a personas LGBTI de Ovejas, Sucre](#), June 24, 2016.

circulated threatening LGBT persons in the municipality, including the director of the Magangué más Diversa collective.<sup>451</sup>

322. At the same time, the Commission has received information on measures adopted by the State to prevent acts of violence and discrimination against LGBTI persons. The IACHR was informed that on April 7, 2016, the Constitutional Court of Colombia approved same-sex marriage. In judgment SU-214/16, the Court revealed its decision that “the principles of human dignity, individual liberty, and equality mean that all human beings may unite in civil matrimony in accordance with their sexual orientations.”<sup>452</sup> In addition, the National Prison Institute (INPEC: Instituto Nacional Penitenciario) adopted Resolution No. 006349 of December 19, 2016, issuing the General Regulation on Establishments for Confinement at the National level (ERON: Establecimientos de Reclusión del Orden Nacional), under the INPEC.<sup>453</sup> This regulation is a first in the region on contemplating direct measures of protection for LGBTI persons deprived of liberty. Among those protections, special mention should be made of: the prohibition on discrimination on grounds related to sexual orientation and/or gender identity; confidentiality and the voluntary nature of providing personal information related to sexual orientation and gender identity and expression; placement in prisons and cells, taking into account the personality of the person deprived of liberty, the recommendations of the person responsible for the area of social work or the psychologist at the prison; the prohibition on using sexual orientation and/or gender identity as criteria for classification within the prison; the guarantee of intimate visits for same-sex couples; the performance of searches by a public servant of the same gender with which the person deprived of liberty identifies, and in the case of a trans person, the individual will be consulted as to whether he or she prefers that a male or female public servant conduct the search; the possibility of continuing hormone treatments and/or bodily transformations; and coordinating with LGBTI persons for creating special spaces for their protection within prisons.<sup>454</sup> In addition, it should be noted that Colombia is a member of the Core Group on the Rights of LGBTI Persons of the OAS, which was created in the context of the 46th General Assembly of the OAS on June 15, 2016.<sup>455</sup>

323. The Commission welcomes the State’s initiative to form part of the UN Core Group, comprised of Argentina, Brazil, Chile, Mexico, Uruguay, and Costa Rica. At the Human Right Council’s 32nd session, this group proposed a resolution (that was approved) to appoint an independent expert on protection from violence and discrimination based on sexual orientation and gender identity to a 3-year term.<sup>456</sup>

324. The State also informed the Commission on the adoption of a crosscutting perspective and differentiated focus for the UN Development Assistance Framework for Colombia 2015-2019 (UNDAF), under which “women and sexually diverse populations” are seen as priority populations as far as protection and services.<sup>457</sup>

325. The State also informed the IACHR that with regard to the reparation processes, conceptual guidelines and methodologies were developed for responding to, assisting with, and providing comprehensive reparations to victims with non-hegemonic sexual orientations and identities. These

<sup>451</sup> Caribe Afirmativo, [Con un panfleto amenazan a personas LGBT de Magangué. Bolívar](#), May 24, 2016.

<sup>452</sup> Constitutional Court, [Judgment SU214/16](#); IACHR, Press Release No. 116/16, [IACHR Welcomes Progress on Human Rights of LGBTI Persons](#), August 16, 2016.

<sup>453</sup> INPEC, [Boletín Informativo No. 105](#).

<sup>454</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia.”](#) received February 28, 2017.

<sup>455</sup> [Joint statement of founding members of the OAS LGBTI Core Group](#), Santo Domingo, June 15, 2016, and IACHR, Press Release No. 097/16, [IACHR Welcomes Creation of LGBTI Core Group at the OAS](#), July 25, 2016.

<sup>456</sup> IACHR, Press Release No. 189/16, [“IACHR Expresses Concern at the Possible Indefinite Suspension of the Mandate of the United Nations Independent Expert on Sexual Orientation and Gender Identity and Calls on the States of the Region to Reaffirm their Commitment.”](#) December 17, 2016.

<sup>457</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016.

guidelines cover specific issues such as guarantee of the right to identification; processes for testifying on and reporting human rights violations against the victims with non-hegemonic sexual orientations and identities; psychosocial assistance; establishment of reparation measures; and building inter-institutional working relationships between entities, international organizations, and civil society organizations.<sup>458</sup>

326. It also reported that in 2016, a National Victims Meeting was held. This meeting provided space for victims with non-hegemonic sexual orientations and identities to participate in and discuss policy with representatives of the Departmental Roundtables. They were able describe their policy agendas for involvement in spaces for developing public policy on victims, specifically with regard to response to and reparations for victims with non-hegemonic sexual orientations and identities.<sup>459</sup> As a result of this encounter, an engagement agenda was developed, and proposals were collected from each department. These proposals will serve as inputs for preparing the chapter on victims of the national public policy decree on guaranteeing the rights of LGBTI persons.<sup>460</sup>

327. The Commission appreciates these efforts and the efforts made by the State to produce a number of publications to promote the rights and gender identities of women and LGBTI persons, such as the guide to orienting victims of the armed conflict from the perspective of sexual orientation and gender identity; the pamphlet “Women victims transforming and building peace;” and the first publication of the bulletin *Enfoque Diferencial*.<sup>461</sup>

328. The Commission appreciates the information provided by the State indicating that with regard to the investigative work done by the Attorney General of the Nation, one of the main challenges to putting in place a comprehensive and well-structured policy is the acts of violence committed against LGBTI persons.<sup>462</sup> In this regard, the IACHR was informed that the Attorney General of the Nation has reiterated its constitutional commitment to investigating any criminal conduct that has a differentiated impact on the human rights of the LGBTI population, and to guaranteeing equal access to justice and due diligence in investigating incidents in which LGBTI persons are the victims.<sup>463</sup>

329. Along the same lines, the Commission welcomes the initiatives of the Attorney General of the Nation to protect the rights of LGBTI persons, specifically: a) prioritization of the investigation of cases involving violence against the LGBTI population, in particular murders of trans women; b) the drafting of a document along with LGBTI organizations to establish a good practices protocol/guide, currently underway; c) participation in spaces for exchange and inter-institutional work where actions and strategies that benefit this population are planned, implemented, and monitored and where specific, urgent cases in which victims and/or their relatives are in danger are discussed (in order to move them forward acceptably through the Urgent Cases Workgroup); d) events to collect complaints from LGBTI victims of the armed conflict; e) until July 31, 2016, the Attorney General of the Nation was investigating at least 346 murders of LGBTI persons that have taken place since January 1, 2015. It should be noted that 158 of these murders took place in Medellin and the departments of Valle del Cauca and Risaralda; 291 of the cases are in the preliminary investigation stage and 55 are at a more advanced stage of the process.<sup>464</sup>

330. In addition, in the context of the appearance in the Senate of the Republic of a legislative initiative to ban adoption by same-sex couples, President Juan Manuel Santos stated publicly that he disagreed with the bill because “my administration has promoted the rights of all Colombians, including

<sup>458</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016.

<sup>459</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016.

<sup>460</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016.

<sup>461</sup> [Guide to orienting victims of the armed conflict from the perspective of sexual orientation and gender identity](#), Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016.

<sup>462</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016.

<sup>463</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016.

<sup>464</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016.

homosexual minorities.”<sup>465</sup> Despite these measures and the efforts made by the State, violence against LGBT persons continues, and no significant progress has been reported in the investigations of these incidents, meaning that the high rates of impunity for these crimes continue as well. Also, the IACHR has been informed that victims of violence related to their sexual orientation and gender identity and/or expression face real or perceived barriers to access to justice, meaning that the majority of crimes are not properly reported and investigated, thereby perpetuating a general situation of impunity.

331. The Commission appreciates the State’s efforts to combat violence against LGBTI persons and to address the discrimination and exclusion that affects them. However the Commission notes with concern that despite certain progress in terms of case law, the adoption of guidelines to guarantee LGBTI victims of the armed conflict are attended and given reparations, and measures deployed by the Attorney General of the Nation to investigate cases of violence against LGBT persons, rates of impunity and lack of investigation of attacks against LGBT persons remain high. Violence and prejudice against LGBTI persons is rooted in society, which drives the violence and discrimination against them. In this regard, the IACHR urges the State of Colombia to continue its leadership toward recognizing the rights of LGBTI persons; redouble its efforts to effectively investigate crimes against LGBTI persons; consider launching educational campaigns to counteract societal prejudices against LGBTI persons; and make efforts to collect statistical information on the rates of violence against LGBTI persons.

## 7. Persons deprived of liberty

332. In its Truth, Justice, and Reparation report, the Commission’s recommendations for the State included the following:

- Adopt the administrative, judicial and legislative measures needed to ensure that the pre-trial detention of persons who have not been convicted with a firm judgment is used as the measure of last resort and for the shortest possible time, in keeping with the international standards presented in this report, so as to bring about a reduction in the number of persons subjected to this precautionary measure.
- Adopt effective measures to ensure the delivery of adequate medical and psychiatric care at every prison and jail in the country. Implement mechanisms of external supervision and monitoring of the health services that are provided in prisons. And make adequate reparation, in keeping with domestic law, to all those persons who have suffered harm stemming from the deficient provision of health services in the prisons, as well as the family members of those who have died as a result of this cause.
- Adopt, on an urgent basis, effective measures to guarantee the supply of drinking water and water to satisfy other needs of persons deprived of liberty in the prisons, in keeping with the international minimum standards set forth in this report.
- Ratify the Optional Protocol of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

333. In response to the concerning situation of people deprived of liberty in Colombia, the Inter-American Commission issued a series of recommendations in its Truth, Justice, and Reparation report. The IACHR recognizes the work that the State has done during this year to comply with the recommendations by addressing the situation; however, it notes a number of important challenges: a) the use of pretrial detention in keeping with its nature as an exceptional measure; b) medical and psychiatric care at penitentiaries; c) provision of drinking water and other necessities for people deprived of liberty; and d) failure to ratify the optional protocol of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>465</sup> El Espectador, [Presidente Santos se opone a la iniciativa que prohíbe que parejas gays y solteros adopten](#), December 14, 2016.



334. First of all, before analyzing compliance with the recommendations, this Commission highlights that according to the INPEC, as of October 2016, the penitentiary population stood at 120,668 inmates, a reduction of 0.5%—or 627 fewer inmates—compared to the number registered during the same period in 2015. The State also reports that people being held in pretrial detention accounted for 32% of Colombia’s total penitentiary population.<sup>466</sup>

335. Meanwhile, regarding the measures taken to ensure that pretrial detention is only used exceptionally, the IACHR observes that this year, the Colombian State changed its laws by amending Law 1760 of 2015, the “Detention Rationing Act.” The amendment establishes differentiated treatment for different crimes as far as ending pretrial detention upon expiration of term. Regarding this, the Commission observes that pursuant to Law 1786, which amends Law 1760, promulgated in July, the grounds on which pretrial detention can be ended due to duration of the criminal process were amended. Specifically, the previous law established that anyone in pretrial detention could request a hearing on release due to term expiration based on any of the following grounds: a) more than 60 days have passed from the accusation date without written charges being filed or dismissal requested; b) more than 120 days have passed from the filing of written charges but the trial hearing has not begun; and c) 150 days have passed from the beginning of the trial hearing but the hearing has not been held to read the judgment or its equivalent.<sup>467</sup> The recent amendment of Law 1786 doubles the initial period of time after which release can be requested based on expiration for process involving specialized justice with three or more plaintiffs, crimes of corruption, crimes against freedom and integrity, and sex crimes.<sup>468</sup>

336. The IACHR also notes that with the entry into force of Law 1786 of 2016, for processes involving the aforementioned crimes, the application of the provision establishing termination of pretrial detention upon term expiration was delayed. For these crimes, the term for pretrial detention would begin to apply on July 1, 2017.<sup>469</sup> This new provision is a step backward compared to what is established in Article 5 of Law 1760 of 2015, which established that termination of pretrial detention would begin applying to all cases starting in July 2016. In this regard, although the IACHR welcomes the Colombian State’s initiatives in this area, it also expresses concern at the measures adopted subsequently—mainly through Law 1786—that extend the duration of pretrial detention and give special treatment to the aforementioned crimes based solely on the nature of the conduct in question and not on whether pretrial detention is warranted in accordance with inter-American standards on the matter.

337. The IACHR also recognizes the work of the Supreme Court of Justice, which has issued judgments that have set important precedents on the prohibition on excluding certain crimes from the established pretrial detention regimen absent objective criteria and only based on standards like “social alarm,” “social impact,” or “dangerousness.”<sup>470</sup> In this regard, through sentence 85126 of April 20, 2016, the Criminal Chamber of the Supreme Court of Justice found that the terms for investigation and trial must apply to pretrial detention for all criminal offenses.<sup>471</sup> This ruling was in the context of Law 1121 of 2006, which makes people accused of crimes involving kidnapping, terrorism, or extortion ineligible for pretrial release.<sup>472</sup> Also, considering that at both the legislative and judicial level, no “reductions, benefits, or subrogates” are

<sup>466</sup> INPEC, Statistical Bulletin, October 10, 2016. Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016.

<sup>467</sup> [Law No. 1786 “modifying some provisions of Law 1760 of 2015.”](#) Colombia, in force as of July 1, 2016, Article 2.

<sup>468</sup> [Law No. 1786 “modifying some provisions of Law 1760 of 2015.”](#) Colombia, in force as of July 1, 2016, Article 2.

<sup>469</sup> [Law No. 1786 “modifying some provisions of Law 1760 of 2015.”](#) Colombia, in force as of July 1, 2016, Article 2.

<sup>470</sup> IACHR, [Report on the Use of Pretrial Detention in the Americas](#), OEA/Ser.L/V/II. Doc.64/13 of December 30, 2013, para. 151.

<sup>471</sup> Supreme Court of Justice, Criminal Cassation Chamber, Colombia, Judgment No. 85126, April 20, 2016, Presiding Magistrate José Luís Barceló Camacho.

<sup>472</sup> [Law 1121 of 2006 establishing laws for preventing, detecting, investigating, and punishing the financing of terrorism and other provisions](#), Colombia, published December 29, 2016.

available for people accused of committing crimes against the freedom and integrity of minors or sex crimes and kidnapping against them,<sup>473</sup> the IACHR welcomes the adoption of sentence 84957 of the Criminal Cassation Chamber of the Supreme Court of Justice, issued on May 11, 2016, which prohibits denial of provisional release due to term expiration for people being tried for sex crimes against minors.<sup>474</sup>

338. Regarding medical care in detention centers in Colombia, the IACHR has information indicating that one of the main problems involves “the deficient healthcare received by the majority of the prison population.”<sup>475</sup> Specifically, civil society organizations and prison inmate groups report that “innumerable complaints” have been filed with the authorities. They report that the penitentiaries have insufficient medical staff, inadequate supplies of medications, and lack the basic equipment for providing good quality medical care.<sup>476</sup>

339. For its part, the State reported on a number of measures taken to guarantee the right to health of people deprived of liberty. Specifically, it reports that in order to issue the technical-administrative manuals to enable implementation of the Healthcare for the Inmate Population Model—adopted through presidential decree 2245 of November 24, 2015<sup>477</sup>—an interdisciplinary team was formed that presented three manuals on the following topics: provision of healthcare services; public health care and interventions; and obligatory quality assurance system for the penitentiary system. Also, according to information from the Colombian State, in External Circular No. 000002 of 2016, the National Health Superintendence issued directives on compliance with legal obligations regarding health, provision of resources, and provision of health services.<sup>478</sup> Similarly, since January 2016, the Leadership Council of the National Fund for the Health of People Deprived of Liberty<sup>479</sup> has held meetings to offer recommendations on health services hiring.<sup>480</sup> Along the same lines, the State reports that by Resolution 2390 of May 10, 2016, the INPEC declared a state of emergency in the prisons and jails, in effect until December 31, 2016, and extended until June 30, 2017. In this context, the IACHR observes the establishment of different lines of action, which as of late 2016, according to the State, had progressed as follows: (a) relocation of personnel in the health areas of the prisons; (b)

<sup>473</sup> Specifically, pursuant to Law 1198 of 2006, no reductions, benefits, or subrogates will be warranted when a person is accused of committing crimes against the freedom and integrity of a minor or sex crimes against or kidnapping of a minor. [Law 1198 of 2006](#), Colombia, published November 8, 2006. In this sense, case law has been established through judgments dated September 17, 2009; April 28, 2010; and May 20, 2012. Prisons Group of the Universidad de Los Andes School of Law, Colombia. Response to questionnaire “Measures aimed at reducing the use of pretrial detention,” sent by the IACHR on August 2, 2016, pg. 26 and 27.

<sup>474</sup> Supreme Court of Justice, Criminal Cassation Chamber, Colombia, [Judgment No. 84957](#), May 11, 2016, Presiding Magistrate Francisco Acuña Vizcaya.

<sup>475</sup> On this, the report from the Office of the Ombudsman presented to the Congress of the Republic this year states that the complaints it received on violations to the rights to health mainly affect individuals deprived of liberty. Office of the Ombudsman, [Report to the Congress of the Republic](#), 2016, pg. 57; request for a hearing from the Colectivo OFB, Corporación Avre, and the Colectivo Psicosocial Colombiano – COPSICO, in the framework of the 157th ordinary period of sessions of the IACHR, January 20, 2016.

<sup>476</sup> Request for a hearing from the Colectivo OFB, Corporación Avre, and the Colectivo Psicosocial Colombiano – COPSICO, in the framework of the 157th ordinary period of sessions of the IACHR, January 20, 2016. Also see the Movimiento Nacional Carcelario and the Colectivo de Presos Políticos Jaime Lombana at the Palogordo jail, [“Muere preso político del ELN por falta de atención médica oportuna.”](#) March 22, 2016; Movimiento Nacional Carcelario and the Colectivo de Presos Políticos Jaime Lombana of the Palogordo jail, [“Crisis total en la atención de salud en cárcel de Palogordo.”](#) April 9, 2016; Movimiento Nacional Carcelario, “Multiple complaints and crisis in the Palmira jail,” May 13, 2016, and Corporación Nelson Mandela para la Libertad y la Paz and the Coalición Larga Vida a las Mariposas Northwestern Region, Urgent Action No. 002 “Hunger strike in the Pesebre penitentiary in Triunfo-Antioquia,” May 13, 2016.

<sup>477</sup> Republic of Colombia, Note S-GAII-16-109909 of December 2, 2016, received on December 16, 2016. Also see: [Presidential Decree 2245](#), Colombia, November 24, 2015.

<sup>478</sup> These guidelines include the following: a) IPS is to take all the administrative actions necessary to guarantee the prison population has real access to health services, and b) sanctions are authorized should the instructions given not be followed.

<sup>479</sup> According to the State of Colombia, the Leadership Council of the Fund is a deliberative body that sets general administrative and investment policies for the Fund’s resources. The fund is “a special account designed to capture and administer resources for the health system of people deprived of liberty.” It was established by Article 66 of Law 1709 of 2014, which amended the penitentiary and prison code. Republic of Colombia, Note S-GAII-16-109909 of December 2, 2016, received on December 16, 2016.

<sup>480</sup> INPEC, [Resolution No. 006349](#) “General Regulation of the Establishments for Confinement at the National Level-ERON under the charge of the INPEC,” December 19, 2016.

strengthening of actions for promotion and prevention in public health; and (c) transfer of prisoners with psychiatric pathologies to establishments that have a mental health unit.<sup>481</sup>

340. Another specific concern received by the Commission on medical care in Colombian prisons was inadequate psychiatric care. Regarding this, the IACHR has received the following allegations: a) treatment is limited only to providing daily medication and does not include any rehabilitation or training of individuals;<sup>482</sup> b) the psychiatric care does not meet the treatment needs of the majority of illnesses present;<sup>483</sup> c) the amount of time that the psychiatric staff spends on assessing and monitoring people with mental disabilities is insufficient (between five and eight minutes per appointment); d) mental illness is not visible in detention centers, reflected in the complete lack of an increase in the number of prisoners diagnosed with mental illness compared to the increase in the number of prisoners overall;<sup>484</sup> and e) the staff is not trained to handle psychotic episodes.<sup>485</sup> The Commission reiterates that proper medical care for people deprived of liberty is a fundamental State obligation derived directly from its duty to respect and guarantee the rights to life and personal integrity.<sup>486</sup> Specifically, the IACHR Principles and Best Practices address the right to health of people deprived of liberty and establish that the right includes, among other things, psychiatric care and special measures to meet the particular health needs of people deprived of liberty who belong to high risk groups, such as people with disabilities.<sup>487</sup>

341. Another of the central issues related to the conditions faced by people deprived of liberty is the failure to provide the minimum amount of water needed for life.<sup>488</sup> The Colombian State reports that based on Law 1709 of 2014, the USPEC has been working toward drafting and publish the Manual of Minimum Guidelines for Prison Design based on its technical experience and the ICRC manual on water, sanitation, hygiene, and living conditions in prisons. The IACHR also has information indicating that a number of facilities—such as the high-security facility in Valledupar, the facility in Guaduas in Cundinamarca, and the facility in Quibdó—have structural problems that prevent inmates from having access to adequate sanitation services.<sup>489</sup> In other prisons, such as the prison in Picalaña in Ibagué, water outages can last for two days or more with no explanation.<sup>490</sup> The lack of water has other serious consequences, such as skin disease among inmates due to poor personal hygiene. Also, civil society organizations say that the situation

<sup>481</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,"](#) received February 28, 2017.

<sup>482</sup> Ombudsman, [Report to the Congress of the Republic](#), 2016, pg. 160.

<sup>483</sup> Ombudsman, [Report to the Congress of the Republic](#), 2016, pg. 154.

<sup>484</sup> Specifically, the Office of the Ombudsman states that according to INPEC data, of the 121,421 people currently deprived of liberty as of September 2015, a total of 2,340 inmates were diagnosed with mental illnesses (1.92% of the total population). The Office of the Ombudsman noted that the percentage of people who take part in the mental health program in 2015 has not changed significantly since 2011, even though over the last four years, the total prison population has increased by 20,938 inmates. This indicates "an underestimation of the number of prisoners suffering from serious mental illness." Ombudsman, [Report to the Congress of the Republic](#), 2016, pg. 157.

<sup>485</sup> Request for a hearing from the Colectivo OFB, Corporación Avre, and the Colectivo Psicosocial Colombiano – COPSICO, in the framework of the 157th ordinary period of sessions of the IACHR, January 20, 2016.

<sup>486</sup> IACHR, [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#), OEA/Ser.L/V/II, adopted on December 31, 2011, para. 519.

<sup>487</sup> IACHR, [Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas](#), approved by the IACHR through Resolution 1/08 in its 131st Ordinary Period of Sessions, held on March 3-14, 2008, Principle X.

<sup>488</sup> Request for a hearing from the Colectivo OFB, Corporación Avre, and the Colectivo Psicosocial Colombiano – COPSICO, in the framework of the 157th ordinary period of sessions of the IACHR, January 20, 2016.

<sup>489</sup> Office of the Ombudsman, [Report to the Congress of the Republic](#), 2016, pg. 176; and request for a hearing from the Colectivo OFB, Corporación Avre, and the Colectivo Psicosocial Colombiano – COPSICO, in the framework of the 157th ordinary period of sessions of the IACHR, January 20, 2016.

<sup>490</sup> Request for a hearing from the Colectivo OFB, Corporación Avre, and the Colectivo Psicosocial Colombiano – COPSICO, in the framework of the 157th ordinary period of sessions of the IACHR, January 20, 2016.

has created tension among the inmates and led to outbreaks of violence.<sup>491</sup> With regard to this, the IACHR has stated that all people deprived of liberty must have access to water for consumption and personal hygiene, and that a failure to supply potable water constitutes a serious failure on the part of the State in its duties to guarantee the rights of people in its custody.<sup>492</sup>

342. Finally, regarding the recommendation concerning ratification of the optional protocol of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Commission reiterates the statement of the Committee against Torture and of other international organizations calling on the Colombian State to ratify this instrument so that all detention centers can be regularly and independently inspected.<sup>493</sup> In this regard, the IACHR is convinced that the most effective way to prevent torture is to open all detention centers to public inspection<sup>494</sup> and independent monitoring.<sup>495</sup>

343. In light of the foregoing considerations, the Commission recognizes the efforts made by the Colombian State to comply with the recommendations discussed in this section toward building a prison system observant of international human rights standards. Since the situation of people deprived of liberty continues to be concerning, the IACHR reiterates its recommendations and urges the State to take the measures necessary to reduce the use of pretrial detention, guarantee that human rights are enjoyed in prison (especially the rights to health and water), and ensure that all detention centers are subject to public inspection and independent monitoring.

## 8. Aggravated Risk Faced by Human Rights Defenders

344. In its Truth, Justice, and Reparation Report, the Commission's recommendations for the State included the following:

- Continue designing and implementing comprehensive and effective public policies for protecting human rights defenders at risk with special attention to those groups of defenders who may be especially vulnerable. As part of this policy the Commission considers that in addition to the material measures of protection the State should effectively investigate the sources of risk to human rights defenders with the aim of defusing them.
- Ensure access for human rights defenders and the general public to public information in the possession of the State. In addition, the State should ensure effective access to the right to habeas data for human rights defenders so that they can have access to their data in intelligence files so as to be able to request that it be corrected, updated, or, as the case may be, removed from those files.

345. In its Truth, Justice, and Reparation report, the Commission indicated it was concerned at finding that the human rights defenders who do the work that is essential for building a peace in Colombia that fully respects human rights are precisely the ones that continue to be disappeared, murdered, and

<sup>491</sup> Request for a hearing from the Colectivo OFB, Corporación Avre, and the Colectivo Psicosocial Colombiano – COPSICO, in the framework of the 157th ordinary period of sessions of the IACHR, January 20, 2016.

<sup>492</sup> Inter-American Court. Case of Pacheco Teruel *et al v.* Honduras. Merits, Reparations, and Costs. Judgment of September 27, 2012, Series C No. 241, para. 67(c), and Inter-American Court. Case of Vélez Looz *v.* Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010, Series C No. 218, paras. 215 and 216.

<sup>493</sup> UN committee against torture, [Concluding Observations on the fifth periodic report of Colombia](#), May 2015, para. 20. Also see: UN, Human Right Council, Annual Report of the UNHCR. Addition. Report of the UNHCR on the human rights situation in Colombia, 19th period of sessions, A/HRC/19/21/Add.3, January 31, 2012, para. 118(d); and UN, WGAD, [Report of the Working Group on Arbitrary Detention on Its Mission to Colombia](#) (October 1-10, 2008), A/HRC/10/21/Add.3, February 16, 2009, para. 103 (a).

<sup>494</sup>IACHR, [Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia](#), OEA/Ser.L/V/II, December 31, 2013, para. 1120. Also see UN, Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, A/HRC/13/39, adopted on February 9, 2010, para. 56.

<sup>495</sup>IACHR, [Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia](#), OEA/Ser.L/V/II, December 31, 2013, para. 1120.

threatened as a result of the violence sparked by the armed conflict.<sup>496</sup> The IACHR also indicated that for a number of years, Colombia has denied human rights defenders access to any of their personal information that may be held in the DAS intelligence files. Despite the recommendations of the IACHR and the UN, the State has not passed a law enabling effective exercise of the right to *habeas data* that would allow people subjected to arbitrary surveillance to have access to their information and thereby ask for it to be corrected, updated, or where necessary, eliminated from intelligence archives.<sup>497</sup>

346. In this regard, the Commission noted that it was important for the State to strengthen its public policies protecting at-risk human rights defenders and adopt new measures to definitively consolidate and legitimize the role of human rights defenders in society.<sup>498</sup> The Commission also urged the State to ensure the exercise of the right of *habeas data* for human rights defenders who wish to have access to the information held in intelligence archives.<sup>499</sup>

347. As regards the data bases and archives of the intelligence and counter-intelligence services, the State reported that procedures are under way as needed to establish the system of vetting, taking into account the report by the Advisory Commission on Vetting Intelligence and Counter-intelligence Data and Archives in keeping with the provisions of Enabling Law 1621 of 2013, which is to be completed in July 2017, and that the intelligence and counter-intelligence agencies are moving forward in their internal processes and procedures for vetting intelligence archives.<sup>500</sup>

348. The State also reported on the strategies implemented to ensure the work of human rights defenders, which include the creation of mechanisms for social dialogue (National Roundtable on Guarantees, Territorial Roundtables on Guarantees, High-level Group, Unified Command Post, Cumbre Agraria, Campesina y Popular, verification missions), ceremonies for public recognition, promotion of a culture of recognition of the legitimate exercise of the defense of rights, and risk management to prevent human rights violations, among others.<sup>501</sup>

349. The IACHR recognizes the efforts the State has made to protect human rights defenders. Specifically, the Commission welcomes the fact that during the IACHR's visit to Colombia to promote its report on the criminalization of human rights defenders in June 2016,<sup>502</sup> the State reported on its efforts to recognize and protect the work of human rights defenders. Among other actions, government authorities reported to the IACHR that they were developing new protocols for government officials on the right to social protests and the actions of security forces during protests, as well as guidelines on differentiated treatment for beneficiaries of measures of protection in rural areas. In addition, the State reported on the actions taken to monitor the situation of human rights defenders in order to reduce and prevent attacks on them, especially murders of human rights defenders. These actions include the reactivation of the national roundtable on guarantees for human rights defenders and a series of regional roundtables, as well as the creation of subgroups in the national roundtable for investigating and verifying when these attacks take place

<sup>496</sup>IACHR, [Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia](#), OEA/Ser.L/V/II, December 31, 2013, para. 1139.

<sup>497</sup>IACHR, [Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia](#), OEA/Ser.L/V/II, December 31, 2013, para. 1188.

<sup>498</sup>IACHR, [Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia](#), OEA/Ser.L/V/II, December 31, 2013, para. 1141.

<sup>499</sup>IACHR, [Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia](#), OEA/Ser.L/V/II, December 31, 2013, para. 1189.

<sup>500</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia"](#), received February 28, 2017.

<sup>501</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia"](#), received February 28, 2017.

<sup>502</sup> IACHR, [Criminalization of Human Right Defenders](#), 2015



350. Also, in its report to the IACHR, the State highlighted the promulgation of Decree 1314 of 2016, creating the Intersectoral Commission on Guarantees for Women Leaders and Human Rights Defenders, the principal function of which is to oversee inter-institutional coordination for the effective implementation of the Comprehensive Program of Guarantees for Women Leaders and Human Rights Defenders.<sup>503</sup>

351. The State also reported that, in response to threats against the lives and integrity of human rights defenders, the Minister for Internal Affairs has reactivated the Regional Guarantees Roundtables in the departments of Cauca, Sucre, Nariño, Huila, Norte de Santander, and Antioquia. Thus coordination is taking place between the national and regional levels to assess risk scenarios and rights violations. As part of the work done in the Regional Guarantees Roundtables, the Minister for Internal Affairs issued Circular 35 of June 20, 2016, addressed to governors, mayors, and military and national police officials. The circular establishes the guidelines, parameters, and actions they must implement in the framework of their respective authorities to guarantee, promote, and respect the rights of human rights defenders in their territories.<sup>504</sup>

352. In March 2016, the Attorney General of the Nation reported that progress had been made in the investigation of the 10 murders of human rights defenders that had taken place since January 2016.<sup>505</sup> For its part, the *Programa Somos Defensores* noted that of the more than 100 human rights defenders murdered between 2015 and 2016, judgments are being issued in eight cases, while another eight are in the trial phase. This is the “greatest progress” made by the Attorney General of the Nation to identify those responsible for crimes against human rights defenders.<sup>506</sup> Subsequently, it was reported that during 2016 the Office of the Attorney General took cognizance of 118 cases reported by the Cumbre Agraria, Étnica y Popular, the Movimiento Político y Social Marcha Patriótica, Programa Somos Defensores, and the OHCHR. The State indicated that of the 78 cases of homicides of human rights defenders reported by the OHCHR for 2016-2017, results have been obtained in 25, with 66 persons identified as suspects, 50 of whom are deprived of liberty.<sup>507</sup>

353. However, despite the aforementioned progress, the IACHR remains concerned that during 2016, it continued to receive information on the persistent murders of human rights defenders in the country. In November, the IACHR noted that although the reports of threats, attacks, arbitrary detentions, and harassment of human rights defenders have declined significantly compared to 2015, according to civil society organizations, murders of human rights defenders have increased. The Commission condemned the murder in February of two human rights defenders: Nelly Amaya, a member of the Asociación Campesina del Catatumbo – Ascamat and the Norte Santander chapter of the Movimiento de Víctimas de Crímenes de Estado – MOVICE, and the president of the Communal Action Council of the Guamalito neighborhood in the municipality of San Calixto, and Johan Alexis Vargas, leader of the Coordinación Nacional de Organizaciones y Comunidades Afrodescendientes and spokesperson for the Marcha Patriótica in the department of Nariño, who had reported the death threats he was receiving to the authorities.<sup>508</sup> In this respect, the State reported

<sup>503</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016, pg. 83.

<sup>504</sup> Republic of Colombia, Note S-GAIIID-16-109909 of December 2, 2016, received on December 16, 2016, pg. 83.

<sup>505</sup> Attorney General of the Nation, [Four convicted and 11 charged for the murder of human rights defenders](#), March 22, 2016; Colombiano, [Fiscalía investiga homicidios a defensores de derechos humanos](#), March 22, 2016. Also see Semana, [La sentida súplica de los embajadores](#), June 4, 2016.

<sup>506</sup> Programa Somos Defensores, [¿Este es el fin? Enero-junio 2016](#), pg. 36.

<sup>507</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia,”](#) received February 28, 2017.

<sup>508</sup> IACHR, Press Release No. 21/2016, [IACHR Condemns Killings and Threats Directed against Human Rights Defenders in Colombia](#), February 25, 2016.

that arrest warrants were issued for the persons presumably responsible for the homicides of Nelly María Amaya and Jhoan Alexis Vargas.<sup>509</sup>

354. For its part, Programa Somos Defensores indicated that 19 human rights defenders and community leaders were murdered between July and September 2016 (three more than in the previous quarter and then during the same period in 2015), with which the total number of murders from January to November 2016 rose to 54. In most of these cases, the perpetrators are illegal armed groups, specifically the *Águilas Negras*, the *Autodefensas Gaitanistas*, and *Los Rastrojos*, as well as other armed groups that operate regionally and locally.<sup>510</sup>

355. Civil society reported that with regard to human rights defenders who are women, Afro-descendants, and indigenous peoples, as well as social leaders who participated in the process or related activities, attacks have not stopped.<sup>511</sup> The illegal armed group *Águilas Negras* was responsible for 90% of the threats against human rights defenders during this past year, according to the monitoring work performed by *Programa Somos Defensores*.<sup>512</sup> In addition to opposing the peace process, they have joined other illegal armed groups and threatened human rights defenders and others who support it.<sup>513</sup> Throughout the year, the IACHR and the international community have urged the State to take immediate action to protect human rights defenders and other people linked to the peace process.<sup>514</sup>

356. For its part, the PBI reported that in the first half of 2016, 28 people were murdered between February 15 and March 15: 13 of them from social and human rights movements and 15 due to so-called “social cleansing,” considered a strategy for controlling communities.<sup>515</sup> It was reported that a number of victims were named in threatening pamphlets and have criminal records for minor infractions.<sup>516</sup> The European Union also expressed concern at the situation and, in a statement, recognized human rights defenders as fundamental actors in democratic societies.<sup>517</sup> Various international civil society organizations expressed the same concern, highlighting that without guarantees for human rights defenders; there would be no peace in Colombia.<sup>518</sup>

<sup>509</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia.”](#) received February 28, 2017.

<sup>510</sup> IACHR, Press Release No. 160/16, [IACHR Condemns the Increase in Killings of Human Rights Defenders in Colombia](#), November 2, 2016.

<sup>511</sup> Programa Somos Defensores, [¿Este es el fin? Enero-junio 2016](#), pgs. 40-45; PBI – Colombia, [Quarterly Human Rights Update, April – June 2016](#), August 8, 2016; Amnesty International (AI), [Colombia: “Tenemos los índices de agresión a defensores de derechos humanos más altos de los últimos 20 años”](#), April 25, 2016; AI, [Annual Report Colombia 2015/2016](#), pg. 147. Also see Presidential Council on Human Rights, [press release from the Presidential Council on Human Rights on attacks against human rights defenders](#), February 24, 2016.

<sup>512</sup> Programa Somos Defensores, [¿Este es el fin? Enero-junio 2016](#), p. 42.

<sup>513</sup> See for example Equipo Nizkor, [Las Águilas Negras amenazan a organizaciones de mujeres](#), April 27, 2016; Proceso, [La guerra sucia que amenaza el proceso de paz](#), April 8, 2016. See also *Front Line Defenders*, [Grupo paramilitar envía amenazas de muerte a CREDDHOS](#), August 3, 2016; Telesur, [Paramilitares amenazan de muerte a líder de víctimas Colombia](#), April 29, 2016; MOVICE, [Denuncia pública: Paramilitares amenazan de muerte a líderes y defensores del Valle del Cauca](#), April 11, 2016.

<sup>514</sup> IACHR Press Release No. 21/2016, [IACHR Condemns Killings and Threats Directed against Human Rights Defenders in Colombia](#), February 25, 2016. IACHR; Press Release No. 160/16, [IACHR Condemns the Increase in Killings of Human Rights Defenders in Colombia](#), November 2, 2016; Delegation of the European Union in Colombia, [La UE y su Enviado Especial para la paz en Colombia, Eamon Gilmore, analizarán esta semana situación de los defensores de derechos humanos en Urabá](#), July 3, 2016. Semana, [La sentida súplica de los embajadores](#), June 4, 2016 (a group of eight ambassadors issued an urgent call to stop the murders of human rights defenders and political and social leaders); UNHCR, [ONU Derechos Humanos rechaza amenazas contra defensores de derechos humanos afrocolombianos en Cauca](#), April 29, 2016; UN, Human Right Council, Annual Report of the UNHCR, addendum on the human rights situation in Colombia, A/HRC/31/3/Add.2, March 15, 2016, paras. 81, 83; IACHR, Press Release No. 21/2016.

<sup>515</sup> PBI, [Focos de interés enero a marzo 2016](#).

<sup>516</sup> HSB Noticias, [Terror por ‘limpieza social’ que ha dejado 8 muertos en Putumayo](#), March 7, 2016.

<sup>517</sup> EU delegation and embassies of member States in Bogotá, [La Unión Europea y sus Estados Miembros\\* expresan preocupación por recientes asesinatos de defensores de Derechos Humanos](#), March 16, 2016.

<sup>518</sup> International civil society organizations, [Sin garantías no habrá paz en Colombia](#), March 22, 2016.

357. Elsewhere, the Information System on Aggressions against Human Rights Defenders (SIADDHH) reported that between January and March 2016, a total of 113 aggressions against human rights defenders took place, of which 81 were threats, 19 were murders, five were arbitrary detentions, one was a forced disappearance, and two were cases of stealing information.<sup>519</sup> Although the number of aggressions declined overall compared to the same period the previous year, the report highlighted that the number of murders remained the same. The SIADDHH indicated that groups characterized as “neo-paramilitaries” were those allegedly responsible for 66% of the aggressions in 2015, while 25% were unknown, 7% came from the Police Force, 2% came from the Office of the Public Prosecutor, 0.2% came from the FARC-EP, and 0.3% came from the ELN.<sup>520</sup>

358. In 2016, the IACHR held five working meetings on the precautionary measures granted. During these meetings, it was informed of the progress made by the State implementing specific protection measures. Despite this, in matters related to the protection of Afro-Colombian leaders who are members of CAVIDA<sup>521</sup> and ASFLICOC,<sup>522</sup> information has been received indicating that the incidents of violence against them continue, and there is a need to strengthen the differentiated focus of the protection measures that have been implemented. One risk component that has been constantly indicated in both matters and throughout 2016 is the alleged presence of illegal groups in the rural communities where the human rights defenders reside. Another issue of serious concern for some human rights defender organizations is the unjustified delay in strengthening the protective measures in urgent situations or in response to a need to travel to an area in the country’s interior.<sup>523</sup>

359. Regarding the information in the previous paragraph, the State reported that the measures with a differential approach are constructed in the process of dialogue with the beneficiary communities, and that the UNP provides “support in the form of temporary relocation” for those cases in which there is evidence of the need to leave the at-risk zone; in 2016 this type of measure was adopted in three cases. It indicated that the individual measures are assigned in keeping with the risk assessments, and that no member of CAVIDA who has reported a threat or requested protection has suffered any impact resulting from an inadequate arrangement or due to the failure to reinforce the measures.<sup>524</sup>

360. The persistence of alleged campaigns to stigmatize human rights defenders<sup>525</sup> and the delivery of threatening pamphlets allegedly from illegal groups<sup>526</sup> are elements that exacerbate the situation of risk faced by a number of human rights defenders. For example, members of the CCAJAR who are beneficiaries of the precautionary measures stated that in 2016, they continued to be the target of a series of social media campaigns to discredit them with accusations of “fabricating victims,” “looting the treasury,” “robbing victims,” and other accusations. Sometimes the accusations come from public officials.<sup>527</sup> The applicants highlighted that given the context and background of violence, these types of public statements can become risk factors in themselves. In this regard, in 2015 the State indicated that it had taken a series of actions with regard to the situation of CCAJAR members that include: material measures of protection,

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<sup>519</sup> Information System on Aggressions against Human Rights Defenders in Colombia (SIADDHH), [January-March quarterly bulletin 2016](#), April 2016.

<sup>520</sup> *Programa Somos Defensores*, [January-March quarterly bulletin 2016](#), April 2016.

<sup>521</sup> Report presented by the applicants on January 20, 2016.

<sup>522</sup> Report presented by the applicants on January 20, 2016.

<sup>523</sup> This was the position taken by the legal representatives of CCAJAR in a report dated June 8, 2016.

<sup>524</sup> Republic of Colombia, [Observations of the Colombian State on Chapter V “Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia.”](#) received February 28, 2017.

<sup>525</sup> Report presented by the applicants on June 8, 2016.

<sup>526</sup> Report presented by the applicants on May 12, 2016.

<sup>527</sup> Report presented by the applicants on May 12, 2016.

investigations into the facts alleged by the applicants, a public and specific recognition of the important human rights defense work that the members of CCAJAR perform, and other actions intended to guarantee their role as human rights defenders in Colombia.

361. *Somos Defensores* also indicates that 99.96% of the aggressions against human rights defenders during the administration of President Santos remain in impunity,<sup>528</sup> and the UNHCR reported that only one conviction had been achieved in a case of crimes against human rights defenders in 2015.<sup>529</sup> In this regard, the UN Special Rapporteur on the situation of human rights defenders has repeatedly expressed his concern at the degree of impunity in cases of attacks on and violations perpetrated against human rights defenders in Colombia.<sup>530</sup>

362. It should be added that before the adoption of this report the Commission condemned the assassination of human rights defenders in Colombia that occurred in January 2017. These killings took place in a context of a steady increase in threats to and assassinations of human rights defenders in the country.<sup>531</sup>

363. The IACHR also notes that in February 2017 it participated in a workshop to promote and guarantee the work of human rights defenders in Colombia, at the initiative of and organized by the State. The Commission's participation in this workshop was part of the activities of accompaniment of the process of implementing the Peace Agreement with the Revolutionary Armed Forces of Colombia (FARC). The Commission is grateful to the Colombian State for the invitation to this important forum for dialogue and inter-institutional discussion.<sup>532</sup>

364. The State reported that by Decree 154 of February 3, 2017, the National Commission of Security Guarantees was established in the context of the Final Agreement, institutionalizing point 3, on the "Guarantees of security and combating the criminal organizations and conduct responsible for homicides and massacres, that attack human rights defenders, social or political movements, or that threaten or attack persons who participate in the implementation of the accords and peace-building, including the criminal organizations that have been called the successors of paramilitarism and their support networks." It indicated that this National Commission, which will meet once a month, has as its objective designing and monitoring the public policy and criminal justice policy on dismantling any organization or conduct addressed in said Agreement that threatens its implementation and peace-building.<sup>533</sup>

365. The Commission values the efforts and strategies implemented by the State to protect human rights defenders. Without prejudice to this, and in view of the escalation in threats against and assassinations of human rights defenders in Colombia and the concerns reported by civil society organizations, the Commission reiterates its recommendations to continue adopting comprehensive and effective public policies for protecting at-risk human rights defenders with special attention to those groups of defenders who may be especially vulnerable. As part of this policy the Commission considers that in addition to the material measures of protection the State must be mindful of its duty to prevent and effectively investigate the sources of risk to human rights defenders with the aim of defusing them.

<sup>528</sup> Programa Somos Defensores, [January-March quarterly bulletin 2016](#), April 2016.

<sup>529</sup> UN, Annual report of the UNHCR on the human rights situation in Colombia, [A/HRC/31/3/Add.2](#), pg. 17, June 23, 2016.

<sup>530</sup> UN, Annual report of the UNHCR on the human rights situation in Colombia, [A/HRC/31/3/Add.2](#), pg. 17, June 23, 2016.

<sup>531</sup> IACHR, Press Release No. 11/17. IACHR [Condemns Murder of Human Rights Defenders in the Region](#), February 7, 2017.

<sup>532</sup> IACHR, Press Release No. 23/17, IACHR [Examines Progress and Challenges in the Protection of Human Rights Defenders in Colombia](#), March 6, 2017.

<sup>533</sup> The National Commission is led by the President of the Republic, and it includes the participation of the Minister of Interior, the Minister of National Defense, the Ministry of Justice and Law, the Attorney General, the Ombudsman, the Procurator General of the Nation, the Director of the Special Unit of investigation for the dismantling of the criminal organizations and conduct responsible for homicide and massacres, the General Commander of the Military Forces, the Director General of the National Police, three recognized experts in the matter, and two delegates of the Human Rights Platforms. Republic of Colombia, Observations of the Colombian State on Chapter V "Follow-up on Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia," received February 28, 2017.

#### **IV. CONCLUSIONS**

1. Based on the information and considerations set forth in this chapter, the Commission reiterates to the State of Colombia that it must continue to pursue efforts to comply with the recommendations included in the Truth, Justice, and Reparation Report: Fourth Report on the Human Rights Situation in Colombia, as well as further and maintain the results achieved thus far.

2. The Commission recognizes that the State continues to develop important public policies on human rights to address the complex reality resulting from the conflict. It also recognizes the government's efforts toward responding to victims of violations and providing protection to at-risk individuals, as well as the significant human and financial resources it is investing therein. The Commission will continue to collaborate with the State in finding solutions to the problems and challenges identified in this chapter and, pursuant to the terms of its mandate, provide it with assistance in the process of implementing and monitoring the measures that the State has employed to effectively address the obstacles that victims of human rights violations in Colombia face and comply with its international obligations.

3. The Commission again welcomes the State's efforts toward the signing of the Final Accord and urges the State to be responsible in taking up the significant challenge of its implementation so as to build a stable and lasting peace in Colombia. The Commission reiterates its commitment to continue offering its cooperation to the State and to Colombian society as a whole in this effort and will be monitoring the implementation of the Accord pursuant to its competence to ensure that its implementation complies with international standards on truth, justice, and reparation during the transition to peace.