

Country Report  
**COLOMBIA**

**IACHR** Inter-American  
Commission on  
Human Rights

# Truth, Justice and Reparation



Organization of  
American States



Organization of  
American States

Inter-American  
Commission on  
Human Rights **IACHR**

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Approved by the Inter-American Commission on Human Rights on December 31, 2013.

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# EXECUTIVE SUMMARY



## INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) has monitored the human rights situation in the Republic of Colombia (hereinafter “Colombia,” “the State,” or “the Colombian State”), in particular the evolution of the internal armed conflict over more than five decades and its impact on the protection, enjoyment, and exercise of the human rights of all persons who live in Colombian territory.
2. Through its different mechanisms the Commission has obtained valuable and voluminous information on the human rights situation in Colombia as well as the situation of groups in particular vulnerability. In addition, the Commission has been able to verify how the continuity of the internal armed conflict has entailed serious human rights violations and infractions of international humanitarian law (hereinafter “IHL”). The Commission has also noted the many initiatives taken by the State, as well as the challenges pending in terms of carrying out its international human rights obligations.
3. The human rights situation in Colombia includes additional complexities stemming from the systematic and widespread violence that is a part the day-to-day life of the Colombian population due to the internal armed conflict.<sup>1</sup> In this context, the obligations of the State are governed by the provisions of both international human rights law and IHL.
4. The Commission acknowledges that the Colombian Government “began a process of exchanging communications with the Revolutionary Armed Forces of Colombia-Ejército del Pueblo (FARC-EP)”<sup>2</sup> since January 2011 and that, on August 26, 2012, the National Government and the FARC-EP signed a “General Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace.”<sup>3</sup>
5. In said agreement, “the mutual decision to end the conflict as an essential condition for the construction of a stable and lasting peace”;<sup>4</sup> the goal to promote “respect for human rights in every corner of the national territory”<sup>5</sup> and an agenda with content and themes to debate in

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<sup>1</sup> In its general observations on the draft report, Colombia rejected references to aspects of “structural discrimination” and “systematic violence,” because it understands that the facts should be analyzed in perspective, and should not be addressed “as static problems in time,” but that it should be taken into account the context in terms of the challenges faced as well as the major progresses achieved mainly through the implementation of public policies in the area of human rights. Colombia also stated that “human rights violations are not systematic in nature.” Colombia’s observations on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 16.

<sup>2</sup> Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted.”

<sup>3</sup> Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted” pp. 3-7.

<sup>4</sup> Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted” p. 3.

<sup>5</sup> Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted” p. 3.

the dialogue commission,<sup>6</sup> *inter alia*, were established. Likewise, the National Government and the FARC-EP stated their “total willingness” to reach an agreement and therefore, pledged to begin discussions on the points of the agenda in order to: reach a Final Agreement for the termination of the conflict, establish a dialogue commission, and ensure the effectiveness of the process, *inter alia*.<sup>7</sup> In this respect, the State noted that the General Agreement, at the point regarding the Agenda, includes victims’ rights.<sup>8</sup>

6. The Commission observes that Colombia is at a historic juncture in which the Government and the FARC-EP may reach a peace agreement that would put an end to the armed conflict in the country, after more than five decades of length. In effect, the State is convinced that “nothing would contribute more to the protection of human rights than ending the armed conflict.”<sup>9</sup> The IACHR recognizes that the consolidation of a dialogue and expectations of achieving a lasting and stable peace in Colombia, are crossing elements in the human rights situation in the country. The IACHR considers that while this process poses a complex dynamic for its achievement, the full observance of the human rights obligations of the State must be central issues within the peace process, not only regarding the possible scope of an agreement but also in its consolidation and implementation, in terms to cease the violations caused by the conflict and to prevent their recurrence in the future; and how the possible establishment of peace in Colombia, could guarantee to their citizens the respect of their fundamental rights. Thus, the Commission appreciates the efforts undertaken by the State in the initiatives of the peace process and expresses its willingness to continue providing support within the terms of its mandate, in the actions taken by the State to comply with its international obligations.
7. In that context, on September 6, 2012, the State of Colombia sent a communication to the IACHR by which it extended an invitation to make a visit to the country. On November 14, 2012, the Commission communicated to the Colombian State that it was pleased to accept the invitation to make an on-site visit to the country December 3 to 7, 2012. Accordingly, the Commission decided that the evaluation of the human rights situation in Colombia would not be done by including it in Chapter IV of the 2012 Annual Report, but by carrying out an on-site visit in keeping with Article 39 of its Rules of Procedure then in force, and the subsequent drawing up of a detailed report on the situation in the country.
8. In consequence, the purpose of the on-site visit was to compile relevant information on the human rights situation in the country, in particular on the internal armed conflict and the situation of groups in particular vulnerability; as well as to evaluate the transitional justice mechanisms adopted by the State.
9. The IACHR made the on-site visit from December 3 to 7, 2012. The delegation was made up of the President and Rapporteur for Colombia, José de Jesús Orozco Henríquez; the First Vice President, Tracy Robinson; the Second Vice-President, Felipe González; Commissioners Rosa

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<sup>6</sup> Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted” pp. 4-7.

<sup>7</sup> Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted” p. 4.

<sup>8</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 23.

<sup>9</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 21.

María Ortiz and Rose-Marie Belle Antoine<sup>10</sup>; the Executive Secretary, Emilio Álvarez Icaza L.; the Assistant Executive Secretary, Elizabeth Abi-Mershed; Executive Secretariat attorneys Lilly Ching, Karin Mansel, Federico Portillo, Jorge Meza, Cristina Blanco, Andrés Pizarro, and Tatiana Gos; press coordinator María Isabel Rivero; and documents officer Gloria Hansen. During the visit, the delegation held meetings in Bogotá D.C., Quibdó (Chocó), Medellín (Antioquia) and Popayán (Cauca).

10. On October 11, 2013, the IACHR transmitted to the State a copy of the preliminary draft of this report, and asked that it submit its observations within one month. On November 5, 2013, the State requested an extension, which was granted by the Commission, up to November 30, 2013. On December 2, 2013, the State submitted its observations.
11. The Commission reiterates its recognition of the Colombian State for its openness to undergo an on-site visit, and highlights the positive disposition, support, and collaboration both in organizing and in carrying out the visit. In this regard, the Commission values the State's acceptance of deep international scrutiny as a sign of its determination to search for and consolidate lasting peace and also to strengthen the efforts made in terms of respect and guarantees of human rights in Colombia. The Commission considers that this willingness of the State favors consolidation of substantive contributions to the historic time that Colombia is going through, to which this report and the recommendations made by the Commission may be added. The IACHR also highlights the willingness, support and cooperation manifested both in the organization and development of the visit and thanks all those with whom it met during the visit, and values the information collected and the testimonies it received. In its observations on the draft report by the Inter-American Commission, the State expressed its gratitude to the IACHR for having sent the draft for its observations, which it submitted in light of its "commitment to respect, ensure, and protect human rights."<sup>11</sup> It also stated:

The Colombian State wishes to highlight the positive references made in the Draft Report regarding gains in attention to the victims of the internal armed conflict; the mechanisms for the participation of civil society for constructing a public policy on human rights; the creation and implementation of the National Unit for Protection; and the development of legal norms aimed at recognizing and protecting the rights of indigenous peoples and Afro-Colombian, black, *palenquero*, and *raizal* communities.<sup>12</sup>

12. The State also indicated that since the on-site visit by the IACHR, and over the last two years, there have been significant progress as a result of the State's commitment and the implementation of public policies in the area of human rights.<sup>13</sup> In particular, the State highlighted the creation of the "National Human Rights and International Humanitarian Law System," by Decree 4100 of 2011, "which ensures the articulation of the State around its human rights obligations." It noted that two years after it was implemented, Colombia has 73 entities and 118 offices at the central level integrated to the activities of the different components of the System.<sup>14</sup>

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<sup>10</sup> In keeping with Article 17(2) of the Commission's Rules of Procedure, Commissioner Rodrigo Escobar Gil, of Colombian nationality, did not participate in the on-site visit or in the process of deliberation and approval of this report on the general human rights situation in Colombia.

<sup>11</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, paras. 1-2.

<sup>12</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 6.

<sup>13</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, paras. 8-9.

<sup>14</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 10.



13. This report is the result of the information that the Commission has organized and analyzed with respect to the human rights situation in Colombia. In this effort, the Commission has drawn on the information received during and after the on-site visit, research done at its own initiative, the inputs of the different mechanisms through which the IACHR has monitored the situation in the country, press reports, and the decisions and recommendations of specialized international organizations, among others. In its observations on the draft report, the State referred to the “different sources of information referenced,” indicating that in some cases “state data and/or figures are not included, to compare them with what is reported by other sources.”<sup>15</sup> In this respect, the IACHR wishes to indicate that in any analysis of this nature, it looks for and takes into account information from various sources, and it is precisely with the aim of taking into account the official information and sources that the IACHR forwards the draft to the State in question, and incorporates the observations and information it considers relevant.
14. This report has seven chapters. The introductory chapter outlines the activities conducted during the on-site visit and the methodology used for preparing this report, as well as the framework used for analyzing the human rights situation in the context of the Colombian internal armed conflict. In the second chapter the Commission will analyze the rights to life, humane treatment, and personal liberty in cases of forced disappearances and extrajudicial executions; as well as the effectiveness of the protection mechanisms adopted for persons at risk. In the third chapter the Commission will address Colombian constitutional and legal framework, to which end it will refer to the justice situation for cases of human rights and IHL violations, and will evaluate the compatibility of Colombia’s normative framework and its application with the international obligations of the State. In particular, the IACHR will analyze the reforms on transitional justice, the proposed changes to the military criminal justice, and the mechanisms that have been adopted by the Office of the Attorney General for setting priorities in investigating cases. In addition, the IACHR will evaluate the mechanisms of reparation for victims of human rights violations; mainly the Law on Victims and Land Restitution, as well as the replacement of the motion victims could make in proceedings for comprehensive reparation (*incidente de reparación integral*) by the motion to identify the impacts caused victims, in the context of the Law on Justice and Peace. In the fourth chapter the Commission will examine the continuity of internal forced displacement, while the fifth chapter will examine the situation of economic, social, and cultural rights (hereinafter “ESCR”). In the sixth chapter, the Commission will analyze the specific situation of groups especially affected in the context of the internal armed conflict, namely, afrodescendants, raizales and palenqueros, children and adolescents, women, indigenous peoples, lesbians, gays, bisexuals, transexuals and intersex persons (hereinafter “LGBTI people”), journalists and media workers, persons deprived of liberty and human rights defenders. In each of these chapters the IACHR will make the recommendations it considers pertinent to adequately address the issues raised. Finally, in the seventh chapter the Commission will set forth its conclusions on the human rights situation in the country.
15. The Commission has indicated that a large part of the human rights violations in Colombia are related to the historical impact of the armed conflict in the country. In this regard, the IACHR recognizes that the Colombian State has launched important public policies on human rights to address the complex situation resulting from the internal armed conflict, and the strengthening that the Government has given to the assistance for victims of human rights

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<sup>15</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAII-13-048140, December 2, 2013, para. 13.

violations and the protection of people at risk, as well as the significant investment in both human and financial resources that the State is making in these areas. In this respect, the State has noted that with the implementation of the Law on Victims (1448 of 2011), “a new institutional framework” has been created “devoted exclusively to victims,” in the context of which “more than 150,000 victims have been compensated” and that an investment of “30 million dollars” has been earmarked “for implementing this policy during the 10 years in which the law will be in effect.”<sup>16</sup> The Commission also recognizes that the State has adopted a series of legislative, administrative and judicial measures that seek to overcome the situations that constitute violations of human rights and to walk toward peace for Colombian society. In this framework, coupled with the efforts within the peace process, the State is developing important participation mechanisms to advance the development of a “Comprehensive policy on human rights and international humanitarian law”, with the participation of the civil society, international community and the State authorities, an initiative that began its consolidation with the celebration of the National Conference on Human Rights and International Humanitarian Law, held in Bogotá in December, 2012.

16. The Commission notes that, during more than fifty years, Colombia’s internal armed conflict has undergone major transformations in terms of the dynamics and actors involved; these stages have been analyzed in detail by the IACHR. At present, Colombia has recognized a situation of armed conflict in relation to the guerrilla forces of the FARC-EP and the *Ejército de Liberación Nacional* (ELN: National Liberation Army). Nonetheless, the Commission has noted that the violence derived from a lack of an effective and complete dismantling of armed paramilitary structures, continues to severely impact the rights of the citizens and Colombia. On that respect, the Commission notes that the State maintains specific duties to dismantle the groups known as “Autodefensas” who did not participate in the collective demobilizations of 2003-2006, and that continue to operate in Colombian territory. In addition, the Commission observes with concern elements of continuity between the former *Autodefensas* and the so-called “emerging criminal bands” (“*bandas criminales emergentes*” hereinafter “BACRIM”). As will be explained in subsequent paragraphs, in its observations on the draft report, the State set forth its position that the criminal bands are “organized crime groups,” and thus are phenomena “different in nature and scope” from the paramilitary groups.<sup>17</sup>
17. During the visit the IACHR received information that indicates the continuity of assassinations, selective assassinations, massacres, forced disappearances, kidnappings, assassination attempts, confrontations and combats, threats and pamphlets, economic blockades, illegal checkpoints, displacements, bombardments and aerial strafing in rural areas, confinement of peasant communities, registration of the civilian population by the Army, and stigmatization of social movements, among others.
18. The Commission considers that the serious situation of impunity that one finds in relation to serious human rights violations and breaches of IHL by all the actors in the conflict in Colombia, as well as the failure to clarify the dynamics, scope, composition, and structure of the former *Autodefensas* and the illegal armed groups that emerged after the demobilization of the paramilitary organizations constitute systematic obstacles not only for guaranteeing victims’ rights, but also for securing detailed and precise information that would make it

<sup>16</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 25.

<sup>17</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 26.

possible to characterize these groups, break up the ties that feed them, and adopt the appropriate policy and legal measures to confront them.<sup>18</sup>

### Right to life in the context of the armed conflict

19. The Commission notes with concern that the forced disappearance of persons continues nowadays to be widespread in Colombia. While the IACHR values the measures aimed at establishing the whereabouts of disappeared persons and to proceed to fully identify them and hand them over to their next-of-kin, it observes that the gains thus far are incipient in relation to the number of disappeared persons, and effective plans or policies for effectively addressing and having uniform and systematized information on this phenomenon have yet to be implemented.
20. The Commission recalls that the State has the obligation to act promptly within the first hours and days after receiving a report of a disappearance or kidnapping, which is why measures must be adopted aimed at ensuring the functioning and effectiveness of the urgent search mechanisms and any other measure that makes it possible to cross-reference data to determine the whereabouts of and/or quickly identify the persons disappeared.
21. For several years the Commission has received information on continued extrajudicial executions by members of state security forces. This phenomenon intensified in the last decade, and became particularly well known through cases of what were known as “false positives,” namely, the extrajudicial execution of civilians so as to then be presented as combat casualties.
22. The Commission observes with satisfaction that according to the information that is publicly known, this phenomenon began to diminish; even so, major challenges persist in relation to follow-up on the internal measures taken with a view to preventing extrajudicial executions. The Commission reiterates that the extrajudicial execution of civilians so as to then be presented as combat casualties implies a violation of international human rights law and IHL, and that the massive and systematic nature of this practice was also shown by the Prosecutor of the International Criminal Court.
23. Likewise, as the Commission has noted consistently, the State is responsible for those human rights violations that stem from abusive use and lack of proportionality in the force used by the security forces. To that end, it is of the utmost importance that the State adopts the measures needed to ensure the protection of civilians and to precisely determine proportionality in the use of force in the context, as well as outside of the context of armed confrontation.

### Protection of persons at risk

24. In the context of the obligations established at Article 1(1) of the American Convention on Human Rights (hereinafter “the American Convention”), the Commission has closely monitored the protection programs that the State has been developing for the purpose of guaranteeing the rights of persons in a situation of risk, in particular in the context of the

<sup>18</sup> In its observations on the draft report, the State indicated that major efforts have been under way “to prosecute those responsible for human rights violations,” accordingly it rejected the assertion by the IACHR regarding the existence of a serious situation of impunity. It also reiterated that with Law 1448 of 2011, “today the victims of the armed conflict in Colombia occupy a central place in the public policy of the State.” Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 27.

armed conflict. Specifically, the IACHR has noted that Colombia has been one of the pioneer countries of the hemisphere in creating specific programs for protecting different groups of Colombian society, as well as in implementing the precautionary measures requested by the Commission. In that scenario the IACHR was pleased with the creation of the National Protection Unit (*Unidad Nacional de Protección*, hereinafter “UNP”) in 2011, as an entity that assumed the protection functions that had been entrusted to the Ministry of Interior and Justice and the Administrative Department of Security (*Departamento Administrativo de Seguridad*, hereinafter “DAS”).

25. The IACHR recognizes that with the creation of UNP, the State continues to make progress in institutional development and strengthening of mechanisms for the protection of persons at risk, and that this is an important continental precedent in the Region associated with significant gains in protection matters. Notwithstanding this, the Commission has received consistent information from civil society sources, and especially from persons who are beneficiaries of the protection programs, on various failings in their operation.
26. The Commission notes that the Colombian State had adopted a practice of conducting an additional risk assessment to the beneficiaries of precautionary measures granted by the IACHR. Several beneficiaries of precautionary measures indicated that they have had make a new showing of risk (“demostración de riesgo”) in order to enter the protection program of the UNP. The Commission highlights that, during the visit, the State authorities expressed its commitment to stop the practice of submitting the beneficiaries of precautionary measures from the IACHR to a new process of “showing of risk” in order to enter into the protection programs.
27. The IACHR recognizes that it is fundamental that the States conduct a situation analysis to determine, in consultation with the beneficiaries, the suitable measures of protection to be adopted to protect their rights and, based on this analysis, to make possible the effective and diligent implementation of the precautionary measures sought. Such considerations are considered applicable to all those measures that the IACHR has issued in previous years, and that have continued to be necessary in view of situations of risk that continue to persist over time. In this context, the Commission wishes to underscore that the decision whether to lift precautionary measures is exclusively up to the Commission, in keeping with its norms. The Commission takes into account and values what the State has said when it affirms that Colombia “keeps in force its mechanism for following up on the measures until the IACHR decides to lift them.”<sup>19</sup>
28. Also, the Commission reiterates that one of the essential principles that should govern the implementation of the measures of protection is that they be planned and implemented with the participation of the beneficiaries and their representatives. The States should guarantee this right for the beneficiaries of precautionary measures, while the beneficiaries and their representatives should provide all the cooperation needed to facilitate their effective implementation. The IACHR recognizes that the State has reaffirmed that its policy is that “all measures of protection are coordinated with the beneficiaries of precautionary measures in the context of a meeting coordinated by the Ministry of Foreign Affairs,” which are held to follow up on or coordinate the measures with the delegates of the corresponding entities.<sup>20</sup>

<sup>19</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 33.

<sup>20</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 34.

29. The IACHR notes that given the binding nature of measures of protection in the inter-American system, recognized by the Colombian State, and the principle of good faith that governs in international law, once a measure of protection is granted by an organ of the inter-American system, corresponds that the State implements it and follows up. In that regard, the Commission recalls that implementing measures of protection granted in the context of international procedures cannot be subordinated to the start-up or conclusion of domestic proceedings, since such a course of action contravenes to the international obligations acquired by the State.
30. Finally, the Commission insists that it is essential for the mechanisms of protection to be articulated with the corresponding entities entrusted with investigation, so as to clear up the sources of risk, and to identify and punish the possible perpetrators. Progress in investigations would also supplement the effectiveness of the measures of protection and defuse the elements that endanger the persons covered by the protection programs.

### **Impunity and obstacles in the area of justice**

31. In relation to the foregoing, the Commission notes with concern that one of the key and urgent challenges in Colombia is overcoming the situation of impunity that affects cases of serious human rights violations and breaches of IHL. The Commission notes that from the scrutiny of the information set forth throughout the report, major obstacles persist for the victims of human rights violations and their next-of-kin to be able to obtain justice in Colombia.
32. That situation is a consequence, as the State has recognized, of the lack of an effective response by the system in processing the high number of cases that have occurred in the context of or have been facilitated by the internal armed conflict. There are also certain structural obstacles that keep judicial proceedings from being resolved in a reasonable time and prevent investigations that could turn out to be related from going forward in a coordinated manner which might not only lead to the identification and punishment of the persons responsible for human rights violations, but also to the dismantling of the structures that facilitated the commission of those violations.
33. The Commission values the initiatives taken by the State to overcome the difficulties indicated, to make its system of justice efficient, and to endow it with greater technical, human, and financial resources. In addition, the Commission emphasizes that the multiplicity of mechanisms and normative frameworks in place for clarifying, investigating, and punishing cases of human rights violations and infractions of IHL should be coordinated and should involve mutual feedback.

34. Nonetheless, the Commission notes that some measures could be incompatible with the right of victims of serious human rights violations and their next-of-kin to judicial guarantees and judicial protection.<sup>21</sup> The Commission recalls that the complementary nature of international systems of justice is based precisely on the premise that the State has the lead responsibility when it comes to guaranteeing justice domestically, with respect to all acts violative of human rights and IHL committed in its territory or under its jurisdiction.
35. The Commission considers that the State should give the greatest priority to clarifying the human rights violations perpetrated by all actors in the conflict and determine casuistically and in detail the nature and actions of the illegal armed groups that emerged after the demobilization of paramilitary organizations and their possible connections with some State authorities.
36. In addition, the State must provide adequate follow-up in the ordinary justice system to the information revealed in the proceedings in the Justice and Peace jurisdiction in order to ensure full truth is arrived at, and that a full investigation is carried out into the structures that have carried out the human rights violations. Making gains in domestic proceedings is inextricably bound up with guaranteeing justice in specific cases; constructing the truth and preserving the memory of the Colombian people; guarantees of non-repetition; and the sustainability of the reparation processes implemented by the State.

### **Transitional justice in the context of an ongoing armed conflict**

37. Considering the mandate and functions of the Commission as well as its role advising the member states of the Organization of American States (hereinafter “OAS”), its General Secretariat, and the Mission to Support the Peace Process of the OAS (hereinafter “MAPP/OAS”), the framework of transitional justice in Colombia has been a subject of the utmost concern. In the context of its monitoring work, the IACHR has valued a series of steps adopted by the State and has noted the applicable international human rights standards.
38. The Commission recognizes that Colombia has applied transitional justice mechanisms to a non-international armed conflict that has not ended, which poses additional challenges. Accordingly, at present, there are multiple normative regimes in place in Colombia to which will likely be added adaptations stemming from a possible peace process.

39. The Commission recognizes that implementation of the Law on Justice and Peace (hereinafter “Law 975 of 2005”) has made it possible to partially reveal a truth that would have been impossible to obtain by other means, as well as certain links with elements of the political sphere, which constitutes an important starting point. Nonetheless, the Commission observes with concern that the results are insufficient and precarious, taking into consideration that as of the date of the preparation of this report, eight years after the Law on Justice and Peace was adopted, only 10 judgments of first instance and 7 judgments of

<sup>21</sup> In its observations on the draft report, the Colombian State reiterated that “the measures that have been implemented are compatible with the rights of the victims of human rights” violations and that Colombia has been cited by the International Criminal Court as “an example of positive complementarity, precisely because the domestic legal order respects the prevalence and application of international treaties, as well as the needs of international cooperation.” Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 36.

second instance have been handed down, and only 14 of those who sought to avail themselves of the benefits (*postulados*) have been convicted. In addition, none of those judgments refer to anyone who has the status of both highest-level responsibility and representative member of the group, nor do they sufficiently address criminal acts that reflect patterns of macro-criminality and macro-victimization.

40. The IACHR has followed up on and analyzed the different obstacles and failings in the implementation of the Law on Justice and Peace, among which special mention can be made of the excessive delay in procedures, the extradition of the top paramilitary leaders without proper prioritization of truth, justice, and reparation; limitations on the victims' participation; difficulties in respect of reparation; and promulgating laws that offer the demobilized a series of benefits additional to those already considered in the Law on Justice and Peace; among others.<sup>22</sup>
41. The Commission takes note of the adoption of Law 1592 of 2012, by which changes are introduced to the Law on Justice and Peace. The Commission notes the legal reforms aimed at ensuring procedural economy and hopes that they will produce specific results in terms of progress in the proceedings. Nonetheless, the Commission notes with concern that on expanding the temporal framework, Law 1592 would make it possible for members of illegal armed groups who continued committing human rights violations after the collective demobilizations to avail themselves of the benefits established in the Law on Justice and Peace, which would presuppose a situation of juridical insecurity and legal inequality among the demobilized who are subject to that regime. In its observations on the draft report, the State argued that Law 1592, "simply resolved the antinomy that existed between Articles 2 and 72 of Law 975 of 2005, establishing that the Law should be applied to acts committed prior to demobilization [...]" It emphasized that "one of the main ideas behind the reform of the Law on Justice and Peace was the change in focus so as to make possible the concentration of criminal justice efforts in relation to the highest-level persons responsible for the most serious crimes."<sup>23</sup> In this report, the IACHR will present its considerations on the inter-American standards in the area of truth, justice, and reparation, in light of what is put forth by the State and its international obligations in this regard.
42. As regards the grounds for exclusion from the Law on Justice and Peace established in Law 1592 of 2012, the Commission values the fact that these conditions have been made explicit, given that it is the other side of the coin of the rigorous application of the Law on Justice and Peace, on evaluating the degree of compliance with the requirements of eligibility, and in particular it will make it possible to give visibility to the failure to comply with the obligations to deliver property and children and adolescents who have been recruited. Nonetheless, the IACHR notes that to carry out the obligations in respect of justice, the exclusion of persons seeking to avail themselves of the Law on Justice and Peace (*postulados*) from the Justice and Peace process should necessarily be accompanied by impetus in the investigations and proceedings that should be carried out with due diligence and in a reasonable time in the regular courts; this is even more critical in the case of those *postulados* who have been extradited.

<sup>22</sup> As will be explained in the section analyzing the Law on Justice and Peace, the Colombian State expressed its concern over the fact that the "performance" of these processes is gauged based on the number of judicial judgments handed down. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAII-13-048140, December 2, 2013, para. 38.

<sup>23</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAII-13-048140, December 2, 2013, para. 39.

43. The Commission reiterates that overcoming impunity is essential for preventing the repetition of human rights violations, which is why it urges the State to carry out its obligations with respect to justice in the context of the Law on Justice and Peace.
44. As the Commission has already stated, the focus, design, and provisions of the Legal Framework for Peace (Legislative Act 01 of 2012) indicated a conceptual change and have provoked a series of human rights concerns. The Colombian State has said that the Legal Framework for Peace

provides for an integral strategy of transitional justice aimed at the maximum possible satisfaction of victims' rights, the creation of a Truth Commission, conditions for laying down arms and contributing to clarification of the facts, and reparation for any special criminal justice treatment, and indicates that in any event extrajudicial measures should be implemented for clarification of the facts and reparation that are complementary in nature.<sup>24</sup>

45. Without prejudice to the analysis that follows, on this point the IACHR emphasizes that while it is true that the concept of prioritization would be in principle consistent with the importance and necessity of judicially establishing the responsibility of the most important leaders, it is no less true that the concept of selectivity and the possibility of waiving the investigation and prosecution of serious human rights violations would in principle be incompatible with the State obligations.

46. The IACHR is aware of the decision adopted by the Constitutional Court by which it decided to declare "enforceable" subsection 4 of Article 1 of the Legislative Act 01 of 2012, under a series of considerations, among these, that the strategy of "grouping serious human rights violations in 'macroprocesses' and the attribution of the most responsible", will be a measure that will allow "more effective compliance with the duty to protect the rights of the victims of the conflict"<sup>25</sup>. In its observations on the draft report, the State reiterated that in keeping with the decision of the Constitutional Court, "it is legitimate that a special application be given to the rules of prosecution, so long as one ensures as a minimum [that crimes against humanity, genocide, and war crimes committed systematically] will be prosecuted." In this regard, the State has said that the interpretation by the Inter-American Court in the case of *El Mozote v. El Salvador* allows one to establish that "in transitions from armed conflict to peace, the State's obligation is to investigate and prosecute international crimes."<sup>26</sup>

47. In this respect, the IACHR notes that it will analyze in detail the State's argument in a subsequent section. On this point, the Commission reiterates to the State that consideration should be given to the relevant international human rights standards in the design and discussion of the enabling laws (*leyes estatutarias*) established in the Legal Framework for Peace. The case-law of the inter-American system has identified the investigation and

<sup>24</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 40.

<sup>25</sup> To the date of approval of the present report, the full text of the judgment was not available, however, the information has been obtained from the Official newsletter No. 34 of the Constitutional Court, dated August 28, 2013. Available in Spanish at: <http://www.corteconstitucional.gov.co/comunicados/No.%2034%20comunicado%2028%20de%20agosto%20de%202013.pdf>

<sup>26</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, paras. 17-18.



prosecution of cases of grave human rights violations and the absence of factual or legal impediments, such as adoption of amnesty laws, as essential elements of the rights established at Articles 8 and 25 of the American Convention. In view of the foregoing, having duly analyzed the reform in question, the Commission reiterates that the mechanisms for selecting and waiving investigation in cases of grave human rights violations could be incompatible with the international obligations of the State.

48. In this context, as regards the “Prioritization Strategy” recently adopted by the Office of the Attorney General, the Commission values the initiatives aimed at bringing together, systematizing, and analyzing the information that is dispersed in different agencies, and considers that in principle the prioritization of cases aimed at making the response of the state justice system more efficient is not incompatible with the obligations that emanate from the American Convention. In this regard, the Commission notes that prioritization cannot imply the failure of the State to act with respect to cases of human rights violations, and observes with concern that according to the information received, grave human rights violations and infractions of IHL, such as forced disappearances, torture, sexual violence, and recruitment of children and adolescents, have not been initially prioritized. However, the Commission notes that within the benchmarks set by the Constitutional Court for the issuance of the enabling law that develops the Legal Framework for Peace, the Court stated that “given the severity and representativeness, the investigation and punishment of the following offenses: extrajudicial executions, torture, forced disappearances, sexual violence against women in armed conflict, forced displacement and illegal recruitment of children, shall be prioritized when they are qualified as crimes against humanity, genocide or crimes war committed in a systematic manner”.<sup>27</sup>
49. In light of the above, the Commission reiterates that a model of transitional justice should be respectful of international obligations on human rights. The jurisprudence of the inter-American system indicates that the obligation to ensure the judicial protection necessary to protect fundamental rights is not subject to suspension, even in times of war. In its observations on the draft report, the State indicated that “integral reparation does not depend on it being judicial and that in cases of transition from armed conflict to peace, when there is a large number of victims, it would be impossible to attempt to compensate all of them in terms of actual damages and loss of earnings.”<sup>28</sup> The Commission recognizes the size and complexities of the conflict in Colombia, and the need for a durable solution as a prerequisite for the full exercise of human rights. In this sense, the construction of a peace process should be done on the pillars of truth, justice and comprehensive reparation. Thus, the Commission believes that the application of certain figures that raise tensions with the right of victims of gross human rights violations, protection and judicial guarantees to achieve the criminal investigation and prosecution of the perpetrators in the jurisdiction ordinary, could undermine the efforts of the State to achieve a lasting peace in Colombia, and overcoming impunity as a guarantee of non-repetition.

<sup>27</sup> See: Official newsletter No. 34 of the Constitutional Court, dated August 28, 2013, p.4. Available in Spanish at: <http://www.corteconstitucional.gov.co/comunicados/No.%2034%20comunicado%2028%20de%20agosto%20de%202013.pdf>

<sup>28</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 45.

## Setbacks with respect to military criminal justice

50. The Commission has monitored the legal framework on the application of military criminal justice in Colombia through its country reports and the system of cases and individual petitions, and has observed gains and setbacks in this area. In past years Colombia had taken important measures to gradually restrict the application of the military jurisdiction, measures that the Commission values. While the case-law of the Constitutional Court and the Supreme Court of Justice have been consistent in terms of indicating that the military criminal courts do not have jurisdiction to investigate cases of human rights violations, more recently the State has implemented different mechanisms that would pose obstacles to the full application of this principle.
51. The Commission observes with concern that reports continue concerning the use of the military jurisdiction for investigating human rights violations. The Commission has repeatedly noted that the military criminal justice system is not competent to investigate cases of human rights violations, which is why initiatives such as the constitutional reform on military criminal justice (Legislative Act 02 of 2012) could constitute a serious step backwards and could be an obstacle to the implementation of the State's obligations to provide for judicial guarantees and judicial protection.
52. The IACHR expressed its profound concern over the serious setback in respect of human rights that the constitutional reform, which significantly expanded the scope of military criminal jurisdiction, could represent. The Commission considered that several of the provisions of Legislative Act 02 would be incompatible with the American Convention. In addition, the IACHR reiterates that the reform contained ambiguous provisions that were subject to a subsequent enabling law and therefore gave rise to legal uncertainty. The IACHR bears in mind that as of the date of approval of this report, Legislative Act 02 was declared unconstitutional by the Constitutional Court. Nonetheless, the Commission has set forth in this report the points of concern regarding initiatives such as that proposed in this constitutional reform, mindful that it is an ongoing debate in Colombia, and with respect to which the State authorities have announced that they would continue analyzing the issues it encompasses. The State has indicated that "Colombia as a state under the rule of law will abide by the ruling of the Court, which is the organ entrusted with protecting the Constitution."<sup>29</sup>
53. The Commission reiterates that the possibility that the State would seek to implement mechanisms such as that proposed with the adoption of the constitutional reform on military criminal justice is a matter of profound concern, given that it could imply a clear setback for the protection of human rights in Colombia and would cast a pall over the efforts the Colombian State has made in recent years to guarantee access to justice for its inhabitants. In addition, the Commission warns that initiatives such as the constitutional reform on criminal military justice would constitute the culmination of a series of measures that run counter to the investigation of cases of human rights violations by the regular justice system, and would take place in a complex context in which it is intended to articulate various mechanisms of judicial and criminal justice benefits for the parties to the internal armed conflict.

<sup>29</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 44.

54. In that context, the Commission notes that as proposed in the text of the constitutional reform, there would not be sufficient guarantees to prevent investigations into human rights violations from taking place in the military jurisdiction. First, the legislative technique used referred to certain violations of human rights by exclusion and in an all-inclusive list, which could not be modified by an enabling law, since such law, according to the terms of the reform, will refer only to the interpretation, application, and harmonization of IHL. Second, some conduct expressly excluded from the military criminal jurisdiction, i.e. extrajudicial executions and sexual violence, is not defined to date as such in domestic law, and therefore a restrictive interpretation could mean accusations of those crimes would be investigated in the military criminal jurisdiction.
55. The Commission notes that the same concerns expressed in relation to the constitutional reform are repeated in the case of the draft enabling law that was submitted for debate to the respective authorities. Specifically, the Commission notes that limitations in relation to the possibility of grave human rights violations being investigated by the military criminal jurisdiction persisted, and the regulations of the military criminal courts are not sufficient to consider them independent and impartial.

### **Mechanisms of reparation**

56. The Commission values the efforts made by the Colombian State and the initiatives undertaken to create a comprehensive policy of reparations and to promulgate a law to make reparation to the victims of the armed conflict. In particular, the Commission once again values the decision of the State to adopt Law 1448 of 2011, Law on Victims and Land Restitution (hereinafter “Law 1448” or “Victims’ Law”) as an administrative system for reparation that encompasses different causes, situations, and particularities of the victims of human rights violations and infractions of IHL stemming from the internal armed conflict. The Commission recognizes the challenges that stem from the massive scale of the human rights violations perpetrated in the context of the armed conflict, the organization among the many institutions involved both nationally and locally, and the implementation of different measures of reparation in a situation in which the internal armed conflict and violence have continued over a long time.
57. In this respect, the Commission notes that one of the issues most debated in relation to Law 1448 has been its scope and the determination of the victims who can have access to the mechanisms of reparation provided for in it. Additionally, the Commission recognizes that situations of overlap and reworking of the competences and functions of the State organs commonly accompany legal and institutional changes, such as those that have taken place with the implementation of Law 1448. Nonetheless, the Commission notes that this situation has only translated into delays for the population, including in the provision of urgent measures of attention, in light of the paralysis of State institutions or the lack of knowledge of the procedures and courses of action by the very authorities in charge of applying the mechanisms provided for in the Law. The Commission considers that the State should make specific efforts both to duly train its officials and to ensure mechanisms for publicizing and getting out information on a mass scale about the measures of reparation provided for in Law 1448. At the same time, it should ensure the effectiveness of the mechanisms of participation of victims provided for in that Law. In these circumstances, it is of concern to the Commission that more than two years after the adoption of Law 1448 both the State and civil society recognize that there are serious difficulties when it comes to ensuring the participation of victims in the process of implementing Law 1448.

58. The Commission reiterates that overcoming the situation of impunity with respect to human rights violations and strengthening of mechanisms for access to justice, judicial guarantees, and judicial protection are essential for ensuring the sustainability and success of somereparations policies, such as land restitution. Defusing the factors of violence and protecting victims and leaders who are claimants are closely linked to gains in the investigations in this regard.
59. In view of the foregoing, the Commission encourages the State to continue going forward in the implementation of Law 1448 and to adopt the measures necessary for adequately addressing the challenges found, in terms of making effective comprehensive reparation to the victims of the conflict.
60. The Commission notes that one of the most controversial elements of Law 1592 is that it does away with the motion for comprehensive reparation (*incidente de reparación*) established in the Law on Justice and Peace, and replaces it by a “motion to identify the impact caused the victims” (*“incidente de identificación de las afectaciones causadas a las víctimas”*). The Commission observes that the provisions of Law 1592 entail major restrictions on the measures of reparation ordered in the framework of the judicial proceedings in the Justice and Peace jurisdiction. In this respect, the Commission notes that as of the entry into force of this law, there would be no incentives, in relation to reparation, for the victims’ participation in the Justice and Peace proceedings, with the exception of the presumed preferential attention. Nonetheless, there is no indication how preferential access will operate or how the sums in the Justice and Peace Reparations Fund will be used.
61. While the Commission has recognized that the State may adopt multiple measures of reparation that imply judicial and non-judicial mechanisms, the Commission notes that this reform would apply, in practice, eliminating any mechanism of judicial reparation in the framework of the transitional justice processes, and thus operate as a restriction on the rights and expectations that victims have come to have during the eight years during which Law 975 of 2005 has been in force. The Commission urges the State to adopt the appropriate mechanisms to ensure that victims who participate in the Justice and Peace proceedings have access to a judicial remedy for determining the harm caused and the corresponding reparations.

### **Continuation of the humanitarian crisis stemming from forced displacement**

62. Throughout the more than 50 years of the internal armed conflict in Colombia, the forced migration of millions of persons has been one of the main consequences and strategies of armed struggle of the parties to the conflict. In the view of the IACHR, the continuation and worsening of the humanitarian crisis resulting from forced displacement represents one of the main human rights challenges Colombia faces at present and in coming decades. The Commission notes that preventing forced displacement and ensuring the human rights of displaced persons still pose major challenges in Colombia.
63. During the visit the Commission received testimony from displaced persons and information from civil society organizations that evidenced the situation of extreme vulnerability affecting the internally displaced, at the same time as they drew attention to a significant increase in the number of events of massive and interurban displacements in recent years, in particular in 2012.

64. The Commission observes with concern that a large number of persons were displaced by the action of illegal armed groups that emerged after the demobilization of paramilitary organizations, forced displacements that apparently have not been adequately registered. In addition, according to the information collected, the access of the internally displaced to basic social services - such as housing- and income generation, continues to be insufficient.
65. The Commission notes with concern that the continuation of the internal armed conflict and the action of the illegal armed groups in the different territories hinder the effective return of the displaced population. The Commission notes that the claimants of lands and the leaders of the restitution processes are at special risk, thus the State should adequately evaluate each specific situation, provide the most appropriate security measures, and generate mechanisms for monitoring and accompaniment after restitution, as well as establishing effective indicators to evaluate the implementation of the return.
66. Similarly, in the exercise of its different mechanisms, and during the visit, the Commission was able to verify the disproportionate impact that internal displacement has on women, especially women heads of household, pregnant women, and women who have been victims of various forms of violence; children and adolescents; older adults; peasants; indigenous peoples; black, Afro-Colombian, *Raizal*, and Palenquero communities; persons with disabilities, and LGBTI persons. The Commission observes that due to both the particular characteristics of these groups and the situation of historical discrimination and exclusion they have suffered, forced displacement has entailed special factors of vulnerability for these populations.

### **Economic, social and cultural rights**

67. The Commission notes that Colombia's economic development has not resulted in equitable distribution of resources, and that there are still parts of the country with major shortcomings in terms of infrastructure and the presence of State institutions, access to basic services, and enjoyment of economic, cultural, and social rights. These shortcomings are all the more serious for populations that have historically suffered discrimination or are living in poverty and extreme poverty. According to the information obtained, in some cases their situation has even worsened with the implementation of large-scale infrastructure projects that have a detrimental impact on their ways of life and income-generating activities; and whose earnings were not reflected in direct benefits for those groups. In its observations on the draft report, the State noted that one of the agreements reached in the dialogues in Havana was in relation to point 1 of the agenda on integral rural development. In that regard, it reiterated that the State has made major efforts to seek "equitable distribution of resources," and that Colombia at this time is among the countries of Latin America "that have significantly reduced inequality" according to the Economic Commission for Latin America (hereinafter "ECLAC").<sup>30</sup> The IACHR bears in mind the commitment of the State "to guarantee inclusion and social mobility so that all Colombians have equal opportunities to access the benefits of development."<sup>31</sup>

<sup>30</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 48.

<sup>31</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 49.

## Groups especially affected by the armed conflict

68. The IACHR has established that the principle of non-discrimination is one of the pillars of any democracy and that it is one of the fundamental bases of the human rights protection system instituted by the OAS. Nonetheless, as developed throughout this report, the Commission notes that the Colombian internal armed conflict provokes and contributes to perpetuating specific impacts on certain groups that are in a situation of particular vulnerability and/or affected by multiple levels of discrimination. The Commission analyzes in detail the differentiated impact with respect to each one of these groups, taking into account the concept of intersectionality.
69. In effect, despite representing a major percentage of the Colombian population and constituting a subject meriting special protection by the State – according to the Constitution and the case-law of the Constitutional Court – Afrodescendant persons are still rendered invisible. This has led the Commission to note that despite the different measures adopted by the State, situations of special concern such as the poverty and exclusion of the Afro-Colombian population are encountered; the failure to clarify the crimes committed against Afro-Colombians; and the obstacles to the effective enjoyment of their collective property rights to the land, among others.
70. The Commission recalls that children and adolescents constitute a group specially protected by IHL and international human rights law, and among the most vulnerable groups in a context of violence. Nonetheless, children and adolescents are victims of many direct violations of their rights, such as forced recruitment; homicides and forced disappearances; sexual violence; and forced displacement. They are also victims of other indirect consequences of the armed conflict, such as the difficulty accessing essential basic services such as health, education, and drinking water, and multiple impacts on their family situation, which in turn increases their vulnerability to the armed actors and contributes to these children and adolescents becoming the victims of new violations, such as forced recruitment. In this context, the IACHR notes that Afrodescendant and indigenous children are affected disproportionately.
71. The Commission reiterates its serious concern over the suffering of Colombian women due to violence and discrimination aggravated by the armed conflict, and the importance of considering their specific needs in the public response to the problem. The Commission has indicated, in turn, that Colombian women and girls affected by the armed conflict cannot fully enjoy or exercise their rights enshrined in the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, in the American Convention on Human Rights, and in other international human rights instruments, and has emphasized the systematic nature and scope of the phenomenon of violence against women, and especially sexual violence in the context of the armed conflict and against displaced women.
72. In connection with indigenous peoples, the IACHR has received consistent information about the multiple facts that show they are deeply and disproportionately affected by the internal armed conflict. In that regard, although the legal and institutional framework is favorable, the information indicates that it has not turned into the effective protection of the rights of indigenous peoples. In particular, the Commission notes with concern that, at present, many indigenous peoples in Colombia face a proven risk of physical and cultural extinction due to multiple and complex factors, such as the impact of the armed conflict, the laws of territory, the few number of members and poverty and its consequences.

73. The IACHR observes that in Colombia lesbian, gay, trans, bisexual, and intersex persons have historically been subject to discrimination and violence based on their sexual orientation and gender identity, a situation that has been exacerbated by the armed conflict, finding expression primarily in two aspects: acts of violence (assassination, attacks, and threats) by armed groups, who make these persons military targets, and forced displacement. This situation of discrimination and violence is aggravated by a social and political context in which there is a highly contentious political dispute over the recognition of certain rights for LGBTI persons. In addition, the IACHR observes that while there have been gains in respect of state measures for preventing and punishing violence against these persons, they have not been effective. Accordingly, the situation of violence is generalized throughout the country, focused on gay men, trans women, lesbian women, and activists and defenders of the rights of LGBTI persons. Notwithstanding the foregoing, in its observations on the draft report, the State noted that major gains have been made in this area, in particular with the creation of the “Roundtable on Urgent Cases” for the LGBTI population with the objective of “receiving and giving impetus to allegations of human rights violations of members of this community.” It also noted “the inclusion in the National Development Plan of the mandate to construct a public policy for that population.”<sup>32</sup>
74. The Commission values the efforts made by the Colombian State to improve prison management, for example in terms of governance and security in the prisons, professionalization of prison staff, and other initiatives being taken by the Ministry of Justice and Law. Nonetheless, the Commission observes that the situation of persons deprived of liberty continues to be one of the most worrisome in relation to human rights in Colombia at this time. The main problem in the Colombian prison system going back decades is the steady growth of the prison population, a structural deficiency that has to do mainly with the design of criminal justice policy. The logical consequence is the serious overcrowding of the prisons.
75. During the visit the Commission once again found the essential role that human rights defenders have played and continue to play in reporting human rights violations committed in the context of the armed conflict, as well as their contribution in the process of seeking and consolidating peace in Colombia. The Commission also found that precisely because of their essential work human rights defenders continue to be subject to serious abuses of their rights, perpetrated by the parties involved in the conflict and done with the aim of suppressing their complaint.
76. The Commission reiterates its concern over the grave acts of violence committed against journalists and social communicators in connection with their professional activities. The Commission emphasizes that acts of violence against journalists and members of the media for reasons related to their work violates the right of these persons to express and share ideas, opinions, and information, and also infringes on the right of citizens and societies as a whole to seek and receive information and ideas of any nature. Furthermore, failing to punish crimes such as these encourages the repetition of similar acts of violence and can have a strong and chilling effect on the exercise of freedom of expression, causing journalists and communicators to resort to self-censure as the only means of protecting themselves.

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<sup>32</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 8.

## Conclusion

77. The State is convinced that an appropriate and effective institutional and normative structure is a fundamental requirement for safeguarding the rights of citizens. The State has indicated that by implanting public policies in recent years, and in particular through the initiative to create the “National Human Rights and International Humanitarian Law System,” Colombia has reaffirmed its commitment “to an integral human rights policy that is coherent, long-term, and based on principles of harmonious State cooperation, dialogue with civil society, [and the] accompaniment of the international community.”<sup>33</sup>
78. The Commission values the multiple policies, actions, programs, institutions, and legislation adopted by the Colombian State in order to comply with its international human rights obligations. Nonetheless, the Commission notes that structural challenges persist in respect of human rights, as do important gaps between the legislation in force and its effective implementation; and between the levels of institutional strength and development in the capital and in all other jurisdictions in Colombia.
79. The Commission observes with concern that impunity transversely affects all violations of human rights and IHL, and is the norm for all the illegal armed actors, as well as State agents. The Commission highlights the progress made in the peace dialogues with the FARC and is of the view that achieving peace in Colombia would be a fundamental step for protecting human rights in the country, would contribute to establishing a context propitious for guaranteeing justice in relation to the grave violations of human rights and infractions of IHL, and is a key element for the sustainability of the measures of reparation implemented by the State. Nonetheless, as the IACHR said in 1999, and its recognized by the State in the “General Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace,”<sup>34</sup> the search for a genuine peace should be grounded in the effective observance of human rights.
80. In this respect, the State also noted that this report addresses issues of national import in Colombia, and that they reflect the “processes that are democratic, inclusive, and respectful of [its] institutional framework,” as a show of “the country’s democratic maturity for addressing issues that pose a challenge not only to the National Government, but to society as a whole.”<sup>35</sup>
81. The IACHR reaffirms its commitment to work with the Colombian State in the search for solutions to the problems identified. Several measures adopted to address the grave human rights situation stemming from the prolonged internal armed conflict highlight the understanding and recognition of the existing issues, and the State’s commitment to effectively address the obstacles that victims of human rights violations face in Colombia.

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<sup>33</sup> In this respect, the State noted that on December 10, 2013, the “proposed guidelines for the formulation of an integral public policy on human rights and international humanitarian law [were launched], resulting from the process carried out through the Drafting Commission, made up of representatives of civil society, entities of the National System of Human Rights and IHL, and the international community.” Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 11.

<sup>34</sup> Signed on August 26, 2012 and available in Spanish at Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted” pp. 3-7.

<sup>35</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 14.





CHAPTER 1  
INTRODUCTION



## INTRODUCTION

1. The Inter-American Commission on Human Rights has monitored the human rights situation in the Republic of Colombia, in particular, the evolution of the internal armed conflict over more than five decades and its impact on the protection, enjoyment, and exercise of the human rights of all persons who live in Colombian territory.
2. The Commission has monitored the situation in the country through its different mechanisms. The IACHR drew up three reports on the *Situation of Human Rights in the Republic of Colombia* (1981, 1993, and 1999), as well as a *Report on the Demobilization Process in Colombia* (2004), a *Statement by the IACHR on the Application and Scope of the Justice and Peace Law in Colombia* (2006), a report on *Violence and Discrimination against Women in the Armed Conflict in Colombia* (2006), a *Report on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings* (2007), *Follow-Up on the Demobilization Process of the AUC in Colombia* (Digest of published documents, 2004-2007), a document on *Principal Guidelines for a Comprehensive Reparations Policy* (2008), a *Report of the visit to the Jiguamiandó and Curvaradó communities in Colombia, Municipality of Carmen del Darién, department of Chocó* (2009), and *Preliminary Observations of the Inter-American Commission on Human Rights after the visit of the Rapporteurship on the Rights of Afro-descendants and against Racial Discrimination* (2009).<sup>36</sup>
3. In addition, the Commission has examined the situation of Colombia through the system of cases and individual petitions, the precautionary measures mechanism, working meetings, requests for information under Article 41 of the American Convention on Human Rights and Article XIV of the Inter-American Convention on Forced Disappearance of Persons (hereinafter “IACFDP”), as well as holding hearings on petitions and cases, and thematic hearings.
4. In addition, Colombia was included in Chapter V of the Annual Report of the IACHR in 1995 and 2009; and in Chapter IV of its Annual Report in 1981, 1982, and 1994, and without interruption from 2000 to 2011. In 2012, the Commission decided that monitoring the human rights situation would be done through an on-site visit and the preparation of the respective report.
5. Through each of these mechanisms the Commission has obtained valuable and abundant information on the human rights situation in Colombia, and has been able to verify how the continuation of the internal armed conflict has entailed the perpetration of grave human rights violations and infractions of international humanitarian law. The Commission has also noted the many initiatives adopted by the State as well as the challenges pending in terms of carrying out its international human rights obligations. On this occasion, the Commission reiterates, as relevant, the considerations articulated by the different mechanisms noted above.
6. The human rights situation in Colombia entails additional complexities derived from the systematic and widespread violence that is part of daily life for the Colombian population due

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<sup>36</sup> Reports available at: <http://www.oas.org/en/iachr/reports/country.asp>; <http://www.oas.org/en/iachr/reports/other.asp>; <http://www.oas.org/en/iachr/reports/thematic.asp>.

to the internal armed conflict.<sup>37</sup> In particular, with respect to the continuity of the confrontations, it has been indicated that the municipal security index of the Ministry of Defense, which divides the country into “red,” “yellow,” and “green” zones, shows that more than 50% of the population lives in areas directly related to the armed conflict.<sup>38</sup>

7. It has also been noted that in those places where the conflict unfolded with greatest intensity in 2011 there were serious violations of IHL to the extent that there was repudiation – principally by the guerrillas – of the principles of distinction, limitation, and proportionality<sup>39</sup>, through indiscriminate attacks, the recruitment of children and adolescents, attacks on protected properties<sup>40</sup>, limitations on the freedom of movement of the civilian population<sup>41</sup>, homicides of protected persons, forced displacements<sup>42</sup>, sowing of anti-personnel mines<sup>43</sup>, and the presence of military units in the vicinity of or inside of civilian properties.<sup>44</sup>

<sup>37</sup> The Office of the Prosecutor of the International Criminal Court has been undertaking a preliminary review of the situation in Colombia since June 2004. In that connection it has received 114 communications pursuant to Article 15 of the Rome Statute. Of those, 20 are manifestly beyond the jurisdiction of the Court and 94 are being analyzed in the context of the preliminary examination. In her Interim Report the Prosecutor of the International Criminal Court concluded that at least from November, 2002 to November 2012: (i) the FARC, the ELN, and state actors have committed assassinations as war crimes and crimes against humanity, while the paramilitary groups have committed assassinations as crimes against humanity; (ii) the FARC, the ELN, and paramilitary groups have committed forced transfers as crimes against humanity; (iii) the FARC and the ELN have committed acts of deprivation of liberty as crimes against humanity and war crimes, and the paramilitary groups as crimes against humanity; (iv) the FARC and the ELN have committed crimes of rape as crimes against humanity and war crimes, the paramilitary groups as crimes against humanity, and the state actors as war crimes; (v) the FARC, the ELN, the paramilitary groups, and the state actors have committed forced disappearances as crimes against humanity; (vi) the FARC, the ELN, and state actors have committed crimes of torture as crimes against humanity and war crimes, and the paramilitary groups as crimes against humanity; (vii) the FARC and the ELN have committed the crime of recruitment and use of children as a war crime. International Criminal Court, Office of the Prosecutor, *Situation in Colombia. Interim Report*, November 2012, table 1. Along the same lines, according to state figures: (i) four of every five victims of the armed conflict have suffered forced displacement and one in nine has had a family member who has been the victim of homicide; (ii) of the victims registered, the largest group is children and adolescents, followed by the population ages 31 to 59 years (26%); and (iii) from 1990 to April 30, 2012, there were 9,846 victims of antipersonnel mines and unexploded munitions, 37% of them civilians. National Council on Economic and Social Policy, *Documento Conpes 3276*, May 30, 2012, p. 10.

<sup>38</sup> United Nations, Human Rights Council, Annual Report of the High Commissioner for Human Rights. Addendum. Report of United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19<sup>th</sup> session, A/HCR/19/21/Add.3, January 31, 2012, para. 81.

<sup>39</sup> United Nations, Human Rights Council, Annual Report of the High Commissioner for Human Rights. Addendum. Report of United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19<sup>th</sup> session, A/HCR/19/21/Add.3, January 31, 2012, para. 82.

<sup>40</sup> ICRC, *Humanitarian Situation in Colombia. Activity Report 2011*, p. 21.

<sup>41</sup> United Nations, Human Rights Council, Annual Report of the High Commissioner for Human Rights. Addendum. Report of United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19<sup>th</sup> session, A/HCR/19/21/Add.3, January 31, 2012, para. 84.

<sup>42</sup> United Nations, Human Rights Council, Annual Report of the High Commissioner for Human Rights. Addendum. Report of United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19<sup>th</sup> session, A/HCR/19/21/Add.3, January 31, 2012, para. 85.

<sup>43</sup> United Nations, Human Rights Council, Annual Report of the High Commissioner for Human Rights. Addendum. Report of United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19<sup>th</sup> session, A/HCR/19/21/Add.3, January 31, 2012, para. 87.

<sup>44</sup> United Nations, Human Rights Council, Annual Report of the High Commissioner for Human Rights. Addendum. Report of United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19<sup>th</sup> session, A/HCR/19/21/Add.3, January 31, 2012, para. 91. For its part, the Human Rights Committee expressed its concern over the persistence of grave human rights violations, including extrajudicial executions, forced disappearances, torture, rape, and recruitment of children in the armed conflict, and made special mention of the seriousness of the absence of statistics and concise information on the number of cases of torture and the relevant investigations. It also expressed concern over the lack of criminal investigations and the sluggishness of progress in the existing investigations, which often get bogged down

8. The IACHR also received information on continued assassinations<sup>45</sup>, selective assassinations<sup>46</sup>, massacres<sup>47</sup>, forced disappearances, kidnappings<sup>48</sup>, attempts, confrontations and combats, threats and pamphlets, economic blockades, illegal checkpoints, displacements, bombardments and aerial strafing in rural areas<sup>49</sup>, confinement of peasant communities<sup>50</sup>, registration of the civilian population by the Army<sup>51</sup>, and the stigmatization of social processes<sup>52</sup>, among others.<sup>53</sup>

in the preliminary stages of investigation. The Committee noted that drug-trafficking continues to have an impact on the use of violence, and the illegal armed groups continue to be involved in committing acts of harassment and violence against indigenous peoples, Afrodescendant communities, social leaders, and human rights defenders. In addition, the number of internally displaced persons in Colombia continues to climb. United Nations, Human Rights Committee, 99<sup>th</sup> session, Consideration of reports submitted by States parties under article 40 of the Covenant. Concluding observations of the Human Rights Committee, CCPR/C/COL/6, August 6, 2010, para. 12.

<sup>45</sup> According to the information received, in the period from July 1, 2002 to June 30, 2010, a total of 28,580 persons lost their life in Colombia for reasons related to human rights violations or sociopolitical violence, including those who died in combat. In 61.7% of the cases, civil society organizations were able to identify the perpetrator purportedly responsible, with responsibility corresponding to the paramilitary forces in 55.7% of the cases, and state agents directly in 18.65% of the cases, represented by 2,114 victims. Observatorio de derechos humanos y derecho humanitario, *Ejecuciones extrajudiciales en Colombia 2002-2010. Crímenes de lesa humanidad bajo el mandato de la seguridad democrática*, September 2012, p. 69.

<sup>46</sup> It has been indicated that from January 1, 2007 to August 31, 2011, at least 267 displaced persons were the victims of assassination attempts. Some of them are persons involved in claiming their right to restitution of lands. Of these victims, 262 were assassinated and five were forcibly disappeared, their whereabouts remaining unknown to this day. Comisión Colombiana de Juristas, *Observaciones y recomendaciones a los programas de protección existentes en Colombia en el contexto de implementación de la Ley 1448 de 2011, conocida como "Ley de Víctimas"*, May 7, 2012, p. 2.

<sup>47</sup> The Commission received the testimony from the municipal ombudsperson (Personera Municipal) of Santa Rosa de Osos, Antioquia with respect to the massacre that occurred on November 7, 2012 at the farm known as La España, where nine men and one woman were riddled with bullets, and then a grenade placed over their corpses, for having refused to pay extortion to the group known as "Los Rastrojos." Office of the Municipal Ombudsperson of Santa Rosa de Osos, *Informe para la Comisión Interamericana de Derechos Humanos*. See also, Office of the High Commissioner for Human Rights in Colombia, Press Release, *Oficina de la ONU para los Derechos Humanos condena masacre de 10 personas en Santa Rosa de Osos, Antioquia*, November 8, 2012. Anne Frank Colombia, December 4, 2012. The Unit for Analysis and Context (UNAC) reported that this case was being resolved. Information received at the meeting held with the director of UNAC and Context in Washington, DC, April 12, 2013.

<sup>48</sup> As for the situation of persons who have been kidnapped by the guerrillas, the Commission has noted repeatedly that hostage-taking is a serious crime, prohibited by the norms of international human rights law and IHL. In view of the foregoing, the Commission has urged the FARC to respect the life and security of persons they hold illegally, and to proceed to release them immediately and unconditionally. See, among others, IACHR, Press Release 9/06, *IACHR condemns a series of acts of violence, attributed to the FARC against the civilian population in various areas of Colombia*, April 6, 2006. Available at: <http://www.cidh.org/Comunicados/Spanish/2006/9.06esp.htm>; Press Release 86/09, *IACHR Deplores Assassination of Governor in Colombia*, December 24, 2009. Available at: <http://www.cidh.org/Comunicados/Spanish/2009/86-09sp.htm>

<sup>49</sup> In its observations on the Draft Report, the State noted that given that in Colombia "the regimes of human rights and IHL co-exist because of the internal armed conflict [...] on referencing bombings and strafing, the report takes [facts] out of context, appearing to indicate that these are directed against the civilian population, and failing to recognize that these concern the legitimate use of force by the State in the context of IHL." Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 55.

<sup>50</sup> Corporación Acción Humanitaria por la convivencia y la paz del Nordeste Antioqueño, *Report on the situation of human rights in the Northeast Antioquia Colombia* [Available in Spanish]. Colombia, 2013.

<sup>51</sup> Information provided in the meeting with civil society organizations held in Medellín, December 5, 2012. In its observations on the Draft Report, the State noted that "the armed forces and National Police do not carry out such procedures in the context of their operations" and that there are no specific allegations regarding these cases. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 55.

<sup>52</sup> Movimiento Ríos Vivos, *Represas en Colombia: desplazamiento y miseria. Documento preparado para la Comisión Interamericana de Derechos Humanos*.

<sup>53</sup> During the visit the Commission learned of situations of tension within the universities, in particular at the Universidad de Antioquia, associated with threats, assaults, and situations of militarization. The Commission also received testimony indicating that two youths were said to have been kidnapped and dismembered by members of a group linked to "Los Urabeños" in the context of recreational activities being held September 29, 2012 at the "Bombonera field" in barrio

9. The Commission notes that Colombia's internal armed conflict continues to affect in a serious manner the human rights situation in the country. In light of the foregoing, the Commission considers it appropriate to consider, in the analysis presented in this report, both the evolving dynamics and characteristics of Colombia's internal armed conflict and the applicable bodies of law, i.e. international human rights law and IHL. Finally, the IACHR acknowledges and encourages the progress of the peace dialogues that are taking place and it reiterates the importance of a definitive end to the conflict that guarantees and respects human rights obligations.

## **A. Background and activities carried out during the on-site visit**

10. On September 6, 2012, the State of Colombia sent a communication to the IACHR by which it extended an "invitation to make a visit to the country, in view of the interest of the Colombian State in strengthening the dialogue and cooperation with the Inter-American Commission, and to become better informed and get a better understanding of the challenges and gains in Colombia with respect to human rights." On November 14, 2012, the Commission communicated to the Colombian State that it was pleased to accept the invitation to make an on-site visit to the country December 3 to 7, 2012. Accordingly, the Commission decided that the evaluation of the human rights situation in Colombia would not be done by including it in Chapter IV of the 2012 Annual Report, but by carrying out an on-site visit in keeping with Article 39 of its Rules of Procedure, and the subsequent drawing up of a detailed report on the situation in the country.
11. The Commission made this decision public by issuing press release 137/12, in which it stated that during the visit it "will observe the human rights situation in Colombia, and since this is an on-site visit, it will evaluate the entire agenda of human rights issues in the country." The IACHR further emphasized: "The Colombian government's willingness to open the door to a visit by the Commission implies that it is willing to submit to international scrutiny, in reflection of its commitment to comply with the State's international human rights obligations."<sup>54</sup>
12. The Commission observes that Colombia is at a historic juncture in which the Government and the FARC may reach a peace agreement that would put an end to the armed conflict in the country. The Commission further notes that in recent years Colombia has adopted a series of statutory and regulatory reforms aimed at constructing an adequate framework for addressing the challenges of the past, present, and future, especially in the context of a possible peace agreement. In this respect, as it noted in 1999, the Commission reiterates that a lasting peace in Colombia will only be possible if based on the principles of justice, truth, and reparation.<sup>55</sup>
13. In such circumstances, the on-site visit had as its purpose to compile relevant information on the human rights situation in the country, specifically the situation of the internal armed conflict and the groups in special situations of vulnerability; and to evaluate the transitional

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Villatina, as well as the testimony of three children who suffered attacks and at whom the Police pointed their weapons in a neighborhood of Medellín. Information provided in the meeting with civil society organizations held in Medellín, December 5, 2012.

<sup>54</sup> IACHR, Press Release 137/12, *IACHR to Conduct an Onsite Visit to Colombia*, November 21, 2012. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/137.asp>

<sup>55</sup> IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999.

justice mechanisms adopted by the State. In this regard, in the opening ceremony of the on-site visit, the President of the IACHR, José de Jesús Orozco Henríquez reaffirmed that achieving a lasting and sustainable peace can only be attained with full respect for the principles of investigation, prosecution, and reparation, guaranteeing that none of the human rights violations perpetrated remains in impunity.

14. The IACHR made the on-site visit from December 3 to 7, 2012. The delegation was made up of the President and Rapporteur for Colombia, José de Jesús Orozco Henríquez; the First Vice President, Tracy Robinson; the Second Vice-President, Felipe González; Commissioners Rosa María Ortiz and Rose-Marie Belle Antoine<sup>56</sup>; the Executive Secretary, Emilio Álvarez Icaza L.; the Assistant Executive Secretary, Elizabeth Abi-Mershed; Executive Secretariat attorneys Lilly Ching, Karin Mansel, Federico Portillo, Jorge Meza, Cristina Blanco, Andrés Pizarro, and Tatiana Gos; press coordinator María Isabel Rivero; and documents officer Gloria Hansen.
15. Given that the purpose of the visit was to take stock of the current human rights situation in the country, the Commission met with authorities from the State, civil society organizations, and representatives of international organizations. During the visit, the Commission received documents on the human rights situation in the country and the specific situation of certain groups, testimonies, and communications concerning individual petitions and precautionary measures.<sup>57</sup>
16. On the morning of Monday, December 3, a protocolary meeting was held to mark the beginning of the on-site visit with the participation of the Vice President of the Republic of Colombia, Angelino Garzón, and the Vice Minister for Multilateral Affairs, Patti Londoño Jaramillo. Subsequently a dialogue was held with authorities from the Ministry of Foreign Affairs, the Presidential Program of Human Rights and IHL, the Office of the High-level Presidential Adviser for Women's Equity, the Ministry of Interior, the National Protection Unit, the Ministry of Defense, the National Police, the National Agency for Overcoming Extreme Poverty (hereinafter "ANSPE"), the Presidential Program for designing strategies and actions for the development of the Afro-Colombian, Black, Palenquero and Raizal Population, the Presidential Program for designing strategies and actions for the comprehensive development of the Indigenous Peoples, the Colombian Institute for Family Well-being (hereinafter "ICBF"), the Ministry of Labor, the Ministry of Health and Social Protection, the Ministry of Education, the Ministry of Culture, the Ministry of Housing, the Unit for Attention to and Reparation for Victims, and the Office of the Attorney General.
17. Later, the Commission met with the director of the National Protection Unit and authorities from the Ministry of Foreign Affairs, the Presidential Human Rights Program, the Ministry of Defense, the National Police, and the Ministry of Interior.
18. At noon, the Commission held a working luncheon with the Chief of Mission and staff of the MAPP/OAS.
19. In the afternoon the Commission held two meetings with numerous civil society organizations. The first meeting addressed the general human rights situation in the country, while the

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<sup>56</sup> In keeping with Article 17(2) of the Commission's Rules of Procedure, Commissioner Rodrigo Escobar Gil, of Colombian nationality, did not participate in the on-site visit or in the process of deliberation and approval of this report on the general human rights situation in Colombia.

<sup>57</sup> The IACHR is processing the communications on individual petitions and precautionary measures in keeping with its Rules of Procedure.



second referred to the Colombian legal framework, and the constitutional and statutory reforms that have been adopted or in the process of being adopted.

20. The Commission then met with the Deputy Representative in Colombia of the United Nations High Commissioner for Human Rights.
21. On Tuesday, December 4, the Commission met with the Vice Minister for Criminal Policy and Restorative Justice, the Director of the National Unit for Attending to and Making Full Reparation to Victims (hereinafter “UARIV”), the Director General of the Special Administrative Unit for Management of the Restitution of Lands Forcibly Taken, (Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas) and authorities of the Presidential Program for designing strategies and actions for the development of the Afro-Colombian, Black, Palenquero and Raizal Population, the Presidential Program for designing strategies and actions for the comprehensive development of the Indigenous Peoples, the Ministry of Foreign Affairs, the Ministry of Justice and Law, the Ministry of Interior, the National Protection Unit, the Ministry of Agriculture and Rural Development, the Land Unit, the Colombian Institute for Rural Development (hereinafter “INCODER”), the Department for Social Prosperity (National Unit of Attention and Full Reparation to Victims-UARIV), the Center for Historical Memory, the Colombian Institute of Family Well-being (ICBF), the National Agency for Overcoming Extreme Poverty (ANSPE), the Office of the Attorney General, and the Office of the Human Rights Ombudsman.
22. The Commission then met with the directors of the units of Justice and Peace, Human Rights and IHL, and Analysis and Context, and staff of the Attorney General.<sup>58</sup> Subsequently, the Commission met with the Minister of National Defense, the Vice Minister for International Affairs, the chief of staff of the Ministry of National Defense, and Manuel José Cepeda, former president of the Constitutional Court of Colombia, who led the Commission that proposed the constitutional reform on military criminal justice.
23. In addition, the Commission participated in a working luncheon with the President of the Senate and with the chair, vice chair, and other members of the Committee on Human Rights of the Chamber of Representatives.
24. In the afternoon, the Commission held several meetings with Colombian civil society organizations. The Commission received information on the situation of women, persons deprived of liberty, indigenous peoples, children and adolescents, afrodescendants, human rights defenders, judicial officers, displaced persons, and LGBTI people.

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<sup>58</sup> Due to scheduling issues, on Saturday, December 8, in the morning, the Commission held a working breakfast with the Attorney General, the Deputy Attorney General, and staff from the units on Context, Human Rights and IHL, and Justice and Peace, all of the Office of the Attorney General. The National Unit of Human Rights and IHL of the Office of the Attorney General was established by Resolution 2725 of December 9, 1994. It carries out investigations into grave violations of human rights and international humanitarian law attributable to all parties to the conflict. The National Unit of Justice and Peace delegated to appear before the Superior Judicial District Courts was established by Law 975 of 2005. By resolution 0-3461 of September 13, 2005, the Attorney General ordered the formation of the National Unit for Justice and Peace, under the office of the Attorney General. Resolution 0-2426 of August 3, 2006 provided that the National Unit of Justice and Peace would operate in a decentralized manner, with its main headquarters in Bogotá and additional offices in the cities of Barranquilla and Medellín. Finally, the Unit of Analysis and Contexts, under the Office of the Attorney General, was created by resolution 01810 of October 4, 2012, as an instrument of criminal justice policy focused on addressing mainly phenomena of organized crime by the use of tools for criminal analysis and the creation of contexts, for the purpose of articulating the isolated information found at present in various units of the institution. It takes on those proceedings that are part of the situations and cases prioritized by the Committee on Prioritization of Situations and Cases of the Office of the Attorney General.

25. Subsequently the Commission met with the Minister of Justice and Law, the Human Rights Ombudsman, and the Director of the Colombian Prisons Institute (hereinafter “INPEC”). In addition, the Rapporteur on the rights of Persons of African Descent and against Racial Discrimination, Commissioner Rose-Marie Belle Antoine, along with the Executive Secretary of the IACHR, Emilio Álvarez Icaza L., held an event to launch the regional report *The Situation of People of African Descent in the Americas*.<sup>59</sup>
26. On Wednesday, December 5, the IACHR split into three working groups so as to travel to other regions of the country, to have a broader view of the situation in different geographic areas, and to generate targeted approaches.
27. Commission President and country Rapporteur José de Jesús Orozco Henríquez along with Assistant Executive Secretary Elizabeth Abi-Mershed and staff of the Secretariat remained in Bogotá. This delegation held a meeting with the Office of Prosecutor and Adjunct Offices of the Prosecutor. The delegation also met with some members of the Constitutional Court, the plenary of the Supreme Court of Justice of Colombia, and an official from the Council of State.
28. Subsequently, the delegation met with organizations working on freedom of expression, and participated in a working luncheon with staff from the International Committee of the Red Cross (hereinafter “ICRC”). That same day, staff from the Executive Secretariat visited the “El Redentor” Work Center, and the “La Picota” prison.
29. In the afternoon, a working meeting was held on precautionary measures with the participation of the beneficiaries and representatives of the National Protection Unit, after which the delegation met with the mayor of Bogotá. In addition, the President of the IACHR and Rapporteur on Human Rights Defenders made a presentation of the *Second Report on the Situation of Human Rights Defenders in the Americas*.<sup>60</sup>
30. Also on Wednesday, December 5, a second working group made up of Commissioners Rose-Marie Belle Antoine and Rosa María Ortiz, the Executive Secretary of the IACHR, Emilio Álvarez Icaza L., and staff of the Executive Secretariat went to the city of Quibdó, in the department of Chocó. There, a meeting was held with the acting Governor, the Regional Human Rights Ombudsman, authorities of the Office of the Governor, the Office of the Attorney General of the Nation, the Office of the Attorney General for Chocó, the National Army, the National Police, the Ministry of Foreign Affairs, and the Ministry of Interior. The delegation also met with civil society organizations. In the afternoon, the delegation when to the city of Medellín, in the department of Antioquia, where it met with civil society organizations.<sup>61</sup>
31. That same day, a third group made up of First Vice President Tracy Robinson, Second Vice President Felipe González, and staff of the Executive Secretariat went to the city of Popayán, department of Cauca. The delegation met with civil society organizations and participated in a working luncheon with staff of the regional offices of the MAPP/OAS and of the Office of the United Nations High Commissioner for Human Rights.

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<sup>59</sup> Available at: [http://www.oas.org/es/cidh/afrodescendientes/docs/pdf/AFROS\\_2011\\_ESP.pdf](http://www.oas.org/es/cidh/afrodescendientes/docs/pdf/AFROS_2011_ESP.pdf)

<sup>60</sup> Available at: <http://www.oas.org/es/cidh/defensores/docs/pdf/defensores2011.pdf>

<sup>61</sup> In view of the meeting requested of the IACHR by the President of the Republic of Colombia, Juan Manuel Santos, the meetings programmed for Thursday, December 6, with the authorities of Medellín were suspended.

32. On Thursday, December 6, President and country Rapporteur José de Jesús Orozco Henríquez, Commissioners Rose-Marie Belle Antoine and Rosa María Ortiz, Executive Secretary of the IACHR Emilio Álvarez Icaza L., and Assistant Executive Secretary Elizabeth Abi-Mershed met with the President of Colombia, Juan Manuel Santos Calderón, the Minister of Foreign Affairs, the Vice Minister for Multilateral Affairs, authorities of the Ministry of Interior, the Presidential Program for Human Rights and IHL, and the Ministry of Defense. In addition, the President of the IACHR, the Assistant Executive Secretary and staff of the Secretariat met with the former president of the Constitutional Court, Manuel José Cepeda.
33. On the morning of Thursday, December 6, staff of the Executive Secretariat made a visit to the Modelo prison of Bogotá, where they examined prison conditions and met with persons deprived of liberty at that prison. In addition, the staff of the Executive Secretariat met with the relevant authorities of the INPEC.
34. That same day, in the morning, the delegation made up of First Vice President Tracy Robinson, Second Vice President Felipe González, and staff of the Executive Secretariat met with the governor of Cauca, authorities from the Ministry of Defense, the armed forces and National Police, the Regional Human Rights Ombudsman, the National Delegate and the Delegate for Children, Youth, and Women.
35. On Friday, December 7, on concluding the on-site visit, the IACHR convened a press conference in which it issued its press release “IACHR Concludes Onsite Visit to Colombia,”<sup>62</sup> and answered the questions asked by the journalists in relation to the initial observations regarding the human rights situation in the country, the constitutional reform on military criminal justice, and the Commission’s monitoring mechanisms. In addition, staff of the Executive Secretariat gave a workshop on international human rights standards for staff of the INPEC; in the afternoon, they gave a training workshop for human rights defenders.
36. On this occasion the Commission reiterated its recognition of the Colombian State for its willingness to subject itself to an on-site visit, and notes the good disposition, support, and cooperation expressed in both the organization and implementation of the visit. The IACHR also thanks all those with whom it met during the visit<sup>63</sup>, and values the information collected

<sup>62</sup> IACHR, Press Release 144/12, *IACHR Concludes Onsite Visit to Colombia*, December 7, 2012. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/144.asp>.

<sup>63</sup> The delegation held meetings with President Juan Manuel Santos; Vice President Angelino Garzón; Minister of Defense Juan Carlos Pinzón; Minister of Justice and Law Ruth Stella Correa Palacio; Minister of Interior Fernando Carrillo Flórez; Minister of Foreign Affairs María Ángela Holguín; Vice Minister for Multilateral Affairs of the Ministry of Foreign Affairs Patti Londoño Jaramillo; Vice Minister of Participation and Equality of Rights of the Ministry of Interior Aníbal Fernández de Soto; Vice Minister for Criminal Policy and Restorative Justice Farid Samir Benavides; Vice Minister for Public Health and Services Delivery Martha Lucía Ospina Martínez; the Director of the Presidential Program for Human Rights and International Humanitarian Law Alma Viviana Pérez; the Director of the National Protection Unit Andrés Villamizar; the Director of the Unit for Attention to and Reparation for Victims Paula Gaviria Betancur; the Director General of the Special Administrative Unit for Management of Restitution of Lands Forcibly Taken Ricardo Sabogal Urrego; the Director of the Administrative Department for Social Prosperity Bruce MacMaster; the Director General of the National Prison Institute, Brigadier General Gustavo Adolfo Ricaurte Tapia; the Director General of the National Agency for the Legal Defense of the State, Adriana Guillén Arango; representatives of those ministries and offices as well as of the Ministry of Agriculture and Rural Development, the Ministry of Culture, the Ministry of Labor, the Ministry of Health and Social Protection, the Ministry of Education, the Ministry of Housing, the National Police, the Lands Unit, the Colombian Institute of Rural Development, the Office of the High-level Presidential Adviser for Women’s Equity, the Colombian Institute of Family Well-being, and the National Agency for Overcoming Extreme Poverty, among other Executive branch offices. In addition the IACHR met with staff of the Office of the Attorney General (units of Justice and Peace, Human Rights, and Contextual Analysis), among other authorities. The delegation held a meeting with the Prosecutor, Alejandro Ordóñez Maldonado; Paula Andrea Ramírez Barbosa, Adjunct Offices of the Prosecutors for Criminal Matters and for Prevention in respect of Human Rights and Ethnic

and the testimonies received. In particular, the Commission highlights the organization and quality of the information, investigation, and systematization provided through the reports presented by the organizations of Colombian society. The Commission considers that the investigations already undertaken by civil society would supplement and be helpful in judicial and non-judicial investigations as well as in reconstructing Colombia's historical memory.

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Matters; and Ilva Myriam Hoyos Castañeda, Adjunct Office of the Prosecutors for the Rights of Children, Adolescents and the Family; as well as with the Human Rights Ombudsman, Jorge Armando Otálora; and the mayor of the city of Bogotá, Gustavo Petro. In Congress, the IACHR met with the President of the Senate Roy Barreras Montealegre and with the chair, vice chair, and members of the Committee on Human Rights. In the Judicial branch, the IACHR was received by the plenary of the Supreme Court of Justice, the Vice President of the Council of State, and members of the Constitutional Court. The IACHR held meetings with civil society organizations. In Bogotá, the Commission met with the Movimiento de Víctimas de Crímenes del Estado (MOVICE), Fundación Nydia Erika Bautista, Colectivo Mujeres al Derecho, Corporación REINICIAR, Comisión Intereclesial de Justicia y Paz, Corporación Colectivo de Abogados José Alvear Restrepo (CCAJAR), Consultoría para los Derechos Humanos y el Desplazamiento (CODHES), Comité Permanente por los Derechos Humanos (CPDH), Coordinación Nacional de Desplazados, Comisión Colombiana de Juristas (CCJ), Project Counseling Service (PCS), Colombia Diversa, SISMA Mujer, Central Unitaria de Trabajadores (CUT), Confederación de Trabajadores en Colombia (CTC), Organización Nacional de Indígenas de Colombia (ONIC), Federación Colombiana de Periodistas, Fundación para la Libertad de Prensa, Movimiento Nacional Cimarrón, Aflólder, CEUNA, AFRODES, Fundepac, Proceso de Comunidades Negras (PCN), Universidad Santo Tomás, Asociación Afrodesplazados, Global Rights, Movimiento "Cárceles al Desnudo", Fundación Comité de Solidaridad con los Presos Políticos (FCSP), Unión de Trabajadores Penitenciarios, Coalición Colombiana contra la Tortura, Colombia Diversa, Grupo de Interés Público of the Universidad de los Andes, Humanidad Vigente, Coalición contra la vinculación de niños, niñas y jóvenes al conflicto armado en Colombia (COALICO), Defense for Children International (DCI), Fundación Antonio Restrepo Barco, Aldeas Infantiles SOS Colombia, Alianza por la Niñez Colombiana, Fundación KIDSAVE Colombia, Fundación Creciendo Unidos, Pastoral Penitenciaria, Fundación Telefónica, Liga de Mujeres de Desplazadas, Casa de la Mujer, Narrar para Vivir, Organización Femenina Popular (OFP), Movimiento Social de Mujeres contra la Guerra y por la Paz, Asociación Colectivo Mujeres al Derecho, Profamilia, Centro de Derechos Reproductivos, Humanas Colombia and Women's Link Red Nacional de Mujer; as well as representatives of the Alianza de Organizaciones Sociales y Afines por una Cooperación para la Paz y la Democracia en Colombia, the Coordinación Colombia-Europa-Estados Unidos, the Plataforma Colombiana de Derechos Humanos Democracia y Desarrollo, and individuals in their personal capacity.

In Quibdó, the IACHR met with Black communities from the Asociación Campesina Integral del Atrato (COCOMACIA), Project Counseling Service (PCS), Asociación de Jóvenes Desplazados (AJODENIO), Asociación de Desplazados Afrodescendientes Neutrales del Chocó (ADACHO), Diocese of Quibdó, Asociación de Cabildos Indígenas Wounaan, Embera Dobida, Katío, Chamí y Tule del Chocó (OREWA), Comisión Vida, Justicia y Paz (COVIJUPA), Red Departamental de Mujeres Chocoanas, Swedish Movement for Reconciliation (SweFOR), and Asociación de Desplazados del Dos de Mayo (ADOM).

In Medellín, the IACHR met with representatives of the Asociación Campesina del Norte de Antioquia (ASCNA), Corporación Jurídica Libertad, Asociación de Hermandades Agroecológicas y Mineras de Guamocó (AHERAMINGUA), Movimiento Ríos Vivos, Fundación Conceptos Integrados (IPC), Fundación Sumapaz, Corporación para el Desarrollo Comunitario y la Integración Social (CEDECIS), Grupo Interdisciplinario por los Derechos Humanos (GIDH), Red Colombiana de Mujeres por los Derechos Sexuales y Reproductivos, Colectivo de Derechos Humanos, Comuna 8, Ruta Pacífica de las Mujeres, Red Nacional de Mujeres, Asociación de Mujeres de las Independencias (AMI), Altavista, CSPP, Universidad de Antioquia, Asociación Campesina San José de Apartadó, Asociación Campesina de Ituango, Corporación Acción Humanitaria por la Convivencia y la Paz del Nordeste Antioqueño (CAHUCOPANA).

In Popayán, the Commission met with the following departmental authorities: the Governor, the Ministry of Defense, high-level military and police commanders, the Ministry of Interior, the Office of the Human Rights Ombudsman, and the Attorney General's Delegates. In addition, meetings were held with the Ruta Pacífica de las Mujeres, Corporación Comunitar, Proceso de Mujeres Maciceñas, CIMA, Corporación Justicia y Dignidad, Red de Derechos Humanos FIC, Corporación Suyana, Red por la Vida y Derechos Humanos, Comisión Intereclesial de Justicia y Paz, JAC "El Mango", Movimiento Campesino Cajibío, Solidaridad Internacional, ANTHOC, COMAC, JAC "El Vergel", Asociación de Cabildos Indígenas del Norte del Cauca (ACIN), Consejo Regional Indígena del Cauca (CRIC), Fundación Sol y Tierra, USAID Human Rights Program, Fundación Tierra de Paz, and CCAJAR.

Finally, the delegation met with other international bodies and agencies, such as the Deputy Representative of the Office of the United Nations High Commissioner for Human Rights, Juan Carlos Monge, as well as other staff of that office; the Chief of the Mission in Support of the Peace Process of the OAS (MAPP/OAS) Marcelo Álvarez, deputy chief Rikard Nordgren, and the person responsible for the area of Justice and Peace, Daniel Millares; and members of the International Committee of the Red Cross. In addition, in Popayán the Commission met with the field team of the MAPP/OAS and the Office of the UN High Commissioner for Human Rights.

37. This report is the result of the information that the Commission has systematically organized and analyzed with respect to the situation of human rights in Colombia. To that end, the Commission has drawn on the information received during and after the on-site visit, the investigations undertaken at its own initiative, the inputs from the different mechanisms by which the IACHR has monitored the situation, news reports, and decisions and recommendations of specialized international bodies, among others.
38. This report has seven chapters. The introductory chapter outlines the activities conducted during the on-site visit and the methodology used for preparing this report, as well as the framework used for analyzing the human rights situation in the context of the internal armed conflict in Colombia. In the second chapter the Commission will analyze the rights to life, humane treatment, and personal liberty in cases of forced disappearances and extrajudicial executions; as well as the effectiveness of the protection mechanisms adopted by persons at risk. In the third chapter the Commission will address Colombian constitutional and legal framework, to which end it will refer to the justice situation for cases of human rights and IHL violations, and will evaluate the compatibility of Colombia's normative framework and its application with the international obligations of the State. In particular, the IACHR will analyze the recently-approved reforms on transitional justice and military criminal justice, and the mechanisms that have been adopted by the Office of the Attorney General for setting priorities in investigating cases. In addition, the IACHR will evaluate the mechanisms of reparation for victims of human rights violations; mainly the Law on Victims and Land Restitution, as well as the replacement of the motion victims could make in proceedings for comprehensive reparation (*incidente de reparación integral*) by the motion to identify the impacts caused victims, in the context of the Law on Justice and Peace. In the fourth chapter the Commission will examine the continuity of internal forced displacement, while the fifth chapter will examine the situation of economic, social, and cultural rights. In the sixth chapter, the Commission will analyze the specific situation of groups especially affected in the context of the internal armed conflict, namely, Afrodescendants, *Raizales* and *Palenqueros*, children and adolescents, women, indigenous peoples, LGBTI people, journalists and media workers, persons deprived of liberty and human rights defenders. In each of these chapters the IACHR will make the recommendations it considers pertinent to adequately address the issues raised. Finally, in the seventh chapter the Commission will set forth its conclusions on the human rights situation in the country.
39. During the visit Colombian Vice President Angelino Garzón and other authorities asked the Commission to help carry out its human rights obligations. The Commission considers that this report contributes to the process that Colombia is undergoing at present, as it presents a detailed analysis of the human rights situation in the country, and a study of the state initiatives taken. Accordingly, the Commission reiterates that this report constitutes a contribution to the consolidation of peace and respect for human rights in Colombia, and hopes to continue working with the State in the search for a lasting solution.

## ***B. Background and present-day dynamics of the internal armed conflict and violence in Colombia***

40. As Vice President of Colombia Angelino Garzón recognized at the ceremony marking the beginning of the on-site visit, the persistence of the internal armed conflict facilitates the perpetration of human rights violations. Accordingly, by virtue of its mandate and functions, the IACHR has given special emphasis to monitoring the human rights situation in Colombia, and considers it appropriate to begin its analysis taking into account the contextual information on the background and current dynamic of the conflict. It its observations on the

draft report, Colombia noted that the references in this section constitute “lessons for the State” and that they have been analyzed by the IACHR in earlier reports.<sup>64</sup>

41. Colombia’s internal armed conflict has continued for more than five decades, and has undergone major transformations in the dynamics and actors involved. The IACHR has analyzed each of those stages in detail through its various mechanisms.
42. As the Commission has recalled, in 1946, with the civil wars of the 19<sup>th</sup> and early 20<sup>th</sup> centuries a thing of the past, Colombian society saw the beginning of a period known as “La Violencia,” after the change in government from the Liberty Party to the Conservative Party. That change entailed a violent confrontation between the two political groups during the 1950s, while the persecution of members of the Liberal Party in the rural areas provoked the rise of armed groups. Subsequently, after the fall of the *de facto* government of General Rojas Pinilla on May 10, 1957, a period of reconciliation was begun during which Liberals and Conservatives participated in the government through the Frente Nacional (National Front), alternating in power. During that stage the groups in armed resistance allied to the Liberal Party disintegrated, laid down their weapons, and rejoined civilian life.<sup>65</sup>
43. Later, in the 1960s, 1970s, and 1980s, the violence resumed with the mobilization of new revolutionary groups, namely the FARC, the ELN, the *Ejército Popular de Liberación* (hereinafter “EPL”: People’s Liberation Army), the Movimiento 19 de Abril (hereinafter “M-19”: April 19<sup>th</sup> Movement), the indigenous guerrilla group Movimiento Armado Quintín Lame, the Autodefensa Obrera (ADO), and dissident groups of the foregoing organizations, such as the “Ricardo Franco” group, among others. The rise of those groups and the failure of the efforts to achieve peace tended to support the development of a new type of violence called “*bandolerismo*” (banditry). Drug-trafficking emerged in this situation as a destabilizing factor, through the violence generated by the drug cartels.<sup>66</sup>
44. The State reacted to the resurgence in violence and in 1965 promulgated, on a transitory basis under a statement of emergency (*estado de excepción*), Decree 3398, which allowed groups of civilians to arm themselves legally.<sup>67</sup> Decree 3398 was converted into permanent legislation in 1968, and the so-called “*grupos de autodefensa*” (“self-defense groups”) were formed under those provisions, with the support of the armed forces.<sup>68</sup> Those paramilitary self-defense groups were linked to economic and political sectors, established close ties with drug-trafficking, and were strengthened notably in the late 1970s and early 1980s.<sup>69</sup> In the 1980s,

<sup>64</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GA/ID-13-048140, December 2, 2013, para. 20.

<sup>65</sup> See IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, para. 48.

<sup>66</sup> See IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, paras. 49-51.

<sup>67</sup> Decree 3398 established at its Article 25 that “all Colombians, men and women, not included in the call to obligatory service, may be used by the Government in activities and tasks with which they contribute to reestablishing normalcy.” At Article 33(3), the Decree indicated that “the Ministry of National Defense, though the authorized command structures, may possess, as they deem advisable, as private property, arms that are considered to be for the exclusive use of the Armed Forces.” See IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, paras. 49-51.

<sup>68</sup> See IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, paras. 49-51.

<sup>69</sup> See IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, paras. 49-51.

these groups began to become notorious for committing selective assassinations and massacres of civilians.<sup>70</sup>

45. In the face of that situation, the State began to adopt measures, including legislative ones, to counter the armed control exercised by paramilitary groups in several areas of the country. On April 19, 1989, the Government of Colombia promulgated Decree 0815, which suspended the application of some articles of Decree 3398 to avoid them being interpreted as a legal authorization to organize armed civilian groups outside the Constitution and the laws.<sup>71</sup>
46. On June 8, 1989, the State issued Decree 1194 “by which it adds legislative decree 0180 of 1988, to sanction new forms of crime, as it is required for the re-establishment of public order,” by which it defined the offenses of promoting, financing, organizing, directing, fostering and carrying out acts “aimed at obtaining the training or entry of persons to armed groups of those commonly called death squads, groups of paid assassins or private justice, mistakenly called paramilitaries.”<sup>72</sup> Considering that members of the Armed Forces and National Police maintained ties with these groups, Decree 1194 also defined as a specific crime training or equipping “persons in military tactics, techniques, or procedures for furthering criminal activities” and stipulated as an aggravating factor the conduct being committed by active or retired members of the armed forces or National Police or security agencies of the State.<sup>73</sup>
47. Nonetheless, despite the legal prohibitions the paramilitary groups continued operating and in the 1990s were responsible for a high number of politically-related violent deaths in Colombia.<sup>74</sup> Around 1997, the paramilitary groups consolidated nationally in an organization called the Autodefensas Unidas de Colombia (hereinafter “the AUC”), organized in rural and urban units known as *bloques*. The AUC publicly expressed its aim to act in a coordinated fashion against the guerrilla forces.<sup>75</sup> According to figures provided by the Ministry of Defense, by 2003 the AUC had approximately 13,500 members who were organized in a series of *bloques* with the names Norte, Central Bolívar, Centauros, Calima, Héroes de Granada, Pacífico, Sur del Cesar, Vencedores de Arauca, and Élder Cárdenas, which operated through 49 fronts with influence in 26 of the country’s 32 departments and in 382 of Colombia’s 1,098 municipalities.<sup>76</sup>

<sup>70</sup> See IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, paras. 49-51.

<sup>71</sup> See IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, paras. 53-55.

<sup>72</sup> In the considerations part, the law stated that “the events unfolding in the country have shown that there is a new form of crime that consists of armed groups ill-named “paramilitaries” that have formed death squads, bands of paid assassins, self-defense or private justice groups whose existence and action have a serious negative effect on the country’s social stability, which should be repressed to reestablish public order and peace.” See IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, paras. 53-55.

<sup>73</sup> See IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, paras. 53-55.

<sup>74</sup> See IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, para. 56.

<sup>75</sup> See IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, para. 56. During the 1990s, the Commission received information that indicated that members of the Colombian armed forces supported and worked with the paramilitary groups in their illegal activities, and in particular at their Third National Summit, held in late 1996, the paramilitary groups recognized and debated their cooperation with the national security forces. IACHR, *Annual Report 1996*, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, Ch. V, Colombia, para. 46.

<sup>76</sup> See IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, para. 56.

48. At the same time, successive administrations undertook to negotiate peace with dissident armed groups. In early 1990 several thousand members of the M-19, part of the EPL, and the Quintín Lame joined the demobilization that resulted from the agreements reached. The FARC and the ELN did not demobilize.<sup>77</sup>
49. In that context, the illegal armed groups – both guerrillas and paramilitaries – created a confusing combination of alliances and clashes with drug-trafficking interests and even government forces.<sup>78</sup> In addition, after the relative success in the official offensive against the drug cartels in the mid-1990, those groups took on the business of controlling the initial phases of narcotics production.<sup>79</sup> The FARC and the ELN, and since the mid-1990s the paramilitary groups, also engaged in extortion and kidnapping activities.<sup>80</sup> In addition, organized crime has had an impact on national life, affecting aspects such as elections and the operation of the judicial system in major parts of Colombian territory.<sup>81</sup>
50. From 2002 to 2010, the Colombian Armed Forces underwent a process of technical and budgetary strengthening, and bolstered their human resources. By August 2002, the State had 203,283 agents of the Military Forces and 110,123 agents of the National Police, while as of May 2012 it had approximately 450,000 agents in the Military Forces and National Police.<sup>82</sup> In addition, from 2002 to 2010, the following units were established: 3 new Divisions, 9 Territorial Brigades, 17 Mobile Brigades with 54 Counter-guerrilla Battalions, 7 High Mountain Battalions, 14 groupings of Urban Anti-terrorist Special Forces, 57 Mobile Squadrons of Carabineros, and 3 Groups of Unified Action for Personal Liberty (GAULA: Grupos de Acción Unificada por la Libertad Personal). In addition, 5 new Marine Infantry Battalions and 2 new Air Bases were established. The military forces also acquired resources for mobility and tactical support.<sup>83</sup>
51. After the election and inauguration of President Álvaro Uribe Vélez in August 2002, some leaders of the AUC made public their intent to negotiate terms for the demobilization of their forces, and on December 1, 2002, they declared a unilateral cessation of hostilities.<sup>84</sup> In the ensuing months, representatives of the Government initiated contacts with members of the

<sup>77</sup> See IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, paras. 53-55.

<sup>78</sup> See IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, para. 57. In this respect, the State indicated that “there is no evidence” that “on occasions the guerrillas have been allied with the State.” Colombia’s observations on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 67.

<sup>79</sup> See IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, para. 57.

<sup>80</sup> See IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, para. 57.

<sup>81</sup> See IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, para. 57.

<sup>82</sup> Observatorio de derechos humanos y derecho humanitario, *Ejecuciones extrajudiciales en Colombia 2002-2010. Crímenes de lesa humanidad bajo el mandato de la seguridad democrática*, September 2012, pp. 45-46. See also, IACHR, *Hearing on human rights and security and defense policy in Colombia*, November 2, 2012. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=129>.

<sup>83</sup> According to the information received, the State also created the institution of “peasant soldiers,” the aim being that in each small municipality with little if any presence of government forces there should be a squad of peasant soldiers whose function would be to support the work of police and soldiers. The peasant soldiers live in their homes with their families, and combine their normal activities of study or work with military training and service-related functions, such as security along the roads, bridges, or infrastructure and intelligence work. Observatorio de derechos humanos y derecho humanitario, *Ejecuciones extrajudiciales en Colombia 2002-2010. Crímenes de lesa humanidad bajo el mandato de la seguridad democrática*, September 2012, pp. 46, 49, citing the Ministry of National Defense, *Rendición de Cuentas. Sector Seguridad y Defensa 2002-2010*. Executive Summary.

<sup>84</sup> See IACHR, *Report on the Implementation of the Justice and Peace Law: Initial Stages in the Implementation of the Justice and Peace Law and First Judicial Proceedings*, OEA/Ser.L/V/II.129, Doc. 6, October 2, 2007.



AUC and on July 15, 2003; a preliminary agreement was reached called the *Agreement of Santa Fe de Ralito to Contribute to Peace in Colombia* (*Acuerdo de Santa Fe de Ralito para contribuir a la Paz de Colombia*). Through this agreement goals were set for demobilizing for December 31, 2005, in exchange for a resolution to desist (*resolución inhibitoria*) issued by the Office of the Attorney General that would make it impossible to bring charges against the demobilized simply for belonging to an illegal armed group, and the promise of establishing alternative penalties for those who had committed a crime beyond merely belonging to those groups.<sup>85</sup> In the month of June 2005, the Congress of the Republic adopted a series of criminal justice benefits through the transitional justice mechanisms established in Law 975 of 2005.

52. In February 2004, the OAS authorized the establishment of a Mission to Support the Peace Process in Colombia and invited the IACHR to provide advisory services to the Mission in the areas of human rights and IHL. Since then the IACHR has monitored the process of dismantling the illegal armed structures and mainly the application of the legal framework aimed at ensuring truth, justice, and reparation for the victims of the conflict as an essential part of its role in advising the member states of the OAS, its General Secretariat, and the MAPP/OAS.<sup>86</sup>
53. The demobilization of the *Autodefensas* occurred in four periods: (i) the first period unfolded in 2003 and included the demobilization of the Bloque Cacique Nutibara, which exercised influence in the metropolitan area of Medellín, and the group known as Autodefensas Campesinas de Ortega; (ii) the second period, from late 2004 to late 2005, saw the demobilization of the *bloques* that operated under the command of Salvatore Mancuso: the Bloque Catatumbo, with influence in the department of Norte de Santander and the Autodefensas de Córdoba; (iii) the third period began in June 2005 with the demobilization of the *bloques* under the command of Diego Fernando Murillo Bejarano such as the Bloque Héroes de Tolová, the Bloque Héroes de Granada in the department of Antioquia, and the Bloque Pacífico in Chocó; (iv) the fourth and final period began in late 2005 and culminated in August 2006, with the Bloque Elmer Cárdenas under the command of Fredy Rendón Herrera, alias “El Alemán.”<sup>87</sup>
54. In all, there were 38 ceremonies marking the demobilization of different structures of the “self-defense” groups, at the end of which the National Government announced that the process had ended, politically closing out the collective demobilizations by those groups.<sup>88</sup>

<sup>85</sup> See IACHR, *Report on the Implementation of the Justice and Peace Law: Initial Stages in the Implementation of the Justice and Peace Law and First Judicial Proceedings*, OEA/Ser.L/V/II.129, Doc. 6, October 2, 2007.

<sup>86</sup> See Permanent Council of the OAS, Resolution CP/RES. 859 (1397/04) “Support to the Peace Process in Colombia,” third operative paragraph. OEA/Ser. G CP/RES. 859 (1397/04) of February 6, 2004.

<sup>87</sup> OAS, *Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana*, MAPP/OAS, October 2011, pp. 17-18. Available at: <http://www.mapp-oea.net/documentos/iniciativas/DiagnosticoJyP.pdf>.

<sup>88</sup> At the same time, according to the Prosecutor, since 2005, the individual demobilization fully took on the strategic thrust it had since it was established, that is a political-military strategy aimed at weakening the illegal armed groups. OAS, *Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana*, MAPP/OAS, October 2011, pp. 17-18, citing the General Prosecutor of the Nation (2011), *La Justicia Transicional en Colombia: Un proceso en construcción*. Bogotá DC. With Decree 1385 of 1994 (modified by Decree 128 of 2003), the possibility was established of laying down arms individually, at the same time as the Operational Committee for the Laying Down of Arms (CODA: Comité Operativo para la Dejaración de Armas) was established as an agency that would be in charge of verifying the pertinence as well as the willingness of the illegal armed group to give up its violent activity. Law 418 of 1997 establishes the basic provisions relating to humanitarian assistance and economic incentives. Decree 1059 of 2008 also regulated Law 418 of 1997 and established that the members of the guerrilla groups who are deprived of liberty may demobilized individually, so long as they are deprived of liberty before April 4, 2008. Subsequently, Decree 4619 of 2010 established March 13, 2011 as the deadline for such demobilizations, and closed off any possibility of demobilization for members of guerrilla forces who were deprived of liberty. In other words, at this time the only ones who may demobilize are members of the guerrilla forces who are free.

Nonetheless, three self-defense structures did not participate in the collective demobilizations: the Autodefensas Campesinas de Casanare (ACC), the Frente Cacique Pipintá, and the Frente Contrainsurgencia Wayúu.<sup>89</sup>

55. After the process of collective demobilization, in 2007 the Commission noted that little information was made known to the public about those persons who, having demobilized without participating in the reinsertion process<sup>90</sup>, rearmed or formed new criminal organizations, thereby continuing their involvement in the violence.<sup>91</sup> The reports by the OAS Secretary General revealed the existence of expressions of violence after the demobilization that reflected dynamics such as the regrouping of persons demobilized into criminal bands that exercised control over specific communities and illegal economies; redoubts that did not demobilize; and the appearance of new armed actors and/or the strengthening of some already-existing ones in areas abandoned by the demobilized groups.<sup>92</sup>
56. The Commission also indicated that despite the demobilization of the AUC, violence stemming from the armed conflict persisted, and reports continued of crimes, human rights violations, and violations of IHL against the civilian population being committed by illegal armed groups and members of the armed forces and National Police that translated into violations of the rights to life, humane treatment, and personal liberty, and which resulted in continued internal displacement.<sup>93</sup>
57. The IACHR expressed its concern over the existence of redoubts of the paramilitary structures that did not demobilize, and the rearming and formation of new armed groups, and reiterated the need for the Government of Colombia to implement effective

<sup>89</sup> OAS, *Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana*, MAPP/OAS, October 2011, pp. 17-18. Available at: <http://www.mapp-oea.net/documentos/iniciativas/DiagnosticoJyP.pdf>.

<sup>90</sup> The Commission received information from the Colombian Agency for Reintegration (ACR: Agencia Colombiana para la Reintegración) that indicates that as of November 2012, there were 55,203 certified demobilizations, 31,840 from collective demobilizations and 23,354 individual demobilizations. Women account for 12% of the total demobilized population. In addition, the ACR reported that it has served 33,360 demobilized persons, 33,312 of whom receive psychological support; 17,464 participate in educational initiatives; 3,142 are engaged in job training programs; 8,312 have benefited from business plans; and there have been 123 community interventions in 101 municipalities. The ACR also indicated that the path to reintegration consists of a basic stage, involving the reintegration to civilian life; an intermediate stage, related to economic and community reintegration; and an advanced stage, geared to ensuring the sustainability of the demobilized pursuing a life within the law. The ACR noted that these initiatives enjoy the participation of 115 enterprises and more than 200 students from 13 Colombian universities, as well as a total investment of \$68,328,179,350 Colombian pesos, of which \$43,636,356,341 are from international cooperation. In addition, the ACR indicated that of the total demobilized population as of November 2012, and of the 31,397 demobilized who are under the program, 29,092 are active, 2,055 inactive, 200 suspended, and 50 have culminated the reintegration process. With respect to the demobilized who are not in the program, the ACR reported that 4,214 have died, 10,861 are being investigated as they lost their benefits, 1,521 have been expelled, 25 suspended, 14 extradited, and 460 withdrew voluntarily. The ACR also indicated that 32.96% of the demobilized population who are in the program are in the advanced stage of the path to reintegration; the recidivism rate of the demobilized population is 20%, while the recidivism rate for the population under the program is 15%; and that 5,765 demobilized persons who did not belong to the program, and 5,649 who did belong to it have been arrested. Finally, the ACR reported that it would be working on a reintegration program for the members of the FARC in light of the peace negotiations that are under way. Agencia Colombiana para la Reintegración, *Reintegration towards Reconciliation: A Challenge that requires the commitment of all*, November 26, 2012. Information received at the meeting held with the director of the ACR in Washington, DC, January 30 2013.

<sup>91</sup> IACHR, *Report on the Implementation of the Justice and Peace Law: Initial Stages in the Implementation of the Justice and Peace Law and First Judicial Proceedings*, OEA/Ser.L/V/II.129, Doc. 6, October 2, 2007, para. 106.

<sup>92</sup> IACHR, *Report on the Implementation of the Justice and Peace Law: Initial Stages in the Implementation of the Justice and Peace Law and First Judicial Proceedings*, OEA/Ser.L/V/II.129, Doc. 6, October 2, 2007, para. 106.

<sup>93</sup> See IACHR, *Annual Report 2007*, OEA/Ser.L/V/II.130, Doc. 22 rev. 1, December 29, 2007, Chapter IV. Colombia, para. 40.

mechanisms aimed at ensuring the dismantling of the structure of the AUC and of the criminal bands.<sup>94</sup>

58. The Government of Colombia recognized that complex situation and noted that if the demobilized took up arms anew they would be excluded from the benefits established in Law 975.<sup>95</sup> While the Commission considered that the Government's warning as to the loss of benefits that would result from a return to illegality was significant, it also noted that those consequences would only affect those demobilized who had come forward to avail themselves of the benefits of the Law on Justice and Peace, only 8.7% of the 31,000 demobilized of the AUC.<sup>96</sup>
59. In 2009, the IACHR considered that despite the efforts aimed at dismantling the armed structure of the AUC, illegal armed groups continued to be involved in committing acts of harassment and violence against vulnerable populations, social leaders, and human rights defenders.<sup>97</sup> In that regard, the MAPP/OAS reported that in some zones of the country there had been a recurrence of massacres and threats associated with so-called "social cleansing" efforts directed against vulnerable populations that were generally attributed to what are known as "emerging bands."<sup>98</sup> Similarly, it observed that "in some capitals and municipalities, high-impact crimes such as homicides, generally executed by hired guns, have increased."<sup>99</sup> Along the same lines, the Office of the Human Rights Ombudsman (Defensoría del Pueblo) has made reference to the interference of the illegal armed groups in some local and departmental administrations, as well as the cooptation of candidates, movements, and political campaigns.<sup>100</sup>
60. At present, the Commission notes that the partial demobilization of the *Autodefensas* or paramilitary groups<sup>101</sup> together with the action of illegal armed groups that emerged after the demobilization of paramilitary organizations<sup>102</sup> have made the dynamics of the internal armed conflict even more complex. Nonetheless, the Government and civil society have different perceptions as to the definition and nature of the new illegal armed groups; these differences have a substantial impact both on the State's response to those groups, the status of victim of the conflict of those persons who affected by the actions of those groups, and the application of the domestic legal framework.

<sup>94</sup> See IACHR, *Annual Report 2007*, OEA/Ser.L/V/II.130, Doc. 22 rev. 1, December 29, 2007, Chapter IV. Colombia, para. 81.

<sup>95</sup> See IACHR, *Report on the Implementation of the Justice and Peace Law: Initial Stages in the Implementation of the Justice and Peace Law and First Judicial Proceedings*, OEA/Ser.L/V/II.129, Doc. 6, October 2, 2007, para. 107.

<sup>96</sup> IACHR, *Report on the Implementation of the Justice and Peace Law: Initial Stages in the Implementation of the Justice and Peace Law and First Judicial Proceedings*, OEA/Ser.L/V/II.129, Doc. 6, October 2, 2007, para. 107.

<sup>97</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 20.

<sup>98</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 20, citing the Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), October 19, 2009.

<sup>99</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 20, citing the Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), October 19, 2009.

<sup>100</sup> Defensoría del Pueblo. *Informe especial de riesgo electoral. Elecciones regionales*, July 2011. Available at: <http://www.eltiempo.com/elecciones-2011/gobernaciones-2011/home/ARCHIVO/ARCHIVO-10072745-0.pdf>.

<sup>101</sup> See, among others, IACHR, *Report on the Implementation of the Justice and Peace Law: Initial Stages in the Implementation of the Justice and Peace Law and First Judicial Proceedings*, OEA/Ser.L/V/II.129, Doc. 6, October 2, 2007, para. 107; OAS, *Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana*, MAPP/OEA, October 2011. Available at: <http://www.mapp-oea.net/documentos/iniciativas/DiagnosticoJyP.pdf>.

<sup>102</sup> United Nations, Human Rights Council, *Annual Report of the United Nations High Commissioner for Human Rights*. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 22<sup>nd</sup> session, A/HCR/22/17/Add.3, January 7, 2013, para. 38.

61. The official position of the Colombian State is that after the collective demobilization of the Autodefensas, the phenomenon of paramilitarism has ended in Colombia, and therefore the groups that operate at present are part of the country's organized crime problem, which is why they are characterized as "emerging criminal bands."<sup>103</sup> In effect, according to the State, the "emerging criminal bands"

arose in 2006, positioned themselves in areas that were strategic for drug-trafficking activities, are generally organizations involved in many forms of crime, independent of one another, lacking any ideology, deploying to areas where the phases of the chain of drug-trafficking converge, and even consolidating alliances with illegal armed groups (FARC and ELN) and with criminal organizations for criminal purposes [...]

The Bacrim (criminal bands) – while at first they grew out of part of [the] functional structure [of the autodefensas] that enables them to dispute control over the areas for growing, transporting, and dispatching drugs with the FARC and the ELN – are gradually beginning to lower their profile as an armed organization, and do not act through military structures.<sup>104</sup>

62. In its observations on the draft report, the State reiterated that:

[...] one observes that the IACHR continues making reference to the 'criminal bands' as 'paramilitary groups,' without taking into account the distinction between these two concepts, which has been presented by Colombia in different international scenarios. In view of the foregoing, it is important for the State that the report refer to criminal bands or Bacrim (*bandas criminales*).<sup>105</sup>

63. Nonetheless, the Commission notes that in 2010, the Office of the Attorney General indicated:

The criminal organizations that arose after the demobilization of the AUC were created as a new form of paramilitarism, considered as the third generation of paramilitary groups in Colombia and whose initial purpose was to conserve the territorial control that had held by the fronts of the AUC.

The main objective of these structures has been to retake control, not only territorial, but economic, logistic, and social control, in the areas of influence where the AUC had been engaging in criminal conduct, in addition to seeking to expand to other regions in which other paramilitary fronts had figured more prominently, and even emerging criminal

<sup>103</sup> See, among others, IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV, Colombia; IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV, Colombia; and IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV, Colombia. Along the same lines, according to the Prosecutor of the International Criminal Court, the position of the State is that the groups that arose after the process of demobilization of the paramilitaries are not organized armed groups, since they lack an established hierarchical structure or chain of command, do not exercise territorial control, and do not carry out sustained and concerted military operations. International Criminal Court, Office of the Prosecutor, *Situation in Colombia. Interim Report*, November 2012, para. 131. The Commission notes that that position would appear to be at odds with strategies such as those included in Proposed Law 97 of 2012, now in the Senate, which proposes to apply international humanitarian law to "fight organized crime."

<sup>104</sup> Ministry of Foreign Affairs of Colombia, document "BACRIM", received by the IACHR on May 3, 2013.

<sup>105</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAII-13-048140, December 2, 2013, para. 19.

bands and criminal bands at the service of drug-trafficking. Why? Control of the main sources of financing of these liquidated groups: Drug-trafficking.<sup>106</sup>

64. Along the same lines, the National Commission on Reparation and Reconciliation (hereinafter “the CNRR”)<sup>107</sup> found:

The AUC demobilized but there was a supervening diaspora of illegal armed groups ranging from dissident and rearmed groups with several characteristics similar to the paramilitary groups to numerous criminal bands. These emerging armed groups take on a new and intense dispute over the control of drug-trafficking, other forms of illegality, control of territories, allies and bases of support, such that they unleash bloody confrontation in several regions and in some cities. There is greater pursuit by the state forces of this new type of illegal armed groups and criminal bands, while at the same time, there are alliances and agreements between guerrilla fronts and rearmed groups with the presence of former paramilitaries [...].<sup>108</sup>

The illegal armed groups that have emerged seek to reproduce scenarios of coercive control against residents, especially against rural and urban communities where they concentrate their action and against certain social sectors and sectors of the population. They bring pressure to bear and carry out armed attacks that bring on forced displacement and dispossession of lands, threats, homicides, and forced disappearances. While the volume of such actions and the territorial impact are not generalized, but rather have a particular impact in localities and in various regions, and are far from the magnitude of the earlier bloody territorial occupation of the paramilitary forces, they are not insignificant and in some particular contexts have the same effects.<sup>109</sup>

In this way, these groupings exercise social and political control with a different intensity in smaller areas. They become *de facto* local powers, imposing rules, violently attacking any opposition or resistance, and they apply so-called “social cleansing” measures. In view of these circumstances, some reports find that their action should be interpreted as a continuation of the paramilitary groups<sup>110</sup>, while for the Government of Colombia these are criminal bands that have emerged and are engaged in drug-trafficking and other criminal enterprises. Indeed, the *bandas delincuenciales* or *bandas criminales* (criminal bands) are a phenomenon that predates and postdates the paramilitary demobilizations, they have been part of the urban and rural social fabric, they were coopted or annihilated by the paramilitary structures, and it is valid to recognize that now, given the new circumstances referred to, they expanded in areas impacted by the processes of DDR [disarmament, demobilization, and reintegration]. Nonetheless, although the criminal bands to some extent explain what is happening, they do not fully explain the dynamics or scope of the present phenomenon nor the diversity of the irregular armed actors, nor can they lead one to ignore the decisive presence of dissident and rearmed structures with a significant

<sup>106</sup> Office of the Attorney General, *Informe de Gestión, agosto de 2009- noviembre de 2010*, Bogotá, 2011, p. 220. Available at: <http://www.fiscalia.gov.co/colombia/wp-content/uploads/2012/01/InformeGestion2009-2010.pdf>.

<sup>107</sup> The National Commission on Reparation and Reconciliation was established by the Law on Justice and Peace for the purpose of facilitating peace processes and the individual or collective reincorporation to civilian life of members of illegal armed groups. Information available at: <http://www.vicepresidencia.gov.co/Iniciativas/Paginas/CNRR.aspx>.

<sup>108</sup> CNRR, *La reintegración: logros en medio de rearmes y dificultades no resueltas, II Informe de la Comisión Nacional de Reparación y Reconciliación*, DDR Area, August 2010, p. 26.

<sup>109</sup> Examples of this assertion can be found in the Regional Reports on DDR (Disarmament, Demobilization, and Reintegration) of the CNRR with respect to the areas of Chocó, Nariño, Llanos Orientales and various subregions of Antioquia and the Caribbean region.

<sup>110</sup> Corporación Nuevo Arco Iris (CNAI), Mauricio Romero, *Bandas criminales, Seguridad Democrática y corrupción*, p. 40.

presence of former paramilitaries and with the elements noted above that evidence expressions of continuity of the prior paramilitary phenomenon.<sup>111</sup>

65. To the contrary, the perception and assessment of the situation by civil society organizations is essentially different, to the extent that they consider that the illegal armed groups have continued using the same structure and terminology as the *Autodefensas* in order to intimidate the population.<sup>112</sup> In addition to noting the similarities between the paramilitary groups and what have been called emerging criminal bands recognized by the CNRR<sup>113</sup>, civil society has argued that there are six reasons to consider those groups paramilitary groups, namely: (i) their leaders are mid-level chiefs of the AUC who never demobilized or who continued participating in criminal activities even though they appeared to have joined the demobilization<sup>114</sup>; (ii) they are groups that meet the criteria to be considered groups that

<sup>111</sup> CNRR, *La reintegración: logros en medio de rearmes y dificultades no resueltas, II Informe de la Comisión Nacional de Reparación y Reconciliación*, DDR Area, August 2010, pp. 60-61.

<sup>112</sup> Information provided at the meeting with civil society held in Bogotá December 3, 2012. See also, Razón Pública, César Alarcón Gil, *Bacrim y las sombras del paramilitarismo*, week of December 3 to 9, 2012. Available at: <http://www.razonpublica.com/index.php/conflicto-drogas-y-paz-temas-30/3443-bacrim-el-poder-y-las-sombras-del-paramilitarismo.html>.

Civil society also indicated that while it is true that as of February 21, 2012, according to official figures, 35,407 members of the groups of *autodefensas* had laid down their arms, it is equally true that the capacity of the illegal armed groups to recruit has been high, and they are said to have had 4,154 members by 2011; to be operating in 31 of the country's 32 departments, and Bogotá; and to have formed strategic alliances with the FARC to maintain the drug-trafficking business. See, among others, Indepaz, *Sobre las cifras oficiales*; El Espectador, *Las bacrim crecen en todo el país*, February 19, 2012. Available in Spanish at: <http://www.elespectador.com/impreso/judicial/articulo-327595-bacrim-crecen-todo-el-pais>

<sup>113</sup> According to the CNRR, in its Segundo Informe sobre DDR (Second Report on DDR), one finds the following elements: (i) Participation of similar (or the same) commanders as well as similar (or the same) types of support and integration with allied or subordinated sectors; (ii) the use of a counterinsurgency language and implementation of actions against the civilian population, especially threats, homicides, and displacements against certain victimized sectors; (iii) performance of functions of local control, forms of coercion of the civilian population, and interference with the authorities, local institutions, and members or structures of the Armed Forces and National Police; (iv) financing and profits based on the control of crops, processing, routes, and trafficking of cocaine and other illegal economies, on which they center their action in the rural areas where a fundamental part of the production and transport is based, and with networks for coordination and support in the cities; (v) articulation with criminal networks at different levels, exercising pressure and control over rural and peripheral urban areas, neighborhoods and shantytowns in the cities, geared to the control of illicit economies, microtrafficking, the management of 'plazas de vicio' and 'ollas' (areas where drugs are sold and consumed) appropriation and illegal sale of lands, extortion of truck drivers and merchants, etc.; (vi) illegally charging for protection, management of legal and illegal security companies, generally related to the control of organized crime and participation in other forms of crime; (vii) implementation, in the municipal seats, of "social cleansing" actions against vulnerable sectors such as recyclers, drug addicts, homeless persons, homosexuals, prostitutes, and persons acting outside the law; (viii) availability of arsenals of long and short arms, munitions and explosives, logistical resources and supply lines, destructive capacity and capacity to acquire and renew armaments, massive purchase of gear, and access to bountiful resources. In addition, civil society considered that the illegal armed groups have as their main target the same types of victims as the purportedly demobilized paramilitary groups: social leaders and trade unionists; human rights defenders; members of indigenous peoples and Afro-Colombian communities, among others. They operate with the complicity, acquiescence, and at times the participation of members of the armed forces or National Police; they have a militarily structured organization and a high military capability; they are integrated, among others, with well-known members of the purportedly demobilized paramilitary groups and former members of the Army. Colombian Commission of Jurists, Andreu Guzmán, Federico, *Algunas anotaciones sobre BACRIM y paramilitares*, March 2011, pp. 3-4.

<sup>114</sup> In this regard, the Commission received information that indicates that the Fundación Comité de Solidaridad con los Presos Políticos has documented how the Bloque Norte of the AUC – on orders from politicians from the Caribbean region – continued operating under the name La Banda de los "40" (so called because of their loyalty to the extradited former paramilitary chief Rodrigo Tovar Pupo, alias "Jorge 40"), and whose members ended up joining "Los Rastrojos," "Los Urabeños," and "Los Paisas." Project Counseling Service, Corporación "José Alvear Restrepo" Lawyers Group, Comisión Intereclesial de Justicia y Paz, Fundación Comité de Solidaridad con los Presos Políticos, *Informe de visita in loco a Colombia. Presentación sobre la persistencia del paramilitarismo en Colombia*, received by the IACHR on May 8, 2013.

participate in hostilities according to the Geneva Conventions<sup>115</sup>; (iii) the ties of these groups to the state security forces continue<sup>116</sup>; (iv) the violations of the civilian population's human rights continue; (v) the profile of the victims is the same, i.e. social leaders, human rights defenders, indigenous and Afro-Colombian communities, leaders of processes for restitution of lands and other social movements; and (vi) the policy of attacks is typical of the *modus operandi* of the paramilitary groups.<sup>117</sup>

66. Civil society also indicated that the characterization of these groups as “emerging criminal bands” has grave consequences when it comes to recognizing, attending to, and protecting their victims, who are not considered victims of the armed conflict<sup>118</sup>, and in relation to the children and adolescents recruited by these groups, who would not have access to the same benefits that apply to children and adolescents recruited by the illegal armed groups.<sup>119</sup>
67. Other international organizations have also made their own assessments of the illegal armed groups in Colombia. In particular, in the framework of the United Nations (hereinafter “UN”), the Human Rights Committee noted that it had “information to the effect that acts by new groups that have emerged in various parts of the country after the demobilization process began are consistent with the *modus operandi* of those paramilitary groups”<sup>120</sup>; the Committee on the Elimination of Racial Discrimination (hereinafter “CERD”) considered that “while illegal armed groups bear significant responsibility for human rights violations, reports continue to indicate the direct involvement or collusion of State agents in such acts”<sup>121</sup>; the United Nations Committee against Torture indicated that while illegal armed groups are to a large extent responsible for such violence, there are persistent complaints about the participation or acquiescence of agents of the State in these acts<sup>122</sup>; the Committee on Economic, Social and

<sup>115</sup> Nonetheless, the National Development Plan considers what are called emerging criminal bands as “group engaging in multiple criminal activities, with a transnational reach, lacking any ideological platform and whose purposes are entirely economic.”

<sup>116</sup> According to the Ministry of Defense, 350 military officers have been retired on suspicion of ties to criminal bands, and since 2008 the Police have carried out 319 investigations into 888 of their members, as a result of which 287 officers were retired and criminally indicted for their ties with these groups.

<sup>117</sup> Colombian Commission of Jurists, Andreu Guzmán, Federico, *Algunas anotaciones sobre BACRIM y paramilitares*, March 2011, pp. 5-6. Along the same lines, the Commission received information on the analysis of these groups as expressions of *neoparamilitarism*, to the extent that the dismantling of the *autodefensas* has been partial and incomplete (since numerous mid- and lower-level commanders of these organizations never ceased their operations); these groups maintain alliances and cooperative relationships with authorities of the Armed forces and National Police and local and regional political authorities; and that while their makeup at the lower levels is mostly common criminals, former guerrilla combatants, former police, former soldiers, and former paramilitaries, the leadership positions are basically held by persons who had been mid-level commanders of the *autodefensas*. It was also noted that these groups have strategies that go beyond the threat of armed force, but that territorial control is fundamental. Razón Pública, César Alarcón Gil. *Bacrim y las sombras del paramilitarismo*, week of December 3 to 9, 2012. Available at: <http://www.razonpublica.com/index.php/conflicto-drogas-y-paz-temas-30/3443-bacrim-el-poder-y-las-sombras-del-paramilitarismo.html>.

<sup>118</sup> Colombian Commission of Jurists, *Informe de seguimiento a las recomendaciones Del Relator Especial sobre Ejecuciones Extrajudiciales, Sumarias o Arbitrarias*, June 14, 2012. Executive Summary, para. 14.

<sup>119</sup> Information provided at the meeting with civil society organizations, held in Bogotá December 3, 2012.

<sup>120</sup> See United Nations, Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant. Concluding observations of the Human Rights Committee. Colombia, CCPR/C/COL/CO/6, August 4, 2010, para. 9.

<sup>121</sup> See United Nations, Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under Article 9 of the Convention. Concluding observations of the Committee on the Elimination of Racial Discrimination. Colombia, CERD/C/COL/CO/14, August 28, 2009, para. 14.

<sup>122</sup> See United Nations, Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention. Concluding observations of the Committee against Torture. Colombia, CAT/C/COL/CO/4, November 19, 2009, para. 11.

Cultural Rights (hereinafter “CESCR”) characterized them as “new paramilitary groups”<sup>123</sup>; while the United Nations High Commissioner for Human Rights (hereinafter “the High Commissioner”) considered them to be heavily armed groups that had a military organizational structure and commanders with responsibility and who had the capacity to exercise territorial control and to undertake military actions against armed actors.<sup>124</sup>

68. Subsequently, in 2012, the High Commissioner indicated that the number of massacres and victims attributed to the illegal armed groups that arose after the demobilization of paramilitary organizations continued to climb, mainly in Antioquia and Córdoba. Moreover, she noted that the violence occurs in the context of confrontations with other groups, or within the same group, on occasion against guerrilla groups, and in several cases these groups carry out direct attacks against the population, and she noted that as of the date of the report, 53% of the commanders of these groups who were arrested or killed were demobilized paramilitaries.<sup>125</sup>
69. Consistent with the official position put forth by the State regarding the difference between the characterization of the so-called “BACRIM” and the paramilitary groups, Colombia noted as follows in its observations on the IACHR’s draft report:

It is suggested that reference be made to the BACRIM as organized crime groups that arose after the demobilization of the paramilitary groups. The purpose of doing so would be to ensure that the IACHR not establish a precedent that there is an armed conflict between the National Government and the BACRIM, which could generate perverse incentives in terms of the use of lethal force as a first option in application of IHL, and of not definitively ending the armed conflict once a final agreement is signed with the guerrilla forces.<sup>126</sup>

70. In this regard, the State reiterated that what is put forth in this report “contradicts the State’s characterization of the BACRIM as an organized crime phenomenon in keeping with international humanitarian law, and that does not constitute part of the armed conflict.”<sup>127</sup> In addition, the State indicated that policies for specialized attention to the victims of the “BACRIM” should be developed “without seeking to have them included in the administrative program for reparation of victims of the conflict, which would make the program cease to be special for victims of the conflict, as it would include all victims of common crime.”<sup>128</sup>

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<sup>123</sup> UN, Committee on Economic, Social and Cultural Rights, Forty-fourth session. Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant. Concluding Observations of the Committee on Economic, Social and Cultural Rights E/C.12/COL/CO/5, 7 June 2010, para. 16.

<sup>124</sup> UN, Human Rights Council, Annual Report of the Office of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human on the situation of human rights in Colombia, 7th session, A/HCR/7/39, February 28, 2008, para. 39.

<sup>125</sup> See United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner on Human Rights on the situation of human rights in Colombia, 19<sup>th</sup> session, A/HCR/19/21/Add.3, January 31, 2012, para. 38.

<sup>126</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 26.

<sup>127</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 54.

<sup>128</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 70.



71. In light of the position put forth by the State, and in keeping with the information available during the visit, the IACHR will present its considerations on the actions of the illegal armed groups that came about after the demobilization ceremonies, which have been identified with serious human rights violations. Accordingly, in a report by the National Federation of Local Ombudsmen (Federación Nacional de Personeros), presented in April 2013, it was indicated that the trend observed in the last year situated the illegal armed groups that arose after the demobilization of the paramilitary organizations in the first places on the list of actors responsible for acts causing victims among the civilian population, whereas in previous years the main actors were the paramilitary and guerrilla organizations. In three of every 10 reports received at the local ombudsman offices (*personerías*), the perpetrators are illegal armed groups that arose after the demobilization of the paramilitary organizations.<sup>129</sup>
72. The organs of the inter-American system have analyzed in detail how the acts of illegal armed groups could entail the international responsibility of the State. In effect, in several cases against the Colombian State, the Commission has indicated that for the purpose of determining the international responsibility of the State under the American Convention, in those cases in which paramilitaries and members of the Army carry out joint operations with the knowledge of high-level officials, or when the paramilitaries act with the acquiescence or collaboration of government forces, one should consider the members of the paramilitary groups to be acting as state agents.<sup>130</sup>
73. The Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), has attributed international responsibility to the State based on the reasoning that “while the acts [...] were committed by members of paramilitary groups, [they] could not have been prepared and carried out without the collaboration, acquiescence, and tolerance, expressed through several actions and omissions, of the Armed Forces of the State, including high officials of the latter.”<sup>131</sup> The Commission recalls that according to the Court, the declaration of the illegality of the paramilitary groups should be translated into the adoption of sufficient and effective measures to prevent the consequences of the risk created, and while this situation of risks subsists, the special duties of prevention and protection that attach to the State and the obligation to investigate with full diligence acts or omissions of state agents and of private persons who attack the civilian population are enhanced.<sup>132</sup>

<sup>129</sup> The report by FENALPER notes that the departments where the most reports have been received from persons victimized by illegal armed groups that arose after the demobilization of paramilitary organizations were Valle del Cauca, Bolívar, Chocó, Antioquia, Nariño, Córdoba, Sucre, and Norte de Santander. The most serious case was Buenaventura, in Valle del Cauca, where, from September to November 2012 the Office of the Municipal Ombudsman (Personería Municipal) recorded 17 massive displacements, which resulted in 7,000 persons displaced, 90% of said displacements resulting from the action of the illegal armed groups that came about after the demobilization of paramilitary organizations. In other municipalities, such as El Dovio and Obando, also in Valle del Cauca, the ombudspersons reported that all the statements taken in 2012 and to date in 2013 were of victims of illegal armed groups that arose after the demobilization of paramilitary organizations from Cauca, Nariño, and Caquetá. The action of these groups includes intimidation of the population, death threats, and extortion, among others. Revista Semana, *Las violentas cifras de las bacrim*, April 15, 2013. Available at: <http://www.semana.com/nacion/articulo/las-violentas-cifras-bacrim/340170-3>.

<sup>130</sup> See, among others, IACHR, Report No. 64/11, Case 12,573, Merits, *Marino López et al. (Operation Génesis)*, Colombia, March 31, 2011, para. 277; IACHR, Report No. 75/06, Case No. 12,415, Merits, *Jesús María Valle Jaramillo*, Colombia, October 16, 2006, para. 63.

<sup>131</sup> I/A Court H.R., Case of the “Mapiripán Massacre” v. Colombia. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 120.

<sup>132</sup> See, among others, I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 126; IACHR, Report No. 75/06, *Jesús María Valle Jaramillo*, Colombia, October 16, 2006, para. 67.

74. The Commission notes that the State continues to have specific duties to dismantle those *Autodefensas* who did not participate in the collective demobilizations carried out from 2003 to 2006 (*supra* para. 53) and that continue to operate in Colombian territory. In addition, the Commission observes with concern that there are elements of continuity between the former *Autodefensas* and what are called “emerging criminal bands.” In this respect, based on the information available and the assessment resulting from its different mechanisms for monitoring, the IACHR has identified as elements of continuity: (i) the type of actor, (ii) the targets of the actions of these groups, (iii) the geographic space in which they operate, (iv) their internal structure, (v) the chronology that can be established among the actions of those groups, (vi) the fact that the denial by the State of the continuity of elements of paramilitarism makes the response to them more complex and less decisive, and (vii) the absence, to date, of a thorough, systematic, and diligent investigation in relation to the members of the *Autodefensas*.<sup>133</sup> These elements of continuity raise questions as to the extent to which the members of the paramilitary groups actually demobilized before joining or creating other illegal armed groups.
75. The Commission is also of the view that the grave situation of impunity one finds in relation to serious violations of human rights and international humanitarian law by all the actors in the conflict in Colombia, as well as the failure to clarify the dynamics, scope, composition, and structure of the former *Autodefensas* and the illegal armed groups that arose after the demobilization of paramilitary organizations constitute systemic obstacles not only to ensuring victims’ rights but also to have detailed and precise information that makes it possible to characterize these groups, dismantle their support structures, and adopt pertinent policy and legal measures to confront them.
76. The Commission also considers that the characterization of the illegal armed groups that emerged after the demobilization of paramilitary organizations should be done on a case-by-case basis with a specialized analysis that takes into account the origin of paramilitarism and the elements of international responsibility of the State. The Commission is also of the view that any policy or measure adopted by the State should have at its core and as its main goal the protection and guarantee of the rights

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<sup>133</sup> The Commission argued that the conclusion as to ineffectiveness in dismantling the paramilitary structures stems *inter alia* from the analysis of the many violations of human rights perpetrated by paramilitaries, acting on their own or in collusion or collaboration with state agents, and the high rates of impunity for such acts. Both the Inter-American Commission and the United Nations High Commissioner for Human Rights have made consistent statements on the high rate of impunity for human rights violations committed as the result of criminal proceedings and disciplinary investigations against members of the armed forces and National Police and of paramilitaries that go nowhere in terms of determining responsibilities or imposing the respective sanctions. IACHR, Report No. 64/11, Case 12,573, Merits, *Marino López et al. (Operation Génesis)* Colombia, March 31, 2011, para. 229, citing the Report of the OHCHR on the situation of human rights in Colombia, E/CN.4/2005/10, February 28, 2005, para. 92. Available at: [www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2004\\_esp.doc](http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2004_esp.doc). Report of the OHCHR on the situation of human rights in Colombia, E/CN.4/2004/13, February 17, 2004, paras. 26-28 and 77. Available at: [www.hchr.org.co/documentoseinformes/.../Informe2003\\_esp.doc](http://www.hchr.org.co/documentoseinformes/.../Informe2003_esp.doc). Report of the OHCHR on the situation of human rights in Colombia in 2002, E/CN.4/2003/13, February 24, 2003, para. 77. Available at: [www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2003\\_esp.doc](http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2003_esp.doc). Report of the OHCHR on the situation of human rights in Colombia, E/CN.4/2002/17, February 28, 2002, paras. 211, 212, and 365. Available at: [www.hchr.org.co/documentoseinformes/.../informes/.../E-CN-4-2002-17.html](http://www.hchr.org.co/documentoseinformes/.../informes/.../E-CN-4-2002-17.html). Report of the OHCHR on the situation of human rights in Colombia in 2000, E/CN.4/2001/15, March 20, 2001, paras. 57, 142, 206, and 254. Available at: [www.hchr.org.co/documentoseinformes/.../informes/.../E-CN-4-2001-15.html](http://www.hchr.org.co/documentoseinformes/.../informes/.../E-CN-4-2001-15.html). Report of the OHCHR on the situation of human rights in Colombia, E/CN.4/2000/11, March 9, 2000, paras. 27, 47, 146 and 173. Available at: [www.hchr.org.co/documentoseinformes/.../informes/.../E-CN-4-2000-11.html](http://www.hchr.org.co/documentoseinformes/.../informes/.../E-CN-4-2000-11.html).

of victims.<sup>134</sup> In its observations on the draft report, the State – reiterating its positions regarding the characterization of the BACRIM – noted that they are in a “process of fragmentation and atomization due to the results obtained in the fight waged against these groups by the Armed Forces and National Police.”<sup>135</sup>

### C. *Current initiatives with a view to the peace process*

77. Turning to another topic, since June 2012, with the presentation to the Congress of the draft “Legal Framework for Peace,” expectations began to build around a possible peace process in Colombia. In late August 2012, the President of the Republic confirmed that the Government had been in contact with the FARC for the purpose of established an agenda for dialogue to pursue a negotiated solution to the conflict. So, on August 27, 2012 the President declared “since the first day of my government I have met the constitutional obligation to seek peace. On that regard, exploratory talks with the FARC have taken place to find the end of the conflict” and he said that “Colombians can fully trust that the Government is working with caution, seriousness and firmness, always keeping in mind the wellbeing and tranquility of all the inhabitants of our country.”<sup>136</sup>
78. On September 4, the President of the Republic announced the beginning of the peace dialogues with the FARC to “effectively achieve the end of the conflict.”<sup>137</sup> On that occasion, he announced that “mechanisms to inform about the progress and to guarantee the adequate societal participation, always keeping the seriousness and secret nature of the conversations,” would be established and that the exploratory meetings with FARC representatives had been

<sup>134</sup> In this respect, while there is a debate on the military capacity and structure of the different illegal armed groups in Colombia so as to consider them part of a non-international armed conflict, the International Committee of the Red Cross has noted that beyond semantic debates as between “armed conflict” and “other situations of violence,” the humanitarian consequences of both phenomena are practically identical for the population. ICRC, *Situación humanitaria. Informe de Actividades Colombia 2011*, p. 8.

<sup>135</sup> Specifically, the State indicated:  
At present the BACRIM are showing a structural decline of 91%, 30 BACRIM groups have been dismantled, as their number has dropped from 33 in 2006 to 3 in 2013. These groups are experiencing a major process of fragmentation; as a result only one band maintains the characteristics of cohesion and national impact. Meanwhile the others have suffered processes of atomization.

Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAII-13-048140, December 2, 2013, paras. 60, 65.

<sup>136</sup> Presidency of the Republic, Statement by the President of August 27, 2012, available in Spanish at: Declaración del Presidente de la República, Juan Manuel Santos. See also: Statements by the President, available only in Spanish at: Declaraciones del Presidente: “Este es un Gobierno que ‘quiere buscar la paz por encima de estimular la guerra’: Presidente Santos”, August 29, 2012; ‘La paz no es solamente la terminación del conflicto’: August 31, 2012; “Queremos ir sembrando la paz en todas partes”, afirmó el Presidente Santos”, September 1, 2012; ‘Tenemos el reto de acompañar el proceso de paz’: September 3, 2012; and ‘Ojala podamos llegar a ese sueño de paz que tenemos todos los colombianos’: September 3, 2012.

<sup>137</sup> Presidency of the Republic, Statement by the President of the Republic, Juan Manuel Santos of September 4, 2012, available in Spanish at: ‘Acuerdo General para la Terminación del Conflicto’. Also see: Statements by the President (all of September 4, 2012) available in Spanish at: ‘Estamos ante una oportunidad real de terminar de manera definitiva el conflicto armado interno’; ‘Tenemos que unirnos todos para hacer que el sueño de vivir en paz se convierta en una realidad’; Venezuela y Chile serán acompañantes del proceso de paz; ‘Conversaciones de paz no tendrán tiempo ilimitado’ and Acuerdo para la terminación del conflicto tiene una agenda realista; La búsqueda de la paz requiere ese trabajo armónico de los poderes: Presidente Santos.

completed with the signing of the “General Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace” of August 26, 2012.<sup>138</sup>

79. In the Agreement, “the mutual decision to end the conflict as an essential condition for the construction of a stable and lasting peace”;<sup>139</sup> the goal to promote “respect for human rights in every corner of the national territory”<sup>140</sup> and an agenda with content and themes to debate in the dialogue commission,<sup>141</sup> *inter alia*, were established.
80. Likewise, the National Government and the FARC-EP stated their “total willingness” to reach an agreement and therefore, they made commitments on five aspects that include: to begin discussions on the points of the agenda in order to reach a Final Agreement for the termination of the conflict; establish a Discussion Commission; ensure the effectiveness of the process and conclude it expeditiously; develop discussions with the support of the Governments of Cuba and Norway, as guarantors, and the Governments of Venezuela and Chile as companions; and the agenda topics.<sup>142</sup> For its part, the agenda agreed by the parties in August 2012 includes the following topics: 1) Policy of comprehensive agricultural development,<sup>143</sup> 2) Political participation,<sup>144</sup> 3) End of the conflict,<sup>145</sup>

<sup>138</sup> Presidency of the Republic, Statement by the President of the Republic, Juan Manuel Santos, about the “Agreement to End the Conflict” from September 4, 2012, available in Spanish at: ‘Acuerdo General para la Terminación del Conflicto’. Also see: Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted” pp. 3-7.

<sup>139</sup> Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted” p. 3.

<sup>140</sup> Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted” p. 3.

<sup>141</sup> Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted” pp. 4-7.

<sup>142</sup> Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted,”p. 4.

<sup>143</sup> The agreement provides that “comprehensive agricultural development is crucial to boost the integration of the regions and the social, economic and equitable development of the country” and cites 5 points: 1) Access and use of the land. Unproductive lands. Formalization of property. Agricultural border and protection of reserves; 2) Development programmes with territory approach; 3) Infrastructure and adequacy of lands ; 4) Social development: health, education, housing, elimination of poverty; 5) Stimulus to agricultural production and a solidarity and cooperative economy. Technical assistance. Subsidies. Credit. Income generation. Marketing. Labor formalization. Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted,”p. 4.

<sup>144</sup> The agreement cites three points under this topic: 1) Rights and guarantees for the exercise of political opposition in general, and specifically for the new movements that will arise after the signing of the Final Agreement. Access to media; 2) Democratic mechanisms of citizen participation, including direct participation at different levels and topics; and 3) Effective measures to promote greater participation in national, regional and local policy in all sectors, including the most vulnerable on equal terms and with security guarantees. Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted,”pp. 4-5.

<sup>145</sup> The agreement defines it as an integral and simultaneous process involving: 1) cease fire and bilateral hostilities; 2) Abdication of weapons. Reinstatement of the FARC-EP - in the economic, social and political - civilian life, according to their interests; 3) The national Government, will coordinate the review of the situation of persons deprived of liberty, prosecuted or convicted, belonging or collaborating with the FARC-EP; 4) In parallel, the national Government will intensify the fight to stop criminal organizations and their support networks, including the fight against corruption and impunity, in particular against any organization responsible for killings and massacres or attempting against human rights defenders, social movements or political movements; 5) The national Government will review and make reforms and institutional

4) Solution to the problem of illicit drugs,<sup>146</sup> 5) Victims<sup>147</sup> and 6) Implementation, verification and reformation.<sup>148</sup>

81. On September 19, 2012, the President signed Order No. 339 ““By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted,”<sup>149</sup> and, on October 18, 2012 the Government of Colombia and the FARC formally began a process of dialogue to end the armed conflict; that process began in Oslo and is continuing in Havana.
82. On January 20, 2013, the date on which the two-month unilateral ceasefire declared by the FARC ended, the Asociación de Cabildos Indígenas del Norte del Cauca reported the assassination of Rafael Mauricio Girón Ulchur, an indigenous leader and beneficiary of precautionary measure No. 255-11, issued by the IACHR.<sup>150</sup> As of that date, the hostilities, kidnappings, explosions, and assassinations have continued.<sup>151</sup>
83. However, the Commission welcomes that on May 26, 2013 delegates of the Government and the FARC-EP reported that they had reached an agreement on the first item on the agenda

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adjustments to deal with the challenges of peace-building; 6) Security Guarantees; and 7) Within the framework of the provisions of point 5 (victims) of the Agreement, the phenomenon of paramilitarism will be clarified, among others. It also establishes that "signature of the Final agreement initiates this process, which must be developed in a reasonable time to be agreed by the parties". Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted,” p. 5.

<sup>146</sup> The agreement cites three points under this topic: 1) illicit crop substitution programs. Comprehensive development plans with the participation of communities in the design, execution and evaluation of programmes of replacement and environmental recovery of areas affected by illicit crops; (2) The consumption and public health prevention programs; and (3) solution of the phenomenon of production and marketing of narcotics. Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted,” p. 5.

<sup>147</sup> The agreement cites: Victims compensation is at the heart of the Agreement between the National Government and FARC-EP. On that regard, Human Rights and Right to Truth of Victims will be analyzed. Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted,” p. 6.

<sup>148</sup> Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted,” pp. 6-7.

<sup>149</sup> Presidency of the Republic of Colombia, Order No. 339 of September 19, 2012 “By which installment and development of a Dialogue Commission is authorized, delegates of the National Government are appointed and other provisions are enacted.”

<sup>150</sup> See, *inter alia*, IACHR, Press Release 7/13, *IACHR Condemns Killing of the Indigenous Leader Rafael Mauricio Giron Ulchur in Colombia*, January 30 2013. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/007.asp](http://www.oas.org/en/iachr/media_center/PReleases/2013/007.asp). Asociación de Cabildos Indígenas del Norte del Cauca, *Fin del cese al fuego: las FARC asesinan a líder indígena en Jambaló*, January 22, 2012. Available at: <http://www.nasaacin.org/noticias/3-newsflash/5224-denuncia-nacional-e-internacional-del-asesinato-de-lider-indigena-rafael-mauricio-giron-ulchur-por-las-farc>.

<sup>151</sup> See, *inter alia*, El País, *La violencia en Colombia amenaza las negociaciones*, February 7, 2012. Available at: [http://internacional.elpais.com/internacional/2013/02/07/actualidad/1360261492\\_843963.html](http://internacional.elpais.com/internacional/2013/02/07/actualidad/1360261492_843963.html); BBC Mundo, *EE.UU. revela preocupación por ciudadano secuestrado por las FARC en Colombia*, July 22, 2013. Available at: [http://www.bbc.co.uk/mundo/ultimas\\_noticias/2013/07/130722\\_ultnot\\_eeuu\\_colombia\\_secuestrado\\_estadounidense\\_sut\\_ay\\_tsb.shtml](http://www.bbc.co.uk/mundo/ultimas_noticias/2013/07/130722_ultnot_eeuu_colombia_secuestrado_estadounidense_sut_ay_tsb.shtml); El Tiempo, *Dos guerrilleros de las Farc mueren en combates con el ejército*, July 22, 2013. Available at: [http://www.eltiempo.com/colombia/occidente/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-12941749.html](http://www.eltiempo.com/colombia/occidente/ARTICULO-WEB-NEW_NOTA_INTERIOR-12941749.html).

contained in the "General Agreement for the termination of the conflict and the construction of a stable and lasting peace" and that they had agreed to call it "Towards a new Colombian field:

Comprehensive rural reform."<sup>152</sup> Subsequently, the State reported that progress has also been made on point 2 of the Agenda regarding political participation. In its observations on the draft report, the State expressed that it is pleased with the recognition by the IACHR of the peace talks.<sup>153</sup>

84. The Commission is of the view that attaining peace in Colombia would be a fundamental step for the protection of human rights in the country, would contribute to establishing a context propitious for ensuring justice in relation to the serious violations of human rights and IHL, and could be crucial for the sustainability of the measures of reparation implemented by the State. The Commission also notes that an eventual scenario of peace would mean that the State would make adaptations to its citizen security policy<sup>154</sup>, mindful of the specific roles of the Police and the Army in that context.
85. The Commission reiterates that already in 2004 it recommended adopting a single legal framework for establishing clear conditions for the demobilization of illegal armed groups, in keeping with the international obligations of the State. The IACHR indicated that such a legal framework should provide for the situation of those who had already joined individual and collective demobilization processes so as to clarify their situation. In addition, it should establish mechanisms for genuine participation, in conditions of security for the victims of the conflict, to ensure access to truth, justice, and reparation.<sup>155</sup>
86. The Commission notes the efforts of the Colombian State to engage in peace dialogues that allow it to move forward to the end of the armed conflict. As the Commission stated more than 13 years ago, the IACHR is convinced that the peace process should be based on the truth, justice, and reparation. Overcoming the violence should be based on clarifying human rights violations, prosecuting those responsible and punishing them as provided for by law, and making reparation for the harm caused the victims.<sup>156</sup>

<sup>152</sup> See, Joint Declaration, La Habana, May 26, 2013 available in Spanish at: Comunicado Conjunto. See also, Presidency of the Republic of Colombia, Statements from the President Juan Manuel Santos and from Humberto De la Calle (both are from May 26, 2013), available in Spanish at: 'Continuaremos con el proceso con prudencia y con responsabilidad', and 'Este acuerdo permite transformar de forma radical la realidad rural de Colombia'.

<sup>153</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, December 2, 2013, para. 5.

<sup>154</sup> The IACHR has noted that a public policy on citizen security, that constitutes an effective tool for the member states to adequately carry out their obligations to respect and ensure the human rights of all persons who inhabit their territory, should have an institutional framework and a professional operational structure appropriate to those purposes. The distinction between the functions that correspond to the armed forces, limited to defense of national sovereignty, and those that correspond to the police, as those with exclusive responsibilities for citizen security, is an essential starting point that cannot be eluded in the design and implementation of that public policy. The Court has indicated, in relation to this point, that "States must limit to the utmost the use of the armed forces to control internal disturbances, for the training they receive is aimed at defeating the enemy, and not to the protection and oversight of civilians, which is the training police receive. In the region it is repeatedly proposed or directly established that military forces assume internal security functions based on the argument that violent or criminal acts are escalating." The Commission has also referred to this point, stating that such propositions respond to the confusion between "the concepts of public security and national security, when there is no doubt that the level of ordinary crime, however high this may be, does not constitute a military threat to the sovereignty of the State." IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, paras. 102-103.

<sup>155</sup> IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, para. 113.

<sup>156</sup> IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, conclusions.

## D. *International responsibility of the State*

87. The organs of the inter-American human rights system have considered that Article 1(1) of the American Convention is fundamental for determining whether a violation of human rights recognized by the Convention can be attributed to a State party. In effect, that article imposes on the states parties the fundamental obligation to respect and ensure the rights, such that any violation of the human rights recognized in the Convention that may be attributed, according to the rules of international law, to the act or omission of any public authority constitutes an act attributable to the State that triggers its international responsibility in the terms provided for by the Convention, and in keeping with general international law.<sup>157</sup>
88. In this regard, it is a principle of international law that a State answers for the acts or omissions of its agents carried out in their official capacity, even if they are acting beyond the scope of their authority.<sup>158</sup> The international responsibility of the State is based on the acts or omissions of any branch of government or organ thereof, independent of its rank, that violate the American Convention, and it arises immediately with the international wrongful act attributed to the State. In such circumstances, to establish a violation of the rights enshrined in the Convention one need not determine, as in domestic criminal law, the guilt of its agents or their intent, nor need one individually identify the agents to which the violations are attributed. It is sufficient for there to be an obligation of the State that has been breached by it.<sup>159</sup>
89. The international responsibility of the State may also arise when acts in violation of human rights committed by third persons or private persons can be attributed to it in the context of the State's obligations to ensure respect for those rights.<sup>160</sup> In this regard, the Inter-American Court has held:

[S]aid international responsibility may also be generated by acts of private individuals not attributable in principle to the State. The States Party to the Convention have *erga omnes* obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein under any circumstances and regarding all persons. The effect of these obligations of the State goes beyond the relationship between its agents and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst individuals. The State may be found responsible for acts by private individuals in cases in which, through actions or omissions by its agents when they are in the position of guarantors, the State does not fulfill these *erga omnes* obligations embodied in Articles 1(1) and 2 of the Convention<sup>161</sup>.

<sup>157</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, para. 39.

<sup>158</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, para. 39, citing I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005, Series C No. 134, para. 108; and *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006, Series C No. 140, para. 111.

<sup>159</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, para. 39.

<sup>160</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, para. 40.

<sup>161</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, para. 40, citing I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005, Series C No. 134, paras. 111 and 112; *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005, Series C No. 124, para. 211; *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004, Series C No. 110, para. 91; *Case of 19 Merchants v. Colombia*. Judgment of July 5, 2004, Series C No. 109, para. 183; *Case of Maritza Urrutia v. Guatemala*. Judgment of November 27, 2003, Series C No. 103, para. 71; *Case of Bulacio v. Argentina*. Judgment of September 18, 2003, Series C No. 100, para. 111.

90. Moreover, the organs of the inter-American human rights system have affirmed the obligation of States to act with due diligence in response to human rights violations. This duty entails a series of obligations: to prevent, to investigate, to prosecute, to punish, and to make reparation for human rights violations. In this respect, the Inter-American Court has said:

[T]his obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.<sup>162</sup>

91. The obligation of the States to act with due diligence includes facilitating access to suitable and effective judicial remedies when there has been a violation of human rights.<sup>163</sup> The Inter-American Court has established that every person who has suffered a violation of his or her human rights has the right “obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the Convention.”<sup>164</sup> The Court has also indicated that the ability to access justice should ensure, in a reasonable time, the right of the alleged victims or their next-of-kin to have everything necessary done to learn the truth of what happened, and to punish the persons responsible.<sup>165</sup>

92. In particular, according to the Inter-American Court, as regards the relationship between paramilitary groups and state forces, even though the State alleges that it does not maintain an official policy of encouraging the formation of paramilitary groups, this does not free it from responsibility for the interpretation that was given for years to the legal framework that provided them cover; for the disproportionate use of the arms delivered to them; and for not adopting the measures necessary for prohibiting, preventing, and punishing their criminal activities. In addition, members of the armed forces and National Police, in certain areas of the country, encouraged the formation of groups known as *Autodefensas* to take offensive action against any person considered a guerrilla sympathizer.<sup>166</sup>

93. The Commission also considered that the State had not acted adequately to control the paramilitary groups, for a veil of impunity had protected the vast majority of those groups and the members of the security forces purportedly related to them. It also argued that the problems associated with the military justice system and the excessively broad interpretation of the offenses that should be heard in that system constituted part of the problem.<sup>167</sup>

<sup>162</sup> See, among others, I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988, Series C No. 4, para. 166.

<sup>163</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007.

<sup>164</sup> See, among others, I/A Court H.R., *Case of Barrios Altos v. Peru*, Judgment of March 14, 2001, Series C No. 75, para. 48.

<sup>165</sup> See, among others, I/A Court H.R., *Case of the Miguel Castro Prison v. Peru*, Judgment of November 25, 2006. Series C No. 160, para. 382, citing *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 289.

<sup>166</sup> IACHR, *Report on the demobilization process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, paras. 53-55.

<sup>167</sup> See IACHR, *Annual Report 1996*, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, Colombia, para. 47.



94. Finally, the Commission notes that the acts perpetrated by the illegal armed groups that emerged after the demobilization of paramilitary organizations that act with the collaboration, support, or acquiescence of the authorities, as well as the acts and omissions *vis-à-vis* the human rights violations carried out by these groups, may give rise to the international responsibility of the State.

CHAPTER 2  
LIFE, HUMANE  
TREATMENT, AND  
PERSONAL LIBERTY



## LIFE, HUMANE TREATMENT, AND PERSONAL LIBERTY

95. Taking into consideration that in armed conflicts international human rights law and international humanitarian law are complementary; the Commission will analyze the situation in the country based on both bodies of law. In that respect, the Commission recalls that the rights to life<sup>168</sup>, humane treatment<sup>169</sup>, and personal liberty<sup>170</sup> are enshrined in Articles 4, 5, and 7 of the American Convention. In addition, IHL principles of humanity<sup>171</sup>, distinction<sup>172</sup>,

<sup>168</sup> Article 4 of the American Convention provides: “1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”

<sup>169</sup> Article 5 of the American Convention provides: “1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”

<sup>170</sup> Article 7 of the American Convention establishes: “1. Every person has the right to personal liberty and security. 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. 3. No one shall be subject to arbitrary arrest or imprisonment. 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him. 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial. 6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

<sup>171</sup> The principle of humanity entails respecting and treating all persons with humanity in the endeavor to protect their dignity. This principle applies both to those who participate directly in the hostilities, who shall not be made to undergo unnecessary suffering, and to the civilian population – who at all times must be treated with humanity. In applying this principle, making unfavorable distinctions based on race, color, sex, language, religion or beliefs, political or other opinions, national or social origin, wealth, birth, or other condition, or any other similar criterion, is prohibited. Expert testimony of Elizabeth Salmón in Case 12,573, *Marino López et al. (Operation Génesis) v. Colombia*, p. 8, citing common Article 3 of the Geneva Conventions; Articles 2(1), 4(1), and 18(2) of Additional Protocol II, and Henckaerts, Jean-Marie and Doswald-Beck, Louis, *Customary International Humanitarian Law*, 2007, rules 87 and 88.

<sup>172</sup> As provided for in international humanitarian law, the principle of distinction refers to a customary provision for international and non-international armed conflicts in which it is established that “[t]he parties to the conflict must at all times distinguish between civilians and combatants,” that ““attacks may only be directed against combatants” and that “[a]ttacks must not be directed against civilians.” In addition, other provisions of customary international humanitarian law provide that “[t]he parties to the conflict must at all times distinguish between civilian objects and military objectives,” so that “[a]ttacks may only be directed against military objectives,” while “attacks must not be directed against civilian objects.” Similarly, Article 13(2) of Additional Protocol II to the Geneva Conventions prohibits civilian individuals and the civilian population as such from being the target of attacks. The case-law of the international criminal courts has also referred to this principle. I/A Court H.R., *Case of the Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012 Series C No. 259, para. 212, citing Henkaerts, Jean-Marie, Doswald-Beck, Louise, *Customary International Humanitarian Law*, volume I, rules, 2007, p. 3, rule 1, rule 7. Along these same lines, rule 87 of international humanitarian law and common Article 3 of the four Geneva Conventions establish that “civilians and persons *hors de combat* must be treated humanely.” Henkaerts, Jean-Marie, Doswald-Beck Louise, *Customary International Humanitarian Law*, volume I, rules 2007, p. 349, Rule 87. International Criminal Tribunal for the former Yugoslavia, Case: IT-96-29/1-T. In the matter of “*Prosecutor v. Stanislav Galic*.” Judgment of December 5, 2003. Trial Chamber of the ICTY, para. 57. See also, *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*, June 13, 2000, para. 29, and *Report of the Commission of Inquiry on Lebanon*, presented pursuant to resolution S-2/1 of the Human Rights Council, November 23, 2006, para. 25.

proportionality<sup>173</sup>, and precaution<sup>174</sup> are also applicable; as well as the prohibition on attacks against the life and integrity of the civilian population and persons *hors de combat*; indiscriminate attacks; the acts or threats of violence whose main aim is to terrify the population; and pillage.

96. The IACHR recalls that Article 27(2) of the American Convention provides that the right to juridical personality, the right to life, the right to humane treatment, the prohibition on slavery and servitude, the principle of the non-retroactivity of laws, freedom of conscience and religion, protection of the family, the right to a name, the rights of the child, the right to nationality, and the right to participate in government are non-derogable. In addition, according to the case-law of the Inter-American Court, non-derogable rights in the inter-American system also include the rule of law and the principle of legality, and, accordingly, the judicial guarantees essential for protecting those rights that may not be suspended, including in particular *habeas corpus* and *amparo* remedies.<sup>175</sup>
97. The Commission has held that the right to life constitutes the essential basis for the exercise of all other rights. Along the same lines, the Inter-American Court has stated that the right to life plays a fundamental role in the American Convention as it is the essential corollary for the attainment of all the other rights. When the right to life is not respected, all other rights become meaningless.<sup>176</sup>
98. The IACHR has also held that in peace time, in emergency situations other than war, or during armed conflict, Article 4 of the American Convention and Article I of the American Declaration of the Rights and Duties of Man (hereinafter “the Declaration”) govern the use of lethal force by States and their agents, and prohibit the arbitrary deprivation of life and summary executions. The Commission has specified that the contours of the right to life may vary in the context of an armed conflict, but that the prohibition on arbitrary deprivation of life continues to be

<sup>173</sup> According to international humanitarian law, the principle of proportionality refers to a customary norm for international and non-international armed conflicts in which it is established that “[l]aunching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.” The principle referred to establishes a limitation on the purpose of war that prescribes that the use of force should not be disproportionate, limiting it to what is essential for attaining the military advantage sought. I/A Court H.R. *Case of the Massacre of Santo Domingo v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012 Series C No. 259, para. 214.

<sup>174</sup> In international humanitarian law the principle of precaution refers to a customary provision for international and non-international armed conflicts in which it is established that “[i]n the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects,” and that “[a]ll feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian object.” Similarly, rule 17 of customary international humanitarian law stipulates that “[e]ach party to the conflict must take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects,” and rule 18 indicates that “[e]ach party to the conflict must do everything feasible to assess whether the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.” I/A Court H.R., *Case of the Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012 Series C No. 259, para. 216, Henkaerts, Jean-Marie, Doswald-Beck Louise, *Customary International Humanitarian Law*, volume I, rules pp. 65 to 67, rules 17 and 18.

<sup>175</sup> See, among others, IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., October 22, 2002, para. 52, citing the I/A Court H.R., Advisory Opinion OC-8/87, *Habeas Corpus in Emergency Situations*, January 30, 1987, Series A No. 8, paras. 21-27; IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, Doc. 59 rev.2, June 2000, paras. 71-73.

<sup>176</sup> See, among others, I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*. Judgment of June 17, 2005. Series C No. 125, para. 161; *Case “Juvenile Reeducation Institute” v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, para. 156; *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, para. 128.

absolute.<sup>177</sup> The Convention clearly establishes that the right to life cannot be suspended under any circumstance, including armed conflicts and legitimate states of emergency.

99. Along the same lines, the Commission has underscored that international humanitarian law does not prohibit one from shooting at enemy combatants or killing them when they have not laid down their arms or have not remained *hors de combat* and, accordingly, that the death of a combatant in such circumstances does not constitute a violation of the right to life. At the same time, international humanitarian law does protect the life of combatants up to a certain point and the way in which they can lawfully be deprived of their lives, restricting the means and methods of war that the parties to an armed conflict can use to wage the war. That includes, for example, restrictions on the use or prohibition of certain arms that cause unnecessary suffering, such as toxic gases or bacteriological weapons.<sup>178</sup>
100. The provisions that govern the means and methods of war in the context of international humanitarian law also protect the life of civilians and the combatants who have been rendered or have remained *hors de combat* due to being wounded, ill, having been detained, or any other cause, and prohibit attacks on these categories of persons.<sup>179</sup> In this respect, the Commission has said that:

in addition to Common Article 3 [common to the four Geneva Conventions], customary law principles applicable to all armed conflicts require the contending parties to refrain from directly attacking the civilian population and individual civilians and to distinguish in their targeting between civilians and combatants and other lawful military objectives. In order to spare civilians from the effects of hostilities, other customary law principles require the attacking party to take precautions so as to avoid or minimize loss of civilian life or damage to civilian property incidental or collateral to attacks on military targets.<sup>180</sup>

101. The Commission has noted that the right to humane treatment is a non-derogable right, independent of the existence or seriousness of an emergency, as specifically provided for by Article 27(2) of the American Convention, reinforced by Article 5 of the Inter-American Convention to Prevent and Punish Torture.<sup>181</sup> The Court has indicated that the American Convention expressly recognizes the right to physical, mental, and moral integrity, the breach of which “is a category of violation that has several gradations [...] with varying degrees of physical and psychological effects caused by endogenous and exogenous factors which must be proven in each specific situation.”<sup>182</sup> In addition, the Court has held that the mere threat of conduct prohibited by Article 5 of the Convention, when sufficiently real and imminent, may in itself be in conflict with the right to humane treatment.<sup>183</sup>
102. With respect to the right to personal liberty, both the Commission and the Court have underscored that no one may be deprived of his or her liberty except in those cases or circumstances expressly provided for by law, and that every deprivation of liberty must adhere

<sup>177</sup> See IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., October 22, 2002, para. 86.

<sup>178</sup> See IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., October 22, 2002, para. 100.

<sup>179</sup> See IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., October 22, 2002, para. 101.

<sup>180</sup> See IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., October 22, 2002, para. 101.

<sup>181</sup> See IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., October 22, 2002, para. 180.

<sup>182</sup> See, among others, I/A Court H.R., *Case of the Massacres of El Mozote and nearby places v. El Salvador*. Merits, Reparations and Costs. Judgment of October 25, 2012 Series C No. 252, para. 147; I/A Court H.R., *Case of Loayza Tamayo v. Peru*. Merits. Judgment of September 17, 1997. Series C No. 33, para. 57.

<sup>183</sup> I/A Court H.R., *Case of the Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012 Series C No. 259, para. 191.

strictly to the procedures defined by law.<sup>184</sup> This includes guaranteeing the right not to be arbitrarily arrested and detained, strictly regulating the grounds for and procedures of the arrest and detention in keeping with the law.<sup>185</sup> It also includes the guarantees of prompt and effective judicial supervision of detentions so as to protect the well-being of persons detained at moments when they are totally under the control of the State, and, therefore, are particularly vulnerable to abuses of authority.<sup>186</sup> It has been observed in this respect that in cases in which there is no arrest warrant or it is not supervised within a short time by a competent judicial authority, when the detainee cannot fully understand the reason for his detention or does not have access to an attorney, and in which the detainee's family members cannot locate him or her promptly, there is a clear risk not only to the rights of the detainee, but also to his or her personal integrity.<sup>187</sup> In addition, international humanitarian law applicable to non-international armed conflicts does not prohibit the arrest and detention of persons who take part in hostilities, but it does prohibit the imprisonment or detention of civilians except when necessary in light of imperative considerations of security.<sup>188</sup>

## A. *Forced disappearances*

103. Both the IACHR and the Inter-American Court have established the permanent or ongoing nature of the forced disappearance of persons and have consolidated a comprehensive perspective on forced disappearance as a multiple offense in terms of the rights affected and the permanent nature of the forced disappearance of persons.<sup>189</sup> In this respect, they have established that the act of disappearance begins with the deprivation of liberty of a person and the subsequent lack of information as to his or her fate, and persists until such time as the whereabouts of the disappeared person become known or his or her remains are identified with certainty.<sup>190</sup> In summary, both organs have argued that the practice of forced disappearance implies a crass abandonment of the essential principles on which the inter-American human rights system is founded<sup>191</sup> and its prohibition has attained the status of *ius cogens*.<sup>192</sup> In addition, from April 12, 2005, the Colombian State has been a party to the Inter-American Convention on Forced Disappearance of Persons.
104. In its observations to the Draft Report, the State noted that the “Network Information System of Corpses and Disappeared Persons (hereinafter “SIRDEC”) is the “main platform of the National Registry of Disappeared Persons, in which the cases of disappeared persons are being registered permanently, as well as information on corpses subjected to medical-legal

<sup>184</sup> See, among others, IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.111 doc. 21 rev., April 6, 2001, Chapter VII, para. 37, citing IACHR, Case 11,245, Report No. 12/96, Jorge Alberto Giménez (Argentina), *Annual Report 1995*; I/A Court H.R., *Case of Suárez Rosero v. Ecuador*, Judgment of November 12, 1997, Series C No. 35, para. 43.

<sup>185</sup> I/A Court H.R., *Case of Suárez Rosero v. Ecuador*, Judgment of November 12, 1997, Series C No. 35, para. 44.

<sup>186</sup> See, among others, IACHR, Case 12,069, Report No. 50/01, Damion Thomas (Jamaica), *Annual Report 2000*, paras. 37-38; Case 11,205, Report No. 2/97, Jorge Luis Bronstein et al. (Argentina), *Annual Report 1997*, para. 11.

<sup>187</sup> IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., October 22, 2002, para. 121.

<sup>188</sup> IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., October 22, 2002, para. 135.

<sup>189</sup> See, among others, I/A Court H.R., *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012 Series C No. 250, para. 112; *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, paras. 155 to 157.

<sup>190</sup> See, among others, I/A Court H.R., *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012 Series C No. 253, para. 191.

<sup>191</sup> See, among others, I/A Court H.R., *Case of Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012 Series C No. 250, para. 114.

<sup>192</sup> See, among others, I/A Court H.R., *Case of Goiburú et al. v. Paraguay*. Judgment of September 22, 2006. Series C No. 153, para. 84.

necropsies, at the national level.”<sup>193</sup> Likewise, the State indicated the according to the “official statistics of disappeared persons [...] taken from the National Registry of Disappeared Persons.”<sup>194</sup> These are the updated numbers as of October 31, 2013.<sup>195</sup>

Type of disappearance / Status of the case	Appeared alive	Appeared dead	Still disappeared	Total
Reports of persons disappeared with no information regarding their situation	17944	2692	46853	67495
Reports of persons presumed to be forcibly disappeared	387	833	19122	20342
<b>Total</b>	<b>18331</b>	<b>3525</b>	<b>65975</b>	<b>87837</b>

105. The IACHR notes that, according to the information given by the State, even when such platform started in 2007, Colombia “has not completed loading the information, and currently in the framework of the norms in effect (Law 975 of 2005, Law 1408 of 2010, Law 1448 of 2011) and the inter-institutional processes for the identification of corpses [...] the relatives of disappeared persons report the cases permanently, at the national and international levels.”<sup>196</sup>
106. The State also pointed out the official statistics of the SIRDEC show the “way the phenomenon [of forced disappearances] has evolved in the last years.”<sup>197</sup> In this sense, it highlighted that “since 2007 there is a decreasing tendency in the cases of forced disappearance reported in the SIRDEC, from 630 reports that year to 133 reports for 2012,” which would correspond for this last period to 1.7% of the total 7,500 disappearance reports registered by SIRDEC in 2012.<sup>198</sup> It indicated that “this reduction of reports of forced disappearance between 2011 and 2012 was of 42%.”<sup>199</sup>
107. On the other hand, the State also presented information on the measures adopted for the prevention and investigation of this crime. Specifically, the State highlighted that the Defense Ministry “permanently calls for the application of Ministerial Permanent Directive No. 06 of

<sup>193</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140 of December 2, 2013, para. 74.

<sup>194</sup> In this respect, the State indicated that, even though the numbers considered by the IACHR refer to what was reported by the Institute for Legal Medicine, there is an “inter-institutional system created by Law 589 of 2000”, by virtue of which there are “consolidated amounts [that come from] the relevant institutions responsible for the search for missing persons”. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140 of December 2, 2013, para. 75.

<sup>195</sup> Report of Missing Persons. National Registry of Disappeared Persons. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140 of December 2, 2013, para. 75.

<sup>196</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140 of December 2, 2013, para. 76.

<sup>197</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140 of December 2, 2013, para. 85.

<sup>198</sup> The State indicated that “the rest of the reports, that is, the 7,377 cases of 2012, correspond to involuntary or voluntary disappearances”. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140 of December 2, 2013, para. 78.

<sup>199</sup> Additionally, it indicated that according to the data of the National Institute of Legal Medicine, “between 2010 and 2012 11,353 persons that were reported missing appeared alive, that is, 29% of the 39,194 reported during that period”. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140 of December 2, 2013, paras. 79-80.



2006, by which measures are adopted to prevent forced disappearance, support the investigation of this crime and the search for Missing persons in the Development of the Urgent Search Mechanism, under the responsibility of the competent judicial authorities.”<sup>200</sup> Also, the State referred to other related institutional measures, such as: i) Circular No. 7692 of 2005 and Permanent Directive No. 007 of 2011, available to the General Command of the Military Forces and the National Police, respectively, which establish “the measures of the Public Forces to prevent forced disappearances, to support the investigation of this crime, and the search for persons as a development of the urgent search mechanism”; and ii) that a process of “diffusion and socialization” is conducted at the internal level of the Directorate of the National Police and “in the framework of the Commission for the Search of Disappeared Persons (CBPD).”<sup>201</sup>

108. The Commission recognizes the efforts made by the State of Colombia. Nonetheless, it notes that those efforts should be stepped up considering that the forced disappearance of persons continues to be widespread in Colombia.<sup>202</sup> During the visit, the Commission received abundant information from civil society regarding the persistence and seriousness of this phenomenon in Colombia.<sup>203</sup> In addition, the Commission observes that claims persist from civil society regarding the uncertainty of the number of persons disappeared;<sup>204</sup> the under-registration of forced disappearances;<sup>205</sup> the inconsistency among the figures reported by

<sup>200</sup> As to the support to the judicial proceedings, it indicated that “[...] the instruction to commanders at every level is to support the human rights units of the Office of the Prosecutor and all staff of the Judicial Police in the production and gathering of evidence; until now, there is no information regarding a case that could have cast doubts on such institutional collaboration”. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140 of December 2, 2013, paras. 82, 84.

<sup>201</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140 of December 2, 2013, para. 83.

<sup>202</sup> According to the information provided, the figures from the Legal Medicine Institute reflect 61,133 disappearances, of which 18,179 are characterized as forced disappearances. Of that number, 25% of the cases correspond to women, while 13,600 are children or adolescents. IACHR, *Hearing on Forced Disappearances in the Americas*, March 16, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=3>. In this respect, the High Commissioner indicated that of the total number of persons on record in the National Registry of Disappeared Persons as disappeared or whose whereabouts are unknown (75,345, as of September 30, 2012), it is estimated that 18,527 cases fit the national definition of forced disappearance. The Government indicated that in 2012, a total of 5,965 persons were considered missing or their whereabouts were considered unknown; it is presumed that 113 of these cases are forced disappearances. United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 22<sup>nd</sup> session, A/HCR/22/17/Add.3, January 7, 2013, para. 66.

<sup>203</sup> Coordinación Colombia-Europa-Estados Unidos, *En Colombia las desapariciones forzadas no son asunto del pasado. Las desapariciones forzadas en Colombia siguen cometiéndose y el Gobierno promueve nuevas medidas que garantizan su impunidad*, November 2, 2012, p. 2. Red por la Vida y los Derechos Humanos del Cauca, Boletín Informativo No. 3, July, August, September 2012. Fundación Nydia Erika Bautista, *Informe sobre la situación de las desapariciones forzadas a la Comisión Interamericana de Derechos Humanos*, November 3, 2012.

<sup>204</sup> Coordinación Colombia-Europa-Estados Unidos, Observatorio de derechos humanos y derecho humanitario, *Desapariciones forzadas en Colombia. En búsqueda de la justicia*, May 2012, p. 14.

<sup>205</sup> As regards the under-registration of this phenomenon, civil society noted that the Unit of Justice and Peace of the Office of the Attorney General collected reports of more than 32,000 cases of forced disappearances, of which only 25,000 appeared to have been included in the National Registry of the Disappeared. Fundación Nydia Erika Bautista, *Informe sobre la situación de las desapariciones forzadas a la Comisión Interamericana de Derechos Humanos*, November 3, 2012, p. 2. In its observations to the Draft Report, the State indicated that the number corresponds to a total of 10,540 cases (12%) rather than 25,000. Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 77. In addition, it was indicated that many cases of forced disappearance have not been included in SIRDEC of the Institute of Legal Medicine and Forensic Science; the cases of forced disappearance before it was defined as a crime in 2000 continue on record as kidnappings and have not been recharacterized; the Unit of Justice and Peace does not include some cases based on the ante-mortem information not being taken down when recording the death, plus there are obstacles to filing complaints in these cases, such as the ineffectiveness of the channels and mechanisms for lodging complaints, the generalized climate of fear and intimidation experienced by the victims’ next-

different state agencies;<sup>206</sup> and the lack of specific measures to determine the universe of persons disappeared, search for the victims, and identify them.<sup>207</sup>

109. The Commission recalls that the State is under an obligation to act promptly in the first hours and days after the report of a disappearance or kidnapping<sup>208</sup>, which is why the necessary measures must be adopted to ensure the functioning and effectiveness of the urgent search mechanisms and any other measure that makes it possible to cross-reference data so as to determine the whereabouts and/or identify the persons disappeared quickly.
110. Similarly, in terms of the State's permanent obligation to determine the whereabouts of the victims of forced disappearance, the Commission recalls that Law 971 of 2005 regulated the Urgent Search Mechanism for the purpose of locating persons who have been disappeared. Nonetheless, civil society indicated that while it represents a major legislative gain, its application in practice has not yielded the results hoped for, since there is no information of any case in which activating the mechanism has made it possible to find a disappeared person alive.<sup>209</sup> In this regard, the Commission takes note of the results that the Urgent Search Mechanism has permitted to achieve. Hereof, the State of Colombia reported to the Commission that "...the Mechanism of Urgent Search has been activated in 1,739 cases of persons reported as disappeared in the National Registry of Disappeared Persons, 476 of which have appeared alive and 156 dead"<sup>210</sup>. On the other hand, civil society representatives also indicated that in general the activity of prosecutors is limited to issuing official communications to other authorities; evidence that is ordered collected is not collected and there is no oversight of the implementation of such orders; no inspections are performed of military facilities; and no wiretaps or searches are ordered.<sup>211</sup>
111. With respect to the obligation to clarify and investigate the cases of forced disappearance, the information provided indicates that impunity continues in relation to these cases and that the judicial authorities are not investigating all cases of forced disappearance, nor are many cases

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of-kin, their attorneys and witnesses, etc. See, among others, Coordinación Colombia-Europa-Estados Unidos, *En Colombia las desapariciones forzadas no son asunto del pasado. Las desapariciones forzadas en Colombia siguen cometiéndose y el Gobierno promueve nuevas medidas que garantizan su impunidad*, November 2, 2012, pp. 5-6. Coordinación Colombia-Europa-Estados Unidos, Observatorio de derechos humanos y derecho humanitario, *Desapariciones forzadas en Colombia. En búsqueda de la justicia*, May 2012, p. 18. IACHR, *Hearing on Forced Disappearances in the Americas*, March 16, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=3>.

<sup>206</sup> See, among others, Fundación Nydia Erika Bautista, *Informe sobre la situación de las desapariciones forzadas a la Comisión Interamericana de Derechos Humanos*, November 3, 2012, p. 2; IACHR, *Hearing on Forced Disappearances in the Americas*, March 16, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=3>.

<sup>207</sup> See, among others, Coordinación Colombia-Europa-Estados Unidos, Observatorio de derechos humanos y derecho humanitario, *Desapariciones forzadas en Colombia. En búsqueda de la justicia*, May 2012, p. 42; IACHR, *Hearing on Forced Disappearances in the Americas*, March 16, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=3>.

<sup>208</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 284.

<sup>209</sup> See, among others, Coordinación Colombia-Europa-Estados Unidos, *En Colombia las desapariciones forzadas no son asunto del pasado. Las desapariciones forzadas en Colombia siguen cometiéndose y el Gobierno promueve nuevas medidas que garantizan su impunidad*, November 2, 2012, p. 7. IACHR, *Hearing on Forced Disappearances in the Americas*, March 16, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=3>.

<sup>210</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAII-13-048140 of December 2, 2013, para. 87.

<sup>211</sup> Along those lines, the example was cited of the alleged detention and forced disappearance of Guillermo Rivera by the National Police on April 22, 2008, whose identification, even though the urgent search mechanism was activated, came 82 days after he was found and buried as an unidentified person on July 15, 2008. Coordinación Colombia-Europa-Estados Unidos, *En Colombia las desapariciones forzadas no son asunto del pasado. Las desapariciones forzadas en Colombia siguen cometiéndose y el Gobierno promueve nuevas medidas que garantizan su impunidad*, November 2, 2012, pp. 6-7.

that should be treated as forced disappearances so characterized.<sup>212</sup> In addition, civil society considered that the investigations treat the cases as isolated events, with no connection among them; they are carried out by different officials; and many times the same individual purportedly responsible is investigated in the same region or in different regions. According to civil society, this approach does not allow the cases to go forward, nor are the patterns of action clarified nor is there a complete determination of the chain of command indicating who has highest-level responsibility, and who are the masterminds, financiers, organizers, and implementers.<sup>213</sup> As will be developed further, the Commission notes with concern that the cases of forced disappearance are not among the issues identified in the strategy of prioritization recently adopted by the Office of the Attorney General.

112. Civil society also reported that when the investigation involves members of the Armed Forces or National Police, the members of the military have placed hindrances and obstacles in the way of the investigation, such as altering the crime scene or the corpses; hiding their documents; changing the clothing they were wearing; burials in common graves as persons of unknown identity; constant allegations of risks to public order to prevent prosecutors or judicial investigators from reaching the crime scene or the places where the corpses may have been buried, or so as not to provide logistical support for the tasks of prospecting and exhumation in those places – a circumstance that leads the judicial inspections to be delayed, carried out with haste, or drawn out and never conducted based on considerations of public

<sup>212</sup> Coordinación Colombia-Europa-Estados Unidos, Observatorio de derechos humanos y derecho humanitario, *Desapariciones forzadas en Colombia. En búsqueda de la justicia*, May 2012, p. 29. Fundación Nydia Erika Bautista para los Derechos Humanos y MINGA – Asociación para la Promoción Alternativa, *Informe. Desapariciones forzadas sin verdad ni justicia en el Bajo y Medio Putumayo. Crímenes ocultos e impunes*, February 2012, p. 49. In that regard, it was indicated that only 23 prosecutors are investigating 14,350 cases regarding disappearances; that during 2011 there were only six convictions under the procedure of Law 906 of 2004 (accusatory procedure) and only 10 judgments under the previous system (Law 600 of 2000); and that more than 1,000 cases ended up being archived, and 135 cases with resolutions of dismissal. Civil society also referred to certain limitations on the participation of the victims in the proceedings governed by Law 906 of 2004. As regards to the proceeding under Law 906 of 2004, it was indicated that the family members of the disappeared, in the first stages of inquiry and indictment, do not have access to knowledge of the lines of investigation, or the Attorney General’s theory of the case, or the measures being taken to search for the victim, and no possibility of having any impact of these. Fundación Nydia Erika Bautista para los Derechos Humanos, *Desapariciones forzadas de Afrodescendientes originarios del norte del Valle del Cauca: Discriminación e impunidad 1988-2012*, June 2012, p. 43. Civil society also indicated that in the proceedings being undertaken in keeping with Law 906, the victims and their representatives are denied information, are not informed of the methodological plan – which would imply that the family members have to file *tutela* actions to guarantee their participation – and, moreover, bear the burden of searching for the disappeared person. Coordinación Colombia-Europa-Estados Unidos, *En Colombia las desapariciones forzadas no son asunto del pasado. Las desapariciones forzadas en Colombia siguen cometiéndose y el Gobierno promueve nuevas medidas que garantizan su impunidad*, November 2, 2012, p. 8.

<sup>213</sup> Coordinación Colombia-Europa-Estados Unidos, *En Colombia las desapariciones forzadas no son asunto del pasado. Las desapariciones forzadas en Colombia siguen cometiéndose y el Gobierno promueve nuevas medidas que garantizan su impunidad*, November 2, 2012, p. 8. In addition, it was indicated that Law 906 of 2004 provides for negotiated management of the evidence that stems from a situation in which the investigation is precarious and the proceedings come to a standstill, where the instruments for negotiating procedural benefits that are in the hands of the Attorney General are not used by the low-ranking accused to implicate those who ordered and organized those crimes, which makes it impossible to unveil the chains of command and lines of authority of the apparatuses of power. Coordinación Colombia-Europa-Estados Unidos, *En Colombia las desapariciones forzadas no son asunto del pasado. Las desapariciones forzadas en Colombia siguen cometiéndose y el Gobierno promueve nuevas medidas que garantizan su impunidad*, November 2, 2012, p. 9. IACHR, *Hearing on Forced Disappearances sin the Americas*, March 16, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=3>.

order<sup>214</sup>; unfounded recusations, unjustified failures to show, motions alleging jurisdictional conflicts, annulments, and unfounded judicial motions.<sup>215</sup>

113. As regards the situation of judicial officers and the participation of the victims' family members in the judicial proceedings that have been initiated, the Commission continued receiving information on a climate of threats, attacks, persecution, and harassment of survivors, victims' next-of-kin, attorneys, accompanying organizations, witnesses, judges, and prosecutors who investigate cases of forced disappearance.<sup>216</sup> As additional obstacles, the information provided includes contextual elements that contribute to the "*de facto* defenselessness of the victims"<sup>217</sup>; structural gaps in the public policy and judicial policy regarding the victims of forced disappearance<sup>218</sup>; and legal mechanisms that reveal a state of legal defenselessness of victims in the searches and in the criminal proceedings into forced disappearance.<sup>219</sup>
114. As regards exhumations, the Commission notes that in the context of the Unit of Justice and Peace, 3,929 common graves were exhumed; 4,809 corpses were found; 748 bodies were identified with indicia of their identity; 1,994 bodies were fully identified; 1,813 bodies were delivered to family members; and 181 bodies identified were pending delivery to their families.<sup>220</sup> In addition, in relation to attending to the family members of the disappeared, there were 248 days of providing services to 42,973 victims; a total of 17,230 biological samples were taken.<sup>221</sup>

<sup>214</sup> Coordinación Colombia-Europa-Estados Unidos, *En Colombia las desapariciones forzadas no son asunto del pasado. Las desapariciones forzadas en Colombia siguen cometiéndose y el Gobierno promueve nuevas medidas que garantizan su impunidad*, November 2, 2012, p. 8.

<sup>215</sup> Coordinación Colombia-Europa-Estados Unidos, *En Colombia las desapariciones forzadas no son asunto del pasado. Las desapariciones forzadas en Colombia siguen cometiéndose y el Gobierno promueve nuevas medidas que garantizan su impunidad*, November 2, 2012, p. 9.

<sup>216</sup> Coordinación Colombia-Europa-Estados Unidos, *En Colombia las desapariciones forzadas no son asunto del pasado. Las desapariciones forzadas en Colombia siguen cometiéndose y el Gobierno promueve nuevas medidas que garantizan su impunidad*, November 2, 2012, p. 9.

<sup>217</sup> Among the elements of that context, it was noted that there is a climate of intimidation that stands in the way of filing complaints; the continuation of serious human rights violations; reprisals against families; forced displacement after or concomitant to the forced disappearance; loss of trust in the authorities due to insensitivity; cultural patterns of discrimination such as prejudices, justifying expressions, or justification of the lack of an investigation. Fundación Nydia Erika Bautista para los Derechos Humanos, *Desapariciones forzadas de Afrodescendientes originarios del norte del Valle del Cauca: Discriminación e impunidad 1988-2012*, June 2012, p. 42.

<sup>218</sup> In this respect, reference was made to the requirement of arbitrary time frames; the ineffectiveness of the urgent search mechanism; the lack of logistical resources for judicial police investigation; the failure to apply the National Search Plan in the cases recorded in the National Registry of Disappeared Persons; and the non-existence of Regional Search Plans for disappeared persons. Fundación Nydia Erika Bautista para los Derechos Humanos, *Desapariciones forzadas de Afrodescendientes originarios del norte del Valle del Cauca: Discriminación e impunidad 1988-2012*, June 2012, p. 42.

<sup>219</sup> In that regard, note was made of the loss of files in the prosecutors' offices; the lack of a judicial record of the complaints by the families; preclusion of the investigation; keeping information under seal with respect to investigative steps taken to determine the victims' whereabouts; assignment to non-specialized departmental prosecutors' offices; refusal to accept complaints at the domicile of the victim's family members; shifting of the burden of proof to the victims' families; failure to initiate investigations when the perpetrator has not been identified; multiplicity of judicial proceedings; geographic distance; paralysis or lack of procedural impetus at the initiative of the authorities; unjustified delay in admitting the civil party; resolutions of dismissal or "provisional" archiving of investigations; minimizing the seriousness of forced disappearance; failure to provide victims legal assistance; lack of psychosocial services; and lack of measures of protection for family members. Fundación Nydia Erika Bautista para los Derechos Humanos, *Desapariciones forzadas de afrodescendientes originarios del norte del Valle del Cauca: Discriminación e impunidad 1988-2012*, June 2012, p. 43. See, in addition, IACHR, *Hearing on Forced Disappearances in the Americas*, March 16, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=3>.

<sup>220</sup> Information available at: <http://www.fiscalia.gov.co:8080/justiciapaz/Index.htm>

<sup>221</sup> Information available at: <http://www.fiscalia.gov.co:8080/justiciapaz/Index.htm>

115. The IACHR has also received information on difficulties recovering the bodies in those cases in which the victims were cast into rivers or the sea, or incinerated in crematoria or given over to wild animals so as not to leave a trace;<sup>222</sup> and on the negative impact of the construction of dams in the middle of the conflict and in areas where bodies or persons disappeared and assassinated, and common graves, may be found.<sup>223</sup> The Commission considers that the State should address these situations without delay, seriously and with due diligence, so as to prevent obstruction of the recovery of bodies in those places.

116. While the IACHR values the measures aimed at establishing the whereabouts of disappeared persons and proceeding to accurately identify them and deliver them to their next-of-kin, it notes that the gains made are still incipient compared to the number of persons disappeared,<sup>224</sup> and that effective plans or policies to adequately address this phenomenon have yet to be implemented. In particular, civil society indicated that the results of the National Plan to Search for Disappeared Persons, adopted in 2007, were unjustified to the extent that structural problems persist such as the loss or destruction of information necessary for finding the disappeared, and the low number of persons identified in relation to the number of remains exhumed.<sup>225</sup> The Human Rights Committee has lamented the

<sup>222</sup> Coordinación Colombia-Europa-Estados Unidos, Observatorio de derechos humanos y derecho humanitario, *Desapariciones forzadas en Colombia. En búsqueda de la justicia*, May 2012, p. 18. IACHR, *Hearing on Forced Disappearances in the Americas*, March 16, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=3>.

<sup>223</sup> Movimiento Ríos Vivos, *Represas en Colombia: desplazamiento y miseria. Documento preparado para la Comisión Interamericana de Derechos Humanos*, p. 3.

<sup>224</sup> Along these lines, the Human Rights Committee has observed that the discovery of the common graves has occurred primarily based on the statements by demobilized paramilitaries in their participation through Law 975 of 2005. United Nations, Human Rights Committee, 99<sup>th</sup> regular session, Consideration of reports submitted by States parties under article 40 of the Covenant. Concluding observations of the Human Rights Committee. Colombia, CCPR/C/COL/6, August 6, 2010, para. 15. In addition, the High Commissioner noted that the dignified conveyance of corpses and remains of disappeared persons to their family members requires additional efforts, since as of October 2011 the Attorney General had exhumed 4,703 corpses, nearly 30% of which (1,142) had been fully identified and handed over to the family members. United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner on Human Rights on the situation of human rights in Colombia, 19<sup>th</sup> session, A/HCR/19/21/Add.3, January 31, 2012, para. 65.

<sup>225</sup> Coordinación Colombia-Europa-Estados Unidos, Observatorio de derechos humanos y derecho humanitario, *Desapariciones forzadas en Colombia. En búsqueda de la justicia*, May 2012, p. 11. In that regard, it was indicated that the Ministry of Interior made known the results of a study in which the National Institute of Legal Medicine processed 22,689 fingerprints of corpses and was able to identify 9,968 persons presently buried as unidentified persons in cemeteries in different regions of the country. Of that total, only 440 persons appear in the National Registry of Disappeared Persons. The results were sent to the Institute of Legal Medicine, which undertook to perform the fingerprint matching, vet the lists, and officially notify the authorities in order to locate the files and burial places of the persons identified through that procedure. Unfortunately, in the records of the Institute of Legal Medicine one reportedly finds only 3,779 persons, for in a very large number of cases the information is confusing or non-existent, and there are structural flaws in the organization of the cemeteries that stand in the way of situating the remains of the persons buried without a name. In all, of the 9,968 persons identified by cross-referencing fingerprints, it was only possible to locate and deliver the remains of 49 persons buried in different cemeteries of the country. Coordinación Colombia-Europa-Estados Unidos, Observatorio de derechos humanos y derecho humanitario, *Desapariciones forzadas en Colombia. En búsqueda de la justicia*, May 2012, p. 12, citing the Fundación Nydia Erika Bautista, *Bulletin Recordis ¿Dónde están los desaparecidos en la ley de víctimas y en su reglamentación?*, Bogotá 2011, pp. 21 ff. In its observations to the Draft Report, the State indicated that “[...] it is important to clarify that 10,455 persons were identified by means of dactyloscopic comparison, 159 of which have been turned to the respective relatives; a search is still pending to locate the remains of 7,400 persons in the country’s cemeteries. The rest of the cases had been previously delivered”. Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140 of December 2, 2013, para. 100.

sluggish pace of implementation of that Plan, and the insufficient coordination among the various institutions and with the victim's next of-kin.<sup>226</sup>

117. In its observations to the Draft Report, the State highlighted the process of coordination with the “competent institutions in the search for disappeared persons” and the inclusion of the National Search Plan “among the procedures and activities carried out for the investigation and search of disappeared persons, including the processes for the exhumation at the national level, which include cases of the National Units of the Office of the Public Prosecutor, which are competent to conduct the investigations associated to the disappearance of persons.”<sup>227</sup>
118. The Commission has already noted that on August 20, 2010, the Congress of the Republic promulgated Law 1418 of 2010, whose purpose is to pay homage to the victims of the crime of forced disappearance, adopt measures to locate and fully identify them, and provide assistance to their family members during the process of delivering the bodies or remains that have been exhumed. The Commission observed with satisfaction the unanimous approval by the Congress by the International Convention for the Protection of All Persons from Enforced Disappearance, which constitutes one more step towards the ratification of that treaty.<sup>228</sup> Nonetheless, during the visit the Commission received information that indicated that the multiplicity of institutions involved in implementing the measures provided for in Law 1418 have made it cumbersome to get it to be operative.<sup>229</sup>
119. More recently, in May 2012, the State approved Law 1531 which establishes “the Action of Declaration of Absence due to Forced Disappearance and other forms of involuntarily disappearance and their effects for purposes of the civil code law.” In this regard, the Office of the High Commissioner for Human Rights valued the adoption of Law 1531 of 2012 and considered that the families of disappeared persons will have the guarantees of continuity of juridical personality of the person disappeared; the conservation of his or her *patria potestas* in relation to his or her minor children; as well as the protection of his or her property and of the right of the family and of the minor children to receive salaries, if the person disappeared is a public servant.<sup>230</sup> Civil society also viewed this law in a positive light insofar as it should facilitate access to government social programs and legal transactions.<sup>231</sup>
120. The Commission values the State's initiatives aimed at ensuring the rights of the relatives of the victims of forced disappearance, and takes note of the progress in exhumations and turning

<sup>226</sup> United Nations, Human Rights Committee, 99<sup>th</sup> session, Consideration of reports submitted by States parties under Article 40 of the Covenant. Concluding observations of the Human Rights Committee. Colombia, CCPR/C/COL/6, August 6, 2010, para. 15.

<sup>227</sup> Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140 of December 2, 2013, para. 99.

<sup>228</sup> IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, para. 24. Law 1418 of 2010 was found constitutional by the Constitutional Court in its Judgment C-620/11 of August 18, 2011, and after the deposit of the instrument of ratification, the International Convention for the Protection of All Persons from Enforced Disappearance entered into force in Colombia on August 10, 2012.

<sup>229</sup> Information provided at the meeting with civil society, held in Medellín December 5, 2012.

<sup>230</sup> Office of the United Nations High Commissioner for Human Rights in Colombia. Press release, *Ley de ausencia es un importante avance para víctimas de desaparición forzada y sus familiares: Oficina de la ONU para los Derechos Humanos*, June 6, 2012.

<sup>231</sup> Coordinación Colombia-Europa-Estados Unidos, Observatorio de derechos humanos y derecho humanitario, *Desapariciones forzadas en Colombia. En búsqueda de la justicia*, May 2012, p. 38.

bodies over to their families. In particular, it considers that it is positive that the unsworn statements given in the framework of Law 975 have proven instrumental for finding the bodies of disappeared persons.<sup>232</sup> The IACHR also takes into account the information supplied by the State regarding the strategy implemented by the Ministry of the Interior since 2010, aimed at “achieving the identification, localization and delivery of the bodies or remains of persons who were forcibly disappeared”; and the process of regulation of Law 1408 under the Development of the “Inter-institutional Group of support to victims of forced disappearance,” with participation by several civil society organizations and the recognition by international organizations<sup>233</sup>. Also, the State informed that only in 2010, 9,968 mortal remains were identified, of which the National Government has delivered “160 bodies to the relatives, in dignified conditions”<sup>234</sup>. The IACHR values the will of the State to continue advancing in the delivery of bodies to the respective relatives, recognizing that this requires facing challenges; and also recognizes the institutional strategies that are being developed to that end. The Commission considers that the State should continue making efforts to achieve full compliance with its international obligations in this area.

121. In this respect, the Commission notes that progress in the judicial proceedings is fundamental for determining the whereabouts of the disappeared, accordingly the information given by the perpetrators should be supplemented by effective and comprehensive investigative measures that take on the phenomenon and the possible victims in a thoroughgoing manner, guaranteeing the broad participation of family members in the process. In addition, the Commission considers it important that measures continue to be adopted aimed at completing, integrating, and vetting the information related to the phenomenon of forced disappearances.

## **B. Extrajudicial executions**

122. For several years the Commission has received information indicating that members of the State security forces continue to perpetrate extrajudicial executions.<sup>235</sup> This phenomenon intensified in the last decade, and became part of the public debate through the phenomenon known as the “false positives.”<sup>236</sup>

<sup>232</sup> IACHR, *Hearing on Forced Disappearances in the Americas*, March 16, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=3>.

<sup>233</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140 of December 2, 2013, paras. 88-89.

<sup>234</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140 of December 2, 2013, para. 94.

<sup>235</sup> See, among others, IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV. Colombia; IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia; IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia; IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia; IACHR, *Annual Report 2007*, OEA/Ser.L/V/II.130, Doc. 22 rev. 1, December 29, 2007, Chapter IV. Colombia; IACHR, *Annual Report 2006*, OEA/Ser.L/V/II.127, Doc. 4, rev. 1, March 3, 2007, Chapter IV. Colombia.

<sup>236</sup> See, among others, IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV. Colombia; IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia; ; IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia; IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia.

123. As regards the phenomenon of “false positives,” the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions indicated that:

[a]s security in Colombia began to improve from 2002, and as guerrillas retreated from populated areas, some military units found it more difficult to engage in combat. In such areas, some units were motivated to falsify combat kills. In other areas, the guerrillas were perceived by soldiers to be particularly dangerous and soldiers were reluctant to engage them in combat. It was “easier” to murder civilians. In other areas, there are links between the military and drug traffickers and other organized criminal groups. Local military units do not want to engage in combat with the illegal groups with which they are cooperating, so killing civilians falsely alleged to be part of these groups makes military units appear to be taking action.<sup>237</sup>

124. The Prosecutor of the ICC indicated:

False positives cases — unlawful killings of civilians, staged by the security forces to look like lawful killings in combat of guerrillas or criminals — reportedly began during the 1980s. However, they began occurring with a disturbing frequency across Colombia from 2004. Executed civilians were reported as guerrillas killed in combat after alterations of the crime scene. The available information indicates that these killings were carried out by members of the armed forces, at times operating jointly with paramilitaries and civilians, as a part of an attack directed against civilians in different parts of Colombia. Killings were in some cases preceded by arbitrary detentions, torture and other forms of ill-treatment.<sup>238</sup>

125. The Prosecutor of the ICC also found that army officers had declared that structures existed to carry out assassinations as false positives, at least at the brigade level.<sup>239</sup> In view of the foregoing, the Prosecutor considered that “the large scale nature of the attacks, the number of victims, similarities amongst allegations of crimes reported across the country, the planning and organization that the conduct required to commit the killings and their subsequent reporting as deaths in combat indicate that ‘false positive’ killings amount to a widespread and systematic attack against the civilian population.”<sup>240</sup> The Prosecutor concluded that “the judicial activity so far has largely failed to bring to light the context and circumstances in which

<sup>237</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. Addendum. Mission to Colombia, 14<sup>th</sup> session, A/HRC/14/24/Add.2, March 31, 2010, para. 21. Civil society, for its part, has indicated that in the 2002-2005 period, extrajudicial executions responded to a counterinsurgency strategy, while in the period 2006 to 2008 there was a deterioration of that strategy and of the political profile of the victims, such that in 2009-2010 there was a considerable decrease in the number of executions of the Army and an increase in the responsibility of other entities, such as the National Police. Observatorio de derechos humanos y derecho humanitario, *Ejecuciones extrajudiciales en Colombia 2002-2010. Crímenes de lesa humanidad bajo el mandato de la seguridad democrática*, September 2012.

<sup>238</sup> International Criminal Court, Office of the Prosecutor, *Situation in Colombia. Interim Report*, November 2012, para. 93.

<sup>239</sup> International Criminal Court, Office of the Prosecutor, *Situation in Colombia. Interim Report*, November 2012, para. 96, citing the Specialized Criminal Court of the Circuit of Sincelejo, Sucre, Anticipated judgment against Luis Fernando Borja Aristizabal, Case 2011-00004-00, June 23, 2011. Specialized Criminal Court of the Circuit of Sincelejo, Sucre, Anticipated judgment against Luis Fernando Borja Aristizabal, Case 2011-0010, September 28, 2011.

<sup>240</sup> International Criminal Court, Office of the Prosecutor, *Situation in Colombia. Interim Report*, November 2012, para. 110. The Office of the Prosecutor also determined that allegedly, Brigades 4, 14, and 17, acting under the command of the Sixth Division of the Armed Forces, Mobile Brigades 7 and 12, acting under the command of the Fourth Division, the Ninth Brigade, under the command of the Fifth Division, the 15<sup>th</sup> Mobile Brigade and the 30<sup>th</sup> Brigade, under the command of the Second Division, have been alleged to be responsible for most of the incidents of false positives that occurred in different parts of the country. International Criminal Court, Office of the Prosecutor, *Situation in Colombia. Interim Report*, November 2012, paras. 114-117.



these crimes have been committed, and have perpetuated rather than diminished impunity enjoyed by virtue of official capacity.”<sup>241</sup>

126. In effect, the information available reveals that the cases of extrajudicial executions encompass a series of situations such as: (i) the execution of members of the guerrilla forces *hors de combat*; (ii) the execution of community leaders accused of being guerrilla collaborators; (iii) the transfer of the bodies from paramilitary groups to Army units; (iv) the execution of informants and demobilized members of the guerrilla forces to cover up previous crimes, deny links, and destroy evidence; (v) the execution of persons who maintain ties with criminal organizations as the result of alliances and corruption; (vi) the execution of persons who were intentionally recruited or detained (vulnerable persons, persons with disabilities, addicts, homeless persons, and persons with criminal records); and (vii) “military errors” covered up by simulating a combat situation.<sup>242</sup>
127. In this respect, the IACHR has indicated that actively protecting the right to life and all other rights enshrined in the American Convention is part of a State’s duty to ensure the free and full exercise of the rights for all persons under the jurisdiction of that State, and requires that it adopt the measures necessary to prosecute and punish the arbitrary deprivation of life, personal integrity, and personal liberty. In particular, it requires preventing the violation of any of these rights by State security forces.<sup>243</sup>

<sup>241</sup> International Criminal Court, Office of the Prosecutor, *Situation in Colombia. Interim Report*, November 2012, para. 220.

<sup>242</sup> In addition, it has been noted that as part of the counterinsurgency strategy, what was called the Democratic Security Policy of 2003 promoted the involvement of the civilian population in tasks that by their nature correspond to the armed forces and National Police by implementing a network of collaborators and informants, defined as “a network of citizens in the urban and rural zones of the country who cooperate actively, voluntarily, and without any self-interest with the authorities, participating in citizen programs of culture for security, providing information that makes possible the prevention and prosecution of crime. It would be associated with the fact that many of the victims of extrajudicial executions belong to the most excluded sectors of society, including victims of forced displacement, inmates, marginalized persons or homeless persons, persons with physical or mental disabilities, unemployed persons, sex workers, and in general persons selected to be executed because of their status as persons who are very vulnerable economically and socially.” FIDH – Coordinación Colombia-Europa-Estados Unidos, *Colombia. La guerra se mide en litros de sangre. Falsos positivos, crímenes de lesa humanidad: más altos responsables en la impunidad*, July 2012, p. 33, citing the Presidency of the Republic, Ministry of National Defense, Política de Defensa y Seguridad Democrática, Bogotá, 2003, paras. 130-131. In addition, it has been indicated that the practice of disappearing civilians and presenting them as “killed in combat” as guerrillas, has been a constant, in particular in Putumayo; such cases were recorded in the context of the high degree of militarization represented in troops, new battalions, and economic and technological resources for the region. Fundación Nydia Erika Bautista para los Derechos Humanos y MINGA – Asociación para la Promoción Alternativa, *Informe. Desapariciones forzadas sin verdad ni justicia en el Bajo y Medio Putumayo. Crímenes ocultos e impunes*, February 2012, p. 17. Civil society also noted that nearly 60% of the victims of extrajudicial executions in which it was possible to learn the status or activities of the victim were persons associated with the countryside (47.4% were peasants, and 10.2% indigenous persons), which would indicate a clear relationship with unresolved agrarian problems. According to that report, if one takes into account the levels of inequality, one notes that almost half of the extrajudicial executions reported have been in the departments of Antioquia, Valle del Cauca, Arauca, Casanare, and Meta, mentioned in the Human Development Report as those with the greatest inequality in terms of concentration of landholdings; moreover, nine of the 12 departments with the largest number of displaced families (Antioquia, Meta, Huila, Cesar, Norte de Santander, Caquetá, Tolima, Arauca, and Valle) are within the group of 12 departments in which the largest numbers of victims of extrajudicial executions are reported. Observatorio de derechos humanos y derecho humanitario, *Ejecuciones extrajudiciales en Colombia 2002-2010. Crímenes de lesa humanidad bajo el mandato de la seguridad democrática*, September 2012, pp. 55, 56, 103.

<sup>243</sup> IACHR, *Annual Report 2006*, OEA/Ser.L/V/II.127, Doc. 4, rev. 1, March 3, 2007, Chapter IV. Colombia, para. 26, citing the I/A Court H.R., *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, para. 153; *Case of Bulacio*. Judgment September 18, 2003. Series C No. 100, para. 111; *Case of Juan Humberto Sánchez. Request for Interpretation of the Judgment on Preliminary Objections, Merits and Reparations*. (Article 67 American Convention on Human Rights). Judgment of November 26, 2003. Series C No. 102, para. 110.

128. Along the same lines, in 2010 the UN Human Rights Committee expressed its concern over the existence of a widespread pattern of extrajudicial execution of civilians subsequently presented by government forces as combat casualties; it was also concerned about the Directives of the Ministry of Defense that gave incentives and paid rewards without any internal oversight or supervision, which were said to have contributed to the execution of civilians.<sup>244</sup> The Committee also expressed its concern over the continued assumption of jurisdiction by the military courts over cases of extrajudicial executions in which the alleged perpetrators were members of the armed forces or National Police.<sup>245</sup>
129. With respect to the current situation of the Directives of the Ministry of Defense, the Commission received information that indicates that “even though the Ministry of Defense confirms in its response to a right of petition filed by the Colombian Commission of Jurists that Standing Ministerial Directive 029 of November 17, 2005 [has been derogated], it does not supply the information about the provision by which said directive was derogated.”<sup>246</sup> That report further mentions that “at present Standing Ministerial Directive 021 of July 9, 2011 is the one that regulates the criteria for payment of rewards [, but t]he Directives mentioned are classified documents that are under seal, their circulation is restricted, and their content addresses issues closely linked to national security and defense. Accordingly, the failure to issue copies of those documents finds legal support in the criteria of reasonableness and proportionality (Law 57 of 1985).”<sup>247</sup>
130. The High Commissioner also stated that some army officers continue denying the existence of extrajudicial executions and discredit the judicial system when it hands down guilty verdicts.<sup>248</sup> In addition, she noted that in 2011 a retired colonel was convicted who accepted

<sup>244</sup> In this respect, civil society referred to Directive 029 of November 17, 2005, which stipulated the “payment of rewards for the arrest or death in combat” of members of illegal organizations and payment for “information that is the basis for the continuing intelligence work and the subsequent planning of operations.” As antecedents in relation to incentives and rewards, one can point to Law 548 of 1999, Law 782 of 2002, Decree 128 of 2003, Decree 2767 of 2004, as well as the subsequent Ministry of Defense Directives 015 and 016 of 2007. FIDH – Coordinación Colombia-Europa-Estados Unidos, *Colombia. La guerra se mide en litros de sangre. Falsos positivos, crímenes de lesa humanidad: más altos responsables en la impunidad*, July 2012, p. 13. According to civil society, the almost complete absence of controls over this system of incentives has been one of the decisive factors for reporting “persons killed in combat,” which were also rewarded with promotions, decorations, and acts of public recognition. Observatorio de derechos humanos y derecho humanitario, *Ejecuciones extrajudiciales en Colombia 2002-2010. Crímenes de lesa humanidad bajo el mandato de la seguridad democrática*, September 2012, p. 38.

<sup>245</sup> See United Nations, Human Rights Committee, 99<sup>th</sup> session, Consideration of reports submitted by States parties under Article 40 of the Covenant. Concluding observations of the Human Rights Committee, CCPR/C/COL/6, August 6, 2010, para. 14.

<sup>246</sup> In its observations to the Draft report, the State indicated that “[...] the Human Rights Department of the National Defense Ministry responded to the request for information made by the Colombian Commission of Jurists. This response included all of the requested information, as well as the supporting documents”. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140 of December 2, 2013, para. 123.

<sup>247</sup> Colombian Commission of Jurists, *Informe de seguimiento a las recomendaciones del Relator Especial sobre Ejecuciones Extrajudiciales, Sumarias o Arbitrarias*, June 14, 2012. Executive Summary, para. 7, citing the Ministry of Defense, Official Note No. 14131/MDVPAIDH-725 of February 20, 2012. During the visit, the Commission received a copy of a purported directive of the Ministry of National Defense from 2011 said to establish a series of criteria for the payment of rewards and information on intelligence, counterintelligence, and criminal investigation activities. Ministry of National Defense, Permanent Ministerial Directive, untitled, 2011. In its observations to the Draft Report, the State reiterated that the decision not to issue copies “has legal basis” and that through a decision of April 18, 2013, the Administrative Tribunal of Cundinamarca, First Section, Subsection A, as part of case No. 2013-00282-00, declared that the request by the Colombian Commission of Jurists for a copy of Directive 021 had been “correctly denied”. Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 125.

<sup>248</sup> United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner on Human Rights on the situation of human rights in Colombia, 19<sup>th</sup> session, A/HCR/19/21/Add.3, January 31, 2012, para. 32.

responsibility in 57 executions committed in 2007 and 2008, when he was commander of the Sucre Task Force; he is the highest-ranking military officer convicted for this crime to date.<sup>249</sup>

131. Later, in her report corresponding to 2012, the High Commissioner indicated that in “2012, OHCHR-Colombia received no reports of military killings having the purpose of increasing statistics,”<sup>250</sup> while between “January and October, OHCHR-Colombia continued to receive reports of violations of the right to life and personal integrity relating to excessive or improper use of force by the military.”<sup>251</sup> Civil society, for its part, reported that from August 7, 2010, to December 31, 2012, there were 85 extrajudicial executions attributed to the Armed Forces and National Police – 38% of which affected populations in the indigenous and Afro-Colombian territories<sup>252</sup> -- while in 2012 alone there were 25 such cases.
132. In the ceremony initiating the on-site visit, the Vice President of the Republic characterized as “shameful” the situation of the “false positives” to the extent that the Army “cannot use the same techniques as the illegal groups.” The State has also indicated that the extrajudicial executions are “homicides of civilians that have occurred in circumstances outside of the scope of the acts that members of the armed forces and National Police are authorized to perform, [and] effectively constitute serious human rights violations, and in some cases also serious violations of international humanitarian law.”<sup>253</sup>
133. In its observations to the Draft Report, Colombia reiterated that:

The State considers unacceptable when any of its agents act outside the Framework of the Constitution, the law and policies, which is why the National Government has adopted strong measures aimed at submitting to justice those who incur in such actions, as well as the prevention of future actions of the same nature.

The [National Defense Ministry] has recognized that there are cases of killings allegedly attributed to State agents, and has implemented measures to prevent and investigate them. Along with the President and the military high command, a mechanism has been put in place to guarantee transparency and cooperation with judicial and disciplinary authorities in their investigations.<sup>254</sup>

134. In this regard, the State highlighted that the Defense Ministry “has been the most interested in reestablishing the conditions that allow the population to live together peacefully.” It indicated that national authorities are working “intensely to cooperate with the judiciary in the fight

<sup>249</sup> United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner on Human Rights. Addendum. Report of the United Nations High Commissioner on Human Rights on the situation of human Rights in Colombia, 19<sup>th</sup> session, A/HCR/19/21/Add.3, January 31, 2012, para. 33.

<sup>250</sup> United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner on Human Rights. Addendum. Report of the United Nations High Commissioner on Human Rights on the situation of human Rights in Colombia, 22<sup>nd</sup> session, A/HCR/22/17/Add.3, January 7, 2013, para. 46.

<sup>251</sup> United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner on Human Rights. Addendum. Report of the United Nations High Commissioner on Human Rights on the situation of human Rights in Colombia, 22<sup>nd</sup> session, A/HCR/22/17/Add.3, January 7, 2013, para. 47.

<sup>252</sup> Coordinación Colombia-Europa-Estados Unidos, International Federation for Human Rights (FIDH), *Síntesis presentación en Audiencia sobre ejecuciones extrajudiciales desarrollada en 147° período ordinario de sesiones*, April 13, 2013. See also, IACHR, *Hearing on Reports of Extrajudicial Executions in Colombia*, March 14, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=2>.

<sup>253</sup> IACHR, *Hearing on Reports of Extrajudicial Executions in Colombia*, March 14, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=2>.

<sup>254</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140 of December 2, 2013, paras. 104-105.

against impunity, in providing reparations to victims and in the guarantees of non-repetition of these acts.”<sup>255</sup> In that framework, the State indicated the measures adopted to confront this situation, which include putting in place general and specialized policies, as well as their strengthening.<sup>256</sup> In that sense, the State indicated that there is a “clear message from the Colombian State to its Armed Forces regarding conduct during operations, as well as incentives to achieve the respective mission,” by virtue of Directive No. 300-28 of 2008, which establishes clearly that “the preferred responses are those that would cause less negative impact on society”<sup>257</sup>.

135. The Commission appreciates the measures adopted by the State and notes with satisfaction that according to information that is a matter of public knowledge, this phenomenon began to diminish, despite which major challenges persist in relation to the follow-up with internal measures introduced in 2008, with a view to preventing extrajudicial executions.<sup>258</sup> Nonetheless, the Commission reiterates that the extrajudicial execution of civilians to then be presented as persons killed in combat implies a violation of international human rights law and IHL<sup>259</sup>, and that its massive and systematic nature was also confirmed by the Prosecutor of the ICC.

136. The State is also responsible for human rights violations stemming from the abusive use and lack of proportionality in the use of force by the security forces. Accordingly, it is of the utmost importance that the State adopt the measures necessary to ensure the protection of civilians and to precisely delimit the proportionality of the use of force in the context as well as outside of the context of armed confrontation.

137. As for the investigation of these cases, the Commission notes that, to date, in Colombia extrajudicial execution is not defined as a criminal offense in the domestic law. Nonetheless,

<sup>255</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 102.

<sup>256</sup> The State has referred, among others, to the following: i) the Integral Policies on human rights and IHL developed since 2008 by the Defense Ministry; ii) the “policy for the prevention of homicides of protected persons or aggravated homicide (Directive 208 of 2008)”, by means of 15 measures which “included concrete actions such as instruction, doctrine, discipline control, command responsibility, and coordination with judicial authorities, among others”; iii) issuing of the “*Manual de Derecho Operacional (2009)*,” by which “a specific legal-operational model was developed, which responds to the Colombian operational reality, which fits in a context of consolidation in which it is necessary to apply force in a gradual and differential manner”; iv) “Policy to fight against impunity (Directive 07 of 2011)”, that provides for collaboration “with the administration of justice [...]”; v) issuing of Directives on June 10 and November 19, 2007, whereby “all commanders were ordered to include agents of the judicial police in the combat areas, so as to ensure the evidence, and the Committee for the Follow-up of Complaints with the purpose of promoting investigations and strengthening prevention measures”; vi) the creation of a “system of public and periodic accountability (*Mesa Nacional de Garantías*: National Group of Guarantees)”, which is based on “constant communication with civil society;” and vii) the adoption of Directives 10 and 19 of the National Defense Ministry, which “established the obligation for Public Forces to cooperate with judicial and control authorities in the development of criminal and disciplinary investigations”. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, paras. 106, 107, 108, 110, 111, 114, 138.

<sup>257</sup> In this regard, the State explained that “[...] the national Government established a public position with respect to the importance of keeping a set of values where demobilization of the enemy is privileged over capture; and the latter is privileged over death in combat”. It indicated that “[...] this policy is evidenced by the facts, where approximately 90% of the operational results achieved in 2011 and 2012 were captures and demobilizations, and 10% were deaths as part of military or police operations”. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, paras. 118-120.

<sup>258</sup> United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner on Human Rights. Addendum. Report of the United Nations High Commissioner on Human Rights on the situation of human Rights in Colombia, 22<sup>nd</sup> session, A/HCR/22/17/Add.3, January 7, 2013, para. 48.

<sup>259</sup> IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia.

the Colombian Criminal Code does include a title on crimes against persons and properties protected by international humanitarian law, such that the cases of extrajudicial executions are investigated by the domestic courts based on the criminal statute on “homicide of a person protected” by international humanitarian law, established at Article 135 of that Code.<sup>260</sup>

138. In 2010, the Commission observed that there were scant convictions for committing extrajudicial executions. As of that date, there were 1,244 active cases of extrajudicial executions in the Unit for Human Rights and International Humanitarian Law of the Attorney General (hereinafter “Unit on Human Rights and IHL”), and there were 40 convictions of 194 persons; in 12 such cases the defendants accepted the charges, through the legal institution known as anticipated judgment (*sentencia anticipada*). In addition, 10 judgments of acquittal were handed down, benefiting 33 persons.<sup>261</sup>
139. More recently, the State reported that there are 2,013 judicial investigations of cases of extrajudicial executions in all that affect 3,254 victims, 708 of which are in the formal investigation case, and 52 in the trial phase. In relation to those cases, 4,354 persons purportedly responsible (4,271 members of the National Army, 92 from the Navy, 78 the National Police, and 11 the now-defunct DAS), 2,123 of whom are detained. In addition, it was indicated that 245 convictions have been obtained in relation to 639 persons, 562 of whom are State agents, some of them high- and medium-ranking.<sup>262</sup> As for disciplinary matters, the Prosecutor Office indicated that it is conducting 802 proceedings into possible homicide of a protected person, 188 of which are in the preliminary inquiry stage, 458 at the stage of opening the investigation, and 156 at the stage of indictment or beyond.<sup>263</sup>
140. The Commission welcomes the increase in the proceedings initiated and in the number of convictions for extrajudicial executions, compared to the information available as of 2010. Nonetheless, according to the above mentioned figures, it observes that the number of investigations at advanced stages of the process as well as the number of persons responsible who have been sanctioned is still limited in relation to the total number of cases.

<sup>260</sup> Article 135 of the Colombian Criminal Code provides: “Homicide of a protected person. One who, in the context of an armed conflict, causes the death of a protected person as per the international humanitarian law conventions ratified by Colombia, shall be sentenced to four hundred eighty (480) to six hundred (600) months, a fine of two thousand six hundred seventy-six and sixty-six hundredths (2,666.66) to seven thousand five hundred (7,500) current monthly legal minimum salaries, and disqualification from exercising public rights and functions for two hundred forty (240) to three hundred sixty (360) months. The penalty provided for in this Article will increase by one-third to one-half when committed against a woman for the fact of being a woman.

Paragraph. For the purposes of this Article and all other provisions of this title, persons protected by international humanitarian law shall be understood to mean:

1. Those who are part of the civilian population.
2. Persons who do not participate in the hostilities and civilians in the power of the adverse party.
3. The wounded, the sick, or the shipwrecked rendered *hors de combat*.
4. Health or religious personnel.
5. Journalists on duty or accredited war correspondents.
6. Those combatants who have laid down their weapons due to capture, surrender, or other similar cause.
7. Those who prior to the commencement of hostilities were considered stateless persons or refugees.
8. Any other person who has said status pursuant to the First, Second, Third, and Fourth Geneva Conventions of 1949 and the First and Second Additional Protocols of 1977 and others that may be ratified.”

<sup>261</sup> IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, para. 25.

<sup>262</sup> IACHR, *Hearing on Extrajudicial Executions in Colombia*, March 14, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=2>.

<sup>263</sup> Office of the Prosecutor, *Actuación de control preventivo, disciplinario y de intervención judicial de la Procuraduría General de la Nación, en torno a los asuntos que se tratarán en el 146 período ordinario de sesiones de la Comisión Interamericana de Derechos Humanos* (November 2 and 3, 2012).

This is in addition to the difficulties associated with some cases of extrajudicial executions going before the military criminal jurisdiction.

141. The Commission bears in mind what the State expressed in the sense that it has dedicated special attention to “actions of transfer and impulse” of cases, as part of the “commitment assumed by the military institution in the clarification of the facts [...]”. In that regard, the State pointed out that “as part of that policy it was established that, in case of doubt, the case would fall under the competence of civilian justice, a premise which was [kept] in the constitutional reform on that matter.<sup>264</sup> Also, the State highlighted the creation of the “position of liaison between the Military Forces on the Office of the Prosecutor and the National Attorney General, with the only purpose of contributing to speed up investigative activities, by locating the members of the Forces that are under investigation, and the gathering of evidence.”<sup>265</sup>
142. On the other hand, the Commission continued receiving information that indicates that (i) the events are always analyzed as individual incidents, isolated from one another, not as systematic crimes or as part of a generalized policy,<sup>266</sup> the context and patterns are not taken into account, nor are logical lines of investigation established;<sup>267</sup> (ii) only lower-ranking soldiers are pursued;<sup>268</sup> (iii) the cases involving the abusive use of force tend to be characterized as “military errors;” (iv) there is a lack of understanding between the battalion responsible for the operations and the use of the Mobile Battalions, especially up to 2007; (v) the proceedings do not investigate other conduct such as forced disappearance, torture, sexual violence, or arbitrary detention despite indicia of those crimes in the course of the investigation;<sup>269</sup> (vi) the limitations in the investigative hypotheses would mean that the initial investigative steps are usually incomplete and tend to be plagued by serious shortcomings;<sup>270</sup> (vii) there are obstacles such as disputes over the territorial jurisdiction of judges<sup>271</sup>, the change, at times abrupt, of prosecutors,<sup>272</sup> changes in procedural rules,<sup>273</sup> excessive dilatory

<sup>264</sup> Concretely, the State reported that “[...] cases pertaining to this type of conduct have been transferred from the military criminal justice system to the civilian justice system. As a consequence of such a transfer, currently more than 500 members of the Public Forces have been convicted, but there is still an important number of proceedings pending a decision by this jurisdiction.” Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, paras. 112, 135.

<sup>265</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 136.

<sup>266</sup> FIDH – Coordinación Colombia-Europa-Estados Unidos, *Colombia. La guerra se mide en litros de sangre. Falsos positivos, crímenes de lesa humanidad: más altos responsables en la impunidad*, July 2012, p. 42.

<sup>267</sup> FIDH – Coordinación Colombia-Europa-Estados Unidos, *Colombia. La guerra se mide en litros de sangre. Falsos positivos, crímenes de lesa humanidad: más altos responsables en la impunidad*, July 2012, p. 59.

<sup>268</sup> In February 2012, the Unit on Human Rights of the Attorney General reported that it is undertaking investigations into homicides attributed to State agents against 2,624 soldiers, 629 non-commissioned officers, and 427 officers. FIDH – Coordinación Colombia-Europa-Estados Unidos, *Colombia. La guerra se mide en litros de sangre. Falsos positivos, crímenes de lesa humanidad: más altos responsables en la impunidad*, July 2012, pp. 42, 44.

<sup>269</sup> FIDH – Coordinación Colombia-Europa-Estados Unidos, *Colombia. La guerra se mide en litros de sangre. Falsos positivos, crímenes de lesa humanidad: más altos responsables en la impunidad*, July 2012, p. 44.

<sup>270</sup> FIDH – Coordinación Colombia-Europa-Estados Unidos, *Colombia. La guerra se mide en litros de sangre. Falsos positivos, crímenes de lesa humanidad: más altos responsables en la impunidad*, July 2012, p. 44.

<sup>271</sup> FIDH – Coordinación Colombia-Europa-Estados Unidos, *Colombia. La guerra se mide en litros de sangre. Falsos positivos, crímenes de lesa humanidad: más altos responsables en la impunidad*, July 2012, p. 60.

<sup>272</sup> FIDH – Coordinación Colombia-Europa-Estados Unidos, *Colombia. La guerra se mide en litros de sangre. Falsos positivos, crímenes de lesa humanidad: más altos responsables en la impunidad*, July 2012, p. 60.

<sup>273</sup> FIDH – Coordinación Colombia-Europa-Estados Unidos, *Colombia. La guerra se mide en litros de sangre. Falsos positivos, crímenes de lesa humanidad: más altos responsables en la impunidad*, July 2012, p. 60.

tactics,<sup>274</sup> false testimonies,<sup>275</sup> and altering the crime scene,<sup>276</sup> among others. In particular, with respect to the extrajudicial execution of 11 youths in the locality of Soacha in 2008 whose bodies were found in Ocaña and who were initially reported killed in combat by the Army,<sup>277</sup> civil society noted that there are 15 investigations outstanding in which no progress has been reported.<sup>278</sup>

143. Moreover, as regards the effective serving of the few sentences imposed, civil society indicated that the members of the military convicted of extrajudicial executions are serving their sentences in military barracks, and there have reportedly been cases of members of the military convicted who remain on active duty – they continue on the payroll, they are treated as eligible for promotions, and they even continue to receive their pension, which would mean they are not disqualified from serving.<sup>279</sup>
144. The Commission reiterates that the State should initiate, develop, and culminate the relevant investigations in the regular criminal jurisdiction, according to the standards of due diligence and in a reasonable period, to clarify the cases of extrajudicial executions and punish the persons responsible. In that regard, the investigation should be geared to identifying not only those directly responsible, but also the structure that favored or encouraged those acts. Therefore, the Commission considers it important, among other points, for the State to clarify the situation of the directives of the Ministry of Defense in terms of the establishment of rewards and bonuses; and that it exercise the pertinent internal controls to ensure that those mechanisms serve the specific purpose for which they were established.
145. In its observations to the Draft Report, the State reiterated that Directive 021 of the Defense Ministry, “adequately regulates the payment of rewards and information under the respective legal parameters”, and that it is a “legally confidential classified document.”<sup>280</sup> Notwithstanding, the State specified that as part of the policy of rewards for information of the Defense Ministry, the following control mechanisms would be established: i) “under no circumstance will a reward be paid to civil servants;” ii) “every payment of reward must be approved by a certified document approved by the Technical Follow-up Committee (integrated by the Defense Minister or his Delegate and the Heads or Directors of Intelligence of the Military Forces and the National Police), or the Central Committee (made up by the Heads or Directors of Intelligence of the Forces and a group of analysts”); iii) “the payment of a reward may only happen after the respective Committee has reviewed the supporting documents, such as the order of operations and the report by the respective patrol, among others, and has

<sup>274</sup> FIDH – Coordinación Colombia-Europa-Estados Unidos, *Colombia. La guerra se mide en litros de sangre. Falsos positivos, crímenes de lesa humanidad: más altos responsables en la impunidad*, July 2012, p. 60.

<sup>275</sup> FIDH – Coordinación Colombia-Europa-Estados Unidos, *Colombia. La guerra se mide en litros de sangre. Falsos positivos, crímenes de lesa humanidad: más altos responsables en la impunidad*, July 2012, p. 62.

<sup>276</sup> Coordinación Colombia-Europa-Estados Unidos, International Federation for Human Rights, *Síntesis presentación en Audiencia sobre ejecuciones extrajudiciales desarrollada en 147° período ordinario de sesiones*, April 13, 2013. See also IACHR, *Hearing on Extrajudicial Executions in Colombia*, March 14, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=2>.

<sup>277</sup> IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia.

<sup>278</sup> Colombian Commission of Jurists, *Informe de seguimiento a las recomendaciones del Relator Especial sobre Ejecuciones Extrajudiciales, Sumarios o Arbitrarias*, June 14, 2012. Executive Summary, para. 5.

<sup>279</sup> Civil society noted that it is not surprising that there is a “pact of silence” in which the low-ranking members of the military are coerced to “protect” their superiors, to obey orders including those related to changing a version or giving false testimony, and thwarting the search for the truth. FIDH – Coordinación Colombia-Europa-Estados Unidos, *Colombia. La guerra se mide en litros de sangre. Falsos positivos, crímenes de lesa humanidad: más altos responsables en la impunidad*, July 2012, pp. 63, 64.

<sup>280</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140 of December 2, 2013, para. 141.

considered the operational context and its contribution to dismantling the organization;” iv) the management of public resources for the payment of rewards is supervised by the General Comptroller of the Republic, an organ that also has the power to “initiate the investigations it deems pertinent;” and v) the Office of the Comptroller “has access to the process of budget execution, as well as the utilization of funds”, and that “annual audits have been carried to review the actions of those civil servants who authorize reserved funds, such as the Head of Intelligence of the Military Forces and the Police, the Directors of Intelligence, the Director of GAULAS (*Grupos de Acción Unificada por la Libertad Personal*, i.e. Unified Action Groups for Personal Liberty), the Commanders of the regional GAULAS, the Chiefs of Staff of Army Divisions and Brigades, and the National Police Director of DIJIN (*Dirección Central de Policía Judicial e Inteligencia*, i.e. Central Directorate of Judicial Police and Intelligence)”<sup>281</sup>.

### C. *Protection mechanisms*

146. In the context of the obligations established in Article 1(1) of the American Convention, the Commission has paid special attention to the protection programs that the State has been designing and implementing to guarantee the rights of persons at risk, especially in the context of the armed conflict. Specifically, the IACHR has noted that Colombia has been one of the pioneers of the countries in the hemisphere in establishing specific protection programs for various groups of Colombian society, and in implementing the precautionary measures requested by the Commission.<sup>282</sup> In that context, information has been received on a large number of protected persons, and on the willingness of the State to provide substantive protection measures and to adopt adequate normative frameworks. In addition, the Constitutional Court has confirmed that precautionary measures are a source of obligations for the State.

147. Without prejudice to the evolution of the mechanisms developed and the significant gains made in the area of protection, the Commission has received consistent information from civil society, and especially from beneficiaries of the protection programs, on different failings in their operation that make their effective protection difficult. Some of the failings noted include: (i) lack of coordination among the protection agencies, the Office of the Attorney General, and the Judicial branch so as to seriously and effectively investigate the acts that gave rise to protection measures, and so to remove the risk factors reported; (ii) failings in the mechanisms for coordinating with the beneficiaries to implement the measures of protection, as well as delays in their implementation or a refusal to recognize the beneficiaries’ representatives; (iii) lack of access to the information on evaluations of risk and the methodology for evaluating; and (iv) lack of information on the part of the

<sup>281</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, paras. 141-146.

<sup>282</sup> In particular, since 1997 with the establishment of the “Program for the protection of human rights defenders, trade unionists, journalists, and social leaders.” That program was established as the result of a joint effort between the Government and civil society to protect certain population groups who were especially vulnerable to the action of illegal armed organizations in their rights to life, integrity, liberty, and personal security. The objectives of the Program are: (i) to strengthen the competent State entities at the national, regional, and local levels to undertake joint, coordinated, integral, and ongoing actions to prevent violations and protect the human rights of the inhabitants of the targeted communities at risk; (ii) to strengthen the traditional organizational forms, traditional authorities, and social organizations of the targeted communities at risk to frame initiatives, present proposals, coordinate with the public authorities, and be involved in the implementation, follow-up, and monitoring of the measures for prevention and protection of human rights and IHL; (iii) to re-establish or improve the relationships between the State and the community for coordinating, undertaking, following up on, and evaluating the preventive and protective measures proposed in the action plans.



beneficiaries and their representatives as to the criteria used for modifying, diminishing, or deactivating the protection schemes.<sup>283</sup>

148. Several beneficiaries of the protection systems continued reporting on the lack of access to the intelligence data that was collected illegally and that have been used to begin investigations against them. These actions were said to have been carried out by the Administrative Department of Security – the institution that was formerly in charge of providing the protection measures – and other State security agencies. According to reports, DAS agents followed the beneficiaries of the protection schemes, used confidential information from the Human Rights Protection Program of the Ministry of Interior and Justice to conduct intelligence activities, and ordered the wiretapping of communications equipment.<sup>284</sup> That situation was said to have exacerbated the distrust of the beneficiaries and accentuated the challenges the competent authorities face in implementing the protection programs.
149. In that scenario, the IACHR was pleased to receive the news that by Decree 4065 of October 31, 2011<sup>285</sup> the National Protection Unit was created as the entity that assumed the protection functions that had been entrusted to the Ministry of Interior and Justice and the DAS. The UNP, which is under the Ministry of Interior with the status of a special administrative unit, is made up of 10 senior officials and has considerable financial resources. In addition, as of 2012, more than 3,000 persons were covered by the UNP’s protection programs.
150. In view of the foregoing, during the visit the Commission paid special attention to the information provided by the persons protected by the protection system, civil society organizations, state authorities, and other actors, for the purpose of monitoring implementation of the protection programs. Next the IACHR will address some of the gains, challenges, and concerns identified in relation to protection.

## 1. Legal framework for protection

151. According to the information provided during the visit, Colombia’s protection programs are divided into three categories: (i) victims and witnesses of serious human rights violations and breaches of international humanitarian law may turn to the “Program for the protection of witnesses, victims, persons involved in the proceeding, and staff of the Attorney General” and to the “Program for the protection of victims and witnesses who participate in the judicial proceedings established in Law 975 of 2005;” (ii) those who are at extraordinary or extreme risk as a result of their political, public, social, or humanitarian activities or functions may be covered under the “human rights protection program of the UNP of the Ministry of Interior and the National Police (Risk-based protection program) and the “Route for protection of the displaced population;” and (iii) public servants have the Protection Programs of the Office of the Attorney General – if they are staff of that institution – and the human rights protection

<sup>283</sup> Information provided at the meeting with human rights defenders, Bogotá, December 4, 2012.

<sup>284</sup> IACHR, *Hearing on Guarantees for the exercise of their rights for the members of the Movimiento Nacional de Víctimas de Crímenes de Estado (National Movement of Victims of State Crimes)*, November 5, 2009. Available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117&page=2>.

<sup>285</sup> Available at: <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Octubre/31/dec406531102011.pdf>.

program of the UNP of the Ministry of Interior and the National Police (protection program based on one's position).<sup>286</sup>

152. In addition, the Law on Victims and Land Restitution establishes the obligation to adopt special measures of comprehensive protection for victims, witnesses, and public servants who are involved in administrative and judicial reparations proceedings;<sup>287</sup> to take account of the information from the Early Warning Systems of the Office of the Ombudsperson to establish preventive measures and to mitigate existing risks;<sup>288</sup> and to adopt reinforced protection for women victims.<sup>289</sup> Law 1448 also sets forth a series of parameters for protection measures,<sup>290</sup> whereas its Regulatory Decree provides for guidelines with respect to the application of the differential approach and the adoption of collective measures of protection.<sup>291</sup>
153. During the visit the Commission also had an opportunity to meet with members of the UNP, who reported that the UNP takes charge of unifying the coordination, articulation, and execution of the protection programs, with the exception of the programs under the direction of the Attorney General and the Prosecutor.<sup>292</sup> In addition, the functions of assessing and determining risk – which had been entrusted exclusively to the National Police – are now under the Technical Corps for Compilation and Analysis of Information (hereinafter “CTRAI”: *Cuerpo Técnico de Recopilación y Análisis de Información*) and the Preliminary Assessment Group (hereinafter “GVP”: *Grupo de Valoración Preliminar*). The Committee on Evaluation of Risk and Recommendation of Measures (hereinafter “CERREM”: *Comité de Evaluación de Riesgo y Recomendación de Medidas*) – which would have the same makeup and functions as the previous Committee for the Regulation and Evaluation of Risks (CRER) – assumes the functions of assessing the cases.<sup>293</sup> The State has also reported that a special group was created called the Group for Emergency Procedures (GETEM: *Grupo de Trámites de Emergencia*), which analyzes cases and activates the constitutional presumption of risk.<sup>294</sup>

<sup>286</sup> Colombian Commission of Jurists, *Observaciones y recomendaciones a los programas de protección existentes en Colombia en el contexto de implementación de la Ley 1448 de 2011, conocida como “Ley de Víctimas”,* May 7, 2012, p. 7.

<sup>287</sup> Law 1448, Article 31.

<sup>288</sup> Law 1448, Article 31(2).

<sup>289</sup> Law 1448, Article 31(3).

<sup>290</sup> Article 32 of Law 1448 establishes a series of standards for protection: (a) measures proportional to the level of risk of the victims before, during, and after their participation; (b) the criteria for risk assessment set by the case-law of the Constitutional Court, as well as the fact that the decision on the measure of protection must be previously known by the victim or witness; (c) periodic evaluation of the risk and updating of the measures; (d) suggestion of alternative or supplemental measures by the victims or witnesses; (e) adoption of differential criteria for gender, capacity, culture, and life cycle; (f) coordination of the protection programs with the programs for victims; (g) conducting interviews in safe and trustworthy locations; and (h) permanent information to the judicial and administrative authorities.

<sup>291</sup> Decree 4800 of 2011, which regulates Law 1448, highlights the need to adopt a differential approach and to coordinate the programs for attending to victims with the protection programs, and stipulates that the beneficiaries of measures of protection should have the accompaniment of the Ministry of Health and Social Protection, entrusted with coordinating those measures with the social services offered by the State and with psychosocial care. As regards to collective protection, this decree provides for the preparation of risk maps, which should pull together the information from the Network of Human Rights Observatories, the Early Warning System, the Ministry of Defense and the Armed Forces, which would make it possible to define the zones and population sectors that require priority attention. The Armed Forces will have a leading role when it comes to deciding on the security conditions for return and relocation, for it is their members who will issue an “evaluation” of the security conditions. See Decree 4800 of 2011, Articles 217-219.

<sup>292</sup> Information provided in the meeting with the UNP, Bogotá, December 3, 2012.

<sup>293</sup> Colombian Commission of Jurists, *Observaciones y recomendaciones a los programas de protección existentes en Colombia en el contexto de implementación de la Ley 1448 de 2011, conocida como “Ley de Víctimas”,* May 7, 2012, p. 9.

<sup>294</sup> The State reported that from January to October 2012 the constitutional presumption of risk was activated in 226 cases processed on an emergency basis for the displaced population, corresponding to 31% of all the requests processed on an emergency basis by the UNP in that period. Ministry of Foreign Affairs of Colombia, Document “*Mujeres víctimas*,” received by the IACHR on May 3, 2013.

154. As regards the legal framework in relation to protection, several organizations indicated that the unification of the programs of the Ministry of Interior and the National Police, in the UNP, as well as the inclusion of new agencies in the risk assessment process are positive measures.<sup>295</sup> Despite that, they said that this unification does not cover all the protection programs, thus there are still a variety of programs and different regulatory frameworks, which is not in line with the criteria established in the Victims' Law.<sup>296</sup> In addition, the civil society organizations were of the view that the multiplicity of provisions and the dispersion of programs does not enable the institutions to work in coordinated fashion, in addition to which there would appear to be a lack of knowledge of protection programs by the departmental and municipal authorities, and by the beneficiaries themselves.
155. The IACHR has observed that the overall protection policy implemented by the State – through various programs, decrees, and directives – has had the aim of responding to specific situations and providing guidance for the implementation of differential approaches for persons who are particularly vulnerable. Nonetheless, the Commission has noted that the “States must adopt rules clearly spelling out the authorities and responsibilities of the officials who will play a role in either implementing or monitoring the protection measures. Likewise, the law must prescribe the powers that the officials have for those purposes.”<sup>297</sup> Along these lines, for the IACHR it is fundamental that in applying any normative framework the protection programs have “personnel trained in receiving requests for protection, evaluating the risk, adopting the measures of protection, putting them into practice and then monitoring them to make certain they are still being enforced.”<sup>298</sup>

## 2. Gains and challenges implementing the programs of the National Protection Unit

156. The Commission, like the High Commissioner,<sup>299</sup> would like to recognize the work being pursued by the UNP. In particular, the IACHR notes: (i) the institutional and financial support that the program is receiving; (ii) the implementation of substantive schemes of protection; (iii) the incorporation of a differentiated approach to address the situation of risk faced by women, among other vulnerable groups; (iv) the establishment of Committees to evaluate risk and recommend measures; and (v) the large number of beneficiaries who are protected by the program.
157. During the visit the members of the UNP noted that the program is based on the principles of consent and interest, and that more than 10,000 studies of risk are conducted annually. It was further reported that in 2012 the Protection Program covered 1,650 trade unionists, 1,150 human rights defenders, and 230 journalists. It was also explained that since the creation of the UNP there have been eight attacks, which did not result in any harm to any of the beneficiaries, and that these incidents were reported to the Attorney General. In that regard,

<sup>295</sup> Information provided in the meeting with human rights defenders, Bogotá, December 4, 2012.

<sup>296</sup> Colombian Commission of Jurists, *Observaciones y recomendaciones a los programas de protección existentes en Colombia en el contexto de implementación de la Ley 1448 de 2011, conocida como “Ley de Víctimas”*, May 7, 2012, p. 18.

<sup>297</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 489.

<sup>298</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 505.

<sup>299</sup> United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 22<sup>nd</sup> session, A/HCR/22/17/Add.3, January 7, 2013, para. 39.

the members of the UNP stated that to respond to the requirements of protection, there is institutional coordination with the Victims' Unit, the Restitution Unit, the Ombudsperson, the Attorney General, and the respective local Municipal Officials (*Personeros*).<sup>300</sup>

158. In addition, the members of the UNP indicated that threats associated with situations characterized as extraordinary risk receive follow-up and they underscored that the main challenge of the UNP is made up of all those persons who are in a situation of risk, but who have not yet requested protection from the institution.<sup>301</sup>
159. More recently, the State has indicated that since the beginning of implementation of Law 1448, the UNP has received 1,965 protection requests from victims of the armed conflict and from “persons who are parties to land restitution proceedings”. It further said that 1,665 risk assessments have been done, 5 of which were labeled “extreme risk”, 659 of them “extraordinary risk”, and 820 as “ordinary risk”. It also pointed out that “185 risk reevaluations have been done after new threats or harassment incidents happened against victims or land claimants after the first risk assessment”. Additionally, the State said that UNP “provides protection to 485 victims of the internal armed conflict and 452 claimants in land restitution proceedings” and that since its creation “it has assisted more than 700 victims and land claimants through protection measures by applying emergency procedures by virtue of the constitutional risk presumption to which they are entitled.”<sup>302</sup>
160. In the context of the thematic meetings held with members of civil society and organizations covered by the protection programs, the IACHR received information on the challenges entailed in their implementation.<sup>303</sup> In particular, members of civil society organizations indicated that in the context of the continuation of the armed conflict the situation of risk is more burdensome for those who are pursuing proceedings to claim their rights, especially the right to restitution of the lands forcibly taken or abandoned.<sup>304</sup> In that scenario, the information was consistent with respect to the lack of measures of protection in the interior zones of the country, especially in rural areas.<sup>305</sup>
161. In its observations to the Draft Report, the State highlighted that “[...] a large part of the beneficiaries of the UNP protection program are victims of the armed conflict. Generally, these persons are located in the countryside, in rural areas where Access is difficult and technological resources scarce”<sup>306</sup>. The State highlighted that, in spite of this, during 2013 533 cases of victims have been processed, 318 of which “are requesters from rural areas.”<sup>307</sup> In this regard, it indicated that the UNP has specialized policies to serve this group, including: i) following “specific protocols” that provide for a differential treatment that takes into account “the context they are in and the traditions that correspond to their environment”; ii) the adoption of “urgent protection measures arising from activating the constitutional risk presumption in their favor”; and iii) the delivery of “material measures with a differential focus

<sup>300</sup> Information provided at the meeting with the UNP, Bogotá, December 3, 2012.

<sup>301</sup> Information provided at the meeting with the UNP, Bogotá, December 3, 2012.

<sup>302</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, paras. 150-151.

<sup>303</sup> Information provided at the meeting with human rights defenders, Bogotá, December 4, 2012.

<sup>304</sup> Colombian Commission of Jurists, *Observaciones y recomendaciones a los programas de protección existentes en Colombia en el contexto de implementación de la Ley 1448 de 2011, conocida como “Ley de Víctimas”*, May 7, 2012, p. 2.

<sup>305</sup> Information provided at the meetings with civil society organizations, Bogotá, December 4, 2012.

<sup>306</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 149.

<sup>307</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 152.

such as rafts, boats (*pangas*) and elements to strengthen indigenous guards (boots, canteens, staffs, radios, among others).”<sup>308</sup>

## a. Risk Assessment

162. As for the mechanism for evaluating the risk to possible beneficiaries, the members of the UNP referred to Decrees 2816 (2006), 1740 (2010), 4912 (2011), and 1225 (2012) and explained that the protection route begins when a person lodges a request for protection, which is evaluated by the Management of the Service.<sup>309</sup> The request is then sent to the CTRAI, which does field work to verify the information with the competent entities. The CTRAI also takes charge of filling out the “Standard Instrument for Risk Assessment”—designed by the Constitutional Court by Order 266 of 2009 – which is needed to verify each case, for it to be analyzed by the GVP, which is based in Bogotá. The GVP meets with the participation of nine agencies, five of them permanent and four as special guests; together they analyze the situation of risk in each matter, based on the information supplied by the CTRAI, for the purpose of presenting an opinion on level of risk to the CERREM so as to determine suitable measures.<sup>310</sup>
163. The purpose of the CERREM, made up of 13 agencies, with five permanent members and eight guest agencies, is to carry out a comprehensive risk assessment, and to recommend the protection measures and supplemental actions. In the context of that exercise, the views and recommendations of the GVP are taken into account, as well as the inputs of the delegates from the institutions that constitute it – in keeping with the scope of their authority – for deciding to adopt the measures or possible supplemental actions required. The CERREM then makes a final decision with respect to the case, which is reported to the Director of the UNP by official notification in order to immediately implement the protection measures for the person requesting them.<sup>311</sup>
164. As regards those proceedings, the Commission notes with concern that the civil society organizations indicated that they do not have access to the report prepared on their own situation of risk, as the authorities argue that it is confidential. This situation would appear to limit due process guarantees, given that not knowing the grounds for the decision would pose an obstacle to pursuing any mechanism to challenge that decision.<sup>312</sup> In that regard, the Commission considers that the State’s response to a request for protection measures should be duly motivated and therefore, the applicants should be informed about both the final decision and the elements taken into consideration to justify that decision.
165. In this respect, the IACHR considers that even though the right of access to information is not an absolute right and may be subject to limitations, such limitations should strictly abide by the requirements that stem from Article 13(2) of the American Convention, i.e. exceptional conditions, provided for by law, legitimate objectives, need, and proportionality.<sup>313</sup> In that regard, principle 4 of the IACHR’s Declaration of Principles on Freedom of Expression

<sup>308</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 153.

<sup>309</sup> Information provided at the meeting with the UNP, Bogotá, December 3, 2012.

<sup>310</sup> Information available at: <http://www.unp.gov.co/comohacemos.html>.

<sup>311</sup> Information available at: <http://www.unp.gov.co/comohacemos.html>.

<sup>312</sup> Information provided at the meeting with human rights defenders, Bogotá, December 4, 2012.

<sup>313</sup> See CJI/RES. 147 (lxxiii-0/08), Principles on the Right of Access to Information, August 7, 2008. Available at: [www.oas.org/cji/CJI-RES\\_147\\_LXXIII-0-08.pdf](http://www.oas.org/cji/CJI-RES_147_LXXIII-0-08.pdf).

provides: “Access to information [...] allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

166. Therefore, the Commission urges the competent authorities to implement suitable mechanisms so that both those persons seeking protection and the persons covered by the program can have access to the respective reports – bearing in mind the considerations deemed pertinent in light of domestic legal provisions and international standards –and so that they can obtain a reasoned response in the decisions made by the entities in charge of risk assessment.
167. During the visit civil society organizations also expressed concerns regarding the domestic mechanisms for risk assessment, describing: (i) delays in the assessments<sup>314</sup>; (ii) when the risk is characterized as extraordinary, the protection measures are imposed unilaterally by the UNP, with no flexibility, nor any opportunity for coordinating with the beneficiaries, and setting aside the principle of coordination (*concertación*);<sup>315</sup> and (iii) access to the program of the UNP is apparently being obstructed by official assumption about the lack of credibility of the applicants, who have the burden of proving the facts and presenting evidence about their situation of risk.<sup>316</sup>
168. Regarding these concerns, the Commission reiterates that the State “must ensure that during the risk evaluation, the lines of communication are adequate and there is active participation”<sup>317</sup> of the persons to protect or of the beneficiaries of the precautionary measures issued by the IACHR and the provisional measures of the Inter-American Court. In addition, all measures needed should be taken to assure that the procedures are speedy and that actions are taken in timely fashion, considering that the rights to life and integrity are at stake. In particular, the IACHR wishes to emphasize the need for the protection programs to be endowed with “personnel who are capable of establishing trust with the persons who seek protection,”<sup>318</sup> with a view to their being adopted and implemented in keeping with the principle of transparency.
169. As regards the coordination of the measures of protection with the request for precautionary measures by the IACHR, at the various meetings held, several human rights defenders who are beneficiaries of precautionary measures indicated that they have had to subject themselves

<sup>314</sup> In particular, it was said that there are failings in the processing of the requests, especially because the time frames are not in line with the needs for protection, insofar as the CERREM meets once a month. AFRODES, *Documento concertado con alternativas para mejorar la efectividad del Programa de Protección coordinado por la Dirección de Derechos Humanos del Ministerio del Interior y de Justicia*. In its observations to the Draft Report, the State pointed out that it is necessary to bear in mind that the majority of the requesters are in “areas difficult to access,” where “communication is difficult,” which “sometimes difficult to contact the applicant, prevents that the access to the area is easily made, and delays the request and reception of information that supports the risk situation”. In this regard, the State recognized that the 30 day period established in the rules that govern the UNP protection program may be exceeded, but to respond to situations such as the one just described. Notwithstanding, it highlighted that “it is UNP policy to make every effort to meet the deadline” and that, in general, 30 days is an adequate time period that allows the realization of the activities linked to the analysis and documentation of the risk situation of the requesters. Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, paras. 154-157.

<sup>315</sup> Information provided at the meeting with human rights defenders, Bogotá, December 4, 2012.

<sup>316</sup> AFRODES, *Documento concertado con alternativas para mejorar la efectividad del Programa de Protección coordinado por la Dirección de Derechos Humanos del Ministerio del Interior y de Justicia*.

<sup>317</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 493.

<sup>318</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 494.

once again to a process of “showing risk” in order to enter the UNP’s program.<sup>319</sup> The Commission highlights that, during the visit, the State expressed its commitment to stop submitting the beneficiaries of precautionary measures granted by the IACHR to new processes of “showing of risk”.

170. On this point, the Commission notes that while the State has indicated that the measures of protection are implemented automatically, information has been received that shows that in some cases the beneficiaries do not receive measures of protection as it is considered that their level of risk is regular (*ordinario*). The State had indicated that, in effect, when the risk situation is assessed as ordinary, the UNP “cannot implement special measures for these persons”, even though “other special measures adopted by other State entities are kept in place”, which are adopted only when precautionary measures are in effect and with “the consent of the beneficiary”<sup>320</sup>. The IACHR points out that, because of this situation, there have been cases where the persons who are left without protection must file *tutela* actions to be effectively incorporated to the respective protection programs. The Commission has also learned of these situations in relation to implementing provisional measures granted by the Inter-American Court, for example in the case of the *Rochela Massacre v. Colombia*.
171. As regards implementing measures of protection for persons who are beneficiaries of precautionary measures granted by the IACHR, the UNP indicated that at present there is a new policy by which an urgent procedure is applied. Accordingly, when a new precautionary measure is requested by the Commission, protection is provided immediately and the person is registered in the program directly, without the need for a risk assessment. In the case of collective precautionary measures, a process of coordination with the organizations is begun in order to identify the priority persons so as to provide immediate protection.<sup>321</sup> In this respect, the State has pointed out that it is the result of a commitment assumed by the UNP Director before the Commission, consisting of “not carrying out an assessment of the risk level when the IACHR requests new precautionary measures.”<sup>322</sup>
172. The UNP states, in relation to the precautionary measures granted in earlier years, that: (i) as regards individual measures, protection is provided for at least one year, without conducting a risk study; and (ii) with respect to collective measures, risk studies are being undertaken at this time to verify whether they are still called for.<sup>323</sup> In its observations to the Draft Report, the State pointed out that it is UNP policy to conduct “risk reassessments periodically (at least once a year) after the precautionary measure request”. It indicated that the reassessment of the risk situation “allows for the determination and definition of the type of protection to be implemented, and whether it is within the competence of the UNP protection program or of another State institution.”<sup>324</sup>
173. The IACHR recognizes that it is fundamental that the States conduct a situation analysis to determine, in consultation with the beneficiaries, the suitable measures of protection to be

<sup>319</sup> Information provided at the meeting with human rights defenders, Bogotá, December 4, 2012.

<sup>320</sup> In its observations to the Draft Report, the State explained that these are not general measures, but that they correspond to “special situations” addressed by other authorities, mostly the National Police. It further indicated that these measures “do not require applying the procedures established by the UNP”. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, paras. 159-160.

<sup>321</sup> Information provided at the meeting with the UNP, Bogotá, December 3, 2012.

<sup>322</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 162.

<sup>323</sup> Information provided at the meeting with the UNP, Bogotá, December 3, 2012.

<sup>324</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 161.

adopted to protect their rights and, based on this analysis, to make possible the effective and diligent implementation of the precautionary measures sought. The State has explained that the UNP “understands that measures must be determined jointly with the beneficiary”, and that Colombia does not pretend to question “the authority of the IACHR to grant or lift precautionary measures”. Without prejudice to this, the State indicated that it is “a legal requisite to keep the precautionary protection measures by the UNP, the conduction of a risk assessment, and that the resulting conclusion is that the risk is extraordinary or extreme.”<sup>325</sup> In addition, it has noted that the measures requested by the IACHR “are implemented not only by the UNP [but that in those] cases in which the risk is considered regular [*ordinario*] after a reassessment, other agencies adopted measures aimed at addressing these cases....”<sup>326</sup>

174. In this scenario, the Commission must highlight that considerations on the implementation and follow-up of precautionary measures are deemed applicable to all those measures that the IACHR has issued in previous years, and that have continued to be necessary in view of situations of risk that continue to persist over time. Also, the Commission wishes to underscore that the decision whether to lift precautionary measures is exclusively up to the Commission, in keeping with its norms. The Commission values the reiteration of the State’s commitment to “implement and follow-up the precautionary measures requested by the IACHR.”<sup>327</sup>
175. The IACHR also notes that while the State should take cognizance of and analyze the situation of risk to beneficiaries of precautionary measures, this analysis should be done for the purpose of determining, in conjunction with the beneficiary, the most appropriate measures of protection. Accordingly, given the binding nature of measures of protection in the inter-American system, recognized by the State of Colombia,<sup>328</sup> and the principle of good faith that holds in international law, the phase that corresponds to the State in the face of a request for a measure of protection from the inter-American system is its implementation and follow-up.<sup>329</sup> In that regard, the Commission recalls that implementing measures of protection granted in the context of international procedures cannot be subordinated to the initiation or exhaustion of domestic remedies, for that is at odds with the international obligations acquired by the State.

## **b. Implementation of substantive measures of protection and their suitability**

176. As regards the implementation of substantive measures of protection, the members of the UNP indicated that in the past protection schemes were not adopted while the risk studies were under way. Nonetheless, they emphasized that in situations of imminent harm the measures are implemented immediately, while the risk studies are being conducted. In that regard, it

<sup>325</sup> In this regard, the State indicated that the Ministry of Foreign Affairs “periodically convokes meetings for follow-up and agreements”, where the different State institutions are represented, as well as the beneficiary of the measures. Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, paras. 163-164.

<sup>326</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 165.

<sup>327</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 165.

<sup>328</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser. L/V/II. Doc. 66, December 31, 2011, paras. 459-460. See also Constitutional Court, Judgment T524/05, May 20, 2005, ground 7. Available at: <http://www.corteconstitucional.gov.co/relatoria/2005/T-524-05.htm>.

<sup>329</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser. L/V/II. Doc. 66, December 31, 2011, para. 459.



was reported that there are 1,700 protection schemes and that based on the last bidding the service is to be split among three private operators. By way of follow-up the UNP interviews the beneficiaries every three months to monitor on the operation of the protection service.<sup>330</sup>

177. Nonetheless, civil society considered that the concept of protection used would be limited to the security provided by the members of the Armed Forces and National Police, even when the Armed Forces and National Police are actors in the armed conflict<sup>331</sup> and noted the following as the main failings or limitations in the protection measures: (i) difficulties in access and limited coverage; (ii) lack of coordination between the protection programs and the programs for providing assistance to victims,<sup>332</sup> lack of protection for the families of those at risk and limitations when it comes to adopting measures of protection with a differential approach for persons who enjoy special constitutional protection; (iii) unwarranted delays in implementing the measures once they have been adopted by the respective offices or agencies;<sup>333</sup> (iv) difficulties due to the lack of certain measures of protection, especially collective measures of protection;<sup>334</sup> (v) in the case of trade union leaders, it was indicated that the difficulty inherent to the protection program is that it is primarily short-term and individual, the aim being to take a series of measures focused on particular threats, but which have not been sufficient to overcome anti-union violence.<sup>335</sup>
178. In order for the measures of protection to be adequate, they must be suitable for providing protection in the situation of risk affecting the person, and to be effective they should produce the intended results.<sup>336</sup> In that regard, the IACHR has constantly said that it is necessary for the State and the beneficiaries to jointly design the modality of the protection measures in each specific situation. As a corollary to monitoring the measures of protection implemented, it has been noted time and again that the States should design policies that enable them to monitor the effectiveness of the measures selected and to provide constant follow-up on their evaluation in the face of situations of risk the beneficiaries face.<sup>337</sup>
179. During the visit the civil society organizations, among them several organizations that are beneficiaries of precautionary measures, noted on several occasions that one especially worrisome aspect is that in the process of doing away with the DAS, the security schemes of the Protection Program that were assigned to the DAS were gradually assigned to private security companies. That situation could pose a risk to their own security and their activities, especially in view of the historic ties that some security companies have with the *Autodefensas*, the possible participation in the protection schemes of persons who have demobilized from those forces, and the lack of experience performing an activity that was originally carried out by the State. Moreover, there were several expressions of concern over the lack of coordination between the State and those private security companies with respect to the

<sup>330</sup> Information provided at the meeting with the UNP, Bogotá, December 3, 2012.

<sup>331</sup> Colombian Commission of Jurists, *Observaciones y recomendaciones a los programas de protección existentes en Colombia en el contexto de implementación de la Ley 1448 de 2011, conocida como "Ley de Víctimas"*, May 7, 2012, p. 19.

<sup>332</sup> The measures adopted by the mayors' offices and governors' offices are not supplemented by programs of services undertaken by Acción Social, nor does the law or the decrees issued thus far have specific and clear mechanisms of coordination between the protection programs and the measures of assistance and reparation.

<sup>333</sup> Decree 4912 of 2011 does not expressly establish a term for adopting protection measures once they have been approved by the CERREM.

<sup>334</sup> Those communities already exposed to an imminent risk require measures other than preventive ones.

<sup>335</sup> Central Unitaria de Trabajadores, Confederación General del Trabajo, Confederación de Trabajadores de Colombia, *Informe a presentar en la 101ª Conferencia de la OIT 2012*, p. 14.

<sup>336</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124, doc. 5 rev. 1, 2006, para. 133.

<sup>337</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 493.

implementation of the protection schemes. Information was also received on the failings of the substantive protection schemes provided by private companies and it was said that they lacked decision-making capacity, which was said to have a direct impact on the effectiveness of the protection measures.

180. In this respect, the State highlighted, on the one hand, that even before the UNP was created, the Ministry of the Interior had already been working for three years “with private security companies to hire the escorts.” On the other hand, it indicated that “the schemes the DAS had in place with its staff have been kept by the UNP with its own staff, that is, not through the companies contracted by the Unit.”<sup>338</sup> The State also affirmed that “it is not true that there are persons linked to the *autodefensas*, or any person with a judicial record, hired as escorts,” and that this information has not been proven with cases or specific denunciations<sup>339</sup>.
181. In light of the available information, the IACHR recalls that it has recommended that the activities of risk analysis and implementation of the protection measures should be assigned to personnel who belong to a State security agency separate from any of those that perform intelligence and counter-intelligence activities.<sup>340</sup> The Commission is of the view that the State should ensure that the personnel participating in the security schemes inspire trust in the beneficiaries of the program. The IACHR reiterates that one fundamental element for winning trust is for the assignment of personnel to be done with the participation of the beneficiaries in the protection measures.<sup>341</sup>
182. In this regard, the IACHR values the State’s efforts to ensure that the personnel in charge of protection no longer belong to the DAS; nonetheless, according to the information received, the Director of the UNP had noted that almost all the employees of the DAS were assigned to the new Unit, with at least 600 former agents of the DAS still part of it,<sup>342</sup> thus it could be that those who formerly performed intelligence and counter-intelligence are now in charge of the protection functions. In this respect, the State has indicated that the DAS had an area dedicated exclusively to protection and that “the staff that were in this area, most of which are now linked to the UNP, were escorts trusted by the beneficiaries of the protection measures.”<sup>343</sup> The State emphasized in that regard that “the UNP has no competence in matters pertaining to intelligence or counterintelligence [and that] the functions performed by the DAS in that field were taken over by the National Intelligence Agency, institution that is not in any

<sup>338</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140 of December 2, 2013, paras. 169-170.

<sup>339</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140 of December 2, 2013, paras. 171-172.

<sup>340</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, para. 136.

<sup>341</sup> I/A Court H.R., *Provisional Measures in the matter of Asunto Mery Naranjo et al. with regard to Colombia*. Order of the Court, March 4, 2011, operative paragraph 3.

<sup>342</sup> *El Espectador*, *Unidad Nacional de Protección sí está integrada con exagentes del DAS*, May 11, 2012. [Available in Spanish]. See also, International Verification Mission on the Situation of Human Rights Protection in Colombia, November 28 to December 2, 2011, p. 19.

<sup>343</sup> Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140 of December 2, 2013, para. 174. Regarding this point, in its observations to the Draft Report, the State considered that the mistrust that may be allegedly caused by the former DAS staff “may become a form of stigmatization, since the fact that a person has worked for the DAS cannot generate a presumption of guilt, especially when none of these persons have any open investigations for participating in illegal activities, or a record of a criminal, disciplinary or tax-related.” Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140 of December 2, 2013, para. 175.

way, related to the UNP.”<sup>344</sup> Additionally, the State informed that when the escort personnel is not trusted by the beneficiaries, the UNP makes a change in personnel.<sup>345</sup>

183. The Commission also considers that the States should have a State security agency for the protection programs that is separate from the agencies that conduct intelligence and counter-intelligence activities; and whose staff is selected, incorporated, educated and trained with absolute transparency and with the participation of the representatives of the population to which the programs are geared so as to create bonds of trust between the persons protected and those in charge of protecting them.<sup>346</sup> The Commission values the fact that the State of Colombia, in its observations on the Draft Report, reiterated that it “has separated completely the tasks of protection from those of intelligence and counterintelligence.”<sup>347</sup>
184. With respect to the implementation of collective protection measures, the UNP stated that it would be implementing specific measures for communities at risk, among them providing engine boats, boats, and provision of means for communication. During the visit several beneficiary communities indicated that the collective protection systems should be analyzed carefully, for while such measures should be collective, on many occasions the State only seeks to protect their leaders.<sup>348</sup> The Commission considers that given the specific needs and dynamics of the groups that require protection as well as the geographic particularities of the location of some communities so measures should be coordinated by the State and the beneficiaries on an ongoing basis, such that they design the modality of every measure of protection together.<sup>349</sup> In this respect, it views positively what the State has reported when it notes that the UNP has been working on an instrument that allows to “contextualize the situation of collectives, communities and specific organizations that share characteristics that determine their risk level,” with the purpose of “advancing in toward providing collective measures that respond to the needs of the requesters.”<sup>350</sup>
185. The civil society organizations indicated the following failings in the institutional response to the situation of the Afrodescendant population: (i) the lack of understanding of the magnitude and seriousness of the risk faced by Afro-Colombian leaders, both men and women; (ii) the failure to take account of leadership changes and the need for a protection arrangement to look at the group as a whole; (iii) the systematic neglect of the needs for protection continually demanded by organizations and leaders of the Afro-Colombian population; and (iv) the inadequacy of the measures actually implemented.<sup>351</sup> The information received indicates that, for example, in Chocó bodyguards were assigned who are not Afro-Colombians, which makes

<sup>344</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 173.

<sup>345</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 176.

<sup>346</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, para. 136.

<sup>347</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 177.

<sup>348</sup> Information provided at the meeting with human rights defenders and Afrodescendant organizations, Bogotá, December 4, 2012.

<sup>349</sup> I/A Court H.R., *Matter of the Television Station “Globovisión.”* Provisional measures regarding Venezuela. Order of the Court, November 21, 2007, eleventh considering paragraph.

<sup>350</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, paras. 178-179.

<sup>351</sup> AFRODES, *Información de Violación Desproporcionada de los Derechos Fundamentales de las Comunidades Afrocolombianas*, December 4, 2012, pp. 3-4.

the security scheme evident.<sup>352</sup> In addition, Afro-Colombian organizations have emphasized that if temporary relocation were necessary, specific mechanisms should be designed to monitor the levels of risk that take into account the contexts and that include strategies for continuing and comprehensive accompaniment; and in cases of definitive relocation, not only should subsistence be guaranteed, but also a process that makes it possible to reconstruct one's life project.<sup>353</sup>

186. Several Afro-Colombian communities also stated that in some cases, in the context of the processes for reassessing risk studies, some persons were assassinated after the risk was characterized as ordinary. In light of the foregoing, they requested the adoption of an additional mechanism to guarantee coordination, at the local level, of the institutions in charge of protection.<sup>354</sup> They further indicated that flexibility in the measures of protection should be guaranteed, taking into account the constant reworking of the strategies of violence by the illegal armed actors.<sup>355</sup> They also considered that the “constitutional presumption of risk” established by the Constitutional Court is a fundamental principle for addressing the particularities of the situations of risk faced by Afro-Colombian communities, organizations, leaders, and persons.<sup>356</sup>
187. On this point, the Commission reminds the State of the need to adequately develop and implement the differential approach in protection measures implemented on behalf of Afrodescendant persons and communities. The Commission insists that when it comes to deciding on, implementing, and following up on the protection measures, the State should take into consideration geographic location and the needs and special situation that Afrodescendant communities have faced in the context of the armed conflict.
188. The IACHR has also closely monitored the situation of women, organizations of women human rights defenders, leaders who work on issues of land restitution, and women beneficiaries of precautionary measures. In this respect, the UNP noted that there is a Special Protection Protocol designed in coordination with UN Women and that special measures have been adopted such as including the nuclear family group in the measures of protection, providing female bodyguards, and providing bulletproof vests adapted to women's physique.<sup>357</sup> In this regard, the IACHR takes into account that the Protocol establishes special directives for the application of the protection program when the cases involve women at risk, including protection strategies, and provides that the risk assessment and the adoption of measures must consider “the specifics and vulnerabilities by age, ethnicity, gender, disability, sexual orientation, urban or rural background of the women”, as well as a “sub differential focus” that contemplates other specific characteristics in the case of “black women, afrocolombian women, *palenqueras* (afrocolombian women from the Caribbean coast who follow African

<sup>352</sup> International Verification Mission on the Situation of Human Rights Protection in Colombia, November 28 to December 2, 2011, p. 28.

<sup>353</sup> AFRODES, *Documento concertado con alternativas para mejorar la efectividad del Programa de Protección coordinado por la Dirección de Derechos Humanos del Ministerio del Interior y de Justicia*.

<sup>354</sup> AFRODES, *Documento concertado con alternativas para mejorar la efectividad del Programa de Protección coordinado por la Dirección de Derechos Humanos del Ministerio del Interior y de Justicia*.

<sup>355</sup> AFRODES, *Documento concertado con alternativas para mejorar la efectividad del Programa de Protección coordinado por la Dirección de Derechos Humanos del Ministerio del Interior y de Justicia*.

<sup>356</sup> AFRODES, *Documento concertado con alternativas para mejorar la efectividad del Programa de Protección coordinado por la Dirección de Derechos Humanos del Ministerio del Interior y de Justicia*.

<sup>357</sup> It refers to the “Specific protocol focused on gender and the rights of women”, issued by the Resolution 805 of 2012, which also had the support of the MAPP/OAS during the drafting process.” Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAID-13-048140 of December 2, 2013, paras. 167, 184.

traditions) and *raizales* (ethnic group with Afro-Anglo-Antillean traditions)”<sup>358</sup>. In this framework, the Commission recognizes the existence of a gender approach aimed at identifying the particularities and specific risks faced by communities of women such as indigenous women leaders, women human rights defenders, and women journalists, among others, as an important step forward in the protection program.<sup>359</sup> According to the numbers provided by the State, the protection program with differential gender focus protects a total of 1,074 women.<sup>360</sup>

189. Without prejudice to the Commission recognizing the policies developed by the State in this regard, in the meetings held during the visit<sup>361</sup> the Commission was deeply concerned to receive the following information: (i) one of the main obstacles to protecting women victims is impunity,<sup>362</sup> given that the risk factors continued to be active; (ii) women continuously face situations of insecurity, in particular they continue receiving threatening pamphlets from illegal armed groups without the necessary measures having been adopted in the face of new situations of risk; (iii) the differential approach in the protection programs is reportedly not being implemented, for the protection mechanisms continue to be gender-neutral in how they understand and analyze situations; (iv) the programs do not offer specialized protection given that, for example, the same modalities used for men continue to be applied for protecting women; (v) it must be recognized that the situation of women leaders and women human rights defenders is serious not only in light of the sociopolitical situation, but also due to the context of gender violence and gender discrimination;<sup>363</sup> (vi) it is difficult for the authorities to understand the comprehensive approach to protection for women;<sup>364</sup> and (vii) to date, the risk studies are permeated by stereotypes.<sup>365</sup>
190. In this context, while the IACHR values the efforts made by the State to develop a differentiated approach to implementing protection programs, it highlights that such an approach needs to be applied consistently in each of the actions taken by those programs. Accordingly, it is essential that measures be taken to train all the personnel of the different offices for the purpose of ensuring its continuing application.
191. The IACHR has already established that the situation of risk to which groups of women may be exposed does not affect all women equally.<sup>366</sup> In that regard, the Commission has reiterated the need for a comprehensive protection program that adapts to their needs and takes into account their aggravated situation of vulnerability due to the impact of the armed conflict on

<sup>358</sup> Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, paras. 185-186. The State has also informed of other complementary measures that are promoted by Resolution 805 of 2012, among them, those aimed at ensuring health, social security and assistance to lactating mothers, and women victims of forced displacement. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, paras. 187-191.

<sup>359</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, recommendation 7.

<sup>360</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 192.

<sup>361</sup> The IACHR held a general meeting on the situation of women in Colombia and held a working meeting with beneficiaries of precautionary measures from the organizations *Colectivo de Mujeres al Derecho*, *Corporación Casa de la Mujer*, *Liga de Mujeres Desplazadas*, and *Observatorio de Género*, among others.

<sup>362</sup> Colombian Commission of Jurists, *Observaciones en relación con la situación de protección a las mujeres víctimas*. May 7, 2012, p. 2.

<sup>363</sup> Corporación Sisma Mujer, *Situación de las mujeres en Colombia*, December 4, 2012, p. 15.

<sup>364</sup> Corporación Sisma Mujer, *Situación de las mujeres en Colombia*, December 4, 2012, p. 14.

<sup>365</sup> Corporación Sisma Mujer, *Situación de las mujeres en Colombia*, December 4, 2012, p. 16.

<sup>366</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc. 6, October 18, 2006, para. 140.

their lives. Accordingly, the Commission considers it necessary to strengthen the protection of the women's organizations working within the country, especially those that are promoting the restitution of lands and who have been subjected to different types of gender violence. The Commission further notes the multiple levels of vulnerability to which indigenous and Afrodescendant women may be exposed.

192. As for the protection of LGBTI persons, the IACHR takes note of the information provided by several organizations regarding a variety of failings in the implementation of the measures of protection. Specifically, the organizations consider it necessary for the State to adopt measures of protection that do not re-victimize persons at risk,<sup>367</sup> since the protection program does not include any special measures for this population, nor does it recognize the particularities of the transgender community. They noted certain differentiated risks, such as sexual violence, that are not taken into account when it comes to conducting risk assessments, thereby placing the defenders of the rights of the LGBTI population in a situation of twofold discrimination when they request measures of protection.<sup>368</sup> Similarly, they argued that so long as a differentiated approach is not incorporated to the protection schemes for LGBTI defenders, the measures implemented will not be effective for guaranteeing their rights.<sup>369</sup>
193. The Commission urges the State to adopt immediate actions to include an approach that takes into account the gender expression, gender identity, and sexual orientation of the persons who turn to the protection program in the relevant protocols, guidelines, risk assessment procedures, and implementation of and follow-up to measures of protection. In this context, it is considered necessary for all the authorities to work jointly to create guidelines and to train the pertinent authorities as to how their situation of risk should be assessed in light of the various forms of violence and social exclusion experienced by LGBTI persons and by human rights defenders who work on this issue. In its observations to the Draft Report, the State pointed out that when conducting the process of information gathering by the risk analysts "consideration is given to aspects included in the jurisprudence of the Constitutional Court, that use a differential treatment in the attention and assessment of the risks of some population groups serviced by the Unit", including among them women and LGBTI persons as subject to special protection. In this regard, the State indicated that in reaching a decision, variables are used in the framework of the "standard instrument for the assessment of individual risk" and some of the aspects considered are "the person's condition, their profile, the differential focus, the personal risk background, the context assessment, and the affectation of the rights to life, integrity, liberty and personal security."<sup>370</sup>
194. During the visit, the UNP reported that it is implementing a Decree for survivors of the Patriotic Union (*Unión Patriótica*) and the Communist Party (*Partido Comunista*), which was fully coordinated with them. More recently, the State informed that Decree 2096 of 2013 had been issued and that protection measures were put in place for persons that belong to that

<sup>367</sup> Colombia Diversa, Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011, Capítulo I: La justicia es ciega ante la evidencia de crímenes por perjuicio (Catalina Lleras), Bogotá, 2013.

<sup>368</sup> International Verification Mission on the Situation of Human Rights Protection in Colombia, November 28 to December 2, 2011, p. 28.

<sup>369</sup> Colombia Diversa, Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011, Capítulo I: La justicia es ciega ante la evidencia de crímenes por perjuicio (Catalina Lleras), Bogotá, 2013.

<sup>370</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 195.

population sector.”<sup>371</sup> It was also indicated that specific measures were implemented to protect trade union leaders and human rights defenders. In particular, it was noted that 2012 saw the lowest rate of homicides against union leaders in the last 20 years, and that many of those homicides were not related to their union activity.<sup>372</sup>

### **c. Investigation as a means for identifying and removing risk and preventing repetition**

195. Even though the IACHR understands the scope of authority and limitations of the UNP when it comes to investigation, and that it is necessarily an issue that requires coordination with the appropriate agencies, it is necessary to point out that members of civil society, persons covered by the protection programs, and beneficiaries of precautionary and provisional measures have consistently and repeatedly insisted on the need to investigate the continuing threats, harassment, and acts of violence to which they continue to be subjected despite their participation in the protection programs.

196. The Commission emphasizes in this regard that it is essential that the protection mechanisms coordinate with the corresponding investigative agencies and offices so as to clarify the sources of risk and to identify and punish the possible perpetrators. Progress in the investigations would also make it possible to supplement the effectiveness of the measures of protection adopted and to deactivate those elements that endanger the persons covered by the protection programs.

197. The Commission recalls that “the most effective way to protect [...] is by effectively investigating the acts of violence, and punishing the persons responsible”<sup>373</sup> and appeals to the State to undertake exhaustive and independent investigations into the attacks suffered by all persons covered by the protection programs, including those beneficiaries of precautionary measures of the Commission and provisional measures of the Court, whose situation of risk persists over time due to the patterns of violence that led them to be granted in the first place.

198. Finally, the Commission wishes to note that independent of the issuance of protective orders or measures of protection, the State has the duty to investigate and clarify alleged acts of intimidation and harassment, as well as attacks. Accordingly, it urges the State to redouble its efforts and to strengthen the institution in relation to this important task, which is still pending.

<sup>371</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 197.

<sup>372</sup> Information provided at the meeting with the UNP, Bogotá, December 3, 2012.

<sup>373</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124., Doc. 5 rev.1, March 7, 2006, para. 202.

## ***Recommendations***

199. Considering what is indicated in this section, the Commission recommends to the Colombian State:
1. 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.
  2. 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.
  3. 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.
  4. That it adopt the appropriate measures to adequately prevent forced disappearances.
  5. 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.
  6. That it adequately investigate, clarify, and punish the cases of forced disappearance that are still in impunity.
  7. 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.
  8. That it continue making progress in recovering the bodies of the disappeared, identifying them correctly, and appropriately delivering them to their next of kin.
  9. That it ensure that those cases under the rubric of “false positives” go forward in terms of prosecuting and punishing the direct perpetrators and the masterminds and that it continue following up on the 15 measures stipulated by the Ministry of Defense in 2008, with a view to preventing extrajudicial executions.
  10. That it adopt the measures necessary for ensuring the protection of civilians and that contribute to a precise delimitation of proportionality in the use of force in the context and outside of the situation of armed confrontation.
  11. 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.

12. That it require the competent authorities to take into account international standards on protection, especially the considerations spelled out in the “Second Report on the Situation of Human Rights Defenders.”
13. 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.
14. It urges the State to secure access to information regarding the reasons for their decisions and procedures on risk assessment in light of the existing legislation and international standards.
15. 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.
16. It urges the National Protection Unit to adopt the measures necessary for reinforcing the protection provided in the interior of Colombia, especially in rural areas. In particular, it urges the UNP to adopt urgent measures to protect those persons who are engaged in processes for land restitution and the protection of human rights as a consequence of the armed conflict.
17. 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.

CHAPTER 3  
CONSTITUTIONAL  
AND LEGAL  
FRAMEWORK



## CONSTITUTIONAL AND LEGAL FRAMEWORK

200. In this chapter, the Commission will examine the general standards on judicial guarantees and judicial protection, pertinent considerations regarding their application from the standpoint of international human rights law and international humanitarian law, given their complementary nature, and the framework of norms governing transitional justice processes. In this context, and taking account of the observations presented by the State regarding its understanding of the obligations incumbent upon it in the context of transitional justice, the Commission will make a number of considerations on how the State's international obligations in this area must be accommodated in the design of a strategy of transitional justice that comports with the *jurisprudence constante* of the inter-American system's organs for the protection of human rights and the applicable rules of IHL.

### ***A. States obligations under Articles 1(1), 8 and 25 of the American Convention***

201. In its articles 8 and 25, the American Convention recognizes the rights to judicial guarantees<sup>374</sup> and to judicial protection.<sup>375</sup> In that regard, the Inter-American Court has defined impunity as “the overall lack of investigation, tracking down, capture, prosecution and conviction of those

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<sup>374</sup> Article 8 of the American Convention reads as follows:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
  - a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
  - b. prior notification in detail to the accused of the charges against him;
  - c. adequate time and means for the preparation of his defense;
  - d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
  - e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
  - f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
  - g. the right not to be compelled to be a witness against himself or to plead guilty; and
  - h. the right to appeal the judgment to a higher court.
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.
5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

<sup>375</sup> Article 25 of the American Convention provides that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
  - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
  - b. to develop the possibilities of judicial remedy; and
  - c. to ensure that the competent authorities shall enforce such remedies when granted.

responsible for violating the rights protected by the American Convention”<sup>376</sup> and has emphasized the point that “the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.”<sup>377</sup>

202. In addition, as to the relationship between the right recognized in Article 25 of the Convention and the obligations set forth in its Articles 1(1) and 2, the Court has written that:

Article 25 is closely linked to the general obligation in Article 1.1 of the American Convention, in that it assigns duties of protection to the States Parties through their domestic legislation, from which it is clear that the State has the obligation to design and embody in legislation an effective recourse, and also to ensure the due application of the said recourse by its judicial authorities.<sup>378</sup> At the same time, the State’s general duty to adapt its domestic law to the stipulations of said Convention in order to guarantee the rights enshrined in it, established in Article 2, includes the enactment of regulations and the development of practices that seek to achieve an effective observation of the rights and liberties enshrined in it, as well as the adoption of measures to suppress the regulations and practices of any nature that imply a violation to the guarantees established in the Convention.<sup>379</sup>

203. The Court has also held that under the principle of non-discrimination recognized in Article 1(1) of the American Convention, members of groups at risk must be guaranteed access to justice, making it imperative “that States offer effective protection that considers the particularities, social and economic characteristics, as well as the situation of special vulnerability, customary law, values, customs, and traditions.”<sup>380</sup>

204. For its part, the Commission has established that when effective remedies are not in place to propel State institutions to intervene, the most vulnerable sectors of the civilian population – indigenous peoples and Afro-descendant communities, displaced children and adolescents, and women, and displaced persons, *inter alia*— are left to the mercy of armed actors who opt for strategies that instill terror and lead to the forced displacement of survivors, but that also make it difficult to ascertain what happened, relegate those killed to oblivion and create a state of confusion that makes it difficult to decipher the causes of the violence and put a stop to them through the rule of law.<sup>381</sup> The Commission recalls that States must take the measures necessary to facilitate victims’ access to adequate and effective remedies both for reporting the

<sup>376</sup> See, *inter alia*, I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, para. 186; I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 123; I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Judgment of November 25, 2000. Series C No. 70, para. 211.

<sup>377</sup> See, *inter alia*, I/A Court H.R., *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala*. Judgment of March 8, 1998. Series C No. 37, para. 173; I/A Court H.R., *Case of Blake. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, para. 64; *Case of Loayza Tamayo. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 170.

<sup>378</sup> See, *inter alia*, I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, para. 135; *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, para. 237.

<sup>379</sup> See, *inter alia*, I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 60; *Case of Castillo Petruzzi et al. v. Peru*. Merits, Reparations and Costs. Judgment of May 30, 1999. Series C No. 52, para. 207.

<sup>380</sup> See, I/A Court H.R. *Case of Rosendo Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, para. 184; *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, para. 200.

<sup>381</sup> IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, para. 29

commission of crimes and to obtain reparations for the harm suffered and in this way help prevent their repetition.<sup>382</sup>

205. In the face of this situation, the Commission has maintained that the right to truth should not be restricted through legislative or other measures. The IACHR has established that the existence of factual or legal impediments -like amnesty laws- that obstruct access to information about the facts and circumstances surrounding a violation of a fundamental right, and that stand in the way of instituting judicial remedies in domestic jurisdiction, are incompatible with the right to judicial protection recognized in Article 25 of the American Convention. The process of determining the truth requires that the right to seek and receive information be exercised freely, and that measures are taken to ensure that the judiciary is given the authority to undertake and complete the respective investigations.<sup>383</sup>
206. Whenever the conduct of those who participate in an armed conflict results in the commission of crimes against humanity, war crimes and/or violations of human rights in the form of assassinations, forced disappearances, rapes, forced movement or displacement, torture, inhumane acts aimed at causing death or inflicting serious physical and psychological pain and suffering, attacks on the civilian population or their property, and recruitment of children and adolescents, States have, under customary international law and treaties, an obligation to investigate the facts and prosecute and punish those responsible. These are serious violations of human rights that are not subject to any statute of limitations and/or amnesty; if not promptly solved, they can engage the State's international responsibility and open the door to universal jurisdiction to establish the individual criminal liability of the persons involved.<sup>384</sup> In its observations on the Draft Report, the State comments that under the Inter-American Court's judgment in the case of *El Mozote v. El Salvador*, in transitions from armed conflict to peace, the State's only obligation would be to investigate "international crimes" and punish those leaders most responsible. The Commission will respond to the State's argument in the section that concerns the normative framework on transitional justice.
207. In cases of extrajudicial executions, forced disappearances, torture and other serious violations of human rights, the case-law of the Inter-American Court has been that:

conducting *ex officio* a prompt, genuine, impartial and effective investigation is a fundamental factor and a condition for the guarantee and protection of certain rights affected by these situations, such as personal liberty, personal integrity and life. In these cases, the State authorities must conduct this investigation as an inherent juridical obligation, over and above the procedural activity of the interested parties, by all available

<sup>382</sup> IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, para. 41. Furthermore, the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law" provide that the States should: (a) make known, by official and private mechanisms, all remedies available against violations of international human rights and humanitarian law norms; (b) adopt, during judicial, administrative, or other proceedings that have a negative impact on the victims' interests, measures to protect their privacy, as appropriate, and guarantee their security, and that of their next-of-kin and witnesses against any act of intimidation or retaliation; and (c) use all appropriate diplomatic and legal means for the victims to be able to exercise their right to pursue remedies and obtain reparation for violations of international human rights and humanitarian law norms. UN, Economic and Social Council, Final Report of Special Rapporteur Cherif Biassiouni pursuant to Resolution 1999/33 of the Commission on Human Rights on "The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms" and "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law," attached to the report, E/CN.4/2000/62 January 18, 2000, p. 9.

<sup>383</sup> IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, para. 30.

<sup>384</sup> Cf. IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, para. 34.

legal means and designed to determine the truth. In addition, depending on the right that is in danger or alleged to have been violated [...], the investigation must endeavor to ensure the pursuit, capture, prosecution and eventual punishment of all the authors of the facts, especially when State agents are or may be involved.<sup>385</sup>

In complex cases, the obligation to investigate includes the duty to direct the efforts of the apparatus of the State to clarify the structures that allowed these violations, the reasons for them, the causes, the beneficiaries and the consequences, and not merely to discover, prosecute and, if applicable, punish the direct perpetrators. In other words, the protection of human rights should be one of the central purposes that determine how the State acts in any type of investigation.<sup>386</sup>

As part of the obligation to investigate extrajudicial executions [...], the State authorities must determine, by due process of law, the patterns of collaborative action and all the individuals who took part in the said violations in different ways, together with their corresponding responsibilities.<sup>387</sup> It is not sufficient to be aware of the scene and material circumstances of the crime; rather it is essential to analyze the awareness of the power structures that allowed, designed and executed it, both intellectually and directly, as well as the interested persons or groups and those who benefited from the crime (beneficiaries). This, in turn, can lead to the generation of theories and lines of investigation, the examination of classified or confidential documents and of the scene of the crime, witnesses, and other probative elements, but without trusting entirely in the effectiveness of technical mechanisms such as these to dismantle the complexity of the crime, since they may not be sufficient. Hence, it is not a question of examining the crime in isolation, but rather of inserting it in a context that will provide the necessary elements to understand its operational structure.<sup>388</sup>

208. Indeed, under the case-law of the Inter-American Court, in cases involving grave human rights violations committed in a context of massive and systematic violations, the obligation to investigate cannot be ignored or made conditional on domestic legal provisions, decisions or actions of any kind.<sup>389</sup> And while the Court has written that the duty to investigate is an obligation of means and not results,<sup>390</sup> it has also held that “every State decision that is part of the investigative process, as well as the investigation as a whole, must be directed at a specific goal, the determination of the truth and the investigation, pursuit, capture, prosecution and, as

<sup>385</sup> See, *inter alia*, I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 117; *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 101; *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 143.

<sup>386</sup> I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 118.

<sup>387</sup> See, I/A Court H.R. *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations and Costs, Judgment of November 27, 2008. Series C No. 192, para. 101; *Case of the “Mapiripán Massacre” v. Colombia*. Judgment of September 15, 2005. Merits, Reparations and Costs, Series C No. 134, para. 219.

<sup>388</sup> See, *inter alia*, I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 119.

<sup>389</sup> See, *inter alia*, I/A Court H.R. *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012 Series C No. 250, para. 190; *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011 Series C No. 232, para. 127.

<sup>390</sup> See, *inter alia*, I/A Court H.R. *Case of Pacheco Teruel et al. v. Honduras*. Merits, Reparations and Costs. Judgment of April 27, 2012. Series C No. 241, para. 129; *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 177.

appropriate, punishment of those responsible for the facts.”<sup>391</sup> Therefore, investigation and prosecution of serious cases of human rights violations are basic elements of the rights established in articles 8 and 25 of the American Convention.

## ***B. Justice for cases of human rights and international humanitarian law violations***

209. The Commission observes with concern that one of the central and most pressing challenges for Colombia today is to correct the problem of impunity that attends serious human rights violations and breaches of IHL. After reviewing the information summarized throughout this report, the inevitable conclusion is that major obstacles still make it very difficult for victims of human rights violations and their next of kin to obtain justice in Colombia.
210. As the State itself has acknowledged, this situation is a consequence of the lack of an effective response by the system to process the high number of cases that have occurred in the context of the internal armed conflict or that have been facilitated by it, as well as certain structural obstacles that keep judicial proceedings from being resolved in a reasonable time, go forward in a coordinated manner with investigations that could turn out to be related, and not only lead to the identification and punishment of the persons responsible for human rights violations, but also to the dismantling of the structures that facilitated the commission of those violations.<sup>392</sup>
211. The Commission appreciates the efforts taken by the State to correct these problems, make its system of justice more efficient, and endow it with more technical, human and financial resources. The Commission must also make the point that the many vehicles and laws in force to investigate, prosecute and punish cases involving human rights violations and breaches of IHL must be coordinated and provide each other with feedback.
212. In the next paragraphs, the Commission will recount the information it has on the question of justice in Colombia. In that regard, in order to evaluate the application of the principle of complementarity established in the Rome Statute, the Prosecutor from the ICC did an analysis of the internal judicial proceedings. She indicated that as of November, 2012, convictions have been handed down against 218 members of the FARC and 28 members of the ELN, for such crimes as murder, forced displacement, hostage-taking, torture and recruitment of children and adolescents. Some high-ranking members of these groups, among them heads of the FARC and of the ELN and their respective seconds, have been convicted *in absentia*. Eight current

<sup>391</sup> See, *inter alia*, I/A Court H.R. *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012 Series C No. 250, para. 192; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Merits, Reparations and Costs. Judgment of September 1, 2010, Series C No. 217, para. 153; *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 131.

<sup>392</sup> Information provided at the meeting with the Office of the Attorney General authorities, held in Bogotá on December 4, 2012. Also, during the visit the Commission received information concerning a work stoppage by judges, prosecutors and employees of the Judiciary and the Office of the Attorney General of the Nation in connection with the right to income equalization of municipal and circuit court judges, which requires that they receive 80% of what their immediate supervisor receive, salary and benefits combined. Note from ASOJUDICIALES, November 21, 2012.



and former members of the Secretariat of the FARC –its highest-ranking body- and four current members of the ELN’s Central Command have also been convicted *in absentia*.<sup>393</sup>

213. According to information compiled by the IACHR as it was preparing its report, 14 persons had either been found guilty or were convicted in Justice and Peace proceedings. The ICC Prosecutor reported that, according to its analysis, as a result of the facts brought to light in the Justice and Peace proceedings, 10,780 cases had been brought in the ordinary justice system, to investigate the possible responsibility of third parties implicated in the incidents<sup>394</sup> and 23 paramilitary leaders were found guilty in courts of ordinary jurisdiction.<sup>395</sup>
214. According to the ICC Prosecutor, the available information indicates that of the 57 leaders or commanders of armed paramilitary groups, 46 are alive and 30 have been found guilty of crimes that fall under the ICC’s jurisdiction; these crimes include murder, forcible displacement, enforced disappearance, abduction, and child recruitment. Another 13 are being prosecuted under the Justice and Peace Law, and five are standing trial in courts of ordinary jurisdiction.<sup>396</sup> Of the 30 paramilitary leaders already convicted, 26 were convicted of murder, 11 of forcible displacement, 6 of kidnapping, 3 of child recruitment, and 2 of rape.<sup>397</sup> Seven of the ten most senior paramilitary leaders extradited to the US have also been convicted by ordinary courts, even after their extradition.<sup>398</sup>
215. The Prosecutor also reported that the statements given by demobilized members revealed that informal agreements had been struck between paramilitary groups and certain members of Congress, public officials, members of the Army, the Police and private entities. Reportedly, public officials at the local, regional and national level entered into informal arrangements with paramilitary leaders whereby the latter used their military domination over large areas of the country to secure electoral victories, security guaranties, for economic profit and ultimately to take control over the State,<sup>399</sup> thereby allowing paramilitary power to infiltrate the institutions of the State.<sup>400</sup> It was also reported that as of August 2012, over 50 former congressmen had been convicted by the Supreme Court,<sup>401</sup> and three senators and a governor were convicted of murder, forced disappearances, abduction and torture.<sup>402</sup>
216. In that regard, the Commission has closely followed the domestic proceedings associated with the investigation into the so-called “parapolitics” and, since 2008, has observed the threats and harassment to which some magistrates involved in those investigations have been subjected.<sup>403</sup>

<sup>393</sup> Cf. International Criminal Court, Office of the Prosecutor, *Situation in Colombia, Interim Report*, November 2012, para. 12.

<sup>394</sup> Cf. International Criminal Court, Office of the Prosecutor, *Situation in Colombia, Interim Report*, November 2012, para. 165.

<sup>395</sup> Cf. International Criminal Court, Office of the Prosecutor, *Situation in Colombia, Interim Report*, November 2012, para. 166.

<sup>396</sup> Cf. International Criminal Court, Office of the Prosecutor, *Situation in Colombia, Interim Report*, November 2012, para. 166.

<sup>397</sup> Cf. International Criminal Court, Office of the Prosecutor, *Situation in Colombia, Interim Report*, November 2012, para. 169.

<sup>398</sup> Cf. International Criminal Court, Office of the Prosecutor, *Situation in Colombia, Interim Report*, November 2012, para. 171.

<sup>399</sup> Cf. International Criminal Court, Office of the Prosecutor, *Situation in Colombia, Interim Report*, November 2012, para. 174.

<sup>400</sup> Supreme Court of Justice, Chamber of Criminal Cassation. Ruling against José María Imbeth Bermúdez, January 12, 2012, at 35227, p. 5, para. 4.

<sup>401</sup> Cf. International Criminal Court, Office of the Prosecutor, *Situation in Colombia, Interim Report*, November 2012, para. 177.

<sup>402</sup> Cf. International Criminal Court, Office of the Prosecutor, *Situation in Colombia, Interim Report*, November 2012, para. 178.

<sup>403</sup> IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia, para. 137; IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 193; IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, para. 220. See, also, IACHR, *Hearing on Allegations of alliances between politicians and paramilitaries in Colombia*, March 23, 2009. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=8>.

217. With respect to acts attributable to State officials, the Prosecutor of the ICC held that, according to the Colombian authorities, 207 members of the armed forces have been convicted of the murder of civilians within ICC temporal jurisdiction, with sentences ranging from 9 to 51 years of imprisonment. The Prosecutor also reported that her Office had information about 27 convictions for abetting and concealment of the murder of civilians, with sentences ranging from 2 to 6 years' imprisonment. The Human Rights and International Humanitarian Law Unit is investigating 1,669 cases of extrajudicial killings of civilians attributed to military forces and represented as combat death; the number of victims could reach 2,896.<sup>404</sup>
218. From the information received, the ICC Prosecutor concluded that: (i) with respect to the FARC: there are numerous proceedings for murder, 15 convictions and 2 ongoing proceedings for the crime of forcible displacement, 4 convictions and 20 ongoing proceedings for the crime of forced disappearance,<sup>405</sup> 5 convictions and 8 ongoing proceedings for the crime of torture, 31 convictions and one ongoing proceeding for illegal recruitment and use of children, 19 convictions for targeting indigenous and Afro-Colombian peoples; (ii) with respect to the ELN: there are numerous proceedings ongoing for murder, 2 convictions for forcible displacement, one ongoing proceeding for enforced disappearances, 5 convictions for torture, 4 convictions for the illegal recruitment and use of children; (iii) in respect of paramilitary groups: numerous proceedings are ongoing for murder, 71 convictions and 25 proceedings ongoing for forcible displacement, 2 convictions and 14 proceedings ongoing for rape and sexual violence, 130 convictions and 422 proceedings ongoing for forced disappearances,<sup>406</sup> two convictions and 62 proceedings ongoing for torture, 19 convictions for illegal recruitment and use of children, and 141 convictions and 11 proceedings ongoing for targeting indigenous and Afro-Colombian people; (iv) with respect to the Army: numerous proceedings are ongoing for the crime of murder, 2 proceedings are ongoing for forcible displacement, 2 convictions and 3 proceedings ongoing for rape and sexual violence, 15 convictions and 110 proceedings ongoing for forced disappearances,<sup>407</sup> 41 convictions and 29 proceedings ongoing for the crime of torture, and 29 convictions and 2 proceedings ongoing for targeting indigenous and Afro-Colombian persons; and (v) with respect to members of the Police and other State actors: three convictions for murder, one conviction and one ongoing proceeding for forcible displacement, two convictions and 53 ongoing proceedings for enforced disappearances, 5 convictions and 22 ongoing proceedings for torture, and one ongoing proceeding for targeting indigenous and Afro-Colombian persons.<sup>408</sup>
219. During the visit the National Human Rights and International Humanitarian Law Unit indicated that its mandate is to investigate all cases of violations of human rights and breaches of IHL. It also reported that while the Unit started with 25 prosecutors, it had been strengthened and now has 115 prosecutors -25 of whom are assigned exclusively to the Labor Union Subunit; it also has 300 judicial police detectives. It explained that special projects are underway concerning: (i) crimes committed by State agents (extrajudicial executions); (ii) trade unions; (iii) cases before the inter-American system; and (iv) members of the *Unión Patriótica*. The Unit also reported that 9,300 investigations are currently underway, 7,000 cases have been achieved, and 3000 convictions have been won since 1994. Finally the Unit acknowledged that

<sup>404</sup> International Criminal Court, Office of the Prosecutor, *Situation in Colombia, Interim Report*, November 2012, para. 180.

<sup>405</sup> The Prosecutor pointed out that the alleged conduct includes cases which are classified under Colombian law as enforced disappearance committed by non-state entities.

<sup>406</sup> The alleged conduct includes cases which, under Colombian law, are classified as enforced disappearance committed by non-state entities.

<sup>407</sup> The alleged conduct includes cases which, under Colombian law, are classified as enforced disappearance committed by non-state entities.

<sup>408</sup> International Criminal Court, Office of the Prosecutor, *Situation in Colombia, Interim Report*, November 2012, Table 2.

investigations into cases involving crimes allegedly committed by agents of the State need to be reinforced.<sup>409</sup>

220. On the matter of discipline, the Office of the General Prosecutor indicated that in 2012: (i) 23 disciplinary investigations were launched for the murder of a protected person (18), forced disappearance (2), torture (1), irregularities in house searches and unlawful arrest (1), and violation of the custody obligation (1), against 121 members of the National Army, the National Police and the DAS;<sup>410</sup> (ii) formal charges were filed in 32 cases of the murder of a protected person (29), torture (1), forced disappearance and murder (2) against 175 members of the National Army and Navy;<sup>411</sup> (iii) 32 lower court rulings were delivered, 17 convictions and 14 acquittals of the murder of a protected person, torture, illegal arrest, forced disappearance, and failure to comply with the custody obligation.<sup>412</sup> The Office of the General Prosecutor also reported that in 2012, the Prosecutor's Office agreed to 73 appeals filed seeking withdrawal, and 31 petitions were filed to change archive decisions on investigations being conducted by the Office of the Prosecutor Delegate.<sup>413</sup>
221. The Office of the General Prosecutor mentioned a number of particularly important cases involving situations in which police "arbitrarily detained, tortured and killed without cause,"<sup>414</sup> "entered a home unlawfully,"<sup>415</sup> "after torturing [the victim], killed him and then displayed his body, armed and in military dress,"<sup>416</sup> "abuses and degrading treatment"<sup>417</sup> were perpetrated, and police were responsible for the "murder of a protected person."<sup>418</sup> In these cases, the penalty imposed was dismissal and general disqualification from public office or public service for varying periods of time.<sup>419</sup> The Commission notes that some of these behaviors match the elements of "false positive" cases.
222. As for the illegal armed groups that emerged after the demobilization of paramilitary organizations, the State pointed to the following: (i) the dismantling of the "Alta Guajira" and "Los Paisas" groups; (ii) "neutralization" of the head of the "Erpac" group; (iii) the trial of 272

<sup>409</sup> Information provided at the meeting with Office of the Attorney General authorities, held in Bogotá on December 4, 2012.

<sup>410</sup> Office of the Prosecutor of the Nation, *Report on Disciplinary Action. Progress and Challenges. 2009-2012*, November 29, 2012, p. 9.

<sup>411</sup> Office of the Prosecutor of the Nation, *Report on Disciplinary Action. Progress and Challenges. 2009-2012*, November 29, 2012, pp. 9-10.

<sup>412</sup> Office of the Prosecutor of the Nation, *Report on Disciplinary Action. Progress and Challenges. 2009-2012*, November 29, 2012, p. 10.

<sup>413</sup> Office of the Prosecutor of the Nation, *Report on Disciplinary Action. Progress and Challenges. 2009-2012*, November 29, 2012, p. 12.

<sup>414</sup> Office of the Prosecutor of the Nation, *Report on Disciplinary Action. Progress and Challenges. 2009-2012*, November 29, 2012, p. 12.

<sup>415</sup> Office of the Prosecutor of the Nation, *Report on Disciplinary Action. Progress and Challenges. 2009-2012*, November 29, 2012, p. 14.

<sup>416</sup> Office of the Prosecutor of the Nation, *Report on Disciplinary Action. Progress and Challenges. 2009-2012*, November 29, 2012, p. 14.

<sup>417</sup> Office of the Prosecutor of the Nation, *Report on Disciplinary Action. Progress and Challenges. 2009-2012*, November 29, 2012, p. 14.

<sup>418</sup> Office of the Prosecutor of the Nation, *Report on Disciplinary Action. Progress and Challenges. 2009-2012*, November 29, 2012, p. 16.

<sup>419</sup> The Office of the Prosecutor of the Nation also mentioned that a Group to Monitor Disciplinary Proceedings had been created under the Justice and Peace Law to ensure that the judge is attentive to all the accusations made in that venue. It was also reported that since May 2011, 555 accusations against public officials have been followed up; the State has taken the lead in instituting 395 cases, and 41 cases related to some disciplinary failing because of serious violations of human rights and breaches of international humanitarian law are in process in the Office of the Disciplinary Delegate for the Defense of Human Rights. Office of the Prosecutor of the Nation, *Report on Disciplinary Action. Progress and Challenges. 2009-2012*, November 29, 2012, p. 18.

members of the “Erpac” group and senior heads of the “Los Machos” group; (iv) the trial of the senior-most head of the “Los Rastrojos” group; (v) extraditions to the United States of 5 top-level leaders, on charges of drug trafficking, and (vi) two captures in Venezuela. The State also observed that in the second half of 2012, 29% of these groups were dismantled and 5,175 members were captured; the armed contingents of the “Los Rastrojos” group was reduced by 35% when 1,910 members were captured, including 8 regional heads.<sup>420</sup>

223. During the visit, civil society told the Commission that human rights violations and breaches of IHL continue to go unpunished and serious difficulties persist where access to justice is concerned. They particularly cited what little in the way of results the Justice and Peace proceedings had accomplished, and mentioned the failure to put together a full accounting of the truth, with the result that investigations have been conducted piecemeal, based on statements but no forensic work; they noted that only 30% of the cases had reportedly gone through the ordinary justice system.<sup>421</sup>
224. During the visit the Commission also learned of a number of obstacles that interfere with the effectiveness of justice measures, such as the following: (i) the absence of a global approach, opting instead for a compartmentalized approach to each individual case, devoid of any connection to other cases and of any examination of the decision-making structures of the groups responsible for human rights and IHL violations; (ii) difficulties with reconstruction of the crime scene, especially in old cases; (iii) random distribution and assignment of cases to prosecutors; (iv) an excessive caseload on prosecutors; (v) evaluating the prosecutors on the basis of case progress, with the result that prosecutors may be tempted to prioritize cases on the basis of convenience; (vi) delays of as much as five years in identifying victims; (vii) little knowledge of the applicable law and difficulties with application of the law given the interaction of the domestic and international systems; (viii) a lack of knowledge of the military structures, practices and culture, and (ix) deference to military authorities.<sup>422</sup>
225. The Commission must again make the point that very few police or military have been convicted of extrajudicial executions and no significant progress has been seen in the investigations of cases of forced disappearance and torture.<sup>423</sup> The Commission also considers that forcible displacement, rape and child recruitment are still invisible crimes in the investigation of human rights violations.
226. Notwithstanding the in-depth analysis that will follow, the Commission does not have detailed information on the status and progress of the 1,124 cases involving politicians, 1,023 cases

<sup>420</sup> Cf. Ministry of Foreign Affairs of Colombia, Document titled “BACRIM”, received by the IACHR on May 3, 2013.

<sup>421</sup> Information provided at the meeting with civil society, held in Bogotá on December 3, 2012.

<sup>422</sup> Furthermore, the Commission received information about certain difficulties that would adversely affect the development of the judicial proceedings, such as: (i) a lack of judicial independence; (ii) intimidation, threats, and attacks against witnesses, investigators, prosecutors, judges, attorneys and victims; (iii) political stigmatization of the prosecutors who have charged members of the Armed Forces and National Police with serious crimes; (iv) destruction of evidence and evidence tampering; (v) parallel investigations undertaken by the military criminal justice system into murder cases and jurisdictional problems; (vi) a lack of cooperation among institutions in ongoing investigations with respect to documents, for example; (vii) delaying tactics caused by defense counsel; and (viii) the location of the prosecutor’s offices inside military bases. International Verification Mission on the Situation of Human Rights Protection in Colombia, November 28 to December 2, 2011, p. 16.

<sup>423</sup> See, *inter alia*, IACHR, *Annual Report 2006*, OEA/Ser.L/V/II.127, Doc. 4, rev. 1, March 3, 2007, Chapter IV. Colombia; IACHR, *Annual Report 2007*, OEA/Ser.L/V/II.130, Doc. 22 rev. 1, December 29, 2007, Chapter IV. Colombia; IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia; IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia; IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011. Chapter IV. Colombia; IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011. Chapter IV. Colombia.

involving members of the Armed Forces, 393 cases involving public servants and 10,329 cases involving third persons and the demobilized that had allegedly been referred to the ordinary justice system based on information brought to light in the Justice and Peace proceedings.<sup>424</sup>

227. Furthermore, of the more than 30,000 people reportedly demobilized between November 2003 and mid 2006, 3,734 expressed an interest in availing themselves of the benefits offered under the Justice and Peace Law. However, 1,189 applicants decided not to pursue the process because there were no complaints against them on record with the Prosecutor's Office. The Commission does not have the specifics on the court cases being instituted with respect to the demobilized who, in their first application for the process under the Justice and Peace Law, acknowledged having committed "atrocities, terrorism, abduction, genocide, murder off the field of combat or placing the victim in a defenseless state", even when they ultimately do not confirm their willingness to pursue the Justice and Peace process.<sup>425</sup>
228. The Commission believes that the State must assign greater priority to solving the human rights violations perpetrated by every actor of the internal armed conflict, and determine, on a case-by-case detailed basis, what the illegal armed groups that emerged after the demobilization of paramilitary organizations are, what they do and what connections they may have to State authorities.
229. In addition, working through the ordinary justice system, the State must properly follow up on any information brought to light in the Justice and Peace proceedings so as to ensure a full and accurate accounting of the truth and a thorough investigation. Any progress in the domestic proceedings will hinge upon the guarantee of justice in individual cases and be a condition *sine qua non* for the process of piecing together the full truth and rebuilding the Colombian people's memory, while guaranteeing non-repetition and ensuring the sustainability of the reparations processes implemented by the State.
230. Finally, the Commission notes with concern that there are still complaints that military jurisdiction is being used to investigate human rights violations. Time and time again the Commission has observed that the military criminal justice system does not have jurisdiction to investigate cases of human rights violations, which is why the recent constitutional amendment on the subject of military criminal justice –Legislative Act 02 of 2012- was a serious setback and could become an obstacle to the State's fulfillment of its obligations to afford judicial guarantees and judicial protection. This observation will be examined at greater length in the corresponding section.
231. The Commission understands the dimensions of the challenges in the area of justice, but observes that the State has not yet marshaled all efforts possible to tackle those challenges. Furthermore, as will be discussed later in this document, some measures recently taken by the State –without having taken full advantage of the existing resources and based on the system's supposed inadequacy- could turn out to be incompatible with the right of the victims of serious human rights violations and their next of kin to judicial guarantees and judicial protection. The Commission must emphasize that measures taken by the State in the area of justice must never amount to a complete failure to investigate a case of human rights violations. The Commission recalls that the principle of the complementarity of the international justice system is based on the premise that the State bears primary

<sup>424</sup> Information available [in Spanish] at: <http://www.fiscalia.gov.co:8080/justiciapaz/Index.htm>

<sup>425</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 25.

responsibility for ensuring justice at the domestic level, in respect of any and all acts committed with its territory or under its jurisdiction that constitute violations of human rights and breaches of IHL.

### **C. Complementarity of international human rights law and international humanitarian law**

232. For more than five decades now, Colombia has been gripped in an internal armed conflict, which means that the obligations of the State are governed by the norms of international human rights law and by the norms of IHL. Article 1 of Protocol II Additional to the Geneva Conventions of 1949 (hereinafter “Protocol II”) defines non-international armed conflicts as:

all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

233. As for the analysis of the elements that must be present to classify a situation as an internal armed conflict, the ICC has written that the intensity can be determined on the basis of certain factual indicators such as “seriousness of attacks and potential increase in armed clashes, their spread over territory and over a period of time, the increase in the number of government forces, the mobilization and the distribution of weapons among both parties to the conflict, as well as whether the conflict has attracted the attention of the United Nations Security Council, and, if so, whether any resolutions on the matter have been passed.”<sup>426</sup> In determining whether a force was an organized body, a number of factors must be considered, among them the following: the force or group’s internal hierarchy; the command structure and rules; the extent to which military equipment, including firearms, are available; the force or group’s ability to plan military operations and put them into effect; and the extent, seriousness, and intensity of any military involvement. The ICC has also written that “organized armed groups” must have a sufficient degree of organization in order to enable them to carry out protracted armed violence.<sup>427</sup>
234. While there have been precedents since the start of the second half of the twentieth century,<sup>428</sup> since 1996 the rule of interpretation of international organizations and courts alike has been

<sup>426</sup> Cf. International Criminal Court, *Prosecutor v. Thomas Lubanga Dyilo*, “Judgment pursuant to Article 74 of the Statute, Situation in the Democratic Republic of the Congo,” March 14, 2012, ICC-01/04-01/06-2842, para. 533.

<sup>427</sup> Cf. International Criminal Court, *Prosecutor v. Thomas Lubanga Dyilo*, “Judgment pursuant to Article 74 of the Statute, Situation in the Democratic Republic of the Congo,” March 14, 2012, ICC-01/04-01/06-2842, paras. 536-537.

<sup>428</sup> See, *inter alia*, UN General Assembly Resolution 2444 of December 19, 1968; UNGA Resolution 2675 (XXV), *Basic Principles for the Protection of Civilian Populations in Armed Conflicts*, December 9, 1970; Preamble to the Protocol Additional II to the

that both bodies of law complement each other. Thus, in its *Advisory Opinion on the Threat or Use of Nuclear Weapons*, the International Court of Justice (hereinafter the “ICJ”) made reference to the complementary application of both branches of international law and observed that:

the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. Respect for the right to life is not, however, such a provision. In principle, the right not arbitrarily to be deprived of one's life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities. Thus whether a particular loss of life, through the use of a certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant, can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself.<sup>429</sup>

235. One year later, in the case of *Juan Carlos Abella v. Argentina*, the Inter-American Commission held that:

It is, moreover, during situations of internal armed conflict that these two branches of international law must converge and reinforce each other.<sup>430</sup> For example, both Common Article 3 and Article 4 of the American Convention protect the right to life and, thus, prohibit, *inter alia*, summary executions in all circumstances. Claims alleging arbitrary deprivations of the right to life attributable to State agents are clearly within the Commission's jurisdiction. But the Commission's ability to resolve claimed violations of this non-derogable right arising out of an armed conflict may not be possible in many cases by reference to Article 4 of the American Convention alone. This is because the American Convention contains no rules that either define or distinguish civilians from combatants and other military targets, much less, specify when a civilian can be lawfully attacked or when civilian casualties are a lawful consequence of military operations. Therefore, the Commission must necessarily look to and apply definitional standards and relevant rules of humanitarian law as sources of authoritative guidance in its resolution of this and other kinds of claims alleging violations of the American Convention in combat situations. To do otherwise would mean that the Commission would have to decline to exercise its jurisdiction in many cases involving indiscriminate attacks by State agents resulting in a considerable number of civilian casualties. Such a result would be manifestly absurd in light of the underlying object and purposes of both the American Convention and humanitarian law treaties.<sup>431</sup> The purpose of [Article 29(b) of the Convention] is to prevent States Parties from relying on the American Convention as a ground for limiting more favorable or less restrictive rights to which an individual is otherwise entitled under either national or international law. Thus, where there are differences between legal standards governing the same or comparable rights in the American Convention and a humanitarian law instrument, the Commission is duty bound to give legal effort to the provision(s) of

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Geneva Conventions of August 12, 1949, relating to the Protection of Victims of Non-International Armed Conflicts, December 12, 1977.

<sup>429</sup> International Court of Justice, *Advisory Opinion on the Threat or Use of Nuclear Weapons*, July 8, 1996, para. 25.

<sup>430</sup> IACHR, Report No. 55/97, Case 11,137, Merits, *Juan Carlos Abella*, Argentina, November 18, 1997, para. 160.

<sup>431</sup> IACHR, Report No. 55/97, Case 11.137, Merits, *Juan Carlos Abella*, Argentina, November 18, 1997, para. 161.

that treaty with the higher standard(s) applicable to the right(s) or freedom(s) in question. If that higher standard is a rule of humanitarian law, the Commission should apply it.<sup>432</sup>

236. The ICJ reiterated this line of reasoning in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, where it wrote that:

the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the International Covenant on Civil and Political Rights. As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. In order to answer the question put to it, the Court will have to take into consideration both these branches of international law, namely human rights law and, as *lex specialis*, international humanitarian law.<sup>433</sup>

237. Thereafter, in the *Case Concerning Armed Activities on the Territory of the Congo (RDC v. Uganda)*, the ICJ recalled what it had written in the Advisory Opinion and concluded that “both branches of international law, namely international human rights law and international humanitarian law, would have to be taken into consideration.”<sup>434</sup>

238. More recently, in the case of the *Santo Domingo Massacre v. Colombia*, the Inter-American Court explained its position on the subject of the application of IHL and wrote that although:

[...] the Court lacks competence to declare that a State is internationally responsible for the violation of international treaties that do not attribute the said competence to it, it may observe that certain acts or omissions that violate human rights under the treaties that it is competent to apply also violate other international instruments that protect the individual, such as the 1949 Geneva Conventions and especially their common Article 3. In addition, in the case of *Las Palmeras v. Colombia*, the Court indicated, in particular, that the relevant provisions of the Geneva Conventions could be taken into account as elements for the interpretation of the American Convention.<sup>435</sup>

239. The Court also wrote that by using IHL as a rule of interpretation that complements the treaty-based provisions, the Court is not establishing a hierarchy between branches of law, because the applicability and relevance of IHL in situations of armed conflict is evident. This only means that the Court can observe the regulations of IHL as the specific law in this area, in order to make a more specific application of the provisions of the Convention when defining the scope of the State’s obligations.<sup>436</sup>

<sup>432</sup> IACHR, Report No. 55/97, Case 11.137, Merits, *Juan Carlos Abella*, Argentina, November 18, 1997, para. 165.

<sup>433</sup> International Court of Justice, Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, July 9, 2004, para. 106.

<sup>434</sup> International Court of Justice, *Armed Activities on the Territory of the Congo (RDC v. Uganda)*, December 19, 2005, para. 216.

<sup>435</sup> I/A Court H.R. *Case of the Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012 Series C No. 259, para. 23.

<sup>436</sup> I/A Court H.R. *Case of the Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012 Series C No. 259, para. 24.



## D. Normative framework for transitional justice

240. Based on its mandate and functions and its advisory role to the OAS member States, to its General Secretariat and to the MAPP/OAS, transitional justice in Colombia has been a matter of key interest to the Inter-American Commission. In following this process, the IACHR has assessed a series of steps taken by the State and has indicated the applicable international human rights standards. Among the United Nations, the parameters established for analyzing these mechanisms are in the *Updated set of principles for the protection and promotion of human rights through action to combat impunity*,<sup>437</sup> the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*<sup>438</sup> and resolutions 12/11 and 12/12 of the Human Rights Council, titled *Human rights and transitional justice* and *Right to the Truth*,<sup>439</sup> respectively.<sup>440</sup>
241. The Commission recognizes that Colombia has used mechanisms of transitional justice in the midst of an ongoing armed conflict that is not international in nature, which poses additional challenges. Furthermore, at the present time there are several laws in effect that establish different systems, which will likely undergo additional adjustments when a peace process eventually takes hold. In this regard, the MAPP/OAS, among other sources, have pointed to the problems associated with implementing a system of transitional justice in the context of an ongoing conflict, and to the legal uncertainties attributable to the amendment of the applicable legal systems and to the fact that multiple transitional justice mechanisms are in place at the same time.
242. Against this backdrop, the Commission has observed that over the last two years in particular, a number of amendments have been introduced in the Constitution and the laws, some of which are intended to “harmonize” and give coherence to the transitional justice framework, such as what the State calls the “Juridical Framework for Peace”. In fact, in its observations on the Draft Report, the State emphasized the fact that it has devised a “transitional justice strategy” reflected in the Legal Framework for Peace, which it regards as the “best way of complying with the various international obligations that the Colombian State has undertaken.”<sup>441</sup>
243. In its observations on the Draft Report, Colombia observed that its understanding of the State’s obligations with respect to investigation, prosecution and punishment was that the scope of those obligations would differ depending on whether the context was one of transition from dictatorship to democracy, or transition from the end of a conflict to peace.

<sup>437</sup> UN, 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. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>.

<sup>438</sup> UN, General Assembly, Resolution 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, December 16, 2005. Available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/60/147](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/60/147).

<sup>439</sup> UN, Human Rights Council, Resolution 12/11 *Human rights and transitional justice*, October 1, 2009; Resolution 12/12, *Right to the truth*, October 1, 2009. Available at: *Report of the Human Rights Council on its 12th session*, October 1, 2009, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/118/28/PDF/G1011828.pdf?OpenElement>.

<sup>440</sup> Expert report by Javier Ciurlizza in Case 12,573, *Marino López et al. (Operation Genesis) v. Colombia*. Available at: <http://vimeo.com/60121157>

<sup>441</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013. Annex 1. Relationship between the Legal Framework for Peace and International Law.

244. The State pointed out that “it is not true that [international law] orders prosecution of ‘all’ serious human rights violations and ‘all’ serious violations of international humanitarian law, and punishment of ‘all’ those responsible for them [...]”<sup>442</sup> Here, the State argued that one factor that has to be considered is that “such acts are exposed and dealt with in the framework of a transitional justice amid the transition from an armed conflict to peace.”<sup>443</sup> This is the State’s interpretation of what the Inter-American Court wrote concerning the provisions of Protocol II Additional to the Geneva Conventions to the effect that transitions to peace, “the obligation to investigate, prosecute and punish must balance international humanitarian law and the peace agreements themselves, and that the prohibition against granting amnesties in these cases points up the fact that amnesties cannot be granted in cases involving international crimes.”<sup>444</sup>

245. The Commission must begin by acknowledging that in a peace-seeking process, tools of transitional justice can be used, which will have their own characteristics to accomplish that objective. As the UN Secretary-General wrote in his report titled *The Rule of Law and transitional justice in conflict and post-conflict societies*, transitional justice initiatives applied consistently toward their intended objective:

promote accountability, reinforce respect for human rights and are critical to fostering the strong levels of civic trust required to bolster rule of law reform, economic development and democratic governance. Transitional justice initiatives may encompass both judicial and non-judicial mechanisms, including individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals.<sup>445</sup>

246. In the specific case of Colombia, the IACHR has often emphasized “the need to put an end to the violence inflicted on the people of Colombia [during the past four decades] through an effective negotiation process aimed at disarming the parties in the conflict.” In this regard, the Commission has monitored the implementation of the Justice and Peace Law as an instrument of transitional justice.<sup>446</sup>

247. Bearing in mind the Commission’s recognition of the fact that transitional justice can be a valid means to help achieve peace, the IACHR is reminded that when devising such frameworks certain obligations must be observed for the sake of compliance with international human rights. Addressing the importance of observing those obligations, the UN Special Rapporteur on Truth, Justice, Reparation and Guarantees of Non-repetition wrote that:

Transitional justice is not the name for a distinct form of justice, but of a strategy for achieving justice for redressing massive rights violations in times of transition. Redress cannot be achieved without truth, justice, reparations and guarantees of non-recurrence. [...] Only a comprehensive approach to the implementation of these measures can effectively respond to this task and put the victims at the center of all responses, [...] “The recognition of victims as individuals and holders of rights is essential in any attempts to

<sup>442</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013. Annex 1. Relationship between the Legal Framework for Peace and International Law.

<sup>443</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013. Annex 1. Relationship between the Legal Framework for Peace and International Law.

<sup>444</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 200.

<sup>445</sup> UN, Security Council, *Report of the Secretary-General: The Rule of Law and transitional justice in conflict and post-conflict societies*, S/2011/634, October 12, 2011, para. 67.

<sup>446</sup> IACHR, Statement of the Inter-American Commission on Human Rights on the application and scope of the Justice and Peace Law in the Republic of Colombia, 2006, para. 1.

redress massive human rights violations and prevent their recurrence. Reconciliation cannot constitute a new burden placed on the shoulders of those who have already been victimized.<sup>447</sup>

248. In keeping with the above, regarding the obligations that must be observed in a context of transitional justice, in his report on *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* the UN Secretary-General observed that the Security Council should consider some explicit reference to the need for transitional justice mechanisms and then encouraged it “to reject any endorsement of amnesties for genocide, war crimes, crimes against humanity or gross violations of human rights.”<sup>448</sup>

249. In the case of Colombia, for more than a decade the Commission has said the following:

Forging peace is indissolubly linked to investigating, judging, and making reparations for human rights violations, especially those committed by State agents or by those who rely on their support or acquiescence. The search for an authentic peace should be grounded in the observance of human rights. The rule of law should provide the formulas for making a determination as to the truth, to try those who violate the laws in force and make reparation to the victims. To respond lawfully and effectively to violations of fundamental rights, the administration of justice requires laws in line with society's needs, and in line with general principles such as the right of access to justice, the impartiality of the court or judge, the procedural equality of the parties, and the enforceability and effectiveness of court decisions.<sup>449</sup>

250. Bearing in mind that international human rights law demands that certain elements be observed in transitional justice systems, the case law of the organs of the inter-America system have singled out certain principles that must be followed when crafting legal mechanisms in order to ensure the rights to the truth, justice and reparations for victims for the conflict. For the IACHR, those international obligations must be fully observed, both in their scope and application, and any provisions in the law that could obstruct the performance of those obligations are inadmissible.

251. Here, the Commission must make the point that in order for any transitional justice system to establish a lasting peace, it must function as an incentives system useful in getting at the truth, identifying and punishing those responsible, and redressing the victims. The IACHR has observed that in enforcing a transitional justice law, a rigorous examination must be done to determine whether the truth and reparations components have been satisfied, as this is a necessary condition precedent for a lesser sentence, for example.<sup>450</sup> For its part, in the case of the *La Rochela Massacre*, the Inter-American Court made specific reference to the Colombian State's obligations in applying a transitional justice system, like the Justice and Peace Law, and

<sup>447</sup> Office of the United Nations High Commissioner for Human Rights in Colombia. *Transitional Justice is not a “soft” form of Justice*, UN Special Rapporteur, Pablo de Greiff, September 11, 2012. Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12496&LangID=E>. See also, UN, Human Rights Council, 21st session, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/21/46, August 9, 2012.

<sup>448</sup> UN, Security Council, *Report of the Secretary-General: The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2011/634, October 12, 2011, para. 67.

<sup>449</sup> IACHR, *Third Report on the situation of human rights in Colombia*, February 26, 1999. Final considerations, paragraph 2.

<sup>450</sup> IACHR, *Statement of the Inter-American Commission on Human Rights on the application and scope of the Justice and Peace Law in the Republic of Colombia*, 2006, para. 38.

specified the “principles, guarantees and duties” that the State must observe. In this case, the Inter-American Court wrote that:

[i]n order for the State to satisfy its duty to adequately guarantee the range of rights protected by the Convention, including the right to judicial recourse, and the right to know and access the truth, the State must fulfill its duty to investigate, try, and, when appropriate, punish and provide redress for grave violations of human rights.<sup>451</sup>

252. In that judgment, and specifically on the question of the truth, the Court wrote that “In cases of grave violations of human rights, the positive obligations inherent in the right to truth demand the adoption of institutional structures that permit this right to be fulfilled in the most suitable, participatory, and complete way. These structures should not impose legal or practical obstacles that make them illusory.” As for the justice component, the Court held that “[t]o achieve this objective, the State should observe due process and guarantee the principles of expeditious justice, adversarial defense, effective recourse, implementation of the judgment, and the proportionality of punishment, among others.”<sup>452</sup>

253. Finally, concerning the duty to make reparations, the Court wrote that:

the State has the non-derogable duty to directly provide redress to the victims of human rights violations for which it is responsible according to the standards of attribution of State responsibility [...]. Moreover, the State must ensure that the reparation claims formulated by the victims of grave human rights violations and their next of kin do not encounter excessive procedural burdens or obstacles.<sup>453</sup>

254. Notwithstanding the obligations that States must observe in their transitional justice systems, the Commission would underscore the importance of endowing such systems with their own distinctive features that enable them to achieve their intended objectives. On this point the Commission has observed that if transitional justice is to help build the peace, then it must include incentives to guarantee the rights of the victims of the conflict, including investigation of the violations that occurred, a determination of those responsible, and their right to the truth and full redress.<sup>454</sup>

255. While inter-American case law has established the non-derogability of the obligation to investigate serious human rights violations committed in a conflict, such as extrajudicial executions, torture, forced disappearances or forced displacements, it has also acknowledged, for example, the possibility of softening the State’s punitive authority, specifically by applying lighter sentences.<sup>455</sup> In this regard, in the case of the *La Rochela Massacre* the Inter-American Court emphasized the importance of considering the principle of proportionality where it wrote that “the punishment which the State assigns to the perpetrator of illicit conduct should be proportional to the affected rights [...] which in turn should be established as a function of the nature and gravity of the events.”<sup>456</sup> The Commission has also applauded the importance of the work done by Truth Commissions as useful instruments for exposing the violations that

<sup>451</sup> I/A Court H.R., *Case of the La Rochela Massacre v. Colombia*, Judgment of May 11, 2007, Series C No. 163, para.193.

<sup>452</sup> I/A Court H.R., *Case of the La Rochela Massacre v. Colombia*, Judgment of May 11, 2007, Series C No. 163, paras. 193, 195.

<sup>453</sup> I/A Court H.R., *Case of the La Rochela Massacre v. Colombia*, Judgment of May 11, 2007, Series C No. 163, para. 198.

<sup>454</sup> IACHR, *Statement of the Inter-American Commission on Human Rights on the application and scope of the Justice and Peace Law in the Republic of Colombia*, 2006, para. 38.

<sup>455</sup> IACHR, *Statement of the Inter-American Commission on Human Rights on the application and scope of the Justice and Peace Law in the Republic of Colombia*, 2006, para. 41.

<sup>456</sup> I/A Court H.R., *Case of the La Rochela Massacre v. Colombia*, Judgment of May 11, 2007, Series C No.163, para. 196.

occurred amid armed conflicts and for revealing the pattern of conduct of those who had a hand in those violations.<sup>457</sup> The Commission therefore believes that Truth Commissions can be an important component that complements the State's judicial response, in accordance with its international obligations.

256. Furthermore, in response to the Colombian State's contention that under the terms of the Protocol II Additional to the 1949 Geneva Conventions, during transitions to peace international law allows amnesties to be granted for human rights violations that are not international crimes, the Commission will first point to the body of inter-American case law regarding the obligation to investigate human rights violations and the incompatibility of amnesty laws. It will then address the State's claim regarding the interpretation of Article 6(5) of the Protocol II.
257. The Commission must begin by pointing out that that the jurisprudence of the organs of the inter-American system has consistently upheld the non-derogability of the State's obligation to investigate serious human rights violations and the fact that amnesty laws that obstruct observance of that obligation are incompatible with it, even in cases of massive and systematic violations.<sup>458</sup> For decades now, the Commission has been voicing its concern over amnesty laws that obstruct prosecution of serious human rights violations, and has stressed their incompatibility with the American Convention.<sup>459</sup> The Commission has brought cases to the Inter-American Court where the Court's final judgment was that the duty to investigate was a non-derogable obligation and amnesties for serious human rights violations were incompatible with the American Convention; such was the Court's finding in cases involving Peru (Barrios Altos and La Cantuta), Chile (Almonacid Arellano *et al.*), Brazil (Gomez Lund *et al.*), Argentina (Gelman *et al.*), El Salvador (the Massacres of El Mozote and nearby places). In its own monitoring endeavors, the Commission has made reference to amnesty laws in Suriname,<sup>460</sup> El Salvador<sup>461</sup> and Guatemala<sup>462</sup>.

<sup>457</sup> Cf. IACHR, *Report on the Situation of Human Rights in El Salvador*, Case No. 11,138, in document OEA/Ser.L/V/II.85, Doc. 28 rev. of February 11, 1994, Some Remarks on the Truth Commission.

<sup>458</sup> Thus, in the case of the Dos Erres Massacre, the Inter-American Court wrote that "[...] the lack of investigation of grave facts against humane treatment such as torture and sexual violence in armed conflicts and/or systematic patterns constitutes a breach of the State's obligations in relation to grave human rights violations, which infringe non-revocable laws (*jus cogens*) and generate obligations for the States such as investigating and punishing those practices [...]" I/A Court H.R., *Case of the Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 140.

<sup>459</sup> Thus, for example, in reference to Laws Nos. 23,492 and 23,521 and Decree No. 1002 (known as the Due Obedience and Full Stop laws) in Argentina, the Commission observed that they sought and effectively prevented the petitioners' right under Article 8(1) of the American Convention. By enacting and enforcing those two laws and the decree, Argentina failed to honor its obligation to ensure the rights protected under articles 8(1), 25(1) and 1(1) of the Convention. IACHR Report No. 28/92. Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311. Argentina. October 2, 1992, paras. 37, 39 and 41.

<sup>460</sup> IACHR, *Annual Report 1988-1989*, OEA/Ser.L/V/II.76, Doc.10, September 19, 1989, Chapter IV on Suriname. Also, in 2012, the IACHR issued a press release in which it expressed its concern over an amnesty law passed by the Parliament of Suriname on April 5, 2012. Here, the IACHR reiterated that amnesty laws related to serious human rights violations are incompatible with international human rights obligations, as such laws keep States from investigating and punishing the perpetrators." IACHR, April 13, 2012, IACHR Expresses Concern about Amnesty Legislation in Suriname. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2012/038.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/038.asp)

<sup>461</sup> IACHR, *Annual Report 1979-1980*, OEA/Ser.L/V/II.50 doc. 13 rev.1, October 2, 1989, Chapter V, El Salvador; and more recently, in a press release, the Commission reiterated that "the State of El Salvador must ensure that the General Amnesty Law for the Consolidation of the Peace does not stand in the way of investigating the grave human rights violations that took place during the armed conflict [...]" IACHR, *El Salvador Must Investigate Grave Human Rights Violations from the Armed Conflict*, October 2, 2013, available at: [https://www.oas.org/en/iachr/media\\_center/PReleases/2013/072.asp](https://www.oas.org/en/iachr/media_center/PReleases/2013/072.asp)

<sup>462</sup> IACHR, *Annual Report 1985-1986*, OEA/Ser.L/V/II.68, Doc. 8 rev. 1, September 26, 1986, Chapter IV on Guatemala. In 2013, the IACHR also issued a press release in which it reiterated that "the State of Guatemala must ensure that the Amnesty Law (Law Decree 8-86) does not represent an obstacle for the investigation of the serious violations of human rights that took

258. Accordingly, the Commission observes that the non-derogable obligation to investigate serious human rights violations has been acknowledged in situations that arose amid a variety of social situations that various countries of the region have experienced, either in transitions from dictatorships to democracy or processes seeking to establish and strengthen peace.
259. The Commission will now address the State's claim concerning the Inter-American Court's interpretation of Article 6(5) of the Protocol II Additional to the 1949 Geneva Conventions; the correct interpretation is that in transitions from armed conflicts to peace, amnesties are acceptable except in the case of international crimes.
260. In this regard, the Commission observes that Article 6(5) of Protocol II reads as follows:
5. At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.
261. The Commission notes that the above text allows for the possibility of an amnesty. However, the amnesty is not absolute; instead, according to the above text, the authorities in power are to try to grant the "broadest possible" amnesty. The article does not specify what limits the authorities must observe.
262. Here, the Commission notes that the Inter-American Court made reference to Article 6(5) of that Protocol II in the case of the *Massacres of El Mozote and nearby places v. El Salvador* and in the case of *Gelman v. Uruguay*.<sup>463</sup> In both cases the Court made reference to a study of customary norms of international humanitarian law entrusted to the ICRC by the XXVI International Conference of the Red Cross and Red Crescent, held in Geneva (1995).<sup>464</sup> As the Court wrote, in that study the International Committee of the Red Cross (ICRC) brought up a position taken by the Union of Soviet Socialist Republics (hereinafter "USSR") during the approval of that article of the Protocol. The Russian position was that "the provision could not be construed to enable war criminals, or those guilty of crimes against humanity, to evade severe punishment."<sup>465</sup> The Court also cited a study by the ICRC classifying the following as customary international humanitarian law: "[a]t the end of hostilities, the authorities in power must endeavor to grant the broadest possible amnesty to persons who have participated in a non-international armed conflict, or those deprived of their liberty for reasons related to the armed conflict, with the exception of persons suspected of, accused of or sentenced for war crimes."<sup>466</sup>

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place during the armed conflict, nor for the identification, prosecution and punishment of those responsible." IACHR, Guatemala Must Investigate Serious Violations of Human Rights Occurred during the Armed Conflict, October 25, 2013, available at: [https://www.oas.org/en/iachr/media\\_center/PReleases/2013/080.asp](https://www.oas.org/en/iachr/media_center/PReleases/2013/080.asp)

<sup>463</sup> See, respectively, I/A Court H.R., *Case of Gelman v. Uruguay*, Merits and Reparations. Judgment of February 24, 2011 Series C No. 221 para. 210, and *Case of the Massacres of El Mozote and Nearby Places v. El Salvador*, Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252 para. 286.

<sup>464</sup> I/A Court H.R., *Case of the Massacres of El Mozote and Nearby Places v. El Salvador*, Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252 para. 286, and *Case of Gelman v. Uruguay*, Merits and Reparations. Judgment of February 24, 2011 Series C No. 221 para. 210.

<sup>465</sup> I/A Court H.R., *Case of Gelman v. Uruguay*, paragraph 210, citing International Committee of the Red Cross, Customary International Humanitarian Law, Vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007, p. 692.

<sup>466</sup> I/A Court H.R., *Case of the Massacres of El Mozote and Nearby Places v. El Salvador*, footnote 461.

263. Based on the foregoing, the Colombian State contends that from the Inter-American Court's analysis in the case of the *Massacres of El Mozote and Nearby Places*, the Commission must conclude that international law prohibits amnesties in contexts in which peace is being sought, solely with respect to "international crimes."<sup>467</sup>
264. The Commission must first point out that acting upon its mandate under the American Convention and the American Declaration, the Commission is called upon to verify compliance with the obligation to investigate serious human rights violations taking into account each case's distinctive features; exercise of that authority cannot be conditional upon classifications of violations and/or crimes established *a priori*.
265. Secondly, with specifically with reference to the ICRC study, the Commission notes that as the Committee pointed out, the study was not an evaluation of the customary law of human rights, in the sense that "[t]his study does not purport [...] to provide an assessment of customary human rights law." Instead, human rights law has been included in order to "support, strengthen and clarify analogous principles of international humanitarian law."<sup>468</sup>
266. With specific reference to the application of international human rights law to armed conflicts and how it dovetails with international humanitarian law, the ICRC wrote that:
- [...] international human rights law continues to apply during armed conflicts, as indicated by the express terms of the human rights treaties themselves. [...]The continued applicability of human rights law during armed conflict has been confirmed on numerous occasions by the treaty bodies that have analysed State behaviour, including during armed conflict, and by the International Court of Justice [...].<sup>469</sup>
267. With specific reference to the "exception" clause concerning the amnesty laws referenced in Article 6(5) of the Protocol II, the Commission notes that the ICRC observed and recounted the practice of various States to determine whether there was any customary norm. The Committee noted the USSR's position, which was that these amnesties could not apply to war crimes; however, the Committee also noted the practice of other states, like Ethiopia and Argentina, where it was understood that amnesties were not allowed in the case of war crimes or crimes against humanity, or the practice in South Africa, for example, where the work of its Truth and Reconciliation Commission did not involve blanket amnesties, since that would have required disclosure of all relevant facts.<sup>470</sup>
268. In the same section, the Commission notes that the ICRC made reference to the practice of international human rights bodies where amnesties are concerned. The International Committee of the Red Cross wrote the following:

Human rights bodies have stated that amnesties are incompatible with the duty of States to investigate crimes under international law and violations of non-derogable human rights law, for example, the UN Human Rights Committee in its General Comment on Article 7 of

<sup>467</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 200; and Annex 1. Section b, para. 25.

<sup>468</sup> ICRC, Customary International Humanitarian Law, Vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007, p. XXXVII.

<sup>469</sup> ICRC, Customary International Humanitarian Law, Vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007, pp. XXXVI-XXXVII.

<sup>470</sup> ICRC, Customary International Humanitarian Law, Vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007, p. 694.

the International Covenant on Civil and Political Rights (prohibition of torture). In a case concerning El Salvador's 1993 General Amnesty Law for Consolidation of Peace, the Inter-American Commission on Human Rights found that law to be in violation of the American Convention on Human Rights, as well as of common Article 3 of the Geneva Conventions and Additional Protocol II. In its judgement in the *Barrios Altos case* in 2001 concerning the legality of Peruvian amnesty laws, the Inter-American Court of Human Rights held that amnesty measures for serious human rights violations such as torture, extrajudicial, summary or arbitrary executions and forced disappearances were inadmissible because they violated non-derogable rights.<sup>471</sup>

269. Therefore, based on the foregoing observations, the IACHR concludes that the ICRC study i) is a compendium of existing practices in the States, identified as international customary law, and the States' treaty-based obligations may vary according to the international instruments to which they are party and the obligations that follow therefrom; ii) it does not discuss the international human rights obligations binding upon the States, and iii) it does not make a distinction for a standard that applies to a process of transition to peace as opposed to a standard that applies to a process of transition from dictatorship to democracy. Lastly, iv) the study itself acknowledges the limitations on amnesties that international human rights bodies have singled out and that are a function of obligations emanating from international treaties on the subject.<sup>472</sup>
270. Thirdly, the Commission notes that in the *Gelman case*, the Inter-American Court made reference to the ICRC international and mentioned the fact that Article 6(5) of the Protocol II had been revisited in statements and decisions issued by the Inter-American Commission and the United Nations Committee in which they make reference to the prohibition of amnesty laws with respect to serious violations of human rights.<sup>473</sup>
271. Drawing on the content of the decisions that the Court cited in that judgment, in its *Report on the Situation of Human Rights in El Salvador*, the IACHR noted that the Government of El Salvador claimed that the amnesty authorized by the Legislative Assembly was based on the provisions of Protocol II Additional to the Geneva Conventions. The Commission indicated that "the Protocol cannot be interpreted to cover violations of the fundamental human rights set forth in the American Convention on Human Rights."<sup>474</sup> This was not a one-time finding on the Commission's part. Indeed, since its 1992-1993 Annual Report, the Commission had expressed concern over the possible passage of an amnesty law.<sup>475</sup> In a number of individual cases, the

<sup>471</sup> ICRC, *Customary International Humanitarian Law*, Vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007, p. 693.

<sup>472</sup> The Commission would point to the Inter-American Court's finding in the recent case of the *Santo Domingo Massacre* to the effect that "the American Convention does not establish limitations on the Court's competence to hear cases in situations of armed conflict" and that when "using international humanitarian law as a supplementary norm of interpretation to the treaty-based provisions," the Court is not assuming any hierarchy among differing normative systems; instead, this only means that "the Court can observe the regulations of international humanitarian law, as the specific law in this area, in order to make a more specific application of the provisions of the Convention when defining the scope of the State's obligations," I/A Court H.R., *Case of the Santo Domingo Massacre v. Colombia*. Judgment on Preliminary Objections, Merits and Reparations of November 30, 2012. Series C No. 259, para. 24.

<sup>473</sup> I/A Court H.R., *Case of Gelman v. Uruguay*, Merits and Reparations. Judgment of February 24, 2011 Series C No. 221 para. 211, citing International Committee of the Red Cross, *Customary International Humanitarian Law*, Vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007, p. 692.

<sup>474</sup> Cf. IACHR, *Report on the Situation of Human Rights in El Salvador*, Case No. 11,138, in document OEA/Ser.L/V/II.85, Doc. 28 rev. of February 11, 1994, General Conclusions, paragraph C.

<sup>475</sup> IACHR. *Report on the Situation of Human Rights in El Salvador*. February 11, 1994. Chapter II.4.



Commission also had had occasion to express its views on various amnesties granted in El Salvador.<sup>476</sup>

272. In its concluding observations on the human rights situation in Croatia, the United Nations Human Rights Committee expressed its concern at the implications of the Amnesty Law. It observed that while that law specifically states that the amnesty does not apply to war crimes, the term "war crimes" is not defined and there is a danger that the law will be applied so as to grant impunity to "persons accused of serious human rights violations." The Committee's recommendation to Croatia was to "ensure that in practice the Amnesty Law is not applied or utilized for granting impunity to persons accused of serious human rights violations."<sup>477</sup> In its Concluding Observations on Lebanon, the Committee expressed concern over the amnesty granted to civilian and military personnel for human rights violations they may have committed against civilians during the civil war." As the Committee wrote, such a sweeping amnesty "may prevent the appropriate investigation and punishment of the perpetrators of past human rights violations, undermine efforts to establish respect for human rights, and constitute an impediment to efforts undertaken to consolidate democracy."<sup>478</sup>
273. Summarizing, given these considerations, the Commission feels compelled to reiterate its *jurisprudence constante* to the effect that the State is still obligated to investigate, in accordance with the norms of international humanitarian law and international human rights law, the serious human rights violations committed during the armed conflict. To forsake this obligation, either by enforcing amnesty laws or any other type of domestic provision, is incompatible with the American Convention.
274. The Commission therefore deems it imperative that the peace agreements and the provisions of transitional justice that will pave the way for Colombian society's transition to a stable and lasting peace are implemented in harmony with the State's international obligations and offer real prospects for fulfillment. The Commission must once again point out that inasmuch as such provisions are domestic norms, they must conform to the State's international obligations on the subject, in accordance with Article 2 of the American Convention and Article 27 of the Vienna convention on the Law of Treaties.<sup>479</sup>
275. The Commission will therefore do an in-depth analysis of the existing legal framework and the results of its application in practice.

## 1. Justice and Peace Law (Law 975 of 2005)

276. Successive governments made efforts to bring a negotiated end to the political violence that has rocked the last five decades of Colombian history. Those efforts focused on conclusion of agreements to demobilize the armed groups operating outside the law. The agreements were

<sup>476</sup> IACHR. Report No. 26/92. Case 10,287. Las Hojas Massacre. September 24, 1992, para. 11; IACHR. Report No. 1/99. Case 10,480. Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, José Catalino Meléndez and Carlos Antonio Martínez Romero. January 27, 1999, para. 122; IACHR. Report No. 136/99. Case 10,488. Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos, S.J.; and Cecilia Mariceth Ramos. El Salvador. December 22, 1999, para. 215.

<sup>477</sup> Concluding observations of the Human Rights Committee. Croatia, U.N. Doc., CCPR/CO/71/HRV, April 4, 2001, para. 11.

<sup>478</sup> Concluding observations of the Human Rights Committee: Lebanon, U.N. Doc. CCPR/C/79/Add.78, May 5, 1997, para. 12. IACHR translation.

<sup>479</sup> Article 27 of the Vienna Convention on the Law of Treaties: Internal Law and Observance of Treaties. "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46."

sealed under laws adopted either through decrees issued by the Executive Branch or laws enacted by the National Congress.<sup>480</sup>

277. Indeed, Colombia has adopted a number of legal mechanisms to deal with situations associated with the armed conflict. One of the major precedents was Law 418 of 1997, “embodying instruments to enable the search for co-existence and the efficacy of justice.”<sup>481</sup> Law 418 of 1997 was amended and extended by laws 782 of 2002 and 1421 of 2010.<sup>482</sup> Under Law 782 of 2002, the implementing regulations for which are contained in Decree 128 of 2003, a number of demobilized individuals received the benefits provided under the law, such as pardons or similar measures, for the crime of conspiracy to commit a crime as a result of having been members of armed groups operating outside the law.<sup>483</sup>
278. In response to the collective demobilizations of the AUC between November 2003 and April 2006, the IACHR, like other international agencies, recommended enacting a legal framework to establish clear requirements for demobilization of armed groups operating outside the law, that would be consistent with the State’s international obligations in the areas of truth, justice

<sup>480</sup> For an historical analysis of the various initiatives, see IACHR, Report on the Demobilization Process in Colombia, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, Section III.C. Background on efforts to resolve the internal armed conflict in Colombia and its legal framework. Available at: <http://www.cidh.oas.org/countryrep/Colombia04eng/chapter3.htm#C>.

<sup>481</sup> The relevant parts of that law read as follows:

Article 50. In each particular case, the National Government may grant a pardon to citizens who have been convicted, in final judgments, of acts constituting the political crimes of rebellion, sedition, attempted coup, conspiracy and related crimes, when in its judgment the armed organization operating outside the law of which the applicant was a member is recognized to be political in nature and has demonstrated its willingness to be reintegrated into civilian life.

A pardon may also be granted to citizens who individually and voluntarily abandon their activities as members of armed groups operating outside the law that are recognized as political in nature and that apply for a pardon, provided they have demonstrated to the National Government’s satisfaction their willingness to be reintegrated into civilian life.

The provisions of this Article shall not apply to those whose acts are brutal and barbaric atrocities, terrorism, abduction, genocide, murder off the field of battle, where the victim is defenseless [...]

Article 64. The benefits set forth in this title shall not affect any liability that the persons pardoned may have with respect to private parties.

Once a pardon is granted, a civil suit may then be brought in the civil courts of ordinary jurisdiction.

Article 65. Persons demobilized under the agreements reached with Armed Organizations operating outside the law and recognized to be political in nature, may individually claim the benefit of the socioeconomic reintegration programs established for that purpose by the National Government, provided his or her legal situation so permits. Available [in Spanish] at: <http://www.reclutamiento.mil.co/?idcategoria=237855#>

<sup>482</sup> With the changes, the text now in force reads as follows:

ARTICLE 50. In each particular case, the National Government may grant a pardon to citizens who have been convicted, in final judgments, of acts constituting a political crime if, in its judgment, the armed organization operating outside the law with which a peace process is underway and of which the applicant is a member, has demonstrated its willingness to be reintegrated into civilian life.

A pardon may also be granted to citizens who individually and voluntarily abandon their activities as members of armed groups operating outside the law that are recognized as political in nature and that apply for a pardon, provided they have demonstrated to the National Government’s satisfaction their willingness to be reintegrated into civilian life.

The legal benefits made available in this title and the socioeconomic benefits that the National Government establishes within the framework of this process shall not apply to those who have committed crimes of genocide, abduction, *lese humanite*, war crimes or those criminalized in Title II of Book II, Single Chapter of the Criminal Code, under international treaties and conventions ratified by the Colombian State. These individuals may go through the transition system established in Law 975 of 2005 and other related provisions, or turn directly to the courts of ordinary jurisdiction to apply for the legal benefits offered in exchange for a confession or cooperation with the justice system.[...]

ARTICLE 65. If their legal situation so permits, persons demobilized under agreements with groups operating outside the law, and with which the National Government has been engaged in a peace process may, either collectively or individually, benefit from the socio-economic reintegration programs that the National Government establishes for that purpose.

<sup>483</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 32. In its observations on the Draft Report, the State observed that “[...] no pardon was ever granted for the crime of conspiracy to commit crime; pardons were, however, granted in the case of sedition.” Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 229.

and reparation for victims of the conflict.<sup>484</sup> The IACHR also emphasized that a further fundamental aspect of this process is to ensure the effective dismantling of the armed structures that took part in the demobilization process, and the gradual reintegration of their members into society, to ensure that there will be no repetition of violations of human rights and grave breaches of IHL.<sup>485</sup>

279. On June 22, 2005, the Colombian Congress passed Law 975, which took effect when it was enacted by the President on July 22, 2005. The IACHR issued a statement voicing its concern about the implementation prospects of this law. It specifically mentioned: (i) the objectives of the law; (ii) the lack of incentives for a full confession of the truth; (iii) the lack of strength of the institutional mechanisms established; (iv) the short time limits and procedural stages provided for in the legal mechanisms to investigate and prosecute the demobilized individuals benefiting from the law; and (v) certain problems with the reparations mechanisms, among others.<sup>486</sup> On December 30, 2005, Decree No. 4760 was issued to regulate certain aspects of Law 975. On the whole, these had to do with deadlines to investigate applicants for benefits under the law before they are arraigned, and with introducing the principle of prosecutorial discretion for the benefit of third parties involved in the purchase, possession, holding, conveyance and in general with the ownership of unlawfully obtained property, surrendered to compensate victims.<sup>487</sup>
280. Several human rights organizations filed a series of lawsuits with the Colombian Constitutional Court challenging the constitutionality of Law 975. The Office of the Prosecutor also took part in these proceedings. The Constitutional Court issued its ruling on May 18, 2006 and the grounds for its decision were made public on July 13, 2006.<sup>488</sup>
281. On the whole, the Constitutional Court found Law 975 constitutional; at the same time, it set constitutionality requirements for several of its provisions. Among the interpretation parameters established by the Court are those intended to insure the victims' participation in the proceedings and their access to restitution *in integrum*. The decision also clarifies the obligation to impose a reduced sentence, provided by the law, and introduces legal consequences such as the loss of benefits if demobilized persons seeking to benefit from the law conceal information from the judiciary. The decision also clarifies the definition of paramilitarism as a common crime, circumstance that prevented the possibility of benefiting applicants with a decision of pardon or amnesty. In brief, persons demobilized who are implicated in crimes connected with the armed conflict and wish to secure the benefits of Law 975 will have to cooperate with the judiciary in ensuring the full effectiveness of the victims' rights to truth, justice, redress and non-repetition.<sup>489</sup>

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<sup>484</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. 7.

<sup>485</sup> IACHR, *Report on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings*, OEA/Ser.L/V/II.129, Doc. 6, October 2, 2007, para. 3.

<sup>486</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. 8 et seq.

<sup>487</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. 9.

<sup>488</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. 10.

<sup>489</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. 11. IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, para. 48, citing Constitutional Court Case D-6032 - Judgment C-370/06, available since July 13, 2006.

282. In November 2006, the State adopted Decree 3391 confirming some of the conditions established in the Constitutional Court's ruling and regulating other aspects in a manner that contradicted what the Court had established in its ruling. This triggered further debate over the interpretation of the Justice and Peace Law.<sup>490</sup>

283. In practice, according to the National Commission on Reparation and Reconciliation:

a demobilized person was steered in the direction of the legal framework established by the Justice and Peace Law if facing a criminal investigation for a crime not eligible for pardon, committed while that person was a member of an illegal armed group. A demobilized person was also steered in the direction of the proceedings under Law 782 of 2002, which established provisions to enable dialogue and agreements with organized armed groups operating outside the law with a view to their demobilization, reconciliation among Colombians, and peaceful co-existence. Decree 128 of 2003, for its part, included definitions and benefits under the reintegration program. These laws applied to demobilized persons who were not the target of or were unaware of any criminal investigation for the commission of crimes that did not qualify for a pardon and whose situation was simply membership in an illegal group. This inter-institutional effort managed to win over many members registered by the paramilitary confederation, which turned out to be useful in the judicial proceedings and in making the transition to the next planned phase, i.e., reinsertion and reintegration into civilian life. In the process, the more than 31 thousand persons who were officially recognized were joined by another 10,774 demobilized individuals who came mainly from the guerrilla groups and were applying for the reintegration programs [...].<sup>491</sup>

The Government, for its part, issued Decree 1,059 under which guerrillas deprived of liberty could be demobilized on an individual base, apply for the Justice and Peace Law and receive the benefit of an alternative penalty under that law. This law gave legal benefits to guerrillas who had expressed, in writing, their interest in surrendering their weapons and waiving any right to be part of a humanitarian exchange. The benefit they were offered was that their criminal cases could be archived if the case against them did not involve crimes against humanity; those already convicted could apply for alternative sentences. As a condition, since there was no demobilization and disarmament, they have to convey to the authorities their willingness to surrender their weapons, publicly renounce the

<sup>490</sup> IACHR, *Report on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings*, OEA/Ser.L/V/II.129, Doc. 6, October 2, 2007, para. 50. In the first place, Decree 3391 provides that any time spent at a detention center before the supervising judge decides on the imposition of preventive detention will be discounted from the corresponding alternative penalty. Second, Decree 3391 provides that demobilized persons "may" be held in Justice and Peace confinement sites administered and defined by the INPEC, but it did not clearly establish the characteristics of those sites. The IACHR noted that the uncertainty over the characteristics of the so-called "Justice and Peace confinement establishments" demanded clarification to bring them clearly within the jurisdiction of the INPEC, consistent with the decision of the Constitutional Court. Third, the Decree provides that if demobilized persons surrender assets for use in economic projects in areas of the country afflicted by violence, for the benefit of displaced persons, peasants and reinserted persons who lack the economic means of subsistence, granting them participation in the ownership and means of production, this will be understood as a collective measure of reparation.<sup>1</sup> In March, 2006 only a small number of demobilized persons were involved in projects of this kind, and there was no evidence of broad acceptance by the communities hosting them. IACHR, *Report on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings*, OEA/Ser.L/V/II.129, Doc. 6, October 2, 2007, paras. 51-54.

<sup>491</sup> CNRR, *La reintegración: logros en medio de rearmes y dificultades no resueltas, II Informe de la Comisión Nacional de Reparación y Reconciliación* [Reintegration: achievements in the midst of rearming and unresolved problems, II Report of the National Reparations and Reconciliation Commission], DDR Area, August 2010, p. 22.

guerrilla movement and comply with other requirements, such as providing information that can be used to bring others to trial and to dismantle the guerrilla organizations.<sup>492</sup>

284. Of the 31,670 persons who demobilized between November 2003 and the middle of 2006, only 2,695 declared their interest in applying for the benefits of the Justice and Peace Law. However, the institutional shortcomings in the demobilization circuits delayed and impeded enforcement of the Justice and Peace Law.<sup>493</sup> On a number of occasions the Commission observed that the demobilization circuits presented a suitable opportunity for the judicial authorities to gather elements for establishing whether demobilized members of illegal armed groups were involved in crimes that might be punishable under Law 975. However, in the course of these voluntary statements the prosecutors received no instructions for delving into the crimes perpetrated and the possible applicability of the Justice and Peace Law.<sup>494</sup>
285. In its 2006 statement, the IACHR did a series of analyses and made observations and recommendations that are useful to recall. The Commission observed that as the new stage was being launched, it was crucial that the agencies charged with implementing the legal framework, namely, the Justice and Peace Unit of the Office of the Attorney General, the Justice and Peace Tribunals, the Ministry of Justice, and the National Commission on Reconciliation and Reparation fully comply with it and with its interpretation by the Constitutional Court, so that the criminal-law benefits granted to those demobilized would not become a mere gift of the justice system but would truly meet the goal of operating as an incentive for peace, learning the truth and appropriately compensating the victims of the conflict. Accordingly, the IACHR alerted the Colombian authorities to the need to strictly enforce the eligibility requirements for benefiting from a lighter sentence and preserving that benefit; and to contribute to a diligent and full investigation of crimes covered by the law, thereby ensuring that the imposition of lesser penalties would reflect an uncovering of the whole truth and would not rely solely on the defendant's confession.<sup>495</sup>
286. Specifically, the Commission pointed out that the defendants' confession did not relieve the authorities of their duty to diligently investigate the events. This obligation, under the Justice and Peace Law, had a twofold purpose. First, to ensure that events would be fully cleared up. In most cases a confession would not be sufficient for that and the State would need to take all investigative steps within its power to arrive at the truth. Secondly, to discharge the duty of investigating and preventing impunity. The reduced prison terms provided by the law offered a very strong incentive not only to those who sincerely wished to fully confess their participation in violations of human rights, but also to those seeking to evade criminal prosecution by the State. Lastly, a full and diligent investigation of the events was also the foundation for effective verification of eligibility for reduced sentencing and preservation of that benefit in the future.<sup>496</sup>

<sup>492</sup> CNRR, *La reintegración: logros en medio de rearmes y dificultades no resueltas, II Informe de la Comisión Nacional de Reparación y Reconciliación* [Reintegration: achievements in the midst of rearming and unresolved problems, II Report of the National Reparations and Reconciliation Commission], DDR Area, August 2010, p. 24.

<sup>493</sup> IACHR, *Report on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings*, OEA/Ser.L/V/II.129, Doc. 6, October 2, 2007, para. 44. Of the total number, which is 35,353 paramilitaries, only 4,227 have applied for Law 97 of 2005; of these, 3,116 participated in the collective demobilization ceremonies, 1,059 were incarcerated and 52 did so voluntarily. "José Alvear Restrepo" Lawyers Group, *Balace de la aplicación de la Ley de "Justicia y Paz"* [An Assessment of the "Justice and Peace" Law] and *Análisis de las sentencias desde algunos presupuestos desde el Estatuto de Roma* [Analysis of the judgments on the basis of the Rome Statute], 2012.

<sup>494</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 33.

<sup>495</sup> Cf. 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. 3.

<sup>496</sup> Cf. 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. 27.

287. In this complex scheme, the IACHR identified a number of challenges for compliance with the international standards with regard to truth, justice and reparations. First, it pointed out that the agencies first had to make certain that demobilized persons who wished to receive the benefits of Law 975 met each and every eligibility requirement as interpreted by the Constitutional Court. In addition, all agencies involved in the application of that law had to cooperate by making available all information, with a view to supporting the justice system in verifying that these requirements had been met. Second, the Justice and Peace Unit of the Office of the Attorney General had to issue guidelines to encourage proper and full investigation by the designated prosecutors of the actions of demobilized persons and to standardize the criteria used by prosecutors when implementing the legal framework in each particular case. Third, the notary certification, registration and real estate recording systems needed to be improved so that the agencies involved would be able to ensure proper restitution of property to victims of the conflict, most of whom were displaced persons who were forced to abandon their lands because of violence.<sup>497</sup>
288. A fourth challenge was to make certain that victims would be truly able to participate in the investigation, prosecution and reparations proceedings. The State, through its institutions, had to ensure that victims had access to adequate legal representation and participation in every procedural stage, as established by the Constitutional Court. The IACHR also stressed the need for adequate steps to protect the victims and witnesses, looking after their physical and psychological well-being as well as their dignity, and respecting their privacy.<sup>498</sup>
289. The IACHR emphasized that, in the face of these challenges, the State had to publicize the results of negotiations with armed groups, the procedures for identifying combatants and the surrender of weapons, as well as the implementation of the Justice and Peace Law, so that Colombian society as a whole would be able to follow and monitor events during this important stage of the country's life.<sup>499</sup>

### Law 975: advances and challenges in the areas of truth and justice

290. The Commission recognizes that implementation of the Justice and Peace Law has managed to partially unveil a truth that would have been impossible to get at by other means, as well as certain connections with elements in the political world,<sup>500</sup> which is an important starting point.
291. The State pointed out that the progress made with the implementation of the Justice and Peace Law has centered on the truth, justice and reparations components. With respect to the truth component, the State underscored the fact that the “joint” voluntary depositions have been more efficient in exposing patterns of macro criminality.<sup>501</sup> As for reparations, Colombia

<sup>497</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. 53.

<sup>498</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. 54.

<sup>499</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. 56.

<sup>500</sup> See, *inter alia*, Expert report by Javier Ciurlizza in Case 12,573, *Marino López et al. (Operation Genesis) v. Colombia*. Available [in Spanish] at: <http://vimeo.com/60121157>; International Criminal Court, Office of the Prosecutor, *Situation in Colombia, Interim Report*, November 2012.

<sup>501</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAII-13-048140, of December 2, 2013, para. 212.

maintains that the normative framework developed for the Justice and Peace proceedings makes it possible to focus on “revealing patterns of macro criminality and the impact on victims,” all of which are considerations when applying a government reparations program as a strategy for guaranteeing “full reparations”.<sup>502</sup> Within that framework, the State contends that all these criteria have to be analyzed as a whole in order to “measure the results of the process” and not just the number of verdicts delivered in application of the Justice and Peace Law.<sup>503</sup>

292. The Commission must point out that one of the principal causes for concern that it has expressed for more than a decade concerning the human rights violations committed on the occasion of the armed conflict, has been the absence of any judicial resolution of the overwhelming majority of the violations and the fact that so many of these crimes have gone unpunished to this day.<sup>504</sup> Given the scope and objective of the Justice and Peace Law as a mechanism for guaranteeing the victims’ right to justice, truth and reparations, the IACHR is especially troubled by the fact that as of the date of preparation of this report, the Justice and Peace Chamber of the Superior Court of the Bogotá Judicial District has handed down only eleven judgments as court of first instances; of these six have become final as a result of five decisions by the courts of second instance that confirmed the sentences imposed, and one lower court ruling that was not appealed by either side. With that, fourteen applicants have been convicted by a court of first instance; nine of those convictions have become final.<sup>505</sup>
293. According to the information received the Justice and Peace Unit has maintained that of the verdicts handed down in that jurisdiction, not one embodies the duality of being the most responsible and the most representative member, and the criminal facts on which the verdicts are based do not portray patterns of large-scale crime and macro-victimization, which might have made it possible to piece together vital information in the reconstruction of the past.<sup>506</sup> Civil society, for its part, pointed out that only 4 of the Justice and Peace verdicts concerned block or front commanders.<sup>507</sup>
294. The Commission notes that the Justice and Peace Unit has 1100 employees in the 59 prosecution offices nationwide, and that since 2006, some 39,546 deeds have reportedly been confessed, involving 51,906 victims. Some 1,046 massacres were reportedly confessed, as were 25,757 murders, 1,618 unlawful recruitments, 3,551 forced disappearances, 11,132 forcible displacements, 1,168 extortions, 1,916 abductions, 96 rapes, 773 acts of torture and 65 cases of trafficking in, manufacturing or carrying narcotic drugs.<sup>508</sup> The Commission is troubled by the fact that as of the date of preparation of this report, the total number of deeds confessed does not match the itemized number and that there are significant inconsistencies

<sup>502</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAII-13-048140, of December 2, 2013, para. 213.

<sup>503</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAII-13-048140, of December 2, 2013, para. 212.

<sup>504</sup> IACHR, *Statement of the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia*, 2006, para. 6.

<sup>505</sup> Ministry of Foreign Affairs of Colombia, *Document titled “Justice and Peace Law”*, received by the IACHR on May 3, 2013.

<sup>506</sup> Justice and Peace Unit, *Plan de acción de los casos a priorizar por la Unidad nacional de Fiscalías para la Justicia y la Paz* [Caseload of the National Unit of Justice and Peace Prosecutors, Prioritized Plan of Action], received by the IACHR on March 19, 2013.

<sup>507</sup> See the cases of Edwar Cobos Tellez, Uber Enrique Banquez Martínez, Fredy Rendón Herrera and Jorge Iván Laverde. “José Alvear Restrepo” Lawyers Group, *Balance de la aplicación de la Ley de “Justicia y Paz”* [An Assessment of the “Justice and Peace” Law] and *Análisis de las sentencias desde algunos presupuestos desde el Estatuto de Roma* [Analysis of the judgments on the basis of the Rome Statute], 2012.

<sup>508</sup> Information available [in Spanish] at: <http://www.fiscalia.gov.co:8080/justiciapaz/Index.htm>.

between these figures and the information that the State supplied to the IACHR on the occasion of the visit.<sup>509</sup>

295. Moreover, since 2006, the voluntary depositions have been broadcast to 846 municipalities, reportedly for a total of 296 days of live broadcasts. As for the victims' participation, 76,688 victims had reportedly participated in the voluntary depositions, and 28,790 victims had reportedly asked 34,168 questions of the applicants. According to information that is a matter of public record, the Justice and Peace Unit is said to have assisted 152,150 victims in 799 assistance sessions held since 2006; 313 applicants had reportedly restored the victims' dignity through public statements they made; 1,173 applicants had reportedly asked pardon of the victims; 1,083 applicants had reportedly publicly expressed their repentance and 1,143 applicants had promised never again to repeat their crimes.<sup>510</sup> By late 2011, the Justice and Peace Unit had registered 372,874 persons as alleged victims.<sup>511</sup> The Commission believes that the broadcast of the voluntary depositions is an important measure and acknowledges the victim participation, although it is still insufficient.
296. As for the applicants for the Justice and Peace Law and the proceedings being conducted in their cases, an arraignment hearing had reportedly been requested for 1,126 applicants; another 628 had reportedly been formally arraigned; 292 applicants were said to have completed the charging phase and were awaiting the hearing held to check the lawfulness of the charges against them; 11 applicants are in the hearing on reparations, and 14 have been sentenced by the Justice and Peace courts.<sup>512</sup>
297. Based on the information summarized above, the Commission observes that Law 975 results are precarious. The IACHR has followed and examined the various obstacles and failings in the implementation of the Justice and Peace Law. Salient among them is the excessive delay in the proceedings; the extradition of the highest-ranking paramilitary leaders, thereby obstructing the effort to get at the truth, justice and reparations; the limitations on victim participation; difficulties in the area of reparation; and enactment of laws that offer the demobilized a number of benefits over and above those already offered under the Justice and Peace Law,<sup>513</sup> among others.<sup>514</sup>

### The challenge of extradition and Law 975

298. The Commission would begin by pointing out that in May 2008, the Government lifted the stay on the extradition of high-ranking demobilized paramilitary leaders and immediately ordered

<sup>509</sup> During the visit, the Justice and Peace Unit reported that 48,541 murders had been confessed, 1,755 massacres, 9,918 forcible displacements, 4,812 forced disappearances, 2,834 illegal recruitments, 1797 extortions. It also explained that other authorities had been asked to investigate 442 politicians, 417 members of the armed forces and 161 public servants. It also pointed out that 334,916 victims had been registered; assistance had been provided to 120,711 victims in assistance workshops. Finally, it reported that 669 applicants for the Justice and Peace Law had asked pardon of the victims, 525 had publicly expressed their repentance and 577 had promised not to repeat their crimes. Statistics provided by the State at the meeting held on December 4, 2012.

<sup>510</sup> Information available [in Spanish] at: <http://www.fiscalia.gov.co:8080/justiciapaz/Index.htm>

<sup>511</sup> Office of the Attorney General of the Nation: *Performance Report 2011*, February 2012, p. 42. Available [in Spanish] at: <http://www.fiscalia.gov.co/colombia/wp-content/uploads/2012/01/Informe-de-Gestion-2011.pdf>.

<sup>512</sup> Information available [in Spanish] at: <http://www.fiscalia.gov.co:8080/justiciapaz/Index.htm>.

<sup>513</sup> See, Law 1312 of 2009 and Law 1424 of 2010.

<sup>514</sup> See, *inter alia*, IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 2, 2009, Chapter IV. Colombia; IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia; IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia; IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV. Colombia.



their transfer to the United States.<sup>515</sup> After the extradition of Carlos Mario Jiménez, alias “Macaco”, the Commission expressed its concern over the first 16 extraditions of paramilitaries who were pursuing Justice and Peace proceedings, many of whom were involved in the so-called “parapolitics.”<sup>516</sup> In 2009, the Government was the driving force behind the extradition of other paramilitary leaders or persons involved in justice and peace proceedings, such as Miguel Ángel Mejía Múnera, alias “El Mellizo” and Hebert Veloza, alias “H.H.”<sup>517</sup> According to the MAPP/OAS analysis, as of August 2011 the extradition of 31 applicants for the Justice and Peace Law were requested; 29 of which were extradited to the United States.<sup>518</sup>

299. In this regard, the Commission has consistently maintained that “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.”<sup>519</sup> As the IACHR observed, extradition: (i) affects the Colombian State’s obligation to guarantee victims’ rights to truth, justice, and reparations for the crimes committed by the paramilitary groups; (ii) impedes the investigation and prosecution of such grave crimes through the avenues established by the Justice and Peace Law in Colombia and through the Colombian justice system’s ordinary criminal procedures; (iii) closes the door to the possibility that victims can participate directly in the search for truth about crimes committed during the conflict, and limits access to reparations for damages that were caused, and (iv) interferes with efforts to determine links between agents of the State and these paramilitary leaders in the commission of human rights violations.<sup>520</sup>
300. For its part, the Court has observed that the State cannot provide direct or indirect protection to those accused of human rights violations through improper application of legal concepts

<sup>515</sup> Information available [in Spanish] at: <http://www.elespectador.com/node/13431/> According to the information reported in the media, some extradited paramilitaries who had served out their sentences in the United States had reportedly returned to Colombia as free persons, because their arrest warrants had either been suspended or were no longer in force. Information available [in Spanish] at: <http://m.eltiempo.com/justicia/regreso-de-paras-extraditados-a-estados-unidos/9860275>

<sup>516</sup> IACHR, Press Release No. 21/08, *IACHR expresses concern about extradition of Colombian paramilitaries*, Washington, D.C., May 14, 2008. Available at: <http://www.cidh.org/Comunicados/English/2008/21.08eng.htm>. On May 7, 2008, Carlos Mario Jiménez alias “Macaco” was extradited to the United States; in May 2008, the following AUC leaders were extradited to the United States: Diego Fernando Murillo Bejarano alias “Don Berna”, Francisco Javier Zuluaga Lindo alias “Gordo Lindo”, Manuel Enrique Torregrosa Castro, Salvatore Mancuso Gómez alias “El Mono” o “Triple Cero”, Diego Alberto Ruiz Arroyave, Guillermo Pérez Alzate alias “Pablo Sevillano”, Ramiro Vanoy Murillo alias “Cuco Vanoy”, Juan Carlos Sierra Ramírez alias “El Tuso”, Martín Peñaranda Osorio alias “El Burro”, Edwin Mauricio Gómez Luna, Rodrigo Tovar Pupo alias “Jorge 40”, Hernán Giraldo Serna alias “El Patrón”, Nodier Giraldo Giraldo and Eduardo Enrique Vengoechea Mola.

<sup>517</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 46. In 2010, the Supreme Court issued a ruling against the extradition of Edwar Cobo Tellez alias “Diego Vecino”, Daniel Rendón Herrera alias “Don Mario” and Fredy Rendón Herrera alias “El Alemán” to the United States. “Following the reasoning employed in the denial of Luis Edgar Mejía Flórez’ extradition request, the Court established that extradition undermines the spirit of Law 975, fails to acknowledge the victims’ right to truth, justice and reparations, and “traumatizes” the functioning of the Colombian administration of justice. It specifically indicated that the extradition of the paramilitaries subject to the justice and peace process was a deathblow to the inspirational purpose of a law intended to make peace grow among Colombians, as well as the most telling evidence of the disarray of the Government’s strategy against violence and illegal armed groups. IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, para. 91.

<sup>518</sup> OAS, *Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana* [Diagnostic Study of Justice and Peace within the context of Colombian transitional justice], MAPP/OAS, October 2011, pp. 145-155. Available [in Spanish] at: <http://www.mapp-oea.net/documentos/iniciativas/DiagnosticoJP.pdf>.

<sup>519</sup> IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 2, 2009, para. 31. See, also, IACHR, *Hearing on the Rule of Law and the Independence of the Judiciary in Colombia*, March 23, 2009. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=8>.

<sup>520</sup> See, *inter alia*, IACHR, Press Release No. 21/08, *IACHR expresses concern about extradition of Colombian paramilitaries*, Washington, D.C., May 14, 2008. Available at: <http://www.cidh.org/Comunicados/English/2008/comunicados2008eng.htm> and I/A Court H.R. Hearing in the case of *Marino López et al. (Operation Genesis) v. Colombia*. Available at: [www.vimeo.com](http://www.vimeo.com)

that threaten the pertinent international obligations. Thus, extradition cannot be a means to favor, foster or guarantee impunity.<sup>521</sup> The Court therefore considered that “based on the lack of agreement as to the judicial cooperation between the States that arranged such extradition, it falls upon Colombia to clarify the mechanisms, instruments and legal concepts that shall be applied to guarantee that the extradited person will collaborate with the investigations into the facts [...] as well as, if applicable, to guarantee due process.”<sup>522</sup>

301. It has also been observed that “[w]ith their extradition, all incentives for these individuals to collaborate with the Colombian judicial system are lost”<sup>523</sup> and that given the crimes for which they were extradited, the cooperation with the United States justice system has more to do with information about drug trafficking but not about solving cases of human rights violations.<sup>524</sup> The IACHR observes that when persons apply for the Justice and Peace process and end up being extradited to the United States as a result, they do not enjoy any specific benefits when they stand trial in the United States, which makes it less likely that applicants will want to continue to participate in the process.
302. The State reported having taken a number of measures to address the situation of those extradited, especially in 2012 when it signed an agreement with the United States which: (i) expressly stipulates that extradited applicants convicted by U.S. courts are to be transferred to the Miami prison, to make it easier for Colombian prosecutors to reach them; (ii) 21 hours out of every week are to be set aside as time for interviews or for the convicted extradited applicants to make video statements; and (iii) extradited applicants housed in the detention center in Northern Neck, Virginia were made available to the Justice and Peace prosecutors for 40 hours a week. The State also highlighted some logistical improvements introduced in late 2012, such as the increased number of video cameras used in simultaneous proceedings. As a result, in 2012, twenty voluntary deposition proceedings were held, ten arraignment hearings, five hearings to formally file charges, five hearings to check the legality of the charges, and one hearing for the reading of the verdict.<sup>525</sup>
303. The Commission takes note of the information provided, but is still concerned over the situation of the demobilized persons who were extradited to the United States, as the extraditions of these paramilitary leaders affect the victims’ rights to obtain truth, justice and reparations, and interfere with the State’s obligation to prosecute civilians and State agents involved in cases of serious violations of human rights protected under the American Convention.<sup>526</sup> Furthermore, given the hierarchical rank of the demobilized persons extradited and the Office of the Attorney General’s willingness to focus its investigation strategy on the highest-ranking leaders, these efforts must produce tangible results that allow victims to participate and reveal complete and accurate information on the commission of human rights violations by the extradited demobilized persons.

<sup>521</sup> I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 166; and *Case of the Mapiripán Massacre v. Colombia*. Monitoring Compliance with the Judgment of July 8, 2009, *Consideranda* 40.

<sup>522</sup> I/A Court H.R. *Case of the Mapiripán Massacre v. Colombia*, Monitoring Compliance with the Judgment of July 8, 2009, para. 41.

<sup>523</sup> Lawyers without Borders Canada, *The Principle of Complementarity in the Rome Statute and the Colombian Situation: A Case that Demands More than a “Positive” Approach*, 2012, p. 18. Available at: [http://asfcanada.ca/documents/file/asf\\_rapport-anglais-v3-lq.pdf](http://asfcanada.ca/documents/file/asf_rapport-anglais-v3-lq.pdf).

<sup>524</sup> Expert report by Javier Ciurlizza in Case 12,573, *Marino López et al. (Operation Genesis) v. Colombia*. Available [in Spanish] at: <http://vimeo.com/60121157>.

<sup>525</sup> Ministry of Foreign Affairs of Colombia, *Document titled “Justice and Peace Law”*, received by the IACHR on May 3, 2013.

<sup>526</sup> IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV. Colombia, para. 93.

## Victim participation under Law 975

304. The Commission recognizes that Law 975 has raised the profile of victims on the national political scene<sup>527</sup> and has given victims visibility and participation in the judicial proceedings. However, the Commission has noticed certain obstacles that victims encounter to be able to participate effectively in the Justice and Peace proceedings, such as: (i) the fact that victims in areas where groups operating outside the law are still active have been displaced, so that subpoenas should be done at the national level;<sup>528</sup> (ii) the fact that in the various phases of the voluntary deposition process, victims are unable to question, either personally or through their representatives, those who are trying to claim the benefits granted under Law 975 with regard to matters that are of interest to those victims;<sup>529</sup> (iii) persons who wanted to participate in the process have reportedly been threatened;<sup>530</sup> (iv) the institutional capacity of public defenders to provide suitable advice to the thousands of victims already registered;<sup>531</sup> (v) despite the progress made in terms of victim involvement in the process, a large percentage of victims reportedly did not receive the proper instructions, particularly in places where the CNRR does not have regional offices or has not operated because of safety reasons;<sup>532</sup> and (vi) psychologists are overwhelmed as the assistance that these victims require exceeds what these services are able to provide.<sup>533</sup>
305. The State reported that the victims' participation in the voluntary deposition proceedings has increased, as they are both present for and participate in the questioning of the applicants. As for the technical and logistical improvements, it was explained that new hearing and victims chambers have been created in cities and municipalities nationwide; two systems have been installed for long-distance transmissions. The State pointed out that it has complied with the rules and protocols for the security and protection of victims and witnesses, as a result of which 1,691 registered victims have been included in the protection program.<sup>534</sup>
306. The State also reported that since a subunit for victim registration, assistance and guidance was created under the Office of the Attorney General's resolution No. 0-2608 of October 3, 2011, five measures have been taken that have been helpful where victim assistance is concerned: (i) the space available for victim assistance in Medellín, Montería and Barranquilla has been logistically arranged; (ii) students in their final years of their studies in law and psychology have been trained and then brought into the victim assistance system under agreements negotiated with the universities; (iii) 1079 persons -including students, employees of the Office of the Attorney General, the public defender's office and people involved in victim assistance nationwide- have been trained in differential approaches, approach guidelines, compilation of investigative information, legal and psychological assistance and guidance; (iv) avenues of assistance for victims have been put into place to minimize the risk of victim guidance becoming scattered and fragmented; (v) inter-institutional cooperation documents have been signed so that in each institution, personnel are designated for victim assistance and referral, based on the institution's expertise and the services it offers.<sup>535</sup>

<sup>527</sup> Expert report by Javier Ciurlizza in Case 12,573, *Marino López et al. (Operation Genesis) v. Colombia*. Available [in Spanish] at: <http://vimeo.com/60121157>. See also, International Criminal Court, Office of the Prosecutor, *Situation in Colombia, Interim Report*, November 2012.

<sup>528</sup> IACHR, *Annual Report 2006*. Chapter IV. Colombia, para. 20.

<sup>529</sup> IACHR, *Annual Report 2007*, OEA/Ser.L/V/II.130, Doc. 22 rev. 1, December 29, 2007, Chapter IV. Colombia, para. 27.

<sup>530</sup> IACHR, *Annual Report 2007*, OEA/Ser.L/V/II.130, Doc. 22 rev. 1, December 29, 2007, Chapter IV. Colombia, para. 28.

<sup>531</sup> IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, para. 39.

<sup>532</sup> IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, para. 39.

<sup>533</sup> IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, para. 90.

<sup>534</sup> Ministry of Foreign Affairs, *Document titled "Justice and Peace Law"*, received by the IACHR on May 3, 2013.

<sup>535</sup> Ministry of Foreign Affairs, *Document titled "Justice and Peace Law,"* received by the IACHR on May 3, 2013.

307. Civil society also observed that Office of the Attorney General resolutions 3398 of 2006 and 387 of 2007 and Decree 317 of 2007, limited victims' participation in the proceedings provided for in Law 975, since the only victims who could participate would be those named by the demobilized applicants in their voluntary depositions. In the case of families of victims of forced disappearance, this would pose a serious problem since the applicants do not always acknowledge having committed forced disappearances, and thus do not identify either the victims or potential family members who would then have a right to participate in the proceedings.
308. Civil society observed that in the end, the next of kin end up being re-victimized; in the few cases in which they have participated in the applicants' voluntary depositions to ask about the fate of their loved ones, the applicants' answers have been evasive and vague.<sup>536</sup> Civil society also indicated that the victims do not have all the information they need about the proceedings or support and that victims are not given an active role in the voluntary deposition proceeding, and hence cannot rebut an applicant's confession. All they can do is ask questions by way of the prosecutor delegate.<sup>537</sup>
309. The Commission observes that there is still a very sizeable difference between the number of victims registered in the process and the number that the applicants for the Justice and Peace Law acknowledge as victims. The Commission appreciates the information the State provided concerning the workshops organized for victim assistance and the measures taken to ensure their participation in the process. It awaits that these measures will be further reinforced in the future, especially inasmuch as one of the main objectives of the transitional justice mechanisms is to rebuild the citizenry's trust. The Commission recalls that victims' participation and satisfaction of their expectations will be a vital factor in measuring the results of Law 975.

### Procedural aspects of the proceedings conducted pursuant to Law 975

310. As for the procedural guarantees and the progress with the investigations, the Justice and Peace Unit reported that it started a reorganization process, created new working groups, planned an agreement for investigation of cases involving children and adolescents,<sup>538</sup> made headway on the work of organizing the voluntary deposition hearings in order of priority,<sup>539</sup> and focused on pushing joint voluntary deposition proceedings.<sup>540</sup> The Justice and Peace Unit also reported that Law 1592 of 2012 introduced significant procedural changes with respect to hearings and procedures, in order to ensure that the process moves swiftly.<sup>541</sup>

<sup>536</sup> Civil society also noted that, in practice, the paramilitary would use the information on the victims' whereabouts and graves or the places where the disappeared were buried to pressure the authorities into allowing them to apply for the procedure under Law 975, even though they might not meet the requirements. Coordinación Colombia-Europa-Estados Unidos, Observatorio de derechos humanos y derecho humanitario [Observatory of Human Rights and Humanitarian Law], *Desapariciones forzadas en Colombia. En búsqueda de la justicia* [Forced Disappearances in Colombia. In search of justice], May 2012, pp. 40-41.

<sup>537</sup> "José Alvear Restrepo" Lawyers Group, *"Balance de la aplicación de la Ley de "Justicia y Paz" [An Assessment of the "Justice and Peace" Law]* and *Análisis de las sentencias desde algunos presupuestos desde el Estatuto de Roma [Analysis of the judgments on the basis of the Rome Statute]*, 2012.

<sup>538</sup> Justice and Peace Unit, *Report to the IACHR*, received by the IACHR on March 7, 2013.

<sup>539</sup> Information provided at the meeting with the Office of the Attorney General authorities, held in Bogotá on December 4, 2012.

<sup>540</sup> Ministry of Foreign Affairs of Colombia, *Document titled "Justice and Peace Law"*, received by the IACHR on May 3, 2013.

<sup>541</sup> Justice and Peace Unit, *Report to the IACHR*, received by the IACHR on March 7, 2013.

311. Civil society also mentioned the limitations created by the subjective jurisdiction under Law 975 and expressed the view that the confessional mechanism does not rise to the due diligence standards required in a criminal investigation. It pointed out that the confession has been the only incriminating evidence that the prosecution and judges have had, so that the voluntary depositions given by the demobilized have had a disproportionate influence in the reconstruction of the truth.<sup>542</sup>
312. According to civil society, there is also the question of how the deeds confessed are analyzed, since the demobilized person determines whether his or her was willful misconduct by the information he provides in his confession; as a result, there would be no way to add new subjective accusations to those already enunciated –geared to describing the paramilitary phenomenon as anti-subversive in nature-.<sup>543</sup> Compounding the problem is the lack of coordination with the mechanisms of the ordinary justice system, as a result of which there is no overall view of the paramilitary phenomenon.<sup>544</sup>
313. It has also been said that the Justice and Peace process is plagued by legal uncertainty and constant changes in the jurisprudence and practice.<sup>545</sup> Another point made in this regard is that allowing partial (or successive) imputations changed the logical unfolding of the proceedings, contrary to principles of procedural law like the principle of preclusion of the guilt determination phase, which would mean that applicants might be able to obtain the legal benefits offered under the Justice and Peace Law even though they do not meet all the legal eligibility requirements.<sup>546</sup> The MAPP/OAS has done a diagnostic study of the Justice and Peace proceedings and has examined each phase of the proceedings in detail.<sup>547</sup>

<sup>542</sup> “José Alvear Restrepo” Lawyers Group, *“Balance de la aplicación de la Ley de “Justicia y Paz”* [An Assessment of the “Justice and Peace” Law] and *Análisis de las sentencias desde algunos presupuestos desde el Estatuto de Roma* [Analysis of the judgments on the basis of the Rome Statute], 2012.

<sup>543</sup> “José Alvear Restrepo” Lawyers Group, *Balance de la aplicación de la Ley de “Justicia y Paz”* [An Assessment of the “Justice and Peace” Law] and *Análisis de las sentencias desde algunos presupuestos desde el Estatuto de Roma* [Analysis of the judgments on the basis of the Rome Statute], 2012.

<sup>544</sup> Lawyers without Borders Canada. *The Principle of Complementarity in the Rome Statute and the Colombian Situation: A Case that Demands More than a “Positive” Approach*, 2012 pp. 16-17. Available at: [http://asfcanada.ca/documents/file/asf\\_rapport-anglais-v3-lq.pdf](http://asfcanada.ca/documents/file/asf_rapport-anglais-v3-lq.pdf).

<sup>545</sup> Lawyers without Borders Canada. *The Principle of Complementarity in the Rome Statute and the Colombian Situation: A Case that Demands More than a “Positive” Approach*, 2012 pp 16-17 Available at: [http://asfcanada.ca/documents/file/asf\\_rapport-anglais-v3-lq.pdf](http://asfcanada.ca/documents/file/asf_rapport-anglais-v3-lq.pdf). Furthermore, applicants have expressed concern over:

(i) the continual replacement of prosecutors, which in practice has meant that the same points had to be revisited three and even five times; (ii) the fact that joint versions are not done; (iii) the lack of clarity as to the applications for the Justice and Peace process; and (iv) the lack of public defenders to assist them, the fact that they are constantly being reshuffled by the Office of the Public Defender, and their excessive caseload. Some applicants for the Justice and Peace process called upon the Office of the Warden of the prison facility in which they were being held to allow them to continue with the program involving meetings with victims for forgiveness and to put the past in the past. Bogotá Superior Court, Justice and Peace Chamber, *Report-Visit to verify compliance with the “Assistance and comprehensive intervention model for Justice and Peace inmates.” “Itagui” Prison*, para.s 2(1) and 2(2). Bogotá Superior Court, Justice and Peace Chamber. *“Report-Visit to verify compliance with the “Assistance and comprehensive intervention model for Justice and Peace inmates.” “La Modelo” Prison – Barranquilla*, paras. 3(2)(6), 6(9). The applicants pointed out that a program of meetings with some seventy victims of the armed conflict in the region had been underway for some months; the victims were willing to hold meetings for pardon and reconciliation with the prison inmates However, the Prison Warden had reportedly put those plans on hold.

<sup>546</sup> “José Alvear Restrepo” Lawyers Group, “José Alvear Restrepo” Lawyers Group, *Balance de la aplicación de la Ley de “Justicia y Paz”* [An Assessment of the “Justice and Peace” Law] and *Análisis de las sentencias desde algunos presupuestos desde el Estatuto de Roma* [Analysis of the sentences on the basis of the Rome Statute], 2012.

<sup>547</sup> OAS, *Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana* [Diagnostic Study of Justice and Peace within the context of Colombian transitional justice], MAPP/OAS, October 2011, pp. 145-155. Available [in Spanish] at: <http://www.mapp-oea.net/documentos/iniciativas/DiagnosticoJyP.pdf>.

314. The State has acknowledged the delays in the implementation of Law 975 and the slow pace of the proceedings, and reports that it has taken steps to correct these problems. The Commission will examine these mechanisms in the corresponding section; it notes, however, that the pace of the proceedings needs to be expedited as soon as possible, especially when one considers that by the second half of 2013, some 665 applicants would have served the maximum sentence (8 years in prison).
315. For the State to be in compliance with its obligations under articles 1(1), 8 and 25 of the American Convention, the modest progress made since the events reported or confessed by the applicants will have to be matched by investigative work conducted with due diligence and within a reasonable period of time. Through a combined, coordinated effort of the multiple institutions that have a role in the investigation and prosecution of human rights violations and crimes committed by the *Autodefensas*, the State will have to identify not just the demobilized persons involved, but also any political and economic actors and state officials in any way connected to the commission of those acts. Any information discovered as a result of the voluntary depositions that might lead to the discovery of common gravesites or burial sites should give an immediate added impetus to the search for the disappeared persons.

### Surrender of assets and reparations under Law 975

316. The Commission notes that one of the main challenges of the mechanism established by Law 975 has been the demobilized persons' surrender of assets and effective reparation of the victims. According to the CNRR, "the former paramilitary chiefs are reluctant to surrender assets and resort to grey areas of the law or legal tricks, corruption of officials and violent acts of intimidation, all of which dampen expectations and instill fear in victims who resort to litigation to get their property returned to them." The CNRR also wrote that "the current state of affairs poses something of a paradox: prior to Law 975, the State had seized 228 properties from the paramilitaries; now, with this law in effect, between 2005 and 2008 it managed to seize only 60 properties, and in no case has control been extinguished."<sup>548</sup>
317. Civil society observed that under Decree 3391 of 2006, the Justice and Peace Law went from being a law of retributive justice to a law of restorative justice; contrary to Constitutional Court judgment C-370 of 2006, under this Decree reparation depended on the resources of the armed group or demobilized group criminally responsible. It was pointed out that although the law provided for the possibility of drawing on the General Budget of the Nation if the resources put up by the demobilized persons were insufficient, those resources will be primarily for symbolic reparation (rather than compensatory) and for collective (rather than individual) reparation; the State will not step in to make up the difference when the demobilized persons' resources are insufficient.<sup>549</sup> The result is that victims' expectations have been raised by court judgments that awarded compensatory damages, only to have the Government extricate itself from its obligation to pay compensatory damages.<sup>550</sup>

<sup>548</sup> CNRR, *La reintegración: logros en medio de rearmes y dificultades no resueltas, II Informe de la Comisión Nacional de Reparación y Reconciliación* [Reintegration: achievements in the midst of rearming and unresolved problems, II Report of the National Reparations and Reconciliation Commission], DDR Area, August 2010, p. 33.

<sup>549</sup> Coordinación Colombia-Europa-Estados Unidos, Observatorio de derechos humanos y derecho humanitario [Observatory of Human Rights and Humanitarian Law], *Desapariciones forzadas en Colombia. En búsqueda de la justicia* [Forced Disappearances in Colombia. In search of justice], May 2012, pp. 40-41.

<sup>550</sup> "José Alvear Restrepo" Lawyers Group, *Balance de la aplicación de la Ley de "Justicia y Paz"* [An Assessment of the "Justice and Peace" Law] and *Análisis de las sentencias desde algunos presupuestos desde el Estatuto de Roma* [Analysis of the judgments on the basis of the Rome Statute], 2012.

318. The Commission applauds the fact that an Assets Subunit was created within the Justice and Peace Unit in May 2011 as a way to redouble its efforts associated with the surrender of assets by demobilized persons. However, it also notes that important obstacles in this area persist. The IACHR recalls that the failure to surrender assets should by itself preclude eligibility for the benefits established under Law 975; the surrender of those assets is essential to ensuring full reparations for the victims. As will be discussed later in this report, the repeal of the hearing on the motion for full reparations for victims should not cause the State to slacken its efforts to ensure that the assets illegally taken by the now demobilized paramilitary are returned to their rightful owner.
319. As for the guarantees of non-repetition, civil society has observed that “the measures of satisfaction and guarantees of non-repetition have not been effectively carried out; no consultation mechanisms have been instituted with the victims and their representatives, and there is no clarity in the follow-up to and monitoring for compliance with the measures by the jurisdiction.”<sup>551</sup> The CNRR also maintained that:

[e]xposing the paramilitary structures and their connections with the financial, political, and institutional spheres, the armed forces and police is a condition *sine qua non* to get them dismantled and to ensuring the necessary guarantees of non-repetition;<sup>552</sup> [but] these processes of dismantling, cleansing, transparency and ensuring the guarantees of non-repetition become more difficult and complicated when the armed conflict is still ongoing, when drug-trafficking is playing such a decisive role, when humanitarian values have become so severely degraded, when there are signs of a reset involving significant elements of paramilitary who did not demobilize and of formerly demobilized paramilitaries and a new fabric of relationships, alliances and even mergers woven among all the irregular armed groups and organized crime groups.<sup>553</sup>

320. The Commission reiterates that is essential to resolved the problem of impunity to avoid a repetition of human rights violations, which is why it is urging the State to comply with its obligations in the area of justice under Law 975.

## 2. Law 1312 of 2009

321. After a Supreme Court judgment delivered on July 11, 2007,<sup>554</sup> any possibility that members of paramilitary groups would be pardoned was foreclosed, which meant that the legal situation of

<sup>551</sup> “José Alvear Restrepo” Lawyers Group, *Balance de la aplicación de la Ley de “Justicia y Paz”* [An Assessment of the “Justice and Peace” Law] and *Análisis de las sentencias desde algunos presupuestos desde el Estatuto de Roma* [Analysis of the judgments on the basis of the Rome Statute], 2012.

<sup>552</sup> CNRR, *La reintegración: logros en medio de rearmes y dificultades no resueltas, II Informe de la Comisión Nacional de Reparación y Reconciliación* [Reintegration: achievements in the midst of rearming and unresolved problems, II Report of the National Reparations and Reconciliation Commission], DDR Area, August 2010, p. 36.

<sup>553</sup> CNRR, *La reintegración: logros en medio de rearmes y dificultades no resueltas, II Informe de la Comisión Nacional de Reparación y Reconciliación* [Reintegration: achievements in the midst of rearming and unresolved problems, II Report of the National Reparations and Reconciliation Commission], DDR Area, August 2010, p. 38.

<sup>554</sup> On July 11, 2007, the Supreme Court held that participation in paramilitary groups does not constitute the political crime of sedition. That decision foreclosed any possibility that members of paramilitary groups could continue to be pardoned under Law 782 of 2002 and Decree 128 of 2003. The Supreme Court wrote the following: “6. Crimes committed by persons linked to paramilitary groups, as in the case of the members of the *autodefensas* who were demobilized under agreements struck with the National Government, can in no way be regarded as the authors of the punishable crime of sedition, as their behaviors do not fall under the heading of *political crime*. [...] In response to the mandates dictated by the principle of legality and interpreted in a manner respectful of the principle of proportionality, it is democracy’s mistake to allow

approximately 19,000 demobilized individuals<sup>555</sup> who did not get a pardon or the like and who had not claimed the benefits of the Justice and Peace Law, was up in the air.<sup>556</sup> That was the context in which Law 1312 was enacted on July 9, 2009, which provided that based on the principle of prosecutorial discretion, *inter alia*,

[...] anyone demobilized from an armed group operating outside the law, who under the terms of the laws in force has demonstrated, by unequivocal acts, his intention to be reintegrated in society, provided that he has not been proposed by the national government for the procedure and benefits contained in Law 975 of 2005 and is not under investigation for offences committed before or after his demobilization other than that of belonging to the criminal organization, which for the purposes of this law include unlawful use of uniforms and insignia and illegal possession of firearms and ammunition.

[...]

For these conditions to apply, the demobilized individual shall be required to sign a sworn statement in which he declares on pain of loss of the benefit set forth in this article in accordance with the Criminal Code that he has not committed any offence other than those set forth in these conditions.<sup>557</sup>

322. At the time, the Commission expressed its concern over the promulgation of this law inasmuch as the ambiguity of its provisions creates doubts regarding the investigation and punishment of crimes committed by demobilized individuals and, therefore, could constitute a mechanism of impunity.<sup>558</sup> For its part, the Human Rights Committee observed that the adoption of Act No. 1312 of July 2009 on the application of the principle of prosecutorial discretion to prosecute leads to impunity if the waiver of prosecution is applied without regard to human rights standards and represents a violation of the victim's right to an effective recourse.<sup>559</sup>
323. On November 23, 2010, the Constitutional Court declared the principle of prosecutorial discretion established in Law 1312 of 2009 to be unconstitutional on the grounds that it did not respect the victims' rights.<sup>560</sup> The Commission was gratified by the Constitutional Court's decision.<sup>561</sup>

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illegitimate ends to carry the day through erroneous jurisprudence, since the law on *conspiracy to commit crime* is the appropriate one to use to answer threats and violations of legal rights, committed by the power structures formed by paramilitary or self-defense organizations." Supreme Court of Justice, Chamber of Criminal Cassation, Case No. 26945, July 11, 2007. (MP Yesid Ramírez Bastidas and Julio Enrique Socha Salamanca).

<sup>555</sup> *Fundación Social. Principio de oportunidad para los desmovilizados que no pueden ser indultados* [Principle of prosecutorial discretion for the demobilized who cannot be pardoned]. Available [in Spanish] at: [http://www.observatorio.derechoshumanospaz.org/descargar\\_agenda.php?id=134](http://www.observatorio.derechoshumanospaz.org/descargar_agenda.php?id=134)

<sup>556</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 34.

<sup>557</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 34.

<sup>558</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 34.

<sup>559</sup> UN, Human Rights Committee, 99th session, Consideration of reports submitted by States parties under article 40 of the Covenant. Concluding observations of the Human Rights Committee, CCPR/C/COL/CO/6, August 4, 2010, para. 9.

<sup>560</sup> *Verdad Abierta. Sin el principio de oportunidad ¿ahora qué?* [Without the principle of prosecutorial discretion, what now?], November 24, 2010, available [in Spanish] at: <http://www.verdadabierta.com/justicia-y-paz/2875-sin-el-principio-de-oportunidad-iahora-que>. "José Alvear Restrepo" Lawyers Group, *Balance de la aplicación de la Ley de "Justicia y Paz* [An assessment of the "Justice and Peace" Law] and *Análisis de las sentencias desde algunos presupuestos desde el Estatuto de Roma* [Analysis of the judgments on the basis of the Rome Statute], 2012.

<sup>561</sup> IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, para. 78.



### 3. Law 1424 of 2010

324. Law 1424 was published on December 29, 2010. Its purpose is

to contribute to achievement of a lasting peace, to help fulfill the guarantees of truth, justice and reparations within a context of transitional justice and in respect of the conduct of the demobilized members of the armed groups operating outside the law, whose only crime was simple or aggravated conspiracy to commit crime, the unlawful use of uniforms and insignia, unlawful use of transmitters and receivers, and illegal possession of firearms or ammunition that are for the exclusive use of the Armed Forces or personal defense, all as a consequence of their membership in those groups, and to promote their reintegration into society.

325. The law states that the demobilized persons shall sign an Agreement to Contribute to the Historical Truth and Reparations with the President of the Republic, when they:

[...] within the year following issuance of the present law state, in writing, their commitment to the process of becoming reintegrated into society and to helping determine the membership of the organized groups operating outside the law [...], the general context of their participation and each and every deed or action they have knowledge of by virtue of their membership in the group.<sup>562</sup>

326. The Law also sets up a non-judicial mechanism for assembling the truth and historical memory so as to compile, organize and preserve the information that is gained by the agreements and produce whatever reports are needed. However, it also provides that the information gained under the agreements may not, under any circumstances, be used as evidence in a judicial proceeding against the person who signed the aforementioned agreement or against third parties.<sup>563</sup>

327. The Law also states that demobilized individuals shall be investigated and/or tried according to the relevant laws in force at the time the punishable offense was committed; it suspends the arrest warrants issued for demobilized individuals, provided they are engaged in the Social and Economic Reintegration process ordered by the National Government, are on their path to reintegration or have satisfactorily completed the process, and have not been convicted of intentional crimes subsequent to the date on which their demobilization was certified. It also suspends execution of demobilized persons' sentences for half the period of the sentence, provided they are engaged in the Social and Economic Reintegration process ordered by the National Government, are on their path to reintegration or have satisfactorily completed the process, make reparations to the victims for any harm caused by the crimes of which they stand convicted, have not been convicted of intentional crimes committed subsequent to the date on which their demobilization was certified, and whose conduct is good.<sup>564</sup>

328. Decree 2601, issued in June 2011, established the regulations to govern Law 1424 of 2010. The regulations concerned such matters as the "Agreements to contribute to the historical truth and reparations." In its observations on the Draft Report the State underscored the fact that these agreements "fostered the reintegration of demobilized persons into society and

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<sup>562</sup> Law 1424 of 2010, Article 3.

<sup>563</sup> Law 1424 of 2010, Article 4.

<sup>564</sup> Law 1424 of 2010, Articles 6, 7.

contribute to the process of national reconciliation.”<sup>565</sup> For its part, the Constitutional Court declared the law enforceable in its Judgment C-771 of October 13, 2011. With that, some 20,000 demobilized individuals –who heretofore were in a kind of legal limbo- are now able to clarify their legal situation; although they would face punishment, it would not include jail unless crimes against humanity have been committed.<sup>566</sup>

329. The Colombia’s Agency for Reintegration (ACR) observed in this regard that by early 2012, 90% of the demobilized had applied for the benefits of this law. However, in March 2012, the MAPP/OAS mentioned that there was no public policy in place on the matter of the reconciliation process, which it opined suggested too little institutional follow-up on the communities, which have been moving forward and implementing initiatives based on their own experience.<sup>567</sup> For its part, the High Commissioner observed that Law 1424 has not led to concrete results and that it would be January 2012 before the process would begin to verify the prerequisites that a demobilized person must fulfill in order to sign an “Agreement to Contribute to the Historical Truth and Reparations.”<sup>568</sup>
330. Civil society made the point that because the information provided in the “agreements to contribute to the truth” cannot be used in judicial proceedings, the Prosecution is prevented from using, in criminal cases, invaluable information coming from the demobilized groups themselves and concerning serious human rights violations. It observed that while Law 1424 was declared constitutional, the Constitutional Court also held that the declarations could be used in criminal cases, but not in those being prosecuted against demobilized persons of the deponent’s same group.<sup>569</sup> Civil society also observed that the law insists on giving special treatment to the crime of conspiracy to commit crime, without providing suitable means to determine whether the beneficiaries of the measures have committed serious human rights violations.<sup>570</sup> For its part, the State reported that the Constitutional Court’s ruling found that “the decision not to use any information disclosed via the extrajudicial mechanism in judicial proceedings will be instrumental in bringing the truth to light,” and that the Court provided “the law could only be enforced if the information obtained could be used against third parties who had not demobilized.”<sup>571</sup>

<sup>565</sup> It indicated that as of October 2013, “10,213 agreements to contribute to the Historical Truth and Reparations [had been] finalized.” Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 233.

<sup>566</sup> In order to qualify for the benefits offered under the new law, a demobilized person must not be an applicant for the Justice and Peace Law and must: be in active service or formally complete the reintegration process headed by the Office of the Presidential Advisor for Reintegration, have not committed crimes subsequent to his demobilization, and sign a form in which he pledges to contribute to the Historical Truth and Reparations.

<sup>567</sup> Sixteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), OEA/Ser.G, CP/doc.4698/12, March 15, 2012, p. 2.

<sup>568</sup> UN, Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19th session, A/HCR/19/21/Add.3, January 31, 2012, para. 46.

<sup>569</sup> Colombian Commission of Jurists, *Informe de seguimiento a las recomendaciones del Relator Especial sobre Ejecuciones Extrajudiciales, Sumarias o Arbitrarias* [Report following up on the recommendations made by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions], June 14, 2012. Executive Summary, para. 15.

<sup>570</sup> “José Alvear Restrepo” Lawyers Group, *Balance de la aplicación de la Ley de “Justicia y Paz”* [An Assessment of the “Justice and Peace” Law] and *Análisis de las sentencias desde algunos presupuestos desde el Estatuto de Roma* [Analysis of the judgments on the basis of the Rome Statute], 2012.

<sup>571</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 231.

331. Again, as it did with respect to Law 1312 of 2009, the Commission notes with concern that this law raises questions about the State's fulfillment of its duty to prosecute and punish the crimes perpetrated by the demobilized and could end up becoming a tool enabling impunity.<sup>572</sup> Furthermore, the Commission does not have any information suggesting that as a result of the proceedings conducted under this law, victims and their families have been effectively redressed for the consequences of the violations of their human rights. Nevertheless, in its observations on the Draft Report, the State flatly rejected those comments, and argued that Law 1424 "is an instrument for battling impunity, as its emphasis is on satisfying a right to the truth that goes beyond the judicial realm."<sup>573</sup> The Commission will continue to monitor the practical application of the mechanisms established in Law 1424 and their compatibility with the State's obligations under articles 1(1), 8 and 25 of the American Convention.

#### 4. Reform of the Justice System

332. On June 20, 2012, Congress passed the "Reform of the Justice System" bill introduced by the Government, the purpose of which was to amend the Articles of the Constitution that concern the administration of justice. Passage of the bill drew sharp criticism from civil society, some media outlets and various NGOs, because of the benefits it gave to members of Congress and its impact on the judicial proceedings being conducted in the case of the members of Congress being prosecuted for "parapolitics". Given the criticism, the President of the Republic objected to its passage and convened a special session of Congress to overturn it. Congress decided to revoke the "Reform of the Justice System" bill that it had just passed.

#### 5. Legal Framework for Peace (Legislative Act 01 of 2012)

333. A bill titled "Legal Framework for Peace" was before Congress on September 12, 2011.<sup>574</sup> The bill authorized the use of non-judicial transitional justice mechanisms and established the criteria for case prioritization and selection in criminal investigations. Case selection gave

Congress the authority to pass a law, proposed by the government, establishing the criteria by which certain human rights violations or breaches of IHL would be selected for investigation.<sup>575</sup>

334. In November 2011, the Colombian Commission of Jurists raised questions about the bill and sent its comments to the Senate of the Republic.<sup>576</sup> On May 1, 2012, Human Rights Watch sent

<sup>572</sup> See, IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, para. 82.

<sup>573</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 232.

<sup>574</sup> *El Tiempo*, "Marco Jurídico para la paz rompe la impunidad" asegura Roy Barreras [Roy Barreras ensures that the "Legal Framework for Peace will put a stop to impunity], December 13, 2011. Available [in Spanish] at: <http://m.eltiempo.com/justicia/impunidad-dentro-del-marco-juridico-para-la-paz/10912537>.

<sup>575</sup> In its observations on the Draft Report, the State commented that "[...] what the Legal Framework for Peace authorizes is for Congress to approve the criteria to be used to focus criminal action on the highest level persons responsible for international crimes." Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 234.

<sup>576</sup> The Colombian Commission of Jurists observed that the Project (i) proposed to include a provision in the Constitution to allow recourse to instruments of transitional justice and that the treatment of armed groups operating outside the law could vary; (ii) it authorizes non-judicial mechanisms; (iii) the constitutionalization of transitional justice may influence the application of the Justice and Peace Law and the Demobilized Persons Law and Victims Law; (iv) the emphasis appears to be on justice from the perspective of investigation and criminal punishment, with scant attention paid to initiatives to ascertain the truth and provide reparations; (v) Congress will be authorized to pass a law establishing the criteria for selecting and prioritizing certain human rights violations and breaches of international humanitarian law for investigation; as for cases not

a letter to the Colombian Congress in which it raised similar questions.<sup>577</sup> On March 26, 2012, during the Commission's 144<sup>th</sup> session, a hearing was held on the right to an effective recourse for investigation of serious human rights violations in Colombia.<sup>578</sup> Civil society expressed concern over various aspects of the reform, such as the possible waiver of criminal prosecution in cases not selected; waiver, in practice, of the investigation of cases not assigned priority; the fact that amnesties might be granted to military and police responsible for human rights violations, and to demobilized paramilitaries whose legal situation had become complicated, and other concerns.<sup>579</sup> In its observations on the Draft Report, the State observed that the Legal Framework for Peace "does not allow amnesties for military and policy and paramilitaries responsible for human rights violations."<sup>580</sup>

335. In exercise of its authorities under Article 41 of the American Convention, on June 12, 2012 the IACHR sent the State a request for information in the following terms:

[...]he Commission has provided the Colombian State with advisory assistance and has continually monitored the situation in Colombia since the establishment of its framework of transitional justice. It has observed that the case law of the inter-American system has established that States have an obligation to avoid and combat impunity, defined "as an absence, on the whole, of investigation, prosecution, arrest, trial and conviction of those responsible for violating rights protected by the American Convention."<sup>581</sup>

Therefore, in furtherance of the IACHR's mandate to promote observance of human rights in the domestic laws of the States Parties to the American Convention, I am respectfully asking Your Excellency's Government to present, within 15 days of the date on which this communication is sent, information on the scope of that bill, its consistency or compatibility with the framework by which Colombian transitional justice is to be applied, and its compatibility with the inter-American standards on the protection of human rights, in keeping with the Colombian State's obligation to investigate and punish all authors of human rights violations so that those violations do not go unpunished [...].

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selected, the State will be able to waive criminal prosecution altogether; (vi) the selection would presuppose criminal benefits prohibited by the Constitutional Court, since selection raises the possibility of amnesty or a pardon for serious crimes; (vii) establishing some order of priority of cases will necessitate criteria on how to decide what cases to investigate first and which will come later, which could be a violation of the State's obligation to investigate within a reasonable period of time; (viii) the bill might be declared unconstitutional based on the body of constitutional law, because it violates international treaties that protect the rights to the truth, justice and reparations in respect of serious violations of human rights and breaches of international humanitarian law; and (ix) it makes amnesty a possibility for military and police responsible for human rights violations and demobilized paramilitary. Colombian Commission of Jurists, *Comentarios al proyecto de "marco jurídico para la paz"* [Comments on the bill for a "legal framework for peace"], sent to the Senate of the Republic, November 23, 2011.

<sup>577</sup> Available [in Spanish] at: <http://m.eltiempo.com/justicia/carta-de-human-rights-watch-al-presidente-y-congreso/11697402>  
<sup>578</sup> IACHR, *Hearing on the Right to Effective Recourse for the Investigation of Grave Human Rights Violations in Colombia*, March 26, 2012. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=125>.

<sup>579</sup> IACHR, *Hearing on the Right to Effective Recourse for the Investigation of Grave Human Rights Violations in Colombia*, March 26, 2012. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=125>.

<sup>580</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAII-13-048140, of December 2, 2013, para. 236.

<sup>581</sup> See, *inter alia*, IACHR, *Statement of the Inter-American Commission on Human Rights on the application and scope of the Justice and Peace Law in Colombia*, 2006; I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, paras. 236, 237; *Case of the Maiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, para. 203; *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, para. 148.

336. The State argued that the bill was fully in keeping with the international obligations undertaken by Colombia in the framework of the inter-American system and maintained that the ultimate purpose of transitional justice is not the number of demobilized convicted, of truth reports published or of victims redressed; instead, the real purpose was a collective acknowledgement, on everyone's part, that egregious human rights violations were committed during the armed conflict and that what happened as a society is to be condemned; it is also a collective reaffirmation that this will never happen again.<sup>582</sup>
337. The State's view was that the purpose of the bill was to give coherence to the transitional justice mechanisms in Colombia by providing a constitutional basis for developing a comprehensive strategy that would at the same time make it possible to afford the maximum satisfaction possible to victims of human rights violations and make the transition to peace.<sup>583</sup> The State also pointed out that in international experiments with transitional justice, the obligation to investigate, prosecute and punish has been weighed against other interests at stake, such as effective satisfaction of the victims of large-scale violations and the achievement of a lasting and stable peace. The State's contention was that the conclusion that has now become part of the orthodoxy of transitional justice, is that in contexts of large scale human rights violations, effective satisfaction of the victims' rights does not come through the ordinary application of criminal justice; instead, it comes from a combination of various judicial and extra-judicial measures that serve to strengthen the rule of law.<sup>584</sup>
338. On that occasion, the State explained that seven years after the Justice and Peace Law entered into force, and following the demobilization of 35,299 members of paramilitary groups, only seven verdicts had been delivered and that only two of the seven had become final. Furthermore, when the investigations have gone "fact by fact," "case by case", the process of bringing charges for the deeds denounced –close to 340,000 to date- could take up to a hundred years. It argued further that this has made it impossible for it to focus on prosecution of those deemed "most responsible," or on a full clarification of the patterns and power structures that participated in the commission of serious human rights violations, as required, for example, by the Inter-American Court. Therefore, it argued that the comprehensive strategy now consists of the following: (i) criminal prosecution of those deemed most responsible for international crimes, through the use of techniques like selection that help expose systems and patterns of victimization, as a means to guarantee maximum satisfaction of the victims' right to justice; (ii) effective reparation of all the victims of the armed conflict, through the mechanisms created under Law 1448 of 2011;<sup>585</sup> (iii) judicial mechanisms and extra-judicial mechanisms (the Center for Historical Memory and the Truth Commission); and (iv) measures to ensure non-repetition (a policy of consolidating the rule of law in the hardest hit areas and introducing institutional reforms such as the elimination of the DAS).<sup>586</sup>
339. The State observed that the bill simply opened up the possibility that in future, lawmakers might regulate eventual selection mechanisms by defining those cases that are to be selected and the rules that must be met for the mechanism to be applied. Selection is not a tool of the Colombian State's making; instead, it is internationally recognized as a useful and necessary

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<sup>582</sup> See, Response from the State of Colombia, July 28, 2012.

<sup>583</sup> Cf. Reply from the Colombian State, July 28, 2012.

<sup>584</sup> Cf. Reply from the Colombian State, July 28, 2012.

<sup>585</sup> The Government approved the National Plan for the Law's Funding and Sustainability, and earmarked 54.9 billion pesos for its implementation in the period from 2012 to 2021; 2.9 billion of that amount will go toward land restitution, and 6.3 toward indemnization via the administrative avenue.

<sup>586</sup> Cf. Reply from the Colombian State, July 28, 2012.

tool for ensuring the maximum satisfaction possible of victims' rights.<sup>587</sup> It maintained, therefore, that selection allowed the justice system to focus on the most serious crimes and to guarantee that they would be solved. It was also a means to insure that the organized power structures would be dismantled, as these would not be individual criminal prosecutions; instead, the focus would be on revealing the patterns and contexts that enabled the commission of these types of serious violations. It also noted that selection is precisely the tool that gives the authority for focusing on the more serious human rights violations, rather than the lesser violations, which is what happened in the first Justice and Peace judgment, which mainly concerned the crime of misrepresentation in a public document.<sup>588</sup>

340. The State also noted that the application of the transitional justice mechanisms to agents of the State is necessary to satisfy victims' rights. It maintained that the efficacy of transitional justice requires differential participation of all the parties to the armed conflict: paramilitary groups, guerrilla groups and agents of the State. Otherwise, the rights of victims and society in general to truth, justice and reparation would be only partially satisfied.<sup>589</sup>
341. As for the inter-American standards regarding possible mechanisms that pardon or clear a person of responsibility, the State indicated that the Inter-American Court has taken up cases exclusively related to general and unconditional self-amnesties, which have not been accompanied by (i) judicial oversight, (ii) a comprehensive strategy for satisfying victims' rights, and (iii) a comprehensive strategy to truly combat impunity, as this bill does.<sup>590</sup>
342. It also argued that the case-law of the inter-American system has extended the prohibition on self-amnesties to other legal provisions such as amnesties, prescription, and other grounds for ruling out liability, when these provisions: (a) seek to leave serious human rights violations such as torture, extrajudicial executions, and forced disappearances in impunity; (b) prevent victims from having access to judicial protection and the use of a simple and effective remedy; (c) do not make it possible to clarify the truth of the facts, as they are geared to "forgetting" serious human rights violations; (d) hinder victims' participation and render them defenseless; (e) may undermine democratic government and tend to support repetition of the acts that have given rise to human rights violations; and (f) entail the obstruction of the investigative system.<sup>591</sup>
343. The State indicated that to the contrary the Legislative Act: (i) seeks to overcome impunity in the case of serious human rights violations through an integrated strategy for investigating systemic crimes (*crímenes de sistema*) that makes it possible to identify, investigate, prosecute and punish the "highest-level persons responsible" for "all the crimes considered crimes against humanity, genocide, or war crimes committed systematically"; (ii) strengthens the victims' right to judicial protection through their participation in the criminal investigations of the "highest-level persons responsible" and wide-ranging participation of the victims in the extrajudicial mechanisms that the law will design in due course; (iii) seeks to discover the truth and combat "forgetting" occurrences in the context of the internal armed conflict, which

<sup>587</sup> The United Nations Secretary-General has observed that in the wake of a conflict the vast majority of the perpetrators of serious human rights violations and breaches of international humanitarian law are ultimately never brought to justice, either within the country or abroad. Therefore, the policy of prosecution must be strategic, must have clear criteria and must take account of the social milieu, for example, the need to limit the culpability of the authors of less serious crimes and support their reform and reintegration.

<sup>588</sup> Cf. Reply from the Colombian State, July 28, 2012.

<sup>589</sup> Cf. Reply from the Colombian State, July 28, 2012.

<sup>590</sup> Cf. Reply from the Colombian State, July 28, 2012.

<sup>591</sup> See Answer of the Colombian State of July 28, 2012.

will be not possible without clear incentives for all actors to participate in the construction of this truth and without the existence of mechanisms, in addition to judicial ones, to clarify with specifics the historical truth so badly needed by the victims and society; (iv) seeks to strengthen democracy through a wide-ranging discussion of the design and implementation of the transitional justice mechanisms that Colombia needs; (v) one of its main objectives is the non-repetition of the acts that have given rise to human rights violations in Colombia, for only through an integral strategy of closure will this be possible, thinking not only of the victims of the past but also the victims we want to avoid in the future; and (vi) rather than obstructing the investigative system, it strengthens it with the creation of integral strategies for judicial investigation and for designing and implementing supplemental extrajudicial mechanisms, relieving the judicial system of tasks that not only do not correspond to it, but also that it is not designed to satisfy in the context of decades of massive human rights violations.<sup>592</sup>

344. The State also indicated that according to inter-American case law, in order to be able to consider that a provision is a *per se* violation of treaty obligations, the provision must be self-executing. Nonetheless, all the measures of the Legislative Act are conditioned on the issuance of laws that develop the constitutional provision in the event of a scenario in which the armed conflict draws to an end.<sup>593</sup>
345. On July 31, 2012, Legislative Act No. 01 of 2012 was published in the Official Gazette. It establishes:

Article 1. The Political Constitution shall have a new transitory article, which will be number 66, as follows:

Transitory Article 66. The instruments of transitional justice shall apply exceptionally and shall have the prevalent aim of facilitating the end of the internal armed conflict and attaining a stable and lasting peace, with guarantees of non-repetition and security for all Colombians; and the victims' rights to truth, justice, and reparation will be guaranteed to the best possible extent. Enabling legislation may authorize, in the framework of a peace agreement, differentiated treatment for the different illegal armed groups that have been party to the internal armed conflict and also for state agents in relation to their participation therein.

By an enabling law judicial or extrajudicial transitional justice instruments will be established that make it possible to guarantee the state duties to investigate and punish. In any event extrajudicial mechanisms will be applied to determine the truth and make reparation to the victims.

A statute should create a Truth Commission and define its purpose, composition, powers, and functions. The Commission's mandate may include making recommendations for the application of transitional justice mechanisms, including how to apply the selection criteria.

It is in the nature of transitional justice instruments that they include criteria for prioritization and selection criteria. The Attorney General shall determine the criteria for prioritization for pressing criminal charges. Without prejudice to the general duty of the State to investigate and punish serious violations of human rights and international

<sup>592</sup> See Answer of the Colombian State of July 28, 2012.

<sup>593</sup> See Answer of the Colombian State of July 28, 2012.

humanitarian law, in the context of transitional justice the Congress of the Republic, at the initiative of the Executive branch, may by enabling legislation determine selection criteria that make it possible to focus efforts on the criminal investigation of the highest-level persons responsible for all the crimes considered crimes against humanity, genocide, or systematic war crimes; to establish the cases, requirements, and conditions in which one should suspend enforcement of the sentence; to establish the cases in which it is appropriate to apply extrajudicial sanctions, alternative penalties, and special modalities for enforcing and serving the sentence; and to authorize the conditioned renunciation of criminal judicial prosecution of all cases not selected. The enabling legislation shall take into account the seriousness and representativity of the cases to determine the selection criteria.

In any event, the special criminal judicial treatment through the application of constitutional instruments such as those mentioned above shall be subject to conditions such as laying down weapons, recognizing responsibility, contributing to clarifying the truth and to the integral reparation of victims, releasing kidnap victims, and separating minors recruited illegally who are in the hands of the illegal armed groups.

Paragraph 1. In those cases in which transitional justice instruments are applied to illegal armed groups that have participated in the hostilities, it shall be limited to those who demobilize collectively in the framework of a peace agreement or those who demobilize individually in keeping with the established procedures and with the authorization of the Executive.

Paragraph 2. In no case shall transitional justice instruments apply to illegal armed groups that have not been party to the internal armed conflict, or to any members of an armed group who, having demobilized, continue to engage in criminal conduct.

Article 2. Transitory. Once the Executive presents the first draft statute that authorizes the application of the criminal justice instruments established in Article 1(4) of this legislative act to the Congress of the Republic, the Congress shall have four (4) years to issue all the laws that regulate this subject matter.

Article 3. The Political Constitution shall have a new transitory article that shall be transitory article 67, in the following terms:

Transitory Article 67. Enabling legislation will regulate which crimes will be considered related to political crimes for the purposes of the possibility of participating in politics. Those offenses that are considered crimes against humanity and genocide committed systematically may not be considered related to political crimes, and accordingly those who have been convicted and selected for these crimes may not participate in politics or be elected.

Article 4. This legislative act shall enter into force from the moment it is promulgated.

346. As regards that Legislative Act, the Attorney General publicly stated that the enabling legislation that regulates it:

will select which criminal justice system will be applied to the FARC, whether prioritization or selectivity. I believe that the selectivity model is going to be chosen, because prioritization would mean investigating all perpetrators and all incidents, which is the criterion that was applied to the paramilitaries in the Law on Justice and Peace, and that



scheme is not going to work with the FARC.... While the Constitution requires that the highest level persons responsible be investigated, indicted, and prosecuted, it does not require that the sanction imposed be deprivation of liberty.... The framework for peace establishes differentiated frameworks for the actors in the conflict. In other words, that there should be one framework for the guerrillas, one for the members of the paramilitary organizations, and another for state agents who have committed serious human rights violations.... Because at this time a member of the military who has committed a false positive in the context of the armed conflict is sentenced to 30 years or more.... Let's not fool ourselves, let's be frank: the new framework for peace is a conditioned amnesty even for serious human rights violations. Amnesties of this sort are allowed under international law.<sup>594ç</sup>

347. On concluding its visit, the Commission stated serious concerns about the draft legislation in terms of its impact on access to justice, and stated:

With respect to the principles that are included in the reform, the concept of prioritization would, in principle, be consistent with the importance of and necessity to obtain the judicial clarification of the responsibility of the most important leaders. However, the Commission considers the concept of selectivity and the possibility of renouncing the investigation and prosecution of serious human rights violations to be problematic insofar as these would be inconsistent with the obligations of the State. The inter-American human rights system has repeatedly emphasized that victims of grave human rights violations have the right to judicial protection and guarantees in order to obtain the investigation and criminal prosecution of the perpetrators in the courts of ordinary jurisdiction. The jurisprudence of the inter-American system further indicates that the obligation to ensure the judicial protection necessary to protect fundamental rights is not subject to suspension, even in times of war.<sup>595</sup>

348. The Prosecutor of the ICC indicated that:

while the Office welcomes the adoption of a national policy to prioritize the investigation and prosecution of cases against those who bear the greatest responsibility for the most serious crimes, it would view with concern any measures that appear designed to shield or hinder the establishment of criminal responsibility of individuals for crimes within the jurisdiction of the Court. Even in relation to apparently low-level offenders, proceedings related to the alleged commission of war crimes or crimes against humanity should ensure that as much as possible is known about the specific crimes committed by each accused person. This is because such information is likely to be of considerable utility in reconstructing the operational behaviour of each group as well as internal leadership roles. Failure to examine such information could negatively impact a State's efforts to conduct genuine proceedings in respect of those bearing the greatest responsibility for the most serious crimes.<sup>596</sup>

349. During the visit, the IACHR also received information on the lack of opportunities for victims to participate in the process of preparing the reform. In addition, with respect to the

<sup>594</sup> Information available at: <http://www.semana.com/nacion/articulo/fiscal-general-puede-ocurrir-ningun-guerrillero-pague-carcel/264388-3>. Last visited March 1, 2012.

<sup>595</sup> IACHR, Press Release 144A/12, *IACHR's Preliminary Observations on its Onsite Visit to Colombia*, Annex to Press Release 144/12 issued upon the conclusion of the on-site visit to Colombia, December 7, 2012. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/144A.asp>.

<sup>596</sup> International Criminal Court, *Situation in Colombia. Interim Report*, November 2012, para. 205.

differentiated treatment for the different illegal armed groups and State agents that is provided for in the provision, civil society organizations noted that the criteria for the distinction was not clearly established, which would open the door to establishing favorable treatment for state agents, and could strengthen impunity, especially in cases of violence against women that are investigated as common crimes.<sup>597</sup> Nevertheless, the IACHR recalls that according to more recent reports from the State, the legislative process staged, *inter alia*, three public hearings in which various civil society organizations participated.<sup>598</sup> Furthermore, according to what the State reported and based on information in the public domain, in the proceedings associated with the constitutionality challenge discussed below, the Constitutional Court held a public hearing in which some 20 civil society organizations and academia participated. In its observations on the Draft Report, the State asserted that “the process of working out the Legal Framework for Peace was a participatory one” and that “when the text was drafted, suggestions from experts in constitutional law and institutions with expertise in transitional justice were incorporated [...]”.<sup>599</sup>

350. On December 19, 2012, the Colombian Commission of Jurists filed an unconstitutionality action related to the Legal Framework for Peace by which it sought a declaration of the unconstitutionality of the expressions “maximums” (“*máximos*”), “committed systematically” (“*cometidos de manera sistemática*”), and “all the” (“*todos los*”) contained in Article 1(4) of said Legislative Act.<sup>600</sup> On August 28, 2013 the Constitutional Court adopted a decision by which it decided to declare “enforceable” subsection 4° of Article 1 of the Legislative Act 01 of 2012. In this respect, the Court found that the “selection and prioritization mechanisms” are consistent with transitional justice measures aimed to achieve a stable and lasting peace and that the grouping of “serious violations of rights in ‘macroprocesses’ and the attribution to the most responsible”, will be a measure that will allow more effective compliance with the “duty to protect the rights of the victims of the conflict”.<sup>601</sup>

351. In its observations on the Draft Report, the State reiterated that:

By its very nature, Transitory Article 66 of the Constitution of Colombia is controversial because it establishes a system of transitional justice that accepts, from the outset, that total and complete criminal punishment of everything that transpired during the armed conflict is not an achievable goal and that the stubborn pursuit of that objective, however laudable, will have disastrous consequences for effective protection of Colombian citizens’ human rights. Transitory Article 66 opts instead for a solution that, in the ordinary state of

<sup>597</sup> Corporación Sisma Mujer, *Acto legislativo “Marco Jurídico para la Paz”*.

<sup>598</sup> Among those mentioned by the State were the following: the MAPP/OAS, the International Center for Transitional Justice, the *Fundación Ideas para la Paz*, *Citpax* – Toledo, the Colombian Commission of Jurists, Indepaz, Dr. Iván Orozco, Professor from the Department of Political Science at the *Universidad de los Andes*, Dr. Francisco Galán, former ELN spokesperson, the International Crisis Group, FUNDAGAN and representatives of the *Movimiento de Restauración Nacional*. The State also observed that “the former Attorney General of the Nation and former kidnapping victims participated in some of the discussions.” Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 237.

<sup>599</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 237.

<sup>600</sup> Colombian Commission of Jurists, *Demanda de inconstitucionalidad contra el acto legislativo 01 de 2012 (parcial)*, “por medio del cual se establecen instrumentos jurídicos de justicia transicional en el marco del artículo 22 de la Constitución Política y se dictan otras disposiciones”, December 19, 2012.

<sup>601</sup> To the date of preparation of the present report, the full text of the judgment was not available, however, the information has been obtained from the Official newsletter No. 34 of the Constitutional Court, dated August 28, 2013. Available in Spanish at: <http://www.corteconstitucional.gov.co/comunicados/No.%2034%20comunicado%2028%20de%20agosto%20de%202013.pdf>

affairs, might not be the optimum one, but is the best solution in transitional contexts, given the scale and the massive and systematic nature of the crimes committed.

352. Here, the State also reiterated that, as the Constitutional Court itself held, “[...] based on the instruments of human rights and international humanitarian law and on the views of those who interpret them, special application of the rules of prosecution is legitimate, provided prosecution of such crimes is assured.”<sup>602</sup>
353. As the Commission has already said, the approach, design, and provisions of the Legal Framework for Peace mark a conceptual change and provoke a series of human rights concerns.<sup>603</sup> As the IACHR has established in preceding paragraphs, the case-law of the inter-American system has identified the investigation and prosecution of cases of serious human rights violations as essential elements of the rights established in Articles 8 and 25 of the American Convention, and the absence of factual or legal impediments, such as the issuance of amnesty laws.
354. However, the Commission notes with concern that the Legal Framework For Peace contemplates the possibility of renouncing the investigation of the serious human rights and IHL violations not selected, which would lead to impunity. Taking into consideration that the duty to investigate and prosecute cases of serious human rights violations cannot be waived, the mechanisms for selecting and the absence of investigation of those cases would be incompatible with the obligations of the State.<sup>604</sup>
355. In its observations on the Draft Report, the Colombian State pointed out that:

[I]t is critical that the Commission not label the selection mechanism as incompatible with our international obligations. This point has very serious implications for the peace process and would be at odds with the Constitutional Court’s recent jurisprudence on Transitory Article 66. An assertion to this effect would also be at odds with the case law of the I/A Court H.R. to the effect that in transitions from dictatorships to democracy, the applicable standard is to investigate international crimes.<sup>605</sup>

356. Here, the IACHR would remind the State of the observations made in the section on the normative framework in transitional justice processes. It would again underscore the fact that its *jurisprudence constante* and its reports on the situation in various countries of the region and on the armed conflict in Colombia have held that the State must comply with its international human rights obligations and, in keeping with international humanitarian law, honor its obligation to investigate serious violations of human rights. The IACHR must again remind the State that it must take the relevant international human rights standards into account both when analyzing the Legal Framework for Peace and when drafting and debating the statutory laws based thereon.

<sup>602</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013. Annex 1, para.3.

<sup>603</sup> IACHR, Press Release 144A/12, *IACHR’s Preliminary Observations on its Onsite Visit to Colombia*, Annex to Press Release 144/12 issued on the culmination of the on-site visit to Colombia, December 7, 2012. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/144A.asp>.

<sup>604</sup> See, among others, I/A Court H.R., *Case of the Rochela Massacre v. Colombia*, Judgment of May 11, 2007. Series C No. 163; *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 166.

<sup>605</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 240.

## 6. Reform of the Law on Justice and Peace (Law 1592 of 2012)

357. On October 16, 2012, the Senate voting in plenary approved Proposed Law No. 096 of 2011, which makes amendments to Law 975; it was published as Law No. 1592 on December 3, 2012. By adopting this law the Congress extended for two more years the Law on Justice and Peace; the Law will cover crimes up to December 31, 2012; and the Government will have up to 2014 to decide whether to accept new applicants. In its observations on the Draft Report, the State pointed out that “[...] what was done with Law 1592 was to ensure that in the collective demobilization of the *Audodefensas*, the Justice and Peace Law would cover acts committed prior to the demobilization, that any acts committed subsequent to demobilization would not be covered, and that there would be a time limit to apply for the special criminal proceeding, which closed in December 2012.”<sup>606</sup>
358. Law 1592 also establishes criteria for prioritization and regionalization for investigating the most serious crimes,<sup>607</sup> and stipulates that the applicants may request “substitution of the sentence” once they have served eight years in prison – the maximum alternative sentence established in Law 975 – which means that those applicants could be released, but only if they meet the requirements established in the Law on Justice and Peace.<sup>608</sup> In addition, this reform

<sup>606</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 242.

<sup>607</sup> In this regard, the International Center for Transitional Justice has indicated that most of the applicants currently in the Justice and Peace process are rank and file members, and that the importance of establishing patterns diminishes and becomes redundant if those allegedly in positions of control admit and supply information directly in relation to the issues under investigation. It noted that given that many of the commanders have already explained the military command structures, it would be important to inquire into their socio-political dimension, to which end the type of questions should be reformulated. ICTJ, *Propuesta de criterios de selección y priorización para la ley de Justicia y Paz en Colombia*, March 2012, pp. 2, 7, 8.

<sup>608</sup> Article 19 of Law 1592 establishes:

Law 975 of 2005 shall have a new Article 18A that will read as follows:

Article 18A. Substitution of the measure to secure appearance and duty of the applicants to continue in the process. An applicant who has demobilized, being free, may request of the judge with the functions of controlling guarantees a hearing to replace the measure to secure appearance by preventive detention in a prison establishment by a measure to secure appearance that does not entail deprivation of liberty, subject to carrying out what is established in this article and all other conditions established by the competent judicial authority to ensure his or her appearance for the proceeding that is the subject of this law. The judge with functions of controlling guarantees may grant the substitution of the measure to secure appearance within no more than twenty (20) days counted from the respective request, when the applicant has complied with the following requirements:

1. Having remained at least eight (8) years in a prison establishment after his or her demobilization for crimes committed during and on occasion of his or her belonging to the illegal organized armed group. This term will be counted from confinement in an establishment subject entirely to the legal rules that concern prison control;
2. Having participated in the available re-socialization activities, if these were offered by the National Prison Institute (INPEC: Instituto Nacional Penitenciario y Carcelario) and having obtained a certificate of good conduct;
3. Having participated and contributed to the clarification of the truth in the judicial proceedings of the Justice and Peace process;
4. Having turned over property to contribute to the full reparation of the victims, as called for as per the provisions of this law;
5. Not having committed willful offenses after demobilizing.

To verify the foregoing requirements, the judge will take into account the information provided by the applicant and by the competent authorities.

Once granted, the substitution of the measure to secure appearance may be revoked by the judge with functions of controlling guarantees at the request of the Office of the Attorney General or of the victims or their representatives in any of the following circumstances:

1. That the applicant cease to participate in the judicial proceedings of his proceeding in the Justice and Peace jurisdiction, or it is shown that he or she has not contributed to clarifying the truth;
2. That the applicant violates the conditions set by the competent judicial authority;

created the so-called “patterns of macro-criminality” to be able to investigate the crimes and conduct of the *bloques*, and to bring collective indictments; and it established specific grounds for exclusion from the Justice and Peace process.<sup>609</sup>

359. In its observations on the Draft Report, the State described Law 1592 as legislation that would “[expedite] the process of securing convictions against the accused deemed to bear ultimate

3. That the applicant not participate in the reintegration process designed by the national Government for the applicants to the Law on Justice and Peace in development of Article 66 of this law.

Paragraph. In those cases in which the applicant was deprived of liberty at the time the group to which he or she belonged demobilized, the term provided for as a requirement at paragraph 1 of the first section of this article will be counted from the date he or she applies for the benefits established in this law.

609

Article 5 of Law 1592 provides:

Law 975 of 2005 shall have a new Article 11A as follows:

Article 11A. Grounds for termination of the Justice and Peace Proceeding and exclusion from the list of applicants. The persons demobilized from illegal organized armed groups who have been proposed by the national Government to accede to the benefits provided for in this law shall be excluded from the list of applicants after a reasoned decision, handed down in a public hearing by the corresponding Chamber for Justice and Peace matters of the Superior Judicial District Court, in any of the following cases, without prejudice of the others determined by the competent judicial authority:

1. When the applicant is reluctant to appear at the proceeding or violates the commitments provided for in this law.
2. When it is found that the applicant has violated any of the requirements of eligibility established in this law.
3. When it is found that the applicant has not delivered, offered, or reported property acquired by him or her or by the illegal organized armed group during and on occasion of his or her belonging to it, directly or through a legal representative.
4. When none of the facts confessed to by the applicant have been committed during and on occasion of his or her belonging to an illegal organized armed group.
5. When the applicant has been convicted for willful crimes committed after his or her demobilization, or when, having been proposed while deprived of liberty, it is found that he has engaged in criminal conduct from the prison or jail.
6. When the applicant violates the conditions imposed in the hearing for replacing the measure to secure appearance that is the subject of Article 18A of this law.

The request for a hearing on termination may go forward at any stage of the process and should be filed by the prosecutor in the case. The termination of the proceeding for several applicants may be decided in a single hearing, as the prosecutor in the case deems appropriate, when he or she so states in his or her request.

Once there is a firm decision to terminate the special criminal proceedings in the Justice and Peace jurisdiction, the Chamber (Sala de Conocimiento) shall order that copies of what has been done be forwarded to the competent judicial authority to undertake the respective investigations in keeping with the law in force at the time the acts attributable to the applicant were committed, or adopt the decisions as appropriate.

If there were prior requirements due to regular investigations or proceedings suspended by virtue of the special criminal process of the Justice and Peace jurisdiction, once it concludes, the Chamber (Sala de Conocimiento), within the next thirty-six (36) hours, will so communicate to the competent judicial authority for the purposes of immediately reactivating the investigations, proceedings, arrest warrants and/or measures to secure appearance suspended, if appropriate.

In any event, the termination of the Justice and Peace proceeding reactivates the running of the limitations period for bringing the criminal action.

Once the decision to terminate the Justice and Peace proceeding is firm, the competent authority shall forward a copy of the national Government’s decision, so it may act accordingly. The demobilized person may not be proposed once again to access the benefits established in this law.

Paragraph 1. In the event that the applicant does not appear for the Justice and Peace proceeding, the procedure established in this article will be used to terminate the proceeding and exclude that person from the list of applicants. It shall be understood that the applicant does not appear for the Justice and Peace proceedings when one of the following has occurred:

1. His or her whereabouts cannot be established despite the activities by the authorities to locate him or her.
2. He or she does not respond, without justified cause, to the public appeals through the broadcast and print media, nor the summonses made on at least three (3) occasions to appear for the unsworn statement that is addressed in this law.
3. He or she does not come forward, without justified cause, to resume the unsworn statement procedure or testimony in the hearings before the judge, if these are suspended.

Paragraph 2. If the applicant dies, the Delegate Prosecutor will ask the Chamber of Hearings of Justice and Peace of the Superior Judicial District to preclude the investigation as a consequence of the extinction of the criminal action.

Paragraph 3. In any event, if the applicant dies after handing over the property, the process will continue with respect to the forfeiture of the assets handed over, offered, or reported for the contribution to the integral reparation of the victims, in keeping with the provisions established in this law.

responsibility and representative members, and judicial acknowledgement of the patterns of macro-criminality and macro-victimization.”<sup>610</sup> Here, it pointed that three elements “directly affect the ‘excessive delay in the [Justice and Peace] proceedings’”: i) the creation of the “combined hearing for reading and formalization of charges”; ii) the “change to the investigation strategy; and iii) replacing the “motion for full reparations with a motion to identify the harm done to the victims” (to be consistent with the application of Law 1448 of 2011).<sup>611</sup> It also emphasized that the 2013 “Plan of Action” prepared by the National Unit of Justice and Peace Prosecution Offices also fits the strategy proposed in Law 1592 regarding exercise of criminal action and the conduct of the trial.<sup>612</sup> The State also observed that other strategies, such as reconstructing the scenarios in which illegal groups operated and identifying their “policies, patterns, practices and modus operandi” are mechanisms introduced on the basis of Law 1592 and will enable the proceedings instituted under the Justice and Peace Law to move forward swiftly.<sup>613</sup>

360. The following are the Commission’s observations on the implications of the reform introduced by Law 1592, based on the information received on the occasion of the Commission’s visit and upon its conclusion.
361. During the visit the Unit of Justice and Peace considered that the reforms adopted as of Law 1592 will be useful for overcoming the obstacles detected in the seven years during which Law 975 has been implemented to the extent that it seeks to unify the framework for transitional justice and to further the reintegration of the persons who demobilized into civilian life, as well as the elements of truth and reparation. In particular, it was noted that the reform would make it possible to clear up the backlog in the processing of cases, insofar as it allows for the imposition of anticipated judgments in which the subsequent applicants implicate the person with lead responsibility for the existence of a shared context. This approach would respect the principle of procedural economy and would avoid the attrition resulting from the repetition of facts proven.<sup>614</sup>
362. The Unit of Justice and Peace also highlighted the importance of Law 1592 on determining grounds for exclusion.<sup>615</sup> The Commission learned that on December 13, 2012, in application of the new legislation, the Unit of Justice and Peace requested the exclusion of 354 applicants from the Justice and Peace process.<sup>616</sup> In this respect, the Unit of Justice and Peace reported that the exclusion of the following persons is being processed before the respective Superior Judicial District Courts: (i) eight former commanders of the *Autodefensas*; (ii) 271 whose whereabouts it has not been possible to establish even though the appropriate procedure was followed, or they have not appeared for the unsworn statements or the trial hearings; (iii) eight applicants whose exclusion is sought because they have not provided information on crimes committed or, having been convicted in the regular courts, they have only confessed to the crime for which they were convicted; and (iv) 30 applicants convicted of crimes committed

<sup>610</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 214.

<sup>611</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 215.

<sup>612</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 216.

<sup>613</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, paras. 222-224.

<sup>614</sup> Information provided at the meeting with authorities of the Office of the Attorney General, Bogotá, December 4, 2012.

<sup>615</sup> Information provided at the meeting with authorities of the Office of the Attorney General, Bogotá, December 4, 2012.

<sup>616</sup> El Espectador, *Desmovilizados podrían pagar hasta 60 años de cárcel*, December 13, 2012. Available at: <http://www.elespectador.com/noticias/judicial/articulo-392357-desmovilizados-podrian-pagar-hasta-60-anos-de-carcel>.

after their demobilization.<sup>617</sup> Afterwards the Unit of Justice and Peace sought the exclusion of Daniel Rendón Herrera, alias “Don Mario,” considering that after his demobilization “he continued to be engaged in criminal conduct and formed another criminal group called Águilas Negras Héroes de Castaño (‘Black Eagles Heroes of Castaño’), and subsequently the Autodefensas Gaitanistas de Colombia, who had a presence in southern Córdoba and in the lower Cauca river valley in Antioquia.”<sup>618</sup> The Unit of Justice and Peace also sought the exclusion of Francisco Javier Zuluaga Lindo, alias “Gordo Lindo,” “since it was not established that he belonged to the financial, political, or military structures of the Autodefensas Unidas de Colombia (AUC) [but rather] was devoted exclusively to drug trafficking.”<sup>619</sup>

363. Subsequently the IACHR received information on the “Action Plan” undertaken by the Unit of Justice and Peace for 2013. In particular, according to the information provided, the specific objectives will be to further investigations against 16 applicants with top-level responsibility for systemic crimes, namely forced disappearance, forced displacement, kidnapping, illegal recruitment, gender-based violence, and those acts which caused great commotion in the regions, mindful of the differential approach. In addition, work will be done: (i) defining the situation of 1,140 applicants who are free, to conclude the process due to voluntary renunciation, request exclusions, or give impetus to the judicial procedure; (ii) defining the situation of the 71 applicants who could have the right to substitute pre-trial detention by a measure not involving deprivation of liberty; and (iii) filing requests for indictment for the purpose of an early termination against those applicants who were part of the same structure and committed criminal acts under the same modality.<sup>620</sup> Here, the State has explained that the “Plan of Action” of the Justice and Peace Unit follows the prioritization criteria developed by the Office of the Attorney General of the Nation, which will be discussed in the next section; the strategy relies on the definition of a “subjective criterion” concerning the highest-level persons responsible who apply for the Justice and Peace Law, and who were part of the “general command and mid-level command structures, block and front commanders, and members of the political, financial and military components.”<sup>621</sup>
364. The information received by the Commission indicated that priority will be given to the cases of: (i) Salvatore Mancuso Gómez, commander of the Bloque Córdoba, Bloque Norte, and Bloque Catatumbo, extradited to the United States; (ii) Rodrigo Tovar Pupo, commander of the Bloque Norte, extradited to the United States; (iii) Carlos Mario Jiménez Naranjo and Rodrigo Pérez Alzate, commanders of the Bloque Central Bolívar, extradited to the United States and detained at the “Itaguí” prison (Antioquia), respectively; (iv) Luis Eduardo Cifuentes Galindo, commander of the Bloque Cundinamarca de las Autodefensas, held at the “La Picota” prison; (v) Ramiro Vanoy Murillo, commander of the Bloque Minero, extradited to the United States; (vi) Arnubio Triana Mahecha, commander of the Autodefensas Campesinas de Puerto Boyacá, held at the “Itaguí” prison (Antioquia); (vii) Ramón María Isaza Arango, commander of the

<sup>617</sup> Unit of Justice and Peace, *Informe dirigido a la CIDH*, received by the IACHR on March 7, 2013.

<sup>618</sup> Office of the Attorney General, *Fiscalía pidió exclusión de alias Don Mario y alias Gordo Lindo de Justicia y Paz*, February 15, 2013. Information available at: <http://www.fiscalia.gov.co/colombia/noticias/fiscalia-pidio-exclusion-de-alias-don-mario-y-alias-gordo-lindo-de-justicia-y-paz/>.

<sup>619</sup> Office of the Attorney General, *Fiscalía pidió exclusión de alias Don Mario y alias Gordo Lindo de Justicia y Paz*, February 15, 2013. Information available at: <http://www.fiscalia.gov.co/colombia/noticias/fiscalia-pidio-exclusion-de-alias-don-mario-y-alias-gordo-lindo-de-justicia-y-paz/>. The Unit of Justice and Peace also reported that it sought the exclusion of Dumar Jesús Guerrero Castillo considering that “when deprived of liberty [he engaged in criminal conduct] from the center of confinement.” Information sent by the Unit of Justice and Peace to the IACHR, March 21, 2013.

<sup>620</sup> Unit of Justice and Peace, *Plan de acción de casos a priorizar por la Unidad nacional de Fiscalías para la Justicia y la Paz*, received by the IACHR on March 19, 2013.

<sup>621</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAII-13-048140, of December 2, 2013, para. 218.

Autodefensas Campesinas del Magdalena Medio, held at the “La Picota” prison; (viii) Hebert Veloza García, commander of the Bloque Bananero and Bloque Calima, extradited to the United States; (ix) Diego Fernando Murillo Bejarano, commander of the Bloque Cacique Nutibara, Bloque Héroes de Granada, and Bloque Héroes de Tolová, extradited to the United States; (x) Miguel Angel Melchol Mujía Múnera, commander of the Bloque Vencedores de Arauca, extradited to the United States; (xi) Edwar Cobos Téllez, commander of the Bloque Héroes de los Montes de María, held at the “La Picota” prison; (xii) Hernán Giraldo Serna, commander of the Bloque Resistencia Tayrona, extradited to the United States; (xiii) Freddy Rendón Herrera, commander of the Bloque Élmer Cárdenas, held at the “Itaguí” prison (Antioquia); (xiv) Elda Neyis Mosqueda García, commander of Fronts 5 and 47 of the FARC, held at the 17<sup>th</sup> Brigade of the National Army at Carepa (Antioquia); (xv) Ely Mejía Mendoza, commander of the Bloque Oriental of the FARC, of Mobile Column Juan José Rondón or Leones del Llano, Mobile Column Ciro Trujillo, Mobile Column Mario Gómez, and Fronts 4, 9, 10, 11, 22, 23, 24, 28, and 43, held at the “La Picota” prison; and (xvi) Olimpo de Jesús Sánchez Caro, commander of the Ejército Revolucionario Guevarista (ERG).<sup>622</sup>

365. In its observations on the Draft Report, the State pointed out that in application of Law 1592 and the prioritization strategies developed, the Justice and Peace Unit has filed 16 requests for hearings to file formal charges, conducted before the Justice and Peace Chambers of the Superior Courts of the Judicial District, “that in addition to the 16 highest-ranking persons responsible and [identified] representative members, cover 220 former members of the AUC and the FARC who were also part of these criminal organizations, in mid-level command positions and as the principal material perpetrators of the criminal acts.”<sup>623</sup> The State reported that hearing requests concern charges such as “commission of crimes against humanity and war crimes, represented in the form of 2,626 cases of forced disappearance, 30,381 cases of forced displacement, 905 cases of gender-based violence, 1,824 cases of unlawful recruitment, which affected 42,620 victims of the armed conflict. Another 1,631 cases were labeled as “by connotation” [...] and claimed 6,068 victims [...]”<sup>624</sup> The Commission also notes that according to what the State reported, as of October 2013 six hearings for file charges had already concluded, and measures to ensure that the accused would be present for trial were ordered. The other hearings are reportedly still in progress.<sup>625</sup>
366. The State recently reported that as part of the prioritization strategy, the “Plan of Action” of the Justice and Peace Unit also provides for the use of a “subjective criterion regarding victims”, which takes into account those cases of victims “who, based on the differential-approach principle [...], have special circumstances that necessitate positive preferential treatment: cases of victims who are members of indigenous groups, Afro-descendant groups, children and women.”<sup>626</sup> The State also reported that there would be prioritization criteria: i) “objective” criteria for the investigation of “serious criminal phenomena in the form of systemic crimes such as forced disappearance of persons, forced displacement, unlawful recruitment and gender-based violence,” as well as “related crimes or crimes committed in the commission of

<sup>622</sup> Unit of Justice and Peace, *Plan de acción de casos a prioridad por la Unidad nacional de Fiscalías para la Justicia y la Paz*, received by the IACHR on March 19, 2013.

<sup>623</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para 225.

<sup>624</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 226.

<sup>625</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 227.

<sup>626</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 219.



these crimes, such as torture, murder, cruel, inhuman and degrading treatment.”<sup>627</sup>; and ii) “additional” criteria such as the representative nature of the case in exposing the pattern of macro-criminality in question, and the case’s connotations for domestic or international justice, the victims, society and the country.”<sup>628</sup>

367. Based on the information, the Commission notes first that the modifications introduced by Law 1592 in relation to the motion for reparation will be analyzed in the corresponding section. The Commission also notes with concern that on extending the time frame, Law 1592 would allow for members of illegal armed groups that continued committing human rights violations after the collective demobilizations to be able to avail themselves of the benefits established in Law 975, which would represent a situation of insecurity and legal inequality among the persons who have demobilized who are subject to that regime.
368. Furthermore, the Commission takes note of the normative reforms aimed at ensuring procedural economy – which would pick up on the parameters imposed in the judgment of the Supreme Court of Justice that annulled the first judgment of the Justice and Peace jurisdiction<sup>629</sup> and the Assessment drawn up by the MAPP/OAS<sup>630</sup>, among others – and hopes that they will produce specific results in terms of moving the proceedings forward.
369. As regards the grounds for exclusion, the Commission considers it positive that they have been made explicit, given that it is the other side of the coin of the rigorous application of Law 975, on evaluating the extent to which the eligibility requirements have been met, and in particular it will make it possible to give visibility to the failure to carry out the obligation to hand over assets and children and adolescents who have been recruited. Nonetheless, the IACHR notes that to meet the obligations in respect of justice, the exclusion of applicants from the Justice and Peace process should necessarily be accompanied by giving impetus to the investigations and proceedings, which should be carried out with due diligence and in a reasonable time in the regular courts, which is even more crucial in the case of those applicants who have been extradited.

### ***E. Directive 001 of 2012 (Strategy for prioritization of the Office of the Attorney General) and Resolution 1810 de 2012 (Creation of the Unit of Analysis and Context)***

370. On October 4, 2012, the Attorney General adopted Directive No. 001, geared to the adoption and implementation of criteria for prioritizing cases as instruments for criminal justice policy,

<sup>627</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 220.

<sup>628</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 221.

<sup>629</sup> In the first judgment on review the Supreme Court of Justice indicated: “In conclusion: (a) The judgment handed down in a justice and peace proceeding should identify the activity of the demobilized person within the armed group and the front to which he or she belonged, his or her activities, the internal power structure, the criminal model of that group, the orders given, and the criminal plans made, to contextualize the crimes for which one is convicted in the generalized and systematic attack on the civilian population, as will be spelled out when analyzing the provisions applicable to this matter. (b) It is not possible to hand down a judgment without the applicant having been charged for the crime of conspiracy to engage in criminal conduct (*concierto para delinquir*), for that charge must first be made, while all others are a consequence of it.” Supreme Court of Justice, Chamber of Criminal Cassation, Case 31539, Judgment of July 31, 2009.

<sup>630</sup> OAS, *Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana*, MAPP/OAS, October 2011, pp. 145-155. Available at: <http://www.mapp-oea.net/documentos/iniciativas/DiagnosticoJyP.pdf>.

accompanied by others that will make it possible: (i) to investigate criminal acts not as isolated and disjointed occurrences but as the result of the action of criminal organizations in a given context; (ii) to create new structures for managing the investigations; (iii) to join cases for the purpose of determining patterns of conduct, chains of command, and highest-level persons responsible; (iv) to optimize the use of the information in the hands of the different prosecutorial offices; (v) to prevent manifestly unfounded citizen petitions from entering the justice system, along with those in which the victim does not have a genuine interest in the criminal prosecution of the offense; (vi) to form specialized groups of prosecutors that take on the investigation in certain cases; (vii) to introduce changes in the way in which prosecutors and investigators are evaluated; (viii) to rationalize the various tasks that prosecutors must perform with the aim of optimizing the use of the time and administrative resources of the Attorney General; (ix) to uniformly interpret and apply the criminal law; (x) to target investigative efforts on prosecuting crimes with the greatest social impact, taking into consideration the wealth of evidence available; (xi) to best carry out the international commitments assumed by the Colombian State in fighting impunity; and (xii) to articulate the investigative effort made by the Office of the Attorney General with all other public authorities, both Colombian and foreign.

371. The Directive establishes that the Attorney General – (i) after undertaking a process of constructing certain criteria for prioritization in a democratic, transparent, deliberative, and participatory manner, with international accompaniment and the support of several national and foreign experts and institutions; (ii) inspired by criminal investigation management models existing in other countries and in international criminal tribunals, albeit always taking into account their *raison d'être* and operational logic, as well as the Colombian constitutional framework and the particularities of our social reality; (iii) considering that any criminal justice policy instrument must be designed and applied from a gender perspective; and (iv) acting in the exercise of his or her constitutional and statutory authority – to adopt the following criteria for prioritizing cases for the Office of the Attorney General:

1. Subjective. Takes into consideration the particular characteristics of the victim (e.g. member of an ethnic minority, minor, woman, human rights defender, displaced person, judicial officer, journalist, trade unionist, among others), as well as the characterization of the perpetrator (e.g. highest-level person responsible, sponsor, collaborator, financial backer, direct perpetrator of the crime, among others).

2. Objective. Begins with analyzing the type of crime perpetrated, as well as its seriousness and representativity, in terms of (i) impact on the fundamental rights of the particular victim or victims and the community in general; and (ii) the modality by which the crime was committed.

3. Supplemental. There are various supplemental criteria, such as: region or locality where the crimes were perpetrated; wealth of evidence and viability of the case; examination of the case by an international human rights body; and its didactic potential, among others.<sup>631</sup>

<sup>631</sup> Office of the Attorney General, Directive 001 of 2012, *Creación de una estrategia de priorización en la Fiscalía General de la Nación: Memorias de los talleres de discusión y construcción de los criterios de priorización y textos de las Directivas sobre el nuevo sistema de gestión de la priorización*, Bogotá 2012.

372. It is also explained that the Directive seeks to attain two supplemental and harmonious objectives:

(a) The creation of a new system for criminal investigation. The new system will be focused on: (i) the effective prosecution of the highest-level persons responsible for committing systemic crimes, perpetrated by organized apparatuses of power, for the purposes of learning the truth of what happened, avoiding its repetition, and contributing to reparation, (ii) investigating and dismantling criminal organizations responsible for committing multiple common crimes; (iii) in the case of crimes not perpetrated by criminal organizations, the new system will be aimed, in particular, at fighting discriminatory cultural patterns and serious violations of fundamental rights.

(b) The adoption and progressive management of criteria for prioritization. The new system will make it possible to focus the investigative action of the Attorney General on attaining the above-noted objectives in a transparent, rational, and controlled manner.

The new system of criminal investigation and management of the criteria for prioritization will be implemented gradually, in keeping with the timetable and plan defined by the Committee for Prioritization of Situations and Cases.<sup>632</sup>

373. The rationale behind this Directive indicates that the creation of contexts is aimed at: (i) learning the truth of what happened; (ii) preventing its repetition; (iii) determining the structure of the criminal organization; (iv) determining the degree of responsibility of the members of the group and their collaborators; (v) unifying proceedings within the Office of the Attorney General to clarify patterns of conduct and chains of command, both *de facto* and *de jure*; (vi) using schemes for dual criminal indictment (against both the individual and the organization), among others aspects. For the purposes of constructing contexts, several sources of information should be collected and evaluated together, in a weighted and systematic fashion, including such information as the victims wish to provide. Similarly, the necessary procedural measures should be adopted so that the information provided that makes it possible to construct the context can also be used as evidentiary material and physical evidence in the respective inquiries or criminal proceedings that stem from the prioritized cases or situations, among others. The Directive also states that the criteria for prioritization cannot be interpreted or applied as mere instruments for clearing up a judicial backlog, and establishes that “somehow prioritization is equivalent to the extinction of the criminal action in relation to the cases not prioritized, or a renouncing of the duty to investigate and punish the criminal conduct.”<sup>633</sup>

<sup>632</sup> Office of the Attorney General, Directive 0001 de 2012, *Creación de una estrategia de priorización en la Fiscalía General de la Nación: Memorias de los talleres de discusión y construcción de los criterios de priorización y textos de las Directivas sobre el nuevo sistema de gestión de la priorización*, Bogotá 2012.

<sup>633</sup> The Directive also notes that it is consistent with the standards of the inter-American human rights system insofar as, according to it, “the definition [of impunity] adopted and promoted by the Inter-American Court is such that the failure to investigate and punish some particular cases does not constitute an international wrongful act, not to mention the prioritization of one criminal investigation over another; only the *general* absence of criminal investigation and punishment is prohibited [....] To date, no reasoning of the Inter-American Court has indicated that the intentional prioritization of cases, favoring the investigation of some over others, based on objective criteria, can result in a violation of the American Convention [....] From all the foregoing one can conclude that the case-law on human rights appears to have two general limitations on the prioritization of cases. The first limitation implies a general investigative effort. In other words, the State cannot generally neglect its judicial procedures. This includes the absolute and structural inactivity of prosecutors. The second limitation requires the State to investigate serious human rights violations, which includes international crimes. In these cases one cannot opt for something different from investigation and punishment. The foregoing implies that an objective prioritization of cases that includes serious human rights violations is not at odds with the international obligations

374. Finally, the Directive established as constitutional grounds for prioritization of cases the constitutional duty to protect life, honor, property, rights and freedoms, the principle of/right to equality, the fundamental right of access to the administration of justice, the principles of unified management and hierarchy, the participation of the Attorney General in the design of the State's criminal justice policy, and Legislative Act 01 of 2012, specifying that said act "does not limit the authority of the Attorney General of the Nation to adopt criteria for prioritization in the exclusive ambit of transitional justice."<sup>634</sup>
375. Subsequently, by Resolution 1810 of October 4, 2012, the National Unit of Analysis and Contexts (hereinafter "the UNAC") was created, under the office of the Attorney General, as a unit specialized in the analysis of criminal matters. The Resolution states:

The situations or cases prioritized that come before the public servants and officials of the National Unit of Analysis and Contexts shall do so by special assignment ordered through the resolution by the Attorney General of the Nation.<sup>635</sup>

376. Resolution 1811 of October 4, 2012 created and regulated the Committee on Prioritization of Situations and Cases in the Office of the Attorney General as the lead organ in the new system of criminal investigation and for management of the prioritization criteria. The Committee is to be convened at least once a week and its sessions are to be confidential; additionally, the

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of the State in the human rights instruments." The Directive also establishes that according to international humanitarian law, "there is no treaty source for the obligation to investigate and prosecute the perpetrators of serious violations of international humanitarian law in the context of non-international armed conflicts [...] In the case of violations of international humanitarian law applicable to the non-international armed conflict there is a general duty, but not a duty to investigate.... In the event that there is an obligation to investigate in situations of serious breaches of international humanitarian law in non-international armed conflicts, that obligation does not imply the imposition of a sanction, and is satisfied with the mere launching of an investigation by a prosecutor or other competent authority, even if he or she decides to archive it for lack of merit." The Directive further notes that the international criminal courts incorporate in their own terms of reference a prioritization of the cases that can be submitted to their jurisdiction, and cited as a reference Canada's "Crimes against Humanity and War Crimes Program" and the system implemented by Chile of classifying crimes as high, medium, or low complexity. Office of the Attorney General, Directive 001 of 2012, *Creación de una estrategia de priorización en la Fiscalía General de la Nación: Memorias de los talleres de discusión y construcción de los criterios de priorización y textos de las Directivas sobre el nuevo sistema de gestión de la priorización*, Bogotá 2012.

<sup>634</sup> Office of the Attorney General, Directive 001 of 2012, *Creación de una estrategia de priorización en la Fiscalía General de la Nación: Memorias de los talleres de discusión y construcción de los criterios de priorización y textos de las Directivas sobre el nuevo sistema de gestión de la priorización*, Bogotá 2012.

<sup>635</sup> This unit will be made up of 85 prosecutors with different areas of competence, and 439 other staff including specialized professionals, university professionals, investigators in criminology, assistants, and technical personnel. In addition, it is established that this Unit will have the permanent support of a special judicial police unit, on a full-time and permanent basis, and with the authority to act throughout the national territory. Office of the Attorney General, Resolution 1810 of 2012, *Creación de una estrategia de priorización en la Fiscalía General de la Nación: Memorias de los talleres de discusión y construcción de los criterios de priorización y textos de las Directivas sobre el nuevo sistema de gestión de la priorización*, Bogotá 2012. During the visit the UNAC reported that 48 persons make up the Unit, and it has a division of analysis and a division of processes each with its respective coordinator, and a group of prosecutors and investigators from the Technical Investigations Corps (CTI: Cuerpo Técnico de Investigación), to whom particular cases will be assigned so that, based on the analysts' input, they can allege the criminal liability of the high-level commanders of the criminal structures and their financiers and other collaborators. The UNAC also explained that there is a first group of objectives of articulation aimed at taking an inventory of the bases available and designing the unit's data base so as to contribute to standardizing the Office of the Attorney General's information system, as well as six thematic groups, namely: false positives, recruitment of children and adolescents, sexual violence in the armed conflict, violence against unionists, violence against the UP, and Urabá. Report UNAC, December 4, 2012. In its observations on the Draft Report, the State commented that since the creation of the UNAC, "more persons have joined, and have been assigned to three coordination groups; UNAC also now has another three thematic groups." Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 252.

Technical Secretariat of the Committee shall have, among its functions, receiving and processing the petitions submitted by citizens to the Committee on Prioritization.<sup>636</sup>

377. During the visit the UNAC explained that 13 issues had been analyzed (trade unionists, state agents, Unión Patriótica, forced disappearances by the FARC, forced displacement by the FARC, illicit trafficking in mercury, sexual violence, corruption of medicines, recruitment of children and adolescents by the FARC, trafficking between Colombia and Mexico, ports, displacement by the Fondo Ganadero de Córdoba and the AUC of Mancuso), after which it was decided to prioritize the following: trade unionists, state agents, Unión Patriótica, sexual violence, recruitment of children and adolescents by the FARC, taxes, narcotics, and displacements provoked by the AUC.<sup>637</sup> Subsequently the UNAC reported that the priority issues are: (i) extrajudicial executions, (ii) Unión Patriótica, (iii) Urabá; (iv) trade unionists; (v) government contracts; and (vi) FARC.<sup>638</sup> The State has reported that in the implementation of the prioritization policy, UNAC has been assigned a total of 9 topics: i) “the organization of the FARC-EP (which also involves the issues of sexual violence and recruitment of minors);” ii) “extrajudicial executions attributable to members of the police and military”; iii) the violence associated with the displacement and dispossession of land in the Urabá; iv) “the violence in the Montes de María region, with emphasis on the cases of sexual violence that occurred in the context of the armed conflict and massacres”; v) “violence against trade union”; vi) “violence committed against members and supporters of the *Unión Patriótica*”; vii) “violence against journalists”; viii) “assassination”; and ix) “corruption in government contracting in Bogotá.”<sup>639</sup>

378. The UNAC indicated that “prioritization means applying macro-criminal contexts” and explained that it will only take up the issues indicated as priorities by the Committee on Prioritization, while an effort is made for the remaining units and offices Attorney General to reflect that model of criminal investigation, including the work of analysts. In that regard, it was noted that the function of the UNAC is to put forth hypotheses that make it possible to press charges and establish contexts to facilitate requests for and the production of evidence that will help strengthen the work of other areas of the Office of the Attorney General.<sup>640</sup>

379. In general terms, civil society organizations had a positive evaluation of the creation of the UNAC as a measure for moving the investigations forward, but emphasized that this should not weaken the activity of the Unit on Human Rights and IHL. They also considered that the mechanism for prioritization of cases would only be admissible if there is a full investigation and the cases are investigated as systemic crimes, using mapping, analysis by region, and coordination among the relevant institutions. In general, the civil society organizations noted

<sup>636</sup> The Committee is made up of the Deputy Attorney General, the National Director of Prosecutors’ Offices, the National Director of the Technical Investigations Corps, the Chief Prosecutor of the Prosecutorial Unit before the Supreme Court of Justice, Chief Prosecutor of the Unit of Analysis and Contexts, and the Chief of the Executive Secretariat. Office of the Attorney General, Resolution 1811 of 2012, *Creación de una estrategia de priorización en la Fiscalía General de la Nación: Memoras de los talleres de discusión y construcción de los criterios de priorización y textos de las Directivas sobre el nuevo sistema de gestión de la priorización*, Bogotá 2012.

<sup>637</sup> Information provided at the meeting with authorities of the Office of the Attorney General, Bogotá, December 4, 2012.

<sup>638</sup> Information received at the meeting held with the Director of the Unit of Analysis and Context in Washington D.C., April 12, 2013.

<sup>639</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 249.

<sup>640</sup> Information received at the meeting held with the Director of the Unit of Analysis and Context in Washington D.C., April 12, 2013.

that prioritization cannot imply a selection of cases, and, therefore, all reports must be investigated.<sup>641</sup>

380. The civil society organizations also highlighted that the effective participation of the civil party should be guaranteed in the process of determining the prioritization of cases, and warned of the possible “collapse” of the Committee on Prioritization, taking into account the number of cases in process, and the frequency with which it meets.<sup>642</sup>
381. The IACHR is also taking account of the information subsequently presented by the State in connection with the results obtained from implementation of the priority strategy as of October 2013, which was one year after it was introduced. Here the State observed that “one of UNAC’s most important achievements has been to design and implement a four-phase method that shows how the progressive reconstruction of the context can move in lockstep with the procedural phases of the criminal investigation.<sup>643</sup> The State reported that UNAC “has identified 32 situations that have made it possible to reassign 133 cases involving investigation of crimes committed against 389 individual victims and a number of group victims,” including two unions and one indigenous community of over 3000 people.<sup>644</sup> The State also reported that “prioritization plans” have been approved for the following Prosecution Units: Justice and Peace, Prosecution Units specializing in Crimes against Natural Resources and the Environment, the National Unit against crimes of forced displacement and forced disappearance, and the Prosecution Unit specializing in crimes against intellectual property and telecommunications.<sup>645</sup>
382. The Commission considers that in principle the prioritization of cases aimed at making the response of the State’s justice system more efficient is not incompatible with the obligations that emanate from the American Convention, and in certain circumstances may constitute a suitable means for clarifying the truth concerning grave violations that have occurred in the conflict through a diligent investigation. This is without prejudice to the fact that “there are significant differences between the purposes and circumstances of the selection of cases in the International Criminal Court and the purposes of any process of this type in Colombia, or in any other country that faces with widest ranging challenges of transitional justice.”<sup>646</sup>
383. Nonetheless, the Commission notes with concern that among its considerations, Directive 001 of 2012 points out that “the most relevant literature confirms [that] it is never an obligation of the State to conduct an exhaustive investigation, but rather to investigate the most serious violations by the highest-level persons responsible”. The Commission highlights that this interpretation of State’s obligations is not in conformity with the inter-American human rights standards. In effect, the Commission has indicated that in contexts of transitional justice, states

<sup>641</sup> Information provided at the meeting with civil society organizations, Bogotá, December 3, 2012.

<sup>642</sup> Information provided at the meeting with civil society organizations, Bogotá, December 3, 2012.

<sup>643</sup> These phases would be as follows: 1) “parameters and description of situations”; 2) “identification of the highest-ranking persons responsible”; 3) investigation to file formal charges against the highest-ranking persons responsible”; and 4) “trial”. The State pointed out that “the four-phase distinction does not necessarily mean that the analysis and investigation process has to be done deductively, in others, working from the more general criminal phenomena to the more specific cases.” Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, paras. 245-246.

<sup>644</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 248.

<sup>645</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GAIIID-13-048140, of December 2, 2013, para. 250.

<sup>646</sup> ICTJ, *Propuesta de criterios de selección y priorización para la ley de Justicia y Paz en Colombia*, March 2012, p. 3.

have the duty to investigate all grave human rights violations that occurred in the conflict, and to prosecute and punish the persons responsible. In that regard, the Court stated that:

the obligation to investigate, as a fundamental and conditioning element for the protection of certain violated rights, acquires a particular and determining importance and intensity in view of the severity of the crimes committed and the nature of the rights violated, as in cases of grave human rights violations that occur as part of a systematic pattern or practice applied or tolerated by the State or in contexts of massive, systematic or generalized attacks on any sector of the population, because the urgent need to prevent the repetition of such events depends, to a great extent, on avoiding their impunity and meeting the expectations of the victims and society as a whole to know the truth about what happened. The elimination of impunity, by all legal means available, is fundamental for the eradication of extrajudicial executions, torture and other grave human rights violations.<sup>647</sup>

384. Accordingly, the Commission notes that the strategy of prioritizing certain cases over others when it comes to investigating grave violations in the conflict cannot be cited to justify the failure of the State to act with respect to those cases not prioritized. Given the high rates of impunity found in relation to cases of serious human rights violations, such as forced disappearances, torture, sexual violence, and the recruitment of children and adolescents, the IACHR reiterates to the State to include these issues in the prioritization. In this regard, the IACHR reiterates the information available on the benchmarks set by the Constitutional Court to issue enabling laws to develop the Legal Framework for Peace.<sup>648</sup>
385. The Commission values the initiatives aimed at gathering, systematizing, and analyzing the information that is dispersed in different offices and agencies, and highlights the importance of considering the investigations and reports produced by civil society in this compilation exercise. Nonetheless, it observes that it is difficult to clearly envision how the process of constructing contexts will take place or how it will be applied in practice to criminal indictments, and considers that the time that institutional and procedural adaptation takes must not be prejudicial to victims who have been waiting a long time for a response from the justice system. In addition, the Commission is of the view that considering the elements that define the prioritization of cases, forums for the adequate participation of victims should be guaranteed, and, as appropriate, non-judicial justice mechanisms should be strengthened, considering that a Truth Commission has yet to be formed, and that the CNRR and the Center for Historical Memory have produced 17 reports.<sup>649</sup>

<sup>647</sup> I/A Court H.R., Case of the Massacres of El Mozote and neighboring locations v. El Salvador. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, para. 244.

<sup>648</sup> See: Official newsletter No. 34 of the Constitutional Court, dated August 28, 2013, p.4. Available in Spanish at: <http://www.corteconstitucional.gov.co/comunicados/No.%2034%20comunicado%2028%20de%20agosto%20de%202013.pdf>

<sup>649</sup> According to the information available, as of the date of the preparation of this report, the CNRR and the Center for Historical Memory have produced the following reports: Trujillo; El Salado; Memorias en tiempos de guerra; Bojayá; La Rochela; Bahía Portete; Tierra y conflicto; Mujeres y Guerra-Caribe; San Carlos; Comuna 13; Carare-El orden desarmado; Las masacres de Remedios y Segovia; El Tigre; El Género-El Placer; Resistencia en el Cauca indígena; Justicia y Paz; Encuesta nacional sobre Justicia y Paz. Reports available at: <http://www.centrodememoriahistorica.gov.co/#>.

## **F. Constitutional Reform of the Military Criminal Justice System**

### **1. Gains and setbacks in military criminal justice in Colombia**

386. The Commission has monitored the legal framework for the application of military criminal justice in Colombia through its country reports and the system of cases and individual petitions, and has observed the gains and setbacks in this area. While the case-law of the Constitutional Court and the Supreme Court of Justice have been consistent in terms of holding that the military criminal courts lack jurisdiction to investigate human rights violations, the State has implemented different mechanisms that could pose an obstacle to the full application of that principle.
387. In its Third Report on the Human Rights Situation in Colombia, the IACHR noted that in 1995 the Constitutional Court indicated that the situation of social conflict the country was facing for several years placed the members of the forces of order in a situation that required that they participate in various repressive actions to contain the enemies of the institutional order, and, at the same time, to sit in judgment of the excesses committed in the course of those actions, excesses that constitute criminal offenses.<sup>650</sup> Nonetheless, the Colombian Congress responded to the decision of the Constitutional Court with an amendment to Article 221 of the Constitution, to provide specifically that active-duty military officers could serve in courts martial.<sup>651</sup>
388. The Commission also appreciated that on August 5, 1997, the Constitutional Court adopted Judgment C-358/97, which delimited the jurisdiction of the military judicial system. That decision declared unconstitutional certain provisions of the Military Criminal Code that had been interpreted so as to grant broad jurisdiction to the military courts. The Court held that the requirement that the acts be committed “in relation to service” constituted a substantial limitation on the military jurisdiction. The Court specifically held that the military courts could not sit in judgment of particularly serious crimes, including crimes against humanity. The Court held that the conduct entailed in these crimes was completely at odds with the duties and responsibilities of the forces of the State and so could not be committed in relation to military service. Finally, the Court held that the military jurisdiction should be considered “exceptional,” such that in situations that raise doubts as to the proper criminal jurisdiction, the cases should be tried in the regular courts.<sup>652</sup>
389. After many years of debate on a possible reform to the military judicial system, the Executive branch finally submitted a new draft Military Criminal Code to the Congress, on September 9, 1997. That draft reform of the Military Criminal Code would incorporate the parameters of the military jurisdiction established in the decision of the Constitutional Court, explicitly excluding

<sup>650</sup> See IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, para. 21.

<sup>651</sup> See IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, para. 22. In its observations to the Draft Report, the State pointed out that “[...]the so-called verbal war councils have not existed for a long time in Colombia. The proceedings that take place in the military criminal jurisdiction are nowadays inquisitorial, with the guarantees appropriate for such trials. Additionally, the military criminal jurisdiction is working on a draft to implement the oral accusatory criminal system, which avoids the congestion of judicial processes and provides the highest guarantees for the parties.” Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 258.

<sup>652</sup> See IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, para. 30.



from the military criminal justice system the crimes of torture, genocide, forced disappearance, and other serious human rights violations.<sup>653</sup> On August 12, 1999, Law 522 was adopted, with which the Military Criminal Code was adopted.<sup>654</sup>

390. The Constitutional Court continued to further delimit the conduct that can be considered to constitute service-related offenses on analyzing the provisions of the Military Criminal Code. In particular, the Constitutional Court declared the conditional constitutionality of Article 3 of that Code, which provides that the crimes of torture, genocide, and forced disappearance cannot be considered service-related,

in the understanding that the crimes indicated in it are not the only punishable acts that should be considered excluded from the cognizance of the military criminal jurisdiction, for all conduct blatantly contrary to the constitutional function of the armed forces and National Police, and which, if performed, would break the functional nexus of the agent with the service, must be understood to be excluded from the reach of this special jurisdiction.<sup>655</sup>

391. The case-law of the Supreme Court of Justice has also consolidated the exceptional nature of the military criminal jurisdiction on indicating that:

the requirement that the punishable conduct have a direct relationship with a legitimate military or police mission or task answers to the need to preserve the special nature of military criminal law, and to prevent the military jurisdiction from expanding to the point of becoming simply the privilege of a particular group. In this regard, everything done as a material consequence of the service or on occasion thereof may be included within the military criminal law, for the reproachable conduct should bear a direct and proximate relationship to the military or police function. The concept of service cannot mistakenly be extended to everything actually done by the agent. Otherwise, his or her action would be disconnected in practice from the functional element that is at the core of this special area of the law.<sup>656</sup>

392. The Commission also observed with satisfaction that in December 2010 the Council of State decided to lift the provisional suspension that weighed since 2009 over an agreement between the Office of the Attorney General and the Ministry of Defense (Administrative Act “Support for Military Criminal Justice” of June 14, 2006) by which it was agreed that the investigations into members of the armed forces and National Police who participated in military operations in which there were deaths in combat, before being heard by the military criminal justice system, should be taken up by the regular justice system, specifically the Office of the Attorney

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<sup>653</sup> See IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, para. 51.

<sup>654</sup> In timely fashion the State mentioned as provisions related to the restricting of the military criminal justice system Law 940 of 2005, “by which regulations are issued on requirements for holding positions in the military criminal jurisdiction,” and Law 1058 of 2006, “by which a special procedure was established in the Military Criminal Jurisdiction, a transitory article was added, and Article 367 of the same Code was amended.” Permanent Mission of Colombia, Communication No. 14/7 of September 7, 2006.

<sup>655</sup> Constitutional Court, Judgment C-878 of July 12, 2000. The State also referred to Judgment C-004 of 2003, by which the Court approved the viability of bringing a motion for review against decisions of acquittal in the proceedings related to serious human rights violations and infractions of international humanitarian law. Permanent Mission of Colombia, Communication No. 14/7 of September 7, 2006.

<sup>656</sup> FIDH – Coordinación Colombia-Europa-Estados Unidos, *Colombia. La guerra se mide en litros de sangre. Falsos positivos, crímenes de lesa humanidad: más altos responsables en la impunidad*, July 2012, p. 50, citing the Supreme Court of Justice, Chamber of Criminal Cassation, Judgment of February 13, 2003, Case 15,705.

General.<sup>657</sup> The provisional suspension of that agreement had been decreed while an action for annulment was being resolved; that action alleged that the Administrative Act was unconstitutional.<sup>658</sup> In addition, the Commission reiterated that the failure of the military criminal justice system to forward the investigations to the regular justice system constituted an obstacle to the clarification of these crimes in some parts of Colombia.<sup>659</sup>

393. Nonetheless, the Commission notes with concern that on November 15, 2012, the Council of State declared the nullity of sections 4, 5, and 6 of the Administrative Act “Support for Military Criminal Justice,” considering that:

if there is criminal conduct by members of the armed forces or National Police “on occasion of the very operations of the Military Forces,” in order to determine the jurisdiction of the military criminal courts or the regular courts to hear the specific case it shall be the judge of Military Criminal Investigation who, on analyzing the factual situation in which the criminal act was committed, will compare the conduct and the operation or action particular to the service for the purpose of establishing whether that operation or action falls within the definition of military crime or common crime adapted to the military function, or does not fall within that definition so as to make out conduct that should be heard by the regular justice system.<sup>660</sup>

394. As for the jurisdictional conflicts between the regular and military courts, in February 2011 a special mechanism was established that favored the removal to the regular justice system of 220 investigations related to homicides attributed to members of the armed forces or National Police, and could include, among its functions, seeking solutions for the review of the cases that may have been archived by the military jurisdiction without an appropriate investigation.<sup>661</sup> The State informed that such initiative, labeled “Impulse Plan”, has the purpose of “generating spaces of communication among judicial staff of the civilian and military criminal jurisdictions, so that they may review at the first instance level and decide jointly the jurisdiction that will conduct the investigation.”<sup>662</sup> In that framework, according to the information received, as provided for in the tripartite agreement signed in June 2011 the Ministry of Defense, the Office of the Attorney General, and the Office of the Prosecutor signed a tripartite agreement by which the Government has formed a Technical Roundtable (Mesa Técnica) that “may resolve jurisdictional conflicts when there is doubt as to the judge with whom jurisdiction should lie”

<sup>657</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on Colombia corresponding to 2010, February 25, 2011, p. 9.

<sup>658</sup> IACHR, *Hearing on application of the military jurisdiction in cases of human rights violations in Colombia*, October 28, 2010. Available at: <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>.

<sup>659</sup> IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, para 29. IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 69.

<sup>660</sup> Council of State, Joined cases nos. 2009-00196 and 2008-00025. Plaintiffs: Hilda Lorena Leal Castaño and Marco Hernando Baez Garzón, November 15, 2012. Available at: [http://www.defensoriamilitar.org/\\_pdf/fallo\\_consejo\\_estado.pdf](http://www.defensoriamilitar.org/_pdf/fallo_consejo_estado.pdf). See also, El Espectador, *Anulan acuerdo firmado entre Gobierno y Fiscalía por Justicia Penal Militar*, December 11, 2012. Available at: <http://www.elespectador.com/noticias/judicial/articulo-391932-anulan-acuerdo-firmado-entre-gobierno-y-fiscalia-justicia-penal>. Coordinación Colombia-Europa-Estados Unidos, International Federation for Human Rights, *Síntesis presentación en Audiencia sobre ejecuciones extrajudiciales desarrollada en 147° periodo ordinario de sesiones*, April 13, 2013. See also, IACHR, *Hearing on reports of extrajudicial executions in Colombia*, March 14, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=2>.

<sup>661</sup> United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner on Human Rights on the situation of human rights in Colombia, 19<sup>th</sup> session, A/HCR/19/21/Add.3, January 31, 2012, para. 34.

<sup>662</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140 of December 2, 2013, para. 259.

in cases of extrajudicial executions, thereby repudiating the functions of the Superior Council of the Judiciary.<sup>663</sup>

395. In addition, the Commission observes setbacks in the decision regarding jurisdictional conflicts between the regular courts and the military courts by the Superior Council of the Judiciary. In this respect, civil society organizations reported that from November 2012 to March 2013, the Superior Council of the Judiciary changed its case-law when it characterized the cases of false positives as service-related, or referred the investigations to the military criminal courts.<sup>664</sup> The IACHR takes note of what the State expressed in its observations to the Draft Report, when discussing the possibility that the false positive cases may be derived to the military criminal jurisdiction, affirming that “it certainly will not happen”, and that such type of initiative “has not been, nor will be the policy of this Government.”<sup>665</sup>

## 2. Process of approval and text of the Constitutional Reform (Legislative Act 02 of 2012)

396. As part of the special attention devoted to the issue of application of military criminal justice in Colombia, the IACHR has been following up closely the discussion generated in that country about a new draft reform to the criminal military jurisdiction. In that context, the Commission received information from the State and from civil society on the implications of such draft, as well as on its scope and compatibility with the State’s international obligations to protect human rights. The IACHR has also been closely following statements and recommendations directed to the State from other international human rights protection organs. At the end of its visit to the country, the Commission also presented its considerations on the content of the draft and later reiterated to the State its preoccupation about its content and later again expressed to the State its concern for its entry into force, after its approval by Legislative Act 02 and the submission of the respective statutory law to Congress. The Commission underscores that, as part of this reform process, there was a broad debate in Colombia about the application of military justice for the investigation of human rights violations even though, as pointed out *supra*, the national jurisprudence itself has allowed for the consolidation of the exceptional nature of its application.

<sup>663</sup> Colombian Commission of Jurists, *Informe de seguimiento a las recomendaciones del Relator Especial sobre Ejecuciones Extrajudiciales, Sumarias o Arbitrarias*, June 14, 2012. Executive Summary, para. 3. Regarding this matter, the State indicated in its observations that “as a product of the implementation of this procedure, good practices were identified and made officially part of the 15 Measures to Fight Impunity, as well as the implementation by the Executive Directorate of Military Criminal Justice [...] of a follow-up and monitoring system in cases where a complaint were filed”. Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 260.

<sup>664</sup> In this regard, it was noted that: (a) not any doubt can define a conflict in one or another direction, but only reasonable doubt, which is constituted only if one refutes: (i) the presumption of the legality of the act, (ii) the presumption of relatedness with service, and (iii) the presumption of innocence of the public servant involved; (b) it justifies the conduct of the military on noting that when one notes a disproportionate use of force it fits within the definition of “legitimate defense” as grounds for being exempt from criminal liability; (c) it undercuts the value of the statements by eyewitnesses and family members of the victims. Coordinación Colombia-Europa-Estados Unidos, International Federation for Human Rights, *Síntesis presentación en Audiencia sobre ejecuciones extrajudiciales desarrollada en 147° período ordinario de sesiones*, April 13, 2013. See also, IACHR, *Hearing on reports of extrajudicial executions in Colombia*, March 14, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=2>.

<sup>665</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 261.

397. The Commission takes into account that --as of the date of approval of the instant report-- the reform of the criminal military jurisdiction was declared inapplicable by the Constitutional Court, as will be explained below. The IACHR has learned that, after that decision was made public, several State authorities announced that they would continue analyzing the matters presented in the reform, with a view to launch initiatives that would again take up the issues included in Legislative Act 02.<sup>666</sup> Accordingly, the Commission considers it important to reflect in this report the background and elements of special concern that have arisen regarding the terms in which such reform was presented, as a way to continue contributing to a discussion that remains current in Colombia, especially in a context where the State is advancing toward a design of transitional justice that would come about with the eventual conclusion of the armed conflict.<sup>667</sup>
398. As background, the IACHR bears in mind that the Proposed Legislative Act 07/11 sought to amend Article 221 of the Constitution and to establish a constitutional presumption in favor of the military criminal courts as the proper jurisdiction for criminal investigations and proceedings related to any and all military operations. This proposal was rejected by the Executive and replaced by another. A new draft reform on this matter was introduced on March 16, 2012, in a context of strong criticism by the international community and Colombian civil society.<sup>668</sup>
399. On June 12, 2012, the IACHR forwarded a request for information to the State in keeping with Article 41 of the American Convention in the following terms:

The Commission has received information indicating that the draft constitutional amendment under discussion establishes that violations of international humanitarian law will be heard exclusively by the military criminal jurisdiction, and that human rights violations are not excluded from that jurisdiction. In addition, according to what we have been told, that draft establishes that the courts of the military criminal jurisdiction will be made of active-duty or retired members of the armed forces or National Police and creates a Court of Criminal Guarantees, in the military criminal jurisdiction, that serves as a judge of control of guarantees (*juez de control de garantías*) for criminal investigations and proceedings that are brought against members of the armed forces of National Police, which oversees the accusations against them.

[...] In view of this, and in furtherance of the mandate of the IACHR to foster respect for human rights in the domestic legislation of the states parties to the American Convention, I take this opportunity to request that Your Excellency's Government, within 15 days of the

<sup>666</sup> For example, the IACHR observes that according to a press release from the Presidency of the Republic, president Juan Manuel Santos ordered the submission of a recourse (*recurso de nulidad*) to nullify the decision of the Constitutional Court that declared inapplicable the reform of the military criminal jurisdiction. In this regard, President Santos said that "[...] as a democrat, I have expressed our respect and compliance with judicial decisions, but this does not mean that we renounce to the possibility of controverting them by means of the procedures that are part of our rule of law." Presidency of the Republic, *Presidente Santos ordena presentar recurso de nulidad contra el fallo de la Corte Constitucional que declaró inexecutable reforma al fuero penal militar*, 30 de octubre de 2013.

<sup>667</sup> In its observations to the Draft report, the State requested the exclusion of the paragraphs relating to the analysis of the military criminal jurisdiction reform; however, it also presented its observations on the content of those paragraphs. For these reasons, the Commission decided to keep the chapter and took into account the information presented by the State about the reform.

<sup>668</sup> Observatorio de Derechos Humanos, CCEEU, *La Expansión del Fuero Militar a Violaciones de Derechos Humanos y crímenes contra el Derecho Internacional Humanitario aniquila una de las Bases del Estado de Derecho y destruye la Independencia del sistema Judicial*. Presentation before the Public Hearing on Expansion of the Military Criminal Jurisdiction. First Committee of the Senate of the Republic.

date of transmittal of this communication, submit information on the scope of that proposal, its consistency or compatibility with the framework for the application of military criminal justice in Colombia, and its compatibility with inter-American standards on human rights protection.

400. In its response of June 28, 2012, the State indicated that the Government's interest in presenting that proposal has been to give the armed forces and National Police a clear and consistent legal framework that enables them to perform their function in the complex context of the armed conflict. It also explained that the reasons behind the reforms were: (i) to establish clear parameters for delimiting the jurisdiction of the military criminal courts and the regular courts, and (ii) to harmonize Colombian criminal law with international humanitarian law.<sup>669</sup>
401. In addition, the State noted that the reform sought: (i) the exceptional convening, through enabling legislation, of a technical coordinating commission made up of representatives of the military and regular jurisdictions, supported by their respective judicial police forces, in case of doubt over the jurisdiction of the military courts; and (ii) to elevate to constitutional rank the determination of crimes which under no circumstance can be heard by the military criminal justice system (crimes against humanity, genocide, forced disappearance, extrajudicial executions, recruitment of children and adolescents).<sup>670</sup>
402. The State also explained that the reform sought: (i) to define a substantive framework for the prosecution of members of the armed forces and National Police in the armed conflict, in keeping with international humanitarian law; (ii) the creation of a court of criminal guarantees (*un tribunal de garantías penales*) with preferential jurisdiction vis-à-vis the two systems, when the accused are members of the armed forces or National Police, that will oversee the criminal accusation and will define which of the two judicial systems will have preferential jurisdiction, and which will be made up of judges who are experts in international humanitarian law, criminal law, and constitutional law, and retired members of the armed forces and National Police; (iii) to foster recognition of a military criminal judicial police force; (iv) to authorize the legislator to create criminal courts for the Police and to adopt a Police code, given that the Colombian National Police, due to the armed conflict, is a civilian body that has been militarized; and (v) the creation of a fund for the public, technical, and specialized defense of the members of the armed forces of National Police for trials in both the regular courts and the military courts. The reform also seeks to have members of the armed forces and National Police to be able to serve the period of pre-trial detention at military centers of confinement and, if found guilty, that they be held in special penitentiaries, separate from those prisoners associated with illegal armed groups, so as to guarantee minimum conditions for the protection of their life and integrity.<sup>671</sup>
403. From the outset Colombian civil society stated its forceful and reiterated opposition to the proposal and to the reform as adopted, and indicated that the changes breached the constitutional case-law and international treaties and resolutions, which have limited the military criminal jurisdiction to matters strictly related to the internal discipline of the armed forces and National Police. In addition, it was noted that the ambience of fear and generalized suspicion in which victims operate at present would be intensified if the trials are left in the hands of the very institutions that have committed the various crimes, and therefore, distrust

<sup>669</sup> See Answer of the Colombian State of June 28, 2012.

<sup>670</sup> See Answer of the Colombian State of June 28 2012.

<sup>671</sup> See Answer of the Colombian State of June 28 2012.

in legal actions would rise, instilling a sensation of vulnerability and defenselessness in society that does not contribute to the processes of accessing truth, justice, and full reparation.<sup>672</sup>

404. In particular, civil society noted that the reform violated equality before the law and repudiates Colombia's international obligations, which exclude human rights violations from the military jurisdiction. In that regard, it has been argued that the complexity of military matters does not justify expanding the jurisdiction, for with that argument equality before the criminal law would be impaired, as one would have to provide special jurisdictions for different professionals or for complex and difficult-to-understand activities. It was also argued that the present-day international criminal tribunals, such as the tribunal for the former Yugoslavia, are made up of non-military judges and they have been able to sit in judgment of the crimes committed in those armed conflicts appropriately and impartially.<sup>673</sup>
405. Civil society organizations also noted that the reform sought to have cases arising from military operations be tried in the military jurisdiction, applying exclusively the provisions of international humanitarian law. They also noted that the reform denies the existence of competent, independent, and impartial judges, for the military tribunals are under the Executive branch. It also considered that there are no bases for the existence of the special process of constituting a Committee that decides on cases in which a jurisdictional conflict arises, since such situation are currently resolved by the Judicial Council; moreover, according to the case-law of the Constitutional Court since 1997, in case of doubt, the regular courts will have jurisdiction. In this respect, the civil society organizations stated their concern that the cases currently being heard in the regular courts could be removed to the military courts.<sup>674</sup>
406. It was also noted that the Court of Guarantees (Tribunal de Garantías) would control the formal and substantive conditions of the accusation, and that preliminary investigations may only be conducted by the military judicial police, which would run to the detriment of an independent evaluation, and would also do away with the agreements signed by the Office of the Attorney General and the Ministry of Defense. The civil society organizations were of the

<sup>672</sup> Organizations of the Coordinación Colombia-Europa-Estados Unidos. *Carta de solicitud de retiro de reforma constitucional que amplía el fuero penal militar a graves violaciones de derechos humanos e infracciones al Derecho internacional humanitario (Reforma a los artículos 116, 152 y 221 de la Constitución Nacional)*, November 14, 2012. Civil society organizations also indicated that the military criminal justice reform occurred in a context governed by the premise of "legal warfare" that proposes infiltrating a judicial proceeding by which the legitimacy of any witness who testifies against the armed forces or National Police is cast in doubt. The concept of "legal warfare" is used to attack, in particular, the human rights organizations under the accusation that they represent a legal arm of the insurgent groups. The notion of "legal warfare" has also led to the creation of the concept of "judicial war," defined as the fabrication of "false charges and accusations against members of the armed forces and National Police." FIDH – Coordinación Colombia-Europa-Estados Unidos, *Colombia. La guerra se mide en litros de sangre. Falsos positivos, crímenes de lesa humanidad: más altos responsables en la impunidad*, July 2012, p. 57.

<sup>673</sup> Uprimny, Rodrigo, *Las sin razones del fuero ampliado (I)*, *El Espectador*, November 17, 2012. Available at: <http://www.elespectador.com/opinion/columna-387641-sin-razones-del-fuero-ampliado-i>. It has also been indicated that in war one can do things that are unlawful during peacetime. International humanitarian law authorizes the lethal use of force, so long as it is an attack directed against a military target and the harm caused is not excessive in relation to the specific military advantage that can be obtained. The rules that regulate the use of force in war and in police operations in peace are different in part. Indeed, the very same expression, such as the "principle of proportionality," has partially different meanings: in humanitarian law it has to do with the relationship between the military advantage and the harm caused, whereas in regular criminal law it refers to the relationship between the act of aggression and the police response. Accordingly, there is ambiguity, and the members of the military are right to call for greater legal clarity. But the solution is not to expand the military jurisdiction, for one does not solve a substantive problem with a procedural change. The solution is to spell out the principles and rules that regulate military operations, for which a law that addresses the matter systematically would suffice. Uprimny, Rodrigo, *Las sin razones del fuero ampliado (II)*, *El Espectador*, November 24, 2012. Available at: <http://www.elespectador.com/opinion/columna-388927-sinrazones-del-fuero-ampliado-ii>

<sup>674</sup> Information provided at the meeting with civil society organizations, Bogotá, December 3, 2012.

view that the proposal of establishing a Technical Corps for Military Investigations is not only an unnecessary expenditure but also an additional element of impunity insofar as its purpose would be to manage the crime scene, making it possible to hide evidence.<sup>675</sup>

407. In terms of the substantive scope of application that established the reform, civil society organizations highlighted that all violations of international humanitarian law would be heard by the military jurisdiction. In this respect, they expressed their concern that extrajudicial executions are not defined as such in domestic law, but are investigated under the criminal statute on “homicide of a protected person,” and from that vantage point could be investigated in the military criminal jurisdiction. The same situation would be raised in respect of other human rights violations defined in domestic law as violations of international humanitarian law. Moreover, it was indicated that the reform leaves it up to military courts to determine whether or not there were forced disappearances that could be characterized as another type of offense that would fit under international humanitarian law, such as “kidnapping,” “hostage-taking,” or “death in combat” when persons who have been disappeared turn up dead.<sup>676</sup>
408. Similarly, the civil society organizations indicated that the reform established a prison jurisdiction (*fuero carcelario*) for the members of the security forces, which is an illegitimate extension of the military jurisdiction. It was indicated that while in some cases measures should be adopted for persons convicted to be separated from other prisoners while detained, with a view to ensuring their security, it is not permissible for detentions to take place at the battalions in any case.<sup>677</sup>
409. Human Rights Watch and other international civil society organizations also rejected the reform. In particular, the ICTJ considered that the reform of the military jurisdiction was unnecessary and could constitute an attack on the integrity of the objectives of transitional justice in the Colombian context. In that regard, it noted that: (i) the international community has consistently held that civilian courts should be the ones to investigate and prosecute war crimes, mindful that the international tribunals and the ICC itself are made up of civilians; (ii) the argument in favor of the reforms does not make sense from a technical standpoint, since (a) civilian courts can seek advice and experience on military issues just as they do for other areas of specialized activity, (b) the investigation and prosecution of the crimes of genocide and crimes against humanity are highly complex, (c) while some war crimes have a certain degree of legal complexity, in general they are less complex than genocide and crimes against humanity, and (d) for decades the civilian courts in Colombia have judged the crimes of the paramilitaries, and in large measure those of the guerrilla forces; (iii) the reforms may lead to greater confusion, for example, in those cases in which the same act can constitute a war crime and a crime against humanity, and may be seen as an instrument of impunity, (iv) the military courts are not appropriate for investigating complex or systemic crimes; (v) there is no guarantee of the impartiality and independence of the court; (vi) the reform is at odds with the traditional objectives of transitional justice given that it would give rise to delays and confusion, and would increase suspicions that the underlying purpose is not to guarantee an adequate technical investigation and an effective criminal prosecution, weakening citizen

<sup>675</sup> Information provided at the meeting with civil society organizations, Bogotá, December 3, 2012.

<sup>676</sup> Coordinación Colombia-Europa-Estados Unidos, *En Colombia las desapariciones forzadas no son asunto del pasado. Las desapariciones forzadas en Colombia siguen cometiéndose y el Gobierno promueve nuevas medidas que garantizan su impunidad*, November 2, 2012, pp. 11-12.

<sup>677</sup> IACHR, *Hearing on constitutional reforms and human rights in Colombia*, March 14, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=131>. IACHR, *Hearing on reports of extrajudicial executions in Colombia*, March 14, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=2>

trust; and (vii) the justifications for granting judicial benefits to the paramilitaries and possibly the guerrillas are not valid in the case of members of the military forces.<sup>678</sup>

410. In her 2011 report the High Commissioner had already indicated:

OHCHR-Colombia reiterates the obligation of military justice to abstain from investigating or claiming jurisdiction over cases that may involve human rights or international humanitarian law violations. When in doubt, the ordinary, and not the military justice system, should be competent, as the former is the general rule and the latter the exception, in conformity with international standards and national jurisprudence of the Constitutional Court. OHCHR-Colombia considers it essential that in these cases the ordinary system undertake the initial investigations without exceptions. This should be reflected in the discussions on justice reform that are currently taking place in Congress.<sup>679</sup>

411. The High Commissioner also indicated that the illegal granting of prison benefits to members of the Army detained at military establishments or bases, or convicted of serious human rights violations, may come to constitute a form of impunity, and triggers the responsibility of the commander of the military facility and his superiors.<sup>680</sup>

412. On October 22, 2012, the 11 mandate-holders of the special procedures of the United Nations Human Rights Council made an appeal to the Executive and Congress of Colombia to reconsider the proposed reform to the Constitution regarding the military criminal jurisdiction, which would have serious implications for the rule of law and the enjoyment of human rights in Colombia. According to the rapporteurs, that reform would represent a historical step backwards in the Colombian State's gains in fighting impunity in relation to respecting and ensuring human rights; it would send the wrong message to the members of the armed forces and National Police as to the consequences of participating in violations of human rights and international humanitarian law, and it would seriously prejudice the administration of justice for cases of violations of human rights and international humanitarian law, including serious crimes, by the military or police forces.<sup>681</sup>

413. They also indicated:

Military and police courts would be competent to investigate, process and judge a long list of other violations of international human rights and humanitarian law, including war crimes; arbitrary detention; cruel, inhuman or degrading treatment; and other violations such as violence against the person and mutilation; taking of hostages; outrages upon personal dignity, including humiliating treatment; and the obligation to treat persons taking no active part in the hostilities humanely in all circumstances, without any distinction on grounds of ethnicity, religion or faith, sex, birth or wealth, or any other similar criteria, prohibited by virtue of common article 3 of the 1949 Geneva Conventions.

<sup>678</sup> ICTJ, *La reforma al fuero militar en Colombia contradice los objetivos de la justicia transicional*, November 2012. Available at: <http://ictj.org/es/publication-type/documento-breve>.

<sup>679</sup> United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner on Human Rights on the situation of human rights in Colombia, 19<sup>th</sup> session, A/HCR/19/21/Add.3, January 31, 2012, para.35.

<sup>680</sup> United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner on Human Rights on the situation of human rights in Colombia, 19<sup>th</sup> session, A/HCR/19/21/Add.3, January 31, 2012, para. 36.

<sup>681</sup> Office of the United Nations High Commissioner for Human Rights in Colombia. Press Release, *Colombia: UN experts call on the authorities to reconsider the constitutional reform of military criminal justice*, October 22, 2012.



These courts could also have jurisdiction over crimes committed by private security forces.<sup>682</sup>

They noted as well that they were

very concerned that this proposed constitutional reform intends to allow institutions of military or police criminal justice to be the first to determine whether an element of any of these crimes exists, to the detriment of an independent evaluation and the principle of natural judges established under international law. We are particularly concerned at the possible impact of this, given that the preliminary investigation phase is essential for the clarification of facts and responsibilities, including specific criteria that could indicate precisely whether the facts suggest the perpetration of crimes against humanity or genocide.<sup>683</sup>

414. In its observations to the Draft Report, the State pointed out that Legislative Act 02 did not modify “the standards of competence to take over the first proceedings in criminal matters”, since that would ignore what Article 250 of the Political Constitution establishes, which was not modified by the reform.<sup>684</sup> Additionally, it indicated that the reform “only covered members of the Armed Forces and National Police” which is why it did not open the possibility for military criminal justice to “try crimes committed by ‘private security forces.’”<sup>685</sup>

415. On November 16, 2012, on concluding its 146<sup>th</sup> period of sessions, the Commission stated its concern with respect to the constitutional reform of the military jurisdiction in process and recalled the applicable guiding principles. The IACHR noted that:

[...] received information regarding the draft constitutional reform in Colombia. The draft reform seeks to modify the military jurisdiction, establishing that violations of international humanitarian law will be heard exclusively in the military criminal jurisdiction and that human rights violations will not be excluded from this jurisdiction. According to the information provided to the IACHR, the draft reform establishes that the courts under military criminal jurisdiction are made up of active or retired members of public security forces. The reform also creates a Court of Criminal Guarantees within the military criminal jurisdiction; it will act as judge to oversee guarantees when it comes to investigations and criminal prosecutions carried out against members of public security forces.

<sup>682</sup> Open letter by Special Procedures mandate-holders of the Human Rights Council to the Government and representatives of the Congress of the Republic of Colombia. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12683&LangID=E>

<sup>683</sup> Open letter by Special Procedures mandate-holders of the Human Rights Council to the Government and representatives of the Congress of the Republic of Colombia. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12683&LangID=E>

<sup>684</sup> In this respect, the State highlights that Article 250 establishes that “It is the responsibility of the Office of the Public Prosecutor to press charges and investigate facts that meet the elements of a crime, when it is made aware of it by means of a denunciation, special petition, criminal action, or of its own initiative, as long as there are enough motives and factual circumstances that point to its existence. Accordingly, it may not suspend, interrupt, or renounce to prosecute criminally, with the exception of such cases established in the law for the application of the principle of opportunity, regulated within the framework of the State’s criminal policy, which shall be subject to the control of legality by the judge who has the power of control of guarantees. **Excepted are the crimes committed by members of the public force in active service and related to their service.** [Highlighted in the document of Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, paras. 265-266.

<sup>685</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 268.

On this point, the Commission calls to mind that the Inter-American Court of Human Rights has established that the State has the obligation to provide effective judicial recourse to victims of human rights violations, and the Commission believes that such recourse, in all cases, is through the regular criminal jurisdiction, regardless of whether or not the violations being prosecuted were committed by members of the military. The Commission has spoken out extensively with respect to cases involving alleged human rights violations committed by agents of the State, and it has urged the State to ensure that its entities act in a coordinated manner to guarantee that all cases not directly tied to military service are heard in the regular jurisdiction. Moreover, the Commission emphasizes that, with respect to guarantees of independence of military judges, inter-American standards require that such judges not exercise command duties at the same time as the duties of investigation, accusation, and prosecution; rather, when the military jurisdiction is the appropriate venue, only judges who are retired from their military duties and from the command structure should be assigned to this task.<sup>686</sup>

416. On November 27, 2012, the Office of the High Commissioner urged the Executive and Legislative branches of Colombia to rethink their position in support of the proposed law, which represented a major change in the scope of the military justice system. In addition, it was indicated that if the provision were adopted, it “would seriously undermine previous efforts undertaken by the Colombian Government to ensure that human rights violations, allegedly committed by members of the Colombian military and police forces, are duly investigated and perpetrators held to account.”<sup>687</sup>
417. During the visit the Commission met with the Minister of National Defense, who explained that the surveys conducted within the armed forces and National Police reflected a sense of insecurity that affected their capacity to operate and he emphasized the democratic process by which the debate on the reform was being conducted.<sup>688</sup> He also noted that the letter from the 11 United Nations rapporteurs was a matter of concern to the Government, but that it was sent before the proposed law evolved in the Congress, where the list of crimes excluded was expanded. In this respect, he noted that the recruitment of children and adolescents was not included in the list, since the armed forces and National Police are prohibited from engaging in that practice.<sup>689</sup>
418. The Minister also indicated that the proposed reform: (i) required that enabling legislation establish additional guarantees of independence and impartiality; (ii) civilian oversight mechanisms over military criminal justice would be maintained and increased; (iii) would strengthen military justice so that the investigations would produce quick results, strengthening discipline and setting examples in the armed forces and National Police; and (iv) established that an enabling law will clearly determine how international humanitarian law applies to an armed conflict, since the applicable protocols in effect in the armed forces and National Police do not have judicial value.<sup>690</sup> As regards jurisdiction for taking the first

<sup>686</sup> IACHR, Press Release 134/12, *IACHR Concludes its 146th Session and Expresses Appreciation for the Confidence Shown by All Stakeholders in the Human Rights System*, November 16, 2012. Available at: [http://www.oas.org/es/cidh/prensa/comunicados/2012/comunicados\\_2012.asp](http://www.oas.org/es/cidh/prensa/comunicados/2012/comunicados_2012.asp)

<sup>687</sup> Press Release available at: <http://www.hchr.org.co/publico/comunicados/2012/imprimir.php3?texto=cp1224es.txt>

<sup>688</sup> Information provided at the meeting with the Minister of Defense, Bogotá, December 4, 2012.

<sup>689</sup> Information provided at the meeting with the Minister of Defense, Bogotá, December 4, 2012.

<sup>690</sup> Information provided at the meeting with the Minister of Defense, Bogotá, December 4, 2012.

investigative steps, the State noted that it is defined in Article 250 of the Constitution, and that it had not been amended by the constitutional reform.<sup>691</sup>

419. Finally, the Minister, while noting that he shared a certain skepticism, asked the IACHR to “trust that the reform does not seek impunity in relation to human rights violations perpetrated by agents of the security forces,” and assured that “the cases of false positives or the rape of children in Arauca will *de facto* remain in the regular courts.”<sup>692</sup>
420. During the visit the Attorney General of the Nation, Eduardo Montealegre – one of the authors of the original draft reform – indicated that the reform created the constitutional bases for delimiting the different scopes of jurisdiction, since the *corpus juris* of international human rights law and that of international humanitarian law have different projections vis-à-vis Colombian criminal law. Accordingly, those offenses that do not constitute the hard core of protection of human rights and that constitute violations of IHL will fall under the jurisdiction of the military criminal justice system. He also noted that a broad interpretation of the situations that could be analyzed in the military jurisdiction was mistaken, as the list of types of conduct finally approved was not a closed list.<sup>693</sup>
421. On concluding its visit, the IACHR stated:

On the basis of the inter-American standards that require States to judge human rights violations in courts of ordinary jurisdiction, various countries of the region have adopted reforms to significantly restrict the scope of military jurisdiction. Colombia has been one of those countries. Over the last 15 years, through changes of law, jurisprudence, and practice, Colombia has ensured that human rights violations committed by members of the security forces would be judged by courts of ordinary jurisdiction. Important reforms along the same lines have taken place in Argentina and more recently in Mexico. The draft constitutional reform on military criminal jurisdiction currently under debate would reverse that progress. The adoption of the constitutional reform as it is currently drafted, even after the changes introduced during the seventh debate, would constitute a serious setback and put at risk the victims’ right to justice. The IACHR urges Congress not to enact the law in this version and to make changes that accord with its constitutional duty to comply with the standards of the Inter-American System of Human Rights.<sup>694</sup>

<sup>691</sup> IACHR, *Hearing on constitutional reforms and human rights in Colombia*, March 14, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=131>.

<sup>692</sup> Information provided at the meeting with the Minister of Defense, Bogotá, December 4, 2012.

<sup>693</sup> Information provided at the working breakfast with the Attorney General and authorities of the Office of the Attorney General, Bogotá, December 8, 2012.

<sup>694</sup> IACHR, Press Release 144A/12, *IACHR’s Preliminary Observations on its Onsite Visit to Colombia*, Annex to Press Release 144/12 issued on the culmination of the on-site visit to Colombia, December 7, 2012. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/144A.asp>.

422. Nonetheless, the proposal, with some modifications, was approved on December 11, 2012, by the plenary of the Senate in the final debate, and promulgated on December 28 as Legislative Act 2 on the Military Jurisdiction.<sup>695</sup> This is how Legislative Act Number 02 of 2012-approved the reform to Articles 116, 152, and 221 of the Colombian Constitution, as follows:

Article 1. An addition is made to Article 116 of the Constitution with the following subsections:

A Court of Criminal Guarantees (Tribunal de Garantías Penales) is created that will have jurisdiction throughout the national territory and in any criminal jurisdiction, and it shall perform the following functions:

1. On a preferential basis, serve as judge of control of guarantees in any investigation or criminal proceeding brought against members of the armed forces or National Police.
2. On a preferential basis, oversee criminal accusations against members of the armed forces or National Police with the aim of ensuring that the substantive and formal conditions for initiating the oral trial have been met.
3. On an ongoing basis, resolve jurisdictional conflicts that may arise between the regular jurisdiction and the military criminal jurisdiction.
4. All other functions assigned to it by law.

The Court of Guarantees will be made up of eight (8) judges, four (4) of whom shall be retired members of the armed forces or National Police. Its members shall be elected by the Chamber of Government (Sala de Gobierno) of the Council of State and the Constitutional Court *en banc*. The retired members of the armed forces and National Police on this Court shall be elected from four (4) slates of three each that will be sent by the President of the Republic. An enabling law shall establish the requirements for serving as judge, the regime of disqualifications and incompatibilities, the mechanism for nominating candidates, the procedure for their selection, and all other aspects of organization and operation of the Court of Criminal Guarantees.

Transitory paragraph. The Court of Criminal Guarantees shall begin to perform the functions assigned in this article once the enabling legislation that regulates it is implemented.

Article 2. An addition is made to Article 152 of the Constitution, a section (g), in the following terms:

(g) The subject matters expressly indicated in Articles 116 and 221 of the Constitution, in keeping with this legislative act.

Article 3. Article 221 of the Constitution shall read in the following terms:

The crimes committed by the members of the armed forces and National Police on active duty, and related to that duty, shall be heard by courts martial or military tribunals, in

<sup>695</sup> IACHR, Press Release 4/13, *IACHR Expresses Concern over Constitutional Reform in Colombia*, January 4, 2013. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2013/004.asp>.

keeping with the provisions of the Military Criminal Code. Those courts or tribunals shall be made up of active-duty or retired members of the armed forces or National Police.

In no case shall the Military or police Criminal Justice system take cognizance of crimes against humanity, or crimes of genocide, forced disappearance, extrajudicial execution, sexual violence, torture, or forced displacement. The breaches of international humanitarian law committed by members of the armed forces and National Police, except for the aforementioned offenses, shall be heard exclusively by the courts martial or military or police courts.

When the conduct of the members of the armed forces or National Police in relation to an armed conflict is investigated and judged by the judicial authorities, international humanitarian law shall always be applied. An enabling law (*ley estatutaria*) shall specify its rules of interpretation and application, and shall determine how to harmonize the criminal law with international humanitarian law.

If in the development of an action, operation, or procedure of the armed forces or National Police there is any conduct that may be punishable and there is doubt as to the jurisdiction of the Military Criminal Court, on an exceptional basis a technical coordinating commission may become involved made up of representatives of the military criminal jurisdiction and of the regular criminal jurisdiction, supported by their respective judicial police bodies. The enabling legislation will regulate the composition and workings of this commission, how it will be supported by the judicial police bodies of the regular and military criminal jurisdictions, and the deadlines that need to be met.

A regular statute (*ley ordinaria*) could create police criminal courts and adopt a Police Criminal Code.

The enabling legislation will develop the guarantees of autonomy and impartiality of the Military Criminal Justice system. In addition, a regular statute will regulate a structure and a career system of its own independent of the institutional command structure.

A fund is hereby established aimed specifically at financing the System of Technical and Specialized Defense of the members of the armed forces and National Police as regulated by the law, under, with the guidance of, and with the coordination of the Ministry of National Defense.

The members of the armed forces and National Police will service pre-trial detention in centers of confinement established for them, and lacking these, in the facilities of the Unit to which they belong. They shall serve any sentence in prisons and jails established for members of the armed forces and National Police.

Article 4. *Transitory*. Criminal proceedings brought against the members of the armed forces and National Police for the crimes that are not related to service or for the crimes that are expressly excluded from cognizance of the Military Criminal Justice system according to Article 3(1) and (2) of this legislative act, and that are in the regular justice system, shall continue in it. The Office of the Attorney General, in coordination with the Military Criminal Justice system, will have a period of up to one (1) year to identify all the proceedings against the members of the armed forces and National Police, and remove to the Military Criminal Justice system those that do not meet the conditions for being under the jurisdiction of the regular courts. In the context of that coordination, one can verify

whether any specific proceeding in the Military Criminal Justice system may correspond to the jurisdiction of the regular justice system.

Article 5. *Transitory*. The President of the Republic is authorized for three (3) months to issue the decrees with force of law necessary to set in motion the Fund for the Technical and Specialized Defense that is the subject of this legislative act. The decrees issued under this authority shall remain in force until the Congress issues the law that regulates the matter.

Article 6. This legislative act is in force as of the date of its promulgation.

423. In the face of this situation the IACHR expressed its profound concern over the serious setback in respect of human rights that the constitutional reform, which significantly broadened the scope of the military criminal jurisdiction, could represent. The Commission considered that several provisions approved would be incompatible with the American Convention on Human Rights. Moreover, the IACHR reiterated that the reform included ambiguous provisions that were subject to subsequent enabling legislation, and therefore created legal uncertainty.<sup>696</sup>
424. On March 19, 2013, the draft enabling legislation on the military criminal jurisdiction was introduced, “[b]y which Articles 116 and 221 of the Constitution of Colombia are developed, and other provisions are issued.” The bill had a preliminary title, a title dedicated to specifying the rules of international humanitarian law applicable to the conduct of the hostilities, a title on harmonization of international law and domestic criminal law, a title on the jurisdiction of the regular courts and the military and police criminal courts, a title on the independence and impartiality of military and police criminal justice, a title that regulates the operations of the Technical Coordinating Commission, a title on the operation of the Court of Criminal Guarantees, and a title on the creation of the Office of the Attorney General for the Military and Police Criminal Justice System (Attorney General Criminal Military and Police).<sup>697</sup>
425. The Commission notes that the draft enabling legislation indicated that its provisions applied only to the National Police when international humanitarian law was applicable to its operations, and determined that only an incurable error will be grounds for exoneration from liability for having committed crimes against humanity, while due obedience was not recognized as grounds for exoneration from liability in the case of crimes against humanity, genocide, forced disappearance, extrajudicial execution, torture, or crimes against sexual freedom, integrity, and identity.
426. As regards the subject matter jurisdiction of the military criminal justice system, the draft enabling legislation reiterated the list of forms of conduct that are of the exclusive jurisdiction of the regular criminal courts established in the constitutional reform and clarified that the crimes of genocide, forced disappearance, torture, and forced displacement would be understood in keeping with the definitions of the Criminal Code in force, while sexual violence takes in “all the crimes against sexual freedom, integrity, and identity considered in Title IV of the Criminal Code, as well as Articles 138, 139, and 141 of the Criminal Code.” In addition, the draft enabling legislation provided for the addition of a Title to the Colombian Criminal Code that defined crimes against humanity and defines the crime of extrajudicial execution as one

<sup>696</sup> IACHR, Press Release 4/13, *IACHR Expresses Concern over Constitutional Reform in Colombia*, January 4, 2013. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2013/004.asp>.

<sup>697</sup> Draft enacting legislation (Proyecto de ley estatutaria) No. 211 of the Chamber of Representatives of 2013, “By which Articles 116 and 221 of the Political Constitution of Colombia are developed and other provisions are issued,” March 19, 2013.

committed by “a public servant who while performing his or her duties kills a person and does so purposefully after having come to exercise control over the person, who was absolutely defenseless.”

427. The proposed legislation established that the military criminal courts will have exclusive jurisdiction over breaches of international humanitarian law, except those over which the regular criminal courts have exclusive jurisdiction, and those that are not proximately and directly service-related. As regards this last situation, the proposed legislation clarified that the “occurrence of a crime or infraction of the duties in performing his or her functions of a member of the armed forces or National Police does not, alone, break the relationship with the service.” In addition, the proposal stipulated that if there is any doubt as regards the proper jurisdiction that is not resolved by the Technical Coordinating Commission, jurisdiction will continue to lie with the judicial authority that first took up the investigation, until such time as the competent organ resolved the dispute.
428. With respect to the guarantees of independence of the military criminal justice system, the draft enabling legislation pointed out that the military or police criminal justice system will be independent of the command structure of the armed forces and National Police, and stipulated that the “officers and employees of the military or police criminal justice system may not seek or receive instructions from the command of the armed forces or National Police,” plus “the members of the armed forces and National Police on active duty who are part of the chain of command may not perform functions in the military or police criminal courts, and vice versa.” In addition, it indicated that the military or police criminal justice system will be administered, with autonomy with respect to the institutional command structure, by a Special Administrative Unit, as a decentralized entity of the Executive at the national level, with its own juridical personality, administrative and financial autonomy, and its own assets, under the Ministry of National Defense.
429. On disciplinary matters, the draft enabling legislation provided that the members of the military or police criminal justice system may only be disciplined by the Office of the Prosecutor General for breaches in the performance of their functions, while all other disciplinary will be heard by the military or police criminal justice system, in keeping with the regulations, and may only be removed from service on the grounds provided for in the career service regimes and statutes, and in the rules that regulate judicial activity.
430. As regards the formation, functions, and powers of the Technical Coordinating Commission, the draft enabling legislation provided for a majority of three members, active-duty or retired, of the armed forces or National Police, and two civilian members. The draft enabling legislation also pointed out that only the Commission’s recommendation will be public, while all other parts of the report shall remain confidential.
431. As regards the Court of Criminal Guarantees, the draft enabling legislation established that it shall have “preferential power to exercise the control of guarantees in criminal proceedings in any jurisdiction against the members of the armed forces and National Police,” at any moment in their activity. In particular, as regards formal and substantive control of the accusation, the draft enabling legislation stipulates that no remedy may be brought against a decision of the Court of Guarantees, and provided that in those cases in which it exercises its preferential power, the Court of Criminal Guarantees:

shall preside over the arraignment hearing and verify that the content and annexes to the charging papers correspond to what is provided for in the applicable code.

The Court of Guarantees shall also verify that in the specific case the evidentiary elements produced by the respective prosecutorial office are not manifestly insufficient to support an indictment in light of the offense for which one is indicted.

432. On the other hand, the Commission underscores that, as regards the initiatives to harmonize the criminal law with international humanitarian law, the civil society organizations referred to the proposed legislation “by which public policies are established that implement operational law in the context of ensuring and respecting human rights and international humanitarian law by the Military Forces and the National Police,” which is being considered by the legislative organs. The purpose of the proposed law is to establish “criteria for implementing and applying operational law for carrying out the constitutional mission entrusted to the armed forces and National Police by identifying the legal regimes that govern military and police operations in the different operational contexts.” The proposal also establishes that the “Superior Council of the Judiciary shall designate specialized judges, with special knowledge of and experience with military and police doctrine, for trying members of the armed forces and National Police for alleged violations of human rights and international humanitarian law in those cases that do not fall within the jurisdiction of the military criminal courts.”<sup>698</sup>
433. In this respect, civil society indicated that the draft would only include some of the provisions of international humanitarian law, but would not recognize the protection of the person nor would it regulate issues such as the prohibition on indiscriminate attacks, special protection from dangers, or the safeguards from attacks against civilians. In addition, it was noted that the proposal provides that the Superior Council of the Judiciary designates specialized judges to try members of the armed forces or National Police who are tried in the regular courts.<sup>699</sup>
434. The IACHR also takes into account that on May 22, 2013, the Attorney General adopted Directive 0001 of 2013 “*by which it adopts the legal basis for the implementation of Legislative Act 02 of 2012 (military justice reform) within the Office of the Attorney General.*” The Directive establishes the following conclusions:
1. Pursuant to Transitional Article 4 of Legislative Act 02 of 2012 and until December 27, 2013 only the Attorney General may transfer processes to the military jurisdiction. [...]
  2. All behaviors called “false positives”, regardless of their criminal definition, will be judged in the ordinary jurisdiction. The processes of this nature that are currently handled by military courts should be transferred to the ordinary courts.
  3. Not every crime that occurs in the context of the armed conflict has a legal relationship with it. Therefore, the mere fact that a criminal act has occurred during a military operation does not determine who should assume jurisdiction.
  4. In any case of doubt about the applicable jurisdiction, ordinary jurisdiction will be preferred.
  5. The fact that a military operation is legitimate does not imply that the acts performed thereof, that constitutes qualitative excesses are legitimate. In these cases, the actions will be judged by the ordinary courts.

<sup>698</sup> Senate Bill No. 19 of 2011, House Bill No. 166 of 2011, July 25, 2012.

<sup>699</sup> IACHR, *Hearing on constitutional reforms and human rights in Colombia*, March 14, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=131>.



6. By the mere fact that conduct has been committed by a member of the security forces does not mean that it should be judged according to international humanitarian law. For this to happen, the conduct must have a relationship with the armed conflict.
  7. Legislative Act 02 of 2012 contains several criteria for the allocation of competence that interact harmoniously with each other. The first paragraph of Article 221 contains the objective and subjective criteria, whereby military jurisdiction is competent in cases of conducts related to the armed conflict and committed by members of the armed forces on active duty. The second paragraph contains the normative criterion, whereby military jurisdiction has competence in cases of international humanitarian law violations.
  8. The specific conducts or groups of conducts expressly excluded from military jurisdiction are an exception to the three criteria. [...]
  9. The acts committed by members of the security forces, when they are closely related to the armed conflict, must be judged according to international humanitarian law. This, by itself, does not define the competent jurisdiction.
  10. The Legislative Act attributes preferential competence to military courts for cases of international humanitarian law violations. This operates without prejudice to actions that do not have a connection with the armed conflict but are prosecuted in that jurisdiction, or acts related to the conflict, which are assumed by the ordinary courts.
  11. Military justice has jurisdiction in cases that, even without connection to the armed conflict, have a direct and close relationship with the duty. In this vein, the military justice also exercises jurisdiction in cases that do not involve violations of international humanitarian law.
  12. In the development of a legitimate military operation, only the individual acts that constitute qualitative excesses will be transferred to the ordinary courts, breaking the procedural unity with any other act that made part of the operation, if there is a need to investigate.
  13. In case of doubt about the competent jurisdiction, the investigation will remain in the ordinary courts. However, the doubt about the facts cannot determine the competent jurisdiction.
  14. The Office of the Attorney General will form a working group to give effect to Legislative Act 02 of 2012 and the criteria established in this Directive. [...]
435. According to publicly available information, on March 20, 2013, an action for unconstitutionality was brought against Legislative Act 02 of 2012, whereby a request was made for a declaration of unconstitutionality of some of its sections for repudiating essential pillars of the Constitution.<sup>700</sup> According to a press release issued by the Constitutional Court on October 25, 2013, by five votes in favor and four against, the Court decided to declare inapplicable the reform to the criminal military jurisdiction<sup>701</sup>. The information available indicates that the decision was based mainly in a “incurable defect in the process of developing democratic will”. Specifically, the analysis was based on the fact that the sessions in the First Commission of the House of Representatives and the plenary of the same body were held simultaneously, despite several rules of Congress which expressly ban such coincidence. In this regard, the Court considered that “substantial principles of the constitutional reform

<sup>700</sup> Colombian Commission of Jurists, *Demanda de inconstitucionalidad contra el acto legislativo 02 de 2012 (parcial)*, “[p]or el cual se reforman los artículos 116, 152 y 221 de la Constitución Política de Colombia”, March 20, 2013.

<sup>701</sup> As of the date of preparation of this report, the complete text of the decision was not available. The considerations used by the Constitutional Court in reaching its decision are summarized in Press Release No. 41 of October 25, 2013. Available at: <http://www.corteconstitucional.gov.co/comunicados/No.%2041%20comunicado%2025%20de%20octubre%20de%202013.pdf>

procedure had been seriously affected, which affected the validity of the act ". In sum, the Court concluded that:

[...] there was a violation of the principle of democracy, which is an essential basis of constitutional amendment processes, because the calmness required by the very nature of the deliberations when the reform of the basic statute of society is at stake, was set aside by urgency and speediness<sup>702</sup>.

436. The Court also established that "taking into account the extent of the vices identified and the moment in which they took place [...] the act could not be returned to Congress to be repaired [...]", which is why Legislative Act No. 02 was declared inapplicable and accordingly, its statutory law also was left without effect.
437. In its observations to the Draft Report, the State pointed out that "[...] Colombia in respect to the Rule of Law will comply with the decision of the Tribunal, which is the organ charged with protecting the Political Constitution"<sup>703</sup>. Also, the IACHR takes into account public information regarding the submission of a remedy to nullify the decision of the Constitutional Court that declared inapplicable the reform to the military criminal jurisdiction, and shall continue to monitor statements in that regard.

### **3. Incompatibility of the Constitutional Reform with the provisions of the American Convention on Human Rights and the case-law of the inter-American human rights system**

438. Colombia also indicated in its observations to the Draft Report:

Legislative Act 02 of 2012 is a very good example of the respect for the functioning of democracy, as conceived within the path defined by the Constitution itself for its reforms. This, in the first place, means that from the outset the State has respected the law of laws, and that at all times it has followed the special procedure established to that end. It is not a minor matter, since such norms provide that constitutional reforms require greater participation with a view to ensuring that the will of the Colombian people is represented in the final decision of the representative organ, our Honorable Congress of the Republic.

As part of the development of the above mentioned reform process, it was considered that placing some matters at the constitutional level would allow for total clarity as to their content when looking at it from the perspective of the higher norm, subjecting to the latter the development of all legal and jurisprudential processes. Finally the National Government grounded the proposal in the conviction that it was necessary to hold an open and democratic discussion, which corresponds to any constitutional reform process.

This reform, even if it was declared inapplicable by the Honorable Constitutional Court, aimed to strengthen the Rule of Law from the area of Military Criminal Justice, limited exclusively to members of the Armed Forces and National Police of Colombia, who need clear rules about the scope and limit of their actions. Also, it provided legal certainty both

<sup>702</sup> Press Release No. 41. Constitutional Court. October 25, 2013, p. 7. Available at: <http://www.corteconstitucional.gov.co/comunicados/No.%2041%20comunicado%2025%20de%20octubre%20de%202013.pdf>

<sup>703</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140 of December 2, 2013, para. 44.

to personnel in uniform and the civilian population, since it sought to create the conditions so that Military Criminal justice and Ordinary Civilian Justice, within each of their respective competencies, could apply in an effective and consistent manner this new legal framework inspired in IHL and harmonization with criminal law in effect, with the purpose of avoiding impunity, without perturbing the legitimate action of Military Forces against illegal armed groups<sup>704</sup>.

439. In this respect, the Commission reiterates that even though Legislative Act 02 was declared inapplicable by the Constitutional, it is important to highlight the implications of a reform to the military criminal jurisdiction in the terms that was proposed in this occasion. In that sense, it must be pointed out that both the Commission and the Inter-American Court have established repeatedly and consistently that military courts do not have jurisdiction to investigate and punish cases involving human rights violations.<sup>705</sup> This position has been reaffirmed in the Inter-American Convention on Forced Disappearance of Persons, which at its Article IX establishes that acts that constitute the offense of forced disappearance may only be prosecuted in the regular courts, “to the exclusion of all other special jurisdictions, particularly military jurisdictions,” and that in addition, “The acts constituting forced disappearance shall not be deemed to have been committed in the course of military duties.”
440. The IACHR emphasizes that the military jurisdiction should apply only when military criminal law interests are attacked in the context of the particular functions of defense and state security<sup>706</sup>, and never to investigate violations of human rights. In this vein, the Commission has consistently held as follows:

The military criminal justice system has certain peculiar characteristics that impede access to an effective and impartial remedy in this jurisdiction. One of these is that the military jurisdiction cannot be considered a real judicial system, as it is not part of the judicial branch, but is organized instead under the Executive. Another aspect is that the judges in the military judicial system are generally active-duty members of the Army, which means that they are in the position of sitting in judgment of their comrades-in-arms, rendering illusory the requirement of impartiality, since the members of the Army often feel compelled to protect those who fight alongside them in a difficult and dangerous context.

[...]

Military justice should be used only to judge active-duty military officers for the alleged commission of service-related offenses, strictly speaking. Human rights violations must be investigated, tried, and punished in keeping with the law, by the regular criminal courts. Inverting the jurisdiction in cases of human rights violations should not be allowed, as this undercuts judicial guarantees, under an illusory image of the effectiveness of military justice, with grave institutional consequences, which in fact call into question the civilian courts and the rule of law.<sup>707</sup>

441. The Commission has also noted repeatedly that service-related offenses, which are the offenses that can be heard by the military courts, are “punishable acts in the form of an excess

<sup>704</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, paras. 255-257.

<sup>705</sup> See, among others, IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999; I/A Court H.R., *Case of 19 Merchants v. Colombia*. Judgment of July 5, 2004. Series C No. 109; *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140; *Case of Vélez Restrepo and family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012 Series C No. 248.

<sup>706</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 132.

<sup>707</sup> IACHR, Report No. 2/06, Case 12,130, Merits, *Miguel Orlando Muñoz Guzmán* (Mexico), February 28, 2006, paras. 83, 84.

or abuse of authority committed in the context of an activity that is directly related to the exclusive function of the armed forces.”<sup>708</sup> Moreover, “the link between the criminal act and military-service related activity is broken when the crime is extremely grave, as in the case of crimes against humanity. In such circumstances, the case is to be referred to the civilian justice system.”<sup>709</sup>

442. Additionally, the Court has established:

When the military jurisdiction assumes competence over a matter that should be heard by the ordinary jurisdiction, it is violating the right to a competent tribunal and, a fortiori, to a due process,” which is, at the same time, intimately related to the right to a fair trial.<sup>710</sup> The judge in charge of hearing a case shall be competent, as well as independent and impartial.<sup>711</sup>

443. The Commission has noted that military tribunals cannot be independent and impartial when it comes to investigating and prosecuting human rights violations since one finds in the armed forces a “a deep-seated sense of *esprit de corps*” which at times is mistakenly interpreted to require them to cover up crimes committed by their colleagues.<sup>712</sup> Likewise, the IACHR considers that when military authorities prosecute actions carried out by another member of the Army, impartiality is difficult because the investigations into conduct of members of the security forces managed by other members of those forces are often used to cover up the facts instead of clarifying them.<sup>713</sup> The IACHR recalls that the impartiality of a court depends on its members not having a direct interest, a position already taken, or a preference for one of the parties, and on the members not being involved in the dispute.<sup>714</sup>

444. Already in its third *Report on the Human Rights Situation in Colombia* the Commission indicated that the problem of impunity in Colombia was aggravated by the fact that the most cases that involved human rights violations by members of the State’s security forces were tried by the military criminal justice system. The IACHR indicated that in Colombia, specifically, the military courts systematically refused to punish the members of the security forces accused of human rights violations.<sup>715</sup> The Commission also noted that the problem of impunity in the military criminal justice system was not exclusively associated with the acquittal of the accused, but that the investigation of cases of human rights violations by the

<sup>708</sup> See, among others, IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, para. 30; Constitutional Court, Judgment C-358, August 5, 1997.

<sup>709</sup> See, among others, IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, para. 30; Application to the Inter-American Court of Human Rights in the case of Teodoro Cabrera García and Rodolfo Montiel Flores (Case 12,449) against Mexico.

<sup>710</sup> See, among others, I/A Court H.R., *Case of Radilla Pacheco v. México*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 273; *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, para. 128; *Case of Tiu Tojin v. Guatemala*. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, para. 118.

<sup>711</sup> See, among others, I/A Court H.R., *Case of Escué Zapata v. Colombia*, Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 101; I/A Court H.R., *Case of 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 167; I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, para. 112.

<sup>712</sup> IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, paras. 26-29.

<sup>713</sup> IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, para. 19.

<sup>714</sup> IACHR, Report No. 66/11, Case 12,444, *Eduardo Nicolas Cruz Sánchez et al.* (Peru), March 31, 2011, para. 196.

<sup>715</sup> IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, para. 17.

military justice system entailed problems accessing an effective and impartial judicial remedy. The IACHR emphasized that the investigation of the case by the military justice system precluded the possibility of an objective and independent investigation by judicial authorities not linked to the command structure of the security forces.<sup>716</sup>

445. The Commission reiterates its profound concern at the possibility that the State may pretend to implement mechanisms such as the one that was developed by means of a constitutional reform to military criminal justice, inasmuch as provisions of this sort imply a clear setback in the protection of human rights in Colombia and casts a shadow over the efforts made by the Colombian State in recent years to ensure access to justice for its inhabitants. Also, the Commission notes that the possible application of norms in the terms that the constitutional reform to the military criminal justice system was proposed would have great incidence on several measures contrary to the investigation of human rights violations by civilian justice authorities. Additionally, there is also a complex context in which it appears that efforts are made to articulate different mechanisms of judicial and criminal benefits for the parties to the internal armed conflict. The Commission recalls that as established by the ICC, all state agents who have committed crimes against humanity with respect to the civilian population and war crimes during Colombia's internal armed conflict should be appropriately investigated and punished.<sup>717</sup>
446. The Commission notes that among the factual considerations<sup>718</sup> argued by the State is the alleged sensation of legal uncertainty in the Armed Forces as a result of the convictions in the regular courts in cases of extrajudicial executions. The Commission does not have specific information from the State that would make it possible to support the argument regarding that sensation.<sup>719</sup> Nonetheless, the conviction of members of the armed forces and National Police for committing human rights violations, far from justifying expansion of the military jurisdiction, confirms the importance of those cases being tried in independent and impartial civilian courts.
447. Accordingly, the Commission is of the view that the constitutional reform was not a measure proportional to the ends pursued, insofar as the needs to strengthen the independence and impartiality of the military criminal courts, and to afford legal certainty to the members of the armed forces and National Police, have been used to justify expanding the scope of application of the military criminal jurisdiction, contrary to the

<sup>716</sup> IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, para. 19.

<sup>717</sup> International Criminal Court, Office of the Prosecutor, *Situation in Colombia. Interim Report*, November 2012.

<sup>718</sup> In effect, according to data from the Office of the Attorney General, as of March 2012 there were 1,708 cases opened against 4,122 members of the armed forces and National Police for serious human rights violations. A high figure would appear to support those who argue that the regular courts have brought an unusually large number of cases against the members of the military and the police. A closer examination shows, however, that most of the investigations were begun from 2002 to 2008, which coincides with the period of the ill-named "false positives," those assassinations committed massively by members of the Army. In 2007, 600 cases were opened, a figure that contrasts with the lower number of proceedings opened before and after this period: 11 in 2000, 8 in 2001, 13 in 2009, 5 in 2010, and 3 in 2011. The Attorney General simply opened many investigations when many assassinations were occurred outside of combat situations at the hands of members of the armed forces and National Police. Uprimny, Rodrigo, *Las sin razones del fuero ampliado (III)*, *El Espectador*, December 2, 2012. Available at: <http://www.elespectador.com/opinion/columna-390167-sinrazones-del-fuero-ampliado-iii>

<sup>719</sup> According to information in the press, at least two of the four cases cited by the Ministry of Defense as examples of erroneous judicial decisions correspond precisely to cases of executions of civilians outside of combat situations. Information available [in Spanish] at: <http://www.elespectador.com/noticias/politica/articulo-391815-fuero-militar-unas-horas-de-ser-aprobado>; <http://www.elespectador.com/noticias/politica/articulo-391533-argumentos-entredicho>.

standards established in the inter-American human rights system and in the very case-law of Colombia's high courts; and, therefore, contrary to international human rights law.

448. In effect, the Commission notes that the text of the constitutional reform did not contain guarantees sufficient to prevent human rights violations from being investigated in the military jurisdiction. First, the legislative technique used referred to certain human rights violations by exclusion and in a closed list, which cannot be cured by an enabling law (*ley estatutaria*), since it will only refer to the interpretation, application, and harmonization of international humanitarian law. Second, at present, some conduct expressly excluded from the military criminal justice system, e.g. extrajudicial executions and sexual violence, are not defined as such in the domestic legislation, and therefore a restrictive interpretation could mean that they would be investigated in the military criminal courts.
449. Third, the constitutional reform stipulated that only crimes against humanity and some serious human rights violations may not be heard by the military justice system, which is at odds with the settled and repeated case-law of the inter-American system according to which, in keeping with the object and purpose of the American Convention, no human rights violation may be tried in the military jurisdiction. Recently, in response to an attempt by the Colombian State to put forth a less-than-strict reading of this case-law<sup>720</sup>, the Inter-American Court stated in no uncertain terms that:

even though this Court's consistent case law is the interpretive authority of the obligations established in the American Convention, the obligation not to investigate and prosecute human rights violations under the military criminal jurisdiction is a guarantee of due process derived from the obligations contained in Article 8(1) of the American Convention and does not depend solely on what this Court has reaffirmed in its case law. The guarantee that violations of human rights such as life and personal integrity are investigated by a competent court is embodied in the American Convention and is not the result of its application and interpretation by this Court in the exercise of its contentious jurisdiction; thus it must be respected by the States Parties from the moment they ratify the said treaty.<sup>721</sup>

[...]

[T]he obligation not to prosecute human rights violations under the military jurisdiction is a guarantee of due process derived from the obligations included in Article 8(1) of the American Convention. Furthermore, it should be mentioned that, even though the standard in question has been developed mainly through cases on grave human rights violations, this is only because the facts submitted to this Court's jurisdiction were of this nature, and

<sup>720</sup> During litigation of the *Case of Vélez Restrepo and Family v. Colombia* before the Inter-American Court, the Colombian State alleged that according to the sources available at the time of the facts in the case, the military criminal jurisdiction was the proper one to take cognizance of "the violation to the personal integrity of Mr. Vélez." I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012 Series C No. 248, para. 239.

<sup>721</sup> I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012 Series C No. 248, para. 241.

not because the competence to hear the case must be assigned to the ordinary jurisdiction only and exclusively in such cases.<sup>722</sup>

Therefore, the Court reiterates that the criteria to investigate and prosecute human rights violations before the ordinary jurisdiction reside not on the gravity of the violations, but rather on their very nature and on that of the protected juridical right. The Court repeats that, regardless of the year in which the acts that violated human rights occurred, the guarantee of a natural judge must be analyzed according to the object and purpose of the American Convention, which is the effective protection of the individual.<sup>723</sup>

450. Fourth, the reform expressly stipulated that all violations of international humanitarian law shall be heard exclusively by the military courts. In its observations to the Draft Report, the State pointed out that:

[...] the application of IHL to the conflict is a) the natural path and what legally corresponds in such situations, since IHL is *lex specialis*, and b) such application in no way weakens respect and guarantee of human rights in our country. The special application of IHL is not contrary to the protection of human rights in any country, and neither does it debilitate it<sup>724</sup>.

451. However, the Commission considers that the argument according to which breaches of international humanitarian law and violations of human rights are incorporated into the domestic criminal law of the states in such a way that either applies to the exclusion of the other is neither valid nor in line with the law. As the Commission explained in the foregoing paragraphs, international humanitarian law and international human rights law are complementary and in some cases the same conduct regulated by domestic law may answer to one or the other normative framework, depending on the circumstances in which the act was committed. This interpretation is even more applicable to the case of Colombia, in which many human rights violations are defined in the chapter of the Criminal Code corresponding to crimes against persons and property protected by international humanitarian law. Moreover, in most cases it has been civilian courts, domestically and internationally, that have been in charge of investigating and punishing war crimes.

452. In addition to the foregoing, the Commission notes that determining which incidents could be analyzed in the military criminal jurisdiction is a power that should be exercised by the regular courts, as they are the general and not the exceptional jurisdiction.<sup>725</sup> The Commission has consistently emphasized the importance of the first investigative steps being carried out by the regular courts in order to preserve the crime scene and ensure the chain of custody of any evidence. Nonetheless, the creation of the Technical Coordinating Commission, made up of

<sup>722</sup> I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary, Merits, Reparations and Costs. Judgment of September 3, 2012 Series C No. 248, para. 243.

<sup>723</sup> I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012, Series C No. 248, para. 244. See, among others, I/A Court H.R., *Case of 19 Merchants v. Colombia*. Judgment of July 5, 2004. Series C No. 109, para. 173; *Case of the Rochela Massacre v. Colombia*. Judgment of May 11, 2007 Series C. No. 163, para. 200.

<sup>724</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 272.

<sup>725</sup> In that respect, the State pointed out that “[...] the intention of the draft was none other than to reduce as much as possible the doubts that could arise about competence so that proceedings, either in the civilian jurisdiction or the military criminal jurisdiction, would not be carried out with the shadow of doubt, situation that affects substantially the fundamental right to the administration of justice”. Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 274.

civilian and military officials, raises serious doubts as to the possibility of having independence and impartiality in the first stage of the investigation, especially in light of the repeated allegations of cover-up and alteration of the evidence by the armed forces and National Police.<sup>726</sup>

453. The creation of a Court of Criminal Guarantees in the terms proposed by the constitutional reform would mean that the members of the security forces would have an additional procedural benefit in terms of controlling the accusation, which presupposes not only a situation of inequality in relation to other persons under investigation, but also an impairment of the independence with which the Office of the Attorney General should play its role of bringing criminal actions. In addition, this Court will settle jurisdictional conflicts between the regular justice system and the military justice system, a function that is entrusted to the Judicial Council, which is part of the regular justice system. In its observations to the Draft Report, the State pointed out that the creation of such instance would not be “a decision without legal grounds that would also affect the right to equality”. In that sense, it indicated that “[...] inasmuch as in the accusatory criminal system, guarantee control judges have the duty to guarantee the rights of victims and of the persons under trial, the decisions of this Tribunal operate in favor of both civilians and military.”<sup>727</sup>
454. The Commission notes, however, that the reform inverted the rules according to which the military jurisdiction is exceptional, expanding its scope to the point of putting it on an equal plane with the regular justice system. In addition, even if the article that was subjected to reform established a peremptory period for the Attorney General to review the cases that could be moved to the military criminal courts, it did not establish a period with respect to the vetting of cases of human rights violations that are still in the military criminal jurisdiction.
455. Another matter of concern for the Commission was the possible creation of a “police jurisdiction” (“*fuero policial*”) that would entail the establishment of police criminal courts and the adoption of a Police Criminal Code, which could pose additional obstacles to the investigation of human rights violations committed by police forces, who are entrusted with the protection and oversight of civilians<sup>728</sup> and who, in principle, should not participate in military operations.
456. Finally, the Commission notes that the reform established, as a rule, that the members of the armed forces and National Police, independent of the fault or crime of which they are accused, will serve time in pre-trial detention, or a prison sentence imposed as the result of a conviction, in special establishments, and even in the military units themselves. The Commission reiterates that the limited scope of the military jurisdiction is strictly tied to the prosecution and punishment of breaches of military discipline; therefore, there is no justification for extending that situation to serving the sentence imposed. Accordingly, serving the sentence or time in pre-trial detention in special establishments is contrary to the principle

<sup>726</sup> In this regard, the Human Rights Ombudsman recommended doing away with the Technical Coordinating Commission, since it did not offer guarantees for cases of serious human rights violations committed by members of the armed forces or National Police to reach the regular courts, and also emphasized that the Court of Guarantees will be given the power, not provided for in the accusatory criminal justice system, of “procedural and substantive control of the accusation.” Information available at: <http://www.elespectador.com/noticias/politica/articulo-391737-el-defensor-contra-el-fuero-militar>

<sup>727</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, paras. 270-271.

<sup>728</sup> See, IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, OEA/Ser.L/V/II.118, December 29, 2003, para. 113; IACHR, *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96, Doc. 10 rev. 1, 24 April 1997, Chapter III.



of equality. Moreover, it is always possible to implement mechanisms to separate persons deprived of liberty in specific wards or areas should security considerations so require.

457. The Commission recalls that in Colombia, as in most of the countries of the region, the military criminal courts are under the Ministry of Defense, which is why they are part of the Executive branch, and their officials are under that Ministry.<sup>729</sup> In this case, in addition, the constitutional reform did not provide for mechanisms aimed at ensuring that the military criminal courts were separated from the Ministry of Defense and instead placed under the Judicial branch.
458. The Commission notes that the same concerns expressed in relation to the constitutional reform applied to the draft enabling legislation being debated before the corresponding authorities. Specifically, the Commission notes that limitations subsisted insofar as serious human rights violations could be investigated by the military criminal justice system, plus the regulations of the military criminal courts are not sufficient to consider them independent and impartial courts. In this regard, the Commission points out that the military criminal justice system would continue to be under the Ministry of Defense, and that no adequate mechanisms are in place for the appointment, stability, or removal of the judges who will act in the military criminal courts. The Commission also notes that the Technical Coordinating Commission would be made up mostly by military members, and that their decisions would not be public, plus the fact that which body the Court of Guarantees would answer to has not been established. Also problematic is the definition of the crime of extrajudicial execution as was provided for in the draft enabling legislation.<sup>730</sup>
459. In the past Colombia has shown that it can adopt mechanisms aimed at ensuring the activity of the regular courts when human rights violations are committed. If it continued to pursue the establishment of a justice designed with the aspects analyzed in this chapter, the Colombian State would be opting to expand its military jurisdiction precisely when most of the States of the region have made important progress reducing it. The Commission notes that the history of the countries of the Americas has shown that the exercise of the military jurisdiction to try cases of human rights violations has led to impunity, and that in this case a reform as the one proposed in Colombia did not offer sufficient guarantees to avoid the repetition of that

<sup>729</sup> According to Judgment C-037 of February 5, 1996 of the Constitutional Court, the military criminal justice system administers justice, but is part of the Executive branch, under the Ministry of Defense, and its organization is defined in specific provisions. Ministry of National Defense, *El ABC de la Justicia Penal Militar*. Information available at: [http://www.mindefensa.gov.co/irj/servlet/prt/portal/prtroot/pcd!3aportal\\_content!2fcom.pcc.pcc!2fPORTALMDN!2froles!2fcom.pcc.PortalJPM!2fInformacionInstitucional!2fcom.pcc.Glosario!2fGlosarioJPM](http://www.mindefensa.gov.co/irj/servlet/prt/portal/prtroot/pcd!3aportal_content!2fcom.pcc.pcc!2fPORTALMDN!2froles!2fcom.pcc.PortalJPM!2fInformacionInstitucional!2fcom.pcc.Glosario!2fGlosarioJPM)

<sup>730</sup> The State informed that: (i) the approved enabling law creates an independent entity that will allow the JPM to have financial, administrative and budgetary autonomy; (ii) the JPM will have its own staff, independent of the security forces; (iii) 6 members agreed between the Office of the Attorney General and the JPM will be part of the Technical Coordination Committee; (iv) the Office of the Attorney General has to identify each of the processes in the two jurisdictions and maintain in the ordinary jurisdiction those who do not meet these requirements; (v) the Office of the Attorney General issued a directive banning the sending of a case of aggravated murder or murder of protected persons to the military justice without his authorization; (vi) the definition of extrajudicial execution is wide enough to include any homicide perpetrated outside a combat, and in cases of multiple criminal conducts, the criminal conduct of extrajudicial execution prevails to determine the ordinary jurisdiction; (vii) the law is not contrary to the end of the armed conflict and it can be valid in a post-conflict situations with armed groups; (viii) the Board of the Special Administrative Unit of the Military Criminal Justice would consist of 7 members, with civil majority; (ix) the Technical Coordinating Commission only verifies the events in an operation or procedure; (x) the Court of Criminal Guarantees is part of the judicial branch, is a high-level and collegiate body, and is part of the ordinary justice; it is cross to ordinary and military jurisdictions and competent whenever a soldier or police officer is investigated or charged; it is a filter against minor charges against the seriousness of the facts or against frivolous and baseless accusations; and it allows victims to request a control of the accusation; (xi) military justice will be competent for judging other behaviors that can amount to war crimes - and are not the conducts expressly excluded-, since they are acts related to the service. State of Colombia, MPC / OEA No. 948/2013, received by the IACHR on July 11, 2013.

phenomenon. The IACHR appreciates the declaration by the State that it will abide by the decision of the Constitutional Court to declare ineffective Legislative Act 02.

## **Recommendations**

460. In view of what is indicated in this section, the Commission makes the following recommendations to the Colombian State:
1. 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.
  2. That it urgently adopt the measures necessary to ensure effective access to justice for the Colombian population as a fundamental mechanism for protecting their human rights.
  3. 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.
  4. 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.
  5. 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.
  6. That it implement the measures necessary for the proceedings in the context of Law 975 to go forward and conclude in a reasonable time, fostering the full and comprehensive clarification of the acts committed by the persons who demobilized and the various actors involved, and ensuring the participation and rights of the victims and their next of kin. In particular, the Commission urges the State to step up the measures aimed at recovering the assets illegally obtained by the persons demobilized and to ensure the application of Law 975 to the persons demobilized who have been extradited.
  7. That it establish appropriate measures to ensure that the processes of excluding applicants from Law 975 are accompanied by the corresponding strengthening of the regular courts that have jurisdiction to investigate those cases.
  8. 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.
  9. 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.

10. Take into account the considerations regarding Legislative Act 02 of 2012, and its incompatibility with international obligations in the area of investigation and punishment of human rights violations, especially with respect to future initiatives that may arise regarding this matter.

## G. Mechanism of reparation

461. Since its earliest judgments, the Inter-American Court has held that under Article 63(1) of the American Convention, every violation of an international obligation which results in harm creates a duty to make adequate reparation to each victim.<sup>731</sup> According to the Court, reparation is a generic term that covers the various ways a state may make amends for the international responsibility it has incurred.<sup>732</sup>
462. On several occasions, the case-law of the inter-American system has established that victims of serious human rights violations committed during an armed conflict are entitled to adequate compensation for the harm caused, compensation that should materialize in the form of individual measures calculated to constitute restitution, compensation and rehabilitation for the victim, as well as general measures of satisfaction and guarantees of non-repetition.<sup>733</sup> The Inter-American Court of Human Rights has written that “in cases of human rights violations, the State has the duty to provide reparations. This duty implies that while the victims or their next of kin should have ample opportunity to seek just compensation under domestic law, the State’s obligation cannot rest exclusively on their procedural initiative or on the submission of probative elements by private individuals.”<sup>734</sup> Reparations must consist of measures designed to undo the effects of the violations; consequently their nature and amount will depend on the injury inflicted, whether it be material or intangible. Reparations may neither enrich nor impoverish the victims or their heirs. In addition, in a context of structural discrimination, “reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification. In this regard, re-establishment of the same structural context of violence and discrimination is not acceptable.”<sup>735</sup>
463. The Commission has maintained that the guiding principle for implementation of reparations for human rights violations is efficacy, both in the sense of ensuring that the measure is fully carried out and in the sense that the needs of the beneficiaries are properly taken into account.

<sup>731</sup> See, *inter alia*, I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs* (Art. 63(1) American Convention on Human Rights). Judgment of July 21, 1989. Series C No. 7, para. 25.

<sup>732</sup> See, *inter alia*, I/A Court H.R. *Case of Garrido and Baigorria v. Argentina. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998. Series C No. 39, para. 41; *Case of Aloeboetoe et al. v. Suriname. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, para. 46; *Case of El Amparo v. Venezuela. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of September 14, 1996. Series C No. 28, para. 16.

<sup>733</sup> See, *inter alia*, IACHR, *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008; I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, para.s 236-237; *Case of El Caracazo v. Venezuela. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, para.s 77-78; *Case of Blake v. Guatemala. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, para. 31-32.

<sup>734</sup> I/A Court H.R., *Rachela Massacre v. Colombia Case*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 220.

<sup>735</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 450.

The Commission considers that the design and implementation of measures of reparation in these cases must be differentiated, preferential and comprehensive, carried out by specialized institutions and personnel; in their implementation, the victims' expectations and participation should be taken into consideration.

464. As other international human rights bodies have done, the Commission reiterates that egregious human rights violations and breaches of IHL entitle victims to reparations, which is not to be confused with humanitarian assistance or the satisfaction of other needs. In its observations to the Draft Report, Colombia pointed out that the State recognizes such difference and that precisely with the entry into force of Law 1448 “there was unification of the language on victims of the internal armed conflict [...] and currently it is possible to legally distinguish measures of (i) Assistance and attention to measures of (ii) Reparation [...]”. It indicated also as another example of this, the criteria of “administrative indemnification” to victims of forced displacement, approved by the Subcommittee of Administrative Indemnification of the Victims Unit in 2012, according to which it is clarified, for instance, that “the delivery of an administrative indemnification to victims of displacement is different from the delivery of a home [...].”<sup>736</sup>
465. In such a framework, the IACHR also takes into account what was affirmed by the State as to the need to look at the matter of reparations from an integral perspective, keeping in mind also the important challenges involved in achieving this goal, given the extent of the human rights violations brought about by the conflict. Specifically, in its observations to the Draft Report, the State indicated:

[...] in contexts of transition from the armed conflict to peace, and faced with a massive universe of victims [about 6 million in the case of Colombia], the duty of integral reparation cannot be understood as an obligation that may only be satisfied through judicial mechanisms, since this would make reparations impossible given the time taken by judicial processes, and the material impossibility of recognizing to all victims the judicially defined amounts that correspond to the damage [...].

In that regard, the State proposed that “the integral nature of the reparation” could be understood as the “coherence among the diverse measures of indemnification, restitution, satisfaction, rehabilitation and guarantees of non-repetition.”<sup>737</sup>

466. In the case of Colombia, the Commission has written that the equality of citizens before the law and the institutions are fundamental pillars of the rule of law. Re-establishing the conditions of equality that make it possible for victims of the conflict to be recognized as citizens and regain their trust in institutions are of fundamental importance for attaining peace. Victims of crimes committed during an armed conflict have the right to adequate reparation for the harm suffered, which should take the form of individual measures of restitution, compensation, and rehabilitation, measures of satisfaction generally, and guarantees of non-repetition, making it possible to re-establish their *status quo ante*, without discrimination.<sup>738</sup>

<sup>736</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, paras. 283-284.

<sup>737</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 280.

<sup>738</sup> IACHR, *Report on the demobilization process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, para. 29.

467. In this way, there is an obligation on the part of the State to offer full reparation to the victims of human rights violations. The Commission recognizes that in grave, systematic, and prolonged situations of human rights violations, states may establish reparation programs that make it possible for the persons affected to be able to have recourse to expeditious and effective mechanisms. Nonetheless, the Commission notes that the mechanisms of reparation offered by the State must be integral or full in the sense of taking into account all the components of reparation in accordance with the international obligations of states. In particular, the Commission considers that the determination of reparation whether determined judicially or administratively (with the two jurisdictions being mutually exclusive), does not exempt the State of its obligations related to the the component of justice for the violations caused, which obligates the State to guarantee the victims that there will be an investigation into and punishment of the persons responsible for those violations, as per the requirements of international law.
468. The Commission notes that the complementary nature of reparations ordered administratively and juridicially, can be verified at the international level, where, for example, the Inter-American Court has established judicial reparation measures, even when the victims had already received a compensation in the framework of general programs of reparation at the national level.<sup>739</sup>
469. The Commission appreciates the efforts made by the Colombian State and the initiatives undertaken to create a comprehensive reparations policy and enact a law under which victims of the armed conflict would be entitled to reparations. The IACHR has followed this process and assisted the Colombian Government. Thus, in February 2008, in response to the Colombian Government's request for advisory services and in furtherance of the IACHR's mandate, established in Article 41(e) of its Rules of Procedure then in force and Article 18(e) of its Statute, the Commission presented a document to the Colombian Government containing the principal guidelines for a comprehensive reparations policy.<sup>740</sup> In that document the Commission pointed out that the reparations policy must ensure the right of victims to comprehensive reparations for the harm caused by illegal armed groups and by the action or omission of State agents, based on measures of restitution, compensation, rehabilitation and satisfaction. The Commission also pointed out that the policy should be comprehensive and should follow the reparations parameters that the inter-American system established in similar cases.
470. Decree 1290/08 was adopted on April 22, 2008, under which an individual reparations program via the administrative avenue was established for victims of organized armed groups outside the law. While the IACHR was encouraged that such a program was launched, it observed that the only victims the program covered were victims of demobilized armed groups, and the program was basically built on a compensation plan with fixed parameters, measured in minimum wages.<sup>741</sup>
471. On the other hand, in 2007, a bill was introduced in Congress "introducing protection measures for victims of the violence." That bill contemplated comprehensive protection of the right of victims of the armed conflict to reparations. On September 30, 2008, after the bill was

<sup>739</sup> See, *inter alia*, I/A Court H.R., *Case of Almonacid Arellano et al. v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, para. 161; *Case of the Rio Negro Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012. Series C No. 250, paras. 303-304.

<sup>740</sup> IACHR, *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser.L/V/II.131, Doc. 1, February 19, 2008.

<sup>741</sup> IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia, paras. 48, 49.

passed by the Senate, the IACHR received a request from the Coordinator of Backers of the Bill, asking the IACHR for its opinion on the matter. On October 20, 2008, the IACHR answered the request and repeated that the bill had to ensure the right of victims to full reparations for damages caused both by illegal armed groups and by the action or omission of State agents, based on measures for restitution, compensation, rehabilitation and satisfaction. The IACHR also made the point that a bill of that type should make provision for the effects of the conflict on ownership and possession of individual and collective lands and aim to create expeditious and effective mechanisms to ensure the restitution of lands to victims of dispossession. The IACHR also observed that the use of the mechanism provided in the law should not preclude the administrative avenues established by Decree 1290 of 2008 or those contemplated in the Justice and Peace Law.<sup>742</sup>

472. Some days later, the First Committee of the Chamber of Representatives approved the bill. The IACHR took a positive view of the discussions on public policies on reparations for victims of the armed conflict, but noted that the bill excluded administrative reparations programs for victims of human rights violations committed by agents of the State by requiring them first to exhaust judicial remedies and then by setting a ceiling on compensation for this reparations mechanism. It noted that the ceiling adversely affected the principle of comprehensive reparations, which was a setback in terms of the rights such victims could exercise at that time.<sup>743</sup>
473. In 2009, because no headway had been made in the parliamentary debate on the bill for victims' reparations, the Commission again underscored how important it was to ensure the victims' right to comprehensive reparations. In June of that year, following debate in the Senate and House of Representatives a new version of the bill that gave victims of crimes perpetrated by agents of the State access to reparations was defeated in the Congressional Conciliation Commission. The Office of the President of the Republic issued a press release in which he rejected any negotiation of the bill that, in the end, would be costly or equate crimes committed by illegal groups with those perpetrated by agents of the State.<sup>744</sup>
474. On September 27, 2010, after the bill went down in defeat, the Government of President Santos sent Congress a new victims' bill. The Commission was gratified that the new bill featured a series of recommendations that the Commission had made in its *Principal Guidelines for a Comprehensive Reparations Policy*, and reiterated the importance of guaranteeing the victims' right to comprehensive reparations.<sup>745</sup> The discussion of this bill ended in passage of the 2011 Victims and Land Restitution Act, which will be examined at greater length in the following section.

## 1. Law on Victims and Land Restitution (Law 1448 of 2011)

475. Following a lengthy debate in Congress, Law 1448 was passed on June 10, 2011, "ordering care, assistance and comprehensive reparations for victims of the internal armed conflict and other provisions." The purpose of Law 1448:

[...] is to establish a set of judicial, administrative, social and economic measures –both individual and collective- to benefit the victims [who, either individually or collectively,

<sup>742</sup> Cf. IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia, paras. 50-52.

<sup>743</sup> Cf. IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia, paras. 52-53.

<sup>744</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, paras. 62-63.

<sup>745</sup> IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, paras. 112, 116.

have suffered some harm as a result of the violations of international humanitarian law or grave and manifest violations of international human rights law, on the occasion of the internal armed conflict] within a framework of transitional justice, under which they effectively exercise their rights to the truth, to justice and to reparations with a guarantee of non-repetition.<sup>746</sup>

476. In December 2011, the President of the Republic issued Decrees-Laws 4633 and 4635 directed at the individual and collective victims who were members of indigenous peoples and communities and Afro-Colombian, black, *raizales* [native islanders] and *palenqueros* communities, respectively.<sup>747</sup> The indigenous peoples and Afro-descendant communities expressed their disapproval of the fact that they had not been consulted about Law 1448 beforehand, and of the consultation process of the specific decrees-laws.
477. That same month, the President issued Decree 4634 concerning the situation of victims who are members of the *Rom* or gypsy people; Decree 4800, regulating Law 1448, and Decree 4829, regulating Chapter 111 of Title IV of the Law, related to land restitution. In April 2012, Decree 0790 was issued, under which the functions of the National System for Assisting the Population Displaced by the Violence were reassigned.
478. Law 1448 regulates a wide range of issues having to do with the situation of the victims of the armed conflict. It contains provisions on general questions; the rights of victims in judicial proceedings; humanitarian aid, care and assistance; special provisions to ensure comprehensive protection of children and adolescents- and regulation of the mechanisms enabling victims' participation. The Law also establishes a series of reparations mechanisms for victims, including measures of reparations, administrative compensation, measures of rehabilitation and satisfaction, and guarantees of non-repetition. In this respect, the State indicated that "[...] Law 1448 of 2011 and its complementary norms incorporate the collective reparation approach for the first time in the country [...] and its implementation is specifically charged to the Vice Directorate of Collective Reparation of the Victims Unit."<sup>748</sup>

479. Law 1448 also created an institutional structure for victims' assistance and reparations. At the national level, the law created the Victim Assistance and Comprehensive Reparations Unit (hereinafter the "Victims Unit") and the Center Historical Memory, both attached to the Administrative Department for Social Prosperity. Another office created was the Unit to Manage Restitution of Dispossessed Lands, under the Ministry of Agriculture and Rural Development.<sup>749</sup> The Victims Unit coordinates the National Victim Assistance and Comprehensive Reparations System (hereinafter "the SNARIV"), which involves 42

<sup>746</sup> Law 1448 of June 10, 2011, Article 1.

<sup>747</sup> The case-law of the Colombian Constitutional Court on the subject of prior consultation of ethnic communities in respect of legislative measures, can be summarized as follows: (i) prior consultation is a basic right; (ii) there is a clear connection between prior consultation and protection of ethnic minorities' identities; (iii) prior consultation is mandatory when the measure directly affects the ethnic communities; (iv) the Government has an obligation to promote prior consultation, whether or not the bills are its own initiative; (v) pretermission is a violation of the Constitution; and (vi) the consultation must be done before the bill is introduced in the Congress of the Republic, so that the results of the participation process will influence the content of the bill being put up for consideration, without prejudice to the participation provided for the general public during the legislation process. See, for example, Judgment C-196/12 of March 14, 2012 (MP. María Victoria Calle Correa).

<sup>748</sup> Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 282.

<sup>749</sup> Victims Assistance and Comprehensive Reparations Unit, *Report on implementation of the Victims' Assistance and Comprehensive Reparation Law to ensure the rights of victims of the armed conflict in Colombia*. On-site visit of the Inter-American Commission on Human Rights, December 2012, p. 14.

government agencies: State offices, territorial agencies, oversight bodies and victims participation groups.<sup>750</sup> The Law also provides for the creation of Territorial Transitional Justice Committees, the purpose of which will be SNARIV's inter-institutional coordination at the territorial level and to draw up and approve Territorial Action Plans.<sup>751</sup>

480. In its Annual Report for 2011, the IACHR was gratified by the passage of Law 1448, but noted that despite the initiatives to promote and protect human rights, violence persisted and continued to hit the most vulnerable sectors of the population. Furthermore, one of its crucial points was that it recognized the existence of an armed conflict, which heretofore had been systematically denied by the State. This would allow reparations for the victims and the return of lands said to have been forcibly usurped by paramilitary groups, sometimes with the collusion of security forces.<sup>752</sup>
481. The Commission also expressed the view that while the Victims Law was a significant step forward in the development of a concept of comprehensive reparations, it nonetheless posed many challenges for the Colombian State.<sup>753</sup> The IACHR noted that the law did not include specific measures to ensure the security of persons who return to their lands, so that they are safe from those said to have displaced them,<sup>754</sup> a factor that turned out to be critical since once the law took effect, the danger and risk to community leaders and human rights defenders who participated in the land restitution process increased. The MAPP/OAS indicated that the presence of criminal bands and illegal activities in those regions jeopardized the return of those displaced by the violence and any possibility of reweaving the social fabric in those areas. It called upon the authorities to set up efforts through agile and differentiated protection mechanisms, and to strengthen local institutions.<sup>755</sup>
482. For its part, the Office of the High Commissioner was of the view that Law 1448 had some flaws, such as not considering as victims members of illegal armed groups who may have suffered human rights violations, or recruited children who had not left the ranks of the illegal armed groups before turning 18. It also observed that land restitution leaders faced high levels of risk and vulnerability, given the criminal interest in the lands that are subject to restitution. It observed that the sustainability and integrity of the process in some areas of the country, such as the Urabá region in Antioquia, would depend to a large extent on the implementation of robust criminal and disciplinary investigations. Thus, the increased violence

<sup>750</sup> The Victims' Unit started operating on January 1, 2012 and took on the coordination functions singled out in laws 387 of 1997, 418 of 1997, 975 of 2005 and 1190 of 2008, among others. Victims Assistance and Comprehensive Reparations Unit, *Report on implementation of the Victims' Assistance and Comprehensive Reparation Law to ensure the rights of victims of the armed conflict in Colombia*. On-site visit of the Inter-American Commission on Human Rights, December 2012, pp. 14, 16.

<sup>751</sup> Victims Assistance and Comprehensive Reparations Unit, *Report on implementation of the Victims' Assistance and Comprehensive Reparation Law to ensure the rights of victims of the armed conflict in Colombia*. On-site visit of the Inter-American Commission on Human Rights, December 2012, p. 23.

<sup>752</sup> IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV. Colombia, paras. 20, 74.

<sup>753</sup> IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV. Colombia, para. 74.

<sup>754</sup> IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV. Colombia, para. 74. The State observed that the same law makes provision for mechanisms for coordinating the planning, execution and follow-up of the land restitution security strategy. Colombia's Observations on the IACHR's Country Report for 2011, December 27, 2011, p. 18.

<sup>755</sup> Sixteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), OEA/Ser.G, CP/doc.4698/12, March 15, 2012.



by these groups represents an undeniable risk for people seeking to recover their land and for the sustainability of the overall restitution process.<sup>756</sup>

483. The Commission again applauds the State’s decision to adopt an administrative reparations system that covered the various causes, situations and particular circumstances of the victims of human rights violations and violations of IHL a result of the internal armed conflict. The Commission recognizes the challenges created by the massive scale of the human rights violations committed during the internal armed conflict, the orchestration of the many institutions involved at the national and local levels, and the implementation of the various measures of reparation while the internal armed conflict and violence are still ongoing.
484. The IACHR will examine the main issues and challenges that Law 1448 poses. The Commission must begin by pointing out that one of most controversial issues about the Victims Law has been its scope and the determination of the victims eligible for the reparations mechanisms that it establishes. Civil society has been critical of the time frame of Law 1448, since it would mean that only victims of abuses committed after 1985 could apply for financial reparations, and the only lands that could be reclaimed are those illegally appropriated after 1991.<sup>757</sup> It has also complained that recent victims of groups that society regards as paramilitary groups would be excluded, because the State claims that those groups were demobilized in 2003.<sup>758</sup>
485. This dissatisfaction led to complaints being filed challenging the constitutionality of various aspects of Law 1448. In that regard, in its judgment C-253A of March 29, 2012, the Constitutional Court declared that the expression “*in connection with*” the armed conflict alludes to a “*close and sufficient connection with the unfolding*” of the armed conflict and wrote that:

[t]he provision contained in para. 2 of Article 3 of 2011 Law 1448, which is that members of illegal organized armed groups shall not be deemed victims, is not unconstitutional, since (i) it is not a blanket denial that members of those groups may be victims of violations of international humanitarian law or of serious violations of the international human rights norms, committed in the context of the internal armed conflict; therefore, (ii) it does not deny them the opportunity to turn to the courts of ordinary jurisdiction that the legal system has established to protect the rights to the truth, to justice and to reparations, and to do so with full guarantees; nor (iii) does it deprive them of the protection established under IHL and IHRL, and (iv) only means that they are excluded from a special set of additional protections and support measures that the law has established for those who, as law-abiding citizens, have become victims of violations of international humanitarian law or serious violations of international human rights law committed in the context of the internal armed conflict.

486. On May 24, 2012, the Executive Committee for Victims Assistance and Comprehensive Reparations approved the criteria that would be used to assess applications to be listed in the Single Registry of Victims (hereinafter “the RUV”), the vehicle for accessing the measures

<sup>756</sup> UN, Human Rights Council, Annual Report of the Office of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human on the situation of human rights in Colombia, 19th session, A/HCR/19/21/Add.3, January 31, 2012, paras. 43, 50, 57, 59.

<sup>757</sup> The State mentioned the reasons why it limited the universe of victims under the reparations program created by Law 1448, which had to do with the nature of this law as a mechanism of transitional justice. It added that the Constitutional Court was studying the enforceability of the law given the petitions filed since its passage challenging its constitutionality. Colombia’s Observations on the IACHR’s Country Report for 2011, December 27, 2011, p. 18.

<sup>758</sup> IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV. Colombia, para. 74.

provided for in Law 1448. This document stated that the principles by which the application assessment process would be steered would be good faith, *pro homine*, geo-referencing or proof-of-context, *in dubio pro victima*, credibility of the victim's testimony, a review in light of the armed conflict, and ethnic and cultural diversity. A series of legal, technical and context-related criteria were also established to assess applications for listing in the Single Registry of Victims.<sup>759</sup>

487. One of the most controversial points in this process was related to the interpretation of the legal criterion that establishes that “those whose rights have been violated as a result of common criminal acts” shall not be deemed victims, and the determination as to what facts are deemed to be part of the context of the armed conflict. In its case-law, the Constitutional Court has regarded the following as events that occurred within the context of the armed conflict: (i) intra-urban displacements;<sup>760</sup> (ii) the public's confinement;<sup>761</sup> (iii) sexual violence against women;<sup>762</sup> (iv) widespread violence;<sup>763</sup> (v) threats coming from demobilized armed actors;<sup>764</sup> (vi) the State's legitimate actions;<sup>765</sup> (vi) the State's atypical conduct;<sup>766</sup> (viii) the facts attributable to crime bands;<sup>767</sup> (ix) the facts attributed to unidentified armed groups;<sup>768</sup> and (x) the facts attributable to private security groups,<sup>769</sup> among others. In its observations to the Draft Report, the State clarified that the criteria developed by the Constitutional Court refers to the following:

[...] humanitarian attention must be provided to the victims of BACRIM in the framework of Law la ley 387, but this does not imply that the State has the obligation of including those victims in the administrative reparation program for events that took place during the armed conflict. It is also important to clarify that the Court has not referred to facts that must be included in the registry under any circumstance, but rather if and only if there is a reasonable and necessary link between them and the armed conflict.”<sup>770</sup>

488. More recently, in its judgment C-718 of October 10, 2012, the Constitutional Court held that:

[t]he notion of an internal armed conflict to which the Executive Branch, the Congress and the judges have alluded is a complex phenomenon that is not simply a matter of armed confrontations, violent actions on the part of a given armed actor, the use of certain means of combat or the occurrence of an event in a specific geographic place; instead, it also includes its various manifestations and even situations where the activities of armed actors

<sup>759</sup> Victims Assistance and Comprehensive Reparations Unit. *Assessment criteria approved by the Executive Committee for Victims' Assistance and Reparations, at its meeting of May 24, 2012*. Available [in Spanish] at: [http://www.unidadvictimas.gov.co/images/docs/Criterios\\_Valoracion-Aprobados\\_Comite\\_Ejecutivo\\_24-Mayo-2012.pdf](http://www.unidadvictimas.gov.co/images/docs/Criterios_Valoracion-Aprobados_Comite_Ejecutivo_24-Mayo-2012.pdf).

<sup>760</sup> Constitutional Court, Judgment T-268 of 2003 (MP. Marco Gerardo Monroy Cabra).

<sup>761</sup> Constitutional Court, Order 093 of 2008 (MP. Manuel José Cepeda Espinosa) and Judgment T-402 de 2011 (MP. Gabriel Eduardo Mendoza Martelo).

<sup>762</sup> Constitutional Court, Order 092 of 2008 (MP. Manuel José Cepeda Espinosa) and Judgment T-611 of 2007 (MP. Nilson Pinilla Pinilla).

<sup>763</sup> Constitutional Court, Judgment T-821 of 2007 (MP. (E) Catalina Botero Marino).

<sup>764</sup> Constitutional Court, Judgment T-895 of 2007 (MP. Clara Inés Vargas Hernández).

<sup>765</sup> Constitutional Court, Judgment T-630 and Judgment T-611 of 2007 (MP. Humberto Antonio Sierra Porto), Judgment T-299 of 2009 (MP: Mauricio González Cuervo) and Order 218 of 2006 (MP. Manuel José Cepeda Espinosa).

<sup>766</sup> Constitutional Court, Judgment T-318 of 2011 (MP. Jorge Iván Palacio Palacio).

<sup>767</sup> Constitutional Court, Judgment T-129 of 2012 (MP. Jorge Pretelt Chaljub).

<sup>768</sup> Constitutional Court, Judgment T-265 of 2010 (MP. Juan Carlos Henao Pérez) and Judgment T-188 of 2007 (MP. Álvaro Tafur Galvis).

<sup>769</sup> Constitutional Court, Judgment T-076 of 2011 (MP. Luis Ernesto Vargas Silva).

<sup>770</sup> Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 293.

are confused with those of common criminals or with situations in which violence is widespread. From the foregoing it can also be inferred that despite the lawmakers' efforts to establish objective criteria to determine when a situation is an armed conflict, it is not always possible to draw that distinction in the abstract; instead, frequently the complexity of the phenomenon demands that each case be evaluated individually, in the context in which the events transpired and then weigh the various elements to determine whether a necessary and reasonable nexus with the internal armed conflict exists.

So when a serious human rights violation or violation of international humanitarian law occurs, if there is any doubt whether the violation has occurred within the context of an internal armed conflict, the interpretation in favor of the victim must be given more weight.

489. The Victims Unit reported that in practice, taking victims' information for inclusion in the RUV is based on the alleged victim's circumstance, and not the perpetrator's, and the criteria are applied with some degree of flexibility. However, it explained that when a victim expressly states that the alleged author was part of an illegal armed group that emerged after the demobilization of paramilitary organizations, the case is referred to a Working Group, which does a more in-depth study. The Director of the Unit pointed out that none of the five cases referred to the Working Group was added to the RUV, notwithstanding the fact that the victims of illegal armed groups that emerged after the demobilization of paramilitary organizations have been added when a court so orders.<sup>771</sup> More recently, the State has informed that, in compliance with Resolution 119 issued by the Constitutional Court on June 24, 2013, as follow-up to Judgment T-025 of 2004, the Directorate of Registration and Information Management of the Unit is again considering the declarations of acts that generate victims, allegedly caused by actors whose actions are related closely and sufficiently to the armed conflict, and those that are currently presented for such reasons<sup>772</sup>.

490. Secondly, the Commission observes that while effective implementation of Law 1448 has yielded some progress, it has also exposed some challenges. According to the State, Law 1448 assigns clear responsibilities to local and national public institutions; its focus is on preventing new human rights violations, and it establishes that victims are to play a paramount role in the reparations process.<sup>773</sup> Nevertheless, the State acknowledged that obstacles still stand in the way, such as a lack of resources, dispersed responsibility and a lack of institutional coordination. Specifically, one of the challenges that the State mentioned was the situation of women and the precariousness of land ownership in rural areas, where regional authorities favored material and legal evictions, combined with the informal nature of land tenure in rural areas and the fact that, because of a variety of factors the names entered on property deeds are

<sup>771</sup> Information provided by the Director of the Victims Unit at the meeting held in Washington, D.C., March 19, 2013. See also, Caracol, *Fallo de tutela ordenó incluir como víctimas a 18 familias desplazadas por las 'bacrim'* [Ruling on the suit seeking protection of fundamental rights orders that 18 families displaced by the "bacrim" be included as victims], May 6, 2013. Available [in Spanish] at: <http://www.caracol.com.co/noticias/judicial/fallo-de-tutela-ordeno-incluir-como-victimas-a-18-familias-desplazadas-por-las-bacrim/20130506/nota/1893729.aspx>.

<sup>772</sup> Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 291.

<sup>773</sup> Victims Assistance and Comprehensive Reparations Unit, *Implementing Reparations for Victims of Internal Armed Conflict in Colombia*.

those of men.<sup>774</sup> Another challenge mentioned was the development of databases and consolidated information.<sup>775</sup>

491. As for the Law's implementation, the State presented information concerning the following: (i) the operation of the infrastructure provided for in Law 1448; (ii) the situation regarding returns; (iii) the individual financial compensations and housing subsidies provided; (iv) the status of the collective reparations processes, and other matters.<sup>776</sup> The State also underscored the introduction of the Victimization Threat Rate, a tool that could be used to identify and compare victimization-threat levels in every Colombian municipality.<sup>777</sup>
492. With specific reference to the RUV, the Victims Unit pointed out that this is an administrative tool that assists the registration procedure; however, it does not grant victim status, as such status is a factual reality. It also reported that the RUV is composed of a Single Registry of Displaced Persons, the official records organized by other public agencies, and the new cases presented directly to the Unit. As for the procedure followed to be listed in the RUV, the Unit noted that an evaluation is done based on the criteria that the Executive Committee approved on May 24, 2012; on that basis, 85% of the declarations filed have been entered into the RUV.<sup>778</sup>
493. The State also reported that (i) using the strategy of the facilitators' model, 1,130,651 applications have been received at 63 assistance stations in the municipal and district government offices, which is a 50% increase over the number of applications received in the

<sup>774</sup> Information provided at the meetings with the institutional structure provided for in Law 1448, held in Bogotá on December 4, 2012.

<sup>775</sup> Information provided at the meeting held with the Director of the Department of Social Prosperity in Washington, D.C., April 16, 2013. Information provided at the meeting held with the Director of the Lands Unit in Washington, D.C., April 4, 2013.

<sup>776</sup> Specifically, the State reported the following: (i) 110,000 individual financial compensations have been paid out; (ii) the program has a sizable appropriation in the budget; (iii) 97% of Colombian territory is served by Transitional Justice Committees; (iv) INCODER can provide compensation either in the form of money or a dwelling for relocation of displaced persons; (v) there is a national data system where the victims' data are uploaded in order to determine what each one's specific situation is; (vi) in 2012, there were 12,000 places returned; (vii) 136,000 victims have been compensated; (viii) 8000 beneficiaries have individual reparations plans in which the victim has an opportunity to explain the specifics of his or her situation; 68% are women; (ix) 15,000 persons have voluntarily registered for the program that offers alternative ways to invest resources; (x) 17,000 persons have been returned to their places of origin; (xi) more than 1,099 transitional justice committees have been set up at the municipal and departmental levels and 85 assistance stations have been set up nationwide; (xii) until November 22, 2012, 57 micro-zones were established where 4039 applications are in process, involving 170,942 hectares being reclaimed; court rulings are pending in 407 cases; (xiii) the displaced population to be assisted with rural housing subsidies in 2012 was an estimated 3,500 families; (xiv) the criteria and operating protocols for the psycho-social approach have been put together; (xv) 32 cases are in process involving collective reparations in which forced displacement is the principal fact; (xvi) the persons who are subjects of collective reparations retain the right to claim individual reparations, since restitution, compensation and rehabilitation are essentially individual; (xvii) criteria have been established and adopted to measure vulnerability for purposes of providing assistance; (xviii) between June 2011 and October 2012 the ICBF has assisted child and adolescent victims of forced displacement, children orphaned by the violence and children and adolescents who are victims of landmines. The Victims Unit also indicated that where an order of assistance priority has to be established, one point is given to homes in which one partner is absent. An additional point is assigned when the head of household is female and another when she is a pregnant female. Finally, if the head of household has some terminal or degenerative illness that limits his or her capacity to earn income, another point is assigned. Victims Assistance and Comprehensive Reparations Unit, *Report on implementation of the Victims and Land Restitution Act to protect the rights of victims of the armed conflict in Colombia*. On-site visit of the Inter-American Commission on Human Rights, December 2012.

<sup>777</sup> Ministry of Foreign Affairs of Colombia, *Document titled "Victims Law"*, received by the IACHR on May 3, 2013.

<sup>778</sup> Victims Assistance and Comprehensive Reparations Unit, *Report on implementation of the Victims and Land Restitution Act to protect the rights of victims of the armed conflict in Colombia*. On-site visit of the Inter-American Commission on Human Rights, December 2012, p. 60.

same period in 2011;<sup>779</sup> and (ii) 412,462 new victims were added, with the result that as of November 2012 the RUV had 5,532,805 listings; 79% were forcibly displaced, 29.20% were children and adolescents, 10.82% were members of an ethnic group and 49.54% were women.<sup>780</sup>

494. As for the rehabilitation measures provided for in Law 1448, the Victims Unit explained that the Victims Psycho-social Assistance Protocol, prepared in conjunction with civil society, is in the process of being approved by the Ministry of Health. The Victims Unit observed that even so, the strategy called *Entrelazando* [Interconnecting] is currently in operation, geared toward recovery of social practices, collective days of mourning, memory and social pedagogy, and a territory-focused reparations strategy.<sup>781</sup>
495. As for restitution of lands, the State reported that between 2011 and 2012, the Land Restitution Unit received 33,629 applications to register dispossessed lands involving a total of 2,423,655 hectares; 36% of that amount is blamed on FARC activities.<sup>782</sup> It was also reported that 5,720 applications for land restitution are currently in process; 1,667 applications have been listed in the dispossessed lands register. A total of 1,143 suits for restitution are before restitution judges,<sup>783</sup> and restitution judges have issued 24 decisions.<sup>784</sup> Later, the State informed that according to numbers updated to October 22, 2013, the Land restitution Unit had registered the following: i) 47,536 claims received; ii) 127 zones focused with 12,167 claims in course, of which 4,376 administrative processes have concluded; iii) 2,646 cases where restitution lawsuits have been presented; iv) 13 focused cases of indigenous persons and 9 cases of indigenous communities; v) as to ethnic territories, 4 precautionary measures to protect the territory and its communities, which cover 196,000 hectares; and vi) 275 which cover 735 cases, 640 properties and 16,668 hectares<sup>785</sup>. On the other hand, the State singled out specific challenges, such as the presence of illegal armed groups in reclamation areas; the fact that landmines are a problem on 50% of the lands being reclaimed; and 55% of the cases are ones in which no property deed exists.<sup>786</sup>
496. It was indicated that in 2012, progress was made in introducing a differential approach for gender and childhood, associated with: (i) the need to establish the cases' order of preference; (ii) relaxing the requirements on proof; (iii) training and sensitization of officials; and (iv) creation of a program allowing special access to the administrative phase of the land restitution process.<sup>787</sup>

<sup>779</sup> According to the State, it plans to have six regional assistance centers by 2012, serving the cities of Cali, Medellín, Santa Marta, Popayán, and Pereira, and inter-administrative agreements with the territorial entities to move forward with as many regional centers as possible. State of Colombia, *Advances in the Area of Human Rights*.

<sup>780</sup> Victims Assistance and Comprehensive Reparations Unit, *Report on implementation of the Victims and Land Restitution Act to protect the rights of victims of the armed conflict in Colombia*. On-site visit of the Inter-American Commission on Human Rights, December 2012, p. 6. Information supplied at the meeting with the institutional structure planned under Law 1448, held in Bogota on December 4, 2012.

<sup>781</sup> Information received at the meeting with the Director of the Victims Unit, held in Washington on March 19, 2013. See also: [available in Spanish] at: <http://www.unidadvictimas.gov.co/index.php/en/reparacion/9-uncategorised/155-reparacion-colectiva>.

<sup>782</sup> Ministry of Foreign Affairs of Colombia, *Document titled "Victims Law,"* received by the IACHR on May 3, 2013.

<sup>783</sup> Ministry of Foreign Affairs of Colombia, *Document titled "Victims Law,"* received by the IACHR on May 3, 2013.

<sup>784</sup> Ministry of Foreign Affairs of Colombia, *Document titled "Forced Displacement,"* received by the IACHR on May 3, 2013.

<sup>785</sup> Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140 of December 2, 2013, para. 311.

<sup>786</sup> Ministry of Foreign Affairs of Colombia, *Document titled "Victims Law,"* received by the IACHR on May 3, 2013.

<sup>787</sup> Ministry of Foreign Affairs of Colombia, *Document "Forced Displacement,"* received by the IACHR on May 3, 2013.

497. During the visit, the Commission continued to receive information on the lack of inter-institutional cooperation, overlap and competing competences in matters associated with restitution, and the need to ensure the sustainability of the reparations by making further headway with the micro-targeting of restitution and post-restitution monitoring. Furthermore, it was reported that applicants face a serious risk because of criminal interests in the properties, and that while the State is making progress with property deeding, the conditions necessary to make the process sustainable have not been achieved, as the causes and the dynamics underlying the interests in these properties are not being investigated. Corruption is still a problem with the property records, and problems like the extreme social and institutional vulnerability caused by extreme poverty and lack of opportunity in rural areas are not being addressed.<sup>788</sup>
498. For its part, the Office of the Prosecutor reported information on the measures taken to comply with the mandates established in Law 1448 and mentioned a number of challenges in connection with protection, care, assistance and comprehensive reparations to victims,<sup>789</sup> such as the following: the delivery of immediate assistance; attacks and threats against persons seeking to reclaim their lands; a lack of knowledge on the part of local government; and limitations vis-à-vis inclusion of displaced persons on the RUV.<sup>790</sup> The Office of the Prosecutor

<sup>788</sup> Information provided at the working luncheon with the MAPP/OAS, held in Bogotá on December 3, 2012. Information provided at the meeting held with civil society, Bogotá, December 3, 2012.

<sup>789</sup> The Office of the Prosecutor identified the following challenges in the area of protection, assistance and comprehensive reparations to victims: (i) prepare the final version of and introduce the protocol for victims' participation; (ii) expedite the process of appointing persons to represent the victims; (iii) election of land restitution leaders; (iv) compliance with the 60-day deadline for answering applications to be listed in the RUV; (v) coordination of compensation via the administrative avenue and compensation ordered by a court; (vi) protection of leaders of victims; (vii) compliance with the orders of the Constitutional Court in judgment T-025 of 2004; (viii) the guarantee of a differential approach; (ix) facilitating and expediting the receipt of declaration forms and a contingency plan in prison facilities; (x) a guarantee that the processes of land restitution, return and relocation are done in mine-free areas; (xi) full reparations with respect to employment, housing, food security and land restitution; (xii) publication of reports and research on the historic memory; (xiii) expediting coordination with the presidential programs to assist the indigenous and Afro-descendant population, and (xiv) development of territorial action plans. Office of the Attorney General of the Nation. Office of the Prosecutor Delegate for Prevention in the Area of Human Rights and Ethnic Issues, *The role of the Public Prosecutor's Office in implementing Law 1448 of 2011*, December 4, 2012.

<sup>790</sup> Regarding implementation of Law 1448, the Office of the Prosecutor: (i) reported the number of agencies assigned and measures taken to comply with the established mandates; (ii) indicated that 3,502 persons had availed themselves of its assistance in matters related to access to public policies for care, assistance and reparations and that in the period from July to October 2012, it processed 41 applications for emergency humanitarian relief; (iii) in some return processes under the program "Families on Their Land", a number of those included were reportedly persons who were not actually engaged in return processes; (iv) underscored the fact that personnel ill-equipped to evaluate the declarations and include names on the RUV was still a problem; (v) received complaints that territorial agencies had failed to provide immediate service; (vi) the progress in the area of ethnic groups and sexual minorities is poor; (vii) in municipalities where land restitution processes have gotten underway, some victims and human rights defenders have been attacked or threatened; (viii) local governments do not have a command of the processes and decision-making that have to be reformulated under the new legal system; (ix) there is a growing trend toward non-inclusion of displaced persons, a situation that began to reverse itself in 2011; hence the importance of having available objective evaluation mechanisms; and (x) the real impacts in terms of humanitarian assistance are unknown. The Office of the General Prosecutor mentioned the creation of the Inter-institutional Committee for Care, Assistance, Land Restitution and Comprehensive Reparations for Victims of the Internal Armed Conflict (Resolution 339 of August 24, 2011); the National Unit for Care, Assistance and Comprehensive Reparations for Victims of the Violence (Resolution 147 of May 2012); the Office of the Prosecutor Delegate for Land Restitution; the Joint Committee with the Ombudsperson, May 4, 2012; the Regional Committees of the Public Prosecutor's Office for Transitional Justice (Resolution 218 of July 4, 2012); the preparation of a diagnostic report on the law's implementation; organization of the Public Prosecutor Office's First Summit with Governors for purposes of implementation of the Victims Law; presentation of a second report on guarantees of security in land restitution and returns. The Office of the General Prosecutor made specific mention of the fact that in the district capital, this issue was added to the District Development Plan; the Mayor's Office created the Office of Advisory Services on Victims' Rights, Peace and Reconciliation; for reasons of security, the return of the Embera Katios and the Embera Chami has not been carried out; the return to the Chocó has been

also reported that given the number and magnitude of cases of new forced displacements, it is disturbing that the Territorial Transitional Justice Committees in most of the municipalities visited are not in session and that the Territorial Action Plans in the municipalities visited are considerably behind schedule.<sup>791</sup>

499. For its part, the Office of the Ombudsperson explained the guidance, advisory assistance<sup>792</sup> and legal representation of victims<sup>793</sup> provided in accordance with Law 1448 and underscored the fact that the Community Defenders program had been strengthened.<sup>794</sup> The Office of the

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suspended. The District Victims Assistance and Reparations Center was established; in August, the District Transitional Justice Committee was established (although no protection can as yet be offered to ensure victim participation); on November 13, 2012, the first meeting was held with the Public Prosecutor Office's District Commission for Transitional Justice; the Territorial Action Plan for Victim Care, Assistance and Reparations has still not been approved. The Office of the General Prosecutor also indicated that it suggested recommendations to adapt the victim registration method to international and national standards on victimization behaviors and will be limited to questions related to characterization procedures. The Office of the General Prosecutor also pointed that certain reparations methods had been prioritized which are important but not practical for the community. According to the Office of the General Prosecutor, the institutional structure is in the process of adapting its operations to the requirements of victim assistance using a differential approach; to that end, regulatory decrees have been issued for distribution in the communities, and instructive and illustrative texts have been prepared. However: (i) there is no information concerning a strategy for taking a declaration from victims who are members of ethnic groups; (ii) the level of inter-institutional coordination is still inadequate, and (iii) the election of representatives of indigenous peoples and communities has not gotten underway. Furthermore, according to the Office of the General Prosecutor, there is some confusion among the territorial agencies as to how to make the transition between the Territorial Committees for Comprehensive Assistance to the Displaced Population, which are in charge of formulating the PIU, to the Transitional Justice Committees, which are responsible for putting together the action plans for the care, assistance and comprehensive reparations to victims. On the other hand, the Office of the General Prosecutor indicated that strategies should be developed to publicize and promote the right of victims of forced displacement, emphasizing the confidentiality aspect. Finally, the Office of the General Prosecutor observed that the same offer problems still exist in terms of access barriers, poor coverage under some programs and the low order of priority given to groups with special constitutional protection; the results of the process of creating greater flexibility in the institutional supply are not yet known. See, Office of the Prosecutor of the Nation, Office of the Prosecutor Delegate for Prevention in the Area of Human Rights and Ethnic Issues, *The role of the Public Prosecutor's Office in the implementation of Law 1448 of 2011*, December 4, 2012, and the Prosecutor of the Nation, *Process of Implementing Law 1448 of 2011 from the perspective of the rights of victims of forced displacement*.

<sup>791</sup> Office of the Prosecutor of the Nation, Office of the Prosecutor Delegate for Prevention in the Area of Human Rights and Ethnic Issues, *The role of the Public Prosecutor's Office in the implementation of Law 1448 of 2011*, December 4, 2012.

<sup>792</sup> The Ombudsperson's Office pointed out that between August and November 2012, 1888 actions were filed, including rights of petition, petitions seeking reversal and appeal, actions seeking constitutional protection and actions seeking direct revocation; as of October 30, 2012, individual psycho-juridical assistance had been provided to 29,525 victims; a strategy has been launched to decentralize the process of counseling and advising victims, in conjunction with the Ministry of Justice, in 20 municipalities and 5 departments – the second phase of this initiative reportedly got underway on November 26 and thus far guidance has been provided to 220 victims in the municipalities of Valdivia and Tarza in the Department of Antioquia. Ombudsperson's Office, Legal Commission to Follow Up on the Victims Law, *Mandates established in the Law on Victim Assistance, Reparations and Land Restitution and its Regulatory Decrees*, December 5, 2012, p. 1.

<sup>793</sup> The Ombudsperson's Office mentioned the creation of the Unit for Legal Representation of Victims; preparation of a plan for expert support; training in human rights and international humanitarian law; the work of 369 public defenders serving as victims' legal representatives and located in 31 regional ombudsperson's offices; these public defenders have served in justice and peace proceedings. In the opinion of the Office of the Ombudsperson, this is still insufficient. It also mentioned the measures taken to create a special program for collective subjects before the law. Office of the Ombudsperson, Legal Commission to Follow Up on the Victims Law, *Mandates established in the Law on Victim Assistance, Reparations and Land Restitution and its Regulatory Decrees*, December 5, 2012, p. 2.

<sup>794</sup> Under this program 352 communities are being monitored; 66 are indigenous communities and 154 are communities of *palenqueros*, *raizales* (native islanders), blacks and Afro-Colombians. The Office of the Ombudsperson also pointed out that between February and October 2012, 82 workshops were on the means and avenues available to the victims and their rights, with 5,244 victims in attendance, as well as 23 inter-institutional workshops, attended by 1,703 victims. Office of the Ombudsperson, Legal Commission to Follow Up on the Victims Law, *Mandates established in the Law on Victim Assistance, Reparations and Land Restitution and its Regulatory Decrees*, December 5, 2012, pp. 3-5.

Ombudsperson also mentioned the Early Warning Information System<sup>795</sup> and expressed the view that the State's response to the return processes is not always effective. It counseled the need to implement collective protective measures and said that "the failure to properly implement policies to prevent, protect and ensure rights is perhaps more serious than the problems with the risk assessments."<sup>796</sup>

500. Civil society, for its part, took a favorable view of Law 1448, the creation of transitional bodies and the inclusion of organizations dedicated to the defense of human rights in the Victims Groups. However, it observed that in practice, there are significant shortcomings and problems in the law's implementation.<sup>797</sup> It made specific reference to the lack of guidelines and a specific budgetary appropriation for the Territorial Groups, and difficulties with the restitution processes such as: (i) refusal to recognize the tests done by the Land Restitution Unit –and sometimes by the Attorney General– with the result that the tests have to be reordered, causing delays; (ii) the request for measures that the Law does not contemplate and others whose cost would be prohibitive for the victims –such as notices and publications in the media and payment of costly guarantees–, and (iii) difficulties in ensuring the confidentiality of the names and personal particulars of some claimants.<sup>798</sup>
501. Civil society also pointed to challenges involving implementation of Law 1448: (i) the lack of guarantees for persons who do not reside in Colombia; (ii) the absence of preventive and protective measures to guarantee the claimants' security; (iii) local institutions' lack of resources and poor operating capability, and their lack of coordination with national institutions; (iv) the absence of clear rules on the subject of indemnization; (v) deficient health care; (vi) delays in providing emergency relief, and (vii) obstacles to inclusion in the RUV.<sup>799</sup>

<sup>795</sup> The Ombudsperson's Office reported that Threat Reports have been prepared and Follow-up Notes issued during 2012; the respective working group was formed; 50 work stations have been acquired, and the Project for investment in information and communication technologies was registered. Office of the Ombudsperson, Legal Commission to Follow Up on the Victims Law, *Mandates established in the Law on Victim Assistance, Reparations and Land Restitution and its Regulatory Decrees*, December 5, 2012, p. 3.

<sup>796</sup> As for the assistance and monitoring of returns and relocations, the Office of the Ombudsperson pointed out that while the Report Analyzing and Evaluating the Public Policy on Returns and Relocations, presented to the Constitutional Court, documents 40 cases, the actual number of cases is higher. It also observed that the existing law is not clear about which state agency is responsible for designing and implementing those measures; hence, getting those measures underway has been problematic. The Office of the Ombudsperson believes that a process of prior consultations should be part of the return process. Office of the Ombudsperson, Legal Commission to Follow Up on the Victims Law, *Mandates established in the Law on Victim Assistance, Reparations and Land Restitution and its Regulatory Decrees*, December 5, 2012, pp. 3-5.

<sup>797</sup> Information provided at the meeting with civil society, held in Bogotá on December 3, 2012.

<sup>798</sup> *El Tiempo, Toques de alarma* [Alarm Bells, December 4, 2012. Available [in Spanish] at: [http://www.eltiempo.com/opinion/editoriales/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-12421424.html](http://www.eltiempo.com/opinion/editoriales/ARTICULO-WEB-NEW_NOTA_INTERIOR-12421424.html).

<sup>799</sup> Specifically, civil society has said that: (i) the Government put its priority on technical meetings at which pre-established texts were presented, without the victims' participation and in spite of their demands; (ii) law enforcement decides which areas are for registration and returns, through democratic security "consolidation zones"; (iii) the law recognizes victims of State agents but excludes others, depending on the time of victimization, the type of human rights violation and whether the victim was a combatant; (iv) victims cannot seek restitution of their land through the courts without first getting listed in the URT registry, which can delay the process or create obstacles to restitution; (v) close to 30% of the displaced population would be precluded from restitution because of being a renter, a sharecropper or tenant; (vi) no guarantees are offered for reparation of victims who are abroad, under international protection; (vii) a *transaction contract* is planned so that victims who obtain some compensation waive economic reparations through the courts if the latter exceeds the amounts received from the government; although the contract is optional, it could discourage victims from filing their claims; (viii) only land is returned, not the equity, the house and the job, which affects women in particular, who represent the majority of those forcibly displaced and dispossessed; (ix) to ensure that victims return safely, mechanisms are established that coordinate with intelligence activities and involving civilian participation; (x) if the usurper confesses to stealing the land or falsifying the property deed, the Prosecutor's Office will reward him by waiving criminal prosecution; (xi) restitution situations occur where there is no restitution, since if an agri-business has been established and is in operation on the dispossessed land, only formal ownership of the property will be officially restored to the victims and the State or the party who is the respondent



502. As for measures of satisfaction, civil society expressed the view that Regulatory Decree 4800 of 2011 does not make measures of satisfaction mandatory. The Decree provides that the Administrative Unit for Assistance and Comprehensive Reparations “may” develop additional plans containing measures of reparation and satisfaction, when the term used in the law is “shall”. Furthermore, it was noted that the Decree does not contain any provision to bring about the measures provided for in Article 139 of Law 1448, concerning the search for disappeared persons; instead, it delegates responsibility for enforcing measures of satisfaction to the Territorial Transitional Justice Committees. This without considering that the measures to find disappeared persons are the responsibility of national-level agencies like the Attorney General, the Institute of Legal Medicine, the Prosecutor and the Disappeared Persons Search Commission.<sup>800</sup>
503. The IACHR recognizes that the overlap and the lack of orchestration of State agencies’ respective areas of competences and functions commonly accompany changes in the law and institutions, such as those that happened when Law 1448 entered into force. Nevertheless, the Commission notes that this situation has created delays for the public, even delays in urgently needed relief, because of paralysis among State institutions or the lack of command of procedures and avenues on the part of the very authorities charged with implementing the mechanisms provided in the Law. The Commission considers that the State must make concrete efforts to properly train its personnel and to ensure mechanisms for mass dissemination and information on the reparations measures provided for in Law 1448. At the same time, it has to enable operation of the mechanisms that the law creates for victims’ participation.

in the restitution process will be authorized to use the property, if the respondent is a good faith third party; (xii) there are no training opportunities or clear rules for participation, especially by women, Afro-descendant and indigenous persons; (xiii) security is essential to guarantee the victims’ effective participation; (xiv) there are gaps in the implementation of the protection avenue when leaders are threatened; (xv) there are problems in procedures whereby organizations are registered; (xvi) municipalities do not have the resources needed to ensure that the Victims Groups are able to function; (xvii) since 1997 Law 387 is still in force, institutions would have to continue to provide technical and financial assistance to the groups created to strengthen displaced persons’ organizations; (xviii) the Transitional Justice Committees and technical subcommittees are not functional; (xix) in some places, second-tier organizations are participating, while the town councils and other forms of local government, which are for the most part rural, have no guarantee of participation; (xx) it is challenging for victims to receive their reparations within the time periods established under Law 1448; (xxi) other troubling aspects are the restrictions on recognition of victims of so-called “emerging criminal bands,” the failure to meet the deadline for evaluating declarations so as to be able to proceed to inclusion in the Single Registry of Victims, and indemnization in kind through announcements for housing and land; (xxii) the Public Prosecutor’s Office is overburdened with functions; (xxiii) functions have been delegated at the territorial level without a proper transfer of technical, operational and budgetary expertise; (xxiv) the avenues and measures for seeking individual and collective reparations and for arranging and implementing comprehensive plans for collective reparations in Afro-descendant and indigenous territories are not widely known; (xxv) the impact of the prevention policy is limited, as there are no guarantees to protect the return processes, and the institutions charged with monitoring communities of returned persons are weak; (xxvi) projects for socioeconomic restoration are lacking, as are funds appropriated to create revenue streams; (xxvii) clear rules on compensation are lacking; (xxviii) banks are slow about releasing the funds for emergency humanitarian relief for the displaced population; (xxix) as for health care, persons have to drop their enrollment in their home town, and rejoin in the town to which they move and psycho-social treatment is not offered at the municipal level; (xxx) in the Nation-Territory articulation, the various levels of government avoid their responsibilities, and refer victims’ applications from one institution to another; at the same time, the Nation is not doing its part to complement the territories’ efforts; and (xxxi) in some cases, the waiting period for receiving emergency humanitarian relief can be up to a year. | Regional Forum of Voices of Victims in Nariño, November 2012.

<sup>800</sup> Coordinación Colombia-Europa-Estados Unidos, Observatory of human rights and humanitarian law, *Desapariciones forzadas en Colombia. En búsqueda de la justicia* [Forced Disappearance in Colombia: in search of justice], May 2012, p. 42.

504. The Commission observes that it has not received any information that would allow it to confirm how the differential approach has been applied in practice. Furthermore, the Commission has received information on the specific difficulties that women, indigenous peoples, Afro-descendent communities among others encounter in availing themselves of the reparations mechanisms provided for in the Law. It has also heard civil society's criticism of the fact that the consultations concerned the specific decrees, but not the text of Law 1448 itself.
505. The Commission does not have information on the extent to which the Victimization Threat Rate is used as input for the UNP or other relevant protective mechanisms, and to assess the security situation of returned persons. Because the armed conflict is still ongoing, in order to ensure effective reparation of victims the Commission insists that the restitution measures must be matched by measures to check the security conditions and then monitor them.
506. Thirdly, the Commission must underscore the fact that the victims' participation is not only a guarantee of the legitimacy of the reparation measures adopted by the State, but also an essential element to ensure their efficacy and regain the confidence of the citizenry, one of the main goals of transitional justice mechanisms. Here, the State explained that (i) by Circular 004 of 2012, guidelines were set out for a Transitional Mechanism of Victim Participation and Representation, in effect until March 2013;<sup>801</sup> (ii) plans were that the Permanent Participation Groups will begin to operate in March 2013; and (iii) nationwide, the Office of the Deputy Director of Participation of the UARIV has registered 620 victims' organizations and organizations dedicated to victim protection.<sup>802</sup>
507. For its part, the Office of the General Prosecutor was of the view that the participation strategy proposed for the process of regulating the Victims' Law and implementing public policy does not meet the minimum requirements that the Constitutional Court has set in various decisions, and is far from the efficient mechanism of citizen participation that rests on pillars like consensus-building, decision-making and policy adjustments.<sup>803</sup>
508. While the Office of the Ombudsperson acknowledged that victim participation is a "critical dynamic for the legitimacy of public policy," it also noted that the work of engaging the victims is lagging, because the process was plagued with serious problems from the outset and there is still no protocol establishing the content and scope of their participation.<sup>804</sup> It also wrote that when "the agencies in charge delivered the first Follow-up Report [August 20, 2012], no one was there to represent the victims, because the mechanism for selecting representatives to this

<sup>801</sup> Victim Assistance and Comprehensive Reparations Unit, *Report on implementation of the Victims and Land Restitution Act to protect the rights of victims of the armed conflict in Colombia*. On-site visit of the Inter-American Commission on Human Rights, December 2012.

<sup>802</sup> State of Colombia, *Avances en Materia de Derechos Humanos* [Advances in the Area of Human Rights]. Information provided at the meeting with the institutional structure provided for in Law 1448, held in Bogotá on December 4, 2012.

<sup>803</sup> Office of the Prosecutor of the Nation. *Process of implementing Law 1448 of 2011 from the perspective of the rights of the victims of forced displacement*, p. 29.

<sup>804</sup> The Office of the Ombudsperson indicated that the difficulties ranged from too little public information; poor publicity; limitations in the registration process – especially in the municipalities where the officials (*Personeros*) started on March 1 and are inadequately trained; a lack of interest on the part of municipal and departmental authorities. As a result few victims' organizations signed up; accordingly, alternatives were considered such as the transitional bodies created through internal circular 004. Although well intended, these transitional bodies created confusion and did not understand the provisions of the law and its regulatory decrees. Ombudsperson's Office, *Legal Commission to Follow Up on the Victims Law, Mandates established in the Law on Victim Assistance, Reparations and Land Restitution and its Regulatory Decrees*, December 5, 2012, pp. 5-6.

body had not been established.”<sup>805</sup> It went on to point that “one year after the law entered into force, and at a time when national and territorial action plans were already being put together and the environments for implementing public policy are ‘up and running’, the participation of the victims and their representatives is still just a goal.”<sup>806</sup>

509. Civil society observed that victim participation is a condition *sine qua non* for the legitimacy and efficacy of the reparations policy<sup>807</sup> and that Law 1448 reinforces the authorities’ obligation to recognize victims as an important party in the judicial processes. However, thus far victims have not effectively participated in the process of regulating the law and the participation model proposed would not be very different from the participation model designed for the displaced population, which reportedly did not assure effective participation for that group of victims. It was noted that there is no single criterion for what is meant by ‘participation’, a problem complicated by the failure to recognize how violence has – and still does – affected organizational processes and political and social movements; the threat it poses to the independence of the organizations; the campaigns waged against them; and the refusal to recognize the right that victims abroad have to participate.<sup>808</sup>
510. Given the circumstances, the Commission is concerned by the fact that more than a two years after Law 1448 was adopted, the State and civil society both acknowledge that there are serious difficulties where victims’ participation in the implementation of Law 1448 is concerned. The Commission urges the State to implement the recently adopted “Protocol for Effective Victim Participation”<sup>809</sup> as soon as possible and ensure that victims adequately participate in the process, through the channels established in the Victims Law itself and in the decrees regulating it.
511. Finally, the Commission must again make the point that the impunity that attends human rights violations must be corrected; stronger mechanisms enabling access to justice, judicial guarantees and judicial protection are essential to guarantee the sustainability and success of the implementation of some reparations policies, like land restitution. Correcting the factors contributing to violence and protecting victims and leaders reclaiming their lands are intimately linked to the progress of the investigations in that regard.
512. The Commission encourages the State to continue moving ahead with implementation of Law 1448 and to take the measures necessary to properly tackle the challenges encountered in making comprehensive reparations to victims of the conflict.

<sup>805</sup> Ombudsperson’s Office, Legal Commission to Follow Up on the Victims Law, *Mandates established in the Law on Victim Assistance, Reparations and Land Restitution and its Regulatory Decrees*, December 5, 2012, p. 7.

<sup>806</sup> Ombudsperson’s Office, Legal Commission to Follow Up on the Victims Law, *Mandates established in the Law on Victim Assistance, Reparations and Land Restitution and its Regulatory Decrees*, December 5, 2012, p. 6.

<sup>807</sup> Colombian Commission of Jurists, *Observaciones y recomendaciones para garantizar la participación efectiva de las víctimas en el diseño, seguimiento y ejecución de la política pública de asistencia y reparación de la Ley 1448 de 2011* [Observations and recommendations to ensure effective victim participation in the design, follow-up and execution of the public policy on assistance and reparations under Law 1448 of 2011], May 8, 2012, p. 1.

<sup>808</sup> Colombian Commission of Jurists, *Observaciones y recomendaciones para garantizar la participación efectiva de las víctimas en el diseño, seguimiento y ejecución de la política pública de asistencia y reparación de la Ley 1448 de 2011* [Observations and recommendations to ensure effective victim participation in the design, follow-up and execution of the public policy on assistance and reparations under Law 1448 of 2011], May 8, 2012, p. 13.

<sup>809</sup> Information available [in Spanish] at: <http://www.unidadvictimas.gov.co/index.php/79-noticias/536-las-victimas-y-sus-organizaciones-ya-cuentan-con-un-protocolo-de-participacion-efectiva-de-las-victimas>

## 2. Motion to identify impacts on the victims (Law 1592 of 2012)

513. Law 975 established a motion for reparations, which would take place prior to sentencing; during the hearing victims told the Justice and Peace Tribunal that they were seeking reparations and how they planned to secure them.<sup>810</sup> Accordingly, the Justice and Peace Chambers developed a Protocol for conducting the hearings on verification of execution of judgment<sup>811</sup> and a Protocol for the reparations motion.<sup>812</sup> The hearing held on the motion provided an opportunity to bring a legal action seeking reparations, first from the party who committed the crime and if appropriate the paramilitary group; only if the perpetrator does not have sufficient assets can reparations be sought from the State, through the reparations fund.<sup>813</sup> In 2010, the Commission observed that only three applicants [*postulados*] had reached the stage of the reparations motion allowed under Law 975, namely: Edwar Cobos Téllez alias “Diego Vecino”, Uber Enrique Bánquez alias “Juancho Dique” and Jorge Iván Laverde Zapata alias “El Igúano”<sup>814</sup>.

<sup>810</sup> Information available [in Spanish] at: [http://www.cnrr.org.co/contenido/09e/spip.php?article2824&var\\_mode=calcul](http://www.cnrr.org.co/contenido/09e/spip.php?article2824&var_mode=calcul)

<sup>811</sup> According to the protocol, at the hearing held to supervise the judgment, the following will be evaluated: (i) an analysis of convicted persons’ compliance with the obligations imposed by Law 975 so that the alternative penalty will not be revoked; (ii) reports on the progress made in financing execution of the individual and collective reparations measures ordered in the judgment; (iii) a report by the Public Prosecutor’s Office on the assets of persons convicted by courts of ordinary jurisdiction of conspiracy to commit crime by virtue of membership in a paramilitary group or self-defense group (*autodefensas*); (iv) a report from Social Welfare on all aspects pertaining to the administration of those assets that are already in the Victims Reparations Fund, and of all others that are in the process of being included in that fund; (v) a report by the National Reparations Commission on all the measures it has taken to raise national and international donations to the Reparations Fund; (vi) a report on the measures the Executive Branch has taken to ensure payment of the contributions, voluntary or coerced (through the imposition of rates, fees or taxes) to the Reparations Fund by those legal persons and corporations that, according to the records supplied by the demobilized applicants [*postulados*], have contributed to funding the Armed Groups Outside the Law to which Law 975 refers; (vii) a report on the measures taken by the Executive Branch to promote a “Debt Swap” with international lenders (private, or third States) so that these debt swaps cancel a portion of the country’s debt on condition that the sum involved is invested in reparations and other types of assistance to victims; (viii) report by the Office of the Prosecutor, the Attorney General’s Office, Social Welfare and the National Reparations Commission on the measures taken to carry out the individual victim compensation measures determined in the judgment; (ix) report by the Office of the Prosecutor, the Attorney General’s Office, Social Welfare and the National Reparations Commission on the program for implementing the measures of reparation other than the individual reparations determined in the judgment; (x) report on the investigation and prosecution activities conducted in the courts of ordinary jurisdiction, and the status of the proceedings in respect of those local, regional and national civil and political authorities, members of State intelligence agencies, prosecutors, agents of the technical investigation corps, members of the Armed Forces, law enforcement personnel, and any other persons who allegedly contributed to the criminal activities of the respective group and which of the Preliminary Hearing Chambers certified copies for investigation of the crime of conspiracy to commit crime in the decision legalizing the charges or in the judgment; (xi) report on the status of execution of the individual and collective measures of reparation ordered in the judgment.

<sup>812</sup> According to the Protocol, the following must be provided: (i) facts and victims who are the subject of the case in relation to all facts and victims on record with the Prosecutor’s Office in application of Law 975 of 2005; (ii) presentation of proof of victim status; (iii) a determination of the value of the individual reparations; (iv) a determination of the value of the collective reparations; (v) conclusions concerning the value of the individual and collective reparations in the present case and in the body of facts recorded by the Prosecutor’s Office since May 1, 2010 in application of Law 975; and (vi) financing of the individual and collective measures of reparation adopted in the present decision.

<sup>813</sup> IACHR, *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008, para. 6.  
<sup>814</sup> The hearing on the motion for reparations to be paid by “Diego Vecino” and “Juancho Dique” began on April 26, 2010 and lasted eleven days. It culminated in a ruling issued on June 29, 2010, which was appealed. In that ruling, the Court established an equity-based system of reparations, following the Inter-American Court’s practice in the cases involving the Ituango and Pueblo Bello massacres, and the practice of the Council of State. On that basis, it created tables of individual compensation according to the crime and the kinship relationship, which deal with both pecuniary and non-pecuniary damages and are based on the value assigned to the damage done by the most serious crime, in other words, murder, with a maximum referential value of 240 million pesos per nuclear family. Chamber of Justice and Peace, Superior Tribunal of the Bogotá Judicial District. Judgment of June 29, 2010, file: 110016000253200680077, MP. Uldi Teresa Jiménez López, para. 343 - 352. For cases of murder, the Tribunal would award each indirect victim who was a spouse, father, mother or child the sum of 40 million pesos, whereas those who were siblings would receive some 4 million pesos. The maximum per nuclear

514. The Commission notes that one of the most controversial parts of Law 1592 is the elimination of the reparations motion established in Law 975, replacing it with a “motion for identification of the harm caused to the victims,”<sup>815</sup> in which evidence introduced by the victims would be verified, if the person standing trial acknowledged the “harm” alleged.<sup>816</sup> Victims could not file for economic reparations in criminal court; instead, the reparations would be subject of the mechanisms established in Law 1448.
515. During the visit, the Justice and Peace Unit indicated that this change is not contrary to the standards of the inter-American system; it argued that although the jurisprudence of the Inter-American Court establishes *restitutio in integrum* as the guiding principle, it does not indicate the specific form of reparation. It specifically made the point that the motion for administrative reparation allows flexibility in the reparation process, through a swifter proceeding based on summary evidence, contrary to what happens in the case of court-ordered reparations, where the evidence is debated and contested, and the damages ordered were submitted to the Council of State.<sup>817</sup>
516. In its observations to the Draft Report, the State reiterated that:

[...] Law 1592 of 2012 does not imply a setback to the guarantee of the right of victims to integral reparation. To the contrary, what the law did was provide coherence to the diverse transitional justice systems, with the aim of ensuring that victims of justice and peace have access to the administrative program for the reparation of victims, in such a way that conditions are equal for indemnification; that the resources feed the reparation fund for all the victims of the armed conflict; and that the remaining integral reparation measures (rehabilitation, satisfaction and non-repetition), do not depend on a series of jurisprudential exhortations, but rather that they respond to a true integral reparation policy<sup>818</sup>.

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family was 240 million pesos. For cases of displacement, the Tribunal relied on the Council of State’s practice which, for non-pecuniary damages, assigns any displaced person half (50 wages) of the sum paid to the spouse, parents, and children in a case of homicide (100 wages), so that each displaced person in the same nuclear family would receive the sum of 17 million pesos, with a maximum per nuclear family of 120 million pesos. In a case of abduction, the Chamber established something similar to the amount paid by the government and the Inter-American Court of Human Rights for the crime of homicide and determined that the immediate victim would receive 30 million pesos; the amount per family group was not to exceed 180 million pesos; siblings would receive 4 million. Finally, the Chamber held that if the same person was the victim of multiple crimes, the calculation of the compensation owed to the immediate victim and/or his or her nuclear family would take into account the amount owed for the most serious crime; the maximum the nuclear family could receive would be 240 million pesos. The hearing on the motion for reparations in the case of “El Iguano” began on July 7, 2010, and has not yet ended. Information available [in Spanish] at: [http://www.cnrr.org.co/contenido/09e/spip.php?article3069&var\\_mode=calcul](http://www.cnrr.org.co/contenido/09e/spip.php?article3069&var_mode=calcul). See also IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, para. 111. The Supreme Court confirmed the ruling; however, on the matter of the measures of rehabilitation, satisfaction, and non-repetition and the collective measures, it amended the word “order” to read “appeal” and nullified the deadlines established for compliance. Information available [in Spanish] at: <http://www.verdadabierta.com/victimarios/3217-corte-suprema-ratifica-la-primer-sentencia-de-justicia-y-paz>  
See Law 1592, Article 23.

<sup>815</sup> See Law 1592, Article 23.

<sup>816</sup> Thus, for example, if the victim is seeking restitution of usurped land, he or she will have to contact the Ministry of Agriculture (Unit for Restitution of Dispossessed Land) and wait for a complaint to be instituted with the land restitution judges created by the Victims Law. Colombian Commission of Jurists, Gallón Giraldo, Gustavo, *Una ley para ponerles conejo a las víctimas*.

<sup>817</sup> Information provided during the meetings with Office of the Attorney General authorities, held in Bogotá from December 4 through 8, 2012.

<sup>818</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140 of December 2, 2013, para. 295.

517. The IACHR also notes that as of the date of approval of this report, the Constitutional Court has under its consideration the constitutionality analysis of those norms.
518. The Justice and Peace Unit also pointed out that in a case of administrative reparations, the harm caused to the victims is individually assessed, and the measures of reparation will be implemented by experts from the Victims Unit through the Reparations Fund under the Office of the President of the Republic. It was also said that when Law 1592 takes effect, victims registered with Justice and Peace shall have a preferential right to reparations.<sup>819</sup> The State has also said that the motion for comprehensive reparations created problems; since after the ruling in the Mampuján case, 50% of what was then in the reparations fund went to just 0.3% of the victims registered with Justice and Peace.<sup>820</sup>
519. As regards eliminating the motion for reparation, the Commission received information during the visit to the effect that there would have a negative impact to eliminating the motion for reparation would have a negative impact, since in practice it would be the victims' opportunity to interact with the applicant and ask questions. The information provided also indicates that this change is a setback, when one considers the high standards of reparations established in the Justice and Peace rulings, and the fact that while the motion for harm caused provided for in the Victims Law features a series of programs, there is no commitment to award reparations. It has been said that there would no incentives for victims to take an active part in the Justice and Peace process, since they could directly avail themselves of the mechanisms provided under the Victims Law and obtain the reparations therein established.<sup>821</sup> The point was also made that Law 1592 prevents the Justice and Peace Chamber from being able to order any reparation measure other than including the victim's version of the damages sustained in the text of the judgment.<sup>822</sup>
520. In addition, civil society commented that the Administrative Individual Reparations Program – created by 2008 Decree 1290 and repealed by Article 297 of Decree 4800 of 2011, which regulates Law 1448- established an administrative procedure that set an economic *quantum*, independent of the investigation and of the Victims Law and based on a premise of “solidarity with the victims.”<sup>823</sup> The Commission notes that according to the UAEARIV, all the applications filed under Decree 1290 are under study and will be evaluated on the basis of the Victims Law. Furthermore, the victims still have the right to work through mechanisms other than the Victims Law, such as filing a suit in the Administrative-Law Courts seeking direct damages by proving that the State is liable in a given case.<sup>824</sup>

<sup>819</sup> Information provided during the meetings with Office of the Attorney General authorities, held in Bogotá from December 4 through 8, 2012. See also, Ministry of Foreign Affairs of Colombia, *Document titled “Justice and Peace Law,”* received by the IACHR on May 3, 2013.

<sup>820</sup> IACHR, *Hearing on constitutional reforms and human rights in Colombia*, March 14, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=131>.

<sup>821</sup> Information provided during the meeting with civil society, held in Bogotá on December 3, 2012.

<sup>822</sup> Coordinación Colombia-Europa-Estados Unidos, *En Colombia las desapariciones forzadas no son asunto del pasado. Las desapariciones forzadas en Colombia siguen cometiéndose y el Gobierno promueve nuevas medidas que garantizan su impunidad* [In Colombia, forced disappearances are not past history. Forced disappearance continues to be committed and the Government is taking new measures to guarantee impunity], November 2, 2012, p. 10

<sup>823</sup> Coordinación Colombia-Europa-Estados Unidos, *En Colombia las desapariciones forzadas no son asunto del pasado. Las desapariciones forzadas en Colombia siguen cometiéndose y el Gobierno promueve nuevas medidas que garantizan su impunidad* [In Colombia, forced disappears are not past history. Forced disappearance continues to be committed and the Government is taking new measures to guarantee impunity], November 2, 2012, p. 10.

<sup>824</sup> Law 1448 – Victims Law. Avenue for Comprehensive Reparations for Victims of Forced Disappearance. In the case of forced disappearances, prescription and limitation of action shall be counted as of the date on which the victim appears or, failing that, as of the date on which the final judgment in the criminal case becomes enforceable.

521. The Commission observes that the provisions of Law 1592 would entail restrictions, unlike the measures of reparation ordered through Justice and Peace judicial proceedings. The Commission notes that once that law takes effect, there would be no incentive for victims to participate in the Justice and Peace processes seeking reparations, except for the supposed preferential attention. However, there is no indication of how the preferential attention will operate or how the sums from the Justice and Peace Reparations Fund will be used.
522. While the Commission understands that the State can adopt a variety of reparations measures involving both judicial and non-judicial mechanisms,<sup>825</sup> it also observes that this reform would, in practice, imply the elimination of any other judicial reparations mechanism in the framework of the transitional justice process, contrary to the expectations created among victims for the seven years that Law 975 of 2005 remains in force. In its observations to the Draft Report, the State pointed out that it would really not have such implication, since “the mechanism subsists in legislation and in practice; its application would be a different matter”<sup>826</sup>.
523. In that respect, the Commission would once again point out that:
- [s]hould the comprehensive reparations program offer an administrative avenue as an option to the judicial proceeding allowed under the Justice and Peace Law, the two options should not be mutually exclusive; instead, the administrative avenue should complement the judicial reparations proceeding, since the object of the administrative reparations would be different from that of the judicial reparations proceeding. [...]
- For the Commission, then, dismissal of the action seeking reparations via a judicial proceeding should not be a requisite for seeking reparations via the administrative avenue. The Commission believes that both actions should complement each other; in a judicial proceeding, the State would always retain the authority to pay the victim the compensation awarded under the administrative reparations program. In the Commission’s view, therefore, there is no dual reparations cost to the State. Implementation of an administrative program might also serve to reduce litigation of cases seeking reparations.<sup>827</sup>
524. The Commission notes that this legal reform is occurring at a time when the Justice and Peace Unit itself has acknowledged the difficulties involved in attempting to effectively recover assets obtained illegally by demobilized persons, and when the State is hesitant about making up the difference when the assets put up by the demobilized applicants are not sufficient to pay the reparations ordered in the Justice and Peace judgments.<sup>828</sup> The IACHR reiterates that the concept of reparations is one based on a principle of liability or obligation, by contrast to an *ex gratia* payment. As the IACHR has written, the administrative reparations proceeding ought not to preclude a contentious-administrative legal action that seeks to establish the legal liability of the State, nor should it involve abandonment of suits for reparations under the Justice and Peace Law. The Commission made the point that the victims’ right to bring legal action in the contentious-administrative forum to determine the responsibility of the State for

<sup>825</sup> IACHR, *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008.

<sup>826</sup> Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, paras. 298-299.

<sup>827</sup> IACHR, *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008, para. 6.

<sup>828</sup> IACHR, *Hearing on constitutional reforms and human rights in Colombia*, March 14, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=131>.

gross violations committed by paramilitary ought to be preserved, as has been the finding in precedents of the Council of State.<sup>829</sup> In addition, the State could always include in the award the compensation it would pay under the administrative reparations program.<sup>830</sup>

525. As to the possible restrictions mentioned by the IACHR, in its observations to the Draft Report the State pointed out that even though:

[...] a larger reparation in economic terms for each of the victims of the armed conflict is desirable; however, the application of the parameters of physical affectation (*baremos*) for administrative indemnification will allow reaching a greater number of victims in a framework of equality, even giving priority to those victims who participate in the Justice and Peace processes.<sup>831</sup>

526. The IACHR observes that the State, in its observations on the Draft Report, reiterated that it would not be possible to adopt a different mechanism, in relation to the possibility of the victims who participate in the Justice and Peace proceedings having access to a judicial remedy to determine the harm caused and the corresponding reparations. In this respect, the State indicated: "... this would not only presuppose repealing Law 1592, but would also entail renouncing the position that the only way to make reparation to the victims of the armed conflict is through a massive reparations program...."<sup>832</sup> While it is true that, according to what has been reported by the State, the means of accessing reparations and the individual reparations plans provided for in Law 1448 are geared to giving attention to the particular situation of victims, the IACHR notes that those reparations are in the framework of an administrative reparations plan whose characteristics are different from the judicial approach previously offered by the State to the victims whose cases were going through the special Justice and Peace courts.
527. In this chapter the IACHR has reviewed in detail the standards of the system regarding the duty of States to repair serious human rights violations, which includes a series of elements that must be applied as part of international law obligations, and that also includes individual and general aspects. In that framework, the Commission has reiterated that, without prejudice to the complementary nature of reparation mechanisms designed, the States have the obligation to offer full reparation for the human rights violations caused and a judicial response to guarantee access to justice in a reasonable time in the terms established in international law.
528. With these considerations in mind, the Commission highlights in this report the matters of concern with respect to the reparation mechanisms created by the State; and issues the corresponding recommendations. In that respect, the IACHR notes that, on one hand the possibility of judicial reparation still subsists for in those cases where the alleged perpetrators of the human rights violations are State agents. Nonetheless, eliminating the motion for

<sup>829</sup> In its observations to the Draft Report, the State indicated that the administrative action is "still open" and that "[...] the government is willing to pay for administrative reparation, and it has allocated the highest budget in history for an administrative program of reparation of victims." Observations by Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, para. 319.

<sup>830</sup> IACHR, *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008, para. 7.

<sup>831</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140 of December 2, 2013, paras. 298-299.

<sup>832</sup> Observaciones de Colombia al Proyecto de Informe de la Comisión Interamericana de Derechos Humanos. Nota S-GAIIID-13-048140, de 2 de diciembre de 2013, para. 313.



reparation, in practice, could place some victims in a situation of inequality, bearing in mind the extent of reparation that could be obtained through that motion.

529. The Commission observes that in principle, delinking the mechanisms of justice from the mechanisms of reparations could have adverse consequences in that the human rights violations exposed and proven and their specific effects would not be offset in the form of reparations. This delinking affects the victims' interest in participating in the judicial proceedings and the comprehensiveness of the reparations granted.
530. The Commission is aware of the magnitude of the economic resources needed to deal with comprehensive reparations for victims of human rights violations in Colombia. However, once again, this is a consequence of the State's responsibility for those violations, against the backdrop of an armed conflict that is still ongoing after five decades. The Commission recalls that the State cannot argue that it does not have the resources to make good on its human rights obligations.<sup>833</sup>
531. Based on the foregoing, the Commission considers that the State must adopt the pertinent mechanisms to guarantee that victims who participate in Justice and Peace processes have access to a judicial remedy. In this regard, the Commission urges the State to preserve and safeguard the supplemental nature of administrative reparations with respect to the judicial determination, i.e. the reparations which was previously offered by the State to victims whose cases were before the the special Justice and Peace courts. The Commission shall follow up the process of review currently underway before the Constitutional Court with respect to Law 1592, and will remain attentive to any statements in that regard.

## **Recommendations**

532. Based on the observations in this section, the Commission is recommending that the Colombian State:
1. Continue to move forward with implementation of Law 1448 and adopt the measures necessary to adequately address the challenges encountered.
  2. Take a broad approach to including victims in the Single Registry of Victims.
  3. Guarantee, in practice, the implementation of a differential approach for women, children and adolescents, persons with disabilities, indigenous peoples, Afro-descendant persons, lesbian, gay, trans, bisexual and intersex persons, defenders of human rights, among others.
  4. Guarantee victims' effective participation in the proceedings provided for in Law 1448 and take their expectations into account when deciding the appropriate measures of reparation.

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<sup>833</sup> The Inter-American Court has consistently held that the State cannot invoke economic limitations to justify prison conditions that are not up to the minimum international standards in this area and do not respect the inherent dignity of the human person. See, I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, paras. 85, 87; *Case of Boyce et al. v. Barbados*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169, para. 88, and I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, para. 198.

5. Adopt the necessary mechanisms to ensure that victims who participate in Justice and Peace proceedings have access to a judicial recourse through which the harm caused and the reparations due are determined.<sup>834</sup>

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<sup>834</sup> As was indicated *supra*, in its observations to the Draft Report, the State pointed out that it was not possible to accept this recommendation, and asked that consideration be given to the fact that as to the date of approval of this report, several provisions of Law 1592 were under consideration by the Constitutional Court.



CHAPTER 4  
INTERNAL FORCED  
DISPLACEMENT



## INTERNAL FORCED DISPLACEMENT

533. Throughout the more than 50 years of internal armed conflict in Colombia, the forced migration of millions of people has been one of the principal consequences and strategies of armed struggle used by the parties to the conflict. The forced displacement has created an ongoing and worsening humanitarian crisis which, in the Commission's view, is one of the principal human rights challenges confronting Colombia<sup>835</sup> at the present time and for decades into the future. In its observations on the draft report, the State emphasized that the IACHR agrees with that assertion in the sense that the conclusion of the internal armed conflict would represent a fundamental contribution to preventing forced displacement.
534. During the visit, the Commission received testimony from displaced persons and obtained information from civil society organizations that revealed how extremely vulnerable the internally displaced are. It also revealed a significant increase in the number of large-scale, intra-urban displacements in recent years, particularly in 2012.<sup>836</sup> The scale of internal displacement in Colombia, the fact that it is a decades-long problem and the negative impact it has had on the human rights of millions of people make it one of the major humanitarian tragedies not just in the region, but in the world.
535. Internal displacement involves multiple violations of human rights.<sup>837</sup> Some of the rights violated as a consequence of internal displacement are: (i) the right not to be internally displaced; (ii) the right to freedom of movement within the territory of the State; (iii) the right to freely choose one's place of residence; (iv) the right to humane treatment; (v) the right to privacy and family life; (vi) the right to property; and (vii) the right to work. In the case of children and adolescents, their right not to be separated from their families is violated, as are their right to special protection and care and their right to education. Women's right to personal security is also affected by virtue of their vulnerability to the violence associated with the status of a displaced person.<sup>838</sup> In the case of indigenous and Afro-descendent communities and peoples, their right to their ancestral lands and territories is violated, as is their right to their culture. Here, the Inter-American Court has written that:

[i]n view of the complexity of the phenomenon of internal displacement and of the broad range of human rights affected or endangered by it, and bearing in mind said circumstances of special weakness, vulnerability, and defenselessness in which the displaced population generally finds itself, as subjects of human rights, their situation can

<sup>835</sup> See, *inter alia*, IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, Chapter VI, Internal Displacement, para. 1, Section C, para. 26; and IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*. OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 71.

<sup>836</sup> IACHR, Press Release 144A/12, *Preliminary Observations of the IACHR on Its On-Site Visit to Colombia*. Anne to Press Release 144/12 released at the end of the on-site visit to Colombia, December 7, 2012. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2012/144A.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/144A.asp).

<sup>837</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, Chapter VI, Internal Displacement, para. 1, section C; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*. OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 85.

<sup>838</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Article 9.

be understood as an individual *de facto* situation of lack of protection with regard to the rest of those who are in similar situations.<sup>839</sup>

536. With respect to the right to freedom of movement and residence, recognized in Article 22(1) of the American Convention,<sup>840</sup> the organs of the inter-American human rights system have found in their case law that this right creates an obligation upon the States to abstain from actions that will lead to the displacement of persons or aid third parties in perpetuating events that trigger internal displacement.<sup>841</sup> Both the Commission and the Court have considered that the Guiding Principles on Internal Displacement,<sup>842</sup> which are based on international human rights law and IHL, are of particular relevance in determining the scope and content of Article 22(1) of the American Convention on Human Rights in the context of internal displacement. The Guiding Principles define internally displaced persons as follows:

internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.<sup>843</sup>

537. According to these Principles, States have four main obligations in a context of internal displacement: (i) the obligation to prevent the displacement; (ii) the obligation to protect the displaced persons during displacement; (iii) the obligation to provide and enable humanitarian relief, and (iv) the obligation to facilitate the return, resettlement and relocation of the displaced persons.<sup>844</sup>

538. As both the IACHR and the Court have held, in internal armed conflicts States have general and particular obligations to protect the civilian population under their jurisdiction; those obligations are a function of IHL.<sup>845</sup> The provisions on displacement contained in Protocol II to the 1949 Geneva Conventions are particularly useful in this regard.<sup>846</sup> Specifically, under

<sup>839</sup> See, *inter alia*, I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 177; *Case of Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 210.

<sup>840</sup> Article 22(1) recognizes that: “Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.”

<sup>841</sup> See, *inter alia*, I/A Court H.R. *Case of the Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012, Series C No. 259, para. 255; *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, 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 Ituango Massacres v. Colombia*. Judgment of July 1, 2006, Series C No. 148, para. 206; and *Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005, Series C No. 134, para. 168.

<sup>842</sup> In April 1998 Mr. Francis M. Deng presented a report to the United Nations Commission on Human Rights with an addendum titled “Guiding Principles on Internal Displacement.” The United Nations Commission on Human Rights adopted, by consensus, a resolution co-sponsored by more than 50 States, Colombia among them. For more information see UN, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, Addendum, and Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 of February 11, 1998. The Guiding Principles consist of 30 principles covering all stages of internal displacement.

<sup>843</sup> UN, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, Addendum, Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 of February 11, 1998, and Introduction: Scope and Purpose.

<sup>844</sup> Expert opinion by Sebastián Albuja in Case 12,573, *Marino López et al. (Operation Genesis) v. Colombia*.

<sup>845</sup> See, *inter alia*, I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs, para. 114; IACHR, Report No. 64/11, Case 12,573, Merits, *Marino López et al. (Operation Genesis) Colombia*, March 31, 2011, para. 215; and Report No. 86/10, Case 12,649, Merits, *Community of Río Negro of the Maya Indigenous People and its members (Río Negro Massacre) Guatemala*, July 14, 2010, para. 228.

<sup>846</sup> I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 209.

Article 17 of Protocol II, the displacement of the civilian population for reasons related to a conflict is prohibited unless the security of the civilians involved or imperative military reasons so demand, in which case “all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.”<sup>847</sup> The Inter-American Court, for its part, has affirmed the utility and applicability of these provisions and has also relied on the findings of the Constitutional Court of Colombia to the effect that “in the Colombian case, the observance of these rules by the parties in the conflict is of particular urgency and importance, since the armed conflict underway in the country has seriously affected the civilian population, as seen, for example, in the alarming data on forced displacements.”<sup>848</sup>

539. In the Colombian case, although the displaced are often forced to flee their homes for the same reasons that refugees do, the fact that they remain within the national territory means that they cannot apply for refugee status or benefit from the international protection established for refugees under the international law on refugees.<sup>849</sup> The presence of internally displaced persons within the national territory means that the State itself bears primary responsibility for respecting and guaranteeing their human rights without distinction for race, color, sex, language, religion or belief, political or any other opinion, national, ethnic or social origin, legal or social status, age, disability, economic position, birth or any other such criterion.
540. Under the American Convention and domestic and international laws, internally displaced persons are entitled to freely enjoy the same rights and freedoms as the rest of the citizenry.<sup>850</sup> However, in practice, they are seldom able to do so, because the displacement itself prevents them from enjoying their basic human rights. One of its main characteristics is that its victims have been forced to flee their homes or habitual places of residence, which means they are forced to abandon their life plans and, in most case, lose land, housing and other personal and family assets. A number of human rights are affected by the uprooting and displacement.
541. The Court has also held that:

[u]nder the terms of the American Convention, the differentiated situation of displaced persons places States under the obligation to give them preferential treatment and to take positive steps to revert the effects of said condition of weakness, vulnerability, and defenselessness, including those *vis-à-vis* actions and practices of private third parties.<sup>851</sup>

## **A. The situation of forced displacement**

542. The nature and causes of the serious human rights situation in Colombia are a function of multiple factors. During the more than 50 years that the armed conflict has been raging, the various forms of violence are all related to a common factor: the tenure, use and concentration

<sup>847</sup> Protocol II to the 1949 Geneva Conventions, Article 17.

<sup>848</sup> IACHR, Report No. 86/06, Petition 499-04, Admissibility, *Marino López et al. (Operation Genesis) Colombia*, October 21, 2006, para. 43.

<sup>849</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, Chapter VI, Internal Displacement, para. 1, section C.

<sup>850</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, Chapter VI, Internal Displacement, para. 1, section C; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*. OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 85.

<sup>851</sup> I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 179.



of land.<sup>852</sup> While the government has indicated that the planned land restitution will involve 2 million hectares, civil society organizations and international organizations differ on that figure. Some put the figure at between three or more than five million hectares of land illegally appropriated from persons who are now displaced.<sup>853</sup>

543. With the passing of the years, the armed actors, the types of violence they use and their dynamics as the parties responsible for the forced migration of persons have undergone various changes. The violence attributable to the parties to the armed conflict has taken many forms, such as acts of violence, threats, human rights abuses committed for the purpose of controlling territory and dominating entire communities in various regions of the country, military operations, counter-insurgency operations, reprisals on the part of paramilitary and guerrilla groups, restrictions on freedom of movement –cases in which entire villages and towns are confined-, the danger of forced recruitment, attacks,<sup>854</sup> acts of sexual violence,<sup>855</sup> forced labor, selective assassinations, extrajudicial executions, massacres, forced disappearances, arbitrary detention and others. Throughout the armed conflict, eviction and forced displacement have been a constant, and became even worse starting in the 1980s. Thus, as a consequence of the armed conflict and other forms of violence, millions of persons have been forced to flee their habitual place of residence as internally displaced persons; hundreds of thousands more fled the country in search of international protection as asylum seekers, refugees or persons seeking additional protection. The *Consultoría para los Derechos Humanos y el Desplazamiento* [the Office of Advisory Services on Human Rights and Displacement](hereinafter “CODHES”) has maintained that in 2012, the evidence suggests that the multiple causes of displacement have become even more intense and widespread.<sup>856</sup>

544. Apart from the violence committed by the parties to the armed conflict, other sources of violence in have been identified as causes of the forced migration, especially internal displacement and other human rights violations associated with this tragedy. The violence associated with drug trafficking, the clashes over land and economic interests, fumigation of illegal crops, the actions taken to stop the manual eradication of crops, socioeconomic violence rooted in social injustice, the mining and agri-business industries, the non-traditional extractive economies and megaprojects are some of the sources of violence that

<sup>852</sup> In 1999, CODHES wrote that “The land tenure relationships were also changed and are still being changed through the use of armed violence, to perpetuate or expand the concentration of ownership, in a dynamic of acquisition that the political and social violence has to a large extent fostered. Armed violence has thus been used to vacate and/or repopulate strategic territories that will be used for agri-business projects or natural resource exploration and exploitation, to build massive public works or tighten control over lands where crops are grown and processed into illegal drugs. And finally, perhaps the most visible form of violence has been the violence used to seize territories for political and military control. Violence, forced displacements, and appropriation have been constants in our internal armed conflict. We had people displaced at the beginning of the century by the “thousand-day war”; those displaced midway through the century by the liberal-conservative violence, and those displaced at the end of the century by the current armed conflict. They have been and are anonymous protagonists in wars that they often sense are not theirs, but that have brought about abrupt changes in their lives and their social and cultural referents.” See, CODHES, *Un país que huye: Desplazamiento y violencia en una nación fragmentada* [A country in flight: Displacement and violence in a fragmented nation]. CODHES-UNICEF: Bogotá, 1999, p. 3; CODHES, *Desplazamiento creciente y crisis humanitaria invisible* [Displacement on the rise: an invisible humanitarian crisis]. Bogotá, 2012, p. 16.

<sup>853</sup> UN, Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia. 19<sup>th</sup> session, A/HCR/19/21/Add.3, January 31, 2012, para. 53.

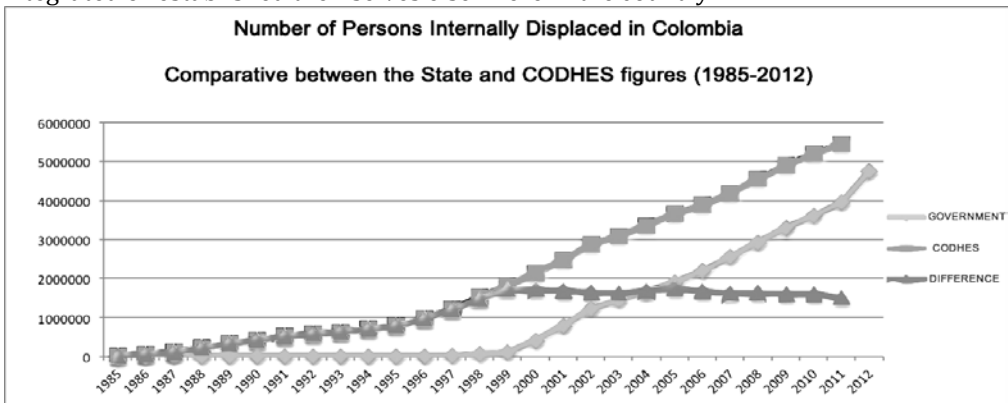
<sup>854</sup> CODHES, *Special Report. On-site Visit. Inter-American Commission on Human Rights*. 2012, p. 3.

<sup>855</sup> Colombian Commission of Jurists, *Colombia: sigue esperando la hora de los derechos humanos Informe sobre la situación de derechos humanos y derecho humanitario 2010-2012* [Colombia: it continues to await the hour of human rights. Report on the situation of human rights and humanitarian law 2010-2012], p. 25.

<sup>856</sup> CODHES, *Special Report. On-site Visit. Inter-American Commission on Human Rights*. 2012, p. 4.

have contributed to the humanitarian catastrophe of internal displacement and forced migration in the country.<sup>857</sup>

545. The Commission notes with concern that at the present time, globally Colombia is the country with the highest number of internally displaced persons, with a total of between 4.9 and 5.5 million internally displaced persons.<sup>858</sup> According to the Internal Displacement Monitoring Centre (hereinafter the “IDMC”), FARC and ELN; armed groups which have emerged after the demobilization of paramilitary organizations between 2003 and 2006; and the Colombian security forces all continued to cause displacements during 2012. Forced displacement has been steadily increasing year after year and in 2012, 230,000 more were forced into internal displacement by the armed conflict and human rights violations. The majority were forced to move from rural areas to urban areas.<sup>859</sup>
546. The Colombian government’s figures indicate that between 1997 and late 2012, 4.9 million persons were forcibly displaced. This figure includes both new displacements and those that happened in previous years.<sup>860</sup> CODHES, for its part, estimated that between 1985 and 2012 approximately 5.5 million persons were forcibly displaced. These figures reveal that between 10.3% and 11.6% of the Colombian population are internally displaced persons. Both the government’s figures and those of CODHES are cumulative figures and thus do not take into consideration that some internally displaced persons may have returned, become locally integrated or established themselves elsewhere in the country.



<sup>857</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Chapter I, para. 1.

<sup>858</sup> See, *inter alia*, Internal Displacement Monitoring Centre, *Global Overview 2012: People internally displaced by conflict and violence*. IDMC: Geneva, 2013, p. 9; Expert opinion by Sebastián Albuja in Case 12,573, *Marino López et al. (Operation Genesis) v. Colombia*.

<sup>859</sup> CODHES, *Special Report. On-site Visit. Inter-American Commission on Human Rights*. 2012, p. 3.

<sup>859</sup> Colombian Commissions of Jurists, *Colombia: sigue esperando la hora de los derechos humanos Informe sobre la situación de derechos humanos y derecho humanitario 2010-2012* [Colombia: it continues to await the hour of human rights. Report on the situation of human rights and humanitarian law 2010-2012], p. 25.

<sup>859</sup> CODHES, *Special Report. On-site Visit. Inter-American Commission on Human Rights*. 2012, p. 4.

<sup>859</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Chapter I, para. 1.

<sup>859</sup> See, *inter alia*, Internal Displacement Monitoring Centre, *Global Overview 2012: People internally displaced by conflict and violence*. IDMC: Geneva, 2013, p. 9; Expert opinion by Sebastián Albuja in Case 12,573, *Marino López et al. (Operation Genesis) v. Colombia*.

<sup>859</sup> Internal Displacement Monitoring Centre, *Global Overview 2012: People internally displaced by conflict and violence*. IDMC: Geneva, 2013, p. 35.

<sup>860</sup> Internal Displacement Monitoring Centre, *Global Overview 2012: People internally displaced by conflict and violence*. IDMC: Geneva, 2013, p. 38.

547. The difference between the government's figures and CODHES' figures has been explained as a function of: (i) the difference in the time period covered by the records; (ii) the different criteria that state officials used to register displaced persons; (iii) the fear that displaced persons have of reprisals from armed groups if they file a complaint concerning their situation; and (iv) the government's figures only include those listed in the RUV and, therefore, do not include those persons displaced by illegal armed groups that emerged after the demobilization of paramilitary organizations, displacement caused by fumigation of illegal crops,<sup>861</sup> or intra-urban displacement.
548. The Commission has also been informed that the displacement records and figures are not up to date and are therefore chronologically outdated, and that the figures kept by the United Nations system, cooperation agencies, the Ombudsperson's Office, municipal officials and ethnic-territorial authorities would not be counted, thus disguising the many under-reported displaced persons.<sup>862</sup>
549. The Commission notes that the difference of one million displaced persons between the 3.9 million that the government reported in late 2011 and the 4.9 million it reported in late 2012 is explained by the measures of reparation provided for in the Victims Law, which triggered a significant increase in applications to be listed in the RUV as displaced persons. Law 1448 established a two-year period to reduce the under-registration of displaced persons, and a one-year period to move names from the RUPD to the RUV. However, the Commission has received information that would indicate that since that process was introduced, it has been very difficult to get clear information on the registration of displaced persons, since there is a considerable delay in migrating names from one registry to the other.<sup>863</sup>
550. In addition, during the visit, the Commission received disturbing information that many people were forcibly displaced by the actions of illegal armed groups that emerged after the demobilization of paramilitary organizations. These forced displacements would not be registered.<sup>864</sup> In many other cases, the factor triggering the displacement is listed as an unidentified or unknown armed group, in which case one could assume that such displacements were caused by the same groups. In April 2013, Andrés Santamaría Garrido, President of the National Federation of Municipal Officials [*Federación Nacional de Personeros*] (hereinafter "FENALPER") called attention to just how vulnerable the public is to this new

<sup>861</sup> Internal Displacement Monitoring Center, *Global Overview 2011: People Internally Displaced by Conflict or Violence*. Geneva, 2012, p. 58.

<sup>862</sup> Norwegian Refugee Council, *NRC Emergencias. Situación y respuesta humanitaria Suroccidente Colombiano* [NRC Emergencias. The situation and humanitarian response, Southwestern Colombia].

<sup>863</sup> The IACHR notes that, according to information provided by the State, as recently as the second half of 2012 the Victims Unit initiated a "project to analyze the quality of the databases [...] as an initial step in the process of migrating data from the databases in which information on the victims of forced displacement population has been collected historically [...] to the Single Registry of Victims." According to the information available, the process of migrating records continues in 2013. In this respect, the State reported that "at the same time, a survey has been done on processes and specifications, initiating the development of the definitive technological tool that will support the RUV." Colombia's observations on the IACHR's draft report. Note S-GA/ID-13-048140, December 2, 2013, para. 332.

<sup>864</sup> In this regard, in its recent Order following up Judgment T-025 of 2004, the Constitutional Court declared that "the practice of the Department of Registration of the Victims Unit, which is not to enroll in the Register of Victims to people who were forcibly displaced by generalized violence, such as that provoked by the actions of the Bacrim when not in the context of the armed conflict and in general, in situations in which the displacement does not keep a close or sufficient relationship with the conflict under the scenarios described in Law 387 of 1997, for purposes of ensuring their rights to protection, care and attention, it is not in conformity with the protection scheme for people displaced by violence, nor the statements made by the Constitutional Court about the definition of the concept of victim in Law 1448 of 2011 and, therefore, is unconstitutional." Constitutional Court, Order 119 of June 24, 2013 (MP. Luis Ernesto Vargas Silva).

threat of displacement. According to Santamaría, what is most disturbing is that “those victims are not protected under Law 1448.”<sup>865</sup> The Commission takes note of the information provided by the State to the effect that, based on Constitutional Court decision C-280 of 2013 and pursuant to Order 119 of 2013, the Victims Unit had begun to include victims of forced displacement in the RUV, “regardless of the perpetrator.”<sup>866</sup>

551. In addition, the information available also reveals that in addition to being one of the major problems created by the armed conflict, forced displacement is also associated with mining activities and infrastructure megaprojects involving relocation, land sales on a massive scale for lack of opportunity, and the State’s handover of territory without complying with the legal requirements.<sup>867</sup>
552. According to the information the Commission has obtained, internally displaced persons’ access to basic social services –like housing- and their income opportunities are still inadequate, notwithstanding the measures the State has been adopting in this regard. On this subject, the IACHR takes into account the information provided by the State on: i) the delivery of 2,537 rural housing solutions to the victim population, corresponding to subsidy awards made prior to 2012; ii) the ratification of Law 1537 of June 20, 2012 (*“Whereby standards are enacted to facilitate and promote urban development and access to housing and other provisions are enacted”*); and iii) the Ministry of Labor’s design of the “Integrated Routes to Rural and Urban Employment Program for the victims of armed conflict,” initiated in 2012 and projected to extend until 2012 [sic], among other actions.<sup>868</sup>
553. In this regard, the IDMC has written that displaced persons have less access to basic services than the rest of the population in Colombia. It also reports that 94% of internally displaced persons live below the poverty line, and 77% live in extreme poverty or indigence.<sup>869</sup> These figures match the findings of the National Verification Process conducted by the Commission to Follow Up on the Public Policy on Forced Displacement, which has reported that:

Forced displacement classified as a humanitarian tragedy follows from the most disturbing conclusion that the verification process came to: Displaced persons are the most vulnerable social group among the vulnerable. They have been dispossessed of over 5.5 million hectares, their poverty levels have gone from 50% prior to displacement to 97% post displacement; the same is true of the indigence rates, which increased from 23% to 80%. Only 5% live in decent housing. More than 80% are unaware of their rights as victims; only 13% have an income over the minimum legal wage, and over 50% have reported physical hunger.<sup>870</sup>

<sup>865</sup> *Revista Semana, Las violentas cifras de las bacrim* [The violent figures on the bacrim]. April 15, 2013. Available [in Spanish] at: <http://www.semana.com/nacion/articulo/las-violentas-cifras-bacrim/340170-3>.

<sup>866</sup> Colombia’s observations on the IACHR’s draft report. Note S-GAIIID-13-048140, December 2, 2013, para. 334.

<sup>867</sup> Jesuit Refugee Service, *¿Cuánto vale la tierra? Minería y megaproyectos. Informe preliminar sobre su impacto en el desplazamiento en Colombia* [How much is land worth? Mining and megaprojects. Preliminary report on the impact on displacement in Colombia], June 2012, p. 11.

<sup>868</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, paras. 336-339.

<sup>869</sup> Internal Displacement Monitoring Centre, *Global Overview 2012: People internally displaced by conflict and violence*. IDMC: Geneva, 2013, p. 38.

<sup>870</sup> Commission to Follow-up on the Public Policy on Forced Displacement, *El reto ante la tragedia humanitaria del desplazamiento forzado: Superar la exclusión social de la población desplazada* [The challenge posed by the humanitarian tragedy of forced displacement: overcoming the displaced population’s social exclusion]. Bogotá: CODHES, 2009, p. 28.

554. The Commission observes that prevention of forced displacement and protection of the human rights of displaced persons are still major challenges in Colombia. Colombia's Constitutional Court declared the situation of displaced persons to be unconstitutional, and that has not changed. Furthermore, the institutions and mechanisms introduced and set in motion by Law 1448 are said to have made the situation and particulars of displaced persons even more invisible and have lessened the chances that the State will adopt a differential approach to their plight. Members of organizations of displaced persons told the Commission that when the Victims Law entered into force, much of the progress made in the public policy on forced displacement was lost and they were now up against the very same problems that they had overcome some years ago.
555. The Commission would also point out that in the Americas, Colombia is the major country of origin of refugees, asylum seekers and people in refugee-like situations. The Commission observes, however, that despite the magnitude of the problem and the serious implications it has for these people and their families, the situation of persons of Colombian origin who are asylum seekers, refugees and other persons in search of international protection has remained virtually invisible on the public agenda.
556. According to the UNHCR, as of late 2011 there were 113,605 refugees, 283,344 people in refugee-like situations, and 43,569 asylum seekers whose cases were pending.<sup>871</sup> These people have fled the violence associated with the armed conflict and the violations of their human rights, and live as refugees or in very difficult circumstances in other countries.<sup>872</sup> According to CODHES, between 2010 and 2011, Colombians whose refugee status had been recognized were in Ecuador, with 47.9% (54,243 as of December 2011); the other 52% are in countries like the United States (33,455 in 2010), Canada (16,054 in 2010), Costa Rica (10,279 as of June 2011), Venezuela (2,734 as of July 2011), Panama (1,328 as of December 2010), Chile (814 as of July 2011), Brazil (654 as of December 2011), Argentina (403 as of July 2011) and Mexico (247 as of July 2011).<sup>873</sup>

## 1. Massive displacements

557. During the visit, the Commission received information about the increase in large-scale displacements in recent years and the worsening of the humanitarian crisis of forced displacement. Based on the UNHCR's estimates, in 2012 there were a total of 137 large-scale displacements, which caused at least 9,690 families to flee their homes. This was double the 2011 figure.<sup>874</sup> CODHES supplied the Commission with additional information indicating that as of November 20, 2012, some 119 episodes of large-scale displacements had reportedly occurred, affecting some 42,724 persons.<sup>875</sup> These large-scale displacements were up by 63% over 2011, when there were 73 episodes of this kind that affected 29,521 people.<sup>876</sup>

<sup>871</sup> UNHCR, *Global Trends 2011: A year of Crisis*. UNHCR, 2012, p. 42.

<sup>872</sup> Colombian Commission of Jurists, *Colombia: sigue esperando la hora de los derechos humanos Informe sobre la situación de derechos humanos y derecho humanitario 2010-2012* [Colombia: it continues to await the hour of human rights. Report on the situation of human rights and humanitarian law 2010-2012], p. 24.

<sup>873</sup> CODHES, *Desplazamiento creciente y crisis humanitaria invisible* [Displacement on the rise: an invisible humanitarian crisis]. Bogotá, 2012, p. 80.

<sup>874</sup> Internal Displacement Monitoring Centre, *Global Overview 2012: People internally displaced by conflict and violence*. IDMC: Geneva, 2013, p. 38.

<sup>875</sup> CODHES, *Special Report. On-site Visit. Inter-American Commission on Human Rights*. 2012, p. 3.

<sup>876</sup> CODHES, *Desplazamiento creciente y crisis humanitaria invisible* [Displacement on the rise: an invisible humanitarian crisis]. Bogotá, 2012, p. 23.

558. The information also indicates that the areas hardest hit by this type of displacement were the Pacific Coast, the Lower Cauca in Antioquia, the Southeast, Catatumbo and the Atlantic Coast. The most affected departments were Cauca (34 events involving 9598 people), Nariño (18 events involving 7761 people), the Valle del Cauca (12 events involving 5613 people), Putumayo (10 events involving 5453 people) and Antioquia (10 events involving 3596 people), and the municipalities of Buenaventura (11 events involving 5213 people), Caloto (9 events involving 2446 people), Puerto Asís (7 events involving 4103 people), Tumaco (6 events involving 3276 people), Tierralta (5 events involving 746 people) and Miranda (5 events involving 1518 people).<sup>877</sup>

559. The Commission observes that the bulk of these large-scale displacement events occurred in coastal areas, particularly in departments and municipalities on Colombia's southern Pacific Coast. These have been identified as strategic sites and corridors for drug trafficking. Many of the communities in those municipalities are Afro-descendant and indigenous communities. In the case of the Chocó, in particular, the Commission received information reporting that the chronic large-scale displacements there continue; the problem is compounded by the difficulty of getting early warning systems in place in remote or isolated territories.<sup>878</sup>

## 2. Intra-urban displacements

560. During its visit, the Commission continued to receive information about the growing phenomenon of intra-urban displacement, a kind of displacement in which pressure exerted by illegal armed groups seeking to establish control over a given area force the inhabitants of one neighborhood of a city to move to another.<sup>879</sup> Civil society has said that intra-urban displacement is a strategy used to control illegal economies, and happens because the civilian institutions of the State are not a presence and because of the ineffective response on the part of the police in marginal sectors of the cities,<sup>880</sup> where poverty and social breakdown are endemic problems.<sup>881</sup>

561. It was also pointed out that intra-urban displacement: (i) seems to involve less moving expense than an inter-urban or inter-municipal displacement; (ii) the person being displaced can keep their social ties active and provide assistance in terms of housing and temporary feeding; (iii) an intra-urban displacement allows the person to maintain his or her informal sources of income; (iv) it leaves the displaced person hopeful of a speedy return to avoid losing everything; and (v) it seems a better option than remaining in a place where the armed coercion is unavoidable or where one cannot complain to the authorities about the situation.<sup>882</sup>

562. Civil society also commented that intra-urban forced displacement is evidence of the fact that the armed conflict is moving into urban areas, where arms trafficking, extortion, drug

<sup>877</sup> CODHES, *Special Report. On-site Visit. Inter-American Commission on Human Rights*. 2012, p. 5.  
<sup>878</sup> Information provided at the meeting with state authorities, held in Quibdó on December 5, 2012.  
<sup>879</sup> CODHES, *Special Report. On-site Visit. Inter-American Commission on Human Rights*. 2012, p. 6.  
<sup>880</sup> CODHES, *Special Report. On-site Visit. Inter-American Commission on Human Rights*. 2012, p. 6.  
<sup>881</sup> CODHES, *Special Report. On-site Visit. Inter-American Commission on Human Rights*. 2012, p. 7.  
<sup>882</sup> CODHES, *Special Report. On-site Visit. Inter-American Commission on Human Rights*. 2012, p. 9.

trafficking and micro-trafficking is easier.<sup>883</sup> Although this is a widespread phenomenon, it remains underreported because neither the victims nor the officials regard the affected population as displaced persons; moreover, they are fearful of a victimizing event, of being fingered for having filed a complaint, or of receiving another threat.<sup>884</sup> Here, civil society insisted that the inclusion of the victims of intra-urban displacement is one of the challenges of the Victims Law, since the responsible parties are mainly illegal armed groups that emerged after the demobilization of paramilitary organizations and that are not clearly perceived as parties to the armed conflict.<sup>885</sup>

563. The Commission also received information indicating that in municipalities like Buenaventura, Soacha and Tumaco, forced displacement could be a means to clear sectors planned as growth areas in municipal development plans; the idea is not to improve living conditions for inhabitants of poor neighborhoods, but to build large-scale works that attract foreign capital investments or mining, housing, tourism or business projects.<sup>886</sup> During its visit, the Commission was told about Commune 8 in the city of Medellín, the majority of whose inhabitants are Afro-descendent persons. With projects planned like the Metropolitan Green Belt, a Metrocable station and the Tranvía, there were large-scale displacements of Commune 8's residents by illegal armed groups.<sup>887</sup>

## ***B. The continuation of the unconstitutional state of affairs with respect to the situation of the displaced population***

564. Given the State's generalized failure to honor its obligations to the displaced population – obligations set out in the charter of special rights established by Law 387 of 1997 and other protective laws-, the Constitutional Court, in judgment T-025 of 2004, responded to the petitions seeking constitutional protection, filed by thousands of displaced persons nationwide. In that judgment the Constitutional Court held that:

[t]he unconstitutional state of affairs embodied in the situation of the displaced population exists because of a lack of correspondence between, on the one hand, the severity of the violation of constitutionally-protected rights that the law elaborates upon and, on the other hand, the number of remedies intended to ensure the effective enjoyment of those rights and the institutional capacity to implement the corresponding constitutional and legal mandates.<sup>888</sup>

565. The Court also ordered the State to take a number of measures to ensure that the displaced population is able to exercise its rights, among them, comprehensive public policies tailored to the special needs and the rights of the displaced population and sufficient to correct the unconstitutional state of affairs.<sup>889</sup>

<sup>883</sup> CODHES, *Special Report. On-site Visit. Inter-American Commission on Human Rights*. 2012, p. 8.

<sup>884</sup> CODHES, *Special Report. On-site Visit. Inter-American Commission on Human Rights*. 2012, p. 10.

<sup>885</sup> CODHES, *Special Report. On-site Visit. Inter-American Commission on Human Rights*. 2012, p. 11.

<sup>886</sup> CODHES, *Special Report. On-site Visit. Inter-American Commission on Human Rights*. 2012, p. 8.

<sup>887</sup> Human Rights Context. Commune 8-Villa Hermosa. Information provided at the meeting with civil society, held in Medellín, December 5, 2012.

<sup>888</sup> Constitutional Court, Judgment T-025 of 2004, January 22, 2004.

<sup>889</sup> Constitutional Court, Judgment T-025 of 2004, January 22, 2004. The unconstitutional state of affairs was defined as serious failings in making institutional and financial resources available and the inadequacy, if not outright failure of public policies, all of which amounted to a *de facto* denial of effective access to the very rights that the State itself recognizes.

566. The Commission notes that the failure to prevail over the serious humanitarian crisis that the forced displacement in Colombia represents has caused the Constitutional Court to issue numerous orders following up on judgment T-025 of 2004. In October 2011, after more than 7 years, the Court issued Order 219 of 2011 in which it concluded that, despite the efforts made by the Colombian government and the results obtained thus far, the unconstitutional state of affairs embodied in the situation of the displaced population persisted.<sup>890</sup> The Constitutional Court also maintained that “despite the progress made in respect of some rights, the figures to illustrate effective enjoyment of rights and the effectiveness of the adjustments made to correct the problems of institutional capacity, coordination and necessary budgetary effort, as portrayed by the National Government, fail to demonstrate that systematic and comprehensive progress has been achieved such that the forcibly displaced population is now able to fully enjoy all their rights and that the conditions that led to the declaration of an unconstitutional state of affairs are now behind us.”<sup>891</sup> Therefore, the Constitutional Court ordered the State to take a number of measures, including, *inter alia*, to make public spending on displaced persons transparent and to report the progress made in ensuring that social services reach these victims.<sup>892</sup>

### ***C. Attention to the displaced population, coordination among the programs provided for in Law 387 of 1997 and Law 1448 of 2011***

567. Again, the Commission acknowledges the progress represented by enactment of Law 1448 to protect and redress the victims of the armed conflict. However, the situation of displaced persons in Colombia exposes significant failings. The Commission has been told that no measures have as yet been taken to expand the number of beneficiaries beyond those listed in the official records.

568. On a number of occasions, the Constitutional Court has had an opportunity to address the phenomenon of displacement. In the process it put together a body of case-law on the nature of a population requiring special and urgent protection<sup>893</sup> when a number of fundamental

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<sup>890</sup> Constitutional Court, Special Chamber to Follow up on Judgment T-025 of 2009 and its orders, Order 219, 2011, October 13, 2011.

<sup>891</sup> Constitutional Court, Special Chamber to Follow up on Judgment T-025 of 2009 and its orders, Order 219, 2011, October 13, 2011.

<sup>892</sup> Constitutional Court, Special Chamber to Follow up on Judgment T-025 of 2009 and its orders, Order 219, 2011, October 13, 2011.

<sup>893</sup> In Judgment T-821 of 2007, the Constitutional Court held that persons in a situation of forced displacement have special constitutional status whose effect cannot be purely rhetorical. The Constitution demands that the authorities recognize that this is a population that enjoys special protection, which finds itself in a dramatic predicament by virtue of having borne extraordinary burdens; its protection is a matter of urgency for the sake of meeting their most pressing needs. Thus, in Judgment T-458 of 2008, the Constitutional Court reiterated its well-established case-law where it underscored the fact that the condition of displaced person is the outcome of a particular *de facto* situation in which a person finds himself, and which is characterized, in general terms, by the concurrence of the following elements: (i) first, a migration is underway within the borders of the national territory; (ii) the migration is in response to threats or actual attacks on the citizen’s fundamental rights; (iii) one also observes that the displacement is closely linked to situations associated with the armed conflict or with violations of the guarantees recognized under international human rights law and international humanitarian law.



constitutional rights are threatened or violated in forced displacement situations.<sup>894</sup> On the question of access to assistance programs, the Constitutional Court wrote that:

[t]he instrument created to “identify” the displaced population cannot become a barrier precluding access to the services that will guarantee their protection, which would mean that the effects that follow from inclusion in the registry are merely declarative in nature and in no way have any effect on the objective condition of displacement.<sup>895</sup>

569. During the visit, the Victims Unit observed that it is engaged in a coordinated effort and that the displaced population retains certain distinctive specifics within the RUV. However, according to the information provided by the State, there would appear to be certain problems with the implementation of Law 1448 and with articulation with pre-existing mechanisms for assisting the displaced population, established under Law 387 of 1997.<sup>896</sup> The State also provided information concerning the attention paid to prevention and emergencies and on providing humanitarian relief.<sup>897</sup> The Commission, for its part, received information concerning initiatives involving exemption or forgiveness of property taxes in the case of the

<sup>894</sup> The Constitutional Court has established that the following are among the fundamental constitutional rights either threatened or violated by situations of forced displacement: the right to life and the right to live in dignity; the rights of the child, women heads of household, disabled persons, the elderly and other especially protected groups; the right to choose one’s domicile; the right to free development of one’s personality; the right to freedom of expression and the right to freedom of association; the economic, social and cultural rights, family unity and protection of the family; the right to health, read in conjunction with the right to life; the right to humane treatment; the right to personal security; freedom of movement within the national territory; the right to remain in the place one chooses to live; the right to work; the right to basic nutrition; the right to education; the right to decent housing; the right to live in peace; the right to recognition as a person before the law; the right to equality. The Constitutional Court also wrote that a victim of forced displacement is also the passive subject of the crime of displacement; it is that condition that gives him the rights to the truth, justice and reparation. See, *inter alia*, Constitutional Court, Judgment SU-1150 de 2000, Judgment T-215 of 2002, Judgment T-227 of 1997, Judgment SU 1150 of 2000, Judgment T-098 of 2002, Judgment SU 1150 of 2000, Judgment T-1635 of 2000, Judgment T-645 of 2003, Judgment T-327 of 2001, Judgment T-258 of 2001, Judgment T-795 of 2003, Judgment T-1365 of 2002, Judgment T-327 of 2001, Judgment T-1346 of 2001, Judgment T-268 of 2003; Judgment T-227 of 1997, Judgment T-669 of 2003; Judgment T-1635 of 2000; Judgment T-327 of 2001; Judgment T-1346 of 2001; Judgment T-268 of 2003; Judgment T-098 of 2002; Judgment T-215 of 2002; Judgment T-602 of 2003; Judgment T-721 of 2003; Judgment T-215 of 2002; Judgment T-268 of 2003; Judgment T-367 of 2010; Judgment T-367 of 2010; Judgment T-328 of 2007; Judgment T-563 of 2005; Judgment T-327 of 2001; Judgment T-268 of 2003; Judgment T-468 of 2006.

<sup>895</sup> See, *inter alia*, Constitutional Court, Judgment T-328 of 2007 and Judgment T-563 of 2005. The Constitutional Court found that listing in the Single Registry of Displaced Population (RUPD) is basically a tool to identify the displaced population, establish their socioeconomic status and their basic unmet needs, among other things, for the purpose of devising and adopting effective measures to adequately assist the displaced population. Constitutional Court, Judgment T-328 of 2007 and Judgment T-563 of 2005. The Constitutional Court also wrote that listing in the RUPD cannot confer displaced status, since the protection of the fundamental rights of those persons who have had to abandon their homes because of the armed conflict cannot be conditional upon speedy certification of the facts presented for consideration. Any other conclusion would be contrary to the substance of the Constitution and the immediate efficacy of the fundamental rights. Constitutional Court, Judgment T-327 of 2001, Judgment T-268 of 2003 and Judgment T-468 of 2006.

<sup>896</sup> Information provided at the meeting with the Victims Unit, held in Bogotá on December 4, 2012.

<sup>897</sup> The State reported that between January and September 2012, a total of 34,788 deliveries were made to 22,275 beneficiary families, valued at \$10,296,664,995; of that amount, \$5,474,687,404 (53,17%) was for Prevention; \$4,392,446,481 (42,66%) for Emergencies, and \$429,531,110 (4,17%) went to Returns/Relocations. Of the assistance provided in 2012, particular mention was made of the Shelter Kits delivered, for a total of \$1.422.161.122, to supply temporary shelters in high-risk areas prone to humanitarian emergencies resulting from the armed conflict. The kit has been provided to 93 municipalities and benefited some 4,438 homes. It also pointed out that humanitarian attention was provided to the 174,067 persons included in 2012. These were grouped into nuclear families or households, with the result that 49,611 households were added to the RUV as victims of forced displacement. Of the 49,611 families added to the RUV in 2012, 35,865 families have received emergency humanitarian assistance and transitional humanitarian attention, through 44,241 cash payouts. Ministry of Foreign Affairs of Colombia, *Document titled “Forced Displacement,”* received by the IACHR on May 3, 2013.

displaced population – in some cases with respect to restituted land or deeding-;<sup>898</sup> initiatives to exempt victims of kidnapping or forced disappearance from payment of taxes; recognition of the system in the district capital for fulfilling tax obligations; and the regulations governing access to the social security system for the health and education of its families.<sup>899</sup>

570. However, the Commission has also received information complaining of inaction on the part of the Victims Unit, its restrictive interpretation of who is eligible to be included in the registry, and how assistance came to a standstill in the period from December 20, 2011 to October 2012, which put a disproportionately heavy drain on the resources of the departments and/or municipalities –whose budgetary capabilities varied- leaving them to absorb all the demands created by the displaced population.
571. In this regard, the Office of the General Prosecutor explained that Decree 790 was issued in April 2012, defining the functions and services to assist victims of displacement in the context of Law 1448. This decree reconfirms the functions and mandates established under Law 387 of 1997 and the process required under Judgment T-025 of 2004;<sup>900</sup> hence, “any authority given to a specific institution under the policies is thus erased, which is a setback for the norms developed and policies devised under Law 387.”<sup>901</sup> Furthermore, according to the Office of the General Prosecutor, the persistence of the unconstitutional state of affairs means that the authorities inside the SNARIV must maintain an independent agenda.<sup>902</sup> The Office of the General Prosecutor also expressed the view that because it is so victim-centered, Law 1448 “does not make any provision for a service structure aimed at preventing displacement and therefore has to rely on Law 387’s socioeconomic stabilization phase in order to be able to complement the intervention.”<sup>903</sup>
572. The Office of the General Prosecutor also maintained that the National Government is aware of the existing gaps in the coordination with territorial entities, especially with respect to implementation of the primary assistance strategies and the procurement and execution of economic and logistical resources.<sup>904</sup> Specifically, the Office of the General Prosecutor observed that in the departments of Córdoba and Cauca there are no directors and/or territorial coordinators from the UARIV, a situation found in every department;<sup>905</sup> at the local level, this can undermine system coordination. The Office of the General Prosecutor also

<sup>898</sup> The information provided refers to the decisions adopted in the municipalities of Carmen de Viboral, Caucasia, Frontino, San Carlos (all in the department of Antioquia), and María La Baja (Bolívar). Office of the Governor of Antioquia, *Alivios fiscales para la población víctima de la violencia. Preguntas más frecuentes sobre el impuesto predial [Tax relief for the victims of the violence. The most frequently asked questions about property taxes]*, 2010.

<sup>899</sup> Office of the Mayor of Bogotá, Decision No. 124, July 9, 2004.

<sup>900</sup> These mechanisms include Decree 250 of 2005 and the decisions of the National Victim Assistance and Comprehensive Reparation System - SNARIV-.

<sup>901</sup> Office of the Attorney General of the Nation, *Proceso de implementación de la Ley 1448 de 2011 desde la perspectiva de los derechos de las víctimas del desplazamiento forzado* [Process of implementing Law 1448 of 2011 from the perspective of the rights of the victims of forced displacement], p. 3.

<sup>902</sup> Office of the Attorney General of the Nation, *Proceso de implementación de la Ley 1448 de 2011 desde la perspectiva de los derechos de las víctimas del desplazamiento forzado* [Process of implementing Law 1448 of 2011 from the perspective of the rights of the victims of forced displacement], p. 6.

<sup>903</sup> Office of the Attorney General of the Nation, *Proceso de implementación de la Ley 1448 de 2011 desde la perspectiva de los derechos de las víctimas del desplazamiento forzado* [Process of implementing Law 1448 of 2011 from the perspective of the rights of the victims of forced displacement], p. 8.

<sup>904</sup> Office of the Attorney General of the Nation, *Proceso de implementación de la Ley 1448 de 2011 desde la perspectiva de los derechos de las víctimas del desplazamiento forzado* [Process of implementing Law 1448 of 2011 from the perspective of the rights of the victims of forced displacement], p. 28.

<sup>905</sup> Office of the Attorney General of the Nation, *Proceso de implementación de la Ley 1448 de 2011 desde la perspectiva de los derechos de las víctimas del desplazamiento forzado* [Process of implementing Law 1448 of 2011 from the perspective of the rights of the victims of forced displacement], p. 8.

observed that the pattern repeats itself in the establishment of the Regional Victim Assistance and Reparations Centers, only one of which has been set up.<sup>906</sup> The Office of the General Prosecutor also maintained that six months after the launch of the SNARIV, it has no specific assistance stations at the local level, so that the old assistance and guidance units [Unidades de Atención y Orientación] (UAO) of the SNAIPDO are now serving as CRARV, and do not have the institutional wherewithal to provide comprehensive assistance to victims under the new institutional structure.<sup>907</sup>

573. As for the timetable of the UARIV, the Office of the General Prosecutor expressed the view that while the diagnostic study was completed on time, no progress appears to have made with the timetable for putting into effect the operating plans or in designing a periodic monitoring mechanism.<sup>908</sup> Furthermore, according to the Office of the General Prosecutor, the requests that the territorial entities filed seeking budgetary assistance were denied for reasons still unknown, as in the case of the Office of the Mayor of Río Quito in the department of Chocó, where the national government has given its response to only one of the four projects developed by that municipal government.<sup>909</sup>
574. By way of conclusion, the Office of the General Prosecutor identified the main obstacles standing in the way of reformulation of public policy on comprehensive assistance to the displaced population and implementation of the Victims Law: (i) the weak territorial presence of the national entities charged with coordinating the institutional services; (ii) problems with the registration, characterization and, in general, the data systems compiling information on the displaced population; and (iii) a lack of effective instruments by which to evaluate the return processes in the short, medium and long term, which makes it impossible to have sufficient information to be able to assert that the returned population is no longer vulnerable, and determine that the process of restoring their rights was a success.<sup>910</sup>

## **D. Sustainability of the return policies**

575. During the visit, the State provided information on the measures taken to ensure that displaced persons are able to return to their territories. As an example of a successful model, the State referenced the case of the Medellín-San Carlos Partnership which is based on the Social Action strategy of “To Return is to Live” and “Families on their Land,” which enabled 300 families to return.<sup>911</sup> The Office of the General Prosecutor was of the view that the Administrative Department for Social Prosperity had not established a specific plan to effect

<sup>906</sup> Office of the Attorney General of the Nation, *Proceso de implementación de la Ley 1448 de 2011 desde la perspectiva de los derechos de las víctimas del desplazamiento forzado* [Process of implementing Law 1448 of 2011 from the perspective of the rights of the victims of forced displacement], pp. 8-9.

<sup>907</sup> Office of the Attorney General of the Nation, *Proceso de implementación de la Ley 1448 de 2011 desde la perspectiva de los derechos de las víctimas del desplazamiento forzado* [Process of implementing Law 1448 of 2011 from the perspective of the rights of the victims of forced displacement], p. 10.

<sup>908</sup> Office of the Attorney General of the Nation, *Proceso de implementación de la Ley 1448 de 2011 desde la perspectiva de los derechos de las víctimas del desplazamiento forzado* [Process of implementing Law 1448 of 2011 from the perspective of the rights of the victims of forced displacement], p. 10.

<sup>909</sup> Office of the Attorney General of the Nation, *Proceso de implementación de la Ley 1448 de 2011 desde la perspectiva de los derechos de las víctimas del desplazamiento forzado* [Process of implementing Law 1448 of 2011 from the perspective of the rights of the victims of forced displacement], p. 14.

<sup>910</sup> Office of the Attorney General of the Nation, *Proceso de implementación de la Ley 1448 de 2011 desde la perspectiva de los derechos de las víctimas del desplazamiento forzado* [Process of implementing Law 1448 of 2011 from the perspective of the rights of the victims of forced displacement], p. 36.

<sup>911</sup> *La Escalera, El Periódico Sancharlitano*, July edition. Information provided by the State during the *in loco* visit.

the returns and relocations of the displaced population under safe, dignified and voluntary conditions,<sup>912</sup> and made the point that the Administrative Department for Social Prosperity does not make clear when it will have an effective instrument to measure and monitor the returns and relocations.<sup>913</sup>

576. Specifically, the Office of the General Prosecutor had a number of observations on the “To Return is To Live” Plan, among them the following: (i) problems with the components planned for the security and protection of the population that has been the victim of the crime of forced displacement; (ii) an information vacuum in a number of the local and departmental governments regarding the protocols for return and/or relocation, which makes it impossible to properly understand how these procedures should work; and (iii) a lack of the kind of security assessments that are needed for the return process to go forward with guarantees of non-repetition.<sup>914</sup> The Office of the General Prosecutor was also critical of the security, protection and non-repetition components used under the *Families on Their Land* strategy, and the poor Nation-Territory articulation for programs to strengthen social development, conducted as part of the processes of return and relocation.<sup>915</sup>
577. Furthermore, the Office of the General Prosecutor noted that there was no way to determine which communities of returned persons had been the scene of victimizing events, since the follow-up and/or monitoring done follows the broader territorial entity and not the community in which the return and/or relocation process took place; in other words it can be determined whether victimizing events occurred in the territorial entity, but not whether those events affected the returned and/or relocated populations.<sup>916</sup>
578. Moreover, the de-mining of the territories is still highly problematic. In particular, the Commission notes with concern that the victimization of people because of landmines continues.<sup>917</sup> The Commission observes that the presence of landmines and the risk of victimization cause forced displacements and pose significant obstacles to the return of displaced people to the territories dispossessed. Indeed, the State reported that 50% of the land subject to restitution has landmines.<sup>918</sup>

579. The Commission observes with concern that the displaced population will have difficulty returning so long as the internal armed conflict continues and illegal armed groups remain active in the various territories. The Commission observes that parties claiming lands and leaders of the restitution processes are in particular danger, which is why the State must

<sup>912</sup> Office of the Attorney General of the Nation, *Proceso de implementación de la Ley 1448 de 2011 desde la perspectiva de los derechos de las víctimas del desplazamiento forzado* [Process of implementing Law 1448 of 2011 from the perspective of the rights of the victims of forced displacement], p. 30.

<sup>913</sup> Office of the Attorney General of the Nation, *Proceso de implementación de la Ley 1448 de 2011 desde la perspectiva de los derechos de las víctimas del desplazamiento forzado* [Process of implementing Law 1448 of 2011 from the perspective of the rights of the victims of forced displacement], p. 33.

<sup>914</sup> Office of the Attorney General of the Nation, *Proceso de implementación de la Ley 1448 de 2011 desde la perspectiva de los derechos de las víctimas del desplazamiento forzado* [Process of implementing Law 1448 of 2011 from the perspective of the rights of the victims of forced displacement], p. 30.

<sup>915</sup> Office of the Attorney General of the Nation, *Proceso de implementación de la Ley 1448 de 2011 desde la perspectiva de los derechos de las víctimas del desplazamiento forzado* [Process of implementing Law 1448 of 2011 from the perspective of the rights of the victims of forced displacement], p. 31.

<sup>916</sup> Office of the Attorney General of the Nation, *Proceso de implementación de la Ley 1448 de 2011 desde la perspectiva de los derechos de las víctimas del desplazamiento forzado* [Process of implementing Law 1448 of 2011 from the perspective of the rights of the victims of forced displacement], p. 32.

<sup>917</sup> Information available at: <http://www.accioncontraminas.gov.co/Paginas/AICMA.aspx>

<sup>918</sup> Ministry of Foreign Affairs of Colombia, *Document titled “Victims Law”*, received by the IACHR on May 3, 2013.

properly evaluate each specific situation, provide the most appropriate security measures, develop mechanisms that can be used to monitor and follow developments once restitution is effected, and establish effective indicators to assess implementation of the returns. In this regard, in its observations on the draft report, the State pointed out that “the verification of security conditions in the receiving municipio” in the return or relocation processes is a “decisive factor” and thus the Ministry of Defense carries out a “security validation” process in coordination with other government forces, making it possible to “guarantee for the returning families a peaceful scenario where they will actually be able to construct their life plan and heal the negative effects caused by the conflict [...].”<sup>919</sup> The Commission considers it important for the State to recognize the role played by verification processes intended to determine the existence of adequate safety conditions in these cases. In this respect, it feels that the State should continue to expand on its efforts and the measures adopted to address the situation of risk faced by the displaced population in the return process.

### ***E. Sectors affected disproportionately by internal displacement***

580. Through the use of its various mechanisms and during the visit, the Commission has been able to verify that the internal displacement has had a disproportionate impact on women, especially women heads of household, pregnant women and women who have been victims of various forms of violence; children and adolescents; older people; peasant farmers; ethnic groups such as indigenous peoples; black, Afro-Colombian, *raizales* and *palenqueros* communities; persons with disabilities and LGBTI persons.<sup>920</sup> The Commission observes that because of the particular characteristics of these groups and the historical discrimination and exclusion they have suffered, forced displacement leaves these groups in a particularly vulnerable situation.
581. Specifically, the IACHR has identified forced displacement as one of the four main forms of violence in the armed conflict that especially affect women<sup>921</sup> and has taken account of the fact that women represent approximately half the country’s displaced population.<sup>922</sup> In the past, the State has told the IACHR that four out of every ten displaced families have a female head of household.<sup>923</sup> At the present time, and despite the problems of under-registration, women account for approximately half the victims listed in the RUV, which shows that 79% are victims of forced displacement.<sup>924</sup> Displaced women continue to be the target of all manner of intimidation, physical and sexual violence, and encounter multiple obstacles in becoming assimilated into the receiving environment, a problem compounded by the fact that they are

<sup>919</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAID-13-048140, December 2, 2013, paras. 340-341.

<sup>920</sup> See, *inter alia*, the Office of Advisory Services for Human Rights and Displacement, *Desplazamiento Creciente y Situación Humanitaria Invisibilizada* [Displacement on the rise: an invisible humanitarian crisis], Boletín 79 (March 2012), p. 2; Colombian Commission of Jurists, *Colombia: sigue esperando la hora de los derechos humanos Informe sobre la situación de derechos humanos y derecho humanitario 2010-2012* [Colombia: it continues to await the hour of human rights. Report on the situation of human rights and humanitarian law 2010-2012], p. 25; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 70.

<sup>921</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 4.

<sup>922</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 70.

<sup>923</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 70.

<sup>924</sup> Ministry of Foreign Affairs of Colombia, *Document titled “Women Victims”*, received by the IACHR on May 3, 2013.

mainly from rural areas and have little schooling. Even so, most are heads of single-parent household.<sup>925</sup>

582. The Commission recalls that in its Order 092 of 2008, Colombia's Constitutional Court made express reference to the disproportionate impact that the armed conflict and the crime of forced displacement had on women and ordered implementation of a number of programs in this regard.<sup>926</sup> The IACHR has discussed this Order, and regarded it as being "of paramount importance in preventing the disproportionate impact that forced displacement has on women and in providing services to and protecting women who are victims of forced displacement."<sup>927</sup>
583. However, the Commission observes with concern that five years after issuance of Order 092, the Office of the General Prosecutor commented that there is no clear evidence at the municipal level that the thirteen programs are being implemented, nor is there any information about whether some measure has been taken to confirm whether the officials are being trained and whether they are discharging their functions based on the constitutional presumption that women are more vulnerable. It was also of the view that the report presented by the SNARIV shows that generalized implementation of the programs does not enable one to determine: what rights are to be protected, the specific aspects of the actions being taken under each program, the planned timetable, the assigned budget, the coverage, the mechanisms to enable continuity, follow-up and evaluation indicators, the means of dissemination and the effective participation of women victims of forced displacement, and the inclusion of the differential approach.<sup>928</sup>
584. Indigenous peoples and Afro-descendent communities that have a special relationship with the territory they inhabit are also affected differently by forced displacement.<sup>929</sup> Thus, because it expels persons or groups of persons from their traditional habitat, forced displacement has a particularly pernicious effect on persons or groups of persons who have a special relationship of dependency with the land; in other words, this is a link that enables their way of life and culture to continue. Thus, forced displacement poses a real threat to the preservation of these groups' way of life. Following displacement, these groups generally become extremely vulnerable.<sup>930</sup>

<sup>925</sup> Working Group on Women and Armed Conflict, *Informe de seguimiento a Recomendaciones contenidas en el informe "Las mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia" de la Relatoría sobre derechos de la mujer de la Comisión Interamericana de Derechos Humanos* [Report following up on the recommendations contained in the report titled "Violence and Discrimination against Women in the Armed Conflict in Colombia", prepared by the Rapporteurship on Women's Rights of the Inter-American Commission on Human Rights], Bogotá, September 2009.

<sup>926</sup> Constitutional Court, Order 092, 2008.

<sup>927</sup> IACHR. *Annual Report 2009*, Chapter V, Follow-up Report – Violence and Discrimination against Women in the Armed Conflict in Colombia, para. 30; IACHR, *Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application*, OEA/Ser.L/V/II.143, Doc. 60, November 3, 2011, para. 103.

<sup>928</sup> Office of the Prosecutor Delegate for the Protection of the Rights of the Child, the Adolescent and the Family, *Observaciones y recomendaciones de la Procuraduría General de la Nación al Informe presentado por el Sistema Nacional de Atención y Reparación Integral a las Víctimas (SNARIV) sobre los avances en el cumplimiento de los Autos 251 y 092 de 2008* [Observations and recommendations from the Office of the Attorney General of the Nation on the Report presented by the National Victims Assistance and Comprehensive Reparations System (SNARIV) on the progress in complying with Orders 251 and 092 of 2008], June 2012.

<sup>929</sup> According to the Victims Unit, 9.6% of the displaced population is Afro-Colombian, while 2.7% are indigenous. Unit for Victim Assistance and Comprehensive Reparations, *Informe sobre implementación de la Ley de Víctimas y Restitución de Tierras para la garantía de los derechos de las víctimas del conflicto armado en Colombia* [Report on implementation of the Victim and Land Restitution Law to protect the rights of the victims of the armed conflict in Colombia]. *In loco* visit of the Inter-American Commission on Human Rights, December 2012, p. 63.

<sup>930</sup> Expert opinion by Sebastián Albuja in Case 12,573, *Marino López et al. (Operation Genesis) v. Colombia*.

585. Forced displacement is also particularly hard on children and adolescents, whose life plans are aborted by forced displacement and who, because of that displacement, will struggle to get access to basic goods and services and to continue their education. This situation was acknowledged by the Constitutional Court itself in Order 251 of 2008. However, according to the Office of the General Prosecutor, (i) implementation of the Program “My Rights First” is not responsive to the obligation to answer the identified needs of children and adolescents from a rights-based approach that takes into account the criteria set out by the Constitutional Court; (ii) the information presented concerning the Assistance Component of the Child and Adolescent Differential Protection Program is incomplete, inconsistent and based entirely on figures, and in general lacking any analysis of the special situation that children and adolescents who are victims of displacement experience, and (iii) as for the Anti-personnel Landmines Prevention (MAP) strategy and the Unexploded Munitions (MUSE) strategy, there is no evidence of any information regarding the prevention and protection mechanisms.<sup>931</sup>
586. The Commission takes into account the information provided by the State regarding various measures related to the situation of children and adolescents who are victims of displacement. In this regard, in its observations on the draft report, the State emphasized, *inter alia*: i) the implementation of the “Strategy to Promote the Rights of Children and Adolescents [and] Prevent their Victimization by the actions of illegal armed groups,” pursued by the ICBF in 19 of the country’s departments and 44 municipios; ii) the ICBF’s construction of a “technical guideline for assistance, reestablishment of rights, and comprehensive reparations” for children and adolescents who are victims of MAP, MUSE, and IEDs, focused on a strategy of psychosocial support; and iii) joint actions of the ICBF and the Presidential Program for Action against Antipersonnel Mines – PAICMA – to care for affected children and adolescents.<sup>932</sup> The IACHR appreciates the institutional deployment undertaken by the State and measures with a differential focus that take into account the particular situation of vulnerability faced by children and adolescents in such circumstances. Nonetheless, it reiterates that this group is particularly affected by displacement and the IACHR thus considers it important for the State to continue expanding its current efforts and intensifying the measures meant to implement them.
587. As for persons with disabilities, in Order 006 of 2009 the Constitutional Court acknowledged the qualitative differential and aggravated impact that forced displacement has on this group of persons. It commented on the discrimination and exclusion created by attitudinal barriers, legal barriers and barriers to accessibility that are the product of ignorance, prejudice, stigma and mistaken social notions about disability.<sup>933</sup> The Constitutional Court underscored the fact that “[i]n conflict situations, this population is at greater risk of loss of life, of being the victim of violence, abuse, denigrating treatment or abandonment.”<sup>934</sup>
588. Given that context, the Constitutional Court recalled that disabled persons displaced by the armed conflict are subjects of special protection under domestic law and the Colombian State’s

<sup>931</sup> Office of the Prosecutor Delegate for the Protection of the Rights of the Child, the Adolescent and the Family, *Observaciones y recomendaciones de la Procuraduría General de la Nación al Informe presentado por el Sistema Nacional de Atención y Reparación Integral a las Víctimas (SNARIV) sobre los avances en el cumplimiento de los Autos 251 y 092 de 2008* [Observations and recommendations from the Office of the Attorney General of the Nation on the Report presented by the National Victims Assistance and Comprehensive Reparations System (SNARIV) on the progress in complying with Orders 251 and 092 of 2008], June 2012.

<sup>932</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, paras. 326-328.

<sup>933</sup> Constitutional Court, Order No. 006 of 2009 (Protection of displaced disabled persons in the context of the unconstitutional state of affairs declared in Judgment T-025 of 2004), para. II.2.5.

<sup>934</sup> Constitutional Court, Order No. 006 of 2009, para. I.3.1.

international obligations in the area of human rights.<sup>935</sup> Given the absence of an approach that differentiates for disability, the Court issued a series of specific orders aimed at mitigating that differentiated impact, whose guiding principle must be the social model established in the Convention on the Rights of Persons with Disabilities.<sup>936</sup>

## ***Recommendations***

589. Based on the observations made in this section, the Commission is recommending to the Colombian State that it:

1. Adopt the measures necessary to prevent forced displacement, including those cases attributed to illegal armed groups that emerged after the demobilization of paramilitary organizations.
2. Take the necessary measures to guarantee the protection and safety of persons who return to the territories from which they were displaced, including de-mining of the territories. Also, apply a differential approach in the policies on prevention and protection of displaced persons.
3. Ensure prompt and immediate delivery of emergency humanitarian relief and take measures to ensure that the population has access to basic services as well as positive measures to ensure that the rights of displaced persons are fully restored.
4. Make further progress in the prosecution of cases of forced displacement, to heighten their visibility.
5. Promote prompt articulation of the mechanisms provided under Law 387 of 1997 and those under Law 1448 of 2011, so that the displaced population may be fully redressed, and in that way not have to abandon an approach that takes their particular situation and needs into account.

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<sup>935</sup> Constitutional Court, Order No. 006 of 2009, para. I.5.

<sup>936</sup> Constitutional Court, Order No. 006 of 2009, para. II.2.7.





CHAPTER 5  
ECONOMIC, SOCIAL  
AND CULTURAL  
RIGHTS



## ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

590. The OAS Charter enshrines important binding goals for states in connection with economic, social, and cultural rights.<sup>937</sup> Likewise, the American Declaration recognizes a variety of ESCR, in addition to civil and political rights.<sup>938</sup> For its part, the American Convention recognizes such rights in its preamble and at Article 26.<sup>939</sup> The inter-American system also has a specialized instrument on ESCR: the Protocol of San Salvador.<sup>940</sup>
591. The IACHR has noted that progressive realization of rights of the rights contained in Article 26 of the American Convention, has two legal implications for the states: a) a corollary obligation not to reverse the achievements in the area, based on international standards;<sup>941</sup> and b) obligations for the State that are justiciable via the individual petition system recognized in the Convention.<sup>942</sup>
592. The Court has also examined the content of the obligations under Article 26, recalling the interdependence that exists between civil and political rights and economic, social and cultural rights, since they should be fully understood as human rights, without any rank and enforceable in all cases before competent authorities. This means that the progressive implementation of the State's measures to ensure realization of economic, social and cultural rights may be subject to accountability. In that regard, a State's fulfillment of the commitments it has undertaken can be challenged before those bodies charged with deciding possible human rights violations.<sup>943</sup>
593. The Court has also pointed out that while Article 26 is in Chapter III of the American Convention, it also figures in Chapter I, as it is subject to the general obligations contained in Articles 1(1) and 2 of the Convention.<sup>944</sup> In keeping with this principle, the IACHR has determined that a violation of Article 26 may imply a failure to comply with the duty to respect and ensure rights contained in Article 1(1) of the American Convention.<sup>945</sup>

<sup>937</sup> Charter of the Organization of American States, Articles 3 and 34.

<sup>938</sup> American Declaration of the Rights and Duties of Man, Articles VII, XI, XII, XIII, XIV, XV, XVI.

<sup>939</sup> Article 26 provides: "The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires."

<sup>940</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador". See, also, IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.143, Doc. 59, November 3, 2011, para. 52.

<sup>941</sup> See, for example, the Application the Inter-American Commission on Human Rights filed with the Inter-American Court of Human Rights in Case 12,034 "Carlos Torres Benvenuto et al." against the Republic of Peru, December 3, 2001, para. 133.

<sup>942</sup> IACHR, Report No. 38/09, Case 12.670, Admissibility and Merits, National Association of Ex-Employees of the Peruvian Social Security Institute et al., Peru, March 27, 2009, para. 139.

<sup>943</sup> IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.143, Doc. 59, November 3, 2011, par. 54, citing I/A Court H.R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller) v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 1, 2009, Series C, No. 198, paras. 101, 102.

<sup>944</sup> I/A Court H.R. *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller) v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 1, 2009, Series C, No. 198, para. 100.

<sup>945</sup> Application the Inter-American Commission on Human Rights filed with the Inter-American Court of Human Rights in Case 12,034 "Five Pensioners" against the Republic of Peru, December 3, 2001, para. 142.

594. Specifically, the Commission has held that:

[t]he progressive nature of the duty to ensure the observance of some of these rights, as is recognized in the language of the provisions cited, does not mean that Colombia can delay in adopting all measures needed to make them effective. To the contrary, Colombia has the obligation to immediately begin the process leading to the complete realization of the rights contained in those provisions. In no way can the progressive nature of the rights mean that Colombia can indefinitely postpone the efforts aimed at their complete attainment. [...] The obligation to develop these rights progressively requires at a minimum that their observance and access to them not be diminished over time.<sup>946</sup>

595. The Commission notes that in Colombia, the context of prolonged internal armed conflicts exist alongside a situation of sustained economic growth, which has led to an unequal distribution of wealth, ranking Colombia as the “country with the second worst income distribution” in 2011, according to data from the Economic Commission for Latin America and the Caribbean (ECLAC).<sup>947</sup>

596. In this connection, the Commission has noted that although Colombia has experienced solid economic development in recent years, not all Colombians have experienced concomitant improvement in their lives. In particular, vulnerable groups continue to face obstacles to the full enjoyment of the civil, political, economic, social, and cultural rights.<sup>948</sup>

597. On that score, in its last country report, the United Nations Economic and Social Council regretted the lack of sufficiently updated information and detailed statistics that would enable it to assess the effective enjoyment of human rights,<sup>949</sup> and it expressed concern at the large number of persons living in poverty (46%) and in extreme poverty (17.8%), as well as the fact that in rural areas extreme poverty was double that of the national average (32.6%).<sup>950</sup> In April 2013, the president of the Republic announced that 700,000 people moved out of extreme poverty, and also that in the period from 2010 to 2012 poverty declined from 34.1 percent to 32.7 percent, while extreme poverty fell by 1.9 percent.<sup>951</sup>

<sup>946</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, 26 febrero 1999, paras. 6, 7.

<sup>947</sup> See, CICR, *Humanitarian Action in Colombia. Activity Report 2011*, p. 5. ECLAC, *Statistical Yearbook for Latin America and the Caribbean*, 2011.

<sup>948</sup> IACHR, Press Release 144A/12, IACHR's Preliminary Observations on Its on-site Visit to Colombia, Annex to Press Release 144/12 issued at the conclusion of the on-site visit to Colombia, December 7, 2012. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2012/144A.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/144A.asp).

<sup>949</sup> United Nations, Committee on Economic, Social and Cultural Rights, Forty-fourth session. Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant. Concluding Observations of the Committee on Economic, Social and Cultural Rights E/C.12/COL/CO/5, 7 June 2010, para. 8.

<sup>950</sup> United Nations, Committee on Economic, Social and Cultural Rights, Forty-fourth session. Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant. Concluding Observations of the Committee on Economic, Social and Cultural Rights E/C.12/COL/CO/5, 7 June 2010, para. 20.

<sup>951</sup> *La Opinión* newspaper, *Nos salimos del vergonzoso segundo puesto de país más desigual de la región*, [“We are no longer the second-most unequal country in the region”], April 19, 2013. Available at: [http://www.laopinion.com.co/demo/index.php?option=com\\_content&task=view&id=418301&Itemid=29](http://www.laopinion.com.co/demo/index.php?option=com_content&task=view&id=418301&Itemid=29).

598. In the course of the visit, the State submitted updated statistics for certain indicators. Thus, for example, it announced that: (i) the poverty rate according to the multidimensional poverty index was 29.4% for 2011<sup>952</sup>; (ii) the number of people with health insurance as of May 2012 accounted for 95.07 percent of the population<sup>953</sup>; (iii) the human development index for 2011 was 0.71; and (iv) 962,177 welfare housing loans were issued in the first half of 2012.<sup>954</sup> The State also said that in the second quarter of 2012 the Colombian economy grew by 4.9 percent compared with the same period in 2011. That growth was led by the construction, mining, financial services, real estate, corporate services and commerce sectors. The State mentioned that the unemployment rate as of September 2012 was 9.9 percent.<sup>955</sup> The Commission also received information about a preliminary version of the Labor Ministry's Labor Equity Program with a Gender Differential Approach for Women.<sup>956</sup> In addition, as noted, the Commission received information about property tax exemptions and extinctions for displaced persons—in some cases with respect to restored, returned, or formalized properties—,<sup>957</sup> as well as tax exemption initiatives for victims of kidnapping and forced disappearance.<sup>958</sup>
599. Specifically with regard to objectives for overcoming extreme poverty, according to the information supplied, the *Agencia Nacional para la Superación de la Pobreza Extrema* [National Agency for Overcoming Extreme Poverty] is implementing a national strategy called *Red Unidos* [Together Network]. The state explained that this strategy has 10,000 co-managers each with 150 families under their supervision. The strategy requires that managers conduct 24 quarterly visits to measure 45 variables for gauging poverty, so as to be able to identify more accurately which factors need to be addressed and dealt with.<sup>959</sup>
600. Reference was also made to the following programs: (i) *Familias en acción*, a conditional cash transfer program for child nutrition or education for poor families (targeted using the SISBEN III methodology through *Red Unidos*), displaced families, and indigenous families;<sup>960</sup> (ii)

<sup>952</sup> Subsequently, the State reports that for the period 2010-2012, the multidimensional poverty index fell by 3.5 points, reaching 27% in 2012, which meant that 1.27 million persons emerged from multidimensional poverty. Colombia's observations on the IACHR's draft report. Note S-GAIIID-13-048140, December 2, 2013, para. 345.

<sup>953</sup> Specifically, the State reported that between 2010 and 2012, 2.3 million people were successfully enrolled in the General System of Social Security in Health and there was a "reduction in the percentage of people reporting barriers to access to health services." Colombia's observations on the IACHR's draft report. Note S-GAIIID-13-048140, December 2, 2013, para. 346.

<sup>954</sup> Statistics provided by the State at the meeting of December 4, 2012. The State also reported that in the context of the "Housing and Friendly Cities Policy," between 2010 and 2012, "460,000 new housing solutions were produced and aqueduct coverage was expanded to 1.8 million people." Colombia's observations on the IACHR's draft report. Note S-GAIIID-13-048140, December 2, 2013, para. 346.

<sup>955</sup> Statistics provided by the State at the meeting of December 4, 2012. In this regard, the State also reported that Colombia has seen the creation of "more than 2 million jobs allowing for the formalization of labor," which has led to higher occupational earnings. Colombia's observations on the IACHR's draft report. Note S-GAIIID-13-048140, December 2, 2013, para. 346.

<sup>956</sup> Ministerio de Trabajo, *Programa de Equidad Laboral con Enfoque Diferencial de Género para las Mujeres del Ministerio de Trabajo*. *Martiz del Programa de Equidad Laboral con Enfoque Diferencial de Género para las Mujeres del Ministerio de Trabajo*.

<sup>957</sup> The information provided refers to the agreements adopted in the municipalities of Carmen de Viboral, Caucasia, Frontino, and San Carlos in Department of Antioquia; and María La Baja (Bolívar). In the same connection, Departmental Government of Antioquia, *Alivios fiscales para la población víctima de la violencia. Preguntas más frecuentes sobre el impuesto predial* [Tax relief for victims of violence. Frequently asked questions about property tax], 2010.

<sup>958</sup> Bogota Mayor's Office, Agreement No. 124 of July 9, 2004.

<sup>959</sup> Information received at the meeting held with the Director of the Department of Social Prosperity in Washington, D.C., on April 16, 2013.

<sup>960</sup> It was also mentioned that this program is present in 32 departments and 1093 of Colombia's 1098 municipalities, amounting to geographical coverage of 99.54%. At present, 2,737,311 families are registered with the program and 1,787,178 families are connected to the banking system. State of Colombia, MPC/OEA 894/2013, received by the IACHR on July 2, 2013.

*Jóvenes en acción*, a conditional cash transfer program for youth in situations of poverty aimed at vocational training, autonomous income generation, and improved living standards;<sup>961</sup> (iii) *Música para la Reconciliación*, which offers musical training to 67,375 children and young people between the ages of 6 and 25, as part of a comprehensive psychosocial assistance program for victims of human rights violations and infringements of international humanitarian law;<sup>962</sup> (iv) *Mujeres Ahorradoras*, which helps to provide extreme poverty relief for 85,840 women in vulnerable circumstances by enabling them to obtain access to the microfinance system and income generation through microenterprise strengthening;<sup>963</sup> (v) “Iraca”, a program targeting households belonging to indigenous and Afro-Colombian communities in situations of extreme poverty and vulnerability associated with forced displacement and at risk of physical or cultural disappearance.<sup>964</sup>

601. As to linkage with other state entities, the commission was informed that the Administrative Department for Social Prosperity (in addition to being part of the SNARIV) chairs the *Mesa Transversal de Pobreza* [Crosscutting Poverty Panel]<sup>965</sup> and takes part in determining the destination of assets allocated by the state in the context of social welfare plans.<sup>966</sup> Furthermore, as a highly important measure in the area of wealth distribution, the State drew attention to the new Royalties Law (Law 1530 of 2012), which is designed to pave the way for fair distribution of income from the exploitation of nonrenewable natural resources.<sup>967</sup>
602. In addition, the State provided information about: (i) a social inclusion project with a psychosocial focus for individuals and groups that have been victims of the armed conflict or forced displacement in rural and/or urban areas of the country; (ii) land management support for the social advancement of vulnerable populations; (iii) the *Programa Mis Derechos Primero* [“My Rights First” Program], aimed at protecting children and youth against forced displacement; (iv) construction of a public policy on disabilities and social inclusion; (v) the strategy *Encuentros Nación Territorio en torno a la Discapacidad* [National-Subnational Meetings on Disabilities]; (vi) rehabilitation for victims of antipersonnel mines; and (vii) online classification and location of persons with disabilities.<sup>968</sup> The Commission notes the adoption of the mental health law in January 2013.<sup>969</sup>

<sup>961</sup> Information received at the meeting held with the Director of the Department of Social Prosperity in Washington, D.C., on April 16, 2013.

<sup>962</sup> State of Colombia, MPC/OEA 894/2013, received by the IACHR on July 2, 2013.

<sup>963</sup> State of Colombia, MPC/OEA 894/2013, received by the IACHR on July 2, 2013.

<sup>964</sup> It is estimated that through this initiative assistance has been provided to 3500 indigenous families and 6500 Afro-descendant families in the first phase of the program, with \$44,000 million pesos invested. State of Colombia, MPC/OEA 894/2013, received by the IACHR on July 2, 2013.

<sup>965</sup> State of Colombia, MPC/OEA 894/2013, received by the IACHR on July 2, 2013.

<sup>966</sup> Information supplied at the meeting held with the Director of the Department of Social Prosperity in Washington, D.C., on April 16, 2013. The State also informed that the Administrative Department for Social Prosperity has a Differential Approach Working Group whose task is to design and monitor implementation of the Department’s assistance delivery differential approach model for the beneficiary population. State of Colombia, MPC/OEA 894/2013, received by the IACHR on July 2, 2013.

<sup>967</sup> Information received at the meeting held with the Director of the Department of Social Prosperity in Washington, D.C., on April 16, 2013. Law 1530 of May 17, 2012. Available at: [http://www.cancilleria.gov.co/sites/default/files/Normograma/docs/ley\\_1530\\_2012.htm](http://www.cancilleria.gov.co/sites/default/files/Normograma/docs/ley_1530_2012.htm).

<sup>968</sup> Ministry of Health and Social Protection, *2012 Report for the Inter-American Commission on Human Rights*, December 2012.

<sup>969</sup> Radio Caracol, *Gobierno sanciona ley que garantiza acceso a tratamientos mentales* [Government passes a law ensuring access to mental health treatment], January 22, 2013. Available at: <http://www.caracol.com.co/noticias/actualidad/gobierno-sanciona-ley-que-garantiza-acceso-a-tratamientos-mentales/20130122/nota/1828508.aspx>.

603. In the area of health, the Ministry of Health indicated that the Constitutional Court urged compliance with specific programs for women, displaced persons, and victims of the armed conflict. However, it noted a number of obstacles to their effective fulfillment: (i) victims lacking identification; (ii) difficulties in delivering comprehensive assistance; and (iii) need for training for officials and for housing, food, and transport for victims. The Ministry of Health also mentioned that an arms tax had been introduced aimed at providing funding for those purposes and that at present the process was under way of transferring resources and building capacity for territorial entities.<sup>970</sup>
604. The existence was also mentioned of a General Public Health Plan with a differential approach and new core objectives, for which there was a survey in which 170,000 individuals were consulted. In that regard, the Ministry noted that 98% access had been ensured and that there were currently two operational models in place that distinguished between either urban or rural areas. In that regard, a pilot plan implemented in 36 rural municipalities where health centers “go looking for” victims and reach out to the community was held up as a positive initiative in primary health care.<sup>971</sup>
605. In its observations on the draft report, the State emphasized that as a result of the social policies implemented in Colombia since 2012, the country “is no longer part of the group of most unequal countries in the region.” In this respect, it reported that income inequality has been reduced, as evidenced by a 2.1 point reduction in the GINI coefficient.<sup>972</sup> In that context, the State emphasized that “nothing would contribute more to the satisfaction of the economic, social, and cultural rights of the populations most affected by the armed conflict than the end of that conflict.”<sup>973</sup> The State also reiterated the “unprecedented” reduction recorded in the rates of poverty and extreme poverty during the period 2010-2012.<sup>974</sup>
606. In addition, the Commission has monitored the malnourishment crisis in the Department of Chocó particularly closely.<sup>975</sup> In that regard, the Commission notes with concern that the Ministry of health said that the problem of widespread malnourishment was simply a symptom of more deep-seated ills. It said that the Department of Chocó was the one that had received the greatest amount of human and financial resources and that this had led not to substantial improvements but to a situation of reliance on handouts, thanks to corruption and “poor political and social development” in the region.<sup>976</sup> According to the information received, all the armed groups are active in this area and there is a lack of infrastructure and development, as demonstrated, for example, by the fact that indigenous peoples are no longer able to practice night fishing and smallholdings have been turned into “mini-estates for the cultivation of illicit crops.” For that reason, the aim for the medium-term is to implement sustainable indigenous farming alternatives and, in the long-term, to recover land.<sup>977</sup> The Commission also received information about the difficulties affecting the economic self-

<sup>970</sup> Information supplied at the meeting with government officials held in Bogotá on December 3, 2012.

<sup>971</sup> Information supplied at the meeting with government officials held in Bogotá on December 3, 2012.

<sup>972</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, para. 343.

<sup>973</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, para. 342.

<sup>974</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, para. 342.

<sup>975</sup> See, *inter alia*, the IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia; IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia.

<sup>976</sup> Information supplied at the meeting with government officials held in Bogotá on December 3, 2012.

<sup>977</sup> Information supplied at the meeting with government officials held in Bogotá on December 3, 2012.



sufficiency of communities living in the Chocó area as a result of the restrictions on certain economic activities. It was also informed about the implementation of the *Chocó sin hambre* [Chocó hunger-free] program, which aims to build 10 nutrition centers in that region in 2013.<sup>978</sup>

607. For its part, the Victims Unit said that the progress in access to education for the population that had fallen victim to the armed conflict had been achieved in the context of five strategies: (i) planning, follow-up, and evaluation of school retention following critical dropout problems in each of the territorial entities; (ii) greater equity in allocation and distribution of financial resources, with incentives for entities to improve school retention; (iii) strengthening of flexible education models and pertinent strategies in keeping with the vulnerability of victims' circumstances; (iv) universal free education and strengthening of supplementary assistance, such as school meals, expansion of the supplementary school day, and transport; and (v) improvement of school spaces.<sup>979</sup> In addition, the State reported with respect to access to the right to education in general that Colombia has achieved 100% coverage in basic education, achieving the goal established for 2015 in advance, and that for 2012 the dropout rate from one year to the next was 4.5%, which represents a 0.36 point reduction as compared to 2010.<sup>980</sup>
608. The Commission also received information from civil society organizations regarding deficiencies in the area of housing. In particular, it was mentioned that in Medellín, the five districts with the highest quantitative housing deficits were Nos. 8, 1, 3, 13, and 7, which account for 62% of the 48,000 homes needed in the city. The majority of displaced persons arriving at the city settle on the peripheries of these districts<sup>981</sup>, despite the fact that these areas are the most impoverished and reportedly benefit from no social spending by the State. In addition to this large housing shortfall, approximately 30,000 homes are without access to basic public services as they are situated outside the urban boundary or in high-risk zones. There are reportedly another 19,690 households that are at risk: 14,420 from landslides, 2,757 from flooding, 698 from avalanches, and 1,815 from other factors. In addition, the Commission was told that the Land Management Plan [*Plan de Ordenamiento Territorial*], prohibits social spending in areas that are at high risk, outside the sanitation perimeter, or in environmental protection zones, such as the edges of dry river beds. Accordingly, as no services systems are installed, there is no spending on social amenities, risk mitigation works, parks, or housing improvements.<sup>982</sup>
609. The Commission was also told that pay-as-you-go electricity consumption has swiftly become widespread among the lower socioeconomic strata in the city of Medellín and that under this

<sup>978</sup> Information received at the meeting held with the Director of the Department of Social Prosperity in Washington, D.C., on April 16, 2013.

<sup>979</sup> Victim Assistance and Comprehensive Reparation Unit, *Report on implementation of the Victims and Land Restitution Law for ensuring the rights of victims of the armed conflict in Colombia*. On-Site Visit of the Inter-American Commission on Human Rights, December 2012, pp. 53-54.

<sup>980</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAID-13-048140, December 2, 2013, para. 346.

<sup>981</sup> Civil society said that in Medellín, there are two types of disconnection: (i) access, in the case of houses that are located in areas classified as high risk, environmental protection, located on the edges of streams or outside of the city limits where, by prohibition of Municipal planning, water supply and sewerage networks cannot be built, and therefore do not reach the public utilities; (ii) provision, in the case of the houses even though they are in areas suitable, for cause of high rates, high rates of unemployment and the high cost of living, people do not have the money to pay the bills. Corporación Jurídica Libertad, Problems associated with the planning in the city, p. 7.

<sup>982</sup> Corporación Jurídica Libertad, *Problemáticas asociadas al ordenamiento de la ciudad*, p. 8.

system families are always being cut off because they cannot keep recharging the meter. The same system is reportedly beginning to be applied for the water supply, at very high costs.<sup>983</sup>

610. The Commission notes that Colombia's economic growth has not resulted in a balanced distribution of resources and that there are still parts of the country with major deficiencies in terms of infrastructure, presence of state institutions, access to basic services, and enjoyment of ESCR. These deficiencies are more acute where populations that have traditionally suffered discrimination or that live in poverty or extreme poverty are concerned. According to the information received, in some cases their situation has actually worsened with the implementation of large-scale economic projects, which affect their way of life and income generating activities; and the profits generated by those projects do not directly benefit those groups.
611. The Commission notes that, despite the many programs and actions implemented, the country shows high levels of poverty and extreme poverty, as well as deficiencies in accessing and enjoyment of rights such as food, health, housing and employment, deficiencies that are close but not exclusively linked to the armed conflict.
612. The Commission has reiterated the need for Colombia to adopt measures promptly and without delay in order to deal with the obstacles and barriers in the exercise, respect and guarantee of economic, social and cultural rights of all persons; applying differential approaches for sectors that are particularly vulnerable or affected by different levels of discrimination. Shortcomings in terms of protection of access to work, education, and resources have a multiplier effect on the exercise of human rights, in general, and undermine all aspects of autonomy. Furthermore, the observance and guarantee of ESCR is closely linked to the full exercise of civil and political rights.

## ***Recommendations***

613. Based on the foregoing, the Commission recommends that the State of Colombia:
1. Step up efforts so as to gradually give full effect to economic, social and cultural rights, in conditions of equality and non-discrimination, while ensuring that that this does not come at the cost of the people's other basic rights.
  2. Continue to adopt measures for the reduction of poverty and extreme poverty.
  3. Urgently address the weaknesses in the area of housing mentioned in this report and, in particular, adopt a comprehensive approach in solving the housing problems connected with internal and intra-urban forced displacement.
  4. Continue strengthening health systems service so as to ensure adequate provision of healthcare throughout the country and the inclusion of differential approaches.

<sup>983</sup> Corporación Jurídica Libertad, *City planning problems*, p. 9.

CHAPTER 6  
GROUPS ESPECIALLY  
AFFECTED IN THE  
ARMED CONFLICT

## GROUPS ESPECIALLY AFFECTED IN THE CONTEXT OF THE ARMED CONFLICT

614. The IACHR has established that the principle of non-discrimination is one of the pillars of any democratic system and a fundamental principle of the system created by the OAS to protect human rights.<sup>984</sup> Even so, as this report illustrates, Colombia's internal armed conflict provoked and perpetuates certain problems for specific groups that are particularly vulnerable and/or suffer discrimination on multiple levels. The Commission will do a detailed examination of the different impact on each of these groups, taking the concept of intersectionality into account.<sup>985</sup>

### A. *The invisibility of Afro-descendant persons, raizales and palenqueros*

615. Afro-descendant persons in Colombia identify themselves as "Afro-Colombians", "blacks", *raizales* from the San Andrés archipelago, Providencia and Santa Catalina,<sup>986</sup> and "*palenqueros*" from the community of San Basilio de Palenque.<sup>987</sup> The situation of the Afro-descendant population has been a matter of particular concern to the IACHR because of the historical and structural discrimination they have suffered and the disproportionate impact that the armed conflict they have lived in has had on them.<sup>988</sup>

616. In effect, although they are one of Colombia's most important minorities and have special protection from the State under the Constitution and the jurisprudence of the Constitutional Court,<sup>989</sup> Afro-descendant persons in Colombia are still invisibilized. In consequence, the Commission has previously observed that despite the various measures the State has taken, some situations continued to be particularly troubling: the poverty and social exclusion that the Afro-Colombian population endures; the human rights violations committed against Afro-Colombians that are never solved; the obstacles that prevent them from enjoying their right to collective property, and others.<sup>990</sup>

<sup>984</sup> See, *inter alia*, IACHR. *Considerations regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination*, Annual Report 1999, Chapter VI; IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II., Doc. 62, December 5, 2011.

<sup>985</sup> Specifically, the CEDAW Committee has written that intersectionality is a basic concept for understanding the scope of the general obligations of States whereby the discrimination against women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. UN, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, October 19, 2010, para. 18.

<sup>986</sup> The cultural roots of these communities are Afro-Anglo-Antillean and their members maintain a strong Caribbean identity, with socio-cultural and linguistic traits clearly different from the rest of the Afro-Colombian population.

<sup>987</sup> San Basilio de Palenque is in the municipality of Mahates, department of Bolívar. This is a community founded in the XVI century by runaway slaves who sought safe haven in the "*palenques*" on Colombia's north coast. The "*cimarrones*", who became part of the palenque, were considered automatically free.

<sup>988</sup> See, *inter alia*, IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999.

<sup>989</sup> See, *inter alia*, Constitutional Court, Order 005-09 of January 26, 2009. (Manuel José Cepeda Espinosa writing); Judgment C-196/12 of March 14, 2012 (María Victoria Calle Correa writing)

<sup>990</sup> IACHR, *Preliminary Observations of the Inter-American Commission on Human Rights after the Visit of the Rapporteurship on the Rights of Afro-Descendants and Against Racial Discrimination to the Republic of Colombia*, OEA/Ser.L/V/II.134, Doc. 66, March 7, 2009, para. 34.

## 1. Racial Discrimination

617. The IACHR and the Inter-American Court have repeatedly observed that the right to equal treatment and non-discrimination is the central and fundamental principle of the inter-American human rights system.<sup>991</sup> The Commission has also highlighted the various concepts of the right to equal treatment and non-discrimination.<sup>992</sup> One relates the right to equal treatment and non-discrimination as the prohibition of arbitrarily different treatment –with different understood as distinction, exclusion, restriction or preference.<sup>993</sup> The other relates to the right to equal treatment as the obligation to create conditions of genuine equality for groups that have been historically excluded and are at greater risk of becoming victims of discrimination.<sup>994</sup> The Commission understands that while in certain cases both concepts may be present, each one deserves a different response from the State and different treatment under the American Convention.<sup>995</sup> Then, too, under the different concepts of the right to equal treatment, a State’s actions or omissions may be with respect to rights recognized in the Convention, or with respect to an undertaking of the State that has no effect whatever on the enjoyment of Convention-protected rights, under the law or national policy.<sup>996</sup>
618. The Commission has maintained that the information available reveals a pattern of racial discrimination and historical and systematic exclusion that has and continues to harm the Afro-descendant population. Indeed, the result of slavery and the subsequent failure to take positive measures to neutralize and reverse its consequences had the effect of further entrenching the forms of direct and indirect discrimination toward the Afro-descendant population.<sup>997</sup>
619. As the Commission has previously observed, the disparities between the social and economic conditions of Afro-descendants and those of the rest of Colombia’s population are very much a function of the social exclusion that Afro-descendants have historically suffered.<sup>998</sup> Therefore, despite laws and public policies aimed at promoting the development of the Afro-Colombian population, equal enjoyment of rights and the defeat of structural discrimination continue to be an enormous challenge for this population group.<sup>999</sup>

<sup>991</sup> See, *inter alia*, IACHR, *Application before the Inter-American Court of Human Rights In the case of Karen Atala and daughters against the State of Chile*. September 17, 2010, paragraph 74. I/A Court H.R. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, para. 173.5

<sup>992</sup> See, *inter alia*, IACHR, *Application before the Inter-American Court of Human Rights In the case of Karen Atala and daughters against the State of Chile*. September 17, 2010, para. 80.

<sup>993</sup> See, *inter alia*, United Nations, Human Rights Committee, General Comment 18, Non-discrimination, 10/11/89, CCPR/C/37, para. 7; I/A Court H.R. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, para. 92; IACHR, *Fourth Progress Report of the Rapporteurship on Migrant Workers and Their Families in the Americas*, OEA/Ser.L/V/II.117, Doc. 1 rev. 1, IACHR, *Annual Report 2002*, March 7, 2003, para. 58.

<sup>994</sup> See, *inter alia*, IACHR, *Application before the Inter-American Court of Human Rights In the case of Karen Atala and daughters against the State of Chile*. September 17, 2010, para. 80.

<sup>995</sup> See, *inter alia*, IACHR, *Application before the Inter-American Court of Human Rights In the case of Karen Atala and daughters against the State of Chile*. September 17, 2010, para. 80.

<sup>996</sup> See, *inter alia*, IACHR, *Application before the Inter-American Court of Human Rights In the case of Karen Atala and daughters against the State of Chile*. September 17, 2010, para. 80.

<sup>997</sup> IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II., Doc. 62, December 5, 2011, para. 97, citing the *Durban Declaration and Programme of Action*, para. 33.

<sup>998</sup> IACHR, *Preliminary Observations of the Inter-American Commission on Human Rights after the Visit of the Rapporteurship on the Rights of Afro-Descendants and Against Racial Discrimination to the Republic of Colombia*, OEA/Ser.L/V/II.134, Doc. 66, March 7, 2009, para. 120.

<sup>999</sup> IACHR, *Preliminary Observations of the Inter-American Commission on Human Rights after the Visit of the Rapporteurship on the Rights of Afro-Descendants and Against Racial Discrimination to the Republic of Colombia*, OEA/Ser.L/V/II.134, Doc. 66, March 7, 2009, para. 120.

620. In its observations on the Draft Report, the State questioned the IACHR's observation on the existence of a "pattern of racial discrimination and systematic historical exclusion." In its view, the Commission's statement meant that "[...] in Colombia, discrimination is tolerated or promoted from the same judicial, legal and institutional socio-political system, this not being the case. On the contrary, Colombia promotes equality and fights against discrimination as the cross-cutting point in the effective realization of human rights."<sup>1000</sup>

621. In this respect, the Commission points out that structural racism and discrimination in Colombia have been examined throughout the years and in several contexts, not only in country reports, but also in individual cases. The structural nature of racism and discrimination is a long running problem for Colombia as well as for many other countries in the region, as the IACHR has emphasized in its *Report on the Situation of People of African Descendant in the Americas*. With regard to this general point, the IACHR emphasized that:

[a]fro-descendants in the region systematically inhabit the poorest areas with the most precarious infrastructure and are more exposed to crime and violence. Furthermore, Afro-descendants encounter serious obstacles regarding access to health and education services, as well as in obtaining housing and employment, especially at the managerial and upper levels. Accordingly, the Commission concludes that persons of African descent face major obstacles for the exercise and guarantee of their civil and political, economic, social, and cultural rights. Similarly, underrepresentation and the scant participation of the Afro-descendant population in politics demonstrate the existence of further impediments to access to political power structures and to an active role in the design of public policies designed to improve their situation of structural discrimination<sup>1001</sup>.

It is in this sense that the Commission considers that there is a situation of racism and structural discrimination, and that the measures adopted to combat them must tackle the breath and scale of the causes and consequences of the problem.

622. The Commission notes that, in Colombia, the Afro-descendant population lives in Valle del Cauca, Antioquia, Bolívar, Chocó, Nariño, Cauca, Atlántico, Córdoba, Cali, Medellín, Bogotá, Cartagena, Barranquilla, Riohacha, Montería, Quibdó, Turbo, Buenaventura and Tumaco, the San Andrés archipelago, Providencia and Santa Catalina, and San Basilio de Palenque,<sup>1002</sup> among other locations. However, the Afro-descendant population is most heavily concentrated on the Pacific Coast, which accounts for 44.71%, and on the Atlantic Coast, where 26.97% of the population recognized as Afro-Colombian lives (4,316,592).<sup>1003</sup>

623. The Commission appreciates that the State recognizes the necessity of dealing with the various forms of discrimination affecting these peoples, in particular, the necessity to confront "cases involving racist practices and different forms of racial discrimination"; as the present report shows, Colombia has designed a legislative framework and public policies aimed at overcoming the structural situations associated with this problem. With regard to these measures, the IACHR has taken into account the information supplied by the State on: i) the

<sup>1000</sup> Colombia's observations on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, para. 354.

<sup>1001</sup> IACHR, *The Situation of People of African Descent in the Americas*, para. 11.

<sup>1002</sup> IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II., Doc. 62, December 5, 2011, para 43.

<sup>1003</sup> *Conferencia Nacional de Organizaciones Afrocolombianas – Proceso de Comunidades Negras* [National Conference of Afro-Colombian Organizations-Black Communities Process] (CNOA-PCN), *Plan de acción en derechos humanos y DIH para la comunidad negra, palenquera, raizal y la población afrocolombiana* [Plan of action in human rights and international humanitarian law for the black, palenquera, raizal and Afro-Colombian population], 2010, p. 19.

creation of an Interior Ministry Racism and Discrimination Watchdog (created by Resolution 1154 of July 23, 2012), whose task it is to create “public policies, actions and national programs and to encourage campaigns against racism, provide follow-up on cases and lend legal advice and support to individuals, communities and villages at risk of racist acts”; ii) the “Special Fund for Education Debt Cancellation of the Black, Afro-Colombian, Raizal and Palenquero Communities” initiative reopened in 2012; iii) the national level literacy programs; and iv) the budget lines approved in accordance with the stipulations in the “National Development Plan of the Black, Afro-Colombian, Raizal and Palenquero Communities (NARP).”<sup>1004</sup>

624. However, the Commission points out that, in other countries of the region, the Afro-descendant population in Colombia still endures *de facto* racial discrimination and is particularly vulnerable to human rights violations.<sup>1005</sup> Furthermore, research has shown that skin color or place of birth are factors that have stimulated stereotypes that trigger inequitable treatment, placing the Afro-descendant population at a disadvantage vis-à-vis other social groups.<sup>1006</sup>

625. The Afro-descendant population has itself pointed out that three specific factors have to be taken into account when examining their situation: (i) the historical role that structural racial discrimination – a legacy of slavery - plays in perpetuating the economic, social and political gaps that explain the next differential factor that has to be considered with respect to Afro-descendant communities; (ii) the unequal treatment and inequity that persist in the areas where the black, *palenquera*, and *raizal* communities live, both rural areas and urban areas, and (iii) the disproportionate impact that the social and armed conflict has had on black and *palenquera* communities, and the less extensive but just as serious impact it has had on the *raizal* community, and which has placed the very socio-cultural survival of the Afro-Colombian ethnic communities in jeopardy.<sup>1007</sup>

626. In fact, during the visit the Commission continued to receive reports on the exclusion and marginalization of the Afro-Colombian population, and how acts of extreme violence are still being committed, especially against Afro-descendant youth.<sup>1008</sup> The IACHR also received information on (i) the mining and extractive industries that operate in violation of ethno-territorial rights; (ii) the increase in the number of murders of and assaults on the civilian population in encampments and urban centers, as well as the establishment of public forces, in violation of international humanitarian law; (iv) the spike in urban violence targeting youth from displaced and highly vulnerable families; (v) how children and adolescents are caught up

<sup>1004</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, paras. 351, 352.

<sup>1005</sup> See, *inter alia*, UN, Committee on the Elimination of Racial Discrimination, 75th session, *Consideration of reports submitted by States parties under article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination: Colombia*. CERD/C/COL/CO/14, August 28, 2009, paragraph 18; IACHR, *Hearing on the Situation of Afro Descendants in Colombia*, March 6, 2007; *Hearing on the Human Rights Situation of Internally Displaced Afro-Colombians*, March 12, 2008; *Hearing on Racial Discrimination and Access to Justice of Afro-Descendants in Colombia*, October 23, 2008; *Hearing on the Situation of Afro-Colombian, indigenous and campesino communities in North Cauca, Colombia*, November 5, 2009.

<sup>1006</sup> Office of the Mayor of Bogotá, *Investigando el racismo y la discriminación racial en la escuela* [Investigating racism and racial discrimination in school], 2009, p. 20.

<sup>1007</sup> *Conferencia Nacional de Organizaciones Afrocolombianas – Proceso de Comunidades Negras* [National Conference of Afro-Colombian Organizations-Black Communities Process] (CNOA-PCN), *Plan de acción en derechos humanos y DIH para la comunidad negra, palenquera, raizal y la población afrocolombiana* [Plan of action in human rights and international humanitarian law for the black, *palenquera*, *raizal* and Afro-Colombian population], 2010, p. 16.

<sup>1008</sup> Information provided at the meetings with the national authorities and civil society, held in Quibdó on December 5, 2012.

in and victimized by the dynamic of war and the micro trafficking and dealing and drug trafficking, problems aggravated by sexual abuse and exploitation; (vi) the connivance of the public forces with the armed actors; (vii) situations of ungovernable nature and impunity; (viii) the increased drug trafficking; (ix) the social chaos; (x) the ever-stronger mafias, and (xi) indifference and the lack of a sense of solidarity.<sup>1009</sup>

627. With regard to the foregoing, and with respect to the armed groups, in its observations on the Draft Report the State maintains that these are “isolated cases arising in various zones of the national territory”, but do not form part of a “generalized policy”. In this sense, it pointed out that in addition to the “zero-tolerance policy on the liaison with illegal armed groups”, the Defense Ministry issued Directive No. 007 of 2007, with the aim of “strengthening the policy of recognition, prevention and protection of Human Rights of the Black, Afro-Colombian, Raizal and Palenquero communities”, and that there has been a socialization and implementation process within the Defense Sector.<sup>1010</sup>
628. Furthermore, according to the information received, when it comes to the indicators of well-being, a wide gap still separates the Afro-Colombian population from the non-Afro-Colombian population.<sup>1011</sup> Specifically, the Commission notes that the Afro-descendant population in Colombia still encounters serious obstacles in the following areas: (i) employment, both in terms of access to jobs and access to qualified jobs, even when they have the required education and training; (ii) promotion within the military; (iii) basic unmet needs; (iv) higher infant mortality; (v) housing without the basic services; (vi) high illiteracy rates, poor educational coverage,<sup>1012</sup> higher rates of school nonattendance in the early grades and less participation in higher education; (vii) lower standards of living; (viii) less access to health care; and (ix) higher poverty rates, especially when the situation of women of African descent is compared to that of women not of African descent.<sup>1013</sup>
629. In that regard, the Quibdó Ombudsperson observed that Afro-descendant communities consistently lag behind other Colombian communities: they have less access to education;

<sup>1009</sup> Diocese of Quibdó, *Las Voces del Pueblo Negro, Indígena y Mestizo* [The Voices of the Black, Indigenous and Mestizo People], *Balance* July 2011-June 2012, pp. 28-29.

<sup>1010</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, paras. 362, 363.

<sup>1011</sup> Comisión Intersectorial para el avance de la Población Afrocolombiana [Inter-sectoral Commission for the Advancement of the Afro-Colombian Population], *Recommendations*, p. 9.

<sup>1012</sup> On the question of education, civil society stressed the fact that the education modules and tests are standardized. Cocomacia, Foro Interétnico Solidaridad Chocó, Asociación de Desplazados “Dos de Mayo”, Cocomopoca, Diocese of Quibdó, *Red Departamental de Mujeres Chocoanas, Integración, Resistencia and Vida*.

<sup>1013</sup> Conferencia Nacional de Organizaciones Afrocolombianas – Proceso de Comunidades Negras [National Conference of Afro-Colombian Organizations-Black Communities Process] (CNOA-PCN), Plan de acción en derechos humanos y DIH para la comunidad negra, palenquera, raizal y la población afrocolombiana [Plan of action in human rights and international humanitarian law for the black, palenquera, raizal and Afro-Colombian population], 2010. In effect, it has been reported that pervasive structural discrimination against persons of African descent persists and can be found in their living conditions, their overrepresentation among the displaced population, indicators such as illiteracy, infant and maternal mortality, employment, underrepresentation in public sector employment and senior positions in private sector employment, access to public areas and stereotypes spread by the media. See, *inter alia*, UN, Human Rights Council, 16th session. Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, paragraphs 18, 23, 25, and 26. Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia, 75th session, 28 August 2009, CERD/C/COL/CO/14, paragraphs 22, 26. UN. Committee on Economic, Social and Cultural Rights. 44th Session. Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant. Concluding Observations of the Committee on Economic, Social and Cultural Rights. E/C.12/COL/CO/5, June 7, 2012, para. 11.



what education they have access to, is of lesser quality, and they have no health care services at all, placing them in a situation of triple vulnerability.<sup>1014</sup>

630. The Commission notes with concern that the situation of structural discrimination takes place in a context of certain obstacles that hinder Afro-descendant persons' access to justice when their human rights are violated. The result is that the violations go unpunished, which merely serves to reinforce and perpetuate the structural discrimination. The IACHR continued to receive information on restrictions limiting access to justice, such as geographic obstacles, as well as exclusion and racial discrimination practices that adversely affect the application of the justice system and development of their own system for the administration of justice.<sup>1015</sup> Civil society expressed the view that the State had to recognize that the community councils are performing a function in the administration of justice; since they apply their own legal rules.<sup>1016</sup>

## 2. Absence of disaggregated data

631. The Commission has pointed out that the States must implement suitable mechanisms to enable self-identification of the Afro-descendant population and has written that the problem of statistics is critical. "Without reliable data, without indicators and periodic measurements, the kinds of political decisions calculated to deal with the discrimination problem cannot be taken. The figures also have an unmistakable political element, since for those affected it means that their invisibility is being reversed and they are being counted along with everyone else."<sup>1017</sup>

632. The Commission notes that the State has acknowledged serious gaps in the historical, demographic and socio-economic data on the Afro-Colombian, *raizal* and *palenquera* population, which makes it difficult to target resources, render them "visible" and get society to appreciate them. It also makes the formulation of inclusive public policies difficult.<sup>1018</sup>

633. In fact, the Commission observes that there is still very little disaggregated data that would reveal the inequalities that Afro-Colombians endure,<sup>1019</sup> and as a result the structural discrimination that they experience remains hidden. It has been maintained that although the

<sup>1014</sup> Information provided at the meeting with State authorities, held in Quibdó on December 5, 2012.

<sup>1015</sup> *Conferencia Nacional de Organizaciones Afrocolombianas – Proceso de Comunidades Negras* [National Conference of Afro-Colombian Organizations-Black Communities Process] (CNOA-PCN), *Plan de acción en derechos humanos y DIH para la comunidad negra, palenquera, raizal y la población afrocolombiana* [Plan of action in human rights and international humanitarian law for the black, palenquera, raizal and Afro-Colombian population], 2010, p. 11.

<sup>1016</sup> *Conferencia Nacional de Organizaciones Afrocolombianas – Proceso de Comunidades Negras* [National Conference of Afro-Colombian Organizations-Black Communities Process] (CNOA-PCN), *Plan de acción en derechos humanos y DIH para la comunidad negra, palenquera, raizal y la población afrocolombiana* [Plan of action in human rights and international humanitarian law for the black, palenquera, raizal and Afro-Colombian population], 2010, p. 34.

<sup>1017</sup> See, *inter alia*, IACHR, *Access to justice for women victims of violence in the Americas*, OEA/Ser.L/V/II., Doc. 68, January 20, 2007, paragraph 210, citing, United Nations, ECLAC, Social Development Division. Social Policies Series. Indigenous and Afro-descendant women and the New Millennium, Santiago, Chile, April 2006, p. 25; IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II., Doc. 62, December 5, 2011, para. 38.

<sup>1018</sup> Comisión Intersectorial para el avance de la Población Afrocolombiana [Inter-sectoral Commission for the Advancement of the Afro-Colombian Population], *Recommendations*, p. 16.

<sup>1019</sup> See, *inter alia*, UN, Human Rights Council, 16th Session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, paragraph 17. *Conferencia Nacional de Organizaciones Afrocolombianas – Proceso de Comunidades Negras* [National Conference of Afro-Colombian Organizations-Black Communities Process] (CNOA-PCN), *Plan de acción en derechos humanos y DIH para la comunidad negra, palenquera, raizal y la población afrocolombiana* [Plan of action in human rights and international humanitarian law for the black, palenquera, raizal and Afro-Colombian population], 2010, p. 49.

2005 census data show that the Afro-Colombian population represented 10.62% of the population,<sup>1020</sup> the National Administrative Department of Statistics and the Ombudsperson acknowledged some problems in the data collection process;<sup>1021</sup> according to the UN, the figure would actually be closer to 25% of the population.<sup>1022</sup>

634. Furthermore, it has been said that: (i) while Afro-Colombians represent a significant percentage of the displaced population, the registration of displaced persons does not identify the displaced community as a “black community along river ‘X’”; instead it lists the person as being displaced from anywhere;<sup>1023</sup> (ii) there is insufficient information on how the right to reparations recognized in Law 975 of 2005 and in Decree 1290 of 2008 has been implemented in relation to Afro-Colombian victims;<sup>1024</sup> and (iii) the Office of the Attorney General does not manage comprehensive data on the ethnicity of victims and the outcome of investigations of related cases.<sup>1025</sup>
635. During the visit, civil society stressed the need for a national statistical representation system by requiring that all public records include the variable “Afro-descendant.”<sup>1026</sup> While the State reported that pursuant to Law 1448, work is being done to describe and identify population-related variables, and to draft a preliminary version to include the ethnic component in the RUV-related form,<sup>1027</sup> the Commission observes that it does not have information on a comprehensive and cross-cutting policy to include the “Afro-descendant” variable in all public records and public sector agencies. Therefore, the Commission is urging the State to move toward the adoption of a comprehensive system that includes the “Afro-descendant” variable, so as to have up-to-date, reliable, disaggregated data organized in such a way that it can be used to identify and eventually overcome the factors behind the structural discrimination that the Afro-descendant population in Colombia suffers.

<sup>1020</sup> See, *Departamento Administrativo Nacional de Estadística (DANE)*, Information about the 2005 Census, available (in Spanish) at: <http://www.dane.gov.co/index.php/poblacion-y-demografia/censos>.

<sup>1021</sup> UN, Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under Article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia*, 75th session, 28 August 2009, CERD/C/COL/CO/14, paragraph 24.

<sup>1022</sup> UN, Human Rights Council, 16<sup>th</sup> session, *Report of the Independent Expert on Minority Issues, Gay McDougall*. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, para. 4.

<sup>1023</sup> *Conferencia Nacional de Organizaciones Afrocolombianas – Proceso de Comunidades Negras* [National Conference of Afro-Colombian Organizations-Black Communities Process] (CNOA-PCN), *Plan de acción en derechos humanos y DIH para la comunidad negra, palenquera, raizal y la población afrocolombiana* [Plan of action in human rights and international humanitarian law for the black, palenquera, raizal and Afro-Colombian population], 2010, p. 77.

<sup>1024</sup> See, *inter alia*, UN, Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia*, 75th session, 28 August 2009, CERD/C/COL/CO/14, paragraph 17. UN, Human Rights Council, 16<sup>th</sup> session, *Report of the Independent Expert on Minority Issues, Gay McDougall*. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, paragraph 59.

<sup>1025</sup> UN, Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia*, 75th session, 28 August 2009, CERD/C/COL/CO/14, para. 21.

<sup>1026</sup> Information provided at the meeting with Afro-Colombian organizations, held in Bogotá on December 4, 2012. Information provided at the meeting with civil society, held in Quibdó on December 5, 2012.

<sup>1027</sup> Ministry of Foreign Affairs of Colombia, *Document titled “Indígenas, Afros”* [Indigenous and Afro-Colombian peoples], received by the IACHR on May 3, 2013.

### 3. Disproportionate impact of violence and forced displacement

636. Through its various mechanisms and as indicated in the corresponding chapter of this report, the IACHR has confirmed the disproportionate impact that violence and forced displacement have had on Afro-descendant persons.<sup>1028</sup> Colombia's Constitutional Court observed as much in Order 005 of 2009, in which it confirmed and assessed the highly complex set of problems that have a profound effect, on multiple levels, on the individual and collective rights of Afro-Colombians affected by internal forced displacement, confinement, discrimination and structural marginalization.<sup>1029</sup>
637. In Order 005 of 2009, the Constitutional Court identified a series of risks that demonstrated the disproportionate impact that internal displacement has had on the individual and collective rights of Afro-descendant communities.<sup>1030</sup> It found that the reasons why they represented a disproportionately high percentage of the displaced population were as follows: (i) structural exclusion, leaving them more marginal and vulnerable; (ii) the mining and agricultural operations that have created serious restrictions within their ancestral territories and have often led to dispossession; and (iii) inadequate judicial and institutional protection to safeguard the collective territories of the Afro-Colombians, which has allowed armed groups to infiltrate.<sup>1031</sup> The State reported that in compliance with Order 005, the Interior Ministry has drawn up "plans for the characterization of the collective and ancestral territories largely inhabited by the Afro-Colombian populations" as well as, *inter alia*, specific protection and assistance plans.<sup>1032</sup>
638. However, the Commission notes that the violations of the Afro-descendant communities' rights to life, liberty and personal integrity would be closely related to the land disputes, but they are also a function of the social marginalization and structural exclusion of the Afro-

<sup>1028</sup> According to the Office of the United Nations High Commissioner for Refugees (UNHCR), forced displacement in Colombia has had a profound effect on the Afro-Colombian population, which represents almost a quarter of the displaced population in the country (22.5%). For its part, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) reported that in January and February 2012, some 5,500 people were displaced from the departments of Chocó, Cauca and Nariño, which are the departments where the majority of the population is Afro-descendant. OCHA, *Boletín Humanitario No. 4 / 2012, Se incrementan los desplazamientos masivos. Los departamentos del suroccidente, los más afectados* [Massive displacements on the rise. The hardest hit departments are in the southwest]. February 13-26, 2012 Available [in Spanish] at: <http://www.colombiassh.org/site/spip.php?article808>.

<sup>1029</sup> Constitutional Court, Order 005 of January 26, 2009 (Manuel José Cepeda Espinosa writing).

<sup>1030</sup> The Constitutional Court singled out the following: (i) internal forced displacement poses an extraordinary risk of violation of the Afro-Colombian communities' collective land rights; (ii) the aggravated risk that the internal forced displacement, confinement and resistance causes will end up destroying the social structure of the Afro-Colombian communities; (iii) the heightened risk that the internal forced displacement, confinement and resistance causes will end up destroying the culture of the Afro-Colombian communities; (iv) the extraordinary risk that the internal forced displacement, confinement and resistance causes will exacerbate the poverty and humanitarian crisis; (v) the extraordinary risk that the internal forced displacement causes will exacerbate racism and racial discrimination; (vi) there is a heightened risk that communities that opt for resistance and confinement will be neglected; (vii) there is a heightened risk that the right to participate will be affected, and Afro-Colombian community organizations and the prior consultation mechanism will be weakened; (viii) there is a heightened risk of a violation of the right to State protection and neglect of the obligation to prevent the forced displacement, the confinement and the resistance of the Afro-Colombian population; (ix) there is a heightened risk of a violation of the Afro-Colombian population's right to food security; (x) there is a heightened risk of people returning without the necessary security and dignity or against their will. Constitutional Court, Order 005 of 2009, January 26, 2009 (Manuel José Cepeda Espinosa writing).

<sup>1031</sup> Constitutional Court, Order 005 of 2009, January 26, 2009 (Manuel José Cepeda Espinosa writing).

<sup>1032</sup> Colombia's observations on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, para. 350.

descendant population in the major urban centers to which the displaced are drawn.<sup>1033</sup> The territories that are home to the Afro-descendant population are of strategic importance to the illegal armed groups involved in narcotics production and trafficking,<sup>1034</sup> while new macro-economic development plans have targeted these regions for one-crop agribusiness investments including palm oil and banana cultivation, and for mining concessions,<sup>1035</sup> ranching operations,<sup>1036</sup> or even tourism “megaprojects.”<sup>1037</sup>

639. Furthermore, aerial spraying by the government to control illicit crops has also reportedly caused massive displacement and health problems due to the poisoning of lands;<sup>1038</sup> while Afro-Colombian fishing communities worry that displacement away from coastal areas will make it impossible for them to pursue their traditional fishing-based livelihoods.<sup>1039</sup> In the specific case of the phenomenon called “confinement” of communities, it has been observed that in areas occupied by illegal armed groups seeking to exert control over territories and movement, the groups impose curfews and deny access to rivers, farm fields, bordering territories or markets, thus cutting off access to basic necessities, mostly affecting Afro-Colombian communities.<sup>1040</sup>

640. During the visit it was reported that 50% of the population of Chocó has fallen victim to the armed conflict. The Ombudsperson pointed out that the continued fighting and violence have increased the amount of territory planted with mines, as well as forced displacement, disappearances, massacres, extrajudicial executions and child recruitment.<sup>1041</sup> Civil society, for its part, indicated that of the 480,000 people living in Chocó, 70% have been forcibly displaced; 85% are Afro-descendant communities.<sup>1042</sup>

641. The Commission notes that the Afro-descendant population continues to suffer disproportionately the causes, dynamics, and consequences of the armed conflict. Information available to the Commission establishes that in the implementation of Law 1448, adequate measures in consultation with ethnic communities –with a differential approach– have not

<sup>1033</sup> Conferencia Nacional de Organizaciones Afrocolombianas – Proceso de Comunidades Negras, *Conferencia Nacional de Organizaciones Afrocolombianas – Proceso de Comunidades Negras* [National Conference of Afro-Colombian Organizations-Black Communities Process] (CNOA-PCN), *Plan de acción en derechos humanos y DIH para la comunidad negra, palenquera, raizal y la población afrocolombiana* [Plan of action in human rights and international humanitarian law for the black, palenquera, raizal and Afro-Colombian population], 2010, pp. 9-10 (No. 145).

<sup>1034</sup> UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, para. 37.

<sup>1035</sup> Washington Office on Latin America (WOLA); *Hostages in Our Own Territories: Afro-Colombian Rights under Siege in Chocó*, Washington, D.C., 2012.

<sup>1036</sup> UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, para. 37.

<sup>1037</sup> Conferencia Nacional de Organizaciones Afrocolombianas – Proceso de Comunidades Negras, *Conferencia Nacional de Organizaciones Afrocolombianas – Proceso de Comunidades Negras* [National Conference of Afro-Colombian Organizations-Black Communities Process] (CNOA-PCN), *Plan de acción en derechos humanos y DIH para la comunidad negra, palenquera, raizal y la población afrocolombiana* [Plan of action in human rights and international humanitarian law for the black, palenquera, raizal and Afro-Colombian population], 2010, p. 60.

<sup>1038</sup> UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, para. 37.

<sup>1039</sup> UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, para. 42.

<sup>1040</sup> UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, para. 36.

<sup>1041</sup> Information provided at the meeting with state authorities, held in Quibdó on December 5, 2012.

<sup>1042</sup> Information provided at the meetings with state authorities and civil society, held in Quibdó on December 5, 2012.

been taken, in particular in areas such as the Departments of Chocó, Valle, Cauca and Nariño, where civil society organizations have reported that “they continue to have mass displacement[s] due to [the increase of] armed confrontation and territorial dispute [...]”<sup>1043</sup> According to AFRODES, between 1997 and 2012, around a million Afro-Colombians were expelled from their territories and are currently living in a “situation of exclusion and marginalization far deeper,” aggravated by the context of violence that has accompanied the displacement of these communities.<sup>1044</sup>

642. Within that framework, and in accordance with the follow up given to the *Mesa Nacional de Organizaciones Afrocolombianas* (National Bureau of Afro-Colombian organizations), Afro-Colombian communities continue to face a serious humanitarian crisis that would be exacerbated by the lack of effective measures to ensure the registration of the victims to access the reparation mechanisms, the lack of prior consultation on the measures that have been taken, the lack of knowledge of the victims about “access paths”; as well as failures in the adoption of a differential approach that takes into account the structural conditions of marginality and exclusion of Afro-descendant communities.<sup>1045</sup> In addition, the new dimensions that the action of armed groups have acquired would continue to affect the right of the victims to an integral reparation, taking into account that there would be a high incidence of acts of violence that are classified as alleged acts of regular crime or by criminal gangs, unless they follow a line of investigation that takes into account the context of the armed conflict and its consequences.<sup>1046</sup>
643. The IACHR is therefore urging the State to take preventive and protective measures targeting those areas that are home to the Afro-descendant population and where the risk of violence and dispossession is greater; it is also urging the State to include a differential approach and address the particular situation of displaced Afro-descendant persons.

<sup>1043</sup> Report “Evaluación de la Ley de Víctimas y Restitución de Tierras 1148 de 2011, del Decreto Ley 4635 de 2011 y de la política del Gobierno Nacional a la crisis humanitaria afrocolombiana” (“Assessment of the law of victims and restitution of lands 1148 of 2011, of the Decree 4635 of 2011 and of the Policy of the National Government to the Afro-Colombian humanitarian crisis”), *Mesa Nacional de Organizaciones Afrocolombianas* (National Bureau of Afro-Colombian organizations), Bogotá, D.C., April 2013, p. 56.

<sup>1044</sup> Report “Evaluación de la Ley de Víctimas y Restitución de Tierras 1148 de 2011, del Decreto Ley 4635 de 2011 y de la política del Gobierno Nacional a la crisis humanitaria afrocolombiana” (“Assessment of the law of victims and restitution of lands 1148 of 2011, of the Decree 4635 of 2011 and of the Policy of the National Government to the Afro-Colombian humanitarian crisis”), *Mesa Nacional de Organizaciones Afrocolombianas* (National Bureau of Afro-Colombian organizations), Bogotá, D.C., April 2013, p. 63. Regarding this point, in its observations on the Draft Report, the State raised the possibility that the IACHR’s analysis should be limited to the “developments in protection matters for the year 2012, and not take into account the release of statistical data for the 1997-2012 period, as this would present biased information ignoring the efforts that the State has made up until the present. In this regard, it is worth noting that it is precisely in order to analyze the situation in context, and to take into account its evolution and the State’s efforts that the IACHR considers it necessary to consider information available from different sources within a comprehensive time frame in order to better understand it.

<sup>1045</sup> Report “Evaluación de la Ley de Víctimas y Restitución de Tierras 1148 de 2011, del Decreto Ley 4635 de 2011 y de la política del Gobierno Nacional a la crisis humanitaria afrocolombiana” (“Assessment of the law of victims and restitution of lands 1148 of 2011, of the Decree 4635 of 2011 and of the Policy of the National Government to the Afro-Colombian humanitarian crisis”), *Mesa Nacional de Organizaciones Afrocolombianas* (National Bureau of Afro-Colombian organizations), Bogotá, D.C., April 2013, p. 42.

<sup>1046</sup> Report “Evaluación de la Ley de Víctimas y Restitución de Tierras 1148 de 2011, del Decreto Ley 4635 de 2011 y de la política del Gobierno Nacional a la crisis humanitaria afrocolombiana” (“Assessment of the law of victims and restitution of lands 1148 of 2011, of the Decree 4635 of 2011 and of the Policy of the National Government to the Afro-Colombian humanitarian crisis”), *Mesa Nacional de Organizaciones Afrocolombianas* (National Bureau of Afro-Colombian organizations), Bogotá, D.C., April 2013, p. 64.

#### 4. Situation of Afro-descendant women

644. The Commission has previously established that Afro-Colombian women, because of their gender, have to grapple with another dimension of discrimination and vulnerability, one that exposes them to greater abuse by the actors in the conflict; Afro-Colombian women who lived on Colombia's Pacific coast were in a particularly disturbing and dangerous situation.<sup>1047</sup> The IACHR also observed that in addition to gender-based discrimination, displacement exposed Afro-Colombian women to other types of discrimination: discriminating by virtue of being Afro-Colombian and by virtue of being displaced.<sup>1048</sup>
645. The Commission recalls that in Order 092 of 2008, the Constitutional Court pointed out that Afro-descendant women had been particularly hard hit by the forced displacement. It singled out various risk factors that made women more vulnerable to violence and displacement and underscored the fact that most displaced Afro-descendants are women, many of them heads of household with children.<sup>1049</sup> For her part, the Independent Expert in Minority Issues observed that Afro-descendant women have been subjected to forced labor, violence and rape by illegal armed groups, as a result of which they have become victims of discrimination and ostracism in their own communities.<sup>1050</sup>
646. During the visit, the Commission continued to receive information on the particular vulnerability of Afro-descendant women, who are victims of discrimination on two levels, excluded from the social and economic development processes underway in the country and particularly affected by the conflict ongoing in most Afro-descendant territories.<sup>1051</sup>
647. The Commission has also received information concerning the increase in violence against Afro-descendant women in areas controlled by armed actors and impunity in cases of sexual violence, torture, forced disappearances, death threats and intimidation. The Commission was also informed of the absence of a differential policy on assistance for displaced Afro-descendant women. According to the information received, the lack of adequate response from Law 1257 of 2008 –a law on the prevention and punishment of violence and discrimination against women- has had the effect that Afro-descendant women have decreased their role in organizational processes.<sup>1052</sup>
648. The Commission is concerned about the multiple levels of discrimination that Afro-descendant women experience; they continue to be overrepresented among the displaced population and are vulnerable to violence, especially sexual violence. The Commission is urging the State to

<sup>1047</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II., Doc. 67, October 18, 2006, para. 107.

<sup>1048</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II., Doc. 67, October 18, 2006, para. 121.

<sup>1049</sup> Constitutional Court, Order 092 of 2008, April 14, 2008 (Manuel José Cepeda Espinosa writing).

<sup>1050</sup> UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, para. 44.

<sup>1051</sup> *Conferencia Nacional de Organizaciones Afrocolombianas – Proceso de Comunidades Negras* [National Conference of Afro-Colombian Organizations-Black Communities Process] (CNOA-PCN), *Plan de acción en derechos humanos y DIH para la comunidad negra, palenquera, raizal y la población afrocolombiana* [Plan of action in human rights and international humanitarian law for the black, palenquera, raizal and Afro-Colombian population], 2010, p. 16. Information provided at the meeting with Afro-descendant organizations, held in Bogotá on December 4, 2012. Information provided at the meeting with civil society in Quibdó on December 5, 2012.

<sup>1052</sup> IACHR, *Hearing on the Situation of Human Rights of Afro-descendant Women in Colombia*, March 14, 2013. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/Calendar147eng.pdf](http://www.oas.org/en/iachr/media_center/PReleases/2013/Calendar147eng.pdf). See also, document presented by the petitioner organizations at the hearing.

adopt an intersectional approach when examining the specific situation of Afro-descendant women, one that takes into account the factors caused by their gender and by the fact that they are Afro-descendants, in addition to the poverty in which the majority of them live.

649. In this respect, the IACHR takes note of the information supplied by the State on: i) the creation of at least thirteen “special programs” in relation to the situation of risk faced by Afro-descendant woman victims of the conflict; ii) the measures adopted by the Interior Ministry in formulating programs for the defense of this latter group’s human rights; iii) the workshops set up in the context of Order 092 and themes related to Afro-Colombian women; iv) establishing communication networks with focus groups in various territories with a high percentage of Afro-Colombian inhabitants; v) participation mechanisms for Afro-Colombian women in the formulation of the “National Public Policy for Gender Equality” and its socialization training programs; and vi) the design of the outlines of this Policy in fulfilment of the requirements of Law 1450 of 2011, taking into account the differentiated approach to rights and the recognition of the diversity and individual challenges facing women who belong to ethnic groups.<sup>1053</sup>

## 5. Access to and effective enjoyment of their territories

650. The Commission notes that, Colombia was one of the first countries to recognize the rights that Afro-descendant communities have to their territories. Thus, the 1991 Constitution recognized the ethnic and cultural diversity of the Colombian people and provided that the Afro-descendants’ rights to their territories would be recognized by law. Law 70 of 1993 (hereinafter “Law 70”) was adopted on August 27, 1993, as a result of that clause in the Constitution. In this sense, the State has emphasized the adoption of public policies in favor of Afro-descendant communities and that “it has made important developments to incorporate the differentiated approach in all state programs and facilitate access and preferential inclusion as affirmative action in order to ensure the enjoyment of rights”<sup>1054</sup>. For its part, time and time again the Constitutional Court has held that “the survival of indigenous and tribal peoples depends on recognition of ethnic and cultural diversity”<sup>1055</sup> and that “the provisions of ILO Convention 169 on ‘Indigenous and Tribal Peoples’ clearly defends Afro-descendant communities’ right to be regarded as “peoples”, given the social, cultural and economic conditions that distinguish them from other sectors of the nation’s population, as well as their customs and traditions and the fact that they have their own laws.”<sup>1056</sup>

651. However, the Commission notes with concern that in practice the implementation of those provisions still poses significant challenges. For example, almost twenty years after its approval, chapters IV, V, VI and VII of Law 70 have reportedly still not been regulated. Also, the dynamics of the internal armed conflict and violence have made it more difficult to guarantee access to, use of, enjoyment of and title to<sup>1057</sup> the Afro-descendant communities’

<sup>1053</sup> Colombia’s observations on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, paras. 378-383.

<sup>1054</sup> Colombia’s observations on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, para. 348.

<sup>1055</sup> See, *inter alia*, Constitutional Court, Judgment T- 955-03 of October 17, 2003 (Alvaro Tafur Galvis writing).

<sup>1056</sup> See, *inter alia*, Constitutional Court, Judgment T- 955-03 of October 17, 2003 (Alvaro Tafur Galvis writing).

<sup>1057</sup> The State reported that some 5,300,000 hectares have been deeded, out of a total of 5,600,000, which is 91%. Ministry of Foreign Affairs of Colombia, *Document titled “Indigenous and Afro Peoples”*, received by the IACHR on May 3, 2013. It

collective territories, which is why they face enormous obstacles in exercising control over their lands and territories.<sup>1058</sup>

652. It has also been said that, in practice, the large-scale projects have led to the appropriation of more and more of the Afro-Colombians' collective territories. Those projects have resulted in brutal forced displacements, massive violence and selective assassinations. It was also observed that Afro-descendant communities seldom benefit from these megaprojects and are extremely troubled about encroachment of their land rights and adverse environmental impacts.<sup>1059</sup>
653. During the visit, members of the Chocó communities said that while they had supposedly been given title to 3,050,000 hectares in 58 collective deeds,<sup>1060</sup> the deeds would not be sufficient to protect the communities or to guarantee their right to their territory because of the presence of settlers, possessors *mala fide*, repopulation mechanisms and large-scale projects that have gone ahead without their being consulted beforehand.<sup>1061</sup> It was also pointed out that while the courts have upheld the communities' title to the territories, thousands of hectares are still under the control of illegal armed groups, working in collusion with agribusinesses.<sup>1062</sup> The Commission specifically received information to the effect that in the case of 7 megaprojects reportedly underway on Colombia's Pacific coastline, the necessary prior consultations were supposedly not properly conducted.<sup>1063</sup> In the specific case of Cocomococa, which in September 2011 was reportedly given collective title to 75,000 hectares, multinationals had been given concessions on 55,000 of those hectares, without any prior consultation.<sup>1064</sup>
654. The Commission also received specific information on the legal and illegal mining operations,<sup>1065</sup> where the principal concerns are the environmental degradation they are

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pointed out that there are a total of 181 Community Councils with collective title deeds: Colombia's observations on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, para. 349.

<sup>1058</sup> UN, Human Rights Committee, 99th session, Consideration of reports submitted by States parties under article 40 of the Covenant. Concluding observations of the Human Rights Committee. Colombia. CCRP/C/COL/CO/6, August 6, 2010, para. 25.

<sup>1059</sup> UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, para. 68.

<sup>1060</sup> Cocomococa, Foro Interétnico Solidaridad Chocó, Asociación de Desplazados "Dos de Mayo", Cocomococa, Diocese of Quibdó, *Red Departamental de Mujeres Chocoanas, Integración, Resistencia and Vida* (No. 55).

<sup>1061</sup> Information provided at the meeting with civil society in Quibdó, on December 5, 2012.

<sup>1062</sup> See, *inter alia*, UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, paragraph 70. UN, Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the Convention: Concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia*, 75th session, 28 August 2009, CERD/C/COL/CO/14, para. 19.

<sup>1063</sup> Public Housing Macroproject (2008), Megaproject: Seawall (2008), Megaproject: Buenaventura Business Center CAEB, Megaproject: Buenaventura Container Terminal (TCBUEN August 2008), Megaproject: CELPA (March 2, 2011), Megaproject: Outer Harbor Logistical Activities Zone (ZALESA 2008), Megaproject: Fresh Water Industrial Port (2006). Jesuit Refugee Service, *¿Cuánto vale la tierra? Minería y megaproyectos. Informe preliminar sobre su impacto en el desplazamiento en Colombia [How much is land worth? Mining and megaprojects. Preliminary report on their impact on displacement in Colombia]*, June 2012, pp. 14, 31-33.

<sup>1064</sup> Information provided at the meeting with civil society in Quibdó, December 5, 2012.

<sup>1065</sup> According to the information received, Colombia's mining policy would be basically that of an extractive industry focusing on nonrenewable resources. The model centers on the participation of private industry and foreign investment, while inspection and promotion would be in the hands of the State. It was also pointed out that there are three types of mining in Colombia: (a) legal, large-scale mining, with 8298 concessions as of 2010 and 8.53 million hectares under the control of multinationals; (b) *de facto* mining (small-scale artisanal or traditional mining), practiced in 44% of the countries' municipalities (with 3,631 applications for legal status as of 2007, and only 23 legalized), and (c) "criminal" mining, used as a source of revenue for armed groups operating outside the law in strategic places where these actors directly engage in mining. It was also pointed out that illegal armed groups control a total of 200 mining points. Furthermore, of the 8,000 mining licenses in force, 233 would be either totally or partially located on 113 indigenous reserves. Jesuit Refugee Service,



causing<sup>1066</sup> the violence that attended their establishment, and the allegations of discrimination against black communities with respect to mining concessions.<sup>1067</sup>

655. The Commission notes that one of the most problematic issues is prior consultation. Because they are defined as tribal peoples, Afro-Colombian communities have a right to prior consultation, and to give their free and informed consent to exploitation of natural resources on their territories.<sup>1068</sup> Nevertheless, the information received indicates that the consultation process is not being conducted prior to approval and startup of projects on those communities' collective lands.<sup>1069</sup> The CERD expressed concern over the fact that the Afro-descendant communities' right to prior consultations and consent was frequently violated in conjunction with megaprojects relating to infrastructure and natural resource exploitation.<sup>1070</sup>
656. During the visit, the State indicated that it is attempting to strengthen the channels of dialogue through new mechanisms for consultation on legislative measures;<sup>1071</sup> however, the

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*¿Cuánto vale la tierra? Minería y megaproyectos. Informe preliminar sobre su impacto en el desplazamiento en Colombia [How much is land worth? Mining and megaprojects. Preliminary report on their impact on displacement in Colombia],* June 2012, pp. 7-9, 11, 14.

<sup>1066</sup> Civil society observed that large-scale mining would have: (a) environmental impacts (pollution of water sources, transformation of river basins through the dredging process, atmospheric pollution because of the dynamite blasting and explosions, destruction of vegetation, flora and fauna, and increase in water consumption during the shredding and pulverization of the mined materials, a greenhouse effect caused by the smelting, geomorphologic changes in the area being mined, a threat to the forest preserves and páramos ecosystems); (b) sociocultural effects (tensions within the community, expressed through resistance to the irrational exploitation and to the meager benefits, which they believe do not compensate for the damage that the mining causes; forced displacements as a result of the expansion of the mines, the rupture of the social fabric, the cultural identity and the relationships to the land, desecration of cemeteries and lands that are sacred to the peasant, indigenous and Afro-descendant communities, an increase in violence and the presence of illegal armed actors, violation of rights such as the right to prior consultation and to be informed, health problems, and (c) economic effects (impact on productive and subsistence activities of the communities adjacent to the mines, transformation of the productive supply, shifting the dynamic so that it centers around the mining activity, increased poverty in the communities, displacement of other economic sectors, revaluation of the exchange rate, labor exploitation of women, children and men). Jesuit Refugee Service, *¿Cuánto vale la tierra? Minería y megaproyectos. Informe preliminar sobre su impacto en el desplazamiento en Colombia [How much is land worth? Mining and megaprojects. Preliminary report on their impact on displacement in Colombia]*, June 2012, pp. 22-23.

<sup>1067</sup> Information provided at the meeting with civil society, held in Quibdó on December 5, 2012. The Commission received information to the effect that the laws regulating exploration and extraction of resources were reportedly in a legal limbo as a result of the fact that in judgment C-366/2011, of May 11, 2011, the Constitutional Court had declared the Mining Code (Law 1382 of 2010) unenforceable. Jesuit Refugee Service. *¿Cuánto vale la tierra? Minería y megaproyectos. Informe preliminar sobre su impacto en el desplazamiento en Colombia [How much is land worth? Mining and megaprojects. Preliminary report on their impact on displacement in Colombia]*, June 2012, p. 7.

<sup>1068</sup> UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, paragraph 78, citing the Constitutional Court, Judgments T 955 of 2003, 175 of 2009 and 769 of 2009.

<sup>1069</sup> International Verification Mission on the situation of human rights protection in Colombia, November 28 to December 2, 2011, p. 11.

<sup>1070</sup> UN, Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under Article 9 of the Convention: Concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia*, 75th session, 28 August 2009, CERD/C/COL/CO/14, para. 20.

<sup>1071</sup> The State reported that consultations have been conducted on Annex IV.C.1-1 of the National Development Plan and Decree-Law 4633, the regulations governing the Victims Law; plans are to conduct the prior consultation on the decree that will regulate Andean Decision 391 of 1996 and Law 165 of 1994 on the subject of access to genetic resources, their derivative products, protection of traditional knowledge and a just and equitable share of the profits obtained from their use; the amendment to Law 99 of 1993, which regulates Regional Autonomous Corporations, the Law on Land and Rural Development and the Law on Indigenous Territorial Entities, and others. Ministry of Foreign Affairs of Colombia, *Document titled "Indigenous and Afro Peoples"*, received by the IACHR on May 3, 2013. For its part, civil society indicated that the procedure followed in connection with Law 1448 was inadequate, as the Afro-Colombian communities were not consulted beforehand; furthermore, issuance of a decree with the force of law is not sufficient to resolve the question of prior consultation. AFRODES, *Información de Violación Desproporcionada de los Derechos Fundamentales de las Comunidades*

consultation process itself poses some difficulties, specifically whether the entire Afro-Colombian population has to be consulted or only those tribal communities that maintain a special relationship with their territory. It also pointed out that there is no legislation or regulation on the consultation mechanism, namely: who to consult, when, for how long, who finances the process, who is consulted and what are they consulted about.<sup>1072</sup> The State said that work was underway on a draft Statute to govern the entire consultation process –taking each and every possible case and particulars into account; the bill is now in the stage of the legislative process referred to as “socialization” [a process whereby the public is made familiar with a bill].<sup>1073</sup> For his part, the Quibdó Ombudsperson stated that there are no guarantees of prior consultation and that the State does not have clear mechanisms about whom to consult concerning return policies –the existing population or the displaced population.<sup>1074</sup>

657. In this regard, it was observed that under Colombian law, there are two types of prior consultation: (i) consultation with environmental licensing, governed by Law 99 of 1993 and Decree 1320 of 1998, and viewed as part of the environmental licensing process, which comes under the authority of the Ministry of the Environment, Housing and Territorial Development. Through its Office of the Director of Ethnicities, the Ministry of the Interior conducts working meetings to familiarize the public on the issue, to identify environment impacts, measures and finally establish protocols; and (ii) consultation without environmental licensing, governed under Law 21 of 1991 and Decree 200 of 2003, which is headed by the Office of the Director of Ethnicities and which may or may not involve a related environmental procedure.<sup>1075</sup>
658. The Commission was also informed about a bill titled “Law on participation and representation for Black, Afro-Colombian, *Raizal* and *Palenquera* Communities,” whose purpose is to recognize these communities’ basic right to ethnic identity. It also provides for a number of affirmative action measures in education and research, political participation, democracy, labor, business and economic and social development and territorial integrity. The bill also foresees new forums of representation and institutions, such as the Chamber of Black, *Raizal* and *Palenquera* Collective Subjects and the National Executive Board of Afro-Colombian Organizations.<sup>1076</sup>
659. However, civil society has said that it would be improper, and even contrary to ILO Convention 169, to establish a single model for prior consultation, since each people has different interests,

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*Afrocolombianas* [Information on the Disproportionate Violation of the Afro-Colombian Communities’ Fundamental Rights], December 4, 2012, p. 2.

<sup>1072</sup> Information provided at the meeting with officials from the Ministry of the Interior, held in Bogotá on December 3, 2012.

<sup>1073</sup> Ministry of Foreign Affairs of Colombia, *Document titled “Indígenas Afros” [Indigenous and Afro Peoples]*, received by the IACHR on May 3, 2013.

<sup>1074</sup> Information provided at the meeting with officials, held in Quibdó on December 5, 2012.

<sup>1075</sup> UNDP, *Afrocolombianos. Sus territorios y condiciones de vida* [Afro-Colombians. Their lands and living conditions]. Cuaderno del Informe de Desarrollo Humano Colombia 2011. p. 51. It has also been observed that under Decree 1320 of 1998 prior consultation is required when a project or activity is proposed on lands under the collective ownership of an Afro-Colombian community, or permanently inhabited by communities even if they do not have property titles. It established consultation procedures which included the participation of representatives of Afro-Colombians, the Ministry of Interior, the Ombudsperson’s Office and the Procurator General’s Office. UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, paragraph 80. However, the Constitutional Court declared this decree unconstitutional because it was not consulted beforehand. Another law, Presidential Directive 001 aimed at establishing a general framework for prior consultation, may not be sufficient. Indigenous and Afro-Colombian peoples were reportedly not consulted regarding the draft bill. UN. Committee on Economic, Social and Cultural Rights, 44th session. Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant. Concluding Observations of the Committee on Economic, Social and Cultural Rights. Colombia, E/C.12/COL/CO/5, June 7, 2010, para. 9.

<sup>1076</sup> Ministry of the Interior: *Borrador de Proyecto de Ley Estatutaria [Statutory Law Bill]*.

ways of communing with their territory, cultural development, uses and customs, models for decision-making and internal participation, institutions, representation models and models for exercise of government.<sup>1077</sup> In the specific case of the bill, it was observed that: (i) it provides that consultation will only be required in the case of measures that directly affect the peoples, and disregards the interrelationship between prior consultation and other rights; (ii) it limits the prior consent requirement to just two scenarios (loss of land or destruction of the environment); (iii) it does not offer any real guarantees to those who have been victims of forced displacement and who, despite having a close kinship to their land, have been forced to remain in the cities; (iv) the procedure by which these territories are identified operates through the “Single National Ethnicity Registry” (RUNE), based on a study of ancestral sanctity done by the Colombian Institute of Anthropology and History; (v) black communities who do not have collective title and Afro-Colombians in the cities are excluded; (vi) the Working Group on Prior Consultation it creates is the only body for consultation, and is entirely alien to the communities’ representation systems.<sup>1078</sup>

660. On the other hand, the Commission finds other difficulties as well, related to effective and adequate representation of and participation by Afro-descendant persons and communities. The Independent Expert on Minority Issues wrote that the manipulation or co-opting of community leadership and Community Councils creates divisions within Afro-Colombian communities with the aim of acquiring land.<sup>1079</sup> In the specific case of the community councils, she pointed out that the leaders of Buenaventura and Suárez complained that their Community Councils were being denied registration, effectively denying them the right to claim collective land title and to be consulted over megaprojects. The Independent Expert said that civil society believes that the reason is to benefit those representatives that are more favorable to land expropriation.<sup>1080</sup> On that basis, the Expert concluded that there has been a lack of recognition and respect for Afro-Colombian leadership and decision-making structures and credible evidence of the manipulation or co-opting of Community Councils, often leading to divisions within communities.<sup>1081</sup>
661. Civil society has also observed that as a representation mechanism, Interior Ministry’s Transitory Resolution 0121 of 2012 sets up a transitory venue in which black, Afro-Colombian, *raizal* and *palenquera* communities can be represented, but it does not determine how long the temporary venue will exist and restricts it to those Afro-Colombian communities that have collective title to their lands; furthermore, they were not consulted on the resolution beforehand.<sup>1082</sup>
662. The Commission observes with concern that legal and practical obstacles still exist that obstruct effective recognition and enjoyment of Afro-Colombians’ rights to their lands. On the matter of prior consultation, the IACHR reiterates that, with the Afro-descendant communities’ full participation, the Colombian State must establish legislative and other measures necessary

<sup>1077</sup> CODHES, *Análisis: Borrador de Proyecto de Ley Estatutaria de Consulta Previa: El límite a los derechos de los pueblos étnicos [Analysis: Bill for a Statutory Law on Prior Consultation: the boundary on ethnic peoples’ rights]*, September 27, 2012, p. 4.

<sup>1078</sup> CODHES, *Análisis: Borrador de Proyecto de Ley Estatutaria de Consulta Previa: El límite a los derechos de los pueblos étnicos [Analysis: Bill for a Statutory Law on Prior Consultation: the boundary on ethnic peoples’ rights]*, September 27, 2012.

<sup>1079</sup> UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, para. 68.

<sup>1080</sup> UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, para. 75.

<sup>1081</sup> UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, para. 100.

<sup>1082</sup> CODHES, *Análisis: Borrador de Proyecto de Ley Estatutaria de Consulta Previa: El límite a los derechos de los pueblos étnicos [Analysis: Bill for a Statutory Law on Prior Consultation: the boundary on ethnic peoples’ rights]*, September 27, 2012, p. 7.

to give effect to their right to prior consultation, done in good faith, and their right to give their free, informed and prior consent, in keeping with international human rights standards. Finally, the Commission must point out that the State has an obligation to respect the Afro-descendant communities' forms of organization and put into practice appropriate mechanisms for dialogue, participation and coordination.

## 6. Effective implementation of the public policies adopted

663. The Commission has established that the mere enactment of laws, without any practical effect, is no guarantee that rights will be fully enjoyed and exercised.<sup>1083</sup> The Commission points out that, in the Colombian case, the country has been a pioneer in the constitutional and jurisprudential recognition of the rights of Afro-descendant persons and communities and in setting affirmative action measures in motion. In particular, the State referred, *inter alia*, to the efforts undertaken by the Ministry of Defense to prevent violations of the rights of Afro-Colombian communities, through the implementation of the Ministry's Integrated Human Rights Policy and DIH, and the development of strategic "Lines of Action", including differentiated attendance measures for vulnerable populations, strengthening links between the Security Forces and the ethnic groups, and specialized training programs for members of the Security Forces.<sup>1084</sup>
664. Without prejudice to the foregoing, as the Commission has already observed, based on the information it has received these policies have reportedly not been implemented to any meaningful extent and the Afro-descendant population in Colombia still lives in extreme inequality and invisibility and repeatedly suffers violations of its basic rights to dignity, property, non-discrimination and even the right to life.<sup>1085</sup>
665. Similarly, while the UN Independent Expert on Minority Issues acknowledged that an institutional framework exists to formulate policies to protect the rights of ethnic groups,<sup>1086</sup> she also commented that consultations with officials revealed that implementation of all the policies currently remains at the planning stages<sup>1087</sup> and consultations are poor, implementation weak, resources inadequate and sufficient tangible results are not being delivered.<sup>1088</sup> She also expressed concern over the fact that the structural causes that perpetuate discrimination persist and over the fact that the policies calling for special measures are not matched by sufficient resources, even at the departmental and municipal levels, and their implementation is not properly supervised.<sup>1089</sup> She also noted that the

<sup>1083</sup> See, *inter alia*, IACHR, Report No. 36/09 (Admissibility and Merits), Case No. 12,440 *Wallace de Almeida* (Brazil), March 20, 2009, paragraphs 147, 148; IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, para. 68.

<sup>1084</sup> Colombia's observations on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, paras. 366-369.

<sup>1085</sup> IACHR, Press Release 144A/12, *IACHR'S Preliminary Observations on Its Onsite Visit to Colombia*, Annex to Press Release 144/12 issued at the completion of its onsite visit to Colombia, December 7, 2012. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2012/144A.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/144A.asp).

<sup>1086</sup> UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, para. 7.

<sup>1087</sup> UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, para. 30.

<sup>1088</sup> UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, para. 32.

<sup>1089</sup> UN, Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia*, 75th session, 28 August 2009, CERD/C/COL/CO/14, para. 18.

reparations program does not provide economic compensation for crimes involving property rights or collective violations of the rights of communities.<sup>1090</sup>

666. During the visit, Afro-Colombian civil society complained about the failure to implement public policies and emphasized that the mandates given by the Constitutional Court have still not been fulfilled.<sup>1091</sup> They pointed out that the budgetary appropriation is insufficient. They also pointed to other obstacles having to do with business interests and legal interests in the lands they occupy. They were particularly convinced that institutions do not want to serve the population that declares itself “in resistance” and remains on the land; they also said that health care is poor. In the case of Law 1448, civil society observed that: (i) a differential approach would not be applied; (ii) participation venues would not be respected, and (iii) the humanitarian assistance and housing subsidy would be inadequate.<sup>1092</sup>
667. The Commission states once again that it appreciates the efforts made by the State and notes the many laws<sup>1093</sup> and programs created<sup>1094</sup> to protect the rights of Afro-descendant persons in Colombia. However, given that the implementation of the public policy adopted appears to have incipient progress, the Commission is urging the State to redouble its efforts and adopt the measures necessary to ensure that all Afro-Colombians’ human rights are effectively protected and that they are able to enjoy their rights to the fullest.

## Recommendations

668. Given the observations made in this section, the Commission is recommending that the Colombian State:
1. 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-descendant persons are able to exercise their rights on an equal footing with the rest of the population.

<sup>1090</sup> UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, para. 59.

<sup>1091</sup> UN, Human Rights Council, 16th session, Report of the Independent Expert on Minority Issues, Gay McDougall. Addendum. Mission to Colombia. A/HCR/16/45/Add.1, January 25, 2011, para. 66.

<sup>1092</sup> Information provided at the meeting with Afro-Colombian organizations, held in Bogotá on December 4, 2012.

<sup>1093</sup> See, *Compendio legislativo para población Afrocolombiana, Negra, Palenquera y Raizal* [Legislative compendium for the Afro-Colombian, Black, Palenquera and Raizal Population. Information available [in Spanish] at: <http://wsp.presidencia.gov.co/afrocolombianos/programa/Paginas/normativa.aspx>.

<sup>1094</sup> As for the institutional question, the State also mentioned the Office of the Director for Black, Afro-Colombian, *Raizal* and *Palenquera* Community Affairs; the Office of the Special Ombudsperson for Ethnic Minorities, under the Office of the Ombudsperson; the Office of the Prosecutor Delegate for Human Rights and Ethnic Groups, and the Inter-sectoral Commission for the Advancement of the Black, Afro-Colombian, *Palenquera* and *Raizal* Peoples. On the question of public policy, the State mentioned the National Development Plan 2010-2014; passage of Law 1482 of 2011 (the “Anti-discrimination Act”); the launch of the “AFROUNIDOS” strategy in November 2011; the announcement of the creation of an observatory against racial discrimination; inclusion of an ethnic differential approach in the document Conpes 3726 of 2012; the steering work for the definition of the “Strategy of Institutional Intervention with a Differential Approach”; the Differential Approach Subcommittee’s inclusion of the strategic objectives in the operating plan; instruction to Registry personnel on the dynamics of damages and problems caused to each ethnic group; a workshop held to include the differential ethnic approach in the Territorial Assistance Plan of the municipalities and department of Chocó; socialization of ethnic public policy at the national meeting of incoming municipal officials. As for getting the ethnic differential approach introduced across the board in the implementation of Decree 4635, which regulates Law 1448, the State reported that the following were conducted: workshops for the territorial agencies; instructive campaigns; socialization workshops; roundtables; documents for dissemination, and others. Ministry of Foreign Affairs of Colombia, *Document titled “Indigenous and Afro Peoples”*, received by the IACHR on May 3, 2013.

2. 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.
3. Adopt programs to compile disaggregated statistics on the Afro-descendant population, distinguishing men from women, girls from boys.
4. Urgently adopt positive measures with a gender approach, to examine the multilayered discrimination that Afro-descendant women suffer and their particular needs.
5. Implement suitable mechanisms for prior consultation on all measures affecting Afro-descendant persons and ensure that the communities are able to enjoy their lands free of any form of interference.
6. Make progress on the effective implementation of the many policies and programs created to ensure the rights of the Afro-descendant population, while guaranteeing suitable mechanisms of participation and representation.

## ***B. Violence against Children and Adolescents***

669. The internal armed conflict that Colombia has endured for the last five decades has had a profound impact on the country's children and adolescents, who have suffered multiple violations of their human rights. The IACHR must once again point out that children are an especially protected group under international humanitarian law and international human rights law, and are part of the most vulnerable group in a context of violence. The Commission has followed the special situation of children and adolescents in Colombia and in this chapter will touch upon some of the major challenges that they face in the internal armed conflict.

670. Children and adolescents are victims of multiple direct violations of their rights, such as forced recruitment, extrajudicial executions and forced disappearances, rape and forced displacement. But they also suffer the indirect consequences of the armed conflict, such as difficulty in getting access to basic essential services like health care, education, and drinking water; their family environment also suffers in multiple ways. Taken together, these factors make them more vulnerable to armed actors, with the result that these children and adolescents can fall victim to new violations, such as forced recruitment. Amid this scenario, Afro-descendant and indigenous children and adolescents are disproportionately affected by the armed conflict and are therefore especially vulnerable. The Report of the United Nations Secretary-General to the Security Council, dated March 21, 2012, points out that the armed conflict has mainly been fought on Afro-Colombian and indigenous lands.<sup>1095</sup>

<sup>1095</sup> See, UN, Security Council, Report of the Secretary-General on children and armed conflict in Colombia. S/2012/171, March 21, 2012.

671. The IACHR is aware that violence against children in Colombia is a complex problem, and any State policy designed to confront it must be comprehensive and cover prevention as well as assistance and rehabilitation. The IACHR will examine the issues separately, although this is a vicious circle of violence in which all factors are both causes and effects. Breaking this circle of violence requires implementation of State policies for study, identification and prevention, aimed at determining the opportune moments to intervene and then assist and rehabilitate the children and adolescents.
672. Given the serious and systematic violations of their rights, the IACHR urges the State to consider the incorporation of action plans on serious violations of the rights of children and other commitments for the protection of children in any dialogue or peace accord. On that regard, United Nations Secretary General established that “Ceasefire agreements and peace processes have been strategic instruments with which to engage armed forces and armed groups on child protection concerns.”<sup>1096</sup> He added that: “Ensuring the inclusion of child protection provisions in peace agreements so as to, among others, regulate the release and reintegration of children formerly associated with armed forces or armed groups can provide a useful framework to deepen dialogue between parties and child protection partners.”<sup>1097</sup>

## 1. Information received concerning state policies

673. The Commission takes note of the fact that the State has designed a public policy for the assistance and compensation of victims of the conflict, including children and adolescents, with a broad reach in terms of assistance and care, as well as full reparation, prevention, protection, truth and justice. The State has also pointed out that this public policy is in line with the overlapping approaches of i) the Single Victims’ Registry and the National Information Network ii) returns and relocations; iii) National-territorial Integration within the National Government; and iv) Participation Guidelines.<sup>1098</sup> The State also pointed out that since issuing Decree 0552 of March 15, 2012, and also taking into account UN Security Council Resolution 1612 of 2005, the prevention of sexual violence in the context of the internal armed conflict has been successfully included as a component of public policy. Also the “Inter-Sectoral Commission for the Prevention of Recruitment, Use and Exercise of Sexual Violence against Children and Adolescents by Illegal Groups and Organized Criminal Gangs” was strengthened and its members increased from ten to 23 entities representing all sectors, institutions and programs with direct relevance in the area.<sup>1099</sup>
674. During the visit, the Office of the General Prosecutor presented extensive information concerning its monitoring authority in the area of public policy. Additionally, the Delegated Attorney’s Office for the Defense of the Rights of childhood, adolescence and family referred to the directives 001, 002, and 003 of 2012, related to the evaluation of public policies on the issue of children, adolescents and youth, and the inclusion of women’s rights and the rights of

<sup>1096</sup> UN, Security Council, Children and Armed Conflict, Report of the Secretary-General. A/67/845-S/2013/245, 15 May, 2013. Paras. 15 and 16

<sup>1097</sup> UN, Security Council, Children and Armed Conflict, Report of the Secretary-General. A/67/845-S/2013/245, 15 May, 2013. Paras. 15 and 16.

<sup>1098</sup> Colombia’s observations on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, paras. 393-394.

<sup>1099</sup> State of Colombia, *Avances en Materia de Derechos Humanos*; and Colombia’s observations on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, para. 396.

the family in the 2012-2015 development plan<sup>1100</sup>. Moreover, he also referred to the obligation of the new municipal administration to follow the legal requirements when appointing police chiefs and establishing family police precincts;<sup>1101</sup> and the request to various authorities to comply with the public policies for the integral protection of children and adolescents who are victims of the internal armed conflict, especially, on their recruitment and use by organized armed groups operating outside of the law and organized crime groups.<sup>1102</sup> The Attorney's Office also highlighted that it led the process of public accountability at the territorial level to guarantee the rights of children, adolescents and youth, which required the assessment and analysis of 1025 municipalities, 30 capital cities, 32 departments and the Capital District of Bogotá.<sup>1103</sup>

675. For its part, the Victims' Unit explained that children and adolescents orphaned by the armed conflict are being assisted at the Modalidad Hogar Gestor With Support Unit, while the objective of the strategy of the Family Integration Unit is to provide differential attention to families who are victims of forced displacement with boys and girls under the age of 4 years and 11 months, pregnant women and nursing mothers.<sup>1104</sup> In this respect, it stated that between January and August 2013, the ICBF assisted 176 girls and adolescents<sup>1105</sup> orphaned in the context of the armed conflict, through the *Modalidad Hogar Gestor*; and 15 girl and adolescents<sup>1106</sup> victims of MAP, MUSE and AEI in the context of the armed conflict, also through the *Modalidad Hogar Gestor*.<sup>1107</sup> As for land restitution, it was indicated that the ICBF has introduced special projects involving the active search of orphan children in eastern Antioquia<sup>1108</sup> and in Recetor (Casanare); in the area of rehabilitation, a protocol and assistance procedure is reportedly being developed to help boys, girls and adolescents separated from the armed conflict and who are victims of sexual violence.<sup>1109</sup> In its observations on the Draft Report, the State pointed out that the document was in the process of approval and that other

<sup>1100</sup> Office of the Attorney General of the Nation, Office of the Attorney Delegate for the Defense of the Rights of the Child, Adolescent and Family, *Informe para la Comisión Interamericana de Derechos Humanos [Report for the Inter-American Commission on Human Rights]*, December 2012. Directive 001 of 2012.

<sup>1101</sup> Office of the Attorney General of the Nation, Office of the Attorney Delegate for the Defense of the Rights of the Child, Adolescent and Family, *Informe para la Comisión Interamericana de Derechos Humanos [Report for the Inter-American Commission on Human Rights]*, December 2012. Directive 002 of 2012.

<sup>1102</sup> Office of the Attorney General of the Nation, Office of the Attorney Delegate for the Defense of the Rights of the Child, Adolescent and Family, *Informe para la Comisión Interamericana de Derechos Humanos [Report for the Inter-American Commission on Human Rights]*, December 2012. Directive 003 of 2012.

<sup>1103</sup> Office of the Attorney General of the Nation, Office of the Attorney Delegate for the Defense of the Rights of the Child, Adolescent and Family, *Informe para la Comisión Interamericana de Derechos Humanos [Report for the Inter-American Commission on Human Rights]*, December 2012.

<sup>1104</sup> Victims Assistance and Comprehensive Reparations Unit, *Informe sobre implementación de la Ley de Víctimas y Restitución de Tierras para la garantía de los derechos de las víctimas del conflicto armado en Colombia [Report on implementation of the Victims Assistance and Land Restitution Act to guarantee the rights of the victims of the armed conflict in Colombia]*. In loco visit of the Inter-American Commission on Human Rights, December 2012, p. 58.

<sup>1105</sup> It indicated that, according to ICBF data, in all, 94 are recognized as having ethnic backgrounds, 22 are Afro-Colombians and 72 are indigenous; and were assisted in the Departments of Antioquia, Bogotá D.C., Chocó, Nariño and Valle.

<sup>1106</sup> It indicated that, according to ICBF figures, in total, two are indigenous, and the age range shows a victim of between 0 and 5 years, seven victims between 7 and 12 years, and seven victims between 13 and 17 years of age. It indicated that they were assisted in the Departments of Antioquia, Arauca, Bogotá D.C., Meta, Tolima and Valle.

<sup>1107</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, paras. 398 and 399.

<sup>1108</sup> In this regard, it stated that between January and August 2013, 205 girls and adolescent victims were assisted in the Department of Antioquia through the active search mechanism. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, para. 398.

<sup>1109</sup> Victims Assistance and Comprehensive Reparations Unit, *Informe sobre implementación de la Ley de Víctimas y Restitución de Tierras para la garantía de los derechos de las víctimas del conflicto armado en Colombia [Report on implementation of the Victims Assistance and Land Restitution Act to guarantee the rights of the victims of the armed conflict in Colombia]*. In loco visit of the Inter-American Commission on Human Rights, December 2012, pp. 106, 107.



measures had been adopted, such as: i) the building of a Reconciliation Policy on behalf of children and adolescents; ii) the adaptation of guidelines for the assistance of children and adolescents victims of the illegal recruitment, pursuant to Law 1448; and iii) in general, the establishment of a separate procedure to provide full reparations to children and adolescents victims of the armed conflict.<sup>1110</sup>

## 2. Forced recruitment of children and adolescents

676. The Commission has received repeated reports concerning the practice of forced recruitment of boys, girls and adolescents by illegal armed groups in Colombia,<sup>1111</sup> it is observed with concern that the boys and girls are still being involved in the war as adults. Although some interventions and assistance programs of the State have provided their support for the release and reinsertion into civil life of a great number of boys and girls, others have return to their homes by their own means and usually with great difficulties, specially in the case of girls who generally suffer stigmatization from their communities, in particular those who had children, who also suffer the rejection of the communities. In this respect, the State has emphasized that since 1999, the ICBF has established the Specialized Program for Care of Victims of the armed conflict, "which attends to children and adolescents victims of illegal recruitment, restores their rights and contributes to ensuring full reparations for them."<sup>1112</sup> The IACHR has observed that there are several factors that contribute to the recruitment of boys and girls; while some look forward to enroll voluntarily, among other reasons to escape from an abusive or violent family, or to be among pairs, others are kidnapped and forced to participate in the conflict. Whichever the cause is, these boys and girls see their childhood truncated, and are exposed to atrocities and constant manipulations. The Commission observes with concern that the effects of the constant exposition to violence and other abuses that the boys and girls suffer when they are related to armed groups persist over time and require effective and prolonged policies of support from the State.

677. This shows that there is a need to implement effective prevention policies. As noted by the State in the Document CONPES 3673 "the more security, enjoyment of rights and strengthened protective environments, the lower the risk of recruitment and use of this population by armed groups." In this sense, the objective of this document of the National Council on Economic and Social Policy of July 19, 2010, was to establish an operational plan to prevent the forced recruitment of boys and girls. Among other things it established the Observatory on Recruitment, Use and Sexual Violence<sup>1113</sup> and the Supervision and Reporting Mechanism on children and armed conflict<sup>1114</sup>. Another objective is the implementation of multiple activities and programs, including the Conduct of Community Operational Matrix Porvenir, against

<sup>1110</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, para. 400.

<sup>1111</sup> CICR, *Humanitarian Situation. Report on the Activities in Colombia 2011*, p. 40.

<sup>1112</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, para. 401.

<sup>1113</sup> At the national level, the Technical Secretariat for the Intersectoral Commission for the prevention of recruitment, use and sexual violence against children and adolescents by armed groups outside the law and organized criminal groups, attached to the Presidential Program for Human Rights and IHL, advances in the design of the Observatory for the Prevention of recruitment, Use and sexual violence, which includes monitoring the actions of national institutions signers of the document CONPES 3673 2010.

<sup>1114</sup> In December 2008, Colombia voluntarily agreed -as it is not a situation scheduled on the agenda of the Security Council-, 'to adopt the Monitoring and Reporting Mechanism on Children and Armed Conflict established by resolution 1612 (2005) of the Security Council. The development of this mechanism is led by the United Nations: UNICEF and UNDP are the chairs of the Special Team in charge of its implementation.

forced recruitment of children and adolescents, and the development of the program "Open Your Eyes"<sup>1115</sup>.

678. Although these programs constitute an advance, according to the UN Secretary General, in 2012 the widespread and systematic recruitment and the use of children by non-state armed groups was documented. He added in his report of 2013 that "although the overall scope and magnitude remain unknown, the work team in the country reported 300 cases of recruitment and use in 23 of the 32 departments and in Bogota".<sup>1116</sup> He also indicated that while the guerrillas (FARC and ELN) tend to recruit children mainly in rural areas, other non-state armed groups as Los Rastrojos or Urabeños (illegal armed groups that emerged after the demobilization of paramilitary organizations); recruit them mostly in urban areas. In this regard, he indicated that the recruitment age begins at 9 years.<sup>1117</sup>
679. The Commission notes that, according to the International Committee of the Red Cross, "a child associated with an armed force or armed group, refers to any person under 18 who have been recruited or used by an armed force or armed group in any type of function, including but not limited to, boys and girls used as combatants, cooks, carriers, messengers, spies or for sexual purposes. It does not only refer to a boy or girl who is participating, or has participated directly in hostilities".<sup>1118</sup> In this sense, the Ombudsman, in a document cited by the CONPES 3673 established that: "The recruitment can be defined as the permanent involvement of boys, girls and adolescents with armed groups outside the law and the use of their involvement as transitory or sporadic. Both behaviors are violations of the human rights of children and the armed groups perform them through acts of subtraction, recruitment, transportation, transfer, threat, abduction, fraud, deception, abuse of power, abuse of a situation of vulnerability, use of force or other forms of coercion, or through the offer of payment or benefits, among others".<sup>1119</sup>
680. It is important to highlight that the regulatory framework of International Humanitarian Law provides that all recruitment, including voluntary recruitment or enlistment of children under 15 is prohibited<sup>1120</sup>. Also the Statute of the International Criminal Court of July 17, 1998, includes in the list of war crimes the participation of children in hostilities, and their recruitment into national armed forces and other armed groups in situations of non-international armed conflict. (Article 8 (2) e. vii).

<sup>1115</sup> This program was developed through educational, recreational and awareness activities on the subject of "Preventing the Recruitment and Use of Children and Adolescents by organized groups Margin of Law", achieving 3,629 actions and 93,449 beneficiaries (boys, girls, adolescents and adults); among these results, there was a participation of the Interactive Bus of the Metropolitan Police in Bogota, Medellin, Villavicencio, Cúcuta, Bucaramanga, Barranquilla and Police Departments in Norte de Santander, Magdalena, Santander, Bolívar, Atlántico, Magdalena, Guajira, Sucre, Cesar and Meta, with 128 actions and 3,090 beneficiaries. Seventh Report of Recommendations and Voluntary Commitments of Colombia within the frame of the Universal Periodic Review, p. 185. Available at: <http://www.derechoshumanos.gov.co/epu/Documents/septimo-informe-seguimiento-EPU.pdf>.

<sup>1116</sup> UN, Security Council, Report of the Secretary-General on children and armed conflict A/67/845-S/2013/245, May 15, 2013 para.173.

<sup>1117</sup> See, UN, Security Council, Report of the Secretary-General on children and armed conflict in Colombia. S/2012/171, March 21, 2012.

<sup>1118</sup> International Committee of the Red Cross, *Child Soldiers and other children associated with armed forces and armed groups*, August, 2012. Citing the Paris Principles: *Principles and Rules on children associated to the armed forces or armed groups*, February of 2007, available at <http://childrenandarmedconflict.un.org/es/nuestro-trabajo/los-principios-de-paris/>.

<sup>1119</sup> Source: Analysis on the risk of recruitment and use of boys, girls and adolescents, unpublished document of the National Ombudsman's Office with the support of OIM and UNICEF.

<sup>1120</sup> See Additional Protocol I to the Geneva Conventions of 1977, dated June 8 of 1977, Art. 77 (2) y Additional Protocol II Article 4 (3) (c).

681. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict increased this minimum age to 18 years<sup>1121</sup> and Colombian criminal law also establishes the age at 18 years. For its part, the Convention 182 of the International Labour Organization concerning the worst forms of child labor, establishes in its Article 3: "the term the 'worst forms of child labor comprises': (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt servitude and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict, (b) the use , procuring or offering of a child for prostitution, production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular production and trafficking of drugs as defined in the relevant international treaties, and (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children<sup>1122</sup>. In this regard, the State pointed out that "Colombia did not deal with the issue of forced recruitment in the context of the 1982 Convention since the use and recruitment of children referred to in this international instrument is confined to ordinary criminal activities and cross-border organized crime. Forced recruitment as such, due to its own context in the armed conflict, is dealt with in accordance with the rest of the norms referred to." <sup>1123</sup>
682. Article 1 of the referred Protocol establishes the obligation of States parties to adopt all the measures possible to ensure that none of the members of their armed forces under 18 years takes a direct part in hostilities. For its part, Article 4 establishes that armed groups distinct from the armed forces of a State should not, under any circumstance, recruit or use in hostilities persons under 18 years and the obligation of States parties to adopt all the measures possible to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.
683. In compliance with legal regulations, the States (including Colombia) adopted in 2007 the Paris Principles and Commitments, in which some commitments were made, such as: take the measures necessary to comply with the referred instruments, especially the protocol; to seek the release of all boys and girls recruited or used unlawfully by armed groups; to fight against impunity; to effectively investigate and prosecute persons who have unlawfully recruited and to ensure that the boys and girls under 18 who are or have been recruited or used illegally by armed forces or groups and who are accused of crimes, are considered primarily as victims of violations of international law and not as suspects<sup>1124</sup>.
684. According to the State, illegal recruitment of children and adolescents has been a crime with very few complaints and recruiters punished. It indicated that from November 19, 1999 to March 31, 2012, the ICBF's Program of Specialized Attention for Children and Adolescents

<sup>1121</sup> See UN, General Assembly, Resolution A/Res/54/263 of May 25 2000, and Optional Protocol to the Convention on the Rights of the Child on the participation of children in armed conflicts. Entry into force: February 12, 2002.

<sup>1122</sup> Ratified by Colombia on January 28th 2005.

<sup>1123</sup> Colombia's observations on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, para. 404.

<sup>1124</sup> The Paris Principles and Commitments: Commitments to Paris February 2007, available at <http://childrenandarmedconflict.un.org/es/nuestro-trabajo/los-principios-de-paris/>. According to Conpes 3672, The Principles "related to an initiative to support the Paris Commitments to protect boys and girls recruited or used by armed forces and groups, conducted in February 2007. The Principles are not a binding legal instrument for the Colombian State, but are an international reference in the issue of prevention of recruitment. At the same time, the Paris Principles are an update of the Cape Town Principles and Best Practices for the Prevention of Recruitment of Boys and Girls in Armed Forces and related to the Demobilization and Reintegration to Social Child soldiers in Africa ("The Principles Cape Town"), adopted in 1997. They are regarded as complementary to the Integrated Standards of the United Nations on Disarmament, Demobilization and Reintegration (IDDRS, for its acronym in English).

Separated from the Armed Conflict has assisted 4,868 boys, girls and adolescents, from which 12% are members of ethnic groups.<sup>1125</sup> The State pointed out that from November, 1999 to October, 2013, the Program assisted 5,352 children and adolescents, of whom 13.8% belonged to ethnic groups. It also observed that 156 out of the total number were children and adolescents formerly belonging to BACRIMS, 3,206 to the FARC, 1,054 to the AUC, and 808 to the ELN.<sup>1126</sup> From the total of children separated from the armed conflict, 17% were recovered by the government forces and 83% left voluntarily. During that period of time, the highest number of separations involved children recruited by the FARC, accounting for 59%, followed by children recruited by the AUC, at 22%; and in third place were children recruited by the ELN, who represented 15%. In the same way, of the total, 72% were boys and 28% were girls; and nearly 71% have not achieved the last year of elementary school.<sup>1127</sup> The report of the Secretary General to the Security Council on children in the armed conflict, indicates that from the 5,075 children assisted by the ICBF (as of December 2012), only 25 judgments had been issued for the recruitment of children, 3 of them under the Justice and Peace Law, and 22 issued by the National Human Rights Unit of the National general Attorney's Office.<sup>1128</sup>

685. According to the information provided by the State in the Universal Periodic Review,<sup>1129</sup> the following numbers reflect “the general statistics on child recruitment as of August 31, 2012: cases assigned: 238; cases opened: 191; cases in preliminary stage: 76; cases in pre-trial stage: 115; persons charged: 227; persons for whom an arrest warrant was issued: 237; persons formally accused: 64; persons with indictments: 63; persons formally charged: 1; cases at trial: 6; cases with convictions: 50; regular verdicts: 31; early verdict: 19; persons affected by the verdicts of conviction: 48.”
686. At the beginning of 2013, a research study was published titled “*Como corderos entre lobos*” [“Like Lambs among Wolves”], based on the testimonies of nearly 500 boys, girls and adolescents separated from the irregular armed groups in Colombia. The said investigation was placed by the IACHR in the site of the Center of Historic Memory and has the support of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. According to the research, at least 18,000 children and adolescents have been recruited as combatants by illegal armed groups in Colombia and approximately 100,000 more work in sectors of the illegal economy that depend on the guerrilla groups and drug-trafficking gangs with a paramilitary past. Between 2008 and 2012, as established in the report, the recruitment in urban areas had increased in a 17%. In these areas they are forced to take up arms at around age 12. Among the most affected capital cities an increase of forced recruitment was registered in Bogota in a 304%; Medellín in 229%, and Valledupar in 141%. The report recounts that the regions where children and adolescents are most vulnerable to forced recruitment are the Gulf of Urabá, Magdalena Medio, the mountainous area of Antioquía, the foothills of Amazonas, Catatumbo, the Colombian Massif

<sup>1125</sup> National Economic and Social Policy Council, *Document Conpes 3276*, May 30, 2012, p. 10.

<sup>1126</sup> Colombia's observations on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, paras. 405 and 426.

<sup>1127</sup> National Economic and Social Policy Council, *Document Conpes 3276*, May 30, 2012, p. 10.

<sup>1128</sup> UN, Security Council, Report of the Secretary-General on children and armed conflict A/67/845-S/2013/245, May 15, 2013 para. 181.

<sup>1129</sup> Seventh Report of Recommendations and Voluntary Commitments of Colombia in the framework of the Universal Periodic Review, p. 210. Available [in Spanish] at: <http://www.derechoshumanos.gov.co/epu/Documents/septimo-informe-seguimiento-EPU.pdf> submitted on January 21, 2013.

and the Pacific coast. It is highlighted that on the Pacific coast, a third of the children and adolescents recruited are indigenous, which is approximately 5,000 children.<sup>1130</sup>

687. A report from the Watchlist organization, dated April 2012, indicates that the recruitment tactics used by the FARC (which reportedly intensified their recruitment campaigns due to the pressure they have to rapidly replenish their troop ranks since the government increased its counter-insurgency campaigns) include the use of children to lure their friends into joining and to make surveys in the villages to identify children who will later be recruited; all of this in addition to the economic and work incentives offered. The report also indicates that those who try to refuse or to escape face the risk of being mutilated, tortured or killed. The report recounts that the paramilitary groups also recruited children and then used them as combatants and that, during the demobilization process, the requirement under which the children had to be handed over as a condition for participating in the process was never enforced. As a result, thousands of children and adolescents were left missing and unprotected. Many of them would become part of what the State refers to as emerging criminal gangs. The report states that the Colombian Army has not recruited children and adolescents as combatants, but would have used them as informants and spies to gather intelligence. In the same way, it would have involved them in the conflict by means of civic-military campaigns, which are particularly harmful to children because these expose them to reprisals by armed groups.<sup>1131</sup> In this respect, the State pointed out that Directive 048 of 2008 provides for the express prohibition on “employing children and adolescents in intelligence gathering operations” and these provisions are included in all workshops and instructions distributed to members of the Armed Forces.<sup>1132</sup> Without prejudice to the foregoing, the IACHR observes that the information gathered by civil society organizations and other international mechanisms is consistent in emphasizing the existence of such a practice.
688. The Ombudsman’s Office confirmed that the armed groups operating outside the law recruited and used children and adolescents in 27 of the 32 departments of Colombia, and that such recruitment was done when the children were between the ages of 5 and 17 years.<sup>1133</sup> In reference to the departments of Meta, Guaviare, Guainía and Vichada, the Ombudsman’s Office indicated that, regarding armed groups as a potential risk source, the FARC were identified as the source in every risk situation, whereas the illegal armed groups that emerged after the demobilization of paramilitary organizations were identified as the source in 24 of the 25 risk situations.<sup>1134</sup>

<sup>1130</sup> Centro de memoria histórica, *Como Corderos entre Lobos*. Information available at: <http://www.centrodememoriahistorica.gov.co/index.php/noticias/748-como-corderos-entre-lobos->. Book COMO CORDEROS ENTRE LOBOS. DEL USO Y RECLUTAMIENTO DE NIÑAS, NIÑOS Y ADOLESCENTES EN EL MARCO DEL CONFLICTO ARMADO Y LA CRIMINALIDAD EN COLOMBIA, 2012 by Natalia Springler. (This publication enjoys the support of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression).

<sup>1131</sup> Watchlist on children and armed conflict, Report “*No One to Trust. Children and Armed Conflict in Colombia.*” April 2012, p. 4. Available at: <http://watchlist.org/wordpress/wp-content/uploads/Watchlist-ColombiaReport-LR.pdf>.

<sup>1132</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, paras. 416-417.

<sup>1133</sup> Ombudsperson’s Office, *Informe Especial de riesgo sobre reclutamiento y utilización ilícita de Niños, Niñas y Adolescentes en el Sur Oriente Colombiano: Meta, Guaviare Guainia y Vichada* [Special Report on the danger of illegal recruitment of children and adolescents in Southeastern Colombia: Meta, Guaviare Guainia and Vichada], November 2012, p. 47.

<sup>1134</sup> Ombudsperson’s Office, *Informe Especial de riesgo sobre reclutamiento y utilización ilícita de Niños, Niñas y Adolescentes en el Sur Oriente Colombiano: Meta, Guaviare Guainia y Vichada* [Special Report on the danger of illegal recruitment of children and adolescents in Southeastern Colombia: Meta, Guaviare Guainia and Vichada], November 2012, p. 50.

689. The Commission observes the complexities implied by the determination of children and adolescents as victims in trials under the 1448 Act. On the one hand, regarding the temporal scope of the Act and, on another hand, in the debate on the possibility that victims of illegal armed groups formed after demobilization processes can access the repair mechanisms of the Act. In this regard, the Commission takes into account the jurisprudential criteria developed by the Constitutional Court (the Constitutional Court ruled that victims of forced displacement by the actions of criminal gangs and demobilized from illegal armed groups should benefit by the regulations related to attention, assistance and reparation established in the 1448 Law), especially in its judgments C-253A of March 29, 2012 and C-718 of October 10, 2012, and the assessment criteria for the inscription on the Unique Victims Register. In this context, the IACHR welcomes the additions that have occurred in the RUV for warrants available, for example, in cases concerning the actions of the "Bacrim" (see *supra* para. 221).

690. Moreover, the Commission notes that in the case of children and adolescents linked to armed actors, the 1448 Act provides a temporal limitation to access the reparation mechanisms, that is, that they have demobilized before reaching adulthood. This aspect was examined by the Constitutional Court in its judgment 253A of March 29, 2012, establishing that:

[T] he scope of the law is that demobilized children in such capacity are recognized as victims per se. When demobilization occurs after reaching the age majority, they do not lose the status of victim, derived, first, from the circumstance of forced recruitment, but in that case it imposes the accreditation of that fact to access to the special programs on demobilization and reintegration, in which it will be necessary to undertake a policy that takes into account the situation of children and the limitations that they have to leave the groups outside the law.

691. In light of the aforementioned, the Commission reiterates its views on the importance that the State to adopt a broad perspective for the determination of the victims to have access to the mechanisms of the 1448 Act and expresses its concern for the consideration for the demobilized children and adolescents and the incidence of illegal armed groups that emerged after the demobilization of paramilitary organizations, in terms of gaining access -on equal terms and in compliance with the reinforced obligations of protection from the State- to the reparations of the Law 1448.

692. The above taking into consideration, that in the process of demobilization of the AUC only 391 children and adolescents were formally released. In this regard, in 2007 the UN Secretary General expressed that:

every time there is a greater concern about allegations of violations and abuses committed against children by new illegal organized armed groups. These groups, such as las Aguilas Negras [the Black Eagles], Manos Negras [Black Hands], Organizacion Nueva Generacion [New Generation Organization] y los Rastrojos [the stubble], are very involved in criminal activities primarily related to drug trafficking. The Government believes that these groups are criminal gangs. In June 2007, it was reported that, in the city of Cartagena, in the department of Bolivar, the group Black Eagles had coerced children to join their ranks. In the reporting period, complaints have also been received about the recruitment and use of children by the other three groups mentioned above in the department of Valle del Cauca and the city of Cartagena, in Bolívar, and the city of Medellin, in Antioquia. Furthermore, the two illegal armed groups outside the demobilization process that appear in my 2006 report, namely, the Self-Defense Forces of Casanare and the Cacique Pipinta Front, only partially demobilized, and it is believed that they still have children in their ranks. The

severity of the violations, that, according to denounces received, these groups commit, is very real and requires the adoption of serious measures to improve the protection of children.<sup>1135</sup>

693. Additionally, the Secretary General mentioned that "According to official figures, in 2006, 63 children were demobilized AUC, compared with 17,581 adults. However, those children were not handed over officially, as required by the collective demobilization process, and it is feared that there are children who have not been included in this process. According to the Colombian Family Welfare Institute, in the same period, another 32 children were demobilized individually"<sup>1136</sup>
694. In this sense, the Watchlist organization recounts in its report the testimony of former paramilitary leader Freddy Rendón Herrera, alias "El Alemán" [the German], who was convicted on December 16, 2011 in the Justice and Peace proceeding for child recruitment, among others, who reportedly stated that the paramilitary group "Elmer Cárdenas" had sent all the children and adolescents back home rather than hand them over to the ICBF.<sup>1137</sup> Additionally, the study "as lambs among wolves" details "AUC recruiters interviewed stated that during the first contact period, it was decided "not to deliver children" because this could lead to serious legal obstacles and of legitimacy of the AUC for the fate of these boys and girls, they answered that the majority "were sent back to their places of origin," they have news that "many associated in the establishment of criminal gangs", or were to the service of the "commanders of the fronts that did not participate in the peace process". Also some of them were "discarded", "missing" or "we went out of them" because, in their view, they constituted a "serious danger to society" and for "the stability of the peace process" or "they knew too much"<sup>1138</sup>.
695. The UN Secretary General expressed his concern that Afro-Colombian and indigenous children are particularly vulnerable to the massacres and forced displacement when refusing to be recruited, because their communities are especially affected by the armed conflict. He also reported that the United Nations had documented incidents in which children were used for intelligence purposes by members of the Colombian Armed Forces, in violation of the National Criminal Code, the Code on Children and Adolescents (Law No. 1098) and the directives of the Ministry of National Defense; the subjection to interrogatories of the captured children of the illegal armed groups, or of those who had been released or had escaped from them; as well as the non-compliance with the 36-hour deadline to hand over the children to civilian authorities. He also expressed his concern for the use of children in civic and military activities and the subsistence of programs such as the Club de Lancitas [the little soldiers club]<sup>1139</sup>. Quoting the Commission for Monitoring the Public Policy on Internal Displacement in Colombia, he

<sup>1135</sup> UN, Report of the Secretary General to the Security Council, December 21st 2007. Paras. 116 y 117. Available at: <http://daccessddsny.un.org/doc/UNDOC/GEN/N07/656/07/PDF/N0765607.pdf?OpenElement>

<sup>1136</sup> UN, Report of the Secretary General to the Security Council, December 21st 2007. Paras. 116 y 117. Available at: <http://daccessddsny.un.org/doc/UNDOC/GEN/N07/656/07/PDF/N0765607.pdf?OpenElement>

<sup>1137</sup> Watchlist on children and armed conflict, Report "No One to Trust. Children and Armed Conflict in Colombia," April 2012, p. 17. Available at: <http://watchlist.org/wordpress/wp-content/uploads/Watchlist-ColombiaReport-LR.pdf>.

<sup>1138</sup> Historic Memoir Center. Document available at: <http://www.centrodememoriahistorica.gov.co/index.php/noticias/748-como-corderos-entre-lobos->. Book COMO CORDEROS ENTRE LOBOS. DEL USO Y RECLUTAMIENTO DE NIÑAS, NIÑOS Y ADOLESCENTES EN EL MARCO DEL CONFLICTO ARMADO Y LA CRIMINALIDAD EN COLOMBIA, [Like Lambs Among Wolves. On the Use and Recruitment of Boys, Girls and Adolescents Within the Frame of the Armed Conflict and Criminality in Colombia], 2012 by Natalia Springler. (This publication has the support of the UN Special Rapportur on the promotion and protection of the right to freedom of opinion and expression, para. 157.

<sup>1139</sup> UN, Security Council, Report of the Secretary-General on children and armed conflict in Colombia. S/2012/171, March 21, 2012, p. 15.

emphasized that in 2008, some 2,600 displaced families denounced the recruitment as the cause of their displacement. Without prejudice to the above, the State pointed out that the Colombian authorities have ensured “strict compliance with the time limits [established to hand over children and adolescents] disbanded or recovered from illegal armed groups; and that in those cases where the time limit has not been met, consideration should be given to elements of security and to effective access to hard-to-reach areas.<sup>1140</sup>

696. The Commission emphasizes, as it has on several occasions, that forced recruitment is one of the main causes of forced displacement in Colombia and elsewhere, and it is associated with multiple violations of the rights of children and adolescents, such as disappearances, murders, torture, sexual violence and others.
697. Additionally, the Human Rights Committee expressed its concern on the recruitment of children and adolescents by illegal armed groups, especially by the FARC-EP and the ELN, as well as the fact that security forces continue to use children in military civic acts, such as the “Soldier for a Day” program, and performs interrogatories on children in order to gather intelligence.<sup>1141</sup> For its part, the Committee on the Rights of the Child abhorred that the illegal armed groups continue to recruit and use children in a generalized form, and deeply regretted that despite having made commitments not to recruit children under the age of 15 years, both the FARC-EP and the ELN continue to commit those war crimes. Likewise, the Committee expressed its concern that children who refused to be recruited were killed or forcibly displaced and that Afro Colombian and indigenous children were particularly vulnerable.<sup>1142</sup>
698. The Commission takes note of the information provided by the State on the prevention policies in the area, principally adopted by the National Defense Ministry in coordination with other authorities, as a member of the Inter-Sectoral Commission for the Prevention of Recruitment.<sup>1143</sup> However, the IACHR points out that during the visit, it received information, in particular, on the continuing the use of children and youth for micro trafficking and drug trafficking, activities reportedly done with the knowledge of the State authorities, but without undertaking any effective action to this respect.<sup>1144</sup> In that sense, they highlighted that due to the lack of alternatives and offers from the State, the youth was easily coopted to participate in these structures. From another part, they indicated that, in some cases, the ICBF reports not having enough space to provide remedy to the situation of the recruited children.<sup>1145</sup>
699. The IACHR received information indicating that the number of children and adolescent soldiers continues to be alarming, although there are no exact figures as to how many there are. (*Watchlist*, for example, estimates somewhere between 5,000 and 14,000 children and

<sup>1140</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140, of December 2, 2013, para. 409.

<sup>1141</sup> UN, Human Rights Committee, 99th session, Consideration of reports submitted by States parties under article 40 of the Covenant. Concluding observations of the Human Rights Committee. Colombia. CCRP/C/COL/CO/6, August 6, 2010, para. 24.

<sup>1142</sup> UN, Committee on the Rights of the Child, Consideration of Reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Concluding observations: Colombia, 54th Session, CRC/C/OPAC/COL/CO/1, June 21, 2010, paragraph 26.

<sup>1143</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140, of December 2, 2013, paras. 410-412, 414, 415.

<sup>1144</sup> In this respect, the State also pointed out that it has strengthened the inter-institutional action to confront this crime, principally by extending the Inter-Sectoral Commission’s mandate to include “the prevention of recruitment by organized criminal gangs”, in accordance with Decree 552 of 212. Colombia’s observations on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140, of December 2, 2013, para. 419.

<sup>1145</sup> Information provided at the meeting with civil society, held in Quibdó on December 5, 2012.



adolescents<sup>1146</sup>). The State pointed out that there is a public policy on the prevention of recruitment headed by the Vice President's Office with the support of UNICEF which is present in 145 areas in Colombia: 139 municipalities, and in six locations in Bogota.<sup>1147</sup> It also made clear that the Inter-Sectoral Commission "has become a place for inter-institutional dialogue in the implementation of risk reports and early warnings made by the Ombudsman's Office."<sup>1148</sup> However, de acuerdo the Ombudsman's Office established that in several risk situations identified by the Ombudsman's Office through the early warning system, the practice of illegal recruitment and use by the armed groups in the territories object of the warning is evident, and the competent authorities have ignored complaints and risk reports, producing as a result an increase of this phenomenon and a refusal of the relatives and the community to denounce out of fear of retaliations.<sup>1149</sup>

700. The Ombudsman's Office observes in the said report that, although all the necessary legislative measures are in place to prevent this crime and punish those responsible for the serious violations committed against children and adolescents, it is necessary that the competent public authorities undertake in a substantial way the measures necessary to prevent this heinous crime, measures that involve the institutions in charge of the administration of justice, of seriously investigating with the available means the violations committed within their jurisdiction in order to ascertain the facts, punish those responsible and redress the victims.<sup>1150</sup>
701. The Report of the National Economic and Social Policy Council established that the challenge, according to the Inter-sectoral prevention policy, is to break and transform the paradigm that considers the children and adolescents as minors without legal standing, objects or things. This means, among other things, involving them in matters that concern and affect them and instructing them as holders of rights and, therefore, responsible for their exercise.<sup>1151</sup> Accordingly, any program the State conducts must involve the active participation of children and adolescents.

### 3. Demobilization of children and adolescents

702. The CNRR has written that:

[i]n contrast to the limited number of minors actually separated from the armed conflict by the AUC, and because many of them are not eligible or legally registered for reintegration programs, illegal recruitment of boys, girls and adolescents is still a powerful force that

<sup>1146</sup> Watchlist on children and armed conflict, Report "No One to Trust. Children and Armed Conflict in Colombia," April 2012, p. 4. Available at: <http://watchlist.org/wordpress/wp-content/uploads/Watchlist-ColombiaReport-LR.pdf>.

<sup>1147</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, para. 422.

<sup>1148</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, para. 422.

<sup>1149</sup> Ombudsperson's Office, *Informe Especial de riesgo sobre reclutamiento y utilización ilícita de Niños, Niñas y Adolescentes en el Sur Oriente Colombiano: Meta, Guaviare Guainia y Vichada* [Special Report on the danger of illegal recruitment of children and adolescents in Southeastern Colombia: Meta, Guaviare Guainia and Vichada], November 2012, p. 32.

<sup>1150</sup> Ombudsperson's Office, *Informe Especial de riesgo sobre reclutamiento y utilización ilícita de Niños, Niñas y Adolescentes en el Sur Oriente Colombiano: Meta, Guaviare Guainia y Vichada* [Special Report on the danger of illegal recruitment of children and adolescents in Southeastern Colombia: Meta, Guaviare Guainia and Vichada], November 2012, p. 33.

<sup>1151</sup> National Economic and Social Policy Council, *Document titled Conpes 3673*, July 19, 2010, p. 81.

enables armed groups to expand their ranks, prohibited forms of labor and other illegal activities that adversely affect them.<sup>1152</sup>

703. The Committee on the Rights of the Child has pointed out that the figures on the number of children demobilized from paramilitary groups are incomplete.<sup>1153</sup> It specifically noted the very low number of children, less than 400, released during the demobilization of paramilitary groups and observed that the comprehensive surrender of all children recruited by illegal armed groups is an essential condition that must be met in order to claim the legal benefits offered under Law 975. It also pointed out that in practice, there is impunity regarding illegal recruitment.<sup>1154</sup> The Committee also expressed its concern for the use of boys and girls as spies in intelligence activities, as well as their subjection to interrogatories when they have been captured or demobilized, and the insufficiency of the guarantees to protect the confidentiality of information provided by children to the ICBF.<sup>1155</sup>
704. During the visit, the Colombian Family Wellness Institute -ICBF indicated that it has assisted more than 140 children separated from armed groups, regardless of the group.<sup>1156</sup> It also said that in 2012, the National Army had recovered 35 boys, girls and adolescents recruited by illegal armed groups, who were then handed over to the Colombian Family Welfare Institute (ICBF) as required by law, since the ICBF is the institution in charge of their subsequent recovery, rehabilitation and reintegration.<sup>1157</sup> In its observations on the Draft Report, the State submitted that during 2013, 277 children and adolescents left the groups and that in 2012, 264 disbanded children and adolescents joined the Special Assistance Program.<sup>1158</sup> For its part, the Office of the General Prosecutor reported that the procedure for assisting demobilized children and adolescents to restore their rights had three thematic prongs: (i) the General Policy on Restoration of the Rights of Children and Adolescents; (ii) dropping cases against demobilized children and adolescents; and (iii) administrative procedures to restore the rights of this group.<sup>1159</sup>

<sup>1152</sup> CNRR, *La reintegración: logros en medio de rearmes y dificultades no resueltas, II Informe de la Comisión Nacional de Reparación y Reconciliación* [Reintegration: achievements in the midst of rearming and unresolved problems, II Report of the National Reparation and Reconciliation Commission, DDR Area, August 2010, p. 27.

<sup>1153</sup> UN, Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Concluding observations: Colombia. 54th Session, CRC/C/OPAC/COL/CO/1, June 21, 2010, para. 16.

<sup>1154</sup> UN Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Concluding Observations: Colombia, 54 period of sessions, CRC/C/OPAC/COL/CO/1, June 21, 2010, para. 30.

<sup>1155</sup> UN, Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Concluding observations: Colombia. 54th Session, CRC/C/OPAC/COL/CO/1, June 21, 2010, para. 39.

<sup>1156</sup> In its observations on the Draft Report, the State repeated that the ICBF offers protection to all children and adolescents when requested, “without discriminating against the illegal armed group to which they belonged,” and since September 2007, the State pointed out that it had assisted 145 children and adolescents formerly belonging to BACRIMs. On this point, the State observed that since Constitutional Court’s Order No. 119 of June 24, 2013 “all victims of BACRIM are being included in the Single Victims’ Register”. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, para. 406.

<sup>1157</sup> Seventh Report of Recommendations and Voluntary Commitments of Colombia in the framework of the Universal Periodic Review, p. 181. Available [in Spanish] at: <http://www.derechoshumanos.gov.co/ePU/Documents/septimo-informe-seguimiento-EPU.pdf>.

<sup>1158</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, para. 426.

<sup>1159</sup> Performance Report of the Office of the Prosecutor Delegate for the Defense of the Child, Adolescent and Family (2009-2012), p. 6.

705. The IACHR notes that according to the Paris Principles, "demobilization" implies the controlled and official separation of the active combatants in the armed forces or other armed groups. The first stage of demobilization may include the transferring of individual combatants to temporary centers until the large-scale relocation of the troops in camps designed for this purpose. The second stage of demobilization encompasses a group of support measures offered to the demobilized [adults], which is called reinsertion. For their part, they understand "reintegration of boys and girls" as the process by which the transition of boys and girls to civil society is initiated, and the adoption of valid functions and identities as civilians who are accepted by their families and communities in the context of local and national reconciliation. This process aims that boys and girls can enjoy their rights, including the formal and informal education, the family unity, a decent livelihood and security against any kind of danger.<sup>1160</sup>

706. The State also mentioned that the ICBF has assisted 2,105 children and adolescents after their separation from illegal armed groups within the frame of the Special Program for Children and Adolescents who Separate from the Armed Groups Operating Outside the Law, from January 2008 to November 2012 (53.3% were placed in a socio-family setting and 46.627% were placed in an institutional modality).<sup>1161</sup> According to the information received by the IACHR, children placed in an institutional setting live in a transitional home for the first three months before being transferred to specialized care centers. During that time, the children's families are generally not allowed to visit them or to influence their reintegration process. This would produce re-adaptation problems when the child or adolescent returns to his/her family, especially because the children are frequently transferred far from their communities, as the regional and departmental offices do not have the facilities to offer protection programs. However, the family-based programs, however, would have much less economic resources and would be much more limited than the institutional programs.<sup>1162</sup>

707. In another hand, the United Nations Secretary-General reported that a problem concerning the programs related to the activities of the ICBF is the lack of access given to children separated from non-State armed groups that emerged after the demobilization of paramilitary organizations. Children separated from these groups have not received the same assistance for their reintegration; in contrast, many have been referred to the Office of the Attorney General in the Judicial Power for their association with what the Government considers to be emergent criminal gangs.<sup>1163</sup> The Secretary General indicated that "the lack of information on the cases submitted to the Office of the General Attorney, and the few trials of these boys, girls and adolescents continue to be a challenge."<sup>1164</sup>

708. In this regard, the Commission received information about the detention and imprisonment of children and adolescents, with or without criminal charges on the grounds that they are considered to constitute an alleged threat to national security by the mere fact of belonging to

<sup>1160</sup> The Paris Principles and Commitments: The Commitments of Paris February 2007, Available at: <http://childrenandarmedconflict.un.org/es/nuestro-trabajo/los-principios-de-paris/>. Principles 2.8 y 2.9.

<sup>1161</sup> Seventh Report of Recommendations and Voluntary Commitments of Colombia in the framework of the Universal Periodic Review, p. 181. Available [in Spanish] at: <http://www.derechoshumanos.gov.co/epu/Documents/septimo-informe-seguimiento-EPU.pdf>.

<sup>1162</sup> Watchlist on children and armed conflict, Report "No One to Trust. Children and Armed Conflict in Colombia," April 2012, p. 20. Available at: <http://watchlist.org/wordpress/wp-content/uploads/Watchlist-ColombiaReport-LR.pdf>.

<sup>1163</sup> UN, Security Council, Report of the Secretary-General on children and armed conflict in Colombia. S/2012/171, March 21, 2012, p. 15.

<sup>1164</sup> UN, Security Council, Report of the Secretary-General on children and armed conflict A/67/845-S/2013/245, May 15, 2013 para. 181.

an armed group, especially those who are "captured" during military operations. In this respect, the IACHR emphasizes the provisions of the Paris Principles, in the sense that it is necessary to consider the boys and girls accused of crimes under international law, allegedly committed while they were associated with armed forces or armed groups, as victims of crimes against international law and not only as perpetrators of such acts. It is necessary to treat them according to international law within a framework of restorative justice and social rehabilitation that is consistent with international law, which offers children special protection through numerous agreements and principles.<sup>1165</sup>

709. The Commission notes that there is a high number of girls associated with armed groups and that, although there are common elements between the circumstances and experiences of girls and boys, the situation of the girls may be very different in terms of the reasons, and the way in which they join forces or armed groups, the potential for release, the effects that the experience of being in an armed force or armed group has on their physical, social and emotional wellness, and the consequences that this may have on their ability to adapt successfully to civilian life or reintegrate into family and community life after release.<sup>1166</sup> Because of this, the State must ensure that this situation is visualized in its programs and that appropriate measures and plans are adopted to address it. In this respect, the IACHR takes note of the information provided by the State on the initiatives undertaken during 2013 relating to the drafting of the CONPES document aimed at highlighting the crime of illegally recruiting girls and adolescents, in light of the "differential and disproportionate impact on this population."<sup>1167</sup>
710. In this regard, the IACHR reiterates that reintegration programs should include all demobilized children and adolescents, regardless of their membership to a group. Additionally, the IACHR indicates that these programs should include, whenever possible, the families and communities of the girls and boys, in order to ensure a sustainable reintegration process and respectful of their rights.

#### 4. Right to life

711. The IACHR has closely followed forced disappearances in Colombia. In relation to boys, girls and adolescents, the IACHR received information that recounts that the disappearances continue to be a serious problem in the country and that these are perpetrated by various mechanisms: arbitrary detentions, taking of hostages or abductions, and also forced recruitment of children and adolescents. The IACHR observes that this is an issue that is still not adequately documented by the State, in one hand due to the difficulties and the fear to denounce them, and in another hand for not having an effective and reliable mechanism.
712. In this sense, according to the information provided by the *Fundación Nydia Erika Bautista*, citing information received by the National Institute of Legal Medicine which administers the National Registry of Missing and Disappeared Persons, the number of disappearances since

<sup>1165</sup> Paris Principles and Commitments: The Commitments of Paris February 2007, Available at: <http://childrenandarmedconflict.un.org/es/nuestro-trabajo/los-principios-de-paris/>. Principle 3.6.

<sup>1166</sup> Paris Principles and Commitments: The Commitments of Paris February 2007, Available at: <http://childrenandarmedconflict.un.org/es/nuestro-trabajo/los-principios-de-paris/>. Principle 4.0.

<sup>1167</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, para. 433.

1946 is 19,922.<sup>1168</sup> However, the Foundation indicates that, according to the National Registry of Missing and Disappeared Persons, as of January 2013, 81,000 cases of missing or disappeared persons had been reported, 17% of which were children and adolescents. Furthermore, in the Seventh Report of Advances on Recommendations and Voluntary Commitments of Colombia within the frame of the Universal Periodic Review, a total of 128,996 victims of forced disappearance were identified.<sup>1169</sup> In a document produced by the Institute of Legal Medicine and provided by the Fundación Nydia Erika Bautista (updated to March 22, 2011 at 10:44 a.m.), a total of 185 missing or disappeared boys and girls between the ages of 0 to 7 years were registered; 1459 children from 8 to 13 years of age; 4,487 from 14 to 17 and 10,139 between 18 and 25. The lack of reliable and specific information is a serious challenge for the State, and a great obstacle to investigate, prosecute and in certain cases, punish those who result responsible, apart from being a grave impediment to initiate adequate search mechanisms.

713. The IACHR observes that the internal armed conflict and socio-political violence are special risk contexts of forced disappearance of Afro-descendant, indigenous, poor or forcibly displaced children and adolescents; and that the various forms of disappearance tend to be related with other crimes, such as forced recruitment, extrajudicial executions and sexual exploitation.
714. The IACHR notes the Colombian State's efforts to deal with this enormous challenge, such as the enactment of Law 589 in 2000, which criminalizes forced disappearance; the creation of the Urgent Search Mechanism, established by Law 971 of 2005; the Law in Tribute to Victims of Forced Disappearance (Law 1408 of 2010) and the new Child and Adolescent Code (Law 1098 of 2006). The IACHR also welcomes the creation of the Inter-sectoral Commission to Prevent the Recruitment and Use of Children by Non-State Armed Groups, and the Report of the National Economic and Social Policy Council, which established the parameters of the public policy in relation to the prevention of forced recruitment of children by non-state armed groups as part of national and local development plans (CONPES 3673). Additionally, the Office of the Attorney General created a special unit for investigation of disappearances and forced a displacement that has 23 prosecutors, and the Ombudsman's Office created an early warning system. The State also pointed out the drafting of a *Policy of Reconciliation for Children and Adolescents*, designed to implement actions which "strengthen their protective environments: the family, school, institutions and the community."<sup>1170</sup>
715. Despite all the institutional effort, the IACHR received information indicating that forced disappearances continue to happen and there is a deficit in the register of missing and disappeared persons due to a lack of unification of the figures, a lack of complaints due to fear of retaliations, and a lack of identification of bodies that have been disinterred from common graves.
716. The aforementioned Seventh Report that Colombia prepared as part of the Universal Periodic Review, sets out the following figures concerning the investigation of cases of forced

<sup>1168</sup> On January 24, 2013, the *Fundación Nydia Bautista* sent an email asking the National Institute of Legal Medicine and Forensic Sciences about figures on forced disappearances. On January 25, the Institute answered and enclosed a list of figures adding up to 19,922 persons forcibly disappeared.

<sup>1169</sup> Seventh Report of Recommendations and Voluntary Commitments of Colombia in the framework of the Universal Periodic Review, available [in Spanish] at: <http://www.derechoshumanos.gov.co/epu/Documents/septimo-informe-seguimiento-EPU.pdf>.

<sup>1170</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140, of December 2, 2013, para. 436.

disappearance in the courts of ordinary jurisdiction,<sup>1171</sup> as of August 31, 2012: cases assigned: 334; cases opened: 320; cases in the preliminary stage: 127; cases in pre-trial stage: 173; persons for whom an arrest warrant has been issued: 111; persons accused: 311; persons provisionally charged: 317; persons formally charged: 4; cases at trial: 22; convictions: 195; ordinary verdicts: 133; early verdicts: 62; persons affected by the convictions: 182. The figures provided by the State show that the number of cases assigned is very small in comparison to the number of persons either missing or disappeared.

717. On this matter, the IACHR has received information indicating that there are serious obstacles in the access to justice for the relatives of the disappeared children and adolescents; in the determination of the whereabouts of the boys and girls and in the establishment of the truth, justice and redress, such as the premature closure of the criminal investigations; the lack of coordination between the Justice and Peace Unit and other Prosecutor's Offices; the threats that family members receive from the perpetrators, the lack of interest or attention of the authorities, and the absence of an institutional presence in the areas of greatest risk.<sup>1172</sup>
718. Children and adolescents continue to be victims in the hostilities between the Colombian armed forces and illegal armed groups, all of which include extrajudicial executions, massacres and deaths or mutilations caused by the explosion of anti-personnel mines or unexploded ammunition.
719. The information compiled by the United Nations Secretary-General indicates that in the years 2009 and 2010, 330 persons, including 27 boys and girls died in 68 massacres committed by non-State armed groups in 16 departments of the country.<sup>1173</sup> In its report of 2013, the Secretary-General indicated that there were children killed and mutilated in attacks carried out by non-state armed groups or in the crossfire between non-state armed groups and Colombia's security forces.<sup>1174</sup>
720. Anti-personnel mines and unexploded ordnance continue to have grave consequences on the civilian population, including children. The aforementioned report by the UN Secretary-General indicates that the practice of planting anti-personnel mines continues, mainly by the FARC and the ELN.<sup>1175</sup>
721. The IACHR has closely monitored the allegations of extrajudicial killings of civilians carried out by armed forces, whose victims include girls, boys and primarily adolescents, who were presented as guerrillas killed in combat. In this regard, the Committee on the Rights of the

<sup>1171</sup> Seventh Report of Recommendations and Voluntary Commitments of Colombia in the framework of the Universal Periodic Review, p. 210. Available [in Spanish] at: <http://www.derechoshumanos.gov.co/eju/Documents/septimo-informe-seguimiento-EJU.pdf>.

<sup>1172</sup> See, *inter alia*, Ombudsperson's Office, *Informe Especial de riesgo sobre reclutamiento y utilización ilícita de Niños, Niñas y Adolescentes en el Sur Oriente Colombiano: Meta, Guaviare Guainia y Vichada* [Special Report on the danger of illegal recruitment of children and adolescents in Southeastern Colombia: Meta, Guaviare Guainia and Vichada], November 2012; *Tierra de Hombres* and *Fundación Nydia Erika Bautista para los Derechos Humanos, Informe Preliminar, Colombia: ¿Dónde están nuestros niños Desaparecidos?*, [Preliminary Report, Colombia: Where are our disappeared children?], January 10, 2011.

<sup>1173</sup> UN, Security Council, Report of the Secretary-General on children and armed conflict in Colombia. S/2012/171, March 21, 2012.

<sup>1174</sup> UN, Security Council, Report of the Secretary-General on children and armed conflict A/67/845-S/2013/245, May 15, 2013, para. 175.

<sup>1175</sup> UN, Security Council, Report of the Secretary-General on children and armed conflict in Colombia. S/2012/171, March 21, 2012.

Child of United Nations expressed in 2010 its concern because it continued to receive complaints and there had not been measures adopted "sufficient to carry out investigations and impose sanctions on those responsible." It also expressed concern that the military justice system continues to claim competence on the related investigations<sup>1176</sup>.

722. In the aforementioned Seventh Monitoring Report submitted by the State within the frame of the Universal Periodic Review, and in relation to the recommendation of "tend towards effective prosecution of perpetrators; continue the investigation and prosecution of persons responsible for the death of innocent young men, who are related as guerrillas... ", it is established that given the number of processes that had been referred to the ordinary jurisdiction for competence, the military jurisdiction from the year 2008 to August 2011, had sent a total of 1163 investigations for the crime of murder. In relation to the "general killings statistics attributed to State agents until August 31, 2012", indicates that of 1,727 cases assigned, there are 229 convictions involving 601 people<sup>1177</sup>.
723. The information reflects a low rate of investigation and punishment of this crime. The IACHR received consistent information indicating that this issue also has a great documentation challenge because the vast majority of cases are not denounced, mainly for fear of reprisal and lack of state response to complaints.

## 5. Sexual violence against boys, girls and adolescents

724. The information the IACHR has received indicates that the problem of sexual violence against children and adolescents in connection with the conflict continues to be widespread and systematic in Colombia.<sup>1178</sup> The Constitutional Court of Colombia confirmed in the Order 092 of 2008, that "sexual violence, as well as sexual abuse and exploitation, is a routine, widespread, systematic and unreported practice in the context of the Colombian armed conflict, perpetrated by illegal armed groups and, in isolated cases, by individual agents of the Colombian armed forces." The Court verified the gravity and generalization of the sexual violence situation against women, young girls and girls who are recruited by armed groups operating outside of the law, sexual violence that includes in a repeated and systematic way: rape; forced reproduction planning; slavery and sexual exploitation; forced prostitution; sexual abuse; sexual slavery; from the chief or commanders; forced pregnancy; forced abortion; the transmit of sexually transmitted diseases; and the subjection of civilian women, young girls and girls to individual or collective sexual violations, abuses and harassments from members of the armed groups that operate in their region. The Constitutional Court also highlights that the impact of the acts of sexual violence against girls had increased, and that in the cases of sexual crimes committed within the frame of the armed conflict all of the persons under aged are victims, who occupy a disproportionate part of the total universe of known victims. In effect, according to the Women and Armed Conflict Working Group, on the basis of statistics from the National Institute of Legal Medicine, 42% of the reported victims of sexual

<sup>1176</sup> UN Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Concluding Observations: Colombia, 54 period of sessions, CRC/C/OPAC/COL/CO/1, June 21, 2010, para. 8.

<sup>1177</sup> Seventh Report of Recommendations and Voluntary Commitments of Colombia in the framework of the Universal Periodic Review, p. 210. Available [in Spanish] at: <http://www.derechoshumanos.gov.co/epu/Documents/septimo-informe-seguimiento-EPU.pdf>.

<sup>1178</sup> Amnesty International, Amnesty International 2012, *The state of the world's human rights*. Available at: [iles.amnesty.org/air12/air\\_2012\\_full\\_en.pdf](http://iles.amnesty.org/air12/air_2012_full_en.pdf).

violence are girls between 10 and 14 years of age<sup>1179</sup>. The Commission notes with concern that afro-Colombian and indigenous girls are specially vulnerable to be victims of these crimes.

725. Additionally, the Commission observes that the number of complaints alleging acts of sexual violence committed against boys and girls remain low, and there is no systematic collection of information, nor is there any official record of the number of cases of sexual violence perpetrated against children and adolescents. In this sense, many victims or their family members do not report the abuse for fear of reprisals from the perpetrators or because of a lack of confidence in the justice system or the State's protection.<sup>1180</sup> To the silence of the survivors, a lack of legal action on the cases that are reported is added. In this regard, the State informed the IACHR that during 2012, "it altered the ICBF's mission information system (SIM), in order to include the identification of sexual violence in the context of the armed conflict, as well as the guidelines of the Mobile Units' Single Register (RUUM) to identify cases of sexual violence in the armed conflict with a displaced population."<sup>1181</sup>
726. In the same sense, the figures provided by the State<sup>1182</sup> reflect a small percentage of prosecutions of the perpetrators of these crimes. The "general statistics on sexual violence as of August 31, 2012", indicates the existence of: cases assigned: 84; cases opened: 46; cases in the preliminary stage: 38; cases in the pre-trial stage: 8; persons for whom an arrest warrant was issued: 8; persons accused: 2; persons provisionally charged: 1; persons formally charged: 1; cases at trial: 2; convictions: 7; ordinary verdicts: 5; early verdicts: 2; persons affected by the convictions: 6.
727. In May 2012, the Secretary-General's Special Representative for Sexual Violence in Conflict visited Colombia, and urged the Colombian Government to fight impunity and implement the laws that have already been introduced to the legal framework of the country.<sup>1183</sup> In the report presented by women's and human rights organizations to the Representative, various cases are described in which girls were raped, and that fit patterns of discrimination in the country, such as racial discrimination and the vulnerability derived from forced displacement. The report also mentions cases of sexual violence committed against little girls by irregular armed groups and members of the public security forces. The Secretary-General's Special Representative for Sexual Violence in Conflict has described the sexual violence that armed groups commit against recruited girls as a vastly unreported and unnoticed crime.<sup>1184</sup>
728. During the visit, the Commission received information that indicates that farmer girls in Arauca grow up haunted by the idea that at any moment they can become victims because of the proximity of some armed group, legal or illegal. However, they indicate primarily a fear of the security forces, expressing a recurrent fear that becomes terror, and that is a situation that

<sup>1179</sup> Judgment available at <https://www.dnp.gov.co/LinkClick.aspx?fileticket=-VgnVLar9-w%3D&tabid=1080>

<sup>1180</sup> See, UN, Security Council, Report of the Secretary-General on children and armed conflict in Colombia. S/2012/171, March 21, 2012; figures provided by the State in the Seventh Report of Recommendations and Voluntary Commitments of Colombia in the framework of the Universal Periodic Review, p. 210. Available [in Spanish] at: <http://www.derechoshumanos.gov.co/epu/Documents/septimo-informe-seguimiento-EPU.pdf>.

<sup>1181</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, para. 439.

<sup>1182</sup> Seventh Report of Recommendations and Voluntary Commitments of Colombia in the framework of the Universal Periodic Review, p. 210. Available [in Spanish] at: <http://www.derechoshumanos.gov.co/epu/Documents/septimo-informe-seguimiento-EPU.pdf>.

<sup>1183</sup> Information available at: <http://www.unmultimedia.org/radio/english/2012/05/colombian-women-speak-up-against-sexual-violence/>.

<sup>1184</sup> UN, Report of the Secretary-General. Children and Armed Conflict, A/65/820-S/2011/250, April 23, 2011, paragraph 161.



conditions all of their related dynamics.<sup>1185</sup> This situation would also influence the clothes they wear, imposing clothing that will conceal their bodies for fear of being attacked, all of which leads to a sense of repression, inhibition and self-blame with respect to the violence committed against them.<sup>1186</sup>

729. The Secretary General of United National stated in its 2013 report to the Security Council that while the rates of the complaints are very low, girls continue to be victims of sexual violence by non-state armed groups. He adds that "a large proportion of sexual violence acts are perpetrated by criminal gangs called 'Bacrim'. Since the Government does not recognize these non-state armed groups that emerged after the demobilization process, victims of sexual violence committed by them must face great obstacles to access benefits under the Victims Compensation Act."<sup>1187</sup>
730. The Commission also received additional information concerning sexual violence in the schools, committed against young girls and teenage girls, which constitutes an aggravated form of sexual violence, inasmuch as it is committed in a place where the State has a direct role in children's special care and protection. The various types of institutional sexual violence include: (i) coerced sexual relations; (ii) rapes by school personnel; and (iii) sexual harassment and sexual blackmail (including asking for sexual favors in exchange for school grades).<sup>1188</sup> In this respect, it was indicated that this is a phenomenon for which there is no systematized data and no statistical records.<sup>1189</sup>
731. The IACHR takes into account and values the information provided by the State on the institutional effort undertaken by the authorities, in particular, the Ministry of Defense through cooperation and dialogue work with other authorities and organizations such as UNICEF. <sup>1190</sup> The Inter-American Commission also takes note that in its observations on the Draft Report, the State presented information on its initiatives to confront this situation, such as: i) enacting Law 1620 of 2013 ("establishing the National System for School Relations and Training for the Exercise of Human Rights, Sexual Education and the Prevention and Mitigation of Violence in Schools"); ii) the strategy promoted by the Presidential Program for Human Rights, together with the National Attorney General's Office and the High Council for Women's Equality, to "further cases identified as sexual violence"; iii) activities designed for the "prevention, detection and comprehensive assistance in cases of sexual violence against children, adolescents and indigenous women within their communities" iv) the agreements, diagnostic and training activities undertaken by the National Army in conjunction with UNICEF; and v) the development of a helpline for Special Groups within the population, in the context of which the Military Forces have undertaken to adopt "differentiated measures on behalf of these groups, including children and adolescents, by disseminating information on

<sup>1185</sup> *Humanidad Vigente, Impacto del conflicto armado en la vida de las niñas y adolescentes campesinas de Arauca* [Impact of the Armed Conflict on the lives of the peasant children and adolescents of Arauca], 2012, p. 27.

<sup>1186</sup> *Humanidad Vigente, Impacto del conflicto armado en la vida de las niñas y adolescentes campesinas de Arauca* [Impact of the Armed Conflict on the lives of the peasant children and adolescents of Arauca], 2012, p. 28.

<sup>1187</sup> UN, Security Council, Report of the Secretary-General on children and armed conflict A/67/845-S/2013/245, May 15, 2013 para. 176.

<sup>1188</sup> Women's link worldwide, *Violencia sexual al interior de instituciones educativas en Colombia: entre la invisibilidad y la impunidad* [Sexual violence inside educational institutions in Colombia: between invisibility and impunity], December 2012, p. 1.

<sup>1189</sup> Women's link worldwide, *Violencia sexual al interior de instituciones educativas en Colombia: entre la invisibilidad y la impunidad* [Sexual violence inside educational institutions in Colombia: between invisibility and impunity], December 2012, pp. 3-4.

<sup>1190</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140, of December 2, 2013, paras. 440, 443, 444, 447 and 449.

their rights through Directives and activities to internalize them.<sup>1191</sup> However, the IACHR reiterates once more that the information received during and after the visit confirms the situation described, which continues to be a matter of special concern.

## 6. Schools and access to education

732. In addition to poverty, a number of conflict-related factors have undermined the right of children and adolescents to education: the destruction, the occupation and the forced closure of schools; the scarcity of teachers because of the threats and attacks made against them; the anti-personnel mines and unexploded ordnance in and around the schools and school sidewalks; the abusive use of school areas for military propaganda and recruitment activities; and forced displacement. Added to the aforementioned there is a high level of violence, including student harassment.<sup>1192</sup> The IACHR observes that Colombian boys and girls have, as well as all the boys and girls of the hemisphere, the right to access an education. The schools, within the framework of an armed conflict, are also established as instruments to prevent forced recruitment and other serious violations of children's and adolescents' human rights. In this regard, the Commission reiterates that schools should serve as shelter for children and provide them protection. Therefore, their use for military purposes places children in a situation of risk of attacks and impedes the exercise of their right to education.
733. The IACHR received information regarding the attack of some schools during clashes between the Colombian military forces and non-State armed groups. It also received information about armed groups that had reportedly made teachers the targets of their attacks when they were trying to protect their students; this has forced the children to drop out of school and has obliged some schools to close their doors. In this sense, information was received establishing that between 1991 and 2011, 871 teachers were killed, nearly 3,000 threatened and 1070 forcibly disappeared. The reasons for the above would be that teachers are often the only State presence to protect students against armed groups.<sup>1193</sup>
734. In another hand, the United Nations Secretary General reported that in Arauca in June 2009, an indigenous teacher was killed by members of FARC-EP who shot him in front of his students. As a result, the entire indigenous community was internally displaced. In the same sense, citing the Observatory of the Presidential Program on Human Rights and International Humanitarian Law in 2010, the Secretary general indicated that 22 teachers were killed in 10 departments, and that illegal armed groups such as FARC, Los Rastrojos, Los Urabeños and Los Paisas had reportedly threatened teachers for leading some communitarian initiatives for the rejection of sexual violence and forced recruitment of boys and girls.<sup>1194</sup>

<sup>1191</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, of December 2, 2013, paras. 440, 443, 444, 447 and 449.

<sup>1192</sup> Report "No One to Trust. Children and Armed Conflict in Colombia." Watchlist on children and armed conflict, April 2012, Available at: <http://watchlist.org/wordpress/wp-content/uploads/Watchlist-ColombiaReport-LR.pdf>, p. 28.

<sup>1193</sup> Watchlist on children and armed conflict, Report "No One to Trust. Children and Armed Conflict in Colombia." April 2012, p. 4. Available at: <http://watchlist.org/wordpress/wp-content/uploads/Watchlist-ColombiaReport-LR.pdf>.

<sup>1194</sup> Report of the Secretary-General on children and armed conflict in Colombia. United Nations, Security Council. General Distribution, March 21, 2012. S/2012/171.

735. The information received by the IACHR indicates that the land mines and other unexploded ordinance abandoned near schools are a threat to the children and teachers alike.<sup>1195</sup> According to the Presidential Program for Comprehensive Action against Anti-personnel Mines, between January 1991 and February 2013, 780 boys and 221 girls were wounded or killed by anti-personnel mines.<sup>1196</sup>
736. The information submitted to the IACHR indicates that the protection program implemented by the Ministry of Interior for the teachers (a transfer and protection program) is expensive and sometimes causes additional security problems. The United Nations Secretary General reported that of the 600 teachers threatened, 282 were temporarily relocated, 38 left the country and 35 are waiting for the National Police to evaluate their danger situation.<sup>1197</sup> In the same sense, it indicates that in many departments it was reported that the National Army uses the schools with military purposes<sup>1198</sup>.

## 7. Birth registration and issuance of documents

737. During its visit the IACHR received information regarding the lack of birth registration of boys, girls and adolescents, and the multiple violations of their rights that occurred as a consequence of this lack of registration.
738. In this sense, the State informed through its report in the context of the Universal Periodic Review, that various measures had been adopted, such as identification workshops staged by the ICBF and the Office of the National Registrar. These workshops were conducted by the Vulnerable Population Assistance Unit –UDAPV- using mobile units, which constitute a complementary strategy to the activities performed in the 1.102 Municipal Register Offices of the country.
739. The information provided by the State indicates that these workshops target the ICBF's beneficiary population, vulnerable communities under siege, threatened, displaced, or at risk of being displaced by the internal armed conflict, affected by natural disasters and those located in remote parts of Colombia and that have difficulties to access their documents: it is clear that documents allow the access to rights and serve as a protection mechanism in areas where law enforcement is difficult. It added that 572,044 persons have been assisted since 2008.
740. The IACHR welcomes the State's efforts in this regard, however, according to the information received; this continues to be a problem, especially for isolated and displaced communities.

## 8. Child malnutrition

741. From the information reported by various media outlets in February and March 2012, the Commission learned that a four-year old girl, Yanelda Moña, who lived in the Municipality of Alto Baudó, Department of the Chocó, died of severe malnutrition. The news reports suggest

<sup>1195</sup> Report of the Secretary-General on children and armed conflict in Colombia. United Nations, Security Council. General Distribution, March 21, 2012. S/2012/171.

<sup>1196</sup> Website available [in Spanish] at: <http://www.accioncontraminas.gov.co/Paginas/AICMA.aspx>

<sup>1197</sup> UN. Security Council, Report of the Secretary-General on children and armed conflict in Colombia. S/2012/171, March 21, 2012, p. 15.

<sup>1198</sup> UN, Security Council, Report of the Secretary-General on children and armed conflict A/67/845-S/2013/245, May 15, 2013 para. 177.

that this is not an isolated case but that her death reflected a more general problem affecting indigenous boys and girls in that part of the country. According to information that is public knowledge, the Governor of Chocó had declared in March of 2012 that 12,000 boys and girls are currently suffering from malnutrition in that department and that 10,000 reportedly had not received any assistance from the State.<sup>1199</sup>

742. The high incidence of child malnutrition in the region has already been the subject of concern by the Commission in its annual reports. Thus, the Commission has been monitoring the situation since 2008 in its Annual Reports. In 2010, the Commission found that there had been no significant changes in the nutritional status of the boys and girls of the region, and highlighted the factors that contribute to food insecurity in the department, in the following terms:

One of the most serious consequences of poverty is the high incidence of child malnutrition among indigenous communities (...). The ONIC has reported, for example, that among the boys and girls of the village Guayabero (Jiw) the level of chronic malnutrition is 83.5%; it also reported that in the course of 2009, "there had become public the case of death from malnutrition of indigenous boys and girls in the communities of Embera Katío (Chocó), Wiwa (Guajira), Yukpa (Cesar), Wayuu (Guajira), and cases of high malnutrition levels in the Awa and Eperara Siapidaara villages in Nariño"; it has equally been reported this year that in the Kankuamos community, 12.9% of the child population between 0 and 6 years of age suffer from chronic malnutrition level II, the 6.22% suffer chronic malnutrition level III, and 19% is in serious risk of malnutrition.

Among the factors that threaten the food security of indigenous peoples the armed conflict stands out -in particular because of the restrictions imposed by the armed actors on traditional livelihood activities, on the food transit to and from the communities, for the appropriation of livelihood assets owned by the Indigenous people, or the effects of indiscriminate fumigation of the state on food crops<sup>1200</sup>.

743. In particular, in May of 2012, the Commission sent a request of information to Colombia regarding the problem of child malnutrition among the indigenous boys and girls in the department of Chocó, and specifically in the Municipality of Alto Baudó. On June 8, Colombia replied to the Commission's request for information by recounting the State policies at the national and departmental levels on the subject of food security, for which the Commission decided to continue to monitor the situation.
744. During the visit, the ICBF stated that there is a program on nutritional recovery and school meals, as well as initiatives oriented towards the prevention of child labor and forced recruitment of boys, girls and adolescents. In the same sense, it reported that starting in 2013 the ICBF will undertake a Transitional Food Program which will target households of victims of armed conflict in displacement situation, assisting the population on the issue of food in a temporary setting and providing a nutritional assessment to the members of the family, verifying the delivery of the assistance as well as providing guidance and instruction to the family.<sup>1201</sup>

<sup>1199</sup> UN, *Chocó se unió por los objetivos de desarrollo del Milenio* [Chocó unites around the Millennium Development Goals]. Information available [in Spanish] at: [www.pnud.org.co](http://www.pnud.org.co); *El Colombiano, Desnutrición Infantil, muy grave en 12 departamentos* [Child malnutrition very severe in 12 departments], March 2012.

<sup>1200</sup> IACHR, *Annual Report 2010*, paras. 169 – 171.

<sup>1201</sup> Victims Assistance and Comprehensive Reparations Unit, *Informe sobre implementación de la Ley de Víctimas y Restitución de Tierras para la garantía de los derechos de las víctimas del conflicto armado en Colombia* [Report on implementation of

745. For its part, the Office of the General Prosecutor reported that the prevalence of overall malnutrition among boys and girls of ages 0 to 17 years, had improved in 15 departments and had worsened in 8 departments, and that the percentage of children diagnosed with chronic malnutrition and retarded growth was better in 12 departments and worse in 11 departments. It also reported that grade repetition rates in secondary education had improved in 17 departments and had worsened in 8 departments; the coverage rate in secondary education had improved in 27 departments and worsened in 3; the grade repetition rate in basic secondary education had improved in 12 departments and worsen in 14 departments; the net coverage rate of basic secondary education improved in 24 departments and worsened in 6 departments; the grade repetition rate in basic primary education improved in 15 departments and worsened in 10; the net coverage rate of basic primary education improved in 14 departments and worsened in 16 departments; the percentage of boy and girls in early education improved in 23 departments and worsened in 5 departments; the morbidity rate improved in 20 departments and worsened in 10 departments; the immunization coverage with “DPT” among children under the age of one improved in 10 departments and worsened in 21 departments; coverage of triple viral vaccine immunization in children under the age of one improved in seven departments and worsened in 23 departments; the mortality rate among children under the age of five improved in 25 departments and worsened in 3 departments; the mortality rate among children under the age of one improved in 26 departments and worsened in 6 departments; the maternal mortality rate improved in 21 departments and worsened in 11 departments.<sup>1202</sup>
746. The IACHR recognizes the advances and efforts of the State in this matter; however, it reiterates its concern for the existence of this grave problem.

## **Recommendations**

747. Give the observations in this section, the Commission recommends that the Colombian State:
1. Adopt mechanisms to guarantee the rights of children and adolescents, especially given the specific risks derived from the armed conflict context.
  2. Include within the framework of the peace negotiations measures for the protection of children and adolescents.
  3. Continue adopting effective measures to prevent the forced recruitment of children and adolescents by all illegal armed groups and punish these cases to the full extent of the law.
  4. Ensure that state agents do not engage children and adolescents in intelligence work or civil-military activities.

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*the Victims Assistance and Land Restitution Act to guarantee the rights of the victims of the armed conflict in Colombia*]. In loco visit of the Inter-American Commission on Human Rights, December 2012, p. 52.

<sup>1202</sup> Office of the Attorney General of the Nation, Office of the Prosecutor Delegate for Defense of the Rights of the Child, Adolescent and Family, *Informe para la Comisión Interamericana de Derechos Humanos* [Report for the Inter-American Commission on Human Rights], December 2012. National Study of indicators of the situation of the rights of the child, adolescent and family (2009-2011).

5. Conduct the necessary investigations to obtain full and truthful information on the children and adolescents recruited by illegal armed groups and then informally separated.
6. Ensure equal treatment of children and adolescents demobilized and adopt appropriate mechanisms for their full reintegration into civilian life, including specific measures demobilized girls.
7. Take all necessary measures to locate the disappeared children including an expedite claim system and a mechanism for the identification of the bodies that are found.
8. Take the necessary measures to prevent and punish sexual violence perpetrated against children and adolescents and in particular to provide the claim mechanisms and adequate treatment of the victims as well as the prosecution and punishment of those responsible for this crime and others such as forced recruitment, disappearance, homicide, and extrajudicial executions, including the cases of “false positives,” among others.

### ***C. The armed conflict's differentiated impact and the danger of extinction looming over the indigenous peoples of Colombia***

748. Colombia is a culturally and ethnically diverse country. According to the most recent national census, conducted by the National Government Department of Statistics (hereinafter “DANE”), in 2005 the indigenous population in Colombia was 1,392,623 persons, members of 87 different peoples<sup>1203</sup> who represent 3.4% of the nation’s population.<sup>1204</sup> Furthermore, Colombia’s indigenous organizations, like the National Indigenous Organization of Colombia (hereinafter “ONIC”) count 102 different indigenous peoples, distributed throughout most of the national territory, but primarily in rural areas.<sup>1205</sup> Each of Colombia’s indigenous peoples has its own culture and history, social and political organization, economic and productive structure, vision of the cosmos, spirituality and ways of interrelating with the environment. According to the Ministry of Culture, 65 indigenous languages are spoken in Colombia, grouped into 13 language families and 8 separate languages.<sup>1206</sup>
749. The IACHR observes that in general terms, Colombia’s legal system favors the protection of the rights of indigenous peoples. That protection rests mainly on the 1991 Constitution,<sup>1207</sup> the

<sup>1203</sup> DANE. “Colombia: una Nación Multicultural. Su diversidad Étnica.” [Colombia: a Multicultural Nation. Its Ethnic Diversity.] Office of the Director of Census and Demography May 2007. Available [in Spanish] at: [www.dane.gov.co/files/censo2005/etnia/sys/colombia\\_nacion.pdf](http://www.dane.gov.co/files/censo2005/etnia/sys/colombia_nacion.pdf). State of Colombia. *Indígenas, Afrodescendientes y Minorías* [Indigenous Peoples, Afro-descendants and Minorities] Note MPC-OEA 609. April 22, 2013, p. 1.

<sup>1204</sup> National Planning Department. “Información sobre acciones y procesos institucionales para los pueblos indígenas en Colombia” [Information on Institutional Activities and Processes for Indigenous Peoples in Colombia]. Office of the Director of Sustainable Territorial Development-Acción Social-European Union-Cordepaz, 2010, p. 153. Available [in Spanish] at: <https://www.dnp.gov.co/LinkClick.aspx?fileticket=EL8FDC3NV0E%3d&tabid=273>.

<sup>1205</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, paragraph 92. For more details on the 102 peoples identified by ONIC see, [www.onic.org.co](http://www.onic.org.co).

<sup>1206</sup> Ministry of Culture. *Política de protección a la diversidad etnolingüística* [Policy on Preserving Ethnolinguistic Diversity]. p. 349. Available [in Spanish] at: <http://www.mincultura.gov.co/?idcategoria=36183#>.

<sup>1207</sup> The 1991 Constitution contains numerous provisions on the rights of the country’s indigenous peoples. Specifically, it recognizes that Colombia is a pluralistic State (Article 1); it recognizes and protects the ethnic and cultural diversity (Article 7); it recognizes the languages and dialects as official in the territories of the ethnic groups that speak them and provides for

case law of the Constitutional Court and the international instruments on this subject to which the Colombian State is party. Colombia is a multi-ethnic and multi-cultural country.<sup>1208</sup> Its Constitution protects the right to equality and requires that the State foster the conditions necessary to ensure that groups that are discriminated against or marginalized enjoy truly genuine equality.<sup>1209</sup> The IACHR recognizes the extensive body of law and regulations that address the rights of indigenous peoples in Colombia and that are the product of the mandates set forth in the Constitution.<sup>1210</sup>

750. As it told the IACHR, the Colombian State, pursuant to its Constitution and laws, is firmly committed to crafting public policies to prevent discrimination and guarantee true equality. To that end, “it has been building up its institutions in the executive, legislative and judicial branches and oversight bodies, with a view to promoting pro-active measures on behalf of minorities.” As part of the progress made in the “recognition, promotion and awareness of the rights and cultures of ethnic groups”, the Colombian State underscored the fact that indigenous peoples and communities in Colombia have special seats to make their political representation possible; their authorities are recognized as such; they have collective title to their land and use it according to their ancestral traditions; they are the beneficiaries of affirmative action in health, education, culture and other areas; they have spaces for dialogue with the State and for interaction with the mechanism of prior consultation which, the State asserted, is a manifestation of their fundamental right to participate in decisions that can affect them directly.<sup>1211</sup>
751. The State also told the IACHR that, general speaking, the institutions charged with implementing public policy apply a differential approach in the case of indigenous peoples and there are institutions dedicated to crafting policies for ethnic groups and their protection.<sup>1212</sup>

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bilingual education in the communities that have their own traditions (Article 10); it makes clear that ethnic groups shall have the right to instruction that is respectful of and develops their cultural identity (Article 68). It also recognizes the jurisdictional functions that the indigenous peoples exercise through their authorities, within their territory and according to their own laws (Article 246). On the subject of territorial rights, the Constitution provides that the communal lands of ethnic groups are inalienable, not subject to any statute of limitations and not subject to attachment (Article 63). It provides that indigenous territories are territorial entities (Article 286) that are autonomous (Article 287). It requires the participation of representatives of the indigenous communities in the formation of the territorial entities and affirms that the indigenous reserves are collective property and not subject to confiscation (Article 329). It further provides that the indigenous territories shall be governed according to the indigenous peoples’ own laws (Article 330). Also, under the Constitution, any exploitation of natural resources on indigenous territories shall not affect their cultural, social and economic integrity and the Government shall endeavor to include the representatives of the respective communities in the decisions that are adopted (Article 330, paragraph).

<sup>1208</sup> State of Colombia. *Indígenas, Afrodescendientes y Minorías* [Indigenous Peoples, Afro-descendants and Minorities] Note MPC-OEA 609. April 22, 2013, p. 1.

<sup>1209</sup> 1991 Political Constitution of Colombia. Article 13. Here, the Colombian State indicated that: “The Constitution takes a multidimensional approach to equality: it insists on formal equality but also demands equality in practice. It adopts the concept of equal opportunity, introduces the principle of equity, includes the criterion of difference and orders the adoption of affirmative action for groups that have been marginalized and discriminated against, and special protection of persons who are manifestly vulnerable.” State of Colombia. *Indígenas, Afrodescendientes y Minorías* [Indigenous Peoples, Afro-descendants and Minorities] Note MPC-OEA 609. April 22, 2013, p. 2.

<sup>1210</sup> The Commission takes note of the enactment of a number of laws, among them Law 1088 of 1993 “regulating the creation of associations of local government and/or traditional indigenous authorities”; Law 152 of 1994, establishing “the Organic Law of the Development Plan”; Law 691 of 2001 regulating “the participation of ethnic groups in the general social security system in Colombia.”

<sup>1211</sup> State of Colombia. *Indígenas, Afrodescendientes y Minorías* [Indigenous Peoples, Afro-descendants and Minorities] Note MPC-OEA 609. April 22, 2013, p. 1.

<sup>1212</sup> Specifically the State reported that at the executive level, it has the Office of the Director of Indigenous, Minority and Roma Affairs, the Office of the Director for Black, Afro-Colombian *Raizal* and *Palenquera* Community Affairs of the Ministry of the Interior, the Presidential Program for Crafting Strategies and Measures for the Comprehensive Development of Colombia’s Indigenous Peoples and the Presidential Program for Crafting Strategies and Measures for Development of the Afro-

The State also indicated that efforts are being made to maintain and strengthen the venues for dialogue with indigenous peoples, like the Permanent Negotiating Group with Indigenous Peoples and Organizations<sup>1213</sup> -which the State said met regularly and is able to reach important agreements-, the Amazonian Region Group,<sup>1214</sup> the National Commission for Indigenous Peoples' Human Rights<sup>1215</sup> and the Permanent Negotiating Group for the Awá People.<sup>1216</sup>

752. However, during its visit and in recent years<sup>1217</sup> the information the Commission has received indicates that this body of laws and institutions has not succeeded in effectively protecting the rights of indigenous peoples.

753. Quite the contrary, the Commission has received consistent reports of numerous incidents that point up the fact that the internal armed conflict has exacted a heavy and disproportionate toll on Colombia's indigenous peoples<sup>1218</sup> and that in 2012 the armed conflict being fought on indigenous territories intensified. A variety of sources, including the Constitutional Court and the United Nations Rapporteur on the rights of indigenous peoples, have also pointed out that this sophisticated body of laws to protect indigenous peoples and their members stands in stark contrast to a reality of profound and repeated violations of the most basic human rights.<sup>1219</sup>

Colombian, Black, *Palenquera* and *Raizal* Population. It also mentioned the existence of an Ombudsperson Delegate for Ethnic Minorities, who is under the Office of the Ombudsperson, and the Office of the Prosecutor Delegate for Human Rights and Ethnic Groups. State of Colombia. *Indígenas, Afrodescendientes y Minorías* [Indigenous Peoples, Afro-descendants and Minorities] Note MPC-OEA 609. April 22, 2013, p. 2.

<sup>1213</sup> The Permanent Negotiating Group with the Indigenous Peoples is a venue for dialogue created under Decree 1397 of 1996. Its purpose is to discuss and negotiate administrative and legislative issues that might affect the indigenous peoples, evaluate the execution of the State's indigenous policy, the functions of the State notwithstanding, and to follow up to ensure that the agreements reached are being honored. Source: Ministry of the Interior and Justice. Office of the Director of Indigenous, Minority and Roma Affairs. Available [in Spanish] at: <http://www.mij.gov.co/econtent/newsdetailmore.asp?id=1353&idcompany=2&idmenucategory=52>.

<sup>1214</sup> The State reported that the Amazonian Region Group was created in 2005 "for the purpose of protecting the ethnic and cultural diversity of the area, which is home to 52 indigenous communities. The purpose of this is to recommend the crafting, enactment and execution of social public policies for indigenous peoples of the region, which includes the departments of Amazonas, Caquetá, Guaviare, Guainía, Putumayo and Vaupés". State of Colombia. *Indígenas, Afrodescendientes y Minorías* [Indigenous Peoples, Afro-descendants and Minorities] Note MPC-OEA 609. April 22, 2013, p. 6.

<sup>1215</sup> Created under Decree 1396 of 1996 for the purpose of "ensuring the protection and promotion of human rights, defining measures to prevent serious violations of human rights and advocating execution of those measures; designing and advocating measures to reduce and eliminate serious violations of human rights and breaches of international humanitarian law; follow up and advocate for criminal and disciplinary investigations and design a special nationwide program to assist indigenous victims of violence, their immediate family members, widows and orphans and establish the mechanisms for its operation and execution." State of Colombia. *Indígenas, Afrodescendientes y Minorías* [Indigenous Peoples, Afro-descendants and Minorities] Note MPC-OEA 609. April 22, 2013, p. 6.

<sup>1216</sup> Established by Decree 1137 of 2010 for the purpose of "recommending measures by which to address the displacement situation, using a differential approach, and to suggest and support measures to prevent violations of the human rights of this indigenous people, which has been particularly victimized by the FARC's drug-terrorist group." State of Colombia. *Indígenas, Afrodescendientes y Minorías* [Indigenous, Afro-descendant and Minority Peoples] Note MPC-OEA 609. April 22, 2013, p. 6.

<sup>1217</sup> The IACHR has continually received information on the specific situation of the indigenous peoples of Colombia from, *inter alia*, the State, indigenous organizations and civil society. This information has come by way of public hearings; the system of precautionary measures; the monitoring that is done of the human rights situation, the United Nations system and information that is in the public record.

<sup>1218</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, paragraph 90. IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia, para. 85.

<sup>1219</sup> UN. Special Rapporteur on the Rights of Indigenous Peoples. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3. January 8, 2009.



754. It is deeply disturbing to the IACHR that at the present time, numerous indigenous peoples in Colombia face a very real danger of physical and cultural extinction, due to a number of complex factors, salient among them poverty and its consequences, the impact of the armed conflict, and the fact that these are, for the most part, small groups. A number of organizations have observed that 65 indigenous peoples are on the verge of extinction. On the one hand, in Order 004 of 2009, Colombia's Constitutional Court concluded that 34 indigenous peoples in Colombia are at risk of physical and cultural extinction as a consequence of the armed conflict and forced displacement.<sup>1220</sup> Thereafter, the Constitutional Court added the Hitnu or Macaguán people to the list of those on the verge of extinction.<sup>1221</sup> For its part, ONIC identified in 2010 32 indigenous peoples that are disappearing because they have fewer than 500 members.<sup>1222</sup> Of the indigenous peoples identified by ONIC, only the Nukak Makú and Guayavero are protected under the Constitutional Court's Order 004. The IACHR is particularly troubled by reports that the risk is such that there are some ten peoples with fewer than 100 members; one, the Tinigua, has just one surviving member.<sup>1223</sup>
755. The indigenous peoples living in isolation and in initial contact in Colombia have been hit particularly hard by the lack of effective protection. A case in point is the situation of the Nukak-Makú people, which lives in the Guaviare and Inírida river basins in the department of Guaviare, in Colombian Amazonia. In the last 20 years, the Nukak-Makú has been decimated by various epidemics caused by contact with non-indigenous society. These epidemics claimed the lives of between 30% and 50% of its members, including the majority of the older adults; today, only four or five elder persons are said to have survived. From the surviving population, approximately 30% have been forcibly displaced by the armed violence on their territory and are living in extreme poverty, having lost contact with their cultural identity. The presence of armed groups operating outside the law, the mines planted, the recruitment and violence on their lands have destroyed any chance that they might one day return to their way of life in the jungle.<sup>1224</sup>

<sup>1220</sup> The 35 indigenous peoples that the Constitutional Court described in Order 004 as being at great risk are: (1) Wiwa, (2) Kankuamo, (3) Arhuaco, (4) Kogui, (5) Wayúu, (6) Embera-Katio, (7) Embera-Dobidá, (8) Embera-Chamí, (9) Wounaan, (10) Awá, (11) Nasa, (12) Pijao, (13) Koreguaje, (14) Kofán, (15) Siona, (16) Betoy, (17) Sikuaní, (18) Nukak-Makú, (19) Guayabero, (20) U'wa, (21) Chimila, (22) Yukpa, (23) Kuna, (24) Eperara-Siapidaara, (25) Guambiano, (26) Zenú, (27) Yanacona, (28) KokUNko, (29) Totoró, (30) Huitoto, (31) Inga, (32) Kamentzá, (33) Kichwa, and (34) Kuiva. Constitutional Court. Order 004 of 2009. Third operative paragraph.

<sup>1221</sup> Constitutional Court. Order 382 of 2010.

<sup>1222</sup> The indigenous peoples that ONIC identified are as follows: (1) Yamalero, (2) Makaguaje, (3) Pisamira, (4) Tsiripu, (5) Eduria (Taiwano), (6) Piara, (7) Wipijiwi o Wipiwi, (8) Muinane, (9) Yaruro, (10) Dujo, (11) Judpa, (12) Yauna, (13) Bara, (14) Ocaina, (15) Yohop (Hupdu), (16) Amorua, (17) Chiricoa, (18) Nunya, (19) Kawiari, (20) Yuri, (21) Matapi, (22) Kakua, (23) Achagua, (24) Carijona, (25) Tatuyo, (26) Tariano, (27) Yagua, (28) Masiguare, (29) Nukak Makú, (30) Guayabero, (31) Carapana, y (32) Bora. ONIC. "Palabra dulce, aire de vida: Forjando caminos para la pervivencia de los pueblos indígenas en riesgo de extinción en Colombia" [Sweet word, breath of life: paving roads for the survival of the indigenous peoples at risk of extinction in Colombia]." 2010. Available [in Spanish] at: [www.onic.org.co](http://www.onic.org.co).

<sup>1223</sup> See in this regard, *inter alia*, Ministry of Culture. *Política de protección a la diversidad etnolingüística* [Policy on Preserving the Ethnolinguistic Diversity]. pp. 353-354. Available [in Spanish] at: <http://www.mincultura.gov.co/?idcategoria=36183#>, and ONIC, Palabra dulce, aire de vida: Forjando caminos para la pervivencia de los pueblos indígenas en riesgo de extinción en Colombia" [Sweet word, breath of life: paving roads for the survival of the indigenous peoples at risk of extinction in Colombia]." 2010. Available [in Spanish] at: [www.onic.org.co](http://www.onic.org.co).

<sup>1224</sup> ONIC. "Palabra dulce, aire de vida: Forjando caminos para la pervivencia de los pueblos indígenas en riesgo de extinción en Colombia" [Sweet word, breath of life: paving roads for the survival of the indigenous peoples at risk of extinction in Colombia]." 2010. Available [in Spanish] at: [www.onic.org.co](http://www.onic.org.co). Mahecha, Dany and Franky, Carlos Eduardo (eds.). "Los Nukak: el último pueblo de tradición nómada contactado oficialmente en Colombia" [The Nukak: the last nomadic people officially contacted in Colombia]. IWGIA Report No. 11, Copenhagen, 2011.

756. The IACHR has spotlighted the risk of the extinction of numerous indigenous peoples in Colombia and has expressed its concern over the seriousness of the situation in its 2011<sup>1225</sup>, 2010<sup>1226</sup>, 2008<sup>1227</sup> and 2006<sup>1228</sup> annual reports. It has specifically mentioned the situation of the Yamalero, Makaguaje, Pisamira, Tsiripu, Yagua, Masiguare and Nukak Makú indigenous peoples. The Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts or CEACR) of the International Labour Organisation (ILO) and the organs of the United Nations system have repeatedly expressed concern and have recommended to Colombia that it adopt the measures necessary to ensure the physical and cultural survival of these peoples.<sup>1229</sup> In public hearings before the IACHR concerning the situation of indigenous peoples, the Colombian State has said that it shares the concern over the indigenous peoples at risk of extinction in Colombia.<sup>1230</sup>

757. In the view of the IACHR, the gradual extinction of each of the 65 indigenous peoples whose very survival is threatened as a consequence or largely because of the armed conflict, discrimination and a lack of protection, implies a series of rampant, profound and historical violations of the individual and collective rights recognized under the American Convention on Human Rights.<sup>1231</sup> It is a matter of grave concern that demands that the Colombian State take immediate, determined and sweeping measures to ensure their physical and cultural survival. As the following paragraphs will illustrate, their survival is threatened by a number of complex processes associated with the violence, poverty and exclusion that is the result of non-indigenous actors having set their sights on the indigenous peoples' ancestral territories.

758. Working from that premise, in this chapter the IACHR will examine the principal factors driving the violations of the individual and collective rights of Colombia's indigenous peoples. While these factors are similar to the ones the IACHR documented in previous years, this chapter will focus on the information received in 2012. The Commission will discuss (i) homicides, disappearances, threats and accusations against indigenous peoples, especially

<sup>1225</sup> IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV. Colombia, para. 111.

<sup>1226</sup> IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, paras. 122-125.

<sup>1227</sup> IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia, para. 92.

<sup>1228</sup> IACHR, *Annual Report 2006*, OEA/Ser.L/V/II.127, Doc. 4, rev. 1, March 3, 2007, Chapter IV. Colombia, para. 39.

<sup>1229</sup> ILO. Report of the Committee on Application of Standards (CEACR). *General Report and Observations and Comments on Particular Countries*. International Labour Conference, 101<sup>st</sup> session, 2012, pp. 1037-1039. UN. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen. Addendum. Mission to Colombia. E/CN.4/2005/88/Add.2, November 10, 2004, paragraphs 5 and 81. UN. Special Rapporteur on the Situation of human rights and fundamental freedoms of indigenous peoples. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010. UN. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia*" (E/C.19/2011/3). UN. Committee on the Elimination of Racial Discrimination. *Consideration of Reports Submitted by States Parties under Article 9 of the Convention. Concluding Observations of the Committee on the Elimination of Racial Discrimination. Colombia*. CERD/C/COL/CO/14. August 28, 2009, para. 25.

<sup>1230</sup> See IACHR. *Hearing on the Human Rights Situation of Indigenous Peoples in Colombia*, October 28, 2010. Available at: <http://www.cidh.org/pdf%20files/Schedule140.pdf>; IACHR. *Hearing on the Situation of Human Rights of Indigenous Peoples in Colombia*, March 14, 2012. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/Calendar147eng.pdf](http://www.oas.org/en/iachr/media_center/PReleases/2013/Calendar147eng.pdf)

<sup>1231</sup> For ONIC, "the reasons why the indigenous peoples of Colombia are on the verge of physical and cultural extinction [...] are: (i) the devastating effects of the internal armed conflict and its many consequences; (ii) the fact that development projects have been imposed on indigenous lands without first getting their prior, free and informed consent, and (iii) the State's neglect, as evidenced by the poverty, lack of access to basic services and structural discrimination.". ONIC. "Palabra dulce, aire de vida: Forjando caminos para la pervivencia de los pueblos indígenas en riesgo de extinción en Colombia" [Sweet word, breath of life: paving roads for the survival of the indigenous peoples at risk of extinction in Colombia]." 2010. Available [in Spanish] at: [www.onic.org.co](http://www.onic.org.co).

their traditional authorities and leaders; (ii) the military buildup on indigenous territories and the armed clashes fought on their land; (iii) the anti-personnel mines and unexploded ordnance; (iv) aerial spraying; (v) forced displacement; (vi) the multiple forms of discrimination and violence committed against indigenous women, which are exacerbated by the armed conflict; (vii) the issue of territory and the right to prior consultation; (viii) the toll that the conflict has taken on indigenous people's health and diet; (ix) the problem of impunity and the fact that indigenous peoples and their members do not have access to the justice system, and (x) reparations and restoring the rights of indigenous victims of the armed conflict.

## 1. Land and territory: the factor that has brought the armed conflict down upon the indigenous peoples

759. The central reason why the internal armed conflict has made its way into the lives of Colombia's indigenous peoples is that outside agents, armed groups and economic actors want to lay claim to their ancestral territories. At the root of the violence that has engulfed the indigenous peoples of Colombia in the past decade is their land. It has strategic military value in the conflict, economic value and the value of the natural resources it holds, whether mineral resources, timber or water resources.<sup>1232</sup> Indigenous territories are used by the various armed combatants as areas of military and economic strategic importance, as corridors for troop transport and safe haven, for weapons trafficking, and for the growing, processing and trafficking of drugs. Other international human rights bodies<sup>1233</sup> have observed as much, as have entities like the Observatory of the Presidential Human Rights and International Humanitarian Law Program<sup>1234</sup> and the Constitutional Court.<sup>1235</sup>
760. In recent years, the pressure on indigenous territories has intensified with the increased financial interest in territories ripe for exploitation of natural resources and construction of highway, mining and hydro-energy works.<sup>1236</sup> During its visit, the Commission was informed

<sup>1232</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, paras. 92-93. IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia, paras. 86-87.

<sup>1233</sup> UN. OHCHR. Annual Report of the United Nations High Commission for Human Rights and Reports of the Office of the High Commissioner and of the Secretary-General. Annual Report of the United Nations High Commissioner for Human Rights on the situation of Human rights in Colombia. March 9, 2009. A/HRC/10/32. UN. Special Rapporteur on the Situation of human rights and fundamental freedoms of indigenous people. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010, paragraph 14. UN. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia*" (E/C.19/2011/3), February 11, 2011.

<sup>1234</sup> As the Observatory of the Presidential Human Rights and International Humanitarian Law Program observed in 2010: [...] [T]he armed confrontation in Colombia today is a fight for control of strategic corridors and territories for planting, producing, selling and marketing illegal substances, and consolidating the rearguard positions between the insurgent groups and crime groups; theirs is not so much an ideological battle; instead, they engage in economic clashes for control of drug trafficking. In the background of this complicated picture are Colombia's immense indigenous territories, most of which are located in woodland ecosystems in the Andean highlands and the rainforest. These are the environments suitable for growing poppies and coca, and are geostrategic areas for planting, transporting and/or marketing those substances. Hence, what makes these communities so vulnerable is the ethnic groups' close relationship to their land and the new colonization that the various illegal armed groups are seeking to establish; these groups have achieved their ends through the use of violence in the form of coercion, terror, threats against community organizations, the murder of their leaders and massacres of members of various communities throughout the national territory. Observatory of the Presidential Human Rights and International Humanitarian Law Program *Informe Anual de Derechos Humanos y DIH 2010* [Annual Report on Human Rights and International Humanitarian Law]. p. 74. Available [in Spanish] at: <http://www.derechoshumanos.gov.co/Observatorio/Documents/Informe-DDHH-2010.pdf>.

<sup>1235</sup> Constitutional Court. Order 004 of 2009.

<sup>1236</sup> IACHR. *Hearing on the Situation of Human Rights of Indigenous Peoples in Colombia*, March 14, 2013. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/Calendar147eng.pdf](http://www.oas.org/en/iachr/media_center/PReleases/2013/Calendar147eng.pdf).

that at least four factors are at work to make the indigenous territories such a valuable commodity in the armed conflict. The first concerns control of the access to the natural resources located within indigenous territories, which are sometimes the “spoils of war that the armed actors will directly seize”; in other cases they become “intermediaries working for the entrepreneurs and businessmen associated with the lumber industry, mining, fishing and the networks for marketing certain products.” These territories are also used to expand the agricultural frontier. The pressure on these lands comes from several quarters: there are those who want to use the indigenous lands to grow coca; the State, on the other hand, is looking to use indigenous lands for the production of agro fuels. All this is compounded by a state policy of awarding concessions on indigenous territories to transnational mining or energy companies, whose security it then guarantees through force of arms. According to the information received, “69.5% of the area with exploitation potential is on indigenous reserves; 55% of the area where hydrocarbons are being produced is on indigenous reserves.”<sup>1237</sup> Finally, the indigenous territories are also affected by the infrastructure works, especially road construction.<sup>1238</sup> The indigenous authorities from the Department of Cauca had similar comments in their meeting with the IACHR:

The revenue funding this conflict and its roots basically have to do with the advancement of the interests of multinationals, the Colombian State’s interest in the ongoing development process, and its interest in making Colombia part of the economic dynamic driving today’s world, foreign investment. These are the factors behind the fighting over various areas of the department where natural resources are located. [...] [For example] there are 63 applications for mining operations in the districts of Suarez, Buenos Aires, Caloto, Santander de Quilichao, Caldono, all in the Department of Cauca. [...] What we are saying is that these are the very municipalities where the armed conflict is most firmly entrenched.<sup>1239</sup>

761. In effect, the information the Commission has received draws a close relationship between the take-over of indigenous territories, an increase in human rights violations caused by the armed conflict, forced displacement and the murder of indigenous persons, and the establishment of extractive industries. The homicides, forced disappearances, threats, displacements and other forms of violence occur against the backdrop of attempts to grab land and natural resources from the indigenous peoples. As the following paragraphs will illustrate, this is the setting of the various forms of violence that claim the indigenous peoples of Colombia as victims.

## **2. Continuation of murders, disappearances, threats and accusations against indigenous peoples, and the special impact on their traditional authorities and leaders**

762. Indigenous Colombians are often the victims of murder and disappearances perpetrated by armed actors or groups associated with them; traditional indigenous authorities and leaders are the most common victims of these crimes. The intent of the perpetrators may be to intimidate the communities to force them to move; the attacks may also be reprisals for the

<sup>1237</sup> ONIC. *Genocidio y crímenes de lesa humanidad en curso: El caso de los Pueblos Indígenas de Colombia* [Genocide and crimes against humanity in progress. The Case of the Indigenous Peoples of Colombia]. Information the IACHR received during its *in loco* visit.

<sup>1238</sup> ONIC. *Genocidio y crímenes de lesa humanidad en curso: El caso de los Pueblos Indígenas de Colombia* [Genocide and crimes against humanity in progress. The Case of the Indigenous Peoples of Colombia]. Information the IACHR received during its *in loco* visit.

<sup>1239</sup> Information provided by *Asociaciones de Cabildos Indígenas del Norte del Cauca* and *Consejo regional Indígena del Cauca-CRIC* during a meeting held on December 5, 2012 in Cauca, Colombia.

communities' opposition to the presence of armed groups on their territory or, in general, for their efforts to reclaim their land. A number of United Nations committees, the ILO's Group of Experts, and the IACHR itself, have expressed concern over the murders and disappearances of indigenous persons in Colombia.<sup>1240</sup>

763. According to the information that ONIC reported during the Commission's visit, 92 members of indigenous communities were murdered between January and November 2012, the most affected peoples being the Nasa, Embera and Awá.<sup>1241</sup> In 47 of the cases –more than 50%– the perpetrator could not be identified.<sup>1242</sup> As for disappearances, as of November 2012 ONIC had recorded seven disappearances, which occurred in the departments of Nariño, Cauca and Risaralda.<sup>1243</sup> The murders and disappearances that occurred in 2012 are added to the many indigenous persons who have perished in the armed conflict in the last 10 years. In fact, according to ONIC's data, between 2002 and 2010, more than 1400 indigenous persons were murdered; 2008, 2009 and 2010 were the worst years, registering 111, 176 and 122 deaths, respectively.<sup>1244</sup> Furthermore, between January and November 2011, ONIC reported a total of 105 indigenous persons murdered.<sup>1245</sup>
764. The figures available from the Observatory of the Presidential Human Rights and International Humanitarian Law Program indicate that from 1998 to July 2008, 1,075 indigenous persons were murdered, with the most affected peoples being the Nasa, Kankuamo, Embera and Wayú. According to the same source, between 1998 and 2002, the murder rate steadily increased from 75 in 1999 to 140 in 2000, 181 in 2001, and 196 in 2002.<sup>1246</sup> According to that Program, the trend started moving down in 2003, when there were 171 indigenous murders, and continued down until 2007 when there were 40 murder victims. However, starting that

<sup>1240</sup> See, *inter alia*, UN, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. Press release on the mission to Colombia from June 8 to 18, 2009. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9219&LangID=E>. UN. Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia*, 75th session, 28 August 2009, CERD/C/COL/CO/14, paragraphs 12, 14 and 15. UN. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen. Addendum. Mission to Colombia. E/CN.4/2005/88/Add.2, November 10, 2004, paragraph 29. ILO. Report of the Committee on Application of Standards (CEACR). *General Report and Observations and Comments on Particular Countries*. International Labour Conference, 99th session, 2010, p. 878.

<sup>1241</sup> ONIC. *Boletín N° 4/2012*. January to November 2012. p. 3.

<sup>1242</sup> ONIC. *Boletín N° 4/2012*. January to November 2012. pp. 6-7.

<sup>1243</sup> ONIC. *Boletín N° 4/2012*. January to November 2012. pp. 6-7.

<sup>1244</sup> ONIC. Palabra dulce, aire de vida: Forjando caminos para la pervivencia de los pueblos indígenas en riesgo de extinción en Colombia" [Sweet word, breath of life: paving roads for the survival of the indigenous peoples at risk of extinction in Colombia]. 2010. Available [in Spanish] at: [www.onic.org.co](http://www.onic.org.co). See also: "Colombia: Agentes del Estado son los principales actores de violencia contra indígenas" [Colombia: Agents of the State are the principal perpetrators of violence against indigenous peoples]. Available [in Spanish] at: <http://servindi.org/actualidad/38910>.

<sup>1245</sup> ONIC. *La protección efectiva de los pueblos indígenas frente al conflicto armado en Colombia: una tarea pendiente* [Effective protection of indigenous peoples from the armed conflict in Colombia: unfinished business]. 2011. p. 7. The UNHCR's figures are that between 1996 and 2002, 997 indigenous persons were the victims of homicide; between 2004 and 2007 that figure was 519. Cited in: ILO. Report of the Committee on Application of Standards (CEACR). *General Report and Observations and Comments on Particular Countries*. International Labour Conference, 98<sup>th</sup> session, 2009.

<sup>1246</sup> Observatory of the Presidential Human Rights and International Humanitarian Law Program. *Los indígenas colombianos: La constancia de los pueblos por mantener sus costumbres* [Colombia's indigenous peoples: Their loyalty to their traditions]. *Boletín temático* No. 11, August 2009, p. 19. Available [in Spanish] at: <http://www.derechoshumanos.gov.co/Observatorio/Publicaciones/paginas/boletintematico.aspx>.

year, the murder rate started to rise again, with 119 indigenous persons murdered; however the figure dropped again in 2010, when there were 75 cases.<sup>1247</sup>

765. Apart from the differences in the figures provided and the variations over the years, the IACHR is deeply troubled by what it regards as a very high murder rate when one considers that the indigenous peoples in Colombia are a numerical minority and account for just 3.4% of Colombia's total population.<sup>1248</sup> The problem is even more disturbing when one considers that a number of indigenous peoples are either disappearing or at risk of disappearing.
766. To ensure that the acts of violence claiming the lives of members of indigenous peoples and communities are not lost among the aggregate figures, the IACHR believes it is vital that State authorities include the ethnicity of the victims in the various statistics and indicators compiled on human rights violations and breaches of international humanitarian law. Nevertheless, to truly grasp the full dimensions of the armed conflict's impact on indigenous peoples and communities, the IACHR believes that in addition to the absolute number of victims, it is important to show the relative magnitude of the loss, i.e., the percentage of total indigenous population that these murder victims represent and the community context as well as the process of extinction of the indigenous peoples in Colombia.
767. The Commission is deeply troubled by how frequently the murderers have targeted traditional indigenous authorities or leaders for murder. In recent years numerous murders of indigenous leaders have been reported to the IACHR, especially in the period between 2006 and 2012.<sup>1249</sup> During the visit, the IACHR received information concerning the murders of 19 traditional authorities and leaders between January and November of that year.<sup>1250</sup> Thus far in 2013, the Commission was informed of the murder of Rafael Mauricio Girón Ulchur, an indigenous leader and traditional authority of the Nasa People. The Commission had ordered precautionary measures on his behalf on November 14, 2011.<sup>1251</sup>
768. On numerous occasions complaints have been filed with various bodies reporting that members of indigenous peoples have been the victims of extrajudicial executions, referred to as "false positives". Such was the finding of the Constitutional Court in Order 004 of 2009; this was also the conclusion reached by the United Nations Rapporteur on Indigenous Peoples in 2009<sup>1252</sup> and the United Nations Permanent Forum on Indigenous Issues in 2011.<sup>1253</sup> According to information received by the IACHR, in 2011 at least one homicide of this type

<sup>1247</sup> Observatory of the Presidential Human Rights and International Humanitarian Law Program. *Annual Human Rights and International Humanitarian Law Report 2010*, P. 25. Available [in Spanish] at: <http://www.derechoshumanos.gov.co/Observatorio/Documents/Informe-DDHH-2010.pdf>.

<sup>1248</sup> DANE. "La visibilización estadística de los grupos étnicos colombianos" ["Raising the statistical profile of Colombia's ethnic groups]. Available [in Spanish] at: [http://www.dane.gov.co/files/censo2005/etnia/sys/visibilidad\\_estadistica\\_etnicos.pdf](http://www.dane.gov.co/files/censo2005/etnia/sys/visibilidad_estadistica_etnicos.pdf).

<sup>1249</sup> See, *inter alia*, IACHR. *Annual Report 2006*. Chapter IV: Colombia. paragraph 34. IACHR. *Annual Report 2008*. Chapter IV: Colombia, paragraph 95. IACHR. *Annual Report 2010*. Chapter IV: Colombia, paragraph 137. It should be noted that 2011 was a particularly violent year. According to ONIC's records, as of November, 23 indigenous leaders or authorities had been murdered, which was an increase of 129% over the same period in 2010. ONIC. *Boletín N° 4/2012*. January to November 2012. pp. 8-9.

<sup>1251</sup> See Press Release 7/13, *IACHR Condemns Killing of the Indigenous Leader Rafael Mauricio Giron Ulchur in Colombia*. Washington, D.C., January 30, 2013. Available at: [http://www.oas.org/en/iachr/media\\_center/press\\_releases.asp](http://www.oas.org/en/iachr/media_center/press_releases.asp).

<sup>1252</sup> UN. Special Rapporteur on the Situation of human rights and fundamental freedoms of indigenous people. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010.

<sup>1253</sup> UN. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia*" (E/C.19/2011/3), February 11, 2011.

was reportedly committed, allegedly on June 10, when a member of the La Ilusión community of the Hitnu people was killed and reported as a guerrilla fallen in combat.<sup>1254</sup> While in 2011 the IACHR recognized the decline in the reports of the extrajudicial executions known as “false positives”, it notes with concern that very few members of the security forces have been convicted of this crime.<sup>1255</sup>

769. In view of the foregoing, the IACHR must again express its deep concern over the murders and disappearances of indigenous persons, which is a concern it has conveyed many times before through its press releases.<sup>1256</sup> It is also compelled to point out that the violence perpetrated against the indigenous peoples not only threatens the lives and personal safety of their members but also their very existence as peoples.<sup>1257</sup> The attacks committed against traditional indigenous authorities and leaders break down the sense of community that binds them together and has an impact that goes beyond the immediate victims of the violence and affects the entire peoples and communities, because of the important functions these authorities and leaders serve and their central role in defending, preserving and perpetuating the ancestral culture.<sup>1258</sup> The IACHR urges the Colombian State to investigate these events and prosecute and punish the material and intellectual authors of these crimes.
770. In recent years, the IACHR has received reports of threats and harassment of members of indigenous communities, particularly targeting their leaders and members who play important roles in defending the rights of their peoples and communities, and indigenous journalists and those who participate in the indigenous guard.<sup>1259</sup> The representatives of indigenous peoples with whom the IACHR met during its *in loco* visit to Colombia repeated these reports.
771. ONIC told the Commission that between January and November 2012, there were 32 episodes involving threats, 22 of them targeted at leaders because of their positions in defense of the

<sup>1254</sup> See “ASCATIDAR demandará al Ejército colombiano por asesinato de indígena” [“ASCATIDAR will sue the Colombian Army for the murder of an indigenous person”]. *El Día*, June 20, 2011. Available [in Spanish] at: [http://www.eldia.co/index.php?option=com\\_content&view=article&id=4757&catid=36&Itemid=9](http://www.eldia.co/index.php?option=com_content&view=article&id=4757&catid=36&Itemid=9). In its observations regarding the draft report, the State noted that the Office of the Special Prosecutor of Arauca is conducting a criminal investigation, now in the inquiry stage, regarding the disciplinary investigation the Regional Procurator’s Office of Arauca is conducting into the same facts. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note S-GA/ID-13-048140, December 2, 2013, para. 464.

<sup>1255</sup> IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV. Colombia, para. 18.

<sup>1256</sup> IACHR. Press Release 73/10, *IACHR condemns murder of human rights defender in Colombia*. Washington, D.C., August 2, 2010. Press Release 89/10, *IACHR condemns murders of indigenous leaders in Colombia*. Washington, D.C., September 1, 2010. Press Release 106/10, *Office of the Special Rapporteur Condemns Murder of Indigenous Journalist in Colombia*. Washington, D.C., October 21, 2010. Press Release 7/13, *IACHR Condemns Killing of the Indigenous Leader Rafael Mauricio Giron Ulchur in Colombia*. Washington, D.C., January 30, 2013. Available at: [http://www.oas.org/en/iachr/media\\_center/press\\_releases.asp](http://www.oas.org/en/iachr/media_center/press_releases.asp).

<sup>1257</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 97.

<sup>1258</sup> See in this regard, IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011, para. 298. The UNHCR also observed that “[i]ndigenous peoples who refuse to cooperate with the guerrillas or other armed groups are reportedly perceived to be obstacles (estorbos) to the aims of the illegal armed groups, and their killing is, according to some observers, part of a strategy to break their resistance.” [UNHCR. “*Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia*, 27 May 2010, HCR/EG/COL/10/2, available at: <http://www.refworld.org/docid/4bfe3d712.html>. Also, in 2009 the Committee on the Elimination of Racial Discrimination expressed concern over the murders of indigenous leaders in Colombia and called upon the State to step up measures to protect their security. [UN. Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia*, 75th session, 28 August 2009, CERD/C/COL/CO/14].

<sup>1259</sup> See, *inter alia*, IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia, para. 95; IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, paras. 139 -140.

territory and against militarization.<sup>1260</sup> It was reported that the peoples most affected are in the Department of Cauca where, according to ONIC, 27 episodes occurred, all against the Nasa and Totoró peoples; the Cauca Indigenous Regional Council (CRIC) said that as of November 2012, there had been around 44 threats made against the lives of 77 leaders in that department. Some of the other most affected peoples live in Chocó, where there were four episodes against the Embera people; and in Risaralda, where there were two events against the Embera-Chami people.<sup>1261</sup>

772. The IACHR is disturbed that in addition to the armed conflict, threats and harassment have also been associated with the implementation of development and investment projects and mining concessions.<sup>1262</sup> United Nations human rights agencies and officials, among them the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions,<sup>1263</sup> the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous persons,<sup>1264</sup> and the Permanent Forum on Indigenous Issues,<sup>1265</sup> have recently expressed alarm at the constant threats and harassment of indigenous leaders, authorities and individuals.
773. The IACHR recalls that the Colombian State has an obligation to respect the right to humane treatment and to ensure that its agents do not interfere with the enjoyment of that right. By virtue of its duty to ensure human rights it is obligated to take all reasonable measures to prevent threats, aggression and harassment targeting human rights defenders, as can be the case of a traditional indigenous authority or leader; to conduct serious investigations into matters brought to its attention and, where appropriate, to punish those responsible and make adequate reparations to the victims, regardless of whether the acts were the work of State agents or private parties.<sup>1266</sup> As for the State's duty to prevent, when indigenous leaders report threats to the authorities or the State learns of those threats through other sources, this must be sufficient for the State to set in motion the mechanisms necessary to protect the indigenous leaders.<sup>1267</sup> Thus, the State's obligations to prevent and protect are conditional upon it having knowledge of a real and immediate threat to a specific individual or group of individuals and to having a reasonable possibility of preventing or averting that threat.<sup>1268</sup>
774. The IACHR was also told that the accusations against and stigmatization of indigenous leaders, authorities and individuals continues. Accusations of collaborating with some faction in the conflict create an immediate threat to their communities and families. Bodies like the

<sup>1260</sup> ONIC. *Boletín N° 4/2012*. January to November 2012, p. 10.

<sup>1261</sup> ONIC. *Boletín N° 4/2012*. January to November 2012, p. 10.

<sup>1262</sup> See ILO. Report of the Committee on Application of Standards (CEACR). *General Report and Observations and Comments on Particular Countries*. International Labour Conference, 99th session, 2010, pp. 879-880.

<sup>1263</sup> UN. Special Rapporteur on extrajudicial, summary or arbitrary executions. *Mission to Colombia*. A/HRC/14/24/Add.2, March 31, 2010, para. 66.

<sup>1264</sup> UN. Special Rapporteur on the Situation of human rights and fundamental freedoms of indigenous peoples. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010, para. 16.

<sup>1265</sup> UN. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia*" (E/C.19/2011/3), February 11, 2011, paras. 20 and 95.

<sup>1266</sup> UN. Report of the Special Rapporteur on the situation of human rights defenders. A/65/223, August 4, 2010. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/475/01/PDF/N1047501.pdf?OpenElement>; I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988, Series C No. 4, para. 177.

<sup>1267</sup> See, *inter alia*, IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011, para. 43.

<sup>1268</sup> I/A Court H.R. *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 123. See also, IACHR, Application with the Inter-American Court in the *Case of the Cotton Field (Cases 12,496, 12,497 and 12,498) v. United Mexican States*, November 4, 2007, para. 159.



Committee on the Elimination of Racial Discrimination,<sup>1269</sup> the United Nations Special Rapporteur on Freedom of Opinion and Expression,<sup>1270</sup> the United Nations Special Rapporteur on the situation of human rights defenders,<sup>1271</sup> the UNHCHR,<sup>1272</sup> and the ILO Committee of Experts<sup>1273</sup> have all expressed concern regarding the public stigmatization and have urged the State to adopt measures to put a stop to this practice. As the Constitutional Court observed in Order 004 of 2009, the “structural and repeated pattern” is one of accusations against indigenous peoples and their members, who are accused “individually and collectively, arbitrarily and without any basis in fact, of collaborating with the armed group that is the security forces’ enemy.”<sup>1274</sup>

775. The IACHR considers that the accusations and stigmatization against indigenous leaders greatly increases the peril to their lives and safety and that of their communities and families. Such acts, therefore, are incompatible with the State’s obligations to prevent and protect. The Commission has observed that cases in which the State authorities make statements or issues press releases publicly incriminating a human rights defender for acts not proven in a court of law are violations of the right to one’s honor and dignity.<sup>1275</sup> It further recalls that, by the principle of the presumption of innocence, States must avoid publicly incriminating any human rights defender whose alleged crimes have not been proven in a court of law.<sup>1276</sup> Public officials must refrain from making statement that stigmatize the traditional indigenous authorities and leaders or that suggest that they are acting improperly or unlawfully, merely because of their work of promoting and defending human rights.<sup>1277</sup>

### 3. The military buildup and armed confrontations on the indigenous peoples’ ancestral lands

776. The ancestral territories of indigenous peoples have often been and continue to be the scene of armed fighting; the enemy factions exercise control over these areas, placing the indigenous peoples, communities and individuals in the crossfire.<sup>1278</sup> The information the Commission

<sup>1269</sup> UN, Committee on the Elimination of Racial Discrimination. Concluding Observations on Colombia. CERD/C/COL/CO/14, August 28, 2009, para. 14.

<sup>1270</sup> Specifically, Rapporteur Ambeyi Ligabo observed that “[i]ndigenous peoples have paid the highest price in the armed conflict; often being accused, without real evidence, of terrorist activities.” He therefore urged the State –especially high-ranking officials- to put a stop to this phenomenon which represents per se “a serious human rights violation and fuels the spiral of violence and resentment.” UN. Report of the Special Rapporteur on the right to freedom of opinion and expression, Ambeyi Ligabo. Addendum. *Mission to Colombia*. E/CN.4/2005/64/Add.3, November 26, 2004, paras. 72 and 92.

<sup>1271</sup> UN. Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya. Addendum. *Mission to Colombia*. March 1, 2010. A/HRC/13/22/Add.3, paras. 60 and 140.

<sup>1272</sup> See UN. OHCHR. 2006 Report (para. 83), 2007 Report (para. 67), 2009 Report (para. 83), and 2010 Report (para. 68).

<sup>1273</sup> ILO. Report of the Committee on Application of Standards (CEACR). *General Report and Observations and Comments on Particular Countries*. International Labour Conference, 99th session, 2010, pp. 877-878.

<sup>1274</sup> Constitutional Court. Order 004 of 2009, para. 221.

<sup>1275</sup> IACHR. *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II., Doc. 54, December 30, 2009, para. 616. IACHR. Report No. 43/96, Case 11,430, José Francisco Gallardo (Mexico), October 15, 1996, para. 76.

<sup>1276</sup> IACHR. *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II., Doc. 54, December 30, 2009, para. 616. IACHR. Report No. 43/96, Case 11,430, José Francisco Gallardo (Mexico), October 15, 1996, para. 76.

<sup>1277</sup> See IACHR. *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, Recommendation 10. IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011, para. 124.

<sup>1278</sup> As far back as its 1981 Report on Colombia, the IACHR observed that one of the claims of the indigenous and campesino organizations was for “[d]emilitarization of the rural areas and a dialogue through the representative organizations of local farmers and the Indian communities in an effort to find solutions for problems of public order in rural areas.” At the time the Commission wrote that “the military operations in the rural areas result in excesses in detriment to the local people and, in some cases these excesses have harmed the interests of persons unconnected with the events that provoked those

has received recounts numerous acts of violence and indiscriminate attacks that are the result of the heavy military buildup on indigenous territories and the control exercised by rival factions. This takes a serious toll in lives and on the physical and cultural integrity of the communities.

777. The State has maintained that government forces are present throughout the country in accordance with the obligation contained in the National Constitution to “guarantee the constitutional order,” in accordance with “standards to guarantee and enforce human rights and international humanitarian law,” making it possible to combat the actions of illegal armed groups that lead to violations committed against, *inter alia*, the indigenous population.<sup>1279</sup> In this regard, the State has indicated that “there is no militarization policy, what there is is a security policy that seeks to consolidate territorial control to ensure the consolidation of the conditions for security [...]”.<sup>1280</sup>
778. Notwithstanding the foregoing, the indigenous organizations with which the IACHR met during its visit emphasized the view that the military buildup on the territories places them in greater danger and exposes them to violations of their individual and collective rights. According to the information received, the presence of security forces can, in some circumstances, expose indigenous communities and individuals to attacks by groups operating outside the law or draw the communities into the conflict. The danger can also come from the violence committed in the course of the security forces’ operations within indigenous territories.
779. About the risk, the IACHR received information indicating that when security forces occupy the homes and communal facilities of indigenous communities, the indigenous members of the community are exposed to the violence that attends the clashes and reprisals by illegal armed groups. In effect, the information available to the Commission indicates that a number of indigenous communities have been the scene of armed fighting between illegal armed actors and the security forces, or between rival illegal armed groups, engaging in combat on indigenous lands or in populated villages.<sup>1281</sup> In 2012, the IACHR continued to receive disturbing reports in this regard. Perhaps the most troubling reports were those that concerned the indigenous people in the Cauca, particularly those living in the northern sector of the department.<sup>1282</sup> Therefore, during its *in loco* visit to Colombia, a team from the

operations [...]”. IACHR. *Report on the Situation of Human Rights in the Republic of Colombia*. OEA/Ser.L/V/II.53 doc. 22, June 30, 1981. Chapter VII, Section E, paragraphs 2(b) and 4.

<sup>1279</sup> Colombia’s observations on the IACHR’s draft report. Note S-GAIIID-13-048140, December 2, 2013, paras. 461-463, 468.

<sup>1280</sup> Colombia’s observations on the IACHR’s draft report. Note S-GAIIID-13-048140, December 2, 2013, para. 469. The State also emphasized that policies have been put forth on “strengthening the relationship” with the indigenous population, for example, through training sessions for government forces on subjects related to the rights of indigenous peoples, in which members of those communities sometimes participate as “instructors and trainers.” The State also indicated that there are currently 186 liaison officers “that allow these population groups to have direct contact with police officers or members of the national army in order to submit their complaints and requests.” The State indicated that these activities are framed by the Ministry of National Defense’s Comprehensive Human Rights Policy, with the incorporation of a line of action intended to address vulnerable populations. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, paras. 470-471, 495.

<sup>1281</sup> IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, para. 141.

<sup>1282</sup> The IACHR was told that in the armed combat between one illegal armed group and government forces, the explosion of a bomb had reportedly left five health professionals and one indigenous person injured in Toribio. Also, on January 27, three indigenous persons reportedly sustained bullet wounds from the fighting between the National Army and the FARC, on the Corinto and Miranda Reserves. One was an eight-year-old boy. On January 27, 2012, Edinson Trochez, 28, and Saúl Silva Mosquera, age 8, were reportedly hit by stray bullets. That same day, Silvia Casamachin Trompeta, 13, was seriously injured as a result of fighting in the hamlet of San Pedro, Corinto Reserve. Later, on March 14 and 15, there was reportedly fighting between the National Army and the guerrilla movement in various areas of the Corinto Reserve. Brayan Iñer Mestizo Quitubmo was reportedly shot. Furthermore, the fighting between the National Police, National Army and the FARC on

IACHR's delegation traveled to that department and met with indigenous organizations and authorities. The latter told the team that between January and November 2012, they had documented 156 cases of conflict-related violations of basic human rights.

780. During the visit, the IACHR was also told that indigenous persons, particularly children, are drawn into the armed conflict because they are used in intelligence work or to transport military troops and equipment, exposing them to the risk of being attacked by the parties to the conflict.<sup>1283</sup> The armed clashes on indigenous lands are also one of the major causes of the forced displacement of indigenous communities. According to what the Commission was told during the visit, of the 41 episodes of displacement reported between January and November 2012, 27 were caused by armed clashes between members of the Army and the illegal armed groups; a total of 7,510 indigenous persons were left displaced.<sup>1284</sup>
781. The Commission also learned that in the course of the armed forces' military operations on indigenous lands, complaints have been made concerning acts of violence committed against indigenous communities and their members.<sup>1285</sup> Specifically, Commission received disturbing information to the effect that on June 21, 2012, while they were fishing in the hamlet of Itaurí on the Pueblo Rico Unified Reserve, María Andrea Onogamá Arcila -an Embera-Chami indigenous woman who was eight months pregnant at the time- and her husband were attacked. The indigenous woman lost her baby and died as a result of the attack.<sup>1286</sup> Also, according to information received, Eduar Fabián Guetio Bastos, a Nasa indigenous youth, died from a mortal injury caused by military troops on July 18, on a road in the La Laguna Siberia Reserve, Municipality of Caldono, Cauca.<sup>1287</sup> Another of the egregious abuses that has come to

March 24 in the Jambalo Reserve, reportedly left at least two civilians wounded, one of whom was a boy of 16. Press Release 94/12. *IACHR Condemns Deaths and Expresses Concern over the Situation of Violence in the North of Cauca, Colombia*. Washington, D.C., July 25, 2012 Regarding these events, the State indicated that "in order to repel the subversive attack [...] government forces activated the defense plan." However, it maintained that "at no time were the homes used as trenches, much less the home that was affected. The movement to the main park was only intended to prevent the subversives from approaching through the upper and lower part of the municipio [...]." Colombia's observations on the IACHR's draft report, Note S-GAIIID-13-048140, December 2, 2013, para. 473. The information available at the time on the worsening of the indigenous people's situation in northern Cauca, was cause for special concern on the part of the IACHR, as it expressed through a press release in which it urged the State to "prevent armed actions that could jeopardize the life or integrity of the civilian population." Press release 94/12. *IACHR Condemns Deaths and Expresses Concern over the Situation of Violence in the North of Cauca, Colombia*. Washington, D.C., July 25, 2012.

<sup>1283</sup> The information that the IACHR has available indicates that the same thing is happening elsewhere in the country. See in this regard, *Cabildo Mayor Indígena del Resguardo Río Murindó y Chageradó Turriquitadó* [Indigenous Government of the Murindó River and Chageradó Turriquitadó Reserve]. *Pronunciamiento de las autoridades frente a la utilización de jóvenes indígenas como informantes por parte del Ejército Nacional* [Statement by the authorities reacting to the National Army's practice of using indigenous youth as informants]. Comuniciqué issued on April 1, 2013. Available [in Spanish] at: <http://cms.onic.org.co/2013/04/prUNnciamiento-de-las-autoridades-del-resguardo-rio-murindo-y-chagerado-turriquitado-frente-a-la-utilizacion-de-jovenes-indigenas-como-informantes-por-parte-del-ejercito-nacional/>. Despite the complaints received, the State maintains that "[...] government forces do not force anyone to provide information nor are [...] the indigenous communities involved," reiterating that "the actions of government forces comply with the standards established by international humanitarian law." Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, para. 472.

<sup>1284</sup> ONIC. *Boletín N° 4/2012*. January to November 2012. p. 14.

<sup>1285</sup> In its Order 004 the Constitutional Court identified the following among the factors typical of the violence that threatens indigenous peoples: "threats, harassment, and persecution of individuals, families and communities [...] by certain individual members of the government forces." Constitutional Court. Order 004 of 2009, para. 2.2.

<sup>1286</sup> ONIC. Risaralda, CRIR: "queremos vivir en paz en nuestro territorio" ["We want to live in peace in our territory]. Available [in Spanish] at: <http://cms.onic.org.co/2012/06/risaralda-queremos-vivir-en-paz-en-nuestro-territorio/>.

<sup>1287</sup> ACIN. "Cauca: Fuerza Pública asesina Indígena Nasa en Caldono" ["Cauca: Government Forces kill Nasa indigenous woman in Caldono]. Available in Spanish at: <http://www.nasaacin.org/noticias/3-newsflash/4360-cauca-fuerza-publica-asesina-indigena-nasa-en-caldono>. Regarding these events, the State reported that the military criminal jurisdiction initiated a criminal investigation that "is currently in the pre-trial stage [and that] Ground Combat Battalion No. 145 is initiating a

the Commission's attention –and that occur as a consequence of the military buildup on indigenous lands– are acts of sexual violence committed against indigenous women, which will be discussed under point 7 of this section.

782. The IACHR observes that the military buildup and armed clashes fought on indigenous territory have the effect of preventing indigenous peoples from fully exercising their rights as collective subjects. Their members become the target of various forms of serious violence that affects their rights to life and to humane treatment and their physical and cultural survival.
783. The armed actors operating on indigenous ancestral lands place their members in real, imminent danger; their efforts to reinforce their ethnic identity and culture are affected, as is their enjoyment of their basic individual and collective rights. Indigenous peoples in Colombia have systematically rejected the military buildup on their territories, have made express declarations of neutrality,<sup>1288</sup> and demanded the demilitarization of their lands.<sup>1289</sup>
784. The IACHR is grateful for the information provided concerning the efforts made to establish dialogue between the indigenous peoples and the State authorities, and the information concerning the adoption of guidelines to strengthen the security forces' respect for and observance of the human rights of indigenous peoples and their members.<sup>1290</sup> It also notes that as part of the "Comprehensive Human Rights and International Humanitarian Law Policy" of the Ministry of National Defense, on October 30, 2006 Directive No. 16 was issued, which establishes the "sectoral policy on recognition, safeguarding and protection of indigenous peoples' communities." That directive provides that "in performing their functions, the Armed Forces and National Police [shall take] the measures necessary to uphold [the indigenous peoples'] individual and collective rights, especially their rights of autonomy, [...] territory and [...] special jurisdiction." In keeping with these principles, 2006 Directive No. 16 provides that members of the security forces shall "take preventive measures to protect the communities during military and police operations within their territories and strictly observe the provisions of international humanitarian law" and shall "respect the previously designated

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disciplinary investigation [...] that is referred [...] based on preferential power to the Office of the Procurator Delegate for the Defense of Human Rights [and] is now in the pre-trial stage." Colombia's observations on the IACHR's draft report. Note S-GA/ID-13-048140, December 2, 2013, para. 465.

<sup>1288</sup> As the IACHR observed in its 2004 Annual Report, "[...]the indigenous peoples have made known to national and international public opinion their categorical rejection of any proposal to involve them in the armed conflict, demanding instead of all the combatants that they respect their right to autonomy and neutrality, declaring themselves to be in community-based resistance to the actors in the internal armed conflict, and the State itself, in defense of their autonomy and human rights and to ensure their collective survival." IACHR, *Annual Report 2004*, OEA/Ser.L/V/II.122, Doc. 5 rev. 1, February 23, 2005, Chapter IV. Colombia, para. 24.

<sup>1289</sup> In 2012, the IACHR learned that because the clashes between the government forces and one illegal armed group had had such terrible consequences, the indigenous authorities of the Northern Cauca reportedly asked both sides of the conflict to call a ceasefire and withdraw from their territory. The information available indicates that between July 17 and 18, 2012, members of the Nasa people had reportedly proceeded to drive out the military troops, which later returned and took up their position in the area. According to the information from the indigenous authorities, these episodes of violence had left dozens of indigenous persons wounded. See ONIC. *Boletín N° 4/2012*. January to November 2012, p. 1.

<sup>1290</sup> The Commission notes in this regard that the Ministry of Defense has a "Comprehensive Human Rights and International Humanitarian Law Policy," one of whose lines of action is "assistance to special groups" –which includes indigenous peoples– in the belief that "they require differentiated treatment by the security forces and deserve special attention." That policy builds on the constitutional provision that creates "special jurisdictions (Art. 246) and grants indigenous peoples the authority to regulate social life and administer justice in their territories". It also states that "in the National Army it is a basic principle that, when operating on indigenous territories, the operation's orders shall include instructions pertaining to the treatment of indigenous communities and the rights they are given under the Constitution." Ministry of National Defense, *Política Integral en DDHH y DIH* [Comprehensive Human Rights and International Humanitarian Law Policy]. pp. 26 and 30. Available [in Spanish] at: [http://www.mindefensa.gov.co/irj/go/km/docs/Mindefensa/Documentos/descargas/Documentos\\_Home/Politica\\_DDHH\\_MDN.pdf](http://www.mindefensa.gov.co/irj/go/km/docs/Mindefensa/Documentos/descargas/Documentos_Home/Politica_DDHH_MDN.pdf).

special sites within each community where cultural and spiritual rites are performed and are therefore sacred for the community.” As for autonomy, the Directive states that “proper coordination between the security forces and indigenous authorities shall be maintained.” It also states that “[i]n that context, upon entering indigenous territory, the commander shall make contact with the appropriate indigenous authorities to report the presence of the security forces, except in those cases where the nature of the operation does not allow disclosure.”<sup>1291</sup>

785. Nevertheless and as previously observed, the available information suggests a failure to effectively put those postulates into practice. Therefore, the IACHR is urging the Colombian State to exert greater effort to put them into practice, pursuant to its national<sup>1292</sup> and international<sup>1293</sup> obligations. It must again point out that the Colombian State must ensure that the indigenous communities have effective control over the lands and territories designated as reserves and other community lands, without interference by persons seeking to take or maintain control over them through violence or by any other means, to the detrimental of the indigenous peoples’ individual and collective rights.<sup>1294</sup>

#### 4. The effect of anti-personnel mines and unexploded ordnance on indigenous peoples and their ancestral territories

786. As the IACHR has observed consistently and repeatedly that many indigenous peoples and communities in Colombia have been affected by the presence of anti-personnel mines and unexploded ordnance.<sup>1295</sup> This was confirmed by the information the Commission received

<sup>1291</sup> See, Human Rights Directives from the Ministry of Defense. 2003 – 2007. Available at: [http://www.mindefensa.gov.co/irj/go/km/docs/Mindefensa/Documentos/descargas/Asuntos\\_de\\_Interes/Derechos\\_Humanos/docs\\_nweb/Directivas\\_DDHH.pdf](http://www.mindefensa.gov.co/irj/go/km/docs/Mindefensa/Documentos/descargas/Asuntos_de_Interes/Derechos_Humanos/docs_nweb/Directivas_DDHH.pdf) The IACHR also takes note of the information provided by the State on the implementation during 2013 of the “National Police’s “Green Heart” Comprehensive Plan for Citizen Security, which establishes the “strategy for protecting vulnerable populations, whereby specific targets are set and are gradually achieved [...]” Colombia’s observations on the IACHR’s draft report. Note S-GAIIID-13-048140, December 2, 2013, para. 475.

<sup>1292</sup> The Constitutional Court has delivered rulings intended to protect indigenous peoples from the illegal occupation of their ancestral territories by the security forces [Constitutional Court. Special Chamber for Follow-up of Judgment T-025 of 2004 and Compliance Orders. Order No. 173 of 2012]. Similarly, in the Constitutional Court’s Order No. 004 of 2009, it recognized that the conflicts fought on indigenous territories, which directly and unequivocally affect indigenous communities and their members, include the following: “(i) incursions by illegal armed groups into indigenous territory and their presence on those territories, occasionally followed by a heavy military buildup in the territory by the security forces; (ii) armed clashes between illegal armed groups or between those groups and the security forces on indigenous territory or nearby; (iii) occupation of sacred sites by illegal armed groups and units of the security forces [...]” [Constitutional Court of Colombia. Order 004/09, of January 26, 2009, para. 2.1].

<sup>1293</sup> The IACHR observes that Article 30 of the UN Declaration on the Rights of Indigenous Peoples provides the following: “1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned. 2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.” The IACHR recalls that Colombia’s Constitutional Court has affirmed that given its nature, the Declaration does not have the same force of law that a treaty would have; nevertheless, it should be directly applied and taken into consideration when determining the scope of indigenous peoples’ rights.” That Court also writes that the Declaration makes clear the extent of the obligations that Colombia must undertake to ensure the efficacy of the rights of indigenous peoples as developed by the Constitutional Court’s case law and the Constitution itself. Constitutional Court. Judgment T-376 of 2012. Judgment T-704 of 2006 and Judgment T-514 of 2009.

<sup>1294</sup> IACHR. *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102, Doc. 9 rev. 1, 26 February 1999. Chapter X, Section J, para. 3.

<sup>1295</sup> See, IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV, Colombia, para. 116; IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, paras. 142-144; IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 98; IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia, para. 91; IACHR, *Annual Report 2007*,

during its visit, according to which as of November 2012, anti-personnel mines and unexploded ordnance had claimed the lives of 23 indigenous persons, 11 of whom were children between the ages of 9 and 18.<sup>1296</sup> According to the figures from the Presidential Program for a Comprehensive Program against Anti-personnel Mines (PAICMA), between 1990 and 2012 mines claimed 307 indigenous victims, 207 of which (67%) were injured and 100 (33%) died. Of the total number of victims, 34% (104) were children: 32 girls and 72 boys. According to the same source, in 2012 alone mines claimed 42 indigenous victims: 15 women and 27 men. This meant that 2012 was the year with the fourth highest number of victims since 1997.<sup>1297</sup> As the Commission has said time and time again in its annual reports,<sup>1298</sup> the Awá people are a cause for particular concern, as their territory is heavily planted with mines. That was one of the factors considered when the Commission granted precautionary measures on their behalf back on March 16, 2011.

787. In addition to the toll in deaths and injuries among indigenous people, the mining of the ancestral territory causes communities to confine themselves and curb the activities that are the source of the community's livelihood, such as hunting, fishing and gathering. The chief result is critical malnutrition among indigenous communities. The landmine problem also prevents indigenous communities from exercising their right to move freely throughout their ancestral territory; they cannot get to health clinics or their sacred site, and indigenous children are unable to attend school. The victimization of indigenous persons by mines and unexploded ordnance is also a driving factor behind forced displacement. The presence of anti-personnel mines on indigenous territories was acknowledged by the Constitutional Court to be one of the factors causing the confinement of families and entire communities.<sup>1299</sup> Furthermore, the UNHCHR,<sup>1300</sup> the UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people,<sup>1301</sup> the Permanent Forum on Indigenous Issues<sup>1302</sup> and the Committee on the Rights of the Child<sup>1303</sup> have expressed their concern over the harm that anti-personnel mines and unexploded ordnance have done on indigenous territories.

OEA/Ser.L/V/II.130, Doc. 22 rev. 1, December 29, 2007, Chapter IV. Colombia, para. 61; IACHR, *Annual Report 1996*, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, Chapter IV. Colombia, para. 116.

<sup>1296</sup> ONIC. *Boletín N° 4/2012*. January to November 2012. p. 18.

<sup>1297</sup> Presidential Human Rights and International Humanitarian Law Program. Available [in Spanish] at: <http://www.accioncontraminas.gov.co/Paginas/victimas.aspx>.

<sup>1298</sup> See, IACHR, *Annual Report 1996*, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, Chapter IV. Colombia, para. 116; IACHR, *Annual Report 2007*, OEA/Ser.L/V/II.130, Doc. 22 rev. 1, December 29, 2007, Chapter IV. Colombia, para. 61; IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia, para. 91; IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 98; IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV. Colombia, para. 114.

<sup>1299</sup> Constitutional Court. Order 004 of 2009, para. 224.

<sup>1300</sup> The UN's OHCHR has made reference to the indigenous victims of anti-personnel mines in the following annual reports: *Annual Report. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, February 28, 2008, A/HRC/7/39, paras. 43, 47, 50 and 51; UN, OHCHR. *Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*. March 9, 2009. A/HRC/10/32, para. 30; UN, OHCHR. *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*. March 4, 2010. A/HRC/13/72, para. 70; and OHCHR. *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*. February 3, 2011. A/HRC/16/22, para. 70.

<sup>1301</sup> UN. Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people. Addendum. *Mission to Colombia*. November 10, 2004. E/CN.4/2005/88/Add.2, para. 28.

<sup>1302</sup> UN. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia*. February 11, 2011. E/C.19/2011/3, para. 66.

<sup>1303</sup> UN. Committee on the Rights of the Child. *Concluding Observations on Colombia*. CRC/C/COL/CO/3. June 8, 2006, para. 94.

788. The IACHR observes that the Colombian State has devised and implemented measures to address the problem of anti-personnel mines and unexploded ordnance in the country, which are reportedly the responsibility of the PAICMA.<sup>1304</sup> On September 6, 2000, Colombia ratified the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and Their Destruction, also called the Ottawa Treaty, which prohibits the use, stockpiling, production and transfer of anti-personnel mines.<sup>1305</sup> The IACHR appreciates the State's efforts to deal with the problem through specific programs that have achieved some success with application of an ethnically differentiated approach, as well as the measures taken to comply with Constitutional Court Order 004 of 2009 and Order 174 of 2011 which concerns the Awá people.<sup>1306</sup>
789. Nevertheless, because serious reports continue to be received, the IACHR calls upon the Colombian State to step up its efforts to eliminate anti-personnel mines and unexploded ordnance on indigenous lands. Particularly important in this regard is the adoption and actual implementation of a culturally appropriate approach, and that the approach be mainstreamed and introduced into all PAICMA components to allow for the kind of intervention that fits the various realities and challenges that the indigenous peoples and communities face. The following are a number of measures that the Commission believes are important: preparation of special accident prevention plans, with the emphasis on those areas most densely planted with anti-personnel mines and unexploded ordnance and where they claim the highest number of victims. These plans should be assembled in consultation with the indigenous peoples; increase the resources earmarked for instruction on the risk that anti-personnel mines and unexploded ordnance represent; increase mine-clearing efforts and activities on indigenous territories, in concert with their traditional authorities; assist victims, their families and communities using a culturally appropriate approach; in the data systems, introduce ethnic and territorial variables so that they are publicly accessible to the specific community that is home to the victim, and the number and size of indigenous territories and reserves where anti-personnel mines and unexploded ordnance are problems.

<sup>1304</sup> According to the information available, up until 2002 the work of coordination and regulation was the responsibility of the Observatory on Anti-personnel Mines, which was under the Presidential Human Rights and International Humanitarian Law Program. On July 25, 2002, Law 759 was issued—regulated through Decree 2150 of 2007— which created the PAICMA under the Administrative Department of the Presidency of the Republic, coordinated by the Vice President of the Republic. According to information in the public record, the PAICMA is charged with coordinating and regulating the “Integrated Action to combat Anti-Personnel Mines” in Colombia and serves as Technical Secretariat of the National Anti-Personnel Mines Authority, called the “National Inter-sectoral Commission for Action against Mines” [Comisión Intersectorial Nacional para la Acción Contra Minas] (CINAMAP). See Presidential Human Rights and International humanitarian Law Program. Available [in Spanish] at: <http://www.accioncontraminas.gov.co/Paginas/AICMA.aspx>. In addition, the IACHR takes note of the information provided by the State regarding demining activities carried out by the military forces throughout the country, including the formation of nine demining platoons within Military Engineers Battalion No. 60, as well as “emergency demining” work in what are considered “common inflow or necessary traffic” areas. Colombia’s observations on the IACHR’s draft report. Note S-GAIIID-13-048140, December 2, 2013, paras. 481-482.

<sup>1305</sup> UN. *UN treaty collections*. Available at: <http://treaties.un.org/pages/Treaties.aspx?id=6&subid=A&lang=en>. In its observations on the draft report, the State emphasized that in compliance with its international obligations, Colombia’s military forces “do not use such devices in any way.” Colombia’s observations on the IACHR’s draft report. Note S-GAIIID-13-048140, December 2, 2013, para. 479.

<sup>1306</sup> Specifically, the available information indicates that the progress includes the development of a strategy with an ethnic, territorial and differential approach with the Awá people in the departments of Nariño and Putumayo; preparation and management of a Project with the Emberá-Katío people in the department of Córdoba; development and implementation of a program to strengthen the skills of organizations and communities to implement the AICMA with a differential approach. See Presidential Human Rights and International Humanitarian Law Program. 2011 Performance Report, pp. 25-28. Available [in Spanish] at: <http://www.accioncontraminas.gov.co/programa/Paginas/InformesGestion09.aspx>; Presentation of the 2012 Performance Report. Available at: <http://www.accioncontraminas.gov.co/Noticias/2012/Paginas/121221b.aspx>.

## 5. Sprayings that affect indigenous territories

790. Illicit drug trafficking is one of the sources that contributes to the revenue for groups operating outside the law and therefore fuels the armed conflict and keeps it going. According to the UN's Integrated Illicit Crops Monitoring System (hereinafter referred to as "SIMSI" using the Spanish acronym), in 2011, the net area under coca cultivation in Colombia was 64,000 hectares; of that total 6,004 hectares were on indigenous territories, representing 9% of the national total.<sup>1307</sup> The illicit coca crop, like drug trafficking, has to be distinguished from the ancestral use of coca, which for some indigenous peoples of Colombia and other countries of the region has a spiritual, religious, curative and dietary use, which the Colombian Constitutional Court<sup>1308</sup> and Colombia's domestic laws<sup>1309</sup> have recognized.
791. The illicit cultivation of coca bushes affects various aspects of the lives of the indigenous communities that inhabit the areas where coca is grown.<sup>1310</sup> Thus, for example, it has an impact on the indigenous communities' autonomy because of the armed coercion and violence that the drug traffickers and armed groups employ; they are also affected by the military buildup of indigenous territories where coca crops are grown, as their rights are violated by the armed fighting, forced displacement and restrictions on their mobility that inevitably ensue. In the sociocultural area, traditional ways of life are disrupted by the imposition of new ways, which leads to a cultural and social breakdown, loss of community activities and rituals, and the social problems that attend the arrival of settlers. The illicit crops also affect the indigenous land itself and, ultimately, the communities' source of livelihood, because of their limited mobility, confinement and/or inability to get to the areas where they grow their crops, hunt, fish and gather. Deforestation has an ecological impact, as does the use of herbicides, pesticides and fertilizers. This in turn causes a dietary insufficiency and malnutrition.<sup>1311</sup>
792. With respect to these problems, the State has submitted information on the implementation of the "Program for the Eradication of Illicit Crops by Aerial Spraying of Glyphosate (PECIG)" by the National Police's Antinarcotics Bureau.<sup>1312</sup> In this regard, the State specified that "eradication using the aerial spray method is not done indiscriminately, in that it is executed in

<sup>1307</sup> UNODC/ Government of Colombia: *Colombia: Coca Cultivation Survey 2011*, pp. 9 and 36. Available at: [http://www.unodc.org/documents/crop-monitoring/Colombia/Colombia\\_Coca\\_cultivation\\_survey\\_2011.pdf](http://www.unodc.org/documents/crop-monitoring/Colombia/Colombia_Coca_cultivation_survey_2011.pdf). As the document indicates, "The information about indigenous territories in Colombia is reported by the IGAC [Instituto Geográfico Agustín Codazzi]".

<sup>1308</sup> Constitutional Court. Judgment C-882/11, November 23, 2011, paragraph 2.5.2.1. See also Judgment C-176, April 12, 1994 and Judgment SU-383 of May 13, 2003.

<sup>1309</sup> The traditional use of coca is protected under Article 7 of Colombia's Constitution –which concerns the recognition of Colombia's cultural and ethnic diversity-, Article 7 of Law 30 of 1986 and Article 14(2) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which Colombia ratified on June 10, 1994.

<sup>1310</sup> As far back as its 1999 report on Colombia, the IACHR observed that "[f]or the indigenous peoples of Colombia, law enforcement activities against illicit crops (especially coca, poppy, and marijuana) and their trafficking has special consequences entailing increased violence, invasion of indigenous territories by settlers who grow coca, and the loss of cultural identity and deterioration of their unique organizations and authorities. The impact is accentuated in Colombia, as the production of illicit crops is not an extension of ancestral indigenous commercial practices, but rather a relatively new phenomenon." IACHR. *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999. paragraph 50. The IACHR also made reference to the effect of the sprayings on indigenous communities and peoples in Chapter IV on Colombia, in its *Annual Reports of 2008* (paragraph 91) and 2010 (paragraph 147).

<sup>1311</sup> See Mingorance F, Minelli F, Le Du H and Olsen V. *Tierra Profanada: Impacto de los megaproyectos en Territorios Indígenas de Colombia*. Cultivos Ilícitos [Desecrated Land. The Impact of Megaprojects on the Indigenous Territories in Colombia]. Human Rights Everywhere (HREV) and ONIC. 2008. p. 21. Available [in Spanish] at: [http://www.mamacoca.org/docs\\_de\\_base/Cifras\\_cuadro\\_mamacoca/HREV\\_Tierra\\_profanada\\_2\\_cultivosilicitos.pdf](http://www.mamacoca.org/docs_de_base/Cifras_cuadro_mamacoca/HREV_Tierra_profanada_2_cultivosilicitos.pdf).

<sup>1312</sup> Pursuant to Resolution No. 0013 of June 27, 2003, issued by the National Narcotics Council, and under the measures provided in the "Environmental Management Plan," regulated by Resolution No. 1054 of September 30, 2004, of the Ministry of the Environment, Housing, and Territorial Development.



three integrated phases: detection, spraying, and verification [...].”<sup>1313</sup> The State also referred to the complaints procedure designed by the National Narcotics Council as “one of the options available for mitigating, compensating, or repairing damages that may be caused by the program to eradicate illicit crops [...],” whereby those affected may submit their complaints before the Municipal Mayor’s Office.<sup>1314</sup> The State also reported on the existence of reparation mechanisms provided by the National Police to “generate the reparations necessary in situations where effects may be generated when eradication work is done.”<sup>1315</sup>

793. In light of the above, and as the IACHR has previously observed, the Colombian State has the right to combat the illegal drug production and trafficking and, to that end, to take measures to wipe out the illicit crops.<sup>1316</sup> The IACHR notes that an important part of the strategy for reducing the drug supply in Colombia is based on forced eradication of illicit crops through aerial spraying and manual eradication. The information available indicates that the most common method is aerial spraying, done “with a mixture of herbicide with active ingredient glyphosate, a coadjuvant and water.”<sup>1317</sup> While both methods can affect the indigenous communities and their territories, aerial spraying has far greater and much more serious consequences; it covers a wide area and is indiscriminate, which means that its effects are difficult to measure. Because of the substances being used, aerial spraying inevitably affects the subsistence crops grown by indigenous peoples; it erodes the soil, causes harm to the environment where these people engage in hunting, fishing and gathering; it pollutes the water and has immediate effects on health. It can even cause the forced displacement of indigenous families or entire indigenous communities.<sup>1318</sup>

794. The IACHR takes into account the information provided by the State but emphasizes that during its visit it received information indicating that numerous indigenous communities were reportedly suffering the negative effects of aerial spraying; prior to the spraying, no one informed them of its effects or consulted them as to the use of this method.<sup>1319</sup> The harm

<sup>1313</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, paras. 483-486.

<sup>1314</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, para. 487.

<sup>1315</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, para. 538.

<sup>1316</sup> IACHR. *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, para. 52.

<sup>1317</sup> During the 2000-2006 period, the eradicated area was reported to be 974,533 hectares of coca and 25,038 hectares of poppy. A total of 856,759 hectares (88%) were eradicated by means of spraying, while manual eradication eliminated the crops on another 117,774 hectares (12%). In 2011, 34,170 hectares (25%) of coca bushes were manually eradicated, as compared to 103,302 hectares (85%) of coca bushes eradicated by spraying with a mixture of herbicide with active ingredient glyphosate, a coadjuvant and water. UNODC/ Government of Colombia. *Colombia: Coca Cultivation Survey 2011*, pp. 76 and 79. Available at: [http://www.unodc.org/documents/crop-monitoring/Colombia/Colombia\\_Coca\\_cultivation\\_survey\\_2011.pdf](http://www.unodc.org/documents/crop-monitoring/Colombia/Colombia_Coca_cultivation_survey_2011.pdf).

<sup>1318</sup> The UN Committee on Economic, Social and Cultural Rights commented in its Concluding Observations on Colombia in 2001 that: “[...] the Committee notes with concern the negative the Committee notes with concern the negative consequences of the military part of Plan Colombia, which has led to further displacements of population groups affected by the spraying of illicit crops [...]”. UN, Committee on Economic, Social and Cultural Rights. *Concluding Observations on Colombia*. E/C.12/1/Add.74. November 30, 2001, paras. 11 and 32. See also Mingorance F, Minelli F, Le Du H and Olsen V. *Tierra Profanada: Impacto de los megaproyectos en Territorios Indígenas de Colombia. Cultivos Ilícitos* [Desecrated Land. The Impact of Megaprojects on the Indigenous Territories in Colombia]. Human Rights Everywhere (HREV) and ONIC. 2008. p. 21. Available [in Spanish] at: [http://www.mamacoca.org/docs\\_de\\_base/Cifras\\_cuadro\\_mamacoca/HREV\\_Tierra\\_profanada\\_2\\_cultivosilicitos.pdf](http://www.mamacoca.org/docs_de_base/Cifras_cuadro_mamacoca/HREV_Tierra_profanada_2_cultivosilicitos.pdf).

<sup>1319</sup> Notwithstanding this, the State maintains that in the case of duly constituted indigenous reserves, there is a process of prior consultation before starting any “intervention in terms of eradication within the confines of the reserve.” Colombia’s

caused by aerial spraying has also been reported by international bodies such as the United Nations Special Rapporteur on the rights of indigenous peoples,<sup>1320</sup> the UN Permanent Forum on Indigenous Issues,<sup>1321</sup> the UNHCHR,<sup>1322</sup> the Committee on the Rights of the Child,<sup>1323</sup> and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>1324</sup> In Order 004 of 2009, the Colombian Constitutional Court observed that the spraying of illicit crops and its indiscriminate effects are part of the territorial and socioeconomic processes related to the armed conflict and affect indigenous territories. It singled out the peoples most affected by the spraying: the Wiwa, the Kankuamo, the Arhuaca, the Kogui, the Embera-Katío, the Awá and the Kofan.<sup>1325</sup> According to a study done by Human Rights Everywhere and ONIC, between 2000 and 2006 at least 33 indigenous peoples were affected by the aerial spraying (36% of the total number of indigenous peoples living in Colombia), as well as 105 of their territories.<sup>1326</sup> However, there is no official, reliable record of the territories that have been sprayed or of the harm caused.

795. As the IACHR and the Inter-American Court have written, under the inter-American human rights instruments States have an obligation to consult indigenous peoples and to ensure their participation in decisions on any measure that might affect their territories, taking into account the special relationship that exists between indigenous peoples and the land and its natural resources. This is a concrete manifestation of the general rule whereby the State must guarantee that “indigenous peoples are consulted on any matters that might affect them” taking into account that “the purpose of such consultations should be to obtain their free and informed consent,” as provided in ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples. The IACHR must reiterate that issues that might affect indigenous property rights are not the only ones in which consultation and consent are required; other decisions or administrative and/or legislative actions by a State that might impact the indigenous peoples’ rights or interests also require their consultation and consent.<sup>1327</sup> As the IACHR has pointed out in earlier paragraphs, the aerial spraying in

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observations on the IACHR’s draft report. Note S-GAIIID-13-048140, December 2, 2013, para. 537. The IACHR does not have specific information supporting these processes.

<sup>1320</sup> UN. Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people. *Report on the mission to Colombia*. E/CN.4/2005/88/Add.2. November 10, 2004, paragraph 106. UN, Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of indigenous People, *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010.

<sup>1321</sup> UN. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia*. February 11, 2011. E/C.19/2011/3, para. 71.

<sup>1322</sup> UN. OHCHR. Annual Report. Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, February 24, 2003, E/CN.4/2003/13. Paragraph 100. UN, OHCHR. Annual Report. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, February 28, 2008, A/HRC/7/39, para. 56.

<sup>1323</sup> UN. Committee on the Rights of the Child. *Concluding Observations on Colombia*. CRC/C/COL/CO/3. June 8, 2006, paras. 72 and 73.

<sup>1324</sup> UN. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Preliminary note on the mission to Ecuador and Colombia. Addendum. A/HRC/7/11/Add.3. March 4, 2008, paras. 19 and 20.

<sup>1325</sup> Constitutional Court. Order 004 de 2009, para. 2.3.3.

<sup>1326</sup> See Mingorance F, Minelli F, Le Du H and Olsen V. *Tierra Profanada: Impacto de los megaproyectos en Territorios Indígenas de Colombia. Cultivos Ilícitos* [Desecrated Land. The Impact of Megaprojects on the Indigenous Territories in Colombia]. Human Rights Everywhere (HREV) and ONIC. 2008. p. 21. Available [in Spanish] at: [http://www.mamacoca.org/docs\\_de\\_base/Cifras\\_cuadro\\_mamacoca/HREV\\_Tierra\\_profanada\\_2\\_cultivosilicitos.pdf](http://www.mamacoca.org/docs_de_base/Cifras_cuadro_mamacoca/HREV_Tierra_profanada_2_cultivosilicitos.pdf).

<sup>1327</sup> See, *inter alia*, IACHR. *Indigenous and Tribal Peoples’ Rights over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, para. 273. IACHR. *Follow-up Report – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, OEA/Ser/L/V/II.135, Doc. 40, August 7, 2009, para. 158; I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, and I/A Court

indigenous territories affects the rights and interests of the indigenous peoples. It is, therefore, the Colombian State's duty to fully comply with the obligations that attend the right to free and informed prior consultation and consent, in keeping with the standards of the inter-American system.<sup>1328</sup>

## 6. Forced displacement and the continuation of the unconstitutional state of affairs declared by the Constitutional Court in Order 004 of 2009

796. The principal consequence of the heavy toll that the armed conflict has taken on the indigenous peoples is the forced displacement of families and entire communities, whose magnitude and destructive effects the IACHR has described in its annual reports<sup>1329</sup> and have warranted precautionary measures.<sup>1330</sup> The Commission has observed that displacements are most common among persons and communities in areas where the highest number of armed clashes occur and that the appropriation of land by illegal armed actors is the main cause of the displacements.<sup>1331</sup> Forced displacement among Colombia's indigenous population is, in part, a consequence of the violence that attends the armed conflict, and clashes between the government forces and armed groups, bombings, the presence of anti-personnel mines and unexploded ordnance and the accidents that result, restrictions on freedom of movement, stigmatization and armed incursions. These factors combine with territorial and socioeconomic processes associated with the legal and illegal exploitation of natural resources, infrastructure projects or illicit or licit crops.<sup>1332</sup>

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H.R.. *Case of the Kichwa People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245.

<sup>1328</sup> This was the finding of the Constitutional Court in the action that the Organization of Indigenous Peoples of the Colombian Amazon [*Organización de los Pueblos Indígenas de la Amazonía Colombiana*] (OPIAC) filed because of the aerial spraying of herbicides, without getting the prior consent required under ILO Convention 169. The spraying did considerable environmental damage in their territories. Accordingly, the Constitutional Court ordered that the agencies involved "shall effectively and efficiently consult the indigenous and tribal peoples of the Colombian Amazon with regard to decisions pertaining to the Illicit Crop Eradication Program that they conduct on their territories "with a view to reaching an agreement or getting their consent to the proposed measures." Constitutional Court. Judgment SU-383 of May 13, 2003.

<sup>1329</sup> IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, para. 148; IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 94; IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia, para. 89; IACHR, *Annual Report 2006*, OEA/Ser.L/V/II.127, Doc. 4, rev. 1, March 3, 2007, Chapter IV. Colombia, paras. 35-38; IACHR, *Annual Report 2005*, OEA/Ser.L/V/II.124, Doc. 7, February 27, 2006, Chapter IV. Colombia, paras. 27-30; IACHR, *Annual Report 2004*, OEA/Ser.L/V/II.122, Doc. 5 rev. 1, February 23, 2005, Chapter IV. Colombia, paras. 23-27; IACHR, *Annual Report 2003*, OEA/Ser.L/V/II.118, Doc. 70 rev. 2, December 29, 2003, Chapter IV. Colombia, para. 12; IACHR, *Annual Report 2002*, OEA/Ser.L/V/II.117, Doc. 1 rev. 1, March 7, 2003, Chapter IV. Colombia, paras. 34-35; IACHR, *Annual Report 2001*, OEA/Ser.L/V/II.114, Doc. 5 rev., April 16, 2002, Chapter IV. Colombia, paras. 6 and 10; IACHR, *Annual Report 2000*, OEA/Ser.L/V/II.111, Doc. 20 rev., April 16, 2001, Chapter IV. Colombia, paras. 3, 21, 22 and 29.

<sup>1330</sup> IACHR, Precautionary Measure 355/10 - 21 Families of the Wounaan Indigenous People of the Sierra Nevada in Santa Marta. Precautionary measure 21/05 – Wiwa Indigenous People of the Sierra Nevada in Santa Marta.

<sup>1331</sup> IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV. Colombia, para. 65; IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, para. 35; IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 83.

<sup>1332</sup> The complex combination of factors that cause displacement and their connection to the conflict-related processes have been cited by a number of organizations, such as the UNHCR. According to the *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia*, "in areas that are utilized for large economic projects, such as mineral and oil explorations, agro-industrial developments or hydro-electric installations, the indigenous communities are at serious risk of eviction and displacement." [UNHCR. *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia*, 27 May 2010, HCR/EG/COL/10/2, p. 23. Available at: <http://www.refworld.org/docid/4bfe3d712.html>]. See also UN. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia*" February 11, 2011 (E/C.19/2011/3).

797. For more than a decade, Colombia has had one of the largest displaced populations in the world. While forced displacement affects a wide cross-section of the Colombian people, it has hit the indigenous population hardest. The figures tell the story: although the official and unofficial figures are leagues apart, they nonetheless reveal the terrible humanitarian crisis that is the product of forced displacement. In effect, as the UNHCR points out, indigenous people in Colombia account for 3.4% of the almost 3.9 million internally displaced persons. According to the UNHCR, between 1997 and 2011 a total of 106,562 persons were displaced; in 2011 alone, 4,080 indigenous persons were displaced in Colombia.<sup>1333</sup> According to ONIC, between 2002 and 2008 approximately 70,351 indigenous persons were forcibly displaced,<sup>1334</sup> whereas in 2010, 1,146<sup>1335</sup> were displaced, and in 2011 the number was 5,011.<sup>1336</sup> For its part, the Colombian State told the IACHR that between 2002 and 2008, a total of 55,325 indigenous persons were displaced; this figure is 15,026 less than the figure reported by ONIC for that same period.<sup>1337</sup> The official figures as of December 2010 indicate that between 2005 and 2010, 52,521 persons belonging to Colombia's indigenous peoples were displaced.<sup>1338</sup> According to the figures in the Single Displaced Persons Registry, as of February 2011 93,000 indigenous persons were listed as forcibly displaced, which would make it the second most affected ethnic group.<sup>1339</sup>
798. During its visit, the Commission was troubled to learn that 2012 saw an alarming spike in the number of indigenous persons forcibly displaced. The main cause was the endless armed clashes being fought on indigenous territories.<sup>1340</sup> According to ONIC, as of November 2012, 41 episodes of large-scale displacements were recorded, in which 11,596 persons and 2,690 families were forcibly displaced. This was more than double the figure ONIC recorded in 2011.<sup>1341</sup> Particularly disturbing was the information provided during the Commission's visit by beneficiaries of precautionary measures according to which 1,725 persons of the Awá people had been forcibly displaced in 2012. It also observes that the largest number of indigenous persons displaced in 2012, 4,584, were from the department of Cauca, followed by Chocó, where 3,469 people were displaced, and Nariño, where 1,625 were displaced.<sup>1342</sup> The

<sup>1333</sup> UNHCR, *Colombia Situation. Indigenous Peoples 2012*. Available at: [http://www.acnur.org/t3/fileadmin/Documentos/RefugiadosAmericas/Colombia/2012/Colombia\\_Situation\\_-\\_Indigenous\\_people\\_2012.pdf?view=1](http://www.acnur.org/t3/fileadmin/Documentos/RefugiadosAmericas/Colombia/2012/Colombia_Situation_-_Indigenous_people_2012.pdf?view=1). According to the Commission Monitoring Public Policy on Forced Displacement, in 2010 6.4% of the indigenous population was displaced, while indigenous persons represented 3.4% of the total population of Colombia. CODHES, *Informe especial. Visita in loco. Comisión Interamericana de Derechos Humanos* [Special Report. In-loco Visit. Inter-American Commission on Human Rights. 2012]. p. 18.

<sup>1334</sup> ONIC. *Violaciones de derechos humanos en los pueblos indígenas: Nuestra realidad en cifras* [Human Rights Violations among Indigenous Peoples: Our Reality in Figures]. Document that the ONIC supplied to the IACHR. November 18, 2008. IACHR. *Annual Report 2008*. Chapter IV. paragraphs 86 and 87.

<sup>1335</sup> ONIC. *Los Derechos Humanos de los pueblos indígenas de Colombia durante el 2010 y en el inicio del gobierno Santos* [The human rights of Colombia's indigenous peoples in 2010 and during the early Santos Administration]. Bogotá, December 2010. p. 21.

<sup>1336</sup> ONIC. *La protección efectiva de los pueblos indígenas frente al conflicto armado en Colombia: una tarea pendiente* [Effective protection of indigenous peoples from the armed conflict in Colombia: unfinished business]. 2011. p. 21.

<sup>1337</sup> Note DDH No. 5717/0223 from the Office of the Director of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia dated February 5, 2009, p. 40. IACHR. *Annual Report 2008*. Chapter IV. paragraphs 86 and 87.

<sup>1338</sup> UNHCR. "Colombia situation". (Colombia, Costa Rica, Ecuador, Panama and Venezuela) Indigenous Peoples No. 4. Available at: [http://www.acnur.org/t3/fileadmin/Documentos/RefugiadosAmericas/Colombia/EN/Colombia\\_Situation\\_-\\_Indigenous\\_People\\_-\\_2011.pdf?view=1](http://www.acnur.org/t3/fileadmin/Documentos/RefugiadosAmericas/Colombia/EN/Colombia_Situation_-_Indigenous_People_-_2011.pdf?view=1).

<sup>1339</sup> UNDP. *Informe Nacional de Desarrollo Humano 2011. Colombia rural. Razones para la Esperanza* [National Human Development Report 2011. Rural Colombia. Reasons to Hope]. Bogotá: INDH UNDP. 2011. p. 286. Available [in Spanish] at: <http://pnudcolombia.org/indh2011/index.php/el-informe/informe-completo>

<sup>1340</sup> ONIC. *Boletín N° 4/2012*. January to November 2012, p. 1.

<sup>1341</sup> ONIC. *Boletín N° 4/2012*. January to November 2012, p. 12.

<sup>1342</sup> ONIC. *Boletín N° 4/2012*. January to November 2012, p. 13.

peoples most affected in 2012 were the Embera (4,860), Nasa (4,674), Awá (1,725), Wounaan (237) and Jiw (100).<sup>1343</sup>

799. Alarming as they are, these figures do not convey the real dimensions of the situation, given the obvious inconsistencies in the statistics and the high incidence of under recording that happens in the case of indigenous displacement because of its particular characteristics. It is important to acknowledge that when indigenous peoples and communities are involved, forced displacement happens in different ways, which the official records should reflect.<sup>1344</sup> Thus, for example, indigenous communities or families can be displaced within the boundaries of a given territory or may be displaced from one territory to a neighboring territory of the same people; in some instances, the bordering territories may be in different states. Although this type of forced displacement can have serious consequences, it is not documented; instead, the forced displacements shown in the record and tabulated in the official figures are generally large-scale displacements where indigenous persons move off the reserve or into urban areas.<sup>1345</sup>
800. The Commission must again emphasize its concern over the impact that displacement has on the indigenous peoples' relationship with their ancestral territory, basic living conditions, access to food, water and traditional health systems, the fact that they are unable to visit their sacred sites, the loss of identity and other problems.<sup>1346</sup> Forced displacement threatens the very existence of an indigenous people, as it severs the fundamental relationship that a given people has to its territory, both in terms of physical survival (as that territory is the source of their material livelihood) and in terms of its cultural survival, to the extent that its culture is directly tied to a people's ancestral territory. The effect is not same for all indigenous peoples and communities; those with the fewest members or undergoing acculturation or breakup are at greater risk of becoming extinct as a consequence of displacement. Then, too, the indigenous population is exposed to many dangers in the urban environments to which they move, dangers that include –in addition to poverty and discrimination- labor exploitation, sexual violence, human trafficking and common crime.<sup>1347</sup> The IACHR also notes that a number of indigenous communities have been reduced to begging in the cities, which involves profound violations of the most fundamental rights of their members and threatens their physical and cultural integrity, as happened in the case of the indigenous communities of the Embera-Katío people, who live on the Tahami reserve in Alto Andágueda, Municipality of Bagadó, Chocó.<sup>1348</sup>

<sup>1343</sup> ONIC. *Boletín N° 4/2012*. January to November 2012, p. 14.

<sup>1344</sup> UN. Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010.

<sup>1345</sup> ONIC. *La protección efectiva de los pueblos indígenas frente al conflicto armado en Colombia: una tarea pendiente* [Effective protection of indigenous peoples from the armed conflict in Colombia: unfinished business]. 2011. p. 13.

<sup>1346</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 94; IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, 25 February 2009, Chapter IV. Colombia, para. 89.

<sup>1347</sup> Amnesty International. *The Struggle for Survival and Dignity. Human Rights Abuses against Indigenous Peoples in Colombia*. 2010. Available at: <http://amnesty.org/en/library/asset/AMR23/001/2010/en/29984719-a927-4ec9-a42a-0641b5865a60/amr230012010en.pdf>.

<sup>1348</sup> See, *inter alia*, Asociación de Cabildos Indígenas Wounaan, Embera Dobida, Katío, Chamí y Tule del Departamento del Chocó [Association of Wounaan, Embera Dobida, Katío, Chamí and Tule Indigenous Governments of the Department of Chocó] (OREWA). *Boletín Informativo Nekkuepur Kaya Purba (The Voice of Our Communities)*. Quibdó, Chocó. December 2, 2010. "Indigenous Communities in Alto Andágueda in danger of displacement". *El Espectador*. "El dilema de la salud embera" [The Embera Health Dilemma]. August 30, 2011. Available [in Spanish] at: <http://www.elespectador.com/impreso/bogota/articulo-295661-el-dilema-de-salud-embera>.

801. As for the State's response, the IACHR observes that since enactment of Law 387 of 1997, Colombia has had a series of policies and programs in place to prevent forced displacement and assist its victims. However, because of the failure to effectively implement those programs and policies and the lack of the wherewithal needed to cope with the problem of forced displacement, in Judgment T-025 of 2004 the Constitutional Court declared an "unconstitutional state of affairs" because of the effect that forced displacement had had, as evidenced by the persistent and ongoing violation of displaced persons' rights. As part of the follow-up of compliance with the judgment, the Constitutional Court issued Order 004 of 2009 in which it declared that forced displacement was closely linked to the extinction of at least 34 indigenous peoples; that list grew in 2010 with the addition of the Hitnu or Macaguán people. In general terms, in Order 004 the Constitutional Court determined that the State's response had been inadequate and was basically in the form of documents that had no application in practice. It also observed that the State has an obligation, on the one hand, to prevent the causes of forced displacement and, on the other, to adopt a differentiated approach in the assistance it provides to the displaced indigenous population. Accordingly, it ordered the National Government to design, adopt and implement a *Program to Guarantee the Rights of Displaced Indigenous Peoples*, and to devise and implement *Ethnicity Protection Plans* for each of the 35 peoples identified as being on the verge of extinction.

802. The IACHR recognizes that the Colombian State has made efforts to include an ethnically differentiated approach in its public policy for the victims of forced displacement. These efforts were mainly in response to the orders calling for a differentiated approach and a review of public policy, which the Constitutional Court issued in following up judgment T-025 of 2004 and Order 004 of 2009.<sup>1349</sup> Even so, the Commission believes that in general terms, any progress made has mainly been through their formal inclusion in various instruments, but not in the form of meaningful practices that could bring about a real improvement in the lot of indigenous peoples in danger of being or already forcibly displaced in Colombia.

803. In the case of the *Ethnic Protection Plans*, nearly four years after issuance of Order 004, some 40% of the plans are reportedly in the pre-consultation phase; 35% are in the phase of assembling the diagnostic study and lines of action; 21% are in the phase during which programs and projects are formulated and negotiated; only 4% are actually in the implementation phase.<sup>1350</sup> The IACHR appreciates the determination expressed by the State

<sup>1349</sup> See in this regard, National Government. *Informe a la Constitutional Court sobre el avance en la superación del estado de cosas inconstitucional declarado mediante la sentencia T- 025 de 2004* [Report to the Constitutional Court on the progress made toward overcoming the unconstitutional state of affairs declared in Judgment T-025 of 2004]. July 1, 2011. Available [in Spanish] at: <https://www.dnp.gov.co/LinkClick.aspx?fileticket=iYva4A77STc%3D&tabid=1552>; National Government. *Informe a la Constitutional Court sobre el avance en la superación del estado de cosas inconstitucional declarado mediante la sentencia T- 025 de 2004* [Report to the Constitutional Court on the progress made toward overcoming the unconstitutional state of affairs declared in Judgment T-025 of 2004]. July 1, 2010. Available [in Spanish] at: <https://www.dnp.gov.co/LinkClick.aspx?fileticket=zG5WOL1WE3c%3D&tabid=1552>; National Government. *Informe a la Constitutional Court sobre el avance en la superación del estado de cosas inconstitucional declarado mediante la sentencia T- 025 de 2004* [Report to the Constitutional Court on the progress made toward overcoming the unconstitutional state of affairs declared in Judgment T-025 of 2004]. October 30, 2009. Available [in Spanish] at: <https://www.dnp.gov.co/LinkClick.aspx?fileticket=6EucA6-cdBw%3D&tabid=1552>.

<sup>1350</sup> Ministry of the Interior. Bureau of Indigenous, Roma and Minority Affairs. *Informe de Avance presentado a la Honorable Constitutional Court: Autos 004 de 2009, 382 de 2009, 174 de 2011, 092 y 237 de 2008, y 008 de 2009* [Progress Report presented to the Honorable Constitutional Court: Orders 004 of 2009, 382 of 2009, 174 of 2011, 092 and 237 of 2008, and 008 of 2009]. June 2012, pp. 23-171, and Ministry of the Interior. Bureau of Indigenous, Roma and Minority Affairs. *Informe de Avance presentado a la Procuraduría. Cumplimiento de las órdenes emitidas en el Order 004 de 2009* [Progress

authorities with whom it met during its visit, not just to move forward with the formulation of these plans but to actually implement the *Ethnic Protection Plans*. It therefore calls upon the State to act upon its commitment, in full concert with the respective indigenous peoples, so that their living conditions are truly improved. The indigenous organizations with which the Commission met during its visit expressed concern because territories belonging to peoples protected under Order 004 are being used to build development and investment projects or for mining concessions. The IACHR believes that the State must prioritize the adoption of effective measures that are instrumental in bringing these peoples back from the brink of extinction, and which do not usher in investment and development projects or mining concessions, which only compound the threat to their physical and cultural survival.

804. As for the *Guarantee Program*, according to the information available between 2009 and 2011 the State worked on the assembly phase, during which it negotiated with the national indigenous organizations and with them put together a document containing the components of the Program and the proposals for each component.<sup>1351</sup> The State underscored the fact that this process involved nearly 4000 indigenous persons from every region in the country, with the result that the agreements were formalized in December 2011.<sup>1352</sup> The progress notwithstanding, the IACHR observes that the Program's Plan of Action is still pending. That plan of action will enable implementation of the program in accordance with the Constitutional Court's mandates. The State reports that the Plan is being assembled by a Joint Committee established by the Permanent Negotiating Group.<sup>1353</sup>
805. As for the State's obligations with respect to the internal displacement previously discussed, the IACHR notes that, among the positive preventive measures adopted was to include a differentiated approach guideline in the policy on preventing and protecting the displaced population, and in documents that implement that policy, such as the "Prevention Protocol", which sets out the various mechanisms and programs in this area. However, it is unclear whether those instruments are actually being put into practice to benefit displaced indigenous peoples and communities. The IACHR believes that the tools the State has to prevent indigenous forced displacement should put to greater use, such as the Early Warning System of the Office of the Ombudsperson. The information received indicates that situations arise in which the Risk Reports have not elicited a prompt and energetic reaction on the part of the

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report presented to the Office of the Attorney General. Compliance with the orders given in Order 004 of 2009]. November 2012, pp. 11-83.

<sup>1351</sup> Ministry of the Interior. Bureau of Indigenous, Roma and Minority Affairs. *Informe de Avance presentado a la Honorable Constitucional Court: Autos 004 de 2009, 382 de 2009, 174 de 2011, 092 y 237 de 2008, y 008 de 2009* [Progress Report presented to the Honorable Constitutional Court: Orders 004 of 2009, 382 of 2009, 174 of 2011 092 and 237 of 2008, and 008 of 2009]. June 2012, p. 11. Ministry of the Interior. Bureau of Indigenous, Roma and Minority Affairs. *Informe de Avance presentado a la Procuraduría. Cumplimiento de las órdenes emitidas en el Order 004 de 2009* [Progress report presented to the Office of the Attorney General. Compliance with the orders given in Order 004 of 2009]. November 2012, pp. 6-7.

<sup>1352</sup> State of Colombia. *Indígenas, Afrodescendientes y Minorías* [Indigenous Peoples, Afro-descendants and Minorities]. Note MPC-OEA 609. April 22, 2013, p. 20.

<sup>1353</sup> Ministry of the Interior. *Informe Ejecutivo de Gestión. Autos 004 de 2009, 092 y 237 de 2008, y 008 de 2009* [Executive Performance Report. Orders 004 of 2009, 092 and 237 of 2008 and 008 of 2009]. December 2012, pp. 3-6; Ministry of the Interior. Bureau of Indigenous, Roma and Minority Affairs. *Informe de Avance presentado a la Procuraduría. Cumplimiento de las órdenes emitidas en el Order 004 de 2009* [Progress report presented to the Office of the Attorney General. Compliance with the orders given in Order 004 of 2009]. November 2012, pp. 7-11; and Ministry of the Interior. Bureau of Indigenous, Roma and Minority Affairs. *Informe de Avance presentado a la Honorable Constitucional Court: Autos 004 de 2009, 382 de 2009, 174 de 2011, 092 y 237 de 2008, y 008 de 2009* [Progress Report presented to the Honorable Constitutional Court: Orders 004 of 2009, 382 of 2009, 174 of 2011, 092 and 237 of 2008, and 008 of 2009]. June 2012, pp. 18-22.

national authorities to prevent the threat from materializing.<sup>1354</sup> Furthermore, in order to develop adequate preventive measures for indigenous peoples, it is critical to take into account that indigenous peoples and communities experience forms of forced displacement that are unique, as they may be displaced from one place in their territory to another, from one village to another, or across state lines. The Commission would also emphasize that ancestral lands and territories that are not properly registered and deeded are more likely to be unlawfully appropriated; hence, the measures of prevention should include actions intended to give property owners legal security and certainty.

806. As for the obligation to *protect*, the IACHR observes that in the case of displaced indigenous peoples, it is vital that for the duration of their displacement, their ancestral territory be protected from settlement or appropriation by third parties; from occupation by armed groups or from inroads by other groups and plans for settling the area; from the startup of mining, hydrocarbon, infrastructure or other projects, and from the destruction of the housing or community infrastructure or their deterioration.<sup>1355</sup> The IACHR therefore believe it is essential that, as a first measure toward restitution of their lands, the State take measures to protect the indigenous territories of communities that have been driven out by the violence.<sup>1356</sup>
807. Decree 2007 of September 24, 2001, established legal instruments for individual and collective protection of properties abandoned as a result of the violence. The purpose of those instruments is to identify and register the properties and ownership rights.<sup>1357</sup> The available information indicates that as part of the project on “Protection of Land and Assets of the Population Displaced by Violence,” –which since January 1, 2012 has been the responsibility of the Land Restitution Unit- “land ownership procedure” and “ethnic protection procedure” have been established by which they are declared threatened or displaced territories; that alone is sufficient to prove that the displaced communities are the owners, tenants or occupants of that land. Nevertheless, the information available indicates that implementation of these measures is still in its early stages, which means that the communities face the threat of invasion, colonization, occupation or illegal exploitation of their territories and natural resources.<sup>1358</sup>

<sup>1354</sup> Other international organizations have also stressed the need for better follow-up of and attention to the Threat Reports produced by the Early Warning System. See UN, OHCHR. *Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*. March 9, 2009. A/HRC/10/32. UN. Human Rights Committee. *Concluding Observations. Colombia*. CCPR/C/COL/CO/6, August 4, 2010. UN. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia* February 11, 2011 (E/C.19/2011/3). UN. Special Rapporteur on the Situation of human rights and fundamental freedoms of indigenous peoples. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010.

<sup>1355</sup> UNDP/UNHCR. *Colección Cuadernos INDH 2011. Desplazamiento forzado tierras y territorios. Agendas pendientes: la estabilización socioeconómica y la reparación* [Forced displacement, lands and territories. Unfinished business: socioeconomic stabilization and reparations], Bogotá, 2011, p. 49. Available [in Spanish] at: <http://pnudcolombia.org/indh2011/index.php/cuadernos-indh/desplazamiento-forzado>.

<sup>1356</sup> The UN Special Rapporteur on the rights of indigenous peoples observed in 2009 that “the Government should protect the land of indigenous peoples that have been forcibly displaced, so as to prevent seizures of the land in the absence of the indigenous peoples and enable them to return to it.” Special Rapporteur on the Situation of human rights and fundamental freedoms of indigenous peoples. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010, para. 69.

<sup>1357</sup> Decree 2007 of September 24, 2001, “Partially regulating articles 7, 17 and 19 of Law 387 of 1997, as pertains to prompt assistance to the rural population displaced by the violence, in their voluntary return to their place of origin or place where they will relocate, and measures are taken to prevent this situation.” Available at: <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/1381>.

<sup>1358</sup> As the UNDP and the UNHCR observe, according to the Office of the Attorney General of the Nation, “no specific measures have been reported to protect properties during the period in which the INCODER was responsible for protecting land,” in other words, in the period between 2001 and 2007. The available information indicates that up until 2010, using the “collective protection procedure”, 2.5 million hectares of abandoned property were identified in the municipalities hardest



The IACHR must emphasize that engaging in or promoting economic, extractive or other activities on territories that belong to displaced indigenous communities or peoples without consulting them or getting their consent in keeping with the standards of the inter-American system on the subject, is incompatible with the duty to protect.

808. On the subject of *assistance* to a displaced population, the Commission appreciates the information provided by the State on the implementation of measures to provide assistance and attention with “differential criteria” for their implementation.<sup>1359</sup> The Commission considers that such efforts should be stepped up, since according to the information received, the living conditions of members of the indigenous peoples are dire, as forced displacement prevents them from engaging in their traditional practices of hunting and gathering and raising crops, practices that are the source of their sustenance. As a result, they do not have access to food and must endure hunger day after day, with the result that they suffer from serious anemia, malnutrition and other health problems. These problems are particularly acute among children. Their health and hygiene also suffer, as they have no access to drinking water and basic sanitation. This, combined with improper solid waste management, has resulted in high rates of child illnesses, parasitism and other digestive disorders.<sup>1360</sup> On this basis, the Commission reiterates that the State must continue to grant differential attention to the displaced indigenous population, particularly bearing in mind that they require assistance appropriate to their cultural needs, identity, cosmovisión, language, and traditions.<sup>1361</sup>
809. During the visit, the IACHR was particularly troubled to learn of the death rate and nutritional condition of the displaced indigenous population. It was told of the displacement of around 3,047 indigenous persons from the Alto Andágueda Reserve in Chocó, after bombings in July 2012. The displaced stayed in the community of Aguasal, living in overcrowded conditions and without food. Three children died of malnutrition and respiratory illnesses.<sup>1362</sup>

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hit by forced displacement; in some cases, this procedure has been used for territories belonging to indigenous communities. As for the protocol for protection of the “ethnic protection procedure”, according to the UNDP and the UNHCR, it has been used very little because the properties are not recorded and institutional implementation is slow. UNDP/UNHCR. *Colección Cuadernos INDH 2011. Desplazamiento forzado tierras y territorios. Agendas pendientes: la estabilización socioeconómica y la reparación* [Forced displacement, lands and territories. Unfinished business: socioeconomic stabilization and reparations], Bogotá, 2011, pp. 54-55. Available [in Spanish] at: <http://pnudcolombia.org/indh2011/index.php/cuadernos-indh/desplazamiento-forzado>.

<sup>1359</sup> The State indicated that the attention measures consider components related to nutrition, clothing (“according to the requirements of the surrounding climate, customs, and traditional usage of the communities); medical and psychosocial care (“through guaranteeing informed prior consent for medical treatments and gradually integrating the traditional healing and curing practices proper to the medicine and traditional knowledge of indigenous people”); and the housing component (“ii) Voluntary nature and adaptation to different areas in their territory, ii) Preparation and orientation to other different areas within their territory, in terms of security, higiene, and basic sanitation, iii) Definition of limits and basic consensus-based standards of coexistence and behavior for accommodations, iv) delivery of habitat kits suitable to the conditions of the environment and the territory.” It also reported that in developing the policy on “special emergency humanitarian care” for the cases of collective and/or mass forced displacements, assistance measures have been implemented “directed to reestablishing the guarantee of a minimum subsistence,” particularly for the Embera communities. Colombia’s observations on the IACHR’s draft report. Note S-GAID-13-048140, December 2, 2013, para. 488 and 532.

<sup>1360</sup> In August 2010, the UN Human Rights Committee expressed concern over the lack of comprehensive measures to provide differentiated care to displaced indigenous people. UN, Human Rights Committee. *Concluding Observations on Colombia*. (CCPR/C/COL/CO/6. August 4, 2010.

<sup>1361</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, 30 December 2009, Chapter IV. Colombia, para. 94; IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, 25 February 2009, Chapter IV. Colombia, para. 89; IACHR, *Annual Report 2007*, OEA/Ser.L/V/II.130, Doc. 22 rev. 1, 29 diciembre 2007, Chapter IV. Colombia, para. 62. UN. Special Rapporteur on the Situation of human rights and fundamental freedoms of indigenous peoples. The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur. A/HRC/15/34, January 8, 2009.

<sup>1362</sup> ONIC. *Boletín N° 4/2012*. January to November 2012. pp. 2-3.

810. As for the *return* of the displaced population, the State reported that significant efforts are being made to ensure a safe and full return. It also indicated that the following communities are the priorities: the displaced Wayúu community of Bahía Portete, which had relocated to Maracaibo, Venezuela, and the Embera communities displaced from the department of Risaralda and relocated in Bogotá. It indicated that in both cases, procedures were negotiated for their return, and the procedure approved for the Embera communities was approved by the Assembly of authorities in June 2012; the first phase of the return is already underway.<sup>1363</sup> The IACHR recognizes the efforts made, although the situation is so critical that greater emphasis needs to be placed on this phase of the public policy on displacement, with a culturally appropriate approach.<sup>1364</sup> The IACHR has learned of the current circumstances of many indigenous communities displaced from their ancestral territories years ago, and who are still living in forced displacement because they cannot return.<sup>1365</sup>
811. The ancestral territories of indigenous communities must be restored in a manner respectful of their traditional forms of participation and organization. In order for the return of indigenous communities to be sustainable, safety and security have to be priorities. During the visit, the Commission learned that persons who led or participated in the land restitution processes had reportedly been threatened; some had even been killed. With that in mind, the IACHR is urging the State to devote particular attention to protection of traditional indigenous authorities and leaders. The Commission also believes that, in order to ensure non-repetition, this process demands that measures be taken to guarantee legal and material ownership of the territory. Thus, in those cases in which collective title has not yet been formally recognized, the respective community or people should be granted title. The State must also make efforts to effectively restore the traditional use and enjoyment of the territory and its management by the indigenous authorities.<sup>1366</sup>

## 7. The multiple forms of discrimination and violence that indigenous women in Colombia suffer, aggravated by the armed conflict

812. The IACHR has repeatedly observed that the situation of indigenous women in Colombia is particularly harsh, as they are victims of multiple forms of discrimination by virtue of their ethnicity and because they are women, a situation that makes them particularly vulnerable to the effects of the armed conflict, forced displacement, poverty and structural marginalization.<sup>1367</sup> The Commission is troubled by the fact that, according to the information received, the armed conflict and related territorial and socioeconomic problems have only

<sup>1363</sup> State of Colombia. *Indígenas, Afrodescendientes y Minorías* [Indigenous Peoples, Afro-Descendants and Minorities]. Note MPC-OEA 609. April 22, 2013, p. 14.

<sup>1364</sup> The United Nations Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people affirmed that before they can resettle on their territories, the Government should ensure that displaced indigenous communities can return safely, of their own free will, with dignity and without fear of forced displacement in the future. Rapporteur on the Situation of human rights and fundamental freedoms of indigenous peoples. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010, para. 69.

<sup>1365</sup> IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, para. 149.

<sup>1366</sup> Similarly, in 2009, the Committee on the Elimination of Racial Discrimination urged the State to adopt measures to ensure that indigenous communities dispossessed of their lands get their land returned and their property titles restored. UN. Committee on the Elimination of Racial Discrimination, *Concluding observations on Colombia*. CERD/C/COL/CO/14, August 28, 2009.

<sup>1367</sup> IACHR. *Violence and Discrimination against Women in the Armed Conflict in Colombia*. OEA/Ser.L/V/II. October 18, 2006, para. 102. IACHR. *Annual Report 2009*. Chapter V: Follow-up Report. *Violence and Discrimination against Women in the Armed Conflict in Colombia*. OEA/Ser.L/V/II. December 30, 2009, para. 39. IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, paras. 151-152.

exacerbated the violence and discrimination that Colombian indigenous women continue to experience.

813. The IACHR notes with concern that many of the violations are committed against women who belong to groups that are on the verge of extinction, which upsets the already threatened cultural, spiritual and physical equilibrium.<sup>1368</sup> The information it received during its visit indicates that between January and November 2012, 14 indigenous women were murdered; they were members of the Nasa, Pastos, Embera, Kankuamo, Arhuaco, Jiw and Inga peoples.<sup>1369</sup> It was also told that many of those forcibly displaced are indigenous women –widows and heads of household- who do not have the guarantees necessary to return to their territories, as they risk reprisals and other serious threats.<sup>1370</sup>

814. The Commission was told that one of the greatest concerns for indigenous women is the impact that “mining concessions and energy, mining, and infrastructure megaprojects [are having] on our lives and our bodies.” They commented that in order to protect the corporations, the State increases the military and police presence in indigenous territory, as happened in the Municipality of Cumaribo, department of Vichada, where the 43rd Infantry Battalion had reportedly established itself in numbers that exceeded the indigenous population. They pointed out that this brings “increased prostitution involving indigenous girls, unwanted pregnancies, sexually transmitted diseases, romantic involvements and sexual violence.”<sup>1371</sup>

815. What is particularly disturbing for the Commission is the fact that, as it was told during its visit, sexual violence continues to be the “most painful and unspoken” indignity that indigenous women in Colombia suffer.<sup>1372</sup> Sexual violence is one of the most serious manifestations of the impact that armed conflict has on indigenous women, and is committed by parties on all sides of the armed conflict. Rape, sexual harassment, forced prostitution, sexual slavery and “romance” as a war tactic exact a particularly heavy toll on indigenous women, who are those most vulnerable to the crimes committed by the combatants because of the multiple forms of discrimination they endure.<sup>1373</sup>

816. Two examples of cases of rape of indigenous women were received during the year 2012. The first happened in May, and the victim was a Nasa woman with a mental disability; the perpetrator was a military man with Special Energy and Highway Battalion No. 9. The crime was committed on the Nasa Uh Reserve, Municipality of Orito, department of Putumayo.<sup>1374</sup> The second reported case was the rape and subsequent death of an Arhuaco girl in September

<sup>1368</sup> ONIC. *Mujeres Indígenas: Víctimas Invisibles del conflicto armado en Colombia* [Indigenous Women: Invisible victims of Colombia's armed conflict].

<sup>1369</sup> ONIC. *Boletín N° 4/2012*. January to November 2012. p. 6.

<sup>1370</sup> ONIC. *Mujeres Indígenas: Víctimas Invisibles del conflicto armado en Colombia* [Indigenous Women: Invisible victims of Colombia's armed conflict].

<sup>1371</sup> ONIC. *Mujeres Indígenas: Víctimas Invisibles del conflicto armado en Colombia* [Indigenous Women: Invisible victims of Colombia's armed conflict].

<sup>1372</sup> ONIC. *Mujeres Indígenas: Víctimas Invisibles del conflicto armado en Colombia* [Indigenous Women: Invisible victims of Colombia's armed conflict].

<sup>1373</sup> IACHR. *Violence and Discrimination against Women in the Armed Conflict in Colombia*. OEA/Ser.L/V/II, Doc. 67, October 18, 2006, paras. 102 to 147.

<sup>1374</sup> Regarding these events, the State reported that Prosecutor's Office 51 of Orito-Putumayo is conducting a criminal investigation, which is now in the pre-trial stage. It also indicated that a disciplinary investigation was initiated but it was archived and finalized. Colombia's observations on the IACHR's draft report. Note S-GAIIID-13-048140, December 2, 2013, para. 499.

2012, in the Municipality of Pueblo Bello, department of Cesar; the motives and perpetrators are still unknown.<sup>1375</sup> In recent years, the Commission also learned of other cases of sexual violence committed against indigenous women, especially in 2009,<sup>1376</sup> 2010<sup>1377</sup> and 2011.<sup>1378</sup> Other voices, like the United Nations Special Rapporteur on the rights of indigenous peoples and the OHCHR have recently expressed concern over the fact that the sexual violence committed against indigenous women and girls continues unabated in the armed conflict; some cases are blamed on members of the armed forces.<sup>1379</sup>

817. The IACHR observes that under reporting of cases of sexual violence is a problem, especially when the perpetrators are military personnel; this is because members of the indigenous communities, who are under constant guard by military personnel, are afraid to report such cases for fear that they might not receive sufficient protection against possible reprisals, and because the circumstances of the conflict and of displacement in which many women victims of violence find themselves, have made them mistrustful of State authorities and institutions. This was obvious from the information received in Cauca: while the military and the Prosecutor's Office told the Commission that there had been only one complaint of sexual violence supposedly committed by military personnel, the indigenous women who are in the CRIC Women's Program reported that there had five cases of rape by Army personnel and efforts are underway to identify still more cases.
818. In Order 092 of 2008, on the subject of the rights of displaced women, the Colombian Constitutional Court acknowledged some manifestations of this problem and ordered the

<sup>1375</sup> ONIC. *Boletín N° 4/2012*. January to November 2012.

<sup>1376</sup> The OHCHR reported that in 2009 a 5-year-old Nakak-Makú indigenous girl from the El Refugio indigenous territory in San José del Guaviare was sexually assaulted, presumably by a member of the security forces serving in the Joaquín Paris Battalion. Another four girls between the ages of 13 and 17 from the same community reportedly suffered similar attacks and had been subjected to sexual exploitation by members of the same battalion. [UN. OHCHR. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia. March 4, 2010. A/HRC/13/72]. It was also reported that in November 2009 a Wiwa girl had been raped by an Army soldier in San Juan del Cesar, in La Guajira [ONIC. "*Las mujeres indígenas en el marco del conflicto armado interno que vive Colombia*" [Indigenous women and Colombia's armed conflict], 2010. Information supplied to the IACHR during the thematic hearing held at the 140th session, October 28, 2010]. On the case of the indigenous Nukak-Makú girl, the State informed the IACHR that Prosecutor's Office 36 of San José de Guaviare is conducting a criminal investigation that is now in the inquiry stage. The IACHR notes that, according to the information provided by the State, the disciplinary investigation initiated regarding these events was also archived based on a decision of the Regional Procurator's Office of San José de Guaviare of September 2012. Colombia's observations on the IACHR's draft report. Note S-GA/ID-13-048140, December 2, 2013, para. 501.

<sup>1377</sup> As for 2010, at the thematic hearing the IACHR held in October on the human rights situation of Colombia's indigenous peoples, ONIC reported that there were 3 recorded cases of sexual assaults committed against indigenous women in the context of the armed conflict. That same year, the UN's OHCHR reported that on March 16, a soldier from Monsalva Battalion had attempted to rape an Embera indigenous woman in Quibdo (Chocó) [UN. OHCHR. *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*. February 3, 2011. A/HRC/16/22] and in August the UN System in Colombia issued a public statement in which it expressed concern over the fact that conflict-related rapes of indigenous women continued to be a problem. [UN System in Colombia. Press Release: International Day of the World's Indigenous Peoples: Challenges for Protecting their Lives and Personal Safety." August 9, 2010. Available [in Spanish] at: <http://www.hchr.org.co/publico/comunicados/2010/comunicados2010.php3?cod=26&cat=81>].

<sup>1378</sup> In 2011, there were reports of various cases of sexual assaults, most committed against indigenous girls: in January a 13-year-old Sikuaní indigenous girl was raped, presumably by soldiers; (ii) on August 7, a 17-year-old Embera girl, pregnant at the time, disappeared somewhere between the Ebejero and Capa-Lana Reserves in the Municipality of Carmen de Atrato, Chocó, and was found dead with signs of sexual violence; and (iii) three Awá women were raped, one of whom was 12. (ONIC. *Mujeres Indígenas: Víctimas Invisibles del conflicto armado en Colombia* [Indigenous Women: Invisible victims of Colombia's armed conflict. Information received during the *in loco* visit).

<sup>1379</sup> UN. Special Rapporteur on the Situation of human rights and fundamental freedoms of indigenous peoples. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010, paragraph 14. UN. OHCHR. *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*. February 3, 2011. A/HRC/16/22.

national government, *inter alia*, to create and put into operation a Displaced Indigenous Women's Protection Program. Nevertheless, the available information suggests that to date, four years after the Order was issued, the Program's implementation is behind schedule and plagued by problems.<sup>1380</sup>

819. Worse still, no one is ever made to answer for the many assaults and other abuses committed against indigenous women. In fact, ONIC reports that no one has ever been convicted of rape or any other form of violence in which the victim is an indigenous woman.<sup>1381</sup> It was also reported that linguistic, geographic, cultural, economic and social obstacles still obstruct indigenous women's access to justice in Colombia.<sup>1382</sup> Specific mention was made of the fact that the justice system where the indigenous peoples live is very unreliable; its officials do not know about indigenous peoples' rights and women's rights; no interpreters or translators are present for the judicial proceedings, there are no protocols specifically for assisting indigenous women, and the right to privacy of victims of sexual violence is not respected:<sup>1383</sup>

There's too much paperwork. Women are dragged from one place to another, summoned to give testimony... when a woman is required to testify about such matters, it sets back her growth and development and spiritual recovery.

820. According to reports, the main perpetrators of the sexual violence committed in the armed conflict are agents of the State, which only increases the likelihood that no one will be made to answer for the crimes and access to justice will be all the more difficult. Information was also received to the effect that indigenous women and girls who suffer from sexually transmitted diseases as a result of sexual violence generally, do not receive the proper treatment or counseling because no specific programs are in place.<sup>1384</sup>
821. The indigenous women with whom the Commission met during its visit and who were representative of a number of indigenous peoples, said that the more their rights were protected, the better able they were to live freely within their ancestral territories; their concept of a violence-free life is one in which they are able to fully enjoy their individual and collective rights.<sup>1385</sup> Accordingly, they emphasized the fact that the protection they need must

<sup>1380</sup> In June 2010, indigenous women told the IACHR that the Court's mandates in Order 092 have still not been carried out, despite the efforts undertaken by indigenous organizations to speak out about the implementation of those orders [ONIC. "Las mujeres indígenas en el marco del conflicto armado interno que vive Colombia"[Indigenous women and the armed conflict in Colombia]. 2010. Supplied to the IACHR during the thematic hearing held during the 140th session, October 28, 2010]. In June 2010, the UN Committee on Economic, Social and Cultural Rights recommended to the State that it adopt and implement "the program "Protection of the Rights of Indigenous Internally Displaced Women"." [UN. Committee on Economic, Social and Cultural Rights, *Concluding Observations on Colombia. E/C.12/COL/CO/5*. June 7, 2010] which the Constitutional Court had ordered in Order 092/08. The State informed the IACHR that the Office of the Director of Indigenous, Minority and Roma Affairs of the Ministry of the Interior and Justice had conducted a number of activities to help put together the program to protect displaced indigenous women. [Colombia's observations on the IACHR's draft report for 2010, February 25, 2011, p. 34.]

<sup>1381</sup> ONIC. *Mujeres Indígenas: Víctimas Invisibles del conflicto armado en Colombia* [Indigenous Women: Invisible victims of Colombia's armed conflict].

<sup>1382</sup> ONIC. *Mujeres Indígenas: Víctimas Invisibles del conflicto armado en Colombia* [Indigenous Women: Invisible victims of Colombia's armed conflict].

<sup>1383</sup> ONIC. *Mujeres Indígenas: Víctimas Invisibles del conflicto armado en Colombia* [Indigenous Women: Invisible victims of Colombia's armed conflict].

<sup>1384</sup> ONIC. *Mujeres Indígenas: Víctimas Invisibles del conflicto armado en Colombia* [Indigenous Women: Invisible victims of Colombia's armed conflict].

<sup>1385</sup> For example, for Muinan women from the Amazon region of Colombia, a violence-free life means "being in harmony with all beings around us [...] animals, children, parents, grandparents." [OPIAC. *Situación de las mujeres indígenas en la Amazonía Colombiana* [The Situation of indigenous women in Colombia's Amazon region]. Information received by the IACHR during

be comprehensive, which means that the State must take into consideration their concern over the occupation of indigenous territories. The IACHR has previously observed that “any analysis of the human rights situation of indigenous women in Colombia must consider that they are part of peoples with a different culture, which have a close connection to their lands. It is important to note that the armed conflict has turned indigenous lands into scenarios of war and death.”<sup>1386</sup> On that basis and with the information received, the IACHR must again make the point that so long as “the ancestral lands of indigenous peoples are not protected and respected by the armed actors, indigenous women will continue to suffer the terrible effects of the armed conflict.”<sup>1387</sup>

## 8. Armed conflict, territories, megaprojects and prior consultation

822. The legally recognized indigenous territories cover some 30% of Colombia’s national territory, and represent a total of 34 million hectares.<sup>1388</sup> This is evidence of undeniable progress in the State’s protection of indigenous peoples’ rights because, as the IACHR has observed, access to and use and possession of their ancestral territories is critical to the exercise of their other individual and collective human rights.<sup>1389</sup>
823. However, ONIC reported that although some 30 million hectares have been deeded over to indigenous peoples, roughly 25 million were deeded over prior to the 1991 Constitution; of the total number of hectares to which they have title, 79% are in Colombia’s Amazon and Orinoco regions, areas that are home to only 5% of Colombia’s total indigenous population.<sup>1390</sup> Other sources report that a large percentage of Colombia’s indigenous peoples are living on territories to which they do not have official title.<sup>1391</sup> According to what the IACHR was told

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the *in loco* visit]. As ONIC’s Counseling Service for Women, Family and Generation observed, a violence-free life means “living in harmony, being well within our peoples and communities [...]. Living without violence means that everyone’s individual and collective rights are being observed. On the collective level, for example, it is important for a people to have its own territory; for women, it has to be a safe territory that enables them to circulate without fear of being physically or sexually assaulted” ONIC. *Mujeres Indígenas: Víctimas Invisibles del conflicto armado en Colombia* [Indigenous Women: Invisible victims of Colombia’s armed conflict].

<sup>1386</sup> IACHR. *Violence and Discrimination against Women in the Armed Conflict in Colombia*. OEA/Ser.L/V/II. October 18, 2006, paras. 126-142

<sup>1387</sup> IACHR. *Violence and Discrimination against Women in the Armed Conflict in Colombia*. OEA/Ser.L/V/II. Doc. 67. October 18, 2006, para. 123.

<sup>1388</sup> State of Colombia, *Indígenas, Afrodescendientes y Minorías* [Indigenous Peoples, Afro-Descendants and Minorities]. Note MPC-OEA 609. April 22, 2013, p. 1. For 2005, Colombia recognized 710 indigenous deeded reserves, located in 27 departments and in 226 municipalities nationwide, and together representing an area of some 34 million hectares, equal to 29.8% of the national territory. See DANE. *Colombia: una Nación Multicultural. Su diversidad Étnica* [Colombia: a Multicultural Nation. Its Ethnic Diversity]. Office of the Director of Census and Demography, May 2007, p. 23. Available [in Spanish] at: [www.dane.gov.co/files/censo2005/etnia/sys/colombia\\_nacion.pdf](http://www.dane.gov.co/files/censo2005/etnia/sys/colombia_nacion.pdf). According to the information available, in 2010 there were 737 indigenous reserves, while DANE certified the existence of 796 reserves located in 234 municipalities and 27 departments. Cited in: DANE. *La visibilización estadística de los grupos étnicos colombianos* [“Raising the statistical profile of Colombia’s ethnic groups]. Available [in Spanish] at: [http://www.dane.gov.co/files/censo2005/etnia/sys/visibilidad\\_estadistica\\_etnicos.pdf](http://www.dane.gov.co/files/censo2005/etnia/sys/visibilidad_estadistica_etnicos.pdf) p. 32.

<sup>1389</sup> See *inter alia* IACHR. Pleadings before the Inter-American Court of Human Rights in the case of Sawhoyamaya Indigenous Community v. Paraguay. Referenced in: I/A Court H.R. *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, paragraph 113(a); IACHR. *Democracy and Human Rights in Venezuela*, Doc. OEA/Ser.L/V/II, Doc. 54, December 30, 2009, paras. 1076-1080.

<sup>1390</sup> ONIC. *Genocidio y crímenes de lesa humanidad en curso: El caso de los Pueblos Indígenas de Colombia* [Genocide and crimes against humanity in progress: the case of Colombia’s Indigenous Peoples]. Information received by the IACHR during its *in loco* visit.

<sup>1391</sup> The UNDP reports that in the case of territories for which there is no legal title and that are in process with INCODER, there are applications pending for a total of 1.7 million hectares, home to some 380,000 indigenous persons. UNDP. *Pueblos Indígenas: Diálogo entre culturas* [Indigenous Peoples: A dialogue among cultures]. 2011. p. 31. Available [in Spanish] at: [http://pnud.org.co/img\\_upload/61626461626434343535373737353535/2012/cuaderno\\_indigenas.pdf](http://pnud.org.co/img_upload/61626461626434343535373737353535/2012/cuaderno_indigenas.pdf); and UNDP,

during its visit, there are more than 500 applications for title to, delimitation and demarcation of territories that the government authorities have not yet decided; in some cases, even though an application for legal title may be pending, concessions have been awarded on the very same territories, or peasant reserves, parks or protected areas have been established there.<sup>1392</sup> The main obstacles to recognition of indigenous territories would be the slow pace of the process; applications get bogged down in red tape, and INCODER does not have the budget needed to handle the workload.<sup>1393</sup> The delay in recognizing indigenous peoples' territorial rights stands in contrast to the growing pace of extractive activity and is a direct function of the economic interest in the ancestral territories and a willingness to bypass consultations with the respective indigenous peoples about the development or investment projects and plans.<sup>1394</sup>

824. In actual fact, the IACHR observes that having title to the territory and the establishment of reserves are in practice no guarantee of material possession, especially when one considers that the territory has been one of the main factors that has caused Colombia's indigenous peoples to be disproportionately victimized by the armed conflict. As was observed in previous paragraphs, indigenous peoples encounter a variety of obstacles that prevent them from effectively exercising their territorial rights, the following among them: acts of violence, military buildup and armed fighting on ancestral territories, deaths and injuries and other consequences of anti-personnel mines and unexploded ordnance, aerial spraying, as well as dispossession, occupation and fraudulent appropriation of their territories by third parties for economic profit, whether legal or illegal; these factors have frequently caused the forced displacement of entire communities.<sup>1395</sup>
825. In terms of the right to the territory, reports suggest that the territorial disputes between indigenous communities or peoples and non-indigenous persons interested in appropriating ancestral indigenous lands for themselves have persisted and escalated, without eliciting an energetic response from the State to protect the indigenous people from the violence used to rob them of their territory.<sup>1396</sup> The IACHR must emphasize that indigenous peoples have a

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Colombia rural. Razonas para una esperanza [Rural Colombia: Reasons to Hope]. National Human Development Report. 2011, p. 155. Available [in Spanish] at: [http://escuelapnud.org/biblioteca/documentos/abiertos/06\\_indh2011co.pdf](http://escuelapnud.org/biblioteca/documentos/abiertos/06_indh2011co.pdf).

<sup>1392</sup> See, also, IACHR. Hearing on the *Human Rights Situation of the Indigenous Peoples in Colombia*, October 28, 2010, and ONIC. *Informe a la IACHR sobre la situación de derechos humanos de los pueblos indígenas de Colombia en el marco de la Audiencia Temática solicitada por la ONIC en el 140º período de sesiones* [Report to the IACHR on the human rights situation of Colombia's Indigenous Peoples, prepared for the Thematic Hearing held during the 140th session and requested by ONIC].

<sup>1393</sup> See also, UN, Committee on the Elimination of Racial Discrimination, *Concluding observations on Colombia*. CERD/C/COL/CO/14, August 28, 2009; UN. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia*. February 11, 2011 (E/C.19/2011/3), paragraph 29; and UN, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. James Anaya. Addendum. The situation of indigenous peoples in Colombia: follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37/Add.3. May 25, 2010, para. 38.

<sup>1394</sup> CODHES. *Informe especial. Visita in loco. Comisión Interamericana de Derechos Humanos* [Special Report. In loco visit. Inter-American Commission on Human Rights]. 2012. p. 20.

<sup>1395</sup> See also, UN, Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination on Colombia*, CERD/C/COL/CO/14, August 28, 2009. UN. Human Rights Committee. *Concluding Observations on Colombia*. CCPR/C/COL/CO/6. August 4, 2010.

<sup>1396</sup> Thus, for example, there was a complaint to the effect that in March 2013, in the village of Octavio, Cauca, a land dispute broke out between indigenous persons on one side and campesinos on the other. Ten people were injured. According to reports, the dispute happened six months earlier, but the State never made its presence felt in the area. News article titled "Diez heridos por enfrentamientos por tierras entre campesinos e indígenas del Cauca" [Disputes between campesinos and indigenous persons in Cauca leave 10 injured]. March 27, 2013. Available in Spanish at: <http://www.caracol.com.co/noticias/regional/10-heridos-deja-duros-enfrentamientos-por-tierras-entre-campesinos-e-indigenas-del-cauca/20130327/nota/1866161.aspx>. It was also reported that on October 9, 2010, on the Iroka Reserve of the Yukpa People, from the Serranía del Perijá in the department of Cesar, a fight broke out between a number of settlers

right to be protected by the State from attacks by third parties, especially in the case of disputes over ancestral territory.<sup>1397</sup> In such cases, the State authorities have an obligation to prevent such conflicts, to protect the indigenous communities from violent attacks, investigate the attacks and punish those responsible.<sup>1398</sup>

826. Protection of the right to collective property, recognized in Article 21 of the American Convention, is of particular importance to indigenous peoples because protection of their right to territorial ownership is a condition *sine qua non* for the development of their culture, the spiritual life, the integrity and economic survival of indigenous communities.<sup>1399</sup> It is also a prerequisite for exercise of the rights to a decent life, to food, water, health, freedom of conscience and religion, freedom of association, the rights of the family and freedom of movement and residence.<sup>1400</sup> For the IACHR, “protection of the right of indigenous peoples to their ancestral territory is an especially important matter, as its enjoyment involves not only protection of an economic unity but also protection of the human rights of a collectivity whose economic, social and cultural development is based on its relationship with the land.”<sup>1401</sup> For its part, the Inter-American Court emphasized that indigenous peoples’ territorial rights are related “to the collective right to survival as an organized people, with control over their habitat as a necessary condition for reproduction of their culture, for their own development and to carry out their life aspirations.”<sup>1402</sup> The IACHR is calling upon the Colombian State to increase its efforts to protect and ensure the indigenous peoples’ effective enjoyment of their right to territory, as a first step toward safeguarding their basic rights amid the internal armed conflict.
827. The IACHR has also been told that one of the greatest dangers currently threatening the physical and cultural existence of indigenous peoples in Colombia are the infrastructure and industrial exploitation plans and projects that are on the drawing board and being implemented on their territories, without the necessary respect for and observance of the indigenous peoples’ individual and collective rights; in some cases, the projects are associated with violence on the part of the armed actors.

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and indigenous persons; the Yukpa leader, Isaías Montes, was killed and indigenous persons Omar Franco and Juan García, among others, were seriously injured. Communiqué from the authorities of the Yukpa people’s six indigenous reserves, October 13, 2010. Available [in Spanish] at: <http://www.onic.org.co/nuevo/comunicados.shtml?x=36832>.

<sup>1397</sup> IACHR. *Third Report on the Situation of Human Rights in Colombia*. Doc. OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999. Chapter X, Recommendation 3.

<sup>1398</sup> IACHR. *Democracy and Human Rights in Venezuela*. Doc. OEA/Ser.L/V/II, Doc. 54, December 30, 2009, paras. 1062-1066; 1071; 1137 – Recommendations 1-4.

<sup>1399</sup> IACHR. Pleadings before the Inter-American Court of Human Rights in the *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, paragraph 113(a).

<sup>1400</sup> IACHR. Pleadings before the Inter-American Court in the case of *Awás Tingni v. Nicaragua*. Mentioned in: I/A Court H.R. *Case of the Mayagna (Sumo) Awás Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, para. 140(f). IACHR. *Democracy and Human Rights in Venezuela*. Doc. OEA/Ser.L/V/II, Doc. 54, December 30, 2009, paras. 1076-1080.

<sup>1401</sup> IACHR. Pleadings before the Inter-American Court in the *Case of the Yakye Axa Indigenous Community v. Paraguay*. Mentioned in: I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, para. 120(c).

<sup>1402</sup> I/A Court H.R. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, paragraph 146. I/A Court H.R. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, paragraph 146, 147. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, paragraph 146, 147. IACHR. Pleadings before the Inter-American Court in the *Case of the Yakye Axa Indigenous Community v. Paraguay*. Mentioned in: I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, paragraph 120(g).



828. Where infrastructure projects are concerned, it is public knowledge that the Colombian State is planning to build, or already has under construction, various large-scale projects like hydroelectric dams, ports or irrigation districts.<sup>1403</sup> The IACHR recognizes that a State has the “freedom to exploit its natural resources, including through the granting of concessions and acceptance of international investment” according to the right to development of the peoples. However, it has pointed out that “development must be managed in a sustainable manner” and that, based on the norms of the Inter-American Human Rights System, it is required that development take place under conditions that respect and ensure the human rights of the individuals affected<sup>1404</sup>.
829. The mineral<sup>1405</sup> and hydrocarbon<sup>1406</sup> exploration and exploitation projects undertaken by the National Government are also a source of great concern among the indigenous peoples, as their ancestral territories would be affected. Furthermore, the indigenous organizations with which the IACHR met during its *in loco* visit reported that there are at least 14 parks for which tourism concessions have been granted. The anticipated effects of these projects include profound environmental degradation, desecration or destruction of sacred sites, an influx of non-indigenous actors into indigenous territories, the negative impact on the structures of social organization and, ultimately, the physical and cultural extinction of the respective peoples. The IACHR is particularly concerned that, according to the information received, a number of these plans or projects affect all or part of the territories of indigenous peoples on the verge of extinction.<sup>1407</sup>
830. The IACHR is troubled by the fact that the international investment and economic agreements that the Colombian State is concluding do not take account of the rights of the

<sup>1403</sup> Multiple major infrastructure projects would be built on indigenous territories or directly affect them, as in the case of the South American Region Infrastructure Integration Initiative (IIRSA), the Los Bezotes Dam, the Ranchería River Dam or the Brisa Multi-purpose Port, which will have a profound impact on the territory of the Arhuaco, Kogui, Wiwa and Kankuamo indigenous peoples from the Sierra Nevada in Santa Marta, and the Wayúu from La Guajira.

<sup>1404</sup> IACHR, *Report on the Situation of Human Rights in Ecuador*. Doc. OEA/Ser.L/V/II.96, Doc. 10 rev.1, April 24, 1997; and IACHR, *Indigenous and Tribal Peoples’ over their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*, OEA/Ser.L/V/II., Doc. 56/09, December 30 2009, para. 204.

<sup>1405</sup> According to ONIC, the Colombian Institute of Geology and Mines (INGEOMINAS) reports that 304 reserves are inside the mining districts where licenses have been issued for mineral prospecting and exploitation. The same source reports that in 2008, 65% of the mining concessions awarded within the mining districts and slated for development under the Free Trade Agreement signed with Canada are located on ancestral territories belonging to indigenous communities (...). (ONIC. *Palabra dulce, aire de vida: Forjando caminos para la pervivencia de los pueblos indígenas en riesgo de extinción en Colombia* [Sweet word, breath of life: paving roads for the survival of the indigenous peoples at risk of extinction in Colombia].” 2010. Available [in Spanish] at: [www.onic.org.co](http://www.onic.org.co)). Likewise, according to the information received during the visit, of the 8,000 mining licenses in effect, 233 are either totally or partially located on 113 indigenous reserves. [ *Mujeres Indígenas: Víctimas Invisibles del conflicto armado en Colombia* [Indigenous Women: Invisible victims of Colombia’s armed conflict].

<sup>1406</sup> As the ONIC points out, “between 2000 and 2007, ECOPEPETROL signed 208 research and exploration contracts; of these 100 affected indigenous peoples; specifically, a total of 207 indigenous reserves and close to 30 communities were included in the oil map; in other words, the oil blocks overlap a total of 5,884,244.2 hectares of indigenous land. Under Agreement No. 08 of 2004, the board of directors of the National Hydrocarbon Agency (ANH) blocked off five special target areas, four of which would directly affect indigenous territories, specifically 134 reserves. Then there are another four (4) areas of interest for heavy crude and three more areas along coastal zones where plans are to drill for light crude. Territories of indigenous peoples will also be affected there.” ONIC. *Palabra dulce, aire de vida: Forjando caminos para la pervivencia de los pueblos indígenas en riesgo de extinción en Colombia*. [Sweet word, breath of life: paving roads for the survival of the indigenous peoples at risk of extinction in Colombia].” 2010. Available [in Spanish] at: [www.onic.org.co](http://www.onic.org.co)..

<sup>1407</sup> CODHES, *Informe especial. Visita in loco. Comisión Interamericana de Derechos Humanos* [Special Report. *In-loco* visit. Inter-American Commission on Human Rights], 2012. p. 20. ONIC. *Mujeres Indígenas: Víctimas Invisibles del conflicto armado en Colombia* [Indigenous Women: Invisible victims of Colombia’s armed conflict].

country's indigenous peoples, who may be profoundly affected.<sup>1408</sup> The IACHR is reminded that, as the Inter-American Court wrote, “[...] the enforcement of bilateral commercial treaties negates vindication of non-compliance with state obligations under the American Convention; on the contrary, their enforcement should always be compatible with the American Convention, which is a multilateral treaty on human rights that stands in a class of its own and that generates rights for individual human beings and does not depend entirely on reciprocity among States.”<sup>1409</sup>

831. The IACHR was deeply disturbed to learn that the industrial extractive or infrastructure megaprojects built on indigenous territories have been associated with violence on the part of armed actors and that any opposition by indigenous peoples and their leaders to these projects has had serious consequences, such as forced displacements and selective assassinations.<sup>1410</sup> One of the socioeconomic and territorial processes associated with the armed conflict and that, as the Constitutional Court observed, takes a disproportionate toll on indigenous peoples are the industrial exploration and exploitation and infrastructure megaprojects being developed within indigenous territories. The Constitutional Court explained that in many cases the armed actors with a stake in the development of industrial exploitation or infrastructure megaprojects on indigenous territories have embarked upon strategies of violence against the territories with a view to silencing the opposition and taking over their territories.<sup>1411</sup> The IACHR notes that in this scenario, it is the indigenous authorities and leaders who are most often the targets of reprisals or acts of intimidation.<sup>1412</sup>
832. One of the areas of greatest concern to the country's indigenous peoples is the matter of prior consultation. Numerous indigenous communities and organizations have complained about the presence and activities of mining, oil, and extractive companies on their territories. The complaints say that the companies, guarded by the Army or Police, are there to engage in prospecting or exploitation, even though the prior, free and informed consultation and required by Colombia's international obligations on this subject have not been observed.
833. During the meeting with the IACHR, the State authorities pointed out that the Constitutional Court's case law is among the most advanced in the region. They also emphasized the fact that ILO Convention 169 was ratified through Law 21 of 1991. They also observed that while there are important standards in place, there is no general law or concrete and clear rules about

<sup>1408</sup> See UN. Committee on Economic, Social and Cultural Rights. *Concluding observations on Colombia*. E/C.12/COL/CO/5, June 7, 2010. UN. Special Rapporteur on the Situation of human rights and fundamental freedoms of indigenous peoples. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010. UN. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia* February 11, 2011 (E/C.19/2011/3).

<sup>1409</sup> I/A Court H.R. *Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, para. 140.

<sup>1410</sup> ONIC said the following in this regard: “in our country, the context of war and internal armed conflict has been used to undertake major projects on indigenous territories; many of these projects are carried out without any prior consultations or with very little in the way of consultation. Frequently armed groups, legal and otherwise, are used to sow terror, fear and anxiety before the Project gets underway [...]” ONIC. *Palabra dulce, aire de vida: Forjando caminos para la pervivencia de los pueblos indígenas en riesgo de extinción en Colombia* [Sweet word, breath of life: paving roads for the survival of the indigenous peoples at risk of extinction in Colombia].” 2010. Available [in Spanish] at: [www.onic.org.co](http://www.onic.org.co). See also *The Struggle for Survival and Dignity. Human Rights Abuses against Indigenous Peoples in Colombia*. 2010. Available at: <http://amnesty.org/en/library/asset/AMR23/001/2010/en/29984719-a927-4ec9-a42a-0641b5865a60/amr230012010en.pdf>.

<sup>1411</sup> Constitutional Court. Order 004 of 2009. Section 2.3.

<sup>1412</sup> See, *inter alia*, United Nations System in Colombia. Press Release: “International Day of the World's Indigenous Peoples: Challenges for Protecting their Lives and Personal Safety.” August 9, 2010. Available in Spanish at: <http://www.hchr.org.co/publico/comunicados/2010/comunicados2010.php3?cod=26&cat=81.>

specific aspects of the consultation process.<sup>1413</sup> They indicated that, accordingly, it has been proposed that the indigenous organizations submit a statutory law to the Congress for the purpose of legislating this right.

834. Similarly, the State indicated that it was “evolving constantly” in terms of the right to prior consultation, “as a sign of respect and guarantee for the rights of ethnic groups.”<sup>1414</sup> In this regard, Colombia pointed out that important progress has been made, such as the consultation conducted with respect to the section of that National Development Plan that pertains to indigenous peoples, Decree 4633 with force of law, and the National Program to Guarantee the Rights of Indigenous Peoples, the Ethnic Protection Plans and the Emergency Assistance Plans ordered by the Constitutional Court. The State also pointed out that Ministerial Resolution No. 3598 of 2008 created the Ministry of the Interior’s Prior Consultation Group, which was responsible for the coordination and management of prior consultation processes throughout the country; and the subsequent creation of the Prior Consultation Bureau under Decree 2893 of 2011, for the purpose of strengthening the ability to handle the prior consultation processes of the various projects, works, or activities at the national level.<sup>1415</sup> The State also pointed out that the National Government issued Presidential Directive 001 of 2010, which seeks to “guarantee and standardize due process in prior consultation, respecting the cultural integrity of ethnic groups in the development of projects, works, activities, administrative and legislative measures that may come to affect them.”<sup>1416</sup> It also noted that during 2013, prior consultations will be conducted in connection with major legislative and administrative measures for the indigenous peoples and communities.<sup>1417</sup> The IACHR also noticed a willingness to strengthen the venues for dialogue with the indigenous peoples.<sup>1418</sup>

<sup>1413</sup> According to the information provided by the State, the Commission notes, for example, that there is a series of regulatory provisions applicable in this area such as: i) Presidential Directive 001 of 2010, establishing the stages in the consultation process (“pre-consultation, opening, workshops on identifying impacts and management measures, pre-agreements, protocols, monitoring and conclusion of the process”); ii) Law 99 of 1993 and its regulatory decree, “categorizing the projects, works, and activities that require an environmental license because their execution has serious impacts on the environment, as a precondition to initiation of the activity”); iii) Decree 1320 of 1998 providing that “the owner of the project, work, or activity must, through the Ministry of the Interior and the Consultation Bureau, outline the prior consultation on agreements (cultural, economic, social, and environmental) with the ethnic communities existing in the project’s area of direct influence,” in accordance with the provisions of decision SU-383/08 of the Constitutional Court; Decree 330 of 2007, in conjunction with the provisions of Article 72 of Law 99 of 1993, which establishes the forms of citizen participation, through public environmental hearings; and iv) Decree 2820 of 2010 in conjunction with the “Manual on the Evaluation of Project Environmental Studies,” in connection with the regulation of licensing procedures. Colombia’s observations on the IACHR’s draft report. Note S-GAIIID-13-048140, December 2, 2013, paras. 509, 515, 517, 518, 521.

<sup>1414</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, para. 507.

<sup>1415</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, para. 508.

<sup>1416</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, para. 509.

<sup>1417</sup> Specific reference was made to the “decree that will regulate Andean Decision 391 of 1996 and Law 165 of 1994 on the subject of access to genetic resources, their derivative products, protection of traditional knowledge and a just and equitable share of the profits obtained from their use; the amendment to Law 99 of 1993, which regulates Regional Autonomous Corporations, the Law on Land and Rural Development and the Law on Indigenous Territorial Entities, and others.” State of Colombia. *Indígenas, Afrodescendientes y Minorías* [Indigenous Peoples, Afro-descendants and Minorities]. Note MPC-OEA 609. April 22, 2013. p. 4.

<sup>1418</sup> Such was the case, for example, with the Permanent Negotiating Group created under Decree 1397 of 1996, to negotiate administrative and legislative decisions that might affect indigenous persons. A process of dialogue and negotiation was also undertaken in connection with compliance with Constitutional Court Order 004 of 2009. There are also national venues for high-level dialogue between the Government and representatives of the indigenous peoples, such as the Commission on Indigenous Peoples’ Human Rights (Decree 1396 of 1996), the National Commission on Indigenous Territories and the Permanent Negotiating Group with the indigenous peoples and organizations (Decree 1397 of 1996). There is also an

835. The IACHR observes that the domestic laws on the right to prior consultation are still problematic. Specifically, Decree 1320 of 1998 “regulating prior consultation with indigenous and black communities for the exploitation of natural resources on their territories” is still being implemented,<sup>1419</sup> even though the Constitutional Court<sup>1420</sup> and the ILO, through its Governing Body and the CEACR,<sup>1421</sup> have said that it is incompatible with ILO Convention 169 and Colombia’s Constitution. On March 26, 2010, the National Government issued Presidential Directive 01 concerning the “Guarantee of national ethnic groups’ fundamental right to prior consultation.” The directive was addressed to all state agencies and offices within the central and decentralized national government, and set out mandatory rules regarding observance of the nation’s ethnic groups’ fundamental right to prior consultation.<sup>1422</sup> The IACHR notes that although prior consultation is mandatory in the case of legislative or administrative decisions that could directly affect indigenous peoples, certain provisions could be problematic if measured by inter-American standards on the subject. As the indigenous organizations told the IACHR, one of the main criticisms is that not all the consent requirements recognized at the domestic and international levels are included;<sup>1423</sup> furthermore, the indigenous peoples were never consulted concerning this very directive.<sup>1424</sup>
836. The State informed the IACHR that “to strengthen consultation as one of the ethnic minorities’ fundamental rights, a draft statute is currently in the works that would regulate every aspect of prior consultation, taking into account each and every possible scenario and every particular that may present itself when the time comes to enforce the statute. The State’s contention is that this draft statute will fill the voids in the law that make consultation difficult

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Amazon Regional Group (Decree 3012 of 2005). All these are negotiating venues in which recommendations can be made to various government institutions.

<sup>1419</sup> UN. Special Rapporteur on the Situation of human rights and fundamental freedoms of indigenous peoples. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010. UN. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia* February 11, 2011 (E/C.19/2011/3). In this regard, the IACHR notes that the standards that the State considers applicable to the consultation process include Decree 1320, while still pointing out that whenever possible the process should be consistent with decision SU-383/08 of the Constitutional Court. Colombia’s observations on the IACHR’s draft report. Note S-GAIIID-13-048140, December 2, 2013, para. 517.

<sup>1420</sup> See, *inter alia*, Constitutional Court. Judgment T- 652 of 1998, Judgment T-880 of 2006 and Judgment T-745 of 2010.

<sup>1421</sup> ILO. Report of the Committee on Application of Standards (CEACR). *General Report and Observations and Comments on Particular Countries*. International Labour Conference, 99th session, 2010, pp. 877-881. UN. *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen. Addendum. Mission to Colombia*. E/CN.4/2005/88/Add.2, November 10, 2004, paragraphs 5 and 81; Governing Body, *Report of the Committee set up to examine the representation alleging non-observance by Colombia of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the Central Unitary Workers’ Union (CUT), 2001*; ILO Governing Body, *Report of the Committee set up to examine the representation alleging non-observance by Colombia of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under Article 24 of the ILO Constitution by the Central Unitary Workers’ Union (CUT) and the Colombian Medical Trade Union Association (ASMEDAS)*, 2001.

<sup>1422</sup> Presidential Directive No. 01 of 2010 proposes that the process of prior consultation be conducted by stages to organize and decide on certain basic procedures that the process must follow. The stages proposed are: a) pre consultation; b) opening of the process; c) workshops to identify impacts and define measures to handle them, d) pre-agreements, e) meeting to formalize the agreements, f) organization and follow-up of compliance with the agreements, and g) completion of the prior consultation process. Colombia’s observations on the IACHR’s Draft Country Report for 2010. February 25, 2011, p. 38.

<sup>1423</sup> The IACHR notes that Chapter 4 on “Mechanisms for the prior consultation process” provides that “While it is true that the prior consultation process is mandatory in the cases provided under international agreements, the National Ethnic Groups cannot exercise this fundamental right to veto a project’s development.”

<sup>1424</sup> CODHES, *Informe especial. Visita in loco. Comisión Interamericana de Derechos Humanos. [Special Report. In loco visit. Inter-American Commission on Human Rights]* 2012. p. 18. CODHES, *Análisis: Borrador de Proyecto de Ley Estatutaria de Consulta Previa: El límite a los derechos de los pueblos étnicos [Analysis: Bill for a Statutory Law on Prior Consultation: the boundary on ethnic peoples’ rights]*, September 27, 2012, pp. 4-5.

in practice.”<sup>1425</sup> The information obtained indicates that the draft law is currently in the “socialization” stage, during which each and every sector that may be involved in the consultation process is acquainting itself with the proposal.<sup>1426</sup>

837. The information received on the visit suggests that the indigenous peoples are troubled by certain aspects of the bill, which they believe are not in keeping with international standards and the constitutional clauses on the subject, particularly on the question of what measures they are to be consulted about, the circumstances under which consent is required, and the cultural ‘fit’ of the process.<sup>1427</sup> According to what they told the Commission, different government agencies are reportedly drafting their own rules on the right to prior consultation; they contend that these administrative rules would, in general, have the effect of restricting the right to prior consultation and would be adopted without first consulting the indigenous peoples.<sup>1428</sup>
838. The IACHR has received information indicating that in practice there are cases in which the right to prior consultation is not observed.<sup>1429</sup> This is evident in the case law of Colombia’s Constitutional Court, which has declared certain legislative measures –including laws amending the Constitution-<sup>1430</sup> to be unconstitutional because the affected indigenous peoples were not consulted beforehand.<sup>1431</sup> In the case of the administrative measures, the Constitutional Court has written that environmental licenses,<sup>1432</sup> concession contracts and mining concessions,<sup>1433</sup> programs to eradicate illicit crops,<sup>1434</sup> budgets and investment

<sup>1425</sup> State of Colombia. *Indígenas, Afrodescendientes y Minorías* [Indigenous Peoples, Afro-Descendants and Minorities]. Note MPC-OEA 609. April 22, 2013, p. 7.

<sup>1426</sup> State of Colombia. *Indígenas, Afrodescendientes y Minorías* [Indigenous Peoples, Afro-Descendants and Minorities]. Note MPC-OEA 609. April 22, 2013, p. 7.

<sup>1427</sup> CODHES, *Análisis: Borrador de Proyecto de Ley Estatutaria de Consulta Previa: El límite a los derechos de los pueblos étnicos* [Analysis: Bill for a Statutory Law on Prior Consultation: the boundary on ethnic peoples’ rights], September 27, 2012.

<sup>1428</sup> They specifically reported that the Ministry of the Interior and Justice had issued the following concept papers and administrative acts that limit the right to consultation: (i) concept paper on the national referendum on October 28, 2011; (ii) concept paper on consultations concerning development plans, April 18, 2012; (iii) concept paper on the national agricultural census, July 26, 2012, and (iv) resolution 0121/2012. CODHES, *Análisis: Borrador de Proyecto de Ley Estatutaria de Consulta Previa: El límite a los derechos de los pueblos étnicos* [Analysis: Bill for a Statutory Law on Prior Consultation: the boundary on ethnic peoples’ rights], September 27, 2012.

<sup>1429</sup> CODHES, *Special Report, In Loco Visit. Inter-American Commission on Human Rights*. 2012, p. 19. For example, in March 2011 OREWA filed a complaint about what happened at the La Cristalina reserve in the municipality of Carmen del Atrato (Chocó), which is home to a number of Embera-Katio communities: “On January 5, 2011, a group of engineers and geologists from the Cordillera S.A. explorations company, escorted by a contingent of 200 National Army personnel, entered the indigenous territory in a rude and disrespectful manner, without first getting the consent of the indigenous authorities. They were there to explore for mineral deposits. Once they found what they were after, they proceeded to cut down and clear the trees to prepare the ground for construction of the mining camp and a heliport. They did severe environmental damage.” Asociación de Cabildos Indígenas Wounaan, Embera Dobida, Katío, Chamí y Tule del Departamento del Chocó – [Association of Wounaan, Embera Dobida, Katío, Chamí and Tule Indigenous Governments of the Department of Chocó] (OREWA): “Mining continues to encroach upon and destroy our indigenous territories.” March 21, 2011. Available [in Spanish] at: <http://orewa.org>.

<sup>1430</sup> In its Judgment C-702 of 2010, the Court examined paragraph 8 of Article 2 of Legislative Act No. 01 of 2009 in which some articles of the Constitution are modified, and some added” and declared it unenforceable because it established that the provision would mean a violation of the indigenous peoples’ right to prior consultation. Constitutional Court. Judgment C-702 de 2010.

<sup>1431</sup> Among the decisions are those that concern the Forestry Law (Law 1021 of 2006), Judgment C-030 of 2008; the law “issuing the Rural Development Statute, reforming the Colombian Rural Development Institute, INCODER, and issuing other provisions” (Law 1152 of 2007), Judgment C-175 of 2009; the law “amending Law 685 of 2011, the Mines Code” (Law 1382 of 2010), Judgment C-366 of 2011 and C-367 of 2011; and the law that approved the International Convention for the Protection of Plant Extracts (Law 1518 of 2012, Judgment C-1051 of 2012).

<sup>1432</sup> Constitutional Court. Judgment U-039 of 1997 and Judgment T-652 of 1998.

<sup>1433</sup> Constitutional Court. Judgment T-769 of 2009, Judgment T-547 of 2010, Judgment T-745 of 2010, Judgment T-1054<sup>a</sup> of 2010, Judgment T-129 of 2011 and Judgment T-693 of 2011.

projects financed with funds from the national budget,<sup>1435</sup> and decisions on the delivery of education services<sup>1436</sup> have not gone through the process of prior consultation with and the free and informed consent of the indigenous peoples. The Court has granted a number of petitions for injunctive relief and in so doing has ordered that extractive projects or investment and development plans be suspended or that reparations be made for the harm caused on the grounds that, *inter alia*, the prior consultation requirement was not observed.<sup>1437</sup>

839. It is clear to the IACHR that the Constitutional Court plays a vital role in protecting the rights of Colombia's indigenous peoples. As other international organizations<sup>1438</sup> have, the IACHR observes that by comparison to other constitutional courts in the region, Colombia's Constitutional Court has developed a singularly rich and progressive body of case law on the rights of participation, prior, free and informed consultation and consent that draws upon international standards of the inter-American system, ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. In its jurisprudence on the subject of the right to prior, free and informed consent,<sup>1439</sup> Colombia's Constitutional Court has cited the Inter-American Court's judgment in the *Case of the Saramaka People v. Suriname*<sup>1440</sup> and wrote that "while the general duty of the State with respect to prior consultation is to ensure active and effective participation by the communities in order to obtain their consent when the measure would heavily affect their right to collective territory, it is mandatory that the community's consent be obtained before implementing any measure, policy, plan or project."<sup>1441</sup> Furthermore, the Constitutional Court identified the circumstances under which their consent must be obtained, as explicitly spelled out in the UN Declaration on the Rights of Indigenous Peoples.<sup>1442</sup>

840. Given the crucial role of the Constitutional Court, the Commission is concerned by what the indigenous organizations said during its visit regarding the recent judgments that could be setbacks for the recognition and protection of indigenous peoples' rights. They mentioned, *inter alia*, Judgment C-317 of 2012, in which the Constitutional Court held that because it is general in nature and for the express purpose of legislating the bonuses system, Legislative Act 05 of 2011 does not provide for any measure that could "directly, specifically and particularly" affect ethnic groups. As the indigenous organizations pointed out, these are not conditions

<sup>1434</sup> Constitutional Court. Judgment U-383 of 2003.

<sup>1435</sup> Constitutional Court. Judgment C-461 of 2008.

<sup>1436</sup> Constitutional Court. Judgment T-116 of 2011.

<sup>1437</sup> For example, in relation to projects conducted on the territories of the Barí indigenous people (Judgment T-880/06), the U'wa (Judgment SU-039/97) or Embera-Katío (Judgment T-652/98).

<sup>1438</sup> See ILO. Report of the Committee on Application of Standards (CEACR). *General Report and Observations and Comments on Particular Countries*. International Labour Conference, 83<sup>rd</sup> Session, 1996. International Labour Office: Geneva, p. 431. STAVENHAGEN, Rodolfo. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen. Addendum. Mission to Colombia, E/CN.4/2005/88/Add.2, November 10, 2004, para. 18.

<sup>1439</sup> Constitutional Court. Judgment T-769 of 2009, Judgment T-129 of 2011 and Judgment T-376 of 2012.

<sup>1440</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, para. 134.

<sup>1441</sup> Constitutional Court. Judgment T-376 of 2012, para. 25.

<sup>1442</sup> Specifically, it made reference to "(i) the ban on the forcible removal of indigenous peoples from their lands or territories without their express consent and after agreement on a just and fair compensation and, where possible, with the option of return; (ii) the obligation of redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs; and (iii) a ban on storage or disposal of hazardous materials on the lands or territories of indigenous peoples without their free, prior and informed consent." Constitutional Court. Judgment T-376 of 2012, II. Considerations and Grounds, para. 8.

required under ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples or even the Constitutional Court's own case law.<sup>1443</sup>

841. One of the challenges in Colombia where the right to prior consultation is concerned are the repeated public complaints made by indigenous peoples to the effect that the National Government views prior consultations as mere formalities that have to be dispensed with to move forward with investment or development projects or to grant concessions to mine for natural resources on indigenous ancestral territories. They contend that the National Government does not assign any weight to the position of the affected peoples or communities, even when they express their opposition to a project about which they are being consulted. The Commission has received reports indicating that indigenous peoples' right to prior consultation is being given a bad name, as suggested by the statements made by high-ranking State officials to the effect that such a requirement is an obstacle to the country's development.<sup>1444</sup>
842. There have also been complaints that while consultations are in progress, companies that have been awarded concessions or stakeholders make efforts to win over members of the communities by offering them material payoffs, taking advantage of their basic unmet needs and the State's neglect.<sup>1445</sup> The Colombian armed conflict poses unique challenges for the consultation process. In effect, the obvious connection between the conflict-related violence and the extractive, investment or development projects demands that the State take measures to protect the life and safety of the communities or peoples that are in the consultation process, especially their authorities and leaders.<sup>1446</sup>
843. The Commission therefore calls upon the Colombian State to establish, with the indigenous peoples' full participation, the legislative or other measures needed to give effect to the right to prior, free and informed consultation and consent, done in good faith and in accordance with international human rights standards.<sup>1447</sup> Under the inter-American human rights instruments, large-scale investment and development plans or projects or concessions to mine

<sup>1443</sup> Constitutional Court. Judgment C-317 of 2012. ONIC pointed to Judge Ignacio Pretelt Chaljub's dissenting opinion, which it described as a comprehensive analysis. In it the judge asserts that the measure was taken "without regard for the fact that it directly and disproportionately affects the country's indigenous peoples and Afro-descendant communities, which means that the State should have consulted them beforehand. As I see it, there is nothing to justify the shift away from the arguments that the Court used to find that the Forestry Law (Law 1021 of 2006), the amendment to the Mines Code (Law 1382 of 2010) and others were unenforceable." The dissenting opinion of Judge Jorge Ignacio Pretelt Chaljub does not appear at the webpage for the Constitutional Court's judgment. The excerpts from the judge's dissenting opinion were found at ONIC's website. See at the following link: <http://cms.onic.org.co/2012/05/regalias-un-retroceso-del-derecho-fundamental-a-la-consulta-previa-de-los-pueblos-indigenas-colombianos/>.

<sup>1444</sup> CODHES, *Special Report, In Loco Visit. Inter-American Commission on Human Rights*. 2012, p. 18.

<sup>1445</sup> Rico Piñeres, Laura (2009), *'La Consulta Previa: farsa multicultural'* [Prior Consultation: a multicultural farce. Available [in Spanish] at: <http://www.lasillavacia.com/historia/3201>. Taken by: "Palabra dulce, aire de vida: Forjando caminos para la pervivencia de los pueblos indígenas en riesgo de extinción en Colombia" [Sweet word, breath of life: paving roads for the survival of the indigenous peoples at risk of extinction in Colombia]." 2010. Available [in Spanish] at: [www.onic.org.co](http://www.onic.org.co).

<sup>1446</sup> The IACHR has received information that raises questions about how "free" the process is, since pressure is exerted on indigenous leaders, a problem made worse by the armed conflict. CODHES, *Special Report, In Loco Visit. Inter-American Commission on Human Rights*. 2012, p. 20.

<sup>1447</sup> The IACHR notes that a number of international bodies have commented on the shortcomings in Colombia's legal system as regards the right to consultation and have urged the State to adopt legislation that enables it to guarantee this right. See, *inter alia*, UN. Special Rapporteur on the Situation of human rights and fundamental freedoms of indigenous peoples. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010; UN. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia*" February 11, 2011 (E/C.19/2011/3). UN. Human Rights Committee. *Concluding Observations on Colombia*. CCPR/C/COL/CO/6, August 4, 2010. UN. Committee on Economic, Social and Cultural Rights. *Concluding Observations on Colombia*. E/C.12/COL/CO/5, June 7, 2010.

natural resources on indigenous territories that can have a profound impact on the way of life of the affected peoples or communities, will require not just their prior, informed consultation, in a culturally suitable manner and in good faith, but also the respective indigenous people's consent.<sup>1448</sup>

## 9. The armed conflict's impact on the health and diet of the indigenous peoples.

844. The socioeconomic conditions of Colombia's majority of the indigenous population are dire, a situation that is the result of profound structural discrimination.<sup>1449</sup> According to the figures published by ONIC, which were based on data from the DANE and the Universidad de los Andes, 63% of the indigenous population lives below the poverty line, and 47.6% lives in extreme poverty.<sup>1450</sup> The information available indicates that 3 out of every 5 indigenous persons do not have access to a water supply system, 4 out of every 5 have no access to a sewer system, and 2 out of every 5 do not have access to electric power.<sup>1451</sup> On the question of health, the IACHR is concerned over the precarious situation of Colombia's indigenous peoples.<sup>1452</sup> The information that the IACHR was able to obtain indicates that the indigenous infant mortality rate is 63.3 per one thousand live births, while the national average is 41.3.<sup>1453</sup> According to DANE's figures, life expectancy among the indigenous population is shorter than it is among the non-indigenous population.<sup>1454</sup> According to the UNDP, the incidence of

<sup>1448</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, paragraph 134. I/A Court H.R., *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Reparations and Costs. Judgment of August 12, 2008. Series C No. 185, para. 17.

<sup>1449</sup> IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, para. 168. UN. Committee on the Elimination of Racial Discrimination, *Concluding observations on Colombia*, CERD/C/COL/CO/14, August 28, 2009. UN. Special Rapporteur on the Situation of human rights and fundamental freedoms of indigenous peoples. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010. UN. OHCHR. *Report on the Human Rights Situation in Colombia*. March 4, 2010. A/HRC/13/72. UN. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia*, February 11, 2011 (E/C.19/2011/3).

<sup>1450</sup> ONIC. *Palabra dulce, aire de vida: Forjando caminos para la pervivencia de los pueblos indígenas en riesgo de extinción en Colombia* [Sweet word, breath of life: paving roads for the survival of the indigenous peoples at risk of extinction in Colombia]. 2010. Available [in Spanish] at: [www.onic.org.co](http://www.onic.org.co). UN, OHCHR. *Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*. March 9, 2009. A/HRC/10/32.

<sup>1451</sup> Informe de la Universidad de los Andes de 2009 para el Relator Especial de la UN [2009 Report of the Universidad de los Andes for the UN Special Rapporteur], cited by: UN. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia* February 11, 2011 (E/C.19/2011/3).

<sup>1452</sup> IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia, paragraph 91; IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, paragraph 170. See UN. Special Rapporteur on the Situation of human rights and fundamental freedoms of indigenous peoples. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010. UN. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia* February 11, 2011 (E/C.19/2011/3) paragraph 28. UN. OHCHR. *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*. February 3, 2011. A/HRC/16/22. UN. Committee on the Elimination of Racial Discrimination. *Concluding observations on Colombia*. CERD/C/COL/CO/14, August 28, 2009. UN. Committee on Economic, Social and Cultural Rights. *Concluding observations on Colombia*. June 7, 2010. E/C.12/COL/CO/5, paragraph 25.

<sup>1453</sup> UNDP. *Pueblos indígenas: diálogo entre Culturas* [Indigenous Peoples: a dialogue among cultures]. *Cuaderno del Informe de Desarrollo Humano Colombia 2011*. Bogotá: 2012. p. 55. Available [in Spanish] at: [http://pnud.org.co/img\\_upload/61626461626434343535373737353535/2012/cuaderno\\_indigenas.pdf](http://pnud.org.co/img_upload/61626461626434343535373737353535/2012/cuaderno_indigenas.pdf).

<sup>1454</sup> According to DANE, in 2005 the ageing index among indigenous persons was 13.22, whereas among persons with no ethnic affiliation it was 21.52. DANE. *La visibilización estadística de los grupos étnicos en Colombia* ["Raising the statistical profile of Colombia's ethnic groups"]. Available [in Spanish] at: [http://www.dane.gov.co/files/censo2005/etnia/sys/visibilidad\\_estadistica\\_eticos.pdf](http://www.dane.gov.co/files/censo2005/etnia/sys/visibilidad_estadistica_eticos.pdf).



infectious disease and malnutrition among infants, children and pregnant females is higher because of problems relating to access to drinking water and health services.<sup>1455</sup>

845. The IACHR recognizes that the State has made some progress toward guaranteeing indigenous peoples' right to health, such as the adoption of Law 691 of September 18, 2001, "regulating the participation of Ethnic Groups in Colombia's General Social Security System."<sup>1456</sup> While the law provides tools with which to improve the health of indigenous peoples and their members, while at the same time taking into account the distinctive features of each one's culture and ethnic diversity, the information available suggests that these tools are not being used to good effect, except in some respects, such as the creation of Indigenous Health Promotion Centers (*Entidades Promotoras de Salud Indígenas* - EPSI).<sup>1457</sup> The Commission also notes that important challenges remain in the area of coverage,<sup>1458</sup> access to services,<sup>1459</sup> and tailoring those services to each culture. These challenges are compounded by structural factors, such as the armed conflict, poverty and discrimination.
846. For indigenous people, exercise of their right to health was already problematic; yet, however difficult it was before, the armed conflict has made it much more so. The Commission is troubled by the information it has received to the effect that the government forces are reportedly taking over the health clinics or establishing their encampments nearby, thereby endangering those who go to the clinics for care, the clinics' medical staff and the infrastructure. It also creates fear of reprisals or of being targeted by armed groups operating outside the law.<sup>1460</sup> The traditional practitioners and those wise in ancestral ways are also

<sup>1455</sup> UNDP. *Pueblos indígenas: diálogo entre Culturas* [Indigenous Peoples: a dialogue among cultures]. *Cuaderno del Informe de Desarrollo Humano Colombia 2011*. Bogotá: 2012. p. 55. Available [in Spanish] at: [http://pnud.org.co/img\\_upload/616264616264343535373737353535/2012/cuaderno\\_indigenas.pdf](http://pnud.org.co/img_upload/616264616264343535373737353535/2012/cuaderno_indigenas.pdf).

<sup>1456</sup> See, in particular, articles 4, 8, 10, 14 and 27 of Law 691 of 2001.

<sup>1457</sup> ONIC. *Palabra dulce, aire de vida: Forjando caminos para la pervivencia de los pueblos indígenas en riesgo de extinción en Colombia* [Sweet word, breath of life: paving roads for the survival of the indigenous peoples at risk of extinction in Colombia]." 2010, p. 40. Available [in Spanish] at: [www.onic.org.co](http://www.onic.org.co).

<sup>1458</sup> According to figures from the Ministry of Health and Social Protection, 931,647 indigenous persons are enrolled in the health system, which is 67.57% of the total indigenous population, calculated at 1,378,884 persons. This means that 32.4% of the indigenous population is not covered. ONIC. *Palabra dulce, aire de vida: Forjando caminos para la pervivencia de los pueblos indígenas en riesgo de extinción en Colombia* [Sweet word, breath of life: paving roads for the survival of the indigenous peoples at risk of extinction in Colombia]." 2010, p. 41. Available [in Spanish] at: [www.onic.org.co](http://www.onic.org.co). UNDP. *Pueblos indígenas: diálogo entre Culturas* [Indigenous Peoples: a dialogue among cultures]. *Cuaderno del Informe de Desarrollo Humano Colombia 2011*. Bogotá: 2012, p. 55. Available [in Spanish] at: [http://pnud.org.co/img\\_upload/616264616264343535373737353535/2012/cuaderno\\_indigenas.pdf](http://pnud.org.co/img_upload/616264616264343535373737353535/2012/cuaderno_indigenas.pdf). Other sources indicate that in 2008, 1,132,138 indigenous persons were enrolled, which was 81% of the indigenous population [UN. Special Rapporteur on the Situation of human rights and fundamental freedoms of indigenous peoples. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010, paragraph 51]. It should be noted that according to figures from the Ministry of Health and Social Protection, enrollment was at roughly 91% [Ministry of Health and Social Protection, Health Coverage, Health enrollment coverage for the period 2004-2011. Available [in Spanish] at: <http://www.minsalud.gov.co/salud/Paginas/CoberturasdelRégimenSubsidiado.aspx>].

<sup>1459</sup> ONIC. *Palabra dulce, aire de vida: Forjando caminos para la pervivencia de los pueblos indígenas en riesgo de extinción en Colombia* [Sweet word, breath of life: paving roads for the survival of the indigenous peoples at risk of extinction in Colombia]." 2010, p. 40. Available [in Spanish] at: [www.onic.org.co](http://www.onic.org.co). ONIC. Report to the IACHR on the Human Rights Situation of Colombia's Indigenous Peoples. Hearing held during the Commission's 140<sup>th</sup> session. October 28, 2010.

<sup>1460</sup> See Press Release 94/12, *IACHR Condemns Deaths and Expresses Concern over the Situation of Violence in the North of Cauca, Colombia*. Washington, D.C., July 25, 2012. In 2009, the UN Special Rapporteur on the rights of indigenous peoples observed that "[a]ccording to information received by the Special Rapporteur, the Security Forces have occupied healthcare facilities in the department of Nariño, leaving the inhabitants reluctant to visit those facilities for fear of stigmatization and retaliation on the part of illegal armed groups." UN. Special Rapporteur on the Situation of human rights and fundamental

frequent victims of assassination by groups operating outside the law, because of the leadership role they have among their peoples or communities; such acts of violence are meant to have an impact that is both individual and collective.<sup>1461</sup> The health of the indigenous peoples and communities is also affected by confinement, obstacles that restrict their freedom of movement or conflict-related displacement, because this makes it impossible for them to get the plants or other elements they need to prepare their traditional remedies.

847. The difficult access to the health system coupled with malnutrition, are creating alarming rates of infant morbidity and mortality in indigenous communities, which is even worse among displaced communities.<sup>1462</sup> One of the most troubling consequences of the dietary problems of Colombia's indigenous peoples is a very high rate of child malnutrition,<sup>1463</sup> which the Commission has examined in its annual reports.<sup>1464</sup> In 2012, the IACHR continued to receive disturbing information in that regard. Specifically, it learned that a four-year-old girl from Alto Baudó in the department of Chocó had died of severe malnutrition. The information available seems to suggest that this was not an isolated case; instead, her death was a reflection of a more widespread problem affecting indigenous children in that region.<sup>1465</sup> Furthermore, according to what the Commission was told, as of November 2012 there were at least 13 reported cases of indigenous children who had died from causes associated with malnutrition.<sup>1466</sup> There are troubling reports that indigenous children in the Municipality of Pueblo Rico in Risaralda, were reportedly facing starvation; as of May 2012, 41 cases of severe child malnutrition had been reported; in the previous five months, four children had died from malnutrition or preventable illnesses. The Commission was also told that in the six-month period leading up to March 2012, 32 children reportedly died from malnutrition or severe respiratory illnesses.<sup>1467</sup>

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freedoms of indigenous peoples. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010.

<sup>1461</sup> Information received during the IACHR's visit indicates that traditional practitioner Jaime Mestizo was killed on April 19, 2012 on the Huellas Reserve, and traditional practitioner Lisandro Tenorio was killed on August 12, 2012 on the López Adentro Reserve, both in the Municipality of Caloto, Cauca. ONIC. Bulletin No. 4/2012. January to November 2012. pp. 8-9.

<sup>1462</sup> According to what the IACHR was told, in May 2012, a two-year-old Embera-Chami boy died of tuberculosis for lack of medical care. He was one of the displaced in the Municipality of Armenia, Quindío, and was sent to Manizales where he died. It was also reported that in the Department of Quindío, eight children from Mistrató and Pueblo Bello, in Risaralda, were hospitalized for malaria between May and June 2012. ONIC. *Bulletin No. 4/2012*. January to November 2012. pp. 20-23.

<sup>1463</sup> According to UNICEF, over 70% of Colombia's indigenous children suffer from chronic malnutrition. [Cited by: UNDP. *Pueblos indígenas: diálogo entre Culturas* [Indigenous Peoples: a dialogue among cultures]. *Cuaderno del Informe de Desarrollo Humano Colombia 2011*. Bogotá: 2012. p. 55. Available [in Spanish] at: [http://pnud.org.co/img\\_upload/61626461626434343535373737353535/2012/cuaderno\\_indigenas.pdf](http://pnud.org.co/img_upload/61626461626434343535373737353535/2012/cuaderno_indigenas.pdf)]. According to the 2010 National Survey of the Nutritional Situation in Colombia [Encuesta Nacional de la Situación Nutricional en Colombia – ENSIN], chronic malnutrition among children under the age of 5 is more than twice as high among the indigenous population (29.5%) as it is among the non-indigenous population. According to the same source, the overall percentage of malnutrition among indigenous children under the age of 5 was 7.5%, which is more than double what it was for the population that does not self-identify with this ethnic group [ENSIN 2010. Executive Summary, pp. 5-7. Available [in Spanish] at: <http://www.bogotamasactiva.gov.co/files/Resumen%20Ejecutivo%20ENSIN%202010.pdf>].

<sup>1464</sup> IACHR, *Annual Report 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, Chapter IV. Colombia. IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, paragraph 169. See, also, UN. OHCHR. Report on the Situation of Human Rights in Colombia. March 4, 2010. A/HRC/13/72.

<sup>1465</sup> According to information in the public record, in March 2012 the Governor of Chocó declared that 12,000 children are suffering from malnutrition in his department; 10,000 reportedly had received no assistance from the State. See UNDP. *Chocó se unió por los objetivos de desarrollo del Milenio* [Chocó unites around the Millennium Development Goals]. Information available [in Spanish] at: [www.pnud.org.co](http://www.pnud.org.co); *El Colombiano*, Desnutrición infantil muy grave en 12 departamentos [Child malnutrition very severe in 12 departments], March 2012.

<sup>1466</sup> ONIC. *Boletín N° 4/2012*. January to November 2012. pp. 20-23.

<sup>1467</sup> ONIC. *Boletín N° 4/2012*. January to November 2012. pp. 20-23.

848. The Colombian State acknowledges that “[t]he indigenous population is where acute malnutrition is most severe and widespread” and that “[it] is not uncommon to find, for example, indigenous children suffering from pathologies associated with malnutrition, such as tuberculosis, diarrhea, dehydration, parasitosis, an acute respiratory infection, and others.”<sup>1468</sup> Colombia reported that programs had been adopted and measures taken to address the indigenous population’s food needs.<sup>1469</sup> While these are certainly laudable efforts, the Commission believes that any such assistance must be regarded as a short-term necessary response, and must be done in full concert with the indigenous peoples and communities involved, to ensure that the measures taken are culturally appropriate.
849. Nevertheless, the IACHR observes that a combination of structural and circumstantial problems, like the years of violence and the uprooting many have experienced, are conspiring to threaten the indigenous peoples’ food security.<sup>1470</sup> Farm communities that relied on their ancestral territories to raise food crops are now facing the loss of those territories because of the presence of armed actors or because they are being used to grow illicit crops; they are also being cut off from hunting, fishing and gathering by the presence of anti-personnel mines planted in those areas or by their own fear of getting caught in the crossfire in fighting between the two sides to the conflict. Food security is also affected by the restrictions that the armed actors impose on the transport of food to and from the communities, the appropriation of property and means of subsistence, or the effects of indiscriminate spraying on subsistence crops. Many indigenous peoples or communities are trapped or confined by the conflict, because their territories are located in regions that are of strategic importance to the armed groups. One of the most severe situations is that of the displaced indigenous communities.<sup>1471</sup> Hence, the Commission believes that comprehensive solutions are needed that go beyond food supplies and that enable indigenous communities to be self-sufficient and enjoy the food security their traditional way of life afforded. This is inextricably linked to protection of ancestral territories and their natural resources and requires that the State place the emphasis on measures intended to guarantee to indigenous peoples and communities the free and full enjoyment of their territorial rights.

<sup>1468</sup> State of Colombia, Note DIDHD/GOI No. 35115/1472 of May 31, 2012.

<sup>1469</sup> According to what Colombia reported, on March 31, 2007 the National Economic and Social Policy Council (CONPES) adopted the National Food and Nutritional Security Policy, implemented through the National Food and Nutritional Security Plan by way of departmental, municipal, district or regional plans and programs. It also indicated that this policy is matched by others like “From Zero to Always”, targeted at promoting and ensuring early childhood development among boys and girls under the age of six. As for measures that use a differential approach, it reported that the Colombian Institute of Family Welfare (ICBF), in coordination with authorities of the indigenous communities, is developing ethnically differentiated assistance projects in sovereignty, self-sufficiency, and food and nutritional security [State of Colombia, Note DIDHD/GOI No. 35115/1472 of May 31, 2012]. During its visit the Commission was informed about a number of measures, among them the delivery of food rations; according to Colombian officials, the challenges here are significant because the food rations have to fit the diet to which the indigenous communities are accustomed. It was also reported that the ICBF has nutritional recovery centers that work not just to assist indigenous children suffering from malnutrition, but also to instruct families in how to keep the nutrition levels sustainable.

<sup>1470</sup> IACHR, *Annual Report 2010*, OEA/Ser.L/V/II., Doc. 5 corr. 1, March 7, 2011, Chapter IV. Colombia, paragraph 169. ONIC. *Informe a la IACHR sobre la situación de Derechos Humanos de los Pueblos Indígenas de Colombia, en el marco de la Audiencia Temática solicitada por la Organización Nacional Indígena de Colombia en el 140º Período de Sesiones de la Comisión* [Report to the IACHR on the Human Rights Situation of the Indigenous Peoples of Colombia, prepared for the thematic hearing requested by the National Indigenous Organization of Colombia and held during the Commission’s 140th session]. October 28, 2010.

<sup>1471</sup> UN. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen. Addendum. Mission to Colombia. E/CN.4/2005/88/Add.2, November 10, 2004, para. 42.

## 10. Lack of accountability for crimes committed against indigenous peoples and their members and their lack of access to justice

850. The information received by the IACHR indicates that the vast majority of the human rights violations committed against indigenous peoples, communities or persons are never punished, which means that critical court rulings to address these violations from a collective perspective never happen. Various international bodies have also observed that the domestic judicial system's response to the investigation and prosecution of these crimes is far from what it should be.<sup>1472</sup> For its part, the Constitutional Court has ruled that the fact that the violations committed against indigenous peoples and their members go unpunished is an "unconstitutional state of affairs" because the State has failed in its duty to guarantee, *inter alia*, their right to justice. The Constitutional Court concluded that for every 200 cases, less than one reached the accusation phase, and the high level of impunity persists.<sup>1473</sup> In its Interim Report on the Situation in Colombia, published in November 2012, the Office of the Prosecutor of the International Criminal Court (ICC) stated that "the OTP concurs with the Constitutional Court's assessment" and that "[t]he crime of forced displacement, which particularly affects vulnerable groups and communities, should remain a prosecutorial priority of the Colombian authorities."<sup>1474</sup>
851. The State informed the IACHR that the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation has been one of driving forces behind the investigation of human rights violations and said that it has over 115 prosecutors on staff and over 300 judicial police detectives for the nearly 7,000 investigations that have been active since 1994. The IACHR recognizes that some improvement has been seen in indigenous peoples' and persons' access to justice, as in the case of the seven military sentenced to 40 years in prison on September 12, 2010, for the murder of Edwin Legarda, husband of indigenous leader Aída Quilcué, a conviction that the defense appealed.<sup>1475</sup> The IACHR also observes that in Directive No. 0001 of October 4, 2012, "criteria are adopted for prioritizing situations and cases and a new system is introduced for criminal investigation and the handling of criminal cases in the Office of the Prosecutor General of the Nation;" one of the subjective criteria for prioritization is the victim's membership in an ethnic group.<sup>1476</sup>
852. Nonetheless, in the Commission's opinion, the alarming level of impunity for crimes committed against indigenous peoples and their members persists in Colombia. Therefore, it is urging the Colombian State to comply with its obligation to investigate, prosecute and punish those responsible for violations of the right to life, the right to humane treatment and other human rights of the members of the indigenous communities and the indigenous communities themselves. The specifics of each indigenous victim's situation and the crimes committed

<sup>1472</sup> UN. Special Rapporteur on the Situation of human rights and fundamental freedoms of indigenous peoples. *The Situation of Indigenous Peoples in Colombia: Follow-up to the recommendations made by the previous Special Rapporteur*. A/HRC/15/37 Add. 3, May 25, 2010. UN. Committee on the Elimination of Racial Discrimination, *Concluding observations on Colombia*, CERD/C/COL/CO/14, August 28, 2009, paragraph 21. UN. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. Follow-up to Country Recommendations. Colombia. May 15, 2012, A/HRC/20/22/Add.2. Paragraph 62. UN. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia*" February 11, 2011 (E/C.19/2011/3), para. 22.

<sup>1473</sup> Cited by: International Criminal Court, Office of the Prosecutor, *Situation in Colombia. Interim Report*, November 2012, para. 213.

<sup>1474</sup> International Criminal Court, Office of the Prosecutor, *Situation in Colombia. Interim Report*, November 2012, para. 214.

<sup>1475</sup> See UN. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia.*" February 11, 2011 (E/C.19/2011/3), footnote 16.

<sup>1476</sup> Office of the Prosecutor General of the Nation. Directive No. 0001 of October 4, 2012, page 38. Available [in Spanish] at: <http://www.fiscalia.gov.co/colombia/wp-content/uploads/2012/10/Directiva001.pdf>.

during the course of the armed conflict must be taken into account to ensure that such victims receive the reparations that they are owed and that their rights to the truth and justice are respected with the differential approach that the inter-American system requires. The IACHR considers that a prosecutorial unit or office specializing in violations committed against indigenous peoples, communities or persons would be useful, as would implementation of the aforementioned directive and publication of the results achieved in the area of justice for Colombia's indigenous peoples.

## 11. Process of reparation and restitution of the rights of victims of the armed conflict who are members of indigenous peoples and communities.

853. Law 1448 was enacted on June 10, 2011. The law orders “services, assistance and comprehensive reparations measures for victims of the domestic armed conflict”. Other laws have also been enacted, such as the “Victims and Land Restitution Act.” The IACHR,<sup>1477</sup> like other international institutions,<sup>1478</sup> has acknowledged that Law 1448 represents a clear step in the direction of a comprehensive concept of reparations and is an important measure for victims of the armed conflict. In the case of indigenous peoples specifically, on December 9, 2011 the President of the Republic issued Decree Law 4633 on “services, assistance, comprehensive reparations and restitution of the territorial rights of victims who are members of indigenous peoples and communities.” This Decree-Law –which, according to what the IACHR was told, was the product of negotiations between the indigenous peoples and the National Government- establishes specific measures for reparation and restitution of the indigenous peoples’ rights and takes account of the collective dimension of the subject, as the effects caused by the conflict are interpreted as being not only the effects on individual persons, but the effects that the people as a whole suffered.

854. On the matter of implementation, during the visit the State informed the Commission that as of December 2012, individual reparations had been made to 110,000 victims, for a total of 54.9 million pesos. According to the information provided by the UARIV, 97% of the municipalities in Colombia have Territorial Transitional Justice Committees; there are 1,055 nationwide, covering the country's 32 departments. Colombian authorities also told the IACHR that as of December 2012, the Single Registry of Victims had 5,532,805 persons listed; 10.8% were members of an ethnic group. However, the figure lumps all ethnic groups together, so it is impossible to say what percentage of that 10.8% is indigenous. They also told the Commission that efforts are being made to apply a differential approach in the case of indigenous peoples in the reparation and restitution process. As for the dissemination of Decree Law 4633, the State said the following: (i) the decree-law's “socialization” (the process whereby the public is acquainted with a piece of legislation or decree) was done at the National Congress of ONIC; (ii) it was decided that the socialization and examination of the decree-law in four departments of the Colombian Amazon Basin would be done in concert with the Organization of Indigenous Peoples of the Colombian Amazon (*Organización de Pueblos Indígenas de la Amazonía Colombiana* - OPIAC); (iii) the negotiation and socialization was done with the authorities, leaders and community of the Wayúu People, in the municipality of Maicao; and (iv) officials of the Colombian Air Force, the Ombudsperson's Office, the National Federation of

<sup>1477</sup> IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV. Colombia, para. 77.

<sup>1478</sup> UN. OHCHR. Press Release. May 25, 2011. Available [in Spanish] at: <http://www.hchr.org.co/publico/comunicados/2011/comunicados2011.php3?cod=12&cat=86>.

Ombudspersons, the Bogotá Ombudsperson's Office, and others were also introduced to the new decree-law.<sup>1479</sup>

855. During the visit, the IACHR could sense the great expectations that the indigenous peoples and their members have placed in the restitution and reparation process as an essential mechanism for achieving lasting peace in Colombia. However, it also noticed that one year after Decree Law 4633 of 2011 took effect, those expectations had been somewhat tempered by a sense that actual implementation is just not happening and the institutional wherewithal is lacking. The indigenous organizations with which the IACHR met emphasized that in practice, the implementation of Law 1448 is not really different from implementation of Law 4633, which contains specific principles and procedures for indigenous victims. According to what they said, one of the obstacles to effective implementation is the absence of a set of strong and well-orchestrated institutions that can guarantee execution of measures from an intercultural and differential perspective.<sup>1480</sup> Information was also received indicating that the budgetary regime is both inadequate and insufficient. Municipal governments and municipal ombudspersons have been charged with implementation, but must fit the requirements of this law into the same budget they already have.<sup>1481</sup> They also said that no protocol has been crafted to provide differential assistance to indigenous peoples and that too little has been done by the indigenous peoples and their members to disseminate the Decree Law and make certain that their people are aware of it.<sup>1482</sup>
856. In view of the foregoing, the IACHR is calling upon the State to put greater effort into effective implementation of Decree Law 4633, in concert with the indigenous peoples. The principles and postulates of this legal instrument must be embodied in properly staffed and funded institutions. As part of these measures, the Commission believes it is important to continue efforts to publicize the law, primarily at the local and community levels, so as to facilitate the

<sup>1479</sup> State of Colombia. *Indígenas, Afrodescendientes y Minorías* [Indigenous Peoples, Afro-descendants and Minorities]. Note MPC-OEA 609. April 22, 2013. p. 14.

<sup>1480</sup> They specifically reported that Victims Decree Law requires that certain groups be established as a means to enable participation of and coordination with the indigenous peoples. Those groups are mentioned in the decree law itself, such as the victims' participation groups at the municipal, departmental and national levels. However, these groups seldom if ever materialize. As an example, they pointed out that in Cauca department, it was not until November 2012 –almost one year after the Decree Law entered into force– that indigenous organizations were convened to become part of the participation group. CRIC. *Evaluación técnica del proceso de implementación de la Ley de Víctimas y Restitución de Tierras- Ley 1448 de 2011 y Decreto Ley de Víctimas y Restitución de Tierras para Pueblos Indígenas 4633 de 2011* [Technical Evaluation of the Implementation of the Victims and Land Restitution Act – Law 1448 of 2011 and the Victims and Land Restitution Decree Law for Indigenous Peoples 4633 of 2011]. December 5, 2012. Information received by the IACHR during the *in loco* visit.

<sup>1481</sup> CRIC. *Evaluación técnica del proceso de implementación de la Ley de Víctimas y Restitución de Tierras- Ley 1448 de 2011 y Decreto Ley de Víctimas y Restitución de Tierras para Pueblos Indígenas 4633 de 2011* [Technical Evaluation of the Implementation of the Victims and Land Restitution Act – Law 1448 of 2011 and the Victims and Land Restitution Decree Law for Indigenous Peoples 4633 of 2011]. December 5, 2012. Information received by the IACHR during the *in loco* visit.

<sup>1482</sup> As an example of the implementation challenges, the Committee noted that in the municipality of the Jámbalo Reserve in the Department of Cauca –the population of which is 99% indigenous– the Jámbalo Ombudsperson had, as of December 2012, taken statements from 39 indigenous victims who were members of the Nasa and Misak peoples. Two statements concerned collective events, while the others concerned individual victims. The total number of victims was 1802. According to what the IACHR was told, by that date the UARIV had, under Law 1448, recognized 6 persons as victims and provided humanitarian assistance but no compensation. They also reported that in 2012 the Unit paid out administrative indemnization for statements made to Social Action one to five years earlier, under the umbrella of Decree 1290 of 2008 and Law 418 of 1997. The IACHR also observes that the decision to include a name in the Single Registry of Victims turns into a very slow process; of the 24 statements given, no decision had been made with respect to 60% by the time the 60-day legal limit expired. CRIC. *Evaluación técnica del proceso de implementación de la Ley de Víctimas y Restitución de Tierras- Ley 1448 de 2011 y Decreto Ley de Víctimas y Restitución de Tierras para Pueblos Indígenas 4633 de 2011* [Technical Evaluation of the Implementation of the Victims and Land Restitution Act – Law 1448 of 2011 and the Victims and Land Restitution Decree Law for Indigenous Peoples 4633 of 2011]. December 5, 2012. Information received by the IACHR during the *in loco* visit.

registration of victims and efforts aimed at instilling indigenous communities and persons with a sense of confidence and trust.

857. As for land restitution, the State told the IACHR that special measures were established for ethnic groups, involving an expedited process, free of charge, in which the presumption always comes down on the side of the respective community's title. The IACHR observes that according to the information from the Special Administrative Land Restitution Unit, as of December 2012, 533 claims had been filed, from which close to 65% are by self-identified indigenous, and the claims covered an area of 41,708 hectares.<sup>1483</sup> The IACHR applauds the fact that at the request of the Land Restitution Unit, the Civil Law Court Specializing in Land Restitution ordered a precautionary measure suspending the administrative acts that would clear the way for mining on the Embera-Katío Reserve in Alto Andágueda in the Department of Chocó.<sup>1484</sup>

858. While the Commission recognizes the progress that has been made and the significant challenges and problems that still have to be overcome to put this mechanism into practice, it also believes it is vital that the State put forward its best efforts to comply with the commitments undertaken in Decree Law 4633, bearing in mind that –as the Commission has repeatedly pointed out– the “protection of the right of indigenous peoples to their ancestral territory is an especially important matter, as its enjoyment involves not only protection of an economic [unit] but also protection of the human rights of a collectivity whose economic, social and cultural development is based on its relationship with the land.”<sup>1485</sup> The IACHR also underscores how essential it is that institutions coordinate with each other properly so that the various State institutions are engaged in the work associated with identifying lands and territories,<sup>1486</sup> mine clearing and the return of the displaced population.

## Recommendations

859. Based on the information available and the Commission's analysis in this chapter on indigenous peoples, and in the spirit of contributing to the protection and enjoyment of the Colombian indigenous peoples' individual and collective rights, the IACHR is recommending the following to the Colombian State:

<sup>1483</sup> Ministry of Agriculture and Rural Development. Administrative Unit Specializing in Land Restitution. Court statistics as of December 28, 2012. Available [in Spanish] at: <http://www.restituciondettierras.gov.co/media/descargas/estadisticas/estadisticas%20%2020121228.pdf>.

<sup>1484</sup> Land Restitution Unit. Note titled “Judge suspends administrative acts that would clear the way for mining activities in the Chocó.” February 12, 2013. Available [in Spanish] at: <http://restituciondettierras.gov.co/?action=article&id=222>.

<sup>1485</sup> See, *inter alia*, IACHR. Pleadings before the Inter-American Court of Human Rights in the *Case of Yakye Axa v. Paraguay*. Mentioned in: I/A Court H.R. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, paragraph 120(c); IACHR. *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, para. 3.

<sup>1486</sup> As the UNDP and the OHCHR observe, “Proper administration, cross-checking, organization and updating must be the basis for supporting current and future procedures for access to and protection and return of lands and territories of displaced populations and for other planning needs by the State.” See UNDP/OHCHR. *Desplazamiento forzado tierras y territorios. Agendas pendientes: la estabilización socioeconómica y la reparación* [Forced displacement, lands and territories. Unfinished business: socioeconomic stabilization and reparations], Bogotá, 2011, p.39. Available [in Spanish] at: <http://pnudcolombia.org/indh2011/index.php/cuadernos-indh/desplazamiento-forzado>.

## General recommendations

1. Take urgent, determined and comprehensive measures to ensure the physical and cultural survival of the Colombian indigenous peoples brought to the brink of extinction by violence, poverty and their fragile demographics.
2. 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.
3. Adopt effective measures to protect indigenous peoples or their members on whose behalf precautionary measures have been granted and provisional measures ordered through the inter-American human rights system, implemented in concert with the respective beneficiaries and which must be culturally appropriate.

### **With respect to the homicides, disappearances, threats and accusations that continue to be targeted at indigenous peoples and that have a special impact on their traditional authorities and leaders.**

4. Protect the lives and integrity of Colombian indigenous persons, in furtherance of the State's obligations under the American Convention on Human Rights; take special and differentiated protective measures to safeguard the life and personal integrity of traditional indigenous leaders and authorities who, in the context of the internal armed conflict, are threatened by the various parties involved.
5. In order to draw attention to the violence that members of indigenous communities suffer, ensure that the ethnic affiliation of the victims is included in the various statistics and indicators that State authorities prepare in connection with human rights violations and breaches of international humanitarian law, and highlight the number of victims, in absolute and relative terms, in order to show the ratio between the number of victims and the total indigenous population of Colombia.
6. Investigate human rights violations committed against indigenous peoples and their members, punish the material and intellectual authors and make individual and collective reparation to victims.
7. 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.
8. Refrain from make statements or assertions that would stigmatize traditional indigenous authorities and leaders or indigenous persons in general; or statements or assertions suggesting that they have acted improperly or illegally, simply because



they have engaged in the work of promoting and defending the human rights of their peoples and communities.

**With respect to the military buildup on the indigenous peoples' ancestral territories and the armed combat fought there.**

9. Given the suffering that the indigenous people have endured within their territories as a consequence of the armed combat between the actors in the internal armed conflict and the episodes of violence that have claimed many victims, respect and enforce the basic principles of international humanitarian law that serve as the standards by which the human rights of the civilian population are protected in a case of armed conflict so that the rights to life and to humane treatment protected under the inter-American human rights instruments are secure.
10. Refrain from involving indigenous persons in the armed conflict, especially children and other vulnerable persons, so that they are not used for intelligence gathering or to assist in the transport of military troops and supplies.

**With respect to the harm that anti-personnel mines and unexploded ordnance do to the indigenous peoples and their ancestral territories.**

11. Take measures aimed at crafting special accident-prevention plans, with special emphasis on those communities where anti-personnel mines and unexploded ordnance are most prevalent and where they claim the highest number of victims. These plans are to be developed in concert with the indigenous peoples. Increase the resources allocated to educate indigenous peoples about the dangers that anti-personnel mines and unexploded ordnance pose; step up the mine clearing on indigenous territories, in full concert with their traditional authorities; treat the victims, their families and their communities using a culturally appropriate approach; in data systems, introduce ethnic and territorial variables so that the information is publicly accessible to the specific people of which the victim is a member, and the number of indigenous reserves or territories where anti-personnel mines and unexploded ordnance are a problem.

**With respect to aerial and other sprayings that affect indigenous territories**

12. Take the measures necessary to prevent the indiscriminate effects of spraying operations that use chemicals to destroy illicit crops, and consider replacing spraying with alternative methods of eradication.
13. Given how the aerial spraying in their territories has affected indigenous peoples' rights and interests, fully comply with the obligations associated with the right to prior, free and informed consultation, in keeping with the standards of the inter-American system.
14. Take the measures necessary to have a reliable record of the indigenous territories affected by the aerial spraying and the damage caused, and any measures necessary to have initiatives or procedures by which to redress the harm caused.

**With respect to forced displacement and the ongoing unconstitutional state of affairs that the Constitutional Court declared in Order 004 of 2009**

15. Make greater efforts to ascertain how many indigenous persons have been displaced in Colombia, through an approach that understands the specific types of forced displacement and the extent to which the indigenous peoples in the various regions of the country are affected.
16. Effectively implement the guidelines for a differential approach that are built into the policy on prevention and protection of the displaced population.
17. Take swift and energetic measures to prevent the risk detected through the Early Warning System of the Office of the Ombudsperson.
18. 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.

**With respect to the multiple forms of discrimination and violence that Colombia's indigenous women have suffered because of the armed conflict**

19. Bolster efforts to effectively comply with the recommendations the IACHR made concerning indigenous women in its 2007 report on *Violence and Discrimination against Women in the Armed Conflict in Colombia*.

**With respect to armed conflict, territories, megaprojects and prior consultation**

20. 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.
21. Make determined efforts to ensure that indigenous peoples effectively enjoy the right to collective property and their related rights in all their various components, as the IACHR summarized in its 2010 report on *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources*.
22. With the full participation of the indigenous peoples, establish the legislative or other measures necessary to give effect to the right to prior, free and informed consultation and consent, done in good faith and in accordance with international human rights standards.

**With respect to the impact of the armed conflict on the health and diet of indigenous peoples**

23. Take measures to ensure full health coverage for the indigenous population, overcome the obstacles that prevent real access to services and tailor those services to ensure that they are culturally appropriate.

24. Ensure that displaced or confined communities or families are supplied with food, as a necessary short-term response carried out in full concert with the indigenous peoples and communities involved, so that they are culturally appropriate.
25. Undertake comprehensive solutions that enable indigenous communities to guarantee their self-sufficiency and food security, in keeping with their cultural patterns, while also protecting the ancestral territory and natural resources.
26. Take specific measures to bring down the mortality and morbidity rate among indigenous children, devoting particular attention to those who are displaced.

**With respect to the problem of impunity and the problem that indigenous peoples and their members do not have access to justice.**

27. Fulfill the obligation to investigate, prosecute and punish those responsible for violations of the rights to life, to humane treatment and the other human rights of the members of indigenous communities and the communities themselves, as collective subjects, bearing in mind the specifics of the situation of the indigenous victims of the violence and the crimes committed during the armed conflict.

**With respect to the process of reparations and restitution of the rights of the victims of the armed conflict who are members of indigenous peoples and communities**

28. In concert with the indigenous peoples, effectively implement Decree Law 4633, a legal instrument whose principles and postulates must be embodied institutions and suitable human and economic resources.
29. Make the greatest possible effort to comply with the commitments undertaken through Decree Law 4633 with regard to the restitution of the indigenous peoples' ancestral territories, with proper institutional coordination to ensure that the various state institutions are performing the functions involved in identifying lands and territories and those associated with the humanitarian demining and the return of the displaced population.

## D. Women and the armed conflict

860. The Commission has consistently expressed grave concern over the suffering that Colombian women endure because of the heightened violence and discrimination that the armed conflict has caused and how important it is that their specific needs be taken into account in the public response to the problem.<sup>1487</sup> The Commission has also observed that Colombian women and girls affected by the armed conflict are unable to fully enjoy and exercise their rights under the Inter-American Convention for 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.

861. In 2006, the IACHR published the report titled *Violence and Discrimination against Women in the Armed Conflict in Colombia*, the follow-up to which was published in Chapter V of the 2009 Annual Report.<sup>1488</sup> These two reports identify the principal manifestations of violence against women aggravated by the armed conflict, and the physical, psychological and sexual violence committed against them by State and non-State actors alike; their forced displacement; their forced recruitment; the rules of conduct imposed on them by illegal armed groups holding communities or territories under their control; the threats and other forms of harassment and violence that women defenders of women's rights suffer; and the particularly critical situation of indigenous and Afro-Colombian women. The IACHR also highlighted a number of basic obstacles that women encounter in getting access to justice when they are victims of violence in the armed conflict, which include legislative, institutional, cultural and geographic barriers. The situation described in those two reports was again examined in Chapter IV of the Commission's 2010 and 2011 annual reports.

862. The IACHR's recommendations on this subject have been geared toward the development of a comprehensive State strategy that takes into account the manifestations of violence and discrimination that affect women and that the armed conflict has exacerbated, all with a view to progress in resolving, preventing and responding to these problems and mainstreaming women's particular needs on the public agenda. The IACHR is using its earlier recommendations as a point of reference when making the following observations on the Colombian State's response to the priority problems that women in Colombia still face.<sup>1489</sup>

### 1. Implementation of a gender-differentiated approach in public policy

863. During the on-site visit, the State informed the IACHR of a series of legislative, policy-related and programmatic efforts to advance women's rights in the country, which the Commission will now summarize. Likewise, in its observations on the Draft Report, the State reported progress made in implementing public policies with a focus on women's rights. The Commission is also taking that information into consideration.

<sup>1487</sup> See, *inter alia*, IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II., Doc. 67, October 18, 2006; IACHR, *Follow-up Report – Violence and Discrimination against Women in the Armed Conflict in Colombia – Chapter V*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009.

<sup>1488</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II., Doc. 67, October 18, 2006; IACHR, *Follow-up Report – Violence and Discrimination against Women in the Armed Conflict in Colombia – Chapter V*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, para. 106.

<sup>1489</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II., Doc. 67, October 18, 2006, pp. 85-93; IACHR, *Follow-up Report – Violence and Discrimination against Women in the Armed Conflict in Colombia – Chapter V*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Section VIII, Recommendations.

864. The State acknowledges that there are “factors conducive to discrimination and violence against women,” which the armed conflict itself has compounded. Accordingly, it highlights the State measures taken to incorporate the gender-differentiated approach into the processes undertaken to tackle the armed conflict. It pointed out in this regard that the gender-differentiated approach is a central part of the Victims Act. The State also reported on the legislative measures adopted with a view to introducing norms that, in general, “are geared toward guaranteeing all women a life free of violence.” Here, the State emphasized Law 1257, enacted in 2008,<sup>1490</sup> whose provisions are intended to raise awareness of, prevent and punish forms of violence and discrimination against women, amend the Criminal Code and the Code of Criminal Procedure, Law 294 of 1996 and introduce other provisions (hereinafter “Law 1257”). In its observations on the Draft Report, the State pointed out that the armed conflict *per se* is not the purpose and scope of Law 1257; instead, “its purpose is to adopt standards that guarantee all women a life free of violence, in both the public and private realms, to ensure the exercise of the rights recognized in domestic and international law, to afford access to administrative and judicial proceedings for their protection and care, and to adopt the public policies needed to make these goals possible.”<sup>1491</sup> During its visit, the IACHR also received information concerning the training being administered in connection with Law 1257.
865. The State also pointed to the adoption of the National Public Policy on Gender Equity for Women, launched in September 2012, under the coordination of the Office of the High Presidential Counsel for Women’s Equity. The scope and measures that are the hallmarks of this law consist of 6 thematic areas assembled as part of the “Indicative Plan of Action 2013-2016.”<sup>1492</sup> Within that framework, the IACHR also received information concerning the formulation of the Guidelines of the National Public Policy on Gender Equity for Women [*Lineamientos de la política pública nacional de equidad de género para las mujeres*], and applauds the fact that the policy was formulated with the participation of and in joint dialogue with civil society organizations, with the international community accompanying the process.<sup>1493</sup>
866. The State also provided information on the adoption of other legislative and administrative measures, such as Law 1542 of 2012, “Amending Article 74 of Law 906 of 2004, the Code of Criminal Procedure” so that crimes of domestic violence and failure to provide child support

<sup>1490</sup> As well as its Regulatory Decrees, namely: Decree No. 2733 of December 27, 2013 (“regulating Article 23 of Law 1257 of 2008”); No. 2734 of December 27, 2012 (“regulating the measures to be taken to address the needs of women victims of violence”); Decree No. 4463 of November 25, 2011 (“partially regulating Law 1257 of 2008”); Decree No. 4796 of December 20, 2011 (“Partially regulating articles 8, 9, 13, and 19 of Law 1257 of 2008 and enacting other provisions”); Decree No. 4798 of December 20, 2011 (“Partially regulating Law 1257 of 2008”); and Decree No. 4799 of December 20, 2011 (“Partially regulating Laws 294 of 1996, 575 of 2000 and 1257 of 2008”). Ministry of Foreign Affairs of Colombia, Document titled “*Mujeres víctimas*” [Women victims], received by the IACHR on May 3, 2013, and Observations of the State of Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, paras. 542-543.

<sup>1491</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, para. 541.

<sup>1492</sup> The six thematic areas are: i) cultural transformation and peace building; ii) economic autonomy and access to assets; iii) participation in positions of authority and decision-making; iv) health and sexual and reproductive rights; v) a gender focus in education, and vi) a plan to ensure a life free of violence. Documento Conpes Social 161 de 2013 (available in Spanish) “which sets out the National Public Policy on Gender Equity and spells out the Indicative Plan of Action for 2012-2016.” Information provided by the State in its observations on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, paras. 542-543.

<sup>1493</sup> See: Office of the High Presidential Counsel for Women’s Equity, *Lineamientos de la Política Pública Nacional de Equidad de Género para las Mujeres*, September 2012. Information provided by the State in its observations on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, paras. 548-549.

are offenses now subject to automatic investigation and whose prosecution is no longer by private action.<sup>1494</sup> The State also reported that on May 14, 2012, Resolution 805 was adopted, which is the “Specific Protocol focusing on gender and the rights of women referred to in Article 50 of Decree 4912 of 2011”; and guidelines were established to mainstream the gender approach into the protection process.<sup>1495</sup> Furthermore, in its observations on the Draft Report, the State reported that the Ministry of the Interior “is in the process of assembling a ‘Program of Guarantees for Women’, which goes beyond strictly material concepts of protection”; it also reported that 2013 saw further reflection upon and evaluation and follow up of the enforcement of 2012 Law 805 and execution of the protection program, all done on the basis of a document presented by the social organizations.”<sup>1496</sup>

867. For its part, the Ministry of Health reported the following: (i) Decree 1792 of August 28, 2011 provided that the revenue collected from the tax on ordnance and explosives, which goes into the Promotion Account of the Solidarity and Guarantee Fund, may be used to finance campaigns to prevent violence and promote peaceful co-existence in the nation and the territories;<sup>1497</sup> (ii) a Protocol for Comprehensive Health Care for Victims of Sexual Violence was implemented through Resolution 0459 of March 9, 2012;<sup>1498</sup> (iii) during 2012/2013, the manuals on abused women and children created through Resolution 412 of 2000 will be updated;<sup>1499</sup> (iv) the “Guidelines for mainstreaming the gender approach throughout the health sector” and the “Basic Manual for facilitators – gender and health”<sup>1500</sup> were introduced to the public, checked and the necessary adjustments introduced; (v) a CONPES document is currently being drafted on Women Victims of the Armed Conflict.<sup>1501</sup>
868. It was also reported that a new CONPES document is being prepared based on the *Guidelines of the national public policy for gender equity for women* of the Office of the High Presidential Counsel for Women’s Equity,<sup>1502</sup> and implementing the following strategies: (i) women’s full participation in the labor market, with equal opportunity; (ii) striking the balance between family life and the job; (iii) promoting women’s participation in positions of power and decision-making; (iv) recognition and strengthening of women and the different ways they organize amongst themselves to build peace; (v) guaranteeing the right to health and the sexual and reproductive rights of women, with a differential approach at each stage in their life cycle; (vi) guaranteeing women their right to an education, with a differential approach at

<sup>1494</sup> The State mentioned, *inter alia*, the following: Resolution 450 of 2012 “Policy on Equality and Non-Discrimination of the Office of the Attorney General of the Nation”, and Resolution 172 of 2012, which creates the Gender Group within the Ministry of Justice and Law. Ministry of Foreign Affairs of Colombia, Document titled “*Mujeres víctimas*”, which the IACHR received on May 3, 2013.

<sup>1495</sup> State of Colombia, *Advances in Human Rights*. The State also reported that in 2012, seven CERREM sessions were held with a gender-focus. Ministry of Foreign Affairs of Colombia, Document “*Mujeres víctimas*” [“Women Victims”], received by the IACHR on May 3, 2013.

<sup>1496</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, paras. 544 and 546

<sup>1497</sup> Ministry of Health and Social Protection, *Informe para Comisión Interamericana de Derechos Humanos 2012 [Report for the Inter-American Commission on Human Rights 2012]*, December 2012, p. 14.

<sup>1498</sup> Ministry of Health and Social Protection, *Informe para Comisión Interamericana de Derechos Humanos 2012 [Report for the Inter-American Commission on Human Rights 2012]*, December 2012, p. 15.

<sup>1499</sup> Ministry of Health and Social Protection, *Informe para Comisión Interamericana de Derechos Humanos 2012 [Report for the Inter-American Commission on Human Rights 2012]*, December 2012, p. 17.

<sup>1500</sup> Ministry of Health and Social Protection, *Informe para Comisión Interamericana de Derechos Humanos 2012 [Report for the Inter-American Commission on Human Rights 2012]*, December 2012, p. 17.

<sup>1501</sup> Ministry of Health and Social Protection, *Informe para Comisión Interamericana de Derechos Humanos 2012 [Report for the Inter-American Commission on Human Rights 2012]*, December 2012, p. 21.

<sup>1502</sup> Ministry of Health and Social Protection, *Informe para Comisión Interamericana de Derechos Humanos 2012 [Report for the Inter-American Commission on Human Rights 2012]*, December 2012, p. 18.

every stage in their life cycle; (vii) promoting and improving women's access to property and the means of production; (viii) lowering the risk factors and/or vulnerability of women vis-à-vis their habitat and environment; (ix) mobilization and communication for cultural transformation, and (x) institution building.<sup>1503</sup>

869. For its part, the Ombudsperson's Office mentioned the following initiatives and programs: (i) a training program that includes a focus on the human rights of children and adolescents and women when assisting victims within and outside the armed conflict; (ii) an institutional modernization project in 10 regions to afford women victims access to justice; (iii) development of the Protocol for Investigation of Sex-related Crimes in the context of the armed conflict, in partnership with the Office of the Attorney General and the Prosecutor General; and (iv) documenting and monitoring cases of sexual and gender violence, work that will be done by on-site interdisciplinary teams from the Office of the Prosecutor Delegate in the targeted regions.<sup>1504</sup>
870. For its part, the Office of the Attorney General was of the view that progress had been made in developing a public policy on preventing violence against women and assisting women victims of violence through: (i) Directive No. 001 of 2012, which urged the offices of the governors and mayors nationwide to include in their respective development plans a chapter on preventing violence against women and assisting women victims of violence, and evaluate public policies on children, adolescents, youth and the family, and the issue of the system of criminal liability for adolescents and food security; and (ii) Directive No. 002 of 2012, which called for the appointment of family police commissioners nationwide.<sup>1505</sup>
871. On the subject of political participation, the State maintained that gender equality is being implemented through such means as, for example, the guarantee of gender-based representation on some Municipal Councils and in all Departmental Assemblies.
872. For its part, civil society pointed out that although the quota law requires that women hold at least 30% of the departmental and municipal seats, women's representation in political life of the country remains very limited. In this regard, it was reported that women represent only 3.2% of Governors and 9% of Mayors; but for a few exceptions, the incidents of noncompliance with this law in the case of women in high positions with decision-making authority has been frequent.<sup>1506</sup> The IACHR also received information to the effect that for the 2010-2014

<sup>1503</sup> Ministry of Health and Social Protection, *Informe para Comisión Interamericana de Derechos Humanos 2012* [Report for the Inter-American Commission on Human Rights 2012], December 2012, pp. 20-24.

<sup>1504</sup> Office of the Ombudsperson, Legal Commission for Follow-Up of the Victims Law, *Mandates established in the Law on Assistance, Reparations and Land Restitution and the Regulatory Decrees*, December 5, 2012, pp. 6-7.

<sup>1505</sup> Office of the Attorney General of the Nation, Memorandum 110600000-AF 393661/2012/IMHC-eff, October 19, 2012, p. 3.

<sup>1506</sup> *Red Nacional de Mujeres* [National Women's Network], *Ruta Pacífica de Mujeres* [Women's Path to Peace], *Iniciativa de Mujeres Colombianas por la Paz* [Colombian Women's Peace Initiative], *Liga Internacional de Mujeres por la Paz y la Libertad* [International League of Women for Peace and Liberty], *Liga de Mujeres Desplazadas* [League of Displaced Women], *Mesa de Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Mesa por la Vida y la Salud de las Mujeres* [Working Group for Women's Life and Health], *Casa de la Mujer, Sisma Mujer, Corporación Humanas, Cladem, Campaña Saquen mi cuerpo de la guerra* [The "Take Me Out of This War" Campaign], *Observatorio de Género y Derechos Humanos* [Gender and Human Rights Observatory], *DeJuSticia, Red de Educación Popular entre Mujeres* [Women's Mutual Education Network], *Mesa de Seguimiento al Auto 092- Anexo Reservado* [Working Group to Follow up on Order 092 – Confidential Addendum], Colombian Commission of Jurists, *Asociación Colectivo mujeres al derecho* [Women's Legal Advocacy Association], *Corporación Jurídica Humanidad Vigente, Colectivo de Abogados José Alvear* [José Alvear Lawyers' Group], *Colombia Diversa, El Estado y la violencia sexual contra las mujeres en el marco de la violencia sociopolítica en Colombia. Informe presentado por organizaciones de mujeres y de derechos humanos a la Representante Especial del Secretario General para la Violencia Sexual en contextos de conflictos armados, señora Margot Wallström, con motivo de su visita a Colombia* [The State and sexual violence against women in the framework of the socio-political violence in Colombia].

legislative period, women were elected to 14.18% of all seats in the Congress of the Republic. In the last three legislative sessions (a 12-year period), women have never accounted for more than 15% of the membership. In the recent local elections, held in October 2011, women represented only 10% of those elected to mayoral offices, and 9.3% of those elected to the governor's offices; in the case of the municipal councils, women won only 16.08% of the seats; in the assemblies, they won only 17.94% of the seats.<sup>1507</sup>

873. As for the efforts highlighted by the Colombian State, civil society emphasized that sexual violence in Colombia continues to be a routine, systematic and invisible practice in the context of the Colombian armed conflict.<sup>1508</sup>
874. In addition, a number of organizations told the Commission that the widespread impunity can be traced to three specific factors: (i) the denial of access to justice for women victims of emblematic cases of sexual violence, such as those of Constitutional Court's Order 092 of 2008 in which it was pointed out that forced displacement was a factor exposing women to the danger of sexual violence in the country; (ii) the failure of the Justice and Peace system approved on the occasion of the demobilization of paramilitaries and the latent risk that the current government's new framework of laws will perpetuate and amplify impunity; and finally, (iii) the current National Government's reluctance to acknowledge the dynamics of the armed conflict today and the consequences it has for women victims of the serial and serious acts of sexual violence that have occurred since the paramilitary demobilization. The organizations contend that these factors reveal that the Colombian State has made no progress on the recommendations made by the IACHR in its report on *Violence and Discrimination against women in the armed conflict in Colombia*, published in 2006. These problems were brought up again at an IACHR hearing on the situation of women's human rights in Colombia, held at Commission headquarters on March 14, 2013.<sup>1509</sup>
875. As for Law 1257 specifically, a number of organizations contend that the Colombian State is still not complying with various components of the law in the areas of education, justice, labor, health and communications. The State is thus failing to comply with its obligation to ensure women's right to live free of violence. This situation is evident in circumstances such as (i) the

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*Report that women's and human rights organizations presented to the Secretary-General's Special Representative for Sexual Violence in Conflict, Ms. Margot Wallström, on the occasion of her visit to Colombia to Colombia*, May 16, 2012, p. 4.

<sup>1507</sup> Corporación Sisma Mujer, *Mujeres en cifras en Colombia* [Women in numbers in Colombia], December 2012.

<sup>1508</sup> Information provided at the meeting with women's organizations, held in Bogotá on December 4, 2012. See, *inter alia*, *Red Nacional de Mujeres* [National Women's Network], *Ruta Pacífica de Mujeres* [Women's Path to Peace], *Iniciativa de Mujeres Colombianas por la Paz* [Colombian Women's Peace Initiative], *Liga Internacional de Mujeres por la Paz y la Libertad* [International League of Women for Peace and Liberty], *Liga de Mujeres Desplazadas* [League of Displaced Women], *Mesa de Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Mesa por la Vida y la Salud de las Mujeres* [Working Group for Women's Life and Health], *Casa de la Mujer, Sisma Mujer, Corporación Humanas, Cladem, Campaña Saquen mi cuerpo de la guerra* [The "Take Me Out of War" Campaign], *Observatorio de Género y Derechos Humanos* [Gender and Human Rights Observatory], *DeJuSticia, Red de Educación Popular entre Mujeres* [Women's Mutual Education Network], *Mesa de Seguimiento al Auto 092- Anexo Reservado* [Working Group to Follow up on Order 092 – Confidential Addendum], Colombian Commission of Jurists, *Asociación Colectivo mujeres al derecho* [Women's Legal Advocacy Association], *Corporación Jurídica Humanidad Vigente, Colectivo de Abogados José Alvear* [José Alvear Lawyers' Group], *Colombia Diversa, El Estado y la violencia sexual contra las mujeres en el marco de la violencia sociopolítica en Colombia. Informe presentado por organizaciones de mujeres y de derechos humanos a la Representante Especial del Secretario General para Violencia Sexual en contextos de conflictos armados, señora Margot Wallström, con motivo de su visita a Colombia* [The State and sexual violence against women in the framework of the socio-political violence in Colombia. Report that women's and human rights organizations presented to the Secretary-General's Special Representative for Sexual Violence in Conflict, Ms. Margot Wallström, on the occasion of her visit to Colombia], May 16, 2012, p. 13.

<sup>1509</sup> IACHR, *Hearing on the Situation of Human Rights of Women in Colombia*, March 14, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=131&page=2>.



persistent violence; (ii) a set of obstacles to the application of and compliance with the regulations governing that law, which the organizations contend is the product of local and national authorities' ignorance of the respective laws; and (iii) the widespread impunity with respect to violence against women and the fact that the criminalization of femicide, sexual harassment and the aggravating circumstances in cases of sexual violence has, in practice, produced very little in the way of results, four years after the law was enacted. During the visit, civil society stressed that part of the problem lies in the fact that there is no institutionalized consultation process in place to craft a public policy on the situation of women using a differentiated approach.<sup>1510</sup>

## 2. Discrimination and violence against women

876. In various documents and reports, the Commission has documented the systematic nature and scale of violence against women in Colombia, especially the sexual violence committed in the armed conflict and against forcibly displaced women.<sup>1511</sup> It has also documented how the different actors in the conflict use sexual violence as a war tactic. The Commission observes with concern that the State would appear to deny this problem in its statement to the effect that “violence committed against women by agents of the State in the context of the armed conflict is not widespread; between 2001 and 2009, the Institute of Legal Medicine and Forensic Sciences reported that only 2.08% of the cases were committed by members of the government forces.”<sup>1512</sup>

877. The IACHR has pointed out that the purpose of the physical, psychological and sexual violence by actors in an armed conflict tends to be to wound, terrorize and weaken the enemy, to gain control of territory and economic resources.<sup>1513</sup> The IACHR has observed that within the armed conflict, all the circumstances that have historically exposed women to discrimination and to inferior treatment, particularly their cultural differences and reproductive capacity, and the civil, political, economic and social consequences of their position of disadvantage, are exploited and manipulated by the actors in the armed conflict in their struggle to control territory and economic resources.<sup>1514</sup> One of the most important factors to consider is that violence and discrimination against women is not solely the product of armed conflict, but permanent fixtures in the lives of Colombian women.<sup>1515</sup>

878. During its visit, the Commission received information indicating that the current State records show an increase in the number of complaints about all types of violence against women,<sup>1516</sup>

<sup>1510</sup> Information provided at the meeting with women's organizations, held in Bogotá on December 4, 2012.

<sup>1511</sup> See, for example, IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, paragraphs 17-39; *Follow-up Report – Violence and Discrimination against Women in the Armed Conflict in Colombia – Chapter V*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, paras. 17-38.

<sup>1512</sup> Ministry of Foreign Affairs of Colombia, *Documento “Mujeres víctimas”* [Document titled “Women Victims”], received by the IACHR on May 3, 2013.

<sup>1513</sup> See, for example, IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, Executive Summary, para. 5.

<sup>1514</sup> See, for example, IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 46.

<sup>1515</sup> See, for example, IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 45.

<sup>1516</sup> See, *inter alia*, Corporación Sisma Mujer, *Situación de las mujeres en Colombia* [Situation of Women in Colombia], December 4, 2012, p. 1; Las Mujeres Chocoanas, *El derecho a la seguridad y a una vida libre de violencias* [The right to security and a life free of violence]. According to the information, between October 2011 and October 2012, domestic violence in Medellín had left 7,706 women victims out of a total of 9,284 persons affected; 1,288 women had reportedly filed a complaint about some form of sexual violence. *Mesa de Seguimiento Proyecto Clínica de las Mujeres*. The Commission also received

which simply brings home the fact that this is an ongoing human rights problem that requires urgent, priority attention.

879. As previously mentioned, the Colombian State adopted Law 1257 in 2008.<sup>1517</sup> Even so, the Commission finds that its regulatory decrees 4799, 4796, 4763 and 4798 were not adopted until three years later, in 2011.
880. Almost four years after enactment of Law 1257 and even after the aforementioned regulatory decrees were adopted, during the IACHR's visit civil society reported that compliance is still very limited because the political will is lacking, as evidenced by the absence of measures to make the necessary institutional adjustments, provide resources, offer services, and the insufficient articulation among the institutions that have compliance-related responsibilities.<sup>1518</sup> Civil society observed that (i) little has been done to publicize and distribute the decrees; (ii) there are still persistent obstacles that require structural changes and are not being addressed by specific prevention, protection and assistance measures; mainly in the labor, education and health issues; (iii) the decrees did nothing to improve the coordination among agencies in charge of assisting victims and in charge of taking steps to eradicate violence; (iv) some sectors would seem bent on setting back the existing laws; (v) criminalizing femicide, sexual harassment and the aggravating circumstances in cases of sexual violence has not produced any results in practice; and (vi) some aspects of the law have been ignored entirely.<sup>1519</sup>
881. It was also said that in general terms, the agencies cannot point to any specific progress toward the law's implementation and application, and there are reportedly no measures specifically intended to prevent violence against women, act with the necessary due diligence, and assist and protect women victims of violence, because the agencies tend to take a family

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testimony concerning the situation of Sandra Correa Castaño, who was murdered by her partner on November 18, 2012 (CEDECIS, *Case Record*), and the testimony of the mother of Valentina Luna Román, who had reportedly been drugged and then raped by a group of youth belonging to the "Los Urabeños." Although a complaint had been filed, the Prosecutor's Office had reportedly made no headway in the investigation. Information provided at the meeting with civil society, held in Medellín on December 5, 2012.

<sup>1517</sup> Available [in Spanish] at: [http://www.secretariassenado.gov.co/senado/basedoc/ley/2008/ley\\_1257\\_2008.html](http://www.secretariassenado.gov.co/senado/basedoc/ley/2008/ley_1257_2008.html).

<sup>1518</sup> *Red Nacional de Mujeres* [National Women's Network], *Ruta Pacífica de Mujeres* [Women's Path to Peace], *Iniciativa de Mujeres Colombianas por la Paz* [Colombian Women's Peace Initiative], *Liga Internacional de Mujeres por la Paz y la Libertad* [International League of Women for Peace and Liberty], *Liga de Mujeres Desplazadas* [League of Displaced Women], *Mesa de Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Mesa por la Vida y la Salud de las Mujeres* [Working Group for Women's Life and Health], *Casa de la Mujer, Corporación Humanas, Cladem, Campaña Saquen mi cuerpo de la guerra* [The "Take Me Out of War" Campaign], *Observatorio de Género y Derechos Humanos* [Gender and Human Rights Observatory], *DeJuSticia, Red de Educación Popular entre Mujeres* [Women's Mutual Education Network], *Mesa de Seguimiento al Auto 092- Anexo Reservado* [Working Group to Follow up on Order 092 – Confidential Addendum], Colombian Commission of Jurists, *Asociación Colectiva mujeres al derecho* [Women's Legal Advocacy Association], *Corporación Jurídica Humanidad Vigente, Colectivo de Abogados José Alvear* [José Alvear Lawyers' Group], *Colombia Diversa, El Estado y la violencia sexual contra las mujeres en el marco de la violencia sociopolítica en Colombia. Informe presentado por organizaciones de mujeres y de derechos humanos a la Representante Especial del Secretario General para Violencia Sexual en contextos de conflictos armados, señora Margot Wallström, con motivo de su visita a Colombia* [The State and sexual violence against women in the framework of the socio-political violence in Colombia. Report that women's and human rights organizations presented to the Secretary-General's Special Representative for Sexual Violence in Conflict, Ms. Margot Wallström, on the occasion of her visit to Colombia], May 16, 2012, p. 13.

<sup>1519</sup> See, *Corporación Sisma Mujer, Situación de las mujeres en Colombia* [Situation of Women in Colombia], December 4, 2012, p. 3. It was also pointed out that there were another three bills to amend Law 1257 of 2008 to: (i) reinforce the protective measures, (ii) create a comprehensive protection system for women, and (iii) prohibit the requirement that a women show proof that she is not pregnant in order to get or keep a job, which were reportedly amendments that had not been discussed with civil society. *Corporación Sisma Mujer, Situación de las mujeres en Colombia* [Situation of Women in Colombia], December 4, 2012, p. 6.

approach, in which women are simply one element of the broader family picture.<sup>1520</sup> It was explained that if one examines how the agencies respond, one finds that they tend to deal with the issue of violence against women as a family problem or a problem associated with other population groups, such as children and adolescents, without ever managing to come up with a specific approach for women (children, adolescents, adults, the elderly, and so on) as a distinctive social sector.<sup>1521</sup> The Commission also received information to the effect that the measures taken are identical in cases of domestic violence, lacking any specific component to address the problem of violence against women; in other words, the assistance offered to every member of the family is the same, without distinguishing for gender. Nor are there any measures to address violence against women outside the family context.<sup>1522</sup>

882. In December 2011, the national government issued the decrees regulating Law 1257. As for the participation of the organizations in the regulation process, it was said that more effort is needed to ensure the regions' participation<sup>1523</sup> and that in the regulation of the health component, neither the organizations nor the follow-up groups were allowed to participate; in the end, women's voices were absent from the process.<sup>1524</sup>
883. Specifically, civil society expressed the view that where matters of justice are concerned, while Decree 4799 contains regulations intended to protect,<sup>1525</sup> those regulations do not apply exclusively to women and would impose certain restrictions that might make the measures of

<sup>1520</sup> *Informe de la Mesa por el derecho de las mujeres a una vida libre de violencia sobre la implementación de la Ley 1257 de 2008 y su estado actual de cumplimiento* [Report of the Working Group for Women's Right to a Life Free of Violence on Implementation of Law 1257 of 2008 and its current state of compliance], March 2012, p. 8.

<sup>1521</sup> *Informe de la Mesa por el derecho de las mujeres a una vida libre de violencia sobre la implementación de la Ley 1257 de 2008 y su estado actual de cumplimiento* [Report of the Working Group for Women's Right to a Life Free of Violence on Implementation of Law 1257 of 2008 and its current state of compliance], March 2012, p. 14.

<sup>1522</sup> *Informe de la Mesa por el derecho de las mujeres a una vida libre de violencia sobre la implementación de la Ley 1257 de 2008 y su estado actual de cumplimiento* [Report of the Working Group for Women's Right to a Life Free of Violence on Implementation of Law 1257 of 2008 and its current state of compliance], March 2012, p. 16.

<sup>1523</sup> *Informe de la Mesa por el derecho de las mujeres a una vida libre de violencia sobre la implementación de la Ley 1257 de 2008 y su estado actual de cumplimiento* [Report of the working Group for Women's Right to a Life Free of Violence on Implementation of Law 1257 of 2008 and its current state of compliance], March 2012, p. 31.

<sup>1524</sup> *Informe de la Mesa por el derecho de las mujeres a una vida libre de violencia sobre la implementación de la Ley 1257 de 2008 y su estado actual de cumplimiento* [Report of the working Group for Women's Right to a Life Free of Violence on Implementation of Law 1257 of 2008 and its current state of compliance], March 2012, p. 31.

<sup>1525</sup> According to civil society: (i) comprehensive regulations were issued for all the protection measures established by Law 1257 of 2008, so that the authorities have very precise instructions as to their scope; (ii) a specific regulation was included to provide for the woman's right not to have to face her assailant and this was proposed as a suitable means to counteract the negative effects of Law 1453 of 2011, under which crimes of intra-family or domestic violence and failure to provide for the dietary needs of one's immediate family members. With Decree 4799 of 2011, all that is required is that women, either directly or through their attorney, express their decision not to face their assailant whereupon the competent authority will declare the conciliation stage over and continue the proceedings; (iii) the measures of protection being regulated apply to public and private incidents of violence against women, in other words, they are not just for intra-family or domestic violence, but for any violence that women suffer; (iv) the State undertakes the principal obligation for guaranteeing legal, medical and psychological assistance and advisory services to women, to make it apparent that violence against women has a public connotation and is no longer regarded as a private matter between a couple; (v) the decree created a risk protocol and a national registry on the protective measures and the police action ordered by the authorities, so that the measures can be tracked and preventive action can be demanded from the police; (vi) the measures of protection will remain in effect as long as the risk exists and women can appeal a decision to lift those measures; (vii) an assailant's failure to comply with the measures will have consequences, such as arrest and fines. The fines paid will go into a municipal fund to support programs of non-violence against women. *Informe de la Mesa por el derecho de las mujeres a una vida libre de violencia sobre la implementación de la Ley 1257 de 2008 y su estado actual de cumplimiento* [Report of the Working Group for Women's Right to a Life Free of Violence on Implementation of Law 1257 of 2008 and its current state of compliance], March 2012, pp. 34-35.

protection less effective.<sup>1526</sup> In the case of Health Decree 4796 of 2011, civil society's contention was that it established provisions contrary to women's right to health, such as making the health measures conditional upon enrollment in a health plan and leaving out certain issues having to do with sexual and reproductive rights.<sup>1527</sup>

884. In its observations on the Draft Report, the State mentioned the provisions of 2011 Decree 4796, and commented that: i) the decree does not establish "any time frame in connection with the assistance measures, since the law itself prescribes that the measures shall remain in place for up to six months and can be extended for an additional six months"; ii) Article 8 of the Decree "does not state that the sole criterion for granting assistance measures is the medical evaluation", because Decree 2734 of 2012 establishes "the procedure through which the competent authority authorizes the assistance measures," which involves "a health professional's evaluation of [the victim's] physical and mental health," and orders that the health sector shall put the procedures into practice; iii) the regulatory provisions do not create "discriminatory criteria for eligibility for the economic subsidy, such as socioeconomic level, a medical evaluation, or quotas," as the criteria were based on the provisions of Article 19 of

<sup>1526</sup> Civil society observed that: (i) Decree 4799 was prepared for Law 1257 and other family-related laws such as Law 294 of 1996 and Law 575 of 2000, which would reflect a family approach. Furthermore, because Law 1257 amended some provisions having to do with intra-family or domestic violence, officials reportedly interpreted that to mean that those measures would apply to all family members; (ii) the authority in the community where the events occurred generally has jurisdiction over the case, a provision that would appear to ignore the fact that women do not want to return to the scene of the events because they would face new dangers; (iii) the decree gave private agents responsibilities in ensuring that the measures were effective on the understanding that the management boards and doormen of high-rise buildings would enforce orders prohibiting the assailant from entering the home where the woman lived; (iv) the decree opens up the possibility that the woman will take charge of the assailant's re-education, a circumstance not provided for in Law 1257; (v) the decree qualified the woman's authority to negotiate the measures and allowed the police to require that the negotiations meet certain criteria so as to preclude any State liability in the event of an act of violence committed against the woman; (vi) the decree limited the effectiveness of the measures of protection by stipulating that such measures cannot be ordered until the assailant is notified. *Informe de la Mesa por el derecho de las mujeres a una vida libre de violencia sobre la implementación de la Ley 1257 de 2008 y su estado actual de cumplimiento* [Report of the working Group for Women's Right to a Life Free of Violence on Implementation of Law 1257 of 2008 and its current state of compliance], March 2012, pp. 37-38.

<sup>1527</sup> It was said in this regard that the Decree: (i) provides that the satisfaction of women's housing and nutritional needs will depend on the availability of resources; (ii) standardizes the length of time that these measures will last; (iii) means that these services would be approved if a causal relationship could be established between the act of violence and the effects on a woman's life, which would have to be corroborated by a health professional; (iv) provides that the danger to a woman is not determined on the basis of her statements, but is left for the authorities to decide; (v) whereas the Constitutional Court and Law 1257 provided that a monetary subsidy for the woman's economic needs was the general rule, the Decree regulates it as an exceptional measure based on a variety of discriminatory criteria, such as a woman's socio-economic level, budgetary availability, medical evaluation, the non-availability of space and the existence of temporary shelters. The Decree also requires that women file a sworn complaint attesting to the facts before she can qualify for the subsidy, and emphasizes the criminal consequences that will follow if the facts she swears to are not borne out; (vi) makes the adoption of assistance measures conditional upon the existence of current enrollment in a social health system, a requirement that ignores the immediacy of a woman's need and the urgency of assistance measures required in cases of violence against women; (vii) establishes that the State does not undertake principal responsibility for ensuring the delivery of the economic subsidy; instead, the decree instructs women to go to their assailants for the economic resources they require. Civil society was also of the view that the Decree fails to regulate certain issues, such as: (a) the right to voluntarily terminate a pregnancy, whereas Law 1257 fully regulates crimes of sexual violence and the sexual and reproductive health of women, and reparations; (b) the right of women victims of violence to be informed of their rights, including the services that are provided with respect to their sexual and reproductive rights; (c) the updating, preparation and follow up of the protocols and manuals on treatment and health; (d) design and implementation of a national program for physical, psychological and forensic care for women victims of violence in order to provide a full service. See, *inter alia*, *Informe de la Mesa por el derecho de las mujeres a una vida libre de violencia sobre la implementación de la Ley 1257 de 2008 y su estado actual de cumplimiento* [Report of the working Group for Women's Right to a Life Free of Violence on Implementation of Law 1257 of 2008 and its current state of compliance], March 2012, pp. 40-42; *Corporación Sisma Mujer, Reglamentación Ley 1257* [Regulation of Law 1257].

Law 1257 and Judgment C-776; iv) the decree does not make assistance measures conditional upon a woman's enrollment in the SGSSS, [... but instead] ratifies the need for women to be enrolled in the System, since under the provisions of [Law 1257] it is the job of the EPS to deliver the assistance measures in the form of housing, food and transportation; and v) under the Law's provisions "the financing of the assistance measures for housing, food and transportation services and a monetary subsidy shall be with funds from the General Health Social Security System."<sup>1528</sup>

885. On the labor issue, civil society pointed out that Decree 4463 makes provision for significant activities to raise awareness on the standards to protect working women, publicize the tax benefit for businesses that hire women victims of violence, surveillance and control of salary and wage equality, recognition of sexual harassment as a professional risk, participation in tripartite venues where decisions are made, and information and research on the violence that women experience on the job, with a view to adopting public policies and other measures.<sup>1529</sup> Observations were also made concerning the positives and negatives of the educational measures provided for in the regulatory decree.<sup>1530</sup>
886. As for the court oversight that Law 1257 stipulates is one of the rights to which women victims of violence are entitled, civil society said that the Public Defender's Office, which is in charge of providing that service, reports that only 66,726 persons have a public defender assigned to his or her Justice and Peace process, which is 19.93% of the total number of victims. The Public Defender's Office also has only 121 public defenders assigned to this work, which means that the average number of victims per attorney is 551.43.<sup>1531</sup>

### 3. Sexual violence

887. No one is ever made to answer for the vast majority of cases of sexual violence in Colombia. Although underreporting is a problem, the figures from the Institute of Legal Medicine indicate that sexual violence has increased 40% in the last eight years, rising from 14.239

<sup>1528</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, paras. 560-562, 564 and 565.

<sup>1529</sup> *Informe de la Mesa por el derecho de las mujeres a una vida libre de violencia sobre la implementación de la Ley 1257 de 2008 y su estado actual de cumplimiento* [Report of the Working Group for Women's Right to a Life Free of Violence on Implementation of Law 1257 of 2008 and its current state of compliance], March 2012, p. 43.

<sup>1530</sup> *Informe de la Mesa por el derecho de las mujeres a una vida libre de violencia sobre la implementación de la Ley 1257 de 2008 y su estado actual de cumplimiento* [Report of the working Group for Women's Right to a Life Free of Violence on Implementation of Law 1257 of 2008 and its current state of compliance], March 2012, pp. 45-51.

<sup>1531</sup> *Red Nacional de Mujeres* [National Women's Network], *Ruta Pacífica de Mujeres* [Women's Path to Peace], *Iniciativa de Mujeres Colombianas por la Paz* [Colombian Women's Peace Initiative], *Liga Internacional de Mujeres por la Paz y la Libertad* [International League of Women for Peace and Liberty], *Liga de Mujeres Desplazadas* [League of Displaced Women], *Mesa de Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Mesa por la Vida y la Salud de las Mujeres* [Working Group for Women's Life and Health], *Casa de la Mujer, Sisma Mujer, Corporación Humanas, Cladem, Campaña Saquen mi cuerpo de la guerra* [The "Take Me Out of War" Campaign], *Observatorio de Género y Derechos Humanos* [Gender and Human Rights Observatory], *DeJuSticia, Red de Educación Popular entre Mujeres* [Women's Mutual Education Network], *Mesa de Seguimiento al Auto 092- Anexo Reservado* [Working Group to Follow up on Order 092 – Confidential Addendum], Colombian Commission of Jurists, *Asociación Colectivo mujeres al derecho* [Women's Legal Advocacy Association], *Corporación Jurídica Humanidad Vigente, Colectivo de Abogados José Alvear* [José Alvear Lawyers' Group], *Colombia Diversa, El Estado y la violencia sexual contra las mujeres en el marco de la violencia sociopolítica en Colombia. Informe presentado por organizaciones de mujeres y de derechos humanos a la Representante Especial del Secretario General para Violencia Sexual en contextos de conflictos armados, señora Margot Wallström, con motivo de su visita a Colombia* [The State and sexual violence against women in the framework of the socio-political violence in Colombia. Report that women's and human rights organizations presented to the Secretary-General's Special Representative for Sexual Violence in Conflict, Ms. Margot Wallström, on the occasion of her visit to Colombia], May 16, 2012, p. 16.

cases in 2003 to 20,142 in 2011. Between 2001 and 2009, the Institute of Legal Medicine reported that 94,565 women in Colombia were victims of sexual violence. As of May 2012, 393 cases of conflict-related sexual violence were reported. Of those cases, verdicts had been delivered in only 3.5%; 11 ended in convictions and 3 in acquittals.<sup>1532</sup> However, according to the data produced by the first survey conducted on the prevalence of conflict-related sexual violence, which was based on 407 municipalities in which security forces, insurgents, paramilitaries or other armed actors in Colombia were present the prevalence of sexual violence for the period 2001 to 2009 was estimated at 17.58%, which means that in those nine years, 489,687 women were direct victims of sexual violence.<sup>1533</sup> There were an average of 54,410 per year, 149 every daily and 6 per hour. The Working Group for Follow-up of Constitutional Court Order 092 reports that of the 57,530 murders reported by the National Institute of Legal Medicine and Forensic Sciences for the period from 2008 to 2011, 4,817 (8.4% of the total) were women. As for women murdered by armed actors, the National Institute of Legal Medicine reported that 304 women murdered in that same period were killed by someone presumed to be an armed actor in the conflict.<sup>1534</sup>

888. The nexus between sexual violence and displacement remains a troubling problem. According to the State, the Administrative Department for Social Prosperity has registered over 1,950,000 displaced women: 30% left home because of sexual violence; 25% were re-victimized in the places they went to seek safe haven.<sup>1535</sup> The ICRC pointed out that sexual violence leaves its victims with a sense of insecurity, which can also be a cause of displacement. At times, sexual violence is a form of reprisal or punishment whose purpose is to stigmatize the victim as being sympathetic to or a collaborator with one of the parties to the

<sup>1532</sup> Remarks by the Minister of Defense. *Relanzamiento de la política en derechos sexuales y reproductivos, equidad y prevención de violencia basada en género [Relaunching the policy on sexual and reproductive rights, equity and prevention of gender-based violence]*, December 5, 2012.

<sup>1533</sup> In that sense, there are inconsistencies in the record of such cases that show the obstacles that arise in access to justice for women victims of sexual violence. Thus, the report of the Center for Historical Memory, indicated that “as of March 31<sup>st</sup>, 2013, the RUV reported [...] 1,754 victims of sexual violence [...] (733 between 1985 and 2012, and 821 more under non-identified year of occurrence). It is also indicated that these data are “in contrast to the 96 cases confessed by the paramilitaries in their free versions under Law 975 of 2005 and the 142 documented by several human rights organizations in the Working Group to Follow up on Order 092 - Confidential Addendum, on sexual violence. General Report of the Center for Historical Memory, *Basta ya! Colombia: Memorias de guerra y dignidad*, Bogotá: Imprenta Nacional, 2013, p. 33 y 78.

<sup>1534</sup> The military forces accounted for the largest percentage of the reported cases, at 79.9%, followed by the FARC at 4.9%, the ELN at 4.3%, the Police at 3.9%, criminal gangs at 2.3%, and others. *Red Nacional de Mujeres [National Women’s Network]*, *Ruta Pacífica de Mujeres [Women’s Path to Peace]*, *Iniciativa de Mujeres Colombianas por la Paz [Colombian Women’s Peace Initiative]*, *Liga Internacional de Mujeres por la Paz y la Libertad [International League of Women for Peace and Liberty]*, *Liga de Mujeres Desplazadas [League of Displaced Women]*, *Mesa de Mujer y Conflicto Armado [Working Group on Women and Armed Conflict]*, *Mesa por la Vida y la Salud de las Mujeres [Working Group for Women’s Life and Health]*, *Casa de la Mujer, Sisma Mujer, Corporación Humanas, Cladem, Campaña Saquen mi cuerpo de la guerra [The “Take Me Out of War” Campaign]*, *Observatorio de Género y Derechos Humanos [Gender and Human Rights Observatory]*, *DeJuSticia, Red de Educación Popular entre Mujeres [Women’s Mutual Education Network]*. *Mesa de Seguimiento al Auto 092- Anexo Reservado [Working Group to Follow up on Order 092 – Confidential Addendum]*, Colombian Commission of Jurists, *Asociación Colectivo mujeres al derecho [Women’s Legal Advocacy Association]*, *Corporación Jurídica Humanidad Vigente, Colectivo de Abogados José Alvear [José Alvear Lawyers’ Group]*, *Colombia Diversa, El Estado y la violencia sexual contra las mujeres en el marco de la violencia sociopolítica en Colombia. Informe presentado por organizaciones de mujeres y de derechos humanos a la Representante Especial del Secretario General para Violencia Sexual en contextos de conflictos armados, señora Margot Wallström, con motivo de su visita a Colombia [The State and sexual violence against women in the framework of the socio-political violence in Colombia. Report that women’s and human rights organizations presented to the Secretary-General’s Special Representative for Sexual Violence in Conflict, Ms. Margot Wallström, on the occasion of her visit to Colombia]*, May 16, 2012, p. 9.

<sup>1535</sup> Remarks by the Minister of Defense. *Relanzamiento de la política en derechos sexuales y reproductivos, equidad y prevención de violencia basada en género [Relaunching the policy on sexual and reproductive rights, equity and prevention of gender-based violence]*, December 5, 2012.

conflict or other armed actors. It is also a way to terrorize communities. Victims of sexual violence have difficulty getting immediate medical attention and medical treatment for the physical aftereffects and to help them overcome the trauma. The victim's response to rape is often silence, which means she does not get the necessary medical attention; victims are often unaware of their rights and don't know where to turn.<sup>1536</sup>

889. Civil society also alerted the Commission to the fact that amid the armed conflict, the sexual violence continues and even claims little girls. Even so, the crimes go unreported when the perpetrators are armed actors. The armed actors threaten human rights defenders and declare them to be "military targets", threats that also materialize in the form of sexual violence.<sup>1537</sup> In this regard, Amnesty International has reiterated that women and girls in Colombia have been subjected to widespread and systematic sexual violence by all the parties to the long-running Colombian armed conflict.<sup>1538</sup> Also, civil society said that the specific purpose of sexual violence in the armed conflict was to use the women or girls as sex slaves; to instill fear in the communities; to force families to flee and then grab their belongings; to take reprisals, retaliate, or punish; to silence them or obtain information.<sup>1539</sup>
890. The Commission also received information about the nexus between cases of sexual violence and mining activity, presumably perpetrated both by the armed groups that emerged after the demobilization of paramilitary groups and that reportedly are now involved in the mining

<sup>1536</sup> ICRC, Activity Report 2011, Humanitarian Action in Colombia, p. 44.

<sup>1537</sup> *Red Nacional de Mujeres* [National Women's Network], *Ruta Pacífica de Mujeres* [Women's Path to Peace], *Iniciativa de Mujeres Colombianas por la Paz* [Colombian Women's Peace Initiative], *Liga Internacional de Mujeres por la Paz y la Libertad* [International League of Women for Peace and Liberty], *Liga de Mujeres Desplazadas* [League of Displaced Women], *Mesa de Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Mesa por la Vida y la Salud de las Mujeres* [Working Group for Women's Life and Health], *Casa de la Mujer, Sisma Mujer, Corporación Humanas, Cladem, Campaña Saquen mi cuerpo de la guerra* [The "Take Me Out of War" Campaign], *Observatorio de Género y Derechos Humanos* [Gender and Human Rights Observatory], *DeJuSticia, Red de Educación Popular entre Mujeres* [Women's Mutual Education Network]. *Mesa de Seguimiento al Auto 092- Anexo Reservado* [Working Group to Follow up on Order 092 – Confidential Addendum], Colombian Commission of Jurists, *Asociación Colectivo mujeres al derecho* [Women's Legal Advocacy Association], *Corporación Jurídica Humanidad Vigente, Colectivo de Abogados José Alvear* [José Alvear Lawyers' Group], *Colombia Diversa, El Estado y la violencia sexual contra las mujeres en el marco de la violencia sociopolítica en Colombia. Informe presentado por organizaciones de mujeres y de derechos humanos a la Representante Especial del Secretario General para Violencia Sexual en contextos de conflictos armados, señora Margot Wallström, con motivo de su visita a Colombia* [The State and sexual violence against women in the framework of the socio-political violence in Colombia. Report that women's and human rights organizations presented to the Secretary-General's Special Representative for Sexual Violence in Conflict, Ms. Margot Wallström, on the occasion of her visit to Colombia], May 16, 2012.

<sup>1538</sup> Amnesty International, "This is what we demand. Justice. Impunity for Acts of Sexual Violence against Women in Colombia's Armed Conflict," September 2011.

<sup>1539</sup> *Red Nacional de Mujeres* [National Women's Network], *Ruta Pacífica de Mujeres* [Women's Path to Peace], *Iniciativa de Mujeres Colombianas por la Paz* [Colombian Women's Peace Initiative], *Liga Internacional de Mujeres por la Paz y la Libertad* [International League of Women for Peace and Liberty], *Liga de Mujeres Desplazadas* [League of Displaced Women], *Mesa de Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Mesa por la Vida y la Salud de las Mujeres* [Working Group for Women's Life and Health], *Casa de la Mujer, Sisma Mujer, Corporación Humanas, Cladem, Campaña Saquen mi cuerpo de la guerra* [The "Take Me Out of War" Campaign], *Observatorio de Género y Derechos Humanos* [Gender and Human Rights Observatory], *DeJuSticia, Red de Educación Popular entre Mujeres* [Women's Mutual Education Network]. *Mesa de Seguimiento al Auto 092- Anexo Reservado* [Working Group to Follow up on Order 092 – Confidential Addendum], Colombian Commission of Jurists, *Asociación Colectivo mujeres al derecho* [Women's Legal Advocacy Association], *Corporación Jurídica Humanidad Vigente, Colectivo de Abogados José Alvear* [José Alvear Lawyers' Group], *Colombia Diversa, El Estado y la violencia sexual contra las mujeres en el marco de la violencia sociopolítica en Colombia. Informe presentado por organizaciones de mujeres y de derechos humanos a la Representante Especial del Secretario General para Violencia Sexual en contextos de conflictos armados, señora Margot Wallström, con motivo de su visita a Colombia* [The State and sexual violence against women in the framework of the socio-political violence in Colombia. Report that women's and human rights organizations presented to the Secretary-General's Special Representative for Sexual Violence in Conflict, Ms. Margot Wallström, on the occasion of her visit to Colombia], May 16, 2012.

activities, and by the mine employees and workers.<sup>1540</sup> According to the available information, the mining activity has also triggered an increase in prostitution in those areas, an increase in violence against girls and women, and an increase in unwanted pregnancies and sexually transmitted disease.<sup>1541</sup>

891. The State indicated that although Colombia has a wide range of laws recognizing women's rights, more progress is needed to put into place the mechanisms that will enable women to actually enjoy a life free of violence.<sup>1542</sup> The Defense Ministry pointed out that it has a zero-tolerance policy regarding acts of sexual violence, and accordingly issued a Policy of Sexual and Reproductive Rights, Equity and Prevention of Gender-based Violence and Permanent Ministerial Directive No. 11 of 2010, their implementation led to the introduction of the Protocol and the Armed Forces Handbook on how to address cases of sexual violence, with emphasis on sexual violence in the armed conflict.<sup>1543</sup> In its observations on the Draft Report, the State commented that this Directive also contributed to the creation of the "Policy on

<sup>1540</sup> Red Nacional de Mujeres [National Women's Network], *Ruta Pacifica de Mujeres* [Women's Path to Peace], *Iniciativa de Mujeres Colombianas por la Paz* [Colombian Women's Peace Initiative], *Liga Internacional de Mujeres por la Paz y la Libertad* [International League of Women for Peace and Liberty], *Liga de Mujeres Desplazadas* [League of Displaced Women], *Mesa de Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Mesa por la Vida y la Salud de las Mujeres* [Working Group for Women's Life and Health], *Casa de la Mujer, Sisma Mujer, Corporación Humanas, Cladem, Campaña Saquen mi cuerpo de la guerra* [The "Take Me Out of War" Campaign], *Observatorio de Género y Derechos Humanos* [Gender and Human Rights Observatory], *DeJuSticia, Red de Educación Popular entre Mujeres* [Women's Mutual Education Network]. *Mesa de Seguimiento al Auto 092- Anexo Reservado* [Working Group to Follow up on Order 092 – Confidential Addendum], Colombian Commission of Jurists, *Asociación Colectivo mujeres al derecho* [Women's Legal Advocacy Association], *Corporación Jurídica Humanidad Vigente, Colectivo de Abogados José Alvear* [José Alvear Lawyers' Group], *Colombia Diversa, El Estado y la violencia sexual contra las mujeres en el marco de la violencia sociopolítica en Colombia. Informe presentado por organizaciones de mujeres y de derechos humanos a la Representante Especial del Secretario General para Violencia Sexual en contextos de conflictos armados, señora Margot Wallström, con motivo de su visita a Colombia* [The State and sexual violence against women in the framework of the socio-political violence in Colombia. Report that women's and human rights organizations presented to the Secretary-General's Special Representative for Sexual Violence in Conflict, Ms. Margot Wallström, on the occasion of her visit to Colombia], May 16, 2012, p. 11.

<sup>1541</sup> Red Nacional de Mujeres [National Women's Network], *Ruta Pacifica de Mujeres* [Women's Path to Peace], *Iniciativa de Mujeres Colombianas por la Paz* [Colombian Women's Peace Initiative], *Liga Internacional de Mujeres por la Paz y la Libertad* [International League of Women for Peace and Liberty], *Liga de Mujeres Desplazadas* [League of Displaced Women], *Mesa de Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Mesa por la Vida y la Salud de las Mujeres* [Working Group for Women's Life and Health], *Casa de la Mujer, Sisma Mujer, Corporación Humanas, Cladem, Campaña Saquen mi cuerpo de la guerra* [The "Take Me Out of War" Campaign], *Observatorio de Género y Derechos Humanos* [Gender and Human Rights Observatory], *DeJuSticia, Red de Educación Popular entre Mujeres* [Women's Mutual Education Network]. *Mesa de Seguimiento al Auto 092- Anexo Reservado* [Working Group to Follow up on Order 092 – Confidential Addendum], Colombian Commission of Jurists, *Asociación Colectivo mujeres al derecho* [Women's Legal Advocacy Association], *Corporación Jurídica Humanidad Vigente, Colectivo de Abogados José Alvear* [José Alvear Lawyers' Group], *Colombia Diversa, El Estado y la violencia sexual contra las mujeres en el marco de la violencia sociopolítica en Colombia. Informe presentado por organizaciones de mujeres y de derechos humanos a la Representante Especial del Secretario General para Violencia Sexual en contextos de conflictos armados, señora Margot Wallström, con motivo de su visita a Colombia* [The State and sexual violence against women in the framework of the socio-political violence in Colombia. Report that women's and human rights organizations presented to the Secretary-General's Special Representative for Sexual Violence in Conflict, Ms. Margot Wallström, on the occasion of her visit to Colombia], May 16, 2012, p. 11, with a citation from the Inter-Ecclesiastical Commission for Justice and Peace, José Alvear Lawyers Group, *Corporación Sisma Mujer, Centro de Estudios para la Justicia Social-Tierra Digna, Colectivo Mujeres al Derecho. Efectos diferenciales sobre las mujeres de la política de extracción minera a gran escala. Ponencia presentada en el Encuentro Latinoamericano Mujer y Minería* [Differential effects of a large-scale mining policy on women. Paper presented at the Latin American Meeting on Women and Mining, October 2011, Bogotá, March 2012].

<sup>1542</sup> Remarks by the Minister of Defense. *Relanzamiento de la política en derechos sexuales y reproductivos, equidad y prevención de violencia basada en género* [Relaunching the policy on sexual and reproductive rights, equity and prevention of gender-based violence], December 5, 2012.

<sup>1543</sup> Remarks by the Minister of Defense. *Relanzamiento de la política en derechos sexuales y reproductivos, equidad y prevención de violencia basada en género* [Relaunching the policy on sexual and reproductive rights, equity and prevention of gender-based violence], December 5, 2012.



*Sexual and Reproductive Rights, gender equity and prevention of gender-based violence, sexual and reproductive health with an emphasis on HIV* [“*Política en Derechos Sexuales y Reproductivos, equidad de género y prevención de violencia basada en género, salud sexual y reproductiva con énfasis en VIH*”]<sup>1544</sup> Furthermore, the State underscored the fact that the Defense Ministry’s Office of the Director of Human Rights “is promoting transformative practices in the area of gender, to bring to the forefront, within the ranks of the military, the problem of sexual violence and sexual violence associated with the armed conflict,” through enforcement of documents such as those mentioned here.<sup>1545</sup>

892. For its part, the Office of the General Prosecutor reported that on November 13, 2012, it issued Directive No. 006 setting out the guidelines for judicial intervention in cases of crimes against sexual liberty, integrity and development; and that in conjunction with the UNDP, a diagnostic paper and methodology are being prepared on the use of indicators to track sexual violence in the context of the armed conflict.<sup>1546</sup> As for compliance with the Constitutional Court’s Order 092 of 2008, the Office of the General Prosecutor reported that although sexual violence is one of the dangers that has the most far-reaching consequences and to which women are much more vulnerable, it is not apparent that the programs in place have measures to counteract it, not even the specific program that goes by the name *Prevention of sexual violence against displaced women and comprehensive treatment of its victims*.<sup>1547</sup>
893. The Office of the United Nations High Commissioner for Human Rights was of the view that Permanent Directive No. 11 of 2010 should be part of a comprehensive policy of zero tolerance of sexual violence by members of security forces, which should include measures to strengthen command responsibility and impose corresponding sanctions. Among other consequences, involvement in such crimes should lead to disqualification from public service or to a freeze on promotions, especially to positions of command or control, and “due obedience” cannot justify failing to report or covering up such crimes.<sup>1548</sup>
894. For its part, civil society was of the view that while there is public awareness of sexual violence, the State’s response still falls shows in some respects such as: (i) it is not putting together reliable standardized variables with respect to this type of violence in the armed conflict, the kind that could be used to compile reliable, up-to-date, rigorous quantitative and qualitative data on the subject; (ii) the protective measures do not take account of the specific needs of women victims of sexual violence from a differential approach and frequently overlook the risk of sexual violence when doing risk assessments; (iii) no public policy has been crafted on psychosocial treatment of victims of sociopolitical violence; (iv) the investigations still lag behind and the majority of these crimes continue to go unpunished; (v)

<sup>1544</sup> Information supplied by the State in its Observations of the State of Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, para. 550.

<sup>1545</sup> Observations of the State of Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, paras. 550-551, 553.

<sup>1546</sup> Office of the Attorney General of the National, Office of the Prosecutor Delegate for Prevention in the Area of Human Rights and Ethnic Affairs, *El papel del Ministerio Público en la implementación de la Ley 1448 de 2011* [The role of the Public Prosecutor’s Office in the Implementation of Law 1448 of 2011], December 4, 2012.

<sup>1547</sup> Office of the Prosecutor Delegate for the Defense of the Child, the Adolescent and the Family, *Observaciones y recomendaciones de la Procuraduría General de la Nación al Informe presentado por el Sistema Nacional de Atención y Reparación Integral a las Víctimas (SNARIV) sobre los avances en el cumplimiento de los Autos 251 y 092 de 2008* [Observations and recommendations of the Office of the Attorney General of the Nation to the report presented by the National Comprehensive Victim Assistance and Reparation System (SNARIV) on the progress made toward full compliance with Orders 251 and 092 of 2008], June 2012.

<sup>1548</sup> UN, Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19th session, A/HCR/19/21/Add.3, January 31, 2012, paragraph 72.

very few cases of sexual violence are effectively redressed; (vi) the preventive and educational measures have been uncoordinated, their real impact is unknown, the resources to ensure that they continue are scarce and concentrated at the central level; and (vii) the zero-tolerance directives adopted in the military are not matched by effective disciplinary measures that act as real deterrents.<sup>1549</sup>

895. In the particular case of the *Protocol for the Military Forces on Managing Sexual Violence, with emphasis on sexual violence associated with the armed conflict* [*Protocolo para la Fuerza Pública en el manejo de la violencia sexual con énfasis en la violencia sexual con ocasión del conflicto armado*] adopted by the Defense Ministry, civil society pointed that under the Protocol, the party who learns of the event takes up the case, takes the testimony and the statements and determines whether the crime was committed while on active duty. It was also observed that no concrete preventive measures have been proposed, especially for militarized zones where women are at greater risk; however, the military are authorized to compile detailed data on sexual violence, which would mean that the victim's first statement would be made to a military officer.<sup>1550</sup> Civil society also noted that according to the State's own figures, sexual violence against women committed by State agents, increased 11% in 2011 (in 2010, the percentage of cases of sexual violence attributable to agents of the State was 68%, whereas in 2011 it was 72.13%), which reveals just how much of a failure the protection programs have been.
896. The Commission notes that the Handbook states that in a case of sexual violence, the steps to be followed are: to prepare as detailed a report as possible for one's immediate superior and report the case to the Armed Forces or the National Police.<sup>1551</sup> In its observations on the Draft Report, the State observed that "all cases of sexual violence attributed to members of the police or military come under the jurisdiction of the Ordinary Criminal Justice System, and not the Military Criminal Justice System, which does not have jurisdiction in such cases."<sup>1552</sup>

<sup>1549</sup> Red Nacional de Mujeres [National Women's Network], *Ruta Pacífica de Mujeres* [Women's Path to Peace], *Iniciativa de Mujeres Colombianas por la Paz* [Colombian Women's Peace Initiative], *Liga Internacional de Mujeres por la Paz y la Libertad* [International League of Women for Peace and Liberty], *Liga de Mujeres Desplazadas* [League of Displaced Women], *Mesa de Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Mesa por la Vida y la Salud de las Mujeres* [Working Group for Women's Life and Health], *Casa de la Mujer, Corporación Humanas, Cladem, Campaña Saquen mi cuerpo de la guerra* [The "Take Me Out of War" Campaign], *Observatorio de Género y Derechos Humanos* [Gender and Human Rights Observatory], *DeJuSticia*, *Red de Educación Popular entre Mujeres* [Women's Mutual Education Network], *Mesa de Seguimiento al Auto 092- Anexo Reservado* [Working Group to Follow up on Order 092 – Confidential Addendum], Colombian Commission of Jurists, *Asociación Colectivo mujeres al derecho* [Women's Legal Advocacy Association], *Corporación Jurídica Humanidad Vigente*, *Colectivo de Abogados José Alvear* [José Alvear Lawyers' Group], *Colombia Diversa*, *El Estado y la violencia sexual contra las mujeres en el marco de la violencia sociopolítica en Colombia. Informe presentado por organizaciones de mujeres y de derechos humanos a la Representante Especial del Secretario General para Violencia Sexual en contextos de conflictos armados, señora Margot Wallström, con motivo de su visita a Colombia* [The State and sexual violence against women in the framework of the socio-political violence in Colombia. Report that women's and human rights organizations presented to the Secretary-General's Special Representative for Sexual Violence in Conflict, Ms. Margot Wallström, on the occasion of her visit to Colombia], May 16, 2012, p. 12.

<sup>1550</sup> *Corporación Sisma Mujer, Situación de las mujeres en Colombia* [Situation of Women in Colombia], December 4, 2012, p. 5.

<sup>1551</sup> Ministry of National Defense, *Protocolo para la fuerza pública en el manejo de la violencia sexual con énfasis en la violencia sexual con ocasión del conflicto armado* [Protocol for government forces on investigating cases of sexual violence, with emphasis on sexual violence associated with the armed conflict]. Ministry of National Defense, Case Handling Handbook.

<sup>1552</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAII-13-048140, December 2, 2013, para. 572.

#### 4. Obstacles to access to justice and impunity with respect to cases of sexual violence

897. The Commission notes that despite the many laws that Colombia has on the books to prevent various forms of violence against women, in practice they are seldom enforced. For example, there are a very small percentage of investigations in connection with cases of sexual violence; the investigations are not conducted with the due diligence that inter-American and international standards on the subject dictate.<sup>1553</sup>
898. According to the information received by the Commission, of the 68,675 cases of sexual violence committed against women, 60,279 (87.7%) have still not moved beyond the inquiry phase. A total of 925 cases (1.3% of the total) are under investigation; 3,287 cases (4.78%) have gone to trial. Furthermore, 165 cases (0.2%) ended with an early verdict; a total of 3,767 cases (5.48%) are in the sentence-enforcement stage; there is no record of procedural status in 121 cases (0.17%). Oddly, the Prosecutor's Office also reported 131 cases of sexual violence (0.19%) as cases in which the victim must first file a formal complaint.<sup>1554</sup>
899. In its 2012 report titled *The State of the World's Human Rights*, Amnesty International expressed concern over the threats and violence against human rights defenders and community leaders. It reported that although the government had made commitments to combat conflict-related sexual violence against women and girls, the problem remained pervasive and systematic. Government compliance with Constitutional Court rulings on the issue remained poor. Impunity for such crimes continued to be significantly higher than for other types of human rights abuse.<sup>1555</sup>
900. Similarly, the Prosecutor of the International Criminal Court observed that the level of prosecutorial and judicial activity pertaining to the commission of rape and other forms of sexual violence appears disproportionate to the scale of the phenomenon, the devastating consequences of the crimes and the number of victims.<sup>1556</sup>

<sup>1553</sup> *Red Nacional de Mujeres* [National Women's Network], *Ruta Pacifica de Mujeres* [Women's Path to Peace], *Iniciativa de Mujeres Colombianas por la Paz* [Colombian Women's Peace Initiative], *Liga Internacional de Mujeres por la Paz y la Libertad* [International League of Women for Peace and Liberty], *Liga de Mujeres Desplazadas* [League of Displaced Women], *Mesa de Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Mesa por la Vida y la Salud de las Mujeres* [Working Group for Women's Life and Health], *Casa de la Mujer, Sisma Mujer, Corporación Humanas, Cladem, Campaña Saquen mi cuerpo de la guerra* [The "Take Me Out of War" Campaign], *Observatorio de Género y Derechos Humanos* [Gender and Human Rights Observatory], *DeJuSticia, Red de Educación Popular entre Mujeres* [Women's Mutual Education Network], *Mesa de Seguimiento al Auto 092- Anexo Reservado* [Working Group to Follow up on Order 092 – Confidential Addendum], Colombian Commission of Jurists, *Asociación Colectivo mujeres al derecho* [Women's Legal Advocacy Association], *Corporación Jurídica Humanidad Vigente, Colectivo de Abogados José Alvear* [José Alvear Lawyers' Group], *Colombia Diversa, El Estado y la violencia sexual contra las mujeres en el marco de la violencia sociopolítica en Colombia. Informe presentado por organizaciones de mujeres y de derechos humanos a la Representante Especial del Secretario General para Violencia Sexual en contextos de conflictos armados, señora Margot Wallström, con motivo de su visita a Colombia* [The State and sexual violence against women in the framework of the socio-political violence in Colombia. Report that women's and human rights organizations presented to the Secretary-General's Special Representative for Sexual Violence in Conflict, Ms. Margot Wallström, on the occasion of her visit to Colombia], May 16, 2012.

<sup>1554</sup> *Informe de la Mesa por el derecho de las mujeres a una vida libre de violencia sobre la implementación de la Ley 1257 de 2008 y su estado actual de cumplimiento* [Report of the Working Group for Women's Right to a Life Free of Violence on Implementation of Law 1257 of 2008 and its current state of compliance], March 2012, p. 28. See, also, I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010, Series C No. 215; *Case of Rosendo Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216.

<sup>1555</sup> Amnesty International, Amnesty International 2012, *The state of the world's human rights*. Available at: [iles.amnesty.org/air12/air\\_2012\\_full\\_en.pdf](https://www.amnesty.org/air12/air_2012_full_en.pdf).

<sup>1556</sup> International Criminal Court, Office of the Prosecutor, *Situation in Colombia. Interim Report*, November 2012, para. 219.

901. In its World Report 2012, Human Rights Watch explained that the illegal armed groups that emerged after the demobilization of paramilitary organizations continue to commit widespread abuses against civilians, including acts of sexual violence. In a 2008 decision the Constitutional Court instructed the Attorney General's Office to further investigate specific cases. According to Human Rights Watch, however, progress in these cases has been slow.<sup>1557</sup> The Human Rights Committee expressed regret at the fact that not all of the necessary measures have been taken in order to make progress in the investigations of the 183 cases of sexual violence referred to the Attorney General's Office by the Constitutional Court. It also expressed concern over the failure of the mechanisms established by Law No. 975 of 2005 to reflect crimes involving sexual violence.<sup>1558</sup> For its part, the Office of the High Commissioner observed that only 4 cases were on trial as of November 2011;<sup>1559</sup> civil society, for its part, reported that 69 cases had been archived, 76 were said to be under preliminary investigation, 17 in discovery, 2 were in the trial phase, 2 in the oral arguments phase, and one verdict of acquittal and 11 convictions had been handed down, 4 cases had been joined, while another was being heard in a different jurisdiction.<sup>1560</sup>
902. During the Commission's visit, civil society again made the point that sexual violence is a manifestation of the patterns of discrimination against women, deeply rooted in society, and that the justice system is not doing its part to investigate these cases properly, and instead takes them as isolated cases amid systematic and widespread violence.<sup>1561</sup>
903. The Commission continued to receive information from civil society on the persistent patterns of discrimination<sup>1562</sup> and the lack of any model by which to redress the harm done to the

<sup>1557</sup> Human Rights Watch, *World Report 2012*, p. 234. Available at: <http://www.hrw.org/sites/default/files/reports/wr2012.pdf>.

<sup>1558</sup> UN, Human Rights Committee, 99th Session, Consideration of reports submitted by States parties under article 40 of the Covenant. Concluding observations of the Human Rights Committee. CCPR/C/COL/CO/6, August 4, 2010, para. 18.

<sup>1559</sup> UN, Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19th session, A/HCR/19/21/Add.3, January 31, 2012, para. 69.

<sup>1560</sup> *Corporación Sisma Mujer, Situación de las mujeres en Colombia* [Situation of women in Colombia], December 4, 2012, p. 9.

<sup>1561</sup> *Red Nacional de Mujeres* [National Women's Network], *Ruta Pacífica de Mujeres* [Women's Path to Peace], *Iniciativa de Mujeres Colombianas por la Paz* [Colombian Women's Peace Initiative], *Liga Internacional de Mujeres por la Paz y la Libertad* [International League of Women for Peace and Liberty], *Liga de Mujeres Desplazadas* [League of Displaced Women], *Mesa de Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Mesa por la Vida y la Salud de las Mujeres* [Working Group for Women's Life and Health], *Casa de la Mujer, Sisma Mujer, Corporación Humanas, Cladem, Campaña Saquen mi cuerpo de la guerra* [The "Take Me Out of War" Campaign], *Observatorio de Género y Derechos Humanos* [Gender and Human Rights Observatory], *DeJuSticia, Red de Educación Popular entre Mujeres* [Women's Mutual Education Network]. *Mesa de Seguimiento al Auto 092- Anexo Reservado* [Working Group to Follow up on Order 092 – Confidential Addendum], Colombian Commission of Jurists, *Asociación Colectivo mujeres al derecho* [Women's Legal Advocacy Association], *Corporación Jurídica Humanidad Vigente, Colectivo de Abogados José Alvear* [José Alvear Lawyers' Group], *Colombia Diversa, El Estado y la violencia sexual contra las mujeres en el marco de la violencia sociopolítica en Colombia. Informe presentado por organizaciones de mujeres y de derechos humanos a la Representante Especial del Secretario General para Violencia Sexual en contextos de conflictos armados, señora Margot Wallström, con motivo de su visita a Colombia* [The State and sexual violence against women in the framework of the socio-political violence in Colombia. Report that women's and human rights organizations presented to the Secretary-General's Special Representative for Sexual Violence in Conflict, Ms. Margot Wallström, on the occasion of her visit to Colombia], May 16, 2012.

<sup>1562</sup> *Red Nacional de Mujeres* [National Women's Network], *Ruta Pacífica de Mujeres* [Women's Path to Peace], *Iniciativa de Mujeres Colombianas por la Paz* [Colombian Women's Peace Initiative], *Liga Internacional de Mujeres por la Paz y la Libertad* [International League of Women for Peace and Liberty], *Liga de Mujeres Desplazadas* [League of Displaced Women], *Mesa de Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Mesa por la Vida y la Salud de las Mujeres* [Working Group for Women's Life and Health], *Casa de la Mujer, Sisma Mujer, Corporación Humanas, Cladem, Campaña Saquen mi cuerpo de la guerra* [The "Take Me Out of War" Campaign], *Observatorio de Género y Derechos Humanos* [Gender and Human Rights Observatory], *DeJuSticia, Red de Educación Popular entre Mujeres* [Women's Mutual

women victims and restore their rights. In the particular case of sexual violence, it was pointed out that women victims encounter a number of obstacles obstructing their access to justice, such as: (i) the structural factors that prevent them from filing their complaints; (ii) the social stigma that attaches to women victims of these crimes; (iii) the mistrust in the justice system, especially the regional systems where there are reportedly links to armed groups; (iv) the security risks; (v) the excessive periods of time that cases languish in the justice system; (vi) the considerable expense and the fact that women victims are required to repeat their statements over and over, as well as the the failure to make the necessary allowance for cases in which victims have some mental handicap or the lack of interpreters for indigenous victims<sup>1563</sup> (vii) the fact that no measures are taken to correct the factors that prevent women from reporting acts of sexual violence; (viii) infiltration of the authorities and leaking of information; (ix) the absence of adequate, effective and sufficient measures of protection;<sup>1564</sup> (x) improper weighing and examining of the evidence; (xi) the fact that justice operators are not properly trained and sensitized in the treatment of victims of sexual violence; (xii) the possibility of re-victimization; (xiii) absence of adequate physical infrastructure; (xiv) the absence of measures of reparation for the victims;<sup>1565</sup> (xv) the fact that the necessary tests are done only if a party so requests; (xvi) a lack of clarity as to the substantive reasons for the decision to archive a case; (xvii) inadequate identification of the facts, obstacles to the victim's participation, and a passive attitude on the part of supervisory judges, and obstacles that make it difficult for victims to be recognized as such in criminal proceedings.<sup>1566</sup>

904. As for the impact that Law 1257 has had, civil society had the following comments: (i) the law has done little to increase the number of criminal investigations into aggravated crimes and/or crimes punishable under the law; (ii) the status of the investigations shows that 80% to 90%

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Education Network]. *Mesa de Seguimiento al Auto 092- Anexo Reservado* [Working Group to Follow up on Order 092 – Confidential Addendum], Colombian Commission of Jurists, *Asociación Colectivo mujeres al derecho* [Women's Legal Advocacy Association], *Corporación Jurídica Humanidad Vigente, Colectivo de Abogados José Alvear* [José Alvear Lawyers' Group], *Colombia Diversa, El Estado y la violencia sexual contra las mujeres en el marco de la violencia sociopolítica en Colombia. Informe presentado por organizaciones de mujeres y de derechos humanos a la Representante Especial del Secretario General para Violencia Sexual en contextos de conflictos armados, señora Margot Wallström, con motivo de su visita a Colombia* [The State and sexual violence against women in the framework of the socio-political violence in Colombia. Report that women's and human rights organizations presented to the Secretary-General's Special Representative for Sexual Violence in Conflict, Ms. Margot Wallström, on the occasion of her visit to Colombia], May 16, 2012, p. 16.

<sup>1563</sup> *Red Nacional de Mujeres* [National Women's Network], *Ruta Pacifica de Mujeres* [Women's Path to Peace], *Iniciativa de Mujeres Colombianas por la Paz* [Colombian Women's Peace Initiative], *Liga Internacional de Mujeres por la Paz y la Libertad* [International League of Women for Peace and Liberty], *Liga de Mujeres Desplazadas* [League of Displaced Women], *Mesa de Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Mesa por la Vida y la Salud de las Mujeres* [Working Group for Women's Life and Health], *Casa de la Mujer, Corporación Humanas, Cladem, Campaña Saquen mi cuerpo de la guerra* [The "Take Me Out of War" Campaign], *Observatorio de Género y Derechos Humanos* [Gender and Human Rights Observatory], *DeJuSticia, Red de Educación Popular entre Mujeres* [Women's Mutual Education Network]. *Mesa de Seguimiento al Auto 092- Anexo Reservado* [Working Group to Follow up on Order 092 – Confidential Addendum], Colombian Commission of Jurists, *Asociación Colectivo mujeres al derecho* [Women's Legal Advocacy Association], *Corporación Jurídica Humanidad Vigente, Colectivo de Abogados José Alvear* [José Alvear Lawyers' Group], *Colombia Diversa, El Estado y la violencia sexual contra las mujeres en el marco de la violencia sociopolítica en Colombia. Informe presentado por organizaciones de mujeres y de derechos humanos a la Representante Especial del Secretario General para Violencia Sexual en contextos de conflictos armados, señora Margot Wallström, con motivo de su visita a Colombia* [The State and sexual violence against women in the framework of the socio-political violence in Colombia. Report that women's and human rights organizations presented to the Secretary-General's Special Representative for Sexual Violence in Conflict, Ms. Margot Wallström, on the occasion of her visit to Colombia], May 16, 2012, p. 15-17.

<sup>1564</sup> *Corporación Sisma Mujer, Obstáculos para el acceso a la justicia de las mujeres víctimas de violencia sexual en Colombia* [Obstacles to access to justice in the case of women victims of sexual violence in Colombia], April 2011.

<sup>1565</sup> *Corporación Sisma Mujer, Obstáculos para el acceso a la justicia de las mujeres víctimas de violencia sexual en Colombia* [Obstacles to access to justice in the case of women victims of sexual violence in Colombia], April 2011.

<sup>1566</sup> *Corporación Sisma Mujer, Obstáculos para el acceso a la justicia de las mujeres víctimas de violencia sexual en Colombia* [Obstacles to Access to justice in the case of women victims of sexual violence in Colombia], April 2011.

of the cases go unpunished; (iii) the identification and/or number of the criminal investigations in which the aggravating circumstances of the crime or the penalties prescribed by law are either not recorded or are not meaningful when they are;<sup>1567</sup> (iv) where femicide is involved, the authorities reported only 8 investigations, even though the records show that in 2010 a case of femicide was committed every three days in the country, involving a partner or former partner, which is around 125 cases;<sup>1568</sup> (v) there is only one case of sexual harassment under Law 600, but no information as to the status of the case.<sup>1569</sup>

905. In the case of proceedings conducted under Law 975, civil society observed that specific problems reportedly arose having to do with a disinterest on the part of the Prosecutor's Office in conducting an inquiry into acts of sexual violence; the fact that in the voluntary depositions they gave, demobilized persons denied engaging in sexual violence; the fact that applicants for the Justice and Peace process either denied or justified violations of human rights or breaches of international humanitarian law and in their statements have even impugned the victims' honor and dignity and have gone unpunished; and in practice, there are no mechanisms in place to ensure victims' participation in the process.<sup>1570</sup>
906. As for application of the Legal Framework for Peace, the organizations expressed doubts as to whether the prioritization criteria would succeed in overcoming the obstacles that women encounter in getting access to justice; they even suggested that the prioritization criteria could make those obstacles even more difficult. For example, the following questions were raised: will priority be given to cases in which the assailant has confessed; will prioritization result in investigative tools focusing on violence against women; and will a comprehensive and coordinated policy for investigating conflict-related violence against women be established.<sup>1571</sup> The organizations also expressed concern as to whether the punishment fit the crime, given the possibilities for a suspended sentence, extrajudicial penalties, alternative penalties and the special modes of enforcing and serving sentences.<sup>1572</sup> They also expressed the view that what the CNRR and the Center for Historical Memory had offered as measures of satisfaction did not

<sup>1567</sup> *Informe de la Mesa por el derecho de las mujeres a una vida libre de violencia sobre la implementación de la Ley 1257 de 2008 y su estado actual de cumplimiento* [Report of the working Group for Women's Right to a Life Free of Violence on Implementation of Law 1257 of 2008 and its current state of compliance], March 2012, p. 22.

<sup>1568</sup> *Informe de la Mesa por el derecho de las mujeres a una vida libre de violencia sobre la implementación de la Ley 1257 de 2008 y su estado actual de cumplimiento* [Report of the working Group for Women's Right to a Life Free of Violence on Implementation of Law 1257 of 2008 and its current state of compliance], March 2012, p. 23.

<sup>1569</sup> *Informe de la Mesa por el derecho de las mujeres a una vida libre de violencia sobre la implementación de la Ley 1257 de 2008 y su estado actual de cumplimiento* [Report of the working Group for Women's Right to a Life Free of Violence on Implementation of Law 1257 of 2008 and its current state of compliance], March 2012, p. 28.

<sup>1570</sup> Corporación Sisma Mujer, *Obstáculos para el acceso a la justicia de las mujeres víctimas de violencia sexual en Colombia* [Obstacles to access to justice for women victims of sexual violence in Colombia] April 2011, p. 22.

<sup>1571</sup> On the subject of case selection, the organizations stressed the fact that the reform includes four selection criteria, which are: (i) the active subject, where the cases selected will be those intended to establish the responsibility of the hierarchical superiors, which again raises the question of *de facto* amnesty/pardon for the vast majority of armed actors; (ii) type of crime, where the cases selected will be those involving crimes against humanity, genocide, or war crimes committed systematically, leaving it up to the victims or the Prosecutor's Office to prove that the criminal conduct was systematic; (iii) the severity of the crimes, which begs the question of which crimes are more severe than others? Is rape more serious than sexual slavery, than recruitment of children and adolescents, than sterilization or forced pregnancy? Is the murder of a woman after raping her more serious than murder? Is the murder of a woman leader more serious than the murder of a campesina, indigenous or Afro-descendant woman? and (iv) representativeness, which will also be defined by statute but is already very troubling to women because the "invisibility" of the violations committed against them is one form of discrimination they face. Corporación Sisma Mujer, *Acto legislativo "Marco Jurídico para la Paz"* [Legislative Act "Legal Framework for Peace"].

<sup>1572</sup> Corporación Sisma Mujer, *Acto legislativo "Marco Jurídico para la Paz"* [Legislative Act "Legal Framework for Peace"].

answer the victims' need to have the facts investigated and solved and the military, economic and political structures exposed.<sup>1573</sup>

907. The organizations also observed that in the prioritization strategy adopted by the Attorney General: (i) the objective, subjective and additional criteria it established to select the priority cases is not precise enough to prevent the justice operator from straying into the area of discretionary interpretation and pose the risk of opening the door to all the discriminatory stereotypes that conspire to prevent women from getting access to justice; (ii) the additional criteria could become the main criteria considered in cases of sexual violence; (iii) the prioritization policy is applied throughout the administration of justice, without a clear sense of the grounds for doing so; in other words, it is not confined to the so-called transitional justice; and (iv) the objectives that the prioritization policy are intended to serve are unclear.<sup>1574</sup>

## 5. Sexual and reproductive rights

908. The Commission has consistently maintained that women who have been historically marginalized for reasons of race, ethnicity, economic position and age are those who encounter more obstacles standing in the way of their access to health information, obstacles that are even more impenetrable when the information being sought has to do with sexual and reproductive health.<sup>1575</sup> During the visit, the women's organizations expressed the view that the exercise of sexual and reproductive rights was not guaranteed,<sup>1576</sup> especially in the case of women victims of sexual violence. The IACHR received specific information on the following issues: (i) the follow-up of Constitutional Court judgment C-355-06; (ii) access to information on the subject of reproduction; (iii) access to contraceptive methods whose distribution is authorized by law; and (iv) the statements made by the Attorney General of the Nation.<sup>1577</sup>

909. To begin with, the Commission recalls that in Judgment C-355 of 2006, the Constitutional Court decided that the absolute ban on abortion to protect the interests of the fetus placed a disproportionate burden on women's exercise of their human rights. The Court also stressed the connection between preventing sexual violence against women and preventing unwanted pregnancies; this connection created positive obligations for the State, which has a duty to mitigate the effects of sexual violence by offering the needed health services.<sup>1578</sup> The Constitutional Court also held that abortion is not a crime: a) when continuation of the pregnancy poses a threat to the woman's life or health, which must be corroborated by a physician; b) when the fetus is so badly deformed that life is not viable, which a physician must also certify; c) when the pregnancy is the result of conduct, duly reported and constituting

<sup>1573</sup> *Corporación Sisma Mujer, Acto legislativo "Marco Jurídico para la Paz" [Legislative Act "Legal Framework for Peace"]*.

<sup>1574</sup> *Corporación Sisma Mujer, Situación de las mujeres en Colombia [Situation of Women in Colombia]*, December 4, 2012, p. 10.

<sup>1575</sup> IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, OEA/Ser.L/V/II, Doc. 61, November 22, 2011.

<sup>1576</sup> As for sexual and reproductive rights, the information received indicates that the data from the 2000, 2005 and 2010 surveys were as follows: (i) safe maternity: a) prenatal care: 97%; b) assistance at delivery: 99.8%; c) more and more women are having the number of children they want; c) teen pregnancy rate: 19.5%; d) women's use of contraceptives has increased eight times over, from 6.2% in 2000 to 7% in 2010; f) the figures on the number of women aware of STDs, HIV and AIDS are high, but only 28% know what signs and symptoms to look for, how these diseases are transmitted and how they can be prevented. Profamilia, *Cifras Salud Sexual y Reproductiva [Figures on Sexual and Reproductive Health]*.

<sup>1577</sup> Information provided at the meeting with women's organizations, held in Bogotá on December 4, 2012.

<sup>1578</sup> IACHR, *Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application*. OEA/Ser.L/V/II.143, Doc. 60, November 3, 2011, paragraph 171.

sexual intercourse or a sexual act that is nonconsensual or abusive, or is the result of nonconsensual artificial insemination or a fertilized egg transplant, or the result of incest.<sup>1579</sup>

910. However, during the visit the organizations complained to the Commission that there were difficulties in the case of women victims of sexual violence<sup>1580</sup> and said that some 400,400 abortions were reportedly performed in clandestine procedures that posed risks to women's lives and that six out of every ten clinics that can provide post-abortion health services do not.<sup>1581</sup>
911. Second, the organizations reported difficulties getting access to the contraceptive methods covered under the medical health plan and underscored the fact that the dissemination measures calculated to ensure the right to information on reproductive rights, especially on the status of legal emergency contraception, have been insufficient.<sup>1582</sup>
912. Third, civil society continued to file complaints about the restrictions that the Office of the General Prosecutor and its staff have established with respect to women's rights<sup>1583</sup> and

<sup>1579</sup> Constitutional Court, Judgment C-355 of 2006, May 10, 2006 (Justices Jaime Araújo Rentería, Clara Inés Vargas Hernández writing).

<sup>1580</sup> The following obstacles were mentioned in this regard: (i) the information, access to and provision of emergency contraception to prevent unwanted pregnancies caused by rape is inadequate; (ii) the barriers blocking access to legal services to file criminal complaints are ever-present; women frequently have no confidence in the authorities because the procedures to protect women victims of sexual violence are slow, a problem compounded for those who have become victims of conflict-related sexual violence; the assistance available for victims of sexual violence does not include information about their right to a legal abortion; (iii) a recurring problem is that health services impose additional requirements on women and demand such things as: a written request for voluntary termination of pregnancy, a legal medical opinion beforehand, and order and/or referral from the prosecutor's office, court authorization or a court order, prior conviction of the perpetrator, or in the case of a mentally disabled woman questions as to whether she was truly incapable of consensual sexual relations; (iv) the impossibility of getting prompt access to health services for a legal abortion, which is often a function of: the non-availability of service providers in the more remote territories; the risk one runs when one has to report the perpetrators who are the very persons who exercise control over the region; not being able to reveal the pregnancy or the need for a legal abortion because of the dangers this poses for women; (v) the Colombian Institute of Family Welfare has not established a clear and uniform policy throughout the national territory to guarantee that girls and teenage girls who are victims of sexual violence will have access to legal abortions; (vi) gender stereotypes built around sexual violence is a recurring problem that is compounded by the pregnancy that is the result of sexual violence and a decision to seek a legal abortion. *Red Nacional de Mujeres* [National Women's Network], *Ruta Pacífica de Mujeres* [Women's Path to Peace], *Iniciativa de Mujeres Colombianas por la Paz* [Colombian Women's Peace Initiative], *Liga Internacional de Mujeres por la Paz y la Libertad* [International League of Women for Peace and Liberty], *Liga de Mujeres Desplazadas* [League of Displaced Women], *Mesa de Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Mesa por la Vida y la Salud de las Mujeres* [Working Group for Women's Life and Health], *Casa de la Mujer, Sisma Mujer, Corporación Humanas, Cladem, Campaña Saquen mi cuerpo de la guerra* [The "Take Me Out of War" Campaign], *Observatorio de Género y Derechos Humanos* [Gender and Human Rights Observatory], *DeJuSticia, Red de Educación Popular entre Mujeres* [Women's Mutual Education Network], *Mesa de Seguimiento al Auto 092- Anexo Reservado* [Working Group to Follow up on Order 092 – Confidential Addendum], Colombian Commission of Jurists, *Asociación Colectivo mujeres al derecho* [Women's Legal Advocacy Association], *Corporación Jurídica Humanidad Vigente, Colectivo de Abogados José Alvear* [José Alvear Lawyers' Group], *Colombia Diversa, El Estado y la violencia sexual contra las mujeres en el marco de la violencia sociopolítica en Colombia. Informe presentado por organizaciones de mujeres y de derechos humanos a la Representante Especial del Secretario General para Violencia Sexual en contextos de conflictos armados, señora Margot Wallström, con motivo de su visita a Colombia* [The State and sexual violence against women in the framework of the socio-political violence in Colombia. Report that women's and human rights organizations presented to the Secretary-General's Special Representative for Sexual Violence in Conflict, Ms. Margot Wallström, on the occasion of her visit to Colombia], May 16, 2012, p. 14.

<sup>1581</sup> Information provided at the meeting with women's organizations, held in Bogotá on December 4, 2012.

<sup>1582</sup> Information provided at the meeting with women's organizations, held in Bogotá on December 4, 2012.

<sup>1583</sup> It was said that: (i) the Office of the General Prosecutor depicted the pills, whose active ingredient is Levonorgestrel (a contraceptive), as a pill to induce abortions. It disregarded a decision by the Council of State that had already determined that this pill was a contraceptive, not a pill to induce abortions. It obstructed free access to emergency contraceptives that are part of women's right to reproductive health; (ii) they have obstructed proper compliance with Judgment C-355 of 2006;



expressed concern over the re-election of the Attorney General of the Nation. On November 27, 2012, Attorney General Alejandro Ordoñez was re-elected by a wide majority in Congress to another four years<sup>1584</sup> in office.<sup>1585</sup> The legitimacy and guarantees in the re-election of the Attorney General has been the subject of a widespread debate in Colombia.<sup>1586</sup> Human rights organizations in Colombia complain that there is currently no institution in Colombia authorized to investigate or exercise control over the activities of the Attorney General, especially considering the circumstances under which he was nominated and elected.<sup>1587</sup> Under Colombia's domestic legal system, the Council of State and Supreme Court are the bodies authorized to investigate the Attorney General's actions.<sup>1588</sup> Organizations and

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(iii) Attorney General Alejandro Ordoñez has gone back on the commitments inherent in his office, and put his own religious convictions ahead of women's rights and the rights of society in general, and has used his office as a platform from which to preach and impose his own religious ideas, in violation of the guarantee of freedom of religion and freedom of conscience of those women who need access to emergency contraceptive services or who voluntarily terminate a pregnancy; (iv) through Resolution 284 of 2009, the Attorney General designated six public officials to exercise preventive control of the Women's Clinic in Medellín; (v) the Prosecutor Delegate for the Civil Service, María Eugenia Carreño sent a request containing distorted information, urging the Minister of Social Protection to suspend the procedure to include Misoprostol in the POS. Attorney General Alejandro Ordoñez has repeatedly filed motions seeking nullification of the Constitutional Court's rulings that protect the right to voluntarily terminate a pregnancy (Judgment C-355 of 2006), that protect human dignity and the lives and physical and mental wellbeing of women (Judgments T-388 of 2009 and T-841 of 2011). He has also refused to comply with the educational programs and programs to publicize the constitutional principles that support the decriminalization of abortion (Judgment T-388 of 2009); (vi) through Judgment T-627 of 2012, the Court required that the Attorney General officially rectify a series of measures, which was done on September 19, 2012. Nevertheless, six days later, Deputy Attorney General Marta Isabel Castañeda asked the Constitutional Court to declare the judgment null and void. The measures mentioned in the judgment included the following: the Attorney General had misrepresented the orders from Judgment T-388 of 2009; the Prosecutors Delegates reported false information on the effects of the requested nullification of Judgment T-388 of 2009; the Office of the General Prosecutor presented its official position based on a false premise regarding the nature of emergency oral contraception; the Office of the General Prosecutor has refused to recognize that voluntary termination of a pregnancy is a right; the Attorney General issued false information regarding the scope of the conscientious objection to voluntary termination of pregnancy. *Mesa por la vida y la salud de las mujeres* [Working Group for Women's Life and Health], *El Procurador General de la Nación: cuatro años de actuaciones contrarias a los derechos sexuales y reproductivos 2009 – 2012* [The Attorney General of the Nation: four years trampling on sexual and reproductive rights, November 2012. Executive Summary.]

<sup>1584</sup> Constitution of Colombia, Article 276. The Attorney General of the National shall be elected by the Senate to a four-year term, from a slate composed of candidates nominated by the President of the Republic, the Supreme Court and the Council of State.

<sup>1585</sup> *El Tiempo*, *Con 80 votos, Alejandro Ordoñez fue reelegido como Procurador General* [Attorney General re-elected by a margin of 80 votes], November 27, 2012. Available [in Spanish] at: [http://www.eltiempo.com/politica/ordonez-obtiene-la-reeleccion-en-la-procuraduria-con-80-votos\\_12404261-4](http://www.eltiempo.com/politica/ordonez-obtiene-la-reeleccion-en-la-procuraduria-con-80-votos_12404261-4).

<sup>1586</sup> One candidate for the office of Attorney General, María Mercedes López, reportedly nominated by the Administration, had even requested a postponement of the election, as she believed she was at a disadvantage because she had only recently been nominated. When no reply was forthcoming from the Executive Branch, she dropped out of the election. *El Tiempo*, *Esperé hasta donde más lo podía hacer* [I waited as long as I could], November 27, 2012. Available [in Spanish] at: [http://www.eltiempo.com/politica/espere-hasta-donde-mas-lo-podia-hacer-maria-mercedes-lopez\\_12403088-4](http://www.eltiempo.com/politica/espere-hasta-donde-mas-lo-podia-hacer-maria-mercedes-lopez_12403088-4). Civil society also alleged that there were irregularities in the election in Congress, because 39 senators should not have voted because they were disqualified on the basis of their connections –including family connections– to Attorney General Ordoñez; they voted anyway. *El Espectador*, *Senado negó los 39 impedimentos presentados para elegir Procurador* [Senate denied the 39 disqualifications presented for the election of the Attorney General], November 27, 2012. Available [in Spanish] at: <http://www.elespectador.com/noticias/politica/articulo-389414-senado-nego-los-39-impedimentos-presentados-elegir-procurador>. See, also, Rodrigo Uprimny, *¿Debe auto destituirse el Procurador?* [Should the Attorney General step down?], September 8, 2012. Available [in Spanish] at: <http://www.elespectador.com/opinion/columna-373507-debe-autodestituirse-el-procurador>.

<sup>1587</sup> Information reported by Women's Link Worldwide and Daniel Sastoque Coronado to the Unit for the Rights of LGBTI Persons. Meeting held during the 146<sup>th</sup> Session, November 2012.

<sup>1588</sup> In Judgment C-244, the Constitutional Court declared the expression "the Supreme Court, *en banc*, and if he or she has been nominated by this body, then the full membership of the Council of State shall do so" to be enforceable. The expression is from subparagraph 1 of Article 66 of Law 200 of 1995. The Court echoed this case law in its Judgment C-594 of 1996.

academics, however, maintain that since these are the very two bodies that proposed him for the post in 2008 and again in 2012, they ought not to have any authority over him.<sup>1589</sup>

913. Finally, at the hearing held by the IACHR on March 14, 2013, a number of civil society organizations presented information on the impact that the Office of the General Prosecutor's activities have had on the work of defenders of sexual and reproductive rights. The IACHR will examine that information in a section below that deals with the situation of women human rights defenders.

## 6. Discrimination in the access to and ownership, use and control of land

914. During the visit, the Commission received information on the various forms of dispossession that women experience, both by force of arms and by the law, and on the failure to comply with the provisions of Law 160 of 1994 which created the National Agrarian Reform and Campesino Rural Development System, established a subsidy for purchase of land, changed the Colombian Institute of Agrarian Reform and issued other provisions.<sup>1590</sup> The Commission notes that both the State and civil society agree that the fact that property deeds are generally in the man's name is a problem, which complicates the land restitution process in the case of women who do not have a deed to their property. . In its observations on the Draft Report, the State wrote that in application of Law 1448 of 2011, "affirmative actions are being taken to overcome the barriers blocking women's access to the right to property," and cited as examples certain court rulings that had reportedly issued orders of restitution, where property title had passed to "both spouses and widows".<sup>1591</sup>
915. Civil society was of the view that Law 1448 is a symbolic step, as illegal armed groups continue to permeate and influence local authorities and the measures that the Restitution Unit has taken do not make allowance for the specific situation of rural women. The Commission also received information about subsidy-based land policies, which in practice had impoverished campesino women, a situation only aggravated by the State measures undertaken to collect the debts. The Commission received information concerning Colombia's Caribbean region, specifically in connection with the negative results that the affirmative action policies reportedly had.<sup>1592</sup>
916. The Commission notes the information supplied by the State in its observations on the Draft Report, concerning the fact that "affirmative actions are being taken to overcome the barriers blocking women's access to the right to property," in particular the court rulings that had reportedly issued orders of restitution, where property title had passed to "both spouses and widows." The State also reported the Land Restitution Unit's adoption of Resolution 080 on January 31, 2013, concerning the "Special Access Program for Women, Children and Adolescents in the administrative phase of the land restitution process," which provides for

<sup>1589</sup> Information that Women's Link Worldwide and Daniel Sastoque Coronado relayed to the team on the Unit for the Rights of LGBTI Persons. Meeting held during the 146<sup>th</sup> session, November 2012. See also Rodrigo Uprimny, *¿Debe auto destituirse el Procurador?* [Should the Attorney General Step Down?], September 8, 2012. Available [in Spanish] at: <http://www.elespectador.com/opinion/columna-373507-debe-autodestituirse-el-procurador>.

<sup>1590</sup> Law available [in Spanish] at: [http://www.incoder.gov.co/documentos/Ley160\\_2004.pdf](http://www.incoder.gov.co/documentos/Ley160_2004.pdf).

<sup>1591</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, para. 574.

<sup>1592</sup> Information provided at the meeting with women's organizations, held in Bogotá on December 4, 2012.

the “creation of effective mechanisms to facilitate the ability of women, children and adolescents to prove their right of ownership.”<sup>1593</sup>

## 7. The serious situation of women who work to defend human rights

917. During the visit, the IACHR received disturbing information on the particular danger to human rights defenders and how unprotected they are.<sup>1594</sup> The IACHR has granted a number of precautionary measures and has amplified those currently in force for these organizations and their members, particularly to advance protection of displaced women’s rights.
918. For example, precautionary measures have been granted for organizations like the *Liga de Mujeres Desplazadas* and the *Liga Joven de Mujeres Desplazadas*, *Casa de la Mujer*, the *Corporación Sisma Mujer* and the *Corporación Yira Castro*. The IACHR has also received information on the State’s failings in implementing the precautionary measures effectively, and Colombian women’s general lack of confidence that the juridical system can offer an adequate remedy for these violations. It should be noted that the Rapporteur on the Rights of Women felt it necessary to visit Colombia from May 2 through 4, 2011, to press for enforcement of the precautionary measures granted by the Commission, evaluate the problems with implementation of the precautionary measures, and advocate the need to establish a differentiated approach for precautionary measures.
919. At a thematic hearing that the IACHR held in 2013, various organizations active in the protection of women’s rights in Colombia –particularly in the area of sexual and reproductive rights- described the harassment, stigmatization, persecution and criminalization that defenders of these rights experience.<sup>1595</sup> They also stressed that the Colombian State was remiss in making efforts, with the necessary due diligence, to identify those responsible for the attacks: State and non-State actors alike. In 2013, the IACHR received reports on a series of recent attacks allegedly targeting Women’s Link Worldwide and its members because of their activities to promote and protect Colombian women’s right to information about their reproductive rights.<sup>1596</sup>
920. At another thematic hearing, this one on the situation of Afro-descendant women in Colombia, the IACHR also received information about 13 women’s organizations in the department of Chocó and how the groups that control that area have declared a number of leaders of these organizations to be military targets.<sup>1597</sup>
921. The danger, threats, harassment and acts of violence targeting women who defend women’s rights in Colombia and their families have been amply documented by the IACHR in its 2006 report titled *Violence and Discrimination against Women in the Armed Conflict in Colombia* and

<sup>1593</sup> Observations of the State of Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GA/ID-13-048140, December 2, 2013, paras. 574-575.

<sup>1594</sup> Information provided at the meeting with women’s organizations, held in Bogotá on December 4, 2012. Information provided at the meeting with human rights defenders, held in Bogotá on December 4, 2012.

<sup>1595</sup> IACHR, *Hearing on the Situation of Defenders of Sexual and Reproductive Rights in Colombia*, March 14, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=131&page=2>.

<sup>1596</sup> IACHR, *Hearing on the Situation of Defenders of Sexual and Reproductive Rights in Colombia*, March 14, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=131&page=2>.

<sup>1597</sup> IACHR, *Hearing on the Situation of Human Rights of Afro-descendant Women in Colombia*, March 14, 2013: Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=131&page=2>.

the follow-up report that appeared in chapter V of the 2009 annual report.<sup>1598</sup> The Commission must again remind the State of its obligation to investigate the threats and attacks targeting those who defend women's rights and to duly punish those responsible, so that their crimes do not go unpunished.

922. Finally, the IACHR is also taking into account and values the information supplied by the State in its observations on the Draft Report, concerning the Interior Ministry's activities toward development of a "gender-focused public policy to ensure the right to defend human rights" [*política pública para la garantía del derecho a la defensa de los derechos humanos con enfoque de género*] and that it has completed the preliminary diagnostic phase and is continuing to develop and move forward with the policy.<sup>1599</sup>

## Recommendations

923. Based on the information and observations set out in this report, the Commission recommends the State of Colombia:

1. To adopt an integral State policy to address the specific impact of the armed conflict on women in the areas of justice, health and education, among others. These policies should be guided by the logic of protecting the rights of women and should tend to guarantee their autonomy.
2. 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.
3. To implement measures to eradicate discriminatory socio-cultural patterns based on sex, race, and ethnic background, and to take these differences and conditions of vulnerability into account in the development of public policies to mitigate the pernicious effect of the armed conflict on Colombian women.
4. To publicly recognize that the different manifestations of gender-based violence and discrimination are closely related to the human rights and humanitarian crisis that Colombia is facing, that they are serious violations of international and national law, and that it is necessary to assign adequate State resources to achieve their prevention, eradication and sanction.
5. To adequately enforce the national legislation and the existing public policies designed to protect women from acts of violence and discrimination and their consequences in civil, political, economic, social and health matters, and to allocate sufficient resources to make this enforcement effective at the national and local level.

<sup>1598</sup> IACHR, Follow-up Report – *Violence and Discrimination against Women in the Armed Conflict in Colombia* – Chapter V, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, para. 106.

<sup>1599</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, paras. 576-578.

6. To incorporate the voices and specific needs of women affected by the armed conflict and the organizations representing them in the design of legislation and public policies geared toward ameliorating the impact of the consequences of the armed conflict on them.
7. 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.
8. To design public policies in the area of citizen protection which incorporate the specific needs of women.
9. To create and improve statistical and qualitative information systems and records on incidents of violence and discrimination against women.
10. To promote that the information collected by State entities about incidents of violence and discrimination is processed with a gender perspective.
11. To design and implement a policy including positive actions to recognize and make effective the rights of women in terms of an integral and multidisciplinary attention and support in the areas of health, justice, education and economy of the displaced women, that adequately address their needs in the short and long-term.
12. 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.
13. To design and adopt policies, with the participation of indigenous and Afro-Colombian women, considering respect for their culture, with the purpose of ameliorating the effects of the armed conflict. In particular, to carry out actions to reduce the negative effects in terms of health, education, and justice caused by the armed conflict.
14. To adopt the necessary measures to prevent, sanction and eradicate acts of rape, sexual abuse and other forms of violence, torture and inhumane treatment by all combatants in the armed conflict.
15. 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.
16. To guarantee that women directly affected by the conflict and its consequences are incorporated in the decision-making bodies working towards the resolution of the causes and consequences of the conflict.

## E. Journalists and media workers

### 1. Attacks on the life and physical integrity of, and threats and harassment against, journalists and media workers

924. On previous occasions, the Inter-American Commission and its Office of the Special Rapporteur for Freedom of Expression have voiced concern over the murders, attacks, intimidation, kidnapping, threats, and other forms of violence committed against journalists and media workers in Colombia for reasons that may be related to the exercise of their right to freedom of expression.<sup>1600</sup> To this end, in its report *Impunity, Self-censorship and Armed Internal Conflict in Colombia: An Analysis of the State of Freedom of Expression in Colombia 2005*, the Office of the Special Rapporteur indicated that “[t]he exercise of freedom of expression in Colombia has been gravely affected in recent decades by the internal armed conflict.”<sup>1601</sup> In this context, “Colombian society has suffered the grave consequences of a violence designed to silence the exercise of freedom of expression, among other freedoms.”<sup>1602</sup> The Office of the Special Rapporteur has also established that the acts of serious violence committed against journalists and media workers that take place in the context of Colombia’s internal armed conflict render those who work in journalism and the media especially vulnerable to the various armed participants in the conflict.<sup>1603</sup> The particular vulnerability of members of the media in connection with the internal armed conflict has likewise been acknowledged by the Colombian State on numerous occasions. As noted in this report, journalists and media workers have been covered under a special government-sponsored protection program<sup>1604</sup> since 2000, and are currently included among the 16 special risk categories of a recently established prevention and protection program administered by the Ministry of Interior and the National Protection

<sup>1600</sup> See: IACHR. *Annual Report 2007*. OEA/Ser.L/V/II.131 Doc. 34 rev. 1. March 8, 2008. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. II (Situation of Freedom of Expression in the Region). Paras. 185-189. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%20Anual%202007%202%20ENG.pdf>; IACHR. *Annual Report 2008*. OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Situation of Freedom of Expression in the Region). Paras. 69-71. Available at: <http://cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>; IACHR. *Annual Report 2009*. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 116-129. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%20Anual%202009%202%20ENG.pdf>; IACHR. *Annual Report 2010*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 119-131. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>; IACHR. *Annual Report 2011*. OEA/Ser.L/V/II. Doc. 69. December 30, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 109-115. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011p%20irnting.pdf>; IACHR. *Annual Report 2012*. OAS/Ser.L/V/II.147. Doc. 1. March 5, 2013. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 127-148. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>.

<sup>1601</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. *Impunity, Self-censorship and Armed Internal Conflict in Colombia: An Analysis of the State of Freedom of Expression in Colombia*. OEA/Ser.L/V/II Doc. 51. 25 de agosto de 2005. Para. 5. Available at: <http://cidh.org/relatoria/ShowDocument.asp?DocumentID=153>.

<sup>1602</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. *Impunity, Self-censorship and Armed Internal Conflict in Colombia: An Analysis of the State of Freedom of Expression in Colombia*. OEA/Ser.L/V/II Doc. 51. 25 de agosto de 2005. Para. 42. Available at: <http://cidh.org/relatoria/ShowDocument.asp?DocumentID=153>.

<sup>1603</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. *Special Study on the Status of Investigations into the Murder of Journalists for Reasons that may be related to their Work in Journalism. Period 1995-2005*. OAS/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 85. Available at: [http://www.cidh.org/relatoria/section/Asesinato de Periodistas INGLES.pdf](http://www.cidh.org/relatoria/section/Asesinato%20de%20Periodistas%20INGLES.pdf).

<sup>1604</sup> Office of the President of the Republic. Decree No. 1592 of August 24, 2000. Available at: <http://www.flip.org.co/resources/documents/430e5a615bc952a7785c77b42dbf5ce2.pdf>.

Unit [*Unidad Nacional de Protección*].<sup>1605</sup> In addition, the Special Administrative Unit for Victim Support and Reparations [*Unidad de Atención y Reparación Integral a las Víctimas*] recognizes journalists and media workers as a beneficiary group entitled to collective reparations under Colombia's Victims and Land Restitution Law [*Ley de Víctimas y Restitución de Tierras*].<sup>1606</sup>

925. The Inter-American Commission acknowledges that the number of murders of journalists and media workers for reasons that may be related to the exercise of their profession has been declining in recent years, and it recognizes the efforts of the Colombian State to develop and implement a protection mechanism for members of the media at risk.<sup>1607</sup>

<sup>1605</sup> Office of the President of the Republic. Decree No. 4912 of December 26, 2011. Article 6. Available at: <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Diciembre/26/dec491226122011.pdf>.

<sup>1606</sup> Unidad de Atención y Reparación Integral a las Víctimas. September 20, 2012. *Gobierno consulta a periodistas Víctimas del conflicto sobre proceso de Reparación Colectiva*. Available at: <http://www.unidadvictimas.gov.co/index.php/en/sala-de-prensa/79-noticias/92-consulta-a-periodistas-victimas-proceso-reparacion-colectiva>; El Mundo. October 9, 2012. *Reparación para periodistas víctimas*. Available at: [http://www.elmundo.com/porta/noticias/derechos\\_humanos/reparacion\\_para\\_journalists\\_victimas.php](http://www.elmundo.com/porta/noticias/derechos_humanos/reparacion_para_journalists_victimas.php); Knight Center for Journalism in the Americas. September 24, 2012. *Colombian Government Consults Journalists Targeted by Violence in Reparation Process*. Available at: <https://knightcenter.utexas.edu/en/blog/00-11515-colombian-government-consults-journalists-targeted-violence-reparation-process>.

<sup>1607</sup> In its 2005 report on the situation of freedom of freedom of expression in Colombia, the Office of the Special Rapporteur found that between 1998 and 2005, at least 31 journalists and media workers had been murdered for reasons that may be related to their professional activity. IACHR. Office of the Special Rapporteur for Freedom of Expression. *Impunity, Self-censorship and Armed Internal Conflict in Colombia: An Analysis of the State of Freedom of Expression in Colombia*. OEA/Ser.L/V/II Doc. 51. 25 de agosto de 2005. Para. 60. Available at: <http://cidh.org/relatoria/ShowDocument.asp?DocumentID=153>. In addition, the Inter-American Commission has confirmed that during the period 2006-2012, at least ten journalists and media workers were murdered for reasons that may have been related to their professional activity: Gustavo Rojas Gáballo, who died on March 20, 2006 of injuries sustained in an attack on February 4, 2006; Milton Fabián Sánchez, murdered on August 9, 2006; Atilano Segundo Pérez Barrios, murdered on 22 August 2006; Elacio Murillo Mosquera, murdered on January 10, 2007; Javier Darío Arroyave Monsalve, murdered on September 7, 2007; José Everardo Aguilar, murdered on April 24, 2009; Clodomiro Castilla Ospino, murdered on March 19, 2010; Rodolfo Maya Aricape, murdered on October 14, 2010; Luis Eduardo Gómez, murdered on June 30, 2011; and Guillermo Quiroz, murdered on November 27, 2012. See: IACHR. *Annual Report 2006*. OEA/Ser.L/V/II.127. Doc. 4 rev. 1. March 3, 2007. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Situation of Freedom of Expression in the Region). Paras. 94, 98 y 99. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Annual%20Report%20OSRFE%202006%20English.pdf>; IACHR. *Annual Report 2007*. OEA/Ser.L/V/II.131 Doc. 34 rev. 1. March 8, 2008. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. II (Situation of Freedom of Expression in the Region). Para. 185. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%20Anual%202007%202%20ENG.pdf>; IACHR. *Annual Report 2009*. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 116. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%20Anual%202009%202%20ENG.pdf>; IACHR. *Annual Report 2010*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 120 and 121. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>; IACHR. *Annual Report 2011*. OEA/Ser.L/V/II. Doc. 69. December 30, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 109. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011printing.pdf>; IACHR. *Annual Report 2012*. OAS/Ser.L/V/II.147. Doc. 1. March 5, 2013. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 128. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%2010%20P%20ENG.pdf>; Fundación para la Libertad de Prensa (FLIP). April 8, 2009. *Nueva condena en casos de asesinatos de periodistas*. Available at: [http://www.flip.org.co/alert\\_display/2/235.html](http://www.flip.org.co/alert_display/2/235.html); Semana. April 10, 2009. *Nuevas condenas en casos de asesinatos de periodistas*. Available at: <http://www.semana.com/Imprimir.aspx?idItem=101966>. In addition, the Office of the Special Rapporteur has taken note of other murders of journalists and media workers that occurred in the period 2006-2012; however, in these cases the link between the crime and the victims' professional activity has not been proven. Included among these cases are those of Diego de Jesús Rojas Velásquez, murdered on September 22, 2009; Harold Humberto Rivas Quevedo, murdered on December 15, 2009; and Argemiro Cárdenas Agudelo, murdered on March 15, 2012. See: IACHR.

926. Despite the measures adopted by the Colombian State to protect at-risk journalists and media workers, the Commission notes with concern the dozens of attacks, threats, acts of harassment, kidnappings, and other acts of violence that have continued to take place in Colombia over the past several years. In this respect, between January 1, 2012 and May 31, 2013, the Inter-American Commission has become aware of a significant number of cases involving violence and threats against journalists and media workers for reasons that may be related to the exercise of their profession (see *infra*).
927. In its report *Impunity, Self-censorship and Armed Internal Conflict in Colombia: An Analysis of the State of Freedom of Expression in Colombia*, the Office of the Special Rapporteur for Freedom of Expression voiced particular concern over “the climate of self-censorship that continues for journalists,” and noted a correlation between self-censorship and the drop in murders and acts of violence reported.<sup>1608</sup> In this regard, the Inter-American Commission reiterates its concern over the chilling and dissuasive effect brought to bear by ongoing acts of violence and threats against journalists and media workers in the exercise of their profession, which may result in their silence.<sup>1609</sup>

## Murders

928. The Office of the Special Rapporteur was informed about the investigations of the murder of journalist Guillermo Quiroz, who died on November 27, 2012, in Sincelejo, department of Sucre<sup>1610</sup>. According to information received, Quiroz was covering a demonstration in San Pedro, Sucre, against the Pacific Rubiales company, when alleged members of the National Police detained his motorcycle, put him in an official vehicle, and struck and then pushed him outside of the moving vehicle. After remaining in intensive care for seven days at a local hospital, the journalist died. Some local police authorities initially denied the aggressions. At

IACHR. *Annual Report 2009*. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 117. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%20Annual%202009%20%20ENG.pdf>; IACHR. *Annual Report 2010*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 119. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>; IACHR. *Annual Report 2012*. OAS/Ser.L/V/II.147. Doc. 1. March 5, 2013. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 127. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202012%20P%20ENG.pdf>

<sup>1608</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. *Impunity, Self-censorship and Armed Internal Conflict in Colombia: An Analysis of the State of Freedom of Expression in Colombia*. OEA/Ser.L/V/II Doc. 51. August 25, 2005. Paras. 9 and 10. Available at: <http://cidh.org/relatoria/ShowDocument.asp?DocumentID=153>

<sup>1609</sup> According to a March 2013 national survey of journalists conducted by the Proyecto Antonio Nariño, 47% of the 694 journalists surveyed reported having not published stories during the previous 12-month period for fear of “assaults against the integrity of their life,” and 37% of 691 journalists surveyed, due to fear owing to “the presence of unlawful actors” in their region. In addition, 25% of 692 journalists surveyed admitted foregoing publication of stories due to pressure from state authorities. Of the 701 journalists interviewed in the survey, 29% reported having been subjected to aggression for stories they published. Proyecto Antonio Nariño. May 2013. *Resultados: Segunda encuesta nacional de libertad de expresión y acceso a la información en Colombia*. Available at: <http://www.pan.org.co/admin/noticiaspdf/descargararchivos.php?archivo=471.pdf>; Proyecto Antonio Nariño. May 3, 2013. *Segunda encuesta nacional de libertad de expresión y acceso a la información en Colombia*. Available at: <http://www.pan.org.co/noticias.php?noticia=471>.

<sup>1610</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. December 4, 2012. Press Release R143/12. *Office of the Special Rapporteur urges the authorities to investigate death of a journalist in Colombia*; Reporteros Sin Fronteras (RSF). December 3, 2012. *COLOMBIA | Muere en extrañas circunstancias el periodista Guillermo Quiroz Delgado* [Available in Spanish].



the closing of this report, investigations were opened, and at first, there would have suspended the officers allegedly involved in these events<sup>1611</sup>.

929. In its observations on the Draft Report, the State reported that, according to the version of events offered publicly by the Police commander in the department of Sucre, Quiroz had actively taken part in the demonstration and, even though he had his camera, he “was not carrying any type of identification or wearing any uniform to show that he was a journalist or employee of any media outlet.” According to that public statement, Quiroz was asked for his identification and the papers for the motorcycle he was riding. According to that same statement, the motorcycle was not properly registered, and was therefore retained. The State reported that the police commander had reportedly indicated that, following these events, the journalist assaulted the security officers and was therefore being transported to the Office of the Public Prosecutor of the municipality of Corozal. Under those circumstances, according to the police commander, the journalist allegedly jumped out of the vehicle. According to the State, the matter is being investigated “by the internal oversight office of the National Police.”<sup>1612</sup>

### Violence against media outlets and journalists

930. Between 2012 and 2013, the IACHR received information on numerous attacks and acts of violence committed against journalists in the exercise of their profession. On April 28, 2012, independent French journalist Roméo Langlois was captured by members of the guerilla group FARC in Caquetá and held for a month.<sup>1613</sup> On May 15, a bomb was detonated in a vehicle carrying journalist and former Colombian Minister of the Interior and Justice Fernando Londoño Hoyos. The blast killed his driver and bodyguard and injured at least 41 people. Colombia’s president forcefully condemned the attack<sup>1614</sup> and authorities subsequently captured six of the individuals allegedly involved.<sup>1615</sup>

<sup>1611</sup> According to information received, on February 4, 2013, the Internal Control Office of the National Police of Colombia accused a police sub-lieutenant of the crime of culpable homicide for his presumed responsibility in the death of journalist Guillermo Quiroz Delgado. Federación Colombiana de Periodistas (Fecolper). 5 de febrero de 2013. *Homicidio culposo para suboficial por caso del periodista Guillermo Quiroz*; El Universal. February 5, 2013. *Homicidio culposo para suboficial por caso del periodista Guillermo Quiroz*; Knight Center for Journalism in the Americas. February 5, 2013. *Policía de Colombia acusa a oficial de homicidio culposo por muerte de periodista*; IACHR. Office of the Special Rapporteur for Freedom of Expression. December 4, 2012. Press Release R143/12. *Office of the Special Rapporteur urges the authorities to investigate death of a journalist in Colombia*; Reporteros Sin Fronteras (RSF). December 3, 2012. *COLOMBIA | Muere en extrañas circunstancias el periodista Guillermo Quiroz Delgado* [Available in Spanish].

<sup>1612</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013.

<sup>1613</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. May 1, 2012. Press Release R42/12. *Office of the Special Rapporteur Expresses Concern for Kidnapping of French Journalist in Colombia*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=892&IID=1>; IACHR. Office of the Special Rapporteur for Freedom of Expression. May 31, 2012. Press Release R56/12. *Office of the Special Rapporteur Celebrates Liberation of French Journalist in Colombia*. Available at: <http://www.oas.org/es/IACHR/expression/showarticle.asp?artID=899&IID=2>; IFEX/Fundación para la Libertad de Prensa (FLIP). May 31, 2012. *FARC Releases French Journalist Romeo Langlois*. Available at: [http://www.ifex.org/colombia/2012/05/31/langlois\\_released/](http://www.ifex.org/colombia/2012/05/31/langlois_released/)

<sup>1614</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. May 16, 2012. Press Release R49/12. *Office of the Special Rapporteur Condemns Attack in Colombia*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=896&IID=1>; Committee to Protect Journalists (CPJ). May 16, 2012. *Murder attempted on Colombian ex-politician, radio host*. Available at: <http://cpj.org/2012/05/murder-attempted-on-colombian-ex-politician-and-ra.php>

<sup>1615</sup> El Espectador. September 6, 2012. *Capturan a otro implicado en atentado contra Fernando Londoño*. Available at: <http://www.elespectador.com/noticias/judicial/articulo-373022-capturan-otro-implicado-atentado-contra-fernando>

931. The IACHR was informed that the antenna of an indigenous community radio station operating in Jambaló, *Voces de Nuestra Tierra*, was destroyed on July 3, 2012 in connection with the armed conflict, and that *Nasa Estéro*, another indigenous radio broadcaster based in Toribío, temporarily suspended its broadcasts.<sup>1616</sup> That same day, the National Liberation Army [*Ejército de Liberación Nacional*] (ELN) guerrilla group released menacing fliers criticizing the work of radio stations *Caracol Radio* and *RCN*, located in the department of Arauca.<sup>1617</sup> In addition, reporter Élide Parra Alfonso was abducted and held by ELN members in Arauca from July 25 through August 13, 2012.<sup>1618</sup>
932. According to information received, on February 28, 2013, unidentified persons broke into journalist Germán Uribe's home in Cundinamarca and proceeded to beat the reporter, gag him, and tie his hands and feet.<sup>1619</sup> On March 7, journalist Juan David Betancur received a letter bomb at his home in Dabeiba, located in the department of Antioquia.<sup>1620</sup> In addition, on May 1, 2013, two individuals fired on the vehicle of Ricardo Calderón, the head of investigations at news magazine *Semana*, near Fusagasugá, Cundinamarca. President Santos and other high-ranking government officials denounced the attack and granted protection measures to the journalist while an investigation was carried out.<sup>1621</sup>
933. The State of Colombia provided information on the measures taken in regards to the attack perpetrated against Ricardo Calderón, in a Communication to the IACHR dated July 10, 2013. The State informed that the National Protection Unit [*Unidad Nacional de Protección*] had

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londono; El Tiempo. September 6, 2012. *Capturada en Córdoba otra persona por atentado contra* Londoño. Available at: [http://www.eltiempo.com/justicia/capturado-en-crdoba-otra-persona-por-atentado-contra-londoo\\_12200028-4](http://www.eltiempo.com/justicia/capturado-en-crdoba-otra-persona-por-atentado-contra-londoo_12200028-4)

<sup>1616</sup> Reporters Without Borders. July 10, 2012. *Cauca's Indigenous Community Radios Appeal for Help*. Available at: <http://en.rsf.org/colombia-cauca-s-indigenous-community-10-07-2012,43002.html>; Asociación Mundial de Radios Comunitarias (AMARC). July 16, 2012. *No más violencia: Radios comunitarias indígenas por la paz en Colombia*. Available at: <http://www2.amarc.org/?q=es/node/627>

<sup>1617</sup> Fundación para la Libertad de Prensa (FLIP). July 4, 2012. *Nuevos panfletos del ELN intimidan a la prensa en Arauca*. Available at: [http://www.flip.org.co/alert\\_display/0/123.html](http://www.flip.org.co/alert_display/0/123.html); Knight Center for Journalism in the Americas. July 5, 2012. *Colombian guerrillas release pamphlets targeting two radio stations*. Available at: <https://knightcenter.utexas.edu/en/blog/00-10660-colombian-guerrillas-release-pamphlets-targeting-two-radio-stations>

<sup>1618</sup> Committee to Protect Journalists (CPJ). August 14, 2012. *Rebel Group Releases Kidnapped Colombian Journalist*. Available at: <http://www.cpj.org/2012/08/rebel-group-releases-kidnapped-colombian-journalis.php>; El Espectador. August 13, 2012. *Liberan a mujeres secuestradas por ELN en Arauca*. Available at: <http://www.elespectador.com/noticias/paz/articulo-367191-liberan-mujeres-secuestradas-eln-arauca>; *Semana*. July 30, 2012. *ELN se atribuye secuestro de una periodista y una ingeniera*. Available at: <http://www.semana.com/nacion/eln-atribuye-secuestro-periodista-ingeniera/181789-3.aspx>

<sup>1619</sup> *Semana*. March 1, 2013. *Ataque contra columnista de Semana.com*. Available at: <http://www.semana.com/nacion/articulo/ataque-contra-columnista-semanacom/335133-3>; Reporters Without Borders. March 18, 2013. *A Journalist and Writer, Victim of a Violent Assault, Suspends his Writing Activities*. Available at: <http://en.rsf.org/colombia-a-journalist-and-writer-victim-of-18-03-2013,44214.html>;

<sup>1620</sup> Committee to Protect Journalists (CPJ). March 11, 2013. *Letter Bomb Sent to Home of Colombian Journalist*. Available at: <https://cpj.org/2013/03/letter-bomb-sent-to-home-of-colombian-journalist.php>; El Mundo. March 8, 2013. *Con carta bomba intentaron atentar contra periodista antioqueño*. Available at: [http://www.elmundo.com/portal/noticias/antioquia/con\\_carta\\_bomba\\_intentaron\\_atentar\\_contra\\_periodista\\_antioqueni\\_o.php](http://www.elmundo.com/portal/noticias/antioquia/con_carta_bomba_intentaron_atentar_contra_periodista_antioqueni_o.php); *Caracol Radio*. March 8, 2013. *Atentado con carta bomba contra un periodista en Antioquia*. Available at: <http://www.Caracol.com.co/noticias/judicial/atentado-con-carta-bomba-contra-un-periodista-en-antioquia/20130308/nota/1855541.aspx>

<sup>1621</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. May 2, 2013. Letter to the Colombian State. *Atentado contra periodista de la revista Semana, Ricardo Calderón*; *Semana*. May 2, 2013. *"El atentado contra Ricardo Calderón es repudiable"*. Available at: <http://www.semana.com/nacion/articulo/atentado-contra-periodista-semana/341900-3>; *RCN La Radio*. May 2, 2013. *Preguntaron por Ricardo and dispararon: Director de Semana*. Available at: <http://www.rcnradio.com/noticias/atentan-contra-periodista-de-semana-63917>; El País. May 2, 2013. *Presidente Santos calificó de "repudiable" atentado contra el periodista Ricardo Calderón*. Available at: <http://www.elpais.com.co/elpais/judicial/noticias/fiscalia-anuncio-dara-prioridad-caso-periodista-semana-ableado>

granted the journalist urgent protection measures, including “a strict protection scheme with an armored vehicle and two bodyguards. The measures were agreed with the beneficiary taking into account the security needs of the case”. Furthermore, the State indicated that it had requested the realization of a Technical Risk Evaluation Study [*Estudio Técnico de Nivel de Riesgo*] and the adoption of preventive measures. The State also informed that the 51<sup>st</sup> Specialized Office of the Public Prosecutor on Human Rights was carrying out an investigation into the facts of the case, in which “six lines of inquiry were being advanced with the assistance of the Human Rights Group of the Judicial Police DIJIN-Interpol”. As a result of which, “they were able to obtain material elements of proof, physical evidence and information leading to the clarification of the facts, and to individualize and identify those allegedly responsible.”<sup>1622</sup>

934. According to information received, a number of journalists were assaulted by members of Colombian State security forces while covering matters public interest in 2012 and 2013. Among those assaulted were Bruno Federico in Gigante,<sup>1623</sup> Ronald Avellaneda in Barranquilla,<sup>1624</sup> Ana María García in Bogotá,<sup>1625</sup> Daniel Martínez in Arauca,<sup>1626</sup> and five reporters who were covering street demonstrations in Bogotá in connection with the National Week of Indignation [*Semana Nacional de la Indignación*] in October 2012.<sup>1627</sup> Bogotá’s police commissioner apologized for the assault on García and disciplinary action was taken against a public official in connection with the incident.<sup>1628</sup> Reporter Jhonathan Ardila was detained and his equipment seized in Bucaramanga.<sup>1629</sup> In February and March 2013, several journalists fell victim to violence at the hands of State security forces and illegal armed groups in connection

<sup>1622</sup> In Communication from the State of Colombia, Official Letter MPC/OEA No.: 945/2013 to the IACHR, dated July 10 22, 2013, that refers Note S-GAPDH-13-025460, dated July 2, 2013 “Communication to the Office of the Special Rapporteur for Freedom of Expression, journalist Ricardo Calderón”

<sup>1623</sup> Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Page 46. Available at: <http://www.flip.org.co/resources/documents/informe-2012.pdf>; Otramérica. February 17, 2012. *La Policía de Colombia reprime en El Quimbo*. Available at: <http://otramerica.com/radar/la-policia-de-colombia-reprime-en-el-quimbo/1567>

<sup>1624</sup> Federación Colombiana de Periodistas (FECOLPER). July 11, 2012. *Alerta FECOLPER. Policía agrade a periodista en Barranquilla*. Available at: <http://www.fecolper.com.co/alertas/20747-policia-agrede-a-periodista-en-barranquilla>; El Espectador. July 12, 2012. *En Barranquilla denuncian agresión a periodista por parte de la Policía*. Available at: <http://www.elespectador.com/noticias/nacional/articulo-359296-barranquilla-denuncian-agresion-periodista-parte-de-policia>

<sup>1625</sup> Fundación para la Libertad de Prensa (FLIP). October 24, 2012. *Agresiones de la Policía contra periodistas durante cubrimiento*. Available at: [http://www.flip.org.co/alert\\_display/0/2805.html](http://www.flip.org.co/alert_display/0/2805.html); El Tiempo. October 23, 2012. *Policía pide perdón a la fotógrafa de EL TIEMPO que fue agredida*. Available at: [http://www.eltiempo.com/colombia/bogota/policia-ordena-investigacion-por-agresion-a-fotografa-de-el-tiempo\\_12329481-4](http://www.eltiempo.com/colombia/bogota/policia-ordena-investigacion-por-agresion-a-fotografa-de-el-tiempo_12329481-4)

<sup>1626</sup> Cerigua. October 9, 2012. *Se registra nueva agresión contra periodista en Colombia*. Available at: [http://cerigua.org/1520/index.php?option=com\\_content&view=article&id=11199:se-registra-nueva-agresion-contra-periodista-en-colombia&catid=48:libertad-de-expresion&Itemid=10](http://cerigua.org/1520/index.php?option=com_content&view=article&id=11199:se-registra-nueva-agresion-contra-periodista-en-colombia&catid=48:libertad-de-expresion&Itemid=10); La Voz del Cinaruco. October 9, 2012. *Policías agreden a periodista de RCN Televisión en Arauca*. Available at: <http://www.lavozdelcinaruco.com/?id=7546>

<sup>1627</sup> Fundación para la Libertad de Prensa (FLIP). October 24, 2012. *Agresiones de la Policía contra periodistas durante cubrimiento*. Available at: [http://www.flip.org.co/alert\\_display/0/2805.html](http://www.flip.org.co/alert_display/0/2805.html); Reporters Without Borders. October 25, 2012. *Call for Punishment of Those Responsible as Police Violence Towards Journalists Grows*. Available at: <http://en.rsf.org/colombia-call-for-punishment-of-those-25-10-2012,43585.html>

<sup>1628</sup> Fundación para la Libertad de Prensa (FLIP). October 24, 2012. *Agresiones de la Policía contra periodistas durante cubrimiento*. Available at: [http://www.flip.org.co/alert\\_display/0/2805.html](http://www.flip.org.co/alert_display/0/2805.html); El Tiempo. October 23, 2012. *Policía pide perdón a la fotógrafa de EL TIEMPO que fue agredida*. Available at: [http://www.eltiempo.com/colombia/bogota/policia-ordena-investigacion-por-agresion-a-fotografa-de-el-tiempo\\_12329481-4](http://www.eltiempo.com/colombia/bogota/policia-ordena-investigacion-por-agresion-a-fotografa-de-el-tiempo_12329481-4); In Communication from the State of Colombia, Official Letter MPC/OEA No.: 256/2013, dated February 22, 2013, that refers Note DIDHD/GAPDH No. 0234/0208, dated February 22, 2013, “Comments of the State of Colombia regarding Actions Undertaken to Ensure and Protect Freedom of Expression.” Para. 13(x).

<sup>1629</sup> El Espectador. October 24, 2012. *Andiarios rechaza agresiones que la Policía ha propinado a los periodistas*. Available at: <http://www.elespectador.com/entreteneamiento/arteygente/medios/articulo-383089-andiarios-rechaza-agresiones-policia-ha-propinado>; Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Page 47. Available at: <http://www.flip.org.co/resources/documents/informe-2012.pdf>

with peasant coffee-grower demonstrations in the departments of Huila and Tolima.<sup>1630</sup> Some journalists were attacked by private parties, including Juan Carlos Avella in Casanare,<sup>1631</sup> Guillermo de Castro in Campoalegre,<sup>1632</sup> and the news teams of *Noticias RCN* in Bogotá<sup>1633</sup> and *Q'hubo* in Cali.<sup>1634</sup>

935. In its observations on the Draft Report, the State reported that “It has publicly acknowledged and regrets the cases in which the assailants were members of the National Police.” It indicated, for example, that in the case of photographer Ana María García the police commander of the Metropolitan Police of Bogotá, General Luis Eduardo Martínez, publicly apologized to the journalist on behalf of the institution. According to the State, General Martínez reportedly stated on that occasion, “This act is not only an affront to all of the country’s women but it is also an affront to the Police as an institution (...) It is a discredit to the work of the National Police.”<sup>1635</sup>
936. The State also recalled that journalists are part of the institutional strategy for the Protection of Vulnerable Populations. Nevertheless, it indicated that “difficulties” arise in defending their rights, “because in some cases they fail to visibly identify themselves, they do not file complaints in time, or in their eagerness to document events they put their lives in extreme danger.”<sup>1636</sup>

### Threats against journalists

937. The IACHR has taken note of threats received by several journalists during 2012, allegedly in connection with their work, including Bladimir Sánchez Espitia,<sup>1637</sup> Edilberto Agudelo and

<sup>1630</sup> Federación Colombiana de Periodistas (FECOLPER). March 1, 2013. *Una semana en alerta naranja para el periodismo colombiano por agresiones durante el paro cafetero*. Available at: <http://www.fecolper.com.co/alertas/20843-una-semana-en-alerta-naranja-para-el-periodismo-colombiano-por-agresiones-durante-el-paro-cafetero>; Federación Colombiana de Periodistas (FECOLPER). 4 March 2013. *Encapuchados impiden a periodistas cubrimiento del paro cafetero en Fresno (Tolima)*. Available at: <http://www.fecolper.com.co/alertas/20844-encapuchados-impiden-a-journalists-cubrimiento-del-paro-cafetero-en-fresno-tolima>; IFEX/Reporters Without Borders. March 12, 2013. *Police Violence against Journalists during Colombian Coffee Worker Strike*. Available at: [http://www.ifex.org/colombia/2013/03/12/violencias\\_policias/](http://www.ifex.org/colombia/2013/03/12/violencias_policias/).

<sup>1631</sup> Municipal Government of Yopal. June 6, 2012. *Press Release, Mayor of Yopal*. Available at: <http://www.yopal-casanare.gov.co/noticias.shtml?apc=Cnx-1-&x=2604212>; Fundación para la Libertad de Prensa (FLIP). June 7, 2012. *Periodista es herido con arma blanca en Yopal, Casanare*. Available at: [http://www.flip.org.co/alert\\_display/0/2698.html](http://www.flip.org.co/alert_display/0/2698.html)

<sup>1632</sup> Campoalegre Noticias. August 12, 2012. *Agredido periodista en Campoalegre*. Available at: <http://www.campoalegrenoticias.com/agredido-periodista-en-campoalegre/>; Federación Colombiana de Periodistas (FECOLPER). August 15, 2012. *Periodistas del Huila víctimas de la delincuencia y la intolerancia*. Available at: <http://www.fecolper.com.co/alertas/20769-journalists-del-huila-victimas-de-la-delincuencia-y-la-intolerancia>

<sup>1633</sup> RCN Televisión. May 10, 2013. *Manifestantes agredieron a equipo de Noticias RCN en el sur de Bogotá*. Available at: [http://www.canalrcnmsn.com/noticias/manifestantes\\_agredieron\\_equipo\\_de\\_noticias\\_rcn\\_en\\_el\\_sur\\_de\\_bogot%C3%A11;Semana](http://www.canalrcnmsn.com/noticias/manifestantes_agredieron_equipo_de_noticias_rcn_en_el_sur_de_bogot%C3%A11;Semana). May 10, 2013. *La agresión a un equipo de 'Noticias RCN'*. Available at: <http://www.semana.com/nacion/articulo/la-agresion-equipo-noticias-rcn/342737-3>

<sup>1634</sup> Federación Colombiana de Periodistas (FECOLPER). May 10, 2013. *Agreden equipo periodístico en Bogotá y Cali. En los mismos hechos queman y atacan los vehículos de prensa*. Available at: <http://www.fecolper.com.co/alertas/20862-agreden-equipo-periodistico-en-bogota-y-cali-en-los-mismos-hechos-queman-y-atacan-los-vehiculos-de-prensa>; El País. *Hieren a periodista del diario Q'hubo en el barrio Mojica del oriente de Cali*. Available at: <http://www.elpais.com.co/elpais/judicial/noticias/hieren-periodista-diario-qhubo-barrio-mojica-oriente-cali>

<sup>1635</sup> Observations of the State of Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013.

<sup>1636</sup> Observations of the State of Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013.

<sup>1637</sup> Reporters Without Borders. February 28, 2012. *Documentary Video-Maker Flees Southwestern Region after Covering Police Violence*. Available at: <http://en.rsf.org/colombia-documentary-video-maker-flees-28-02-2012,41953.html>; Fundación para la Libertad de Prensa (FLIP). February 24, 2012. *Por amenazas sale del Huila el realizador de “El vídeo que el gobierno Colombiano no quiere que veamos”*. Available at: [http://flip.org.co/alert\\_display/0/2584.html](http://flip.org.co/alert_display/0/2584.html)

Dionisia Morales,<sup>1638</sup> Jesús Antonio Pareja,<sup>1639</sup> Carlos Lozano,<sup>1640</sup> William Solano and Arlex Velazco,<sup>1641</sup> Diro César González,<sup>1642</sup> Paul Bacares,<sup>1643</sup> Luis Fernando Montoya,<sup>1644</sup> Eduar Fábregas,<sup>1645</sup> and the journalists and employees of radio station *Guasca FM Stéreo* in Tuluá, department of Valle del Cauca.<sup>1646</sup> The Colombian State has furnished information to the IACHR on protective measures accorded to Carlos Lozano and Luis Fernando Montoya, and informed that had contacted journalist Dionisia Morales to offer her protection measures. The State also furnished information on the status of investigations into threats against Jesús Antonio Pareja, Paul Bacares, and Luis Fernando Montoya.<sup>1647</sup>

938. In 2013, the IACHR received information on threats made against journalists Jineth Bedoya,<sup>1648</sup> Jairo Contreras,<sup>1649</sup> Claudia Julieta Duque,<sup>1650</sup> Juan Manuel Escobar,<sup>1651</sup> Yesid Toro

<sup>1638</sup> Committee to Protect Journalists (CPJ). April 23, 2012. *Three Colombian journalists flee homes in recent months*. Available at: <http://www.cpj.org/2012/04/three-colombian-journalists-flee-their-homes-in-pa.php>; Reporters Without Borders. April 25, 2012. *Three Journalists Forced to Flee*. Available at: <http://en.rsf.org/colombia-three-journalists-forced-to-flee-25-04-2012,42369.html>; El Colombiano. May 9, 2012. *Periodista huye de “los Urabeños”*. Available at: [http://www.elcolombiano.com/BancoConocimiento/P/periodista\\_huye\\_de\\_los\\_urabenos/periodista\\_huye\\_de\\_los\\_urabenos.asp](http://www.elcolombiano.com/BancoConocimiento/P/periodista_huye_de_los_urabenos/periodista_huye_de_los_urabenos.asp)

<sup>1639</sup> Committee to Protect Journalists (CPJ). April 23, 2012. *Three Colombian Journalists Flee Homes in Recent Months*. Available at: <http://www.cpj.org/2012/04/three-colombian-journalists-flee-their-homes-in-pa.php>; Reporters Without Borders. April 25, 2012. *Three Journalists Forced to Flee*. Available at: <http://en.rsf.org/colombia-three-journalists-forced-to-flee-25-04-2012,42369.html>

<sup>1640</sup> Telesur. June 5, 2012. *Periodista colombiano denuncia plan para asesinarlo*. Available at: <http://www.Telesurtv.net/articulos/2012/06/05/periodista-colombiano-denuncia-plan-para-asesinarlo-7720.html>; Radio Santa Fe. June 5, 2012. *Carlos Lozano dice que altos mandos militares están atizando la guerra en Colombia*. Available at: <http://www.radiosantafe.com/2012/06/05/carlos-lozano-dice-que-altos-mandos-militares-estan-atizando-la-guerra-en-colombia/>

<sup>1641</sup> Fundación para la Libertad de Prensa (FLIP). July 26, 2012. *Nuevas amenazas contra periodistas en Buga, Valle del Cauca*. Available at: [http://www.flip.org.co/alert\\_display/0/2728.html](http://www.flip.org.co/alert_display/0/2728.html); Knight Center for Journalism in the Americas. July 31, 2012. *Colombia guerrilla group claims responsibility for kidnapping of journalist*. Available at: <http://knightcenter.utexas.edu/blog/00-10909-colombian-guerrilla-group-claims-responsibility-kidnapping-journalist>

<sup>1642</sup> Fundación para la Libertad de Prensa (FLIP). June 8, 2012. *Nueva amenaza contra Diro César González, director del diario La Tarde en Barrancabermeja*. Available at: [http://www.flip.org.co/alert\\_display/0/2699.html](http://www.flip.org.co/alert_display/0/2699.html)

<sup>1643</sup> Reporters Without Borders. July 16, 2012. *“Warning” for Bogotá TV Reporter Doing Story on Paramilitaries*. Available at: <http://en.rsf.org/colombia-warning-for-bogota-tv-reporter-16-07-2012,43034.html>; Etcétera. July 17, 2012. *Periodista colombiano recibe amenazas de posibles paramilitares*. Available at: <http://www.etcetera.com.mx/articulo.php?articulo=13852>

<sup>1644</sup> Federación Colombiana de Periodistas (FECOLPER). July 31, 2012. *Periodista Luis Fernando Montoya, director del periódico El Puente, recibe nuevas amenazas contra su vida*. Available at: <http://www.fecolper.com.co/alertas/20759-periodista-luis-fernando-montoya-director-del-periodico-el-puente-recibe-nuevas-threats-contra-su-vida>; Semana. August 2, 2012. *Amenaza a un periodista: “Le damos 20 días para que se vaya”*. Available at: <http://www.semana.com/nacion/amenaza-periodista-damos-20-dias-para-vaya/181981-3.aspx>

<sup>1645</sup> Caracol Radio. August 27 2012. *Amenazados dos periodistas en Soledad, Atlántico*. Available at: <http://www.Caracol.com.co/noticias/regional/amenazados-dos-journalists-en-soledad-atlantico/20120827/nota/1750746.aspx>; Federación Colombiana de Periodistas (FECOLPER). August 26, 2012. *Reiteran amenazas contra periodista Eduar Fábregas en Soledad (Atlántico). Recibe tres amenazas de muerte en menos de siete días*. Available at: <http://www.fecolper.com.co/alertas/20775-alerta-reiteran-threats-contra-periodista-eduar-fabregas-en-soledad-atlantico>;

<sup>1646</sup> Federación Colombiana de Periodistas (FECOLPER). November 26, 2012. *Amenazan a personal de la emisora Guasca F.M Stéreo en Tuluá (Valle)*. Available at: <http://www.fecolper.com.co/alertas/20821-amenazan-a-personal-de-la-emisora-guasca-fm-stereo-en-tuluva-valle>; Cartago Noticias. November 27, 2012. *Amenazan a personal de la emisora Guasca F.M Stéreo en Tuluá Valle*. Available at: <http://www.cartagonoticias.com/noticias.php/2012112710/inicio/regional/amenazan-a-personal-de-la-emisora-guasca-f-m-stereo-en-tuluva-valle/>

<sup>1647</sup> In Communication from the State of Colombia, Official Letter MPC/OEA No.: 256/2013, dated February 22, 2013, that refers Note DIDHD/GAPDH No. 0234/0208, dated February 22, 2013, “Comments of the State of Colombia Regarding Actions Undertaken to Ensure and Protect Freedom of Expression.” Párrs. 13 (i), (ii), (iv), (vi), y (vii).

<sup>1648</sup> Fundación para la Libertad de Prensa (FLIP). January 17, 2013. *Nuevas amenazas contra la periodista Jineth Bedoya*. Available at: [http://www.flip.org.co/alert\\_display/0/2890.html](http://www.flip.org.co/alert_display/0/2890.html); El Tiempo. January 17, 2013. *Denuncian nuevas amenazas*

Meléndez,<sup>1652</sup> Jeorgi Alexander Pabón Martínez and Alejandro Cabarcas in Barrancabermeja,<sup>1653</sup> a cameraman and the news team of channel *Teleantioquia* and the news teams of *Telemedellín*, *RCN TV*, and *Caracol TV* in Medellín.<sup>1654</sup> According to the information received, significant headway has been made in the criminal proceedings against the perpetrators in the cases of Jineth Bedoya and Claudia Julieta Duque.<sup>1655</sup> According to the information provided by the State, journalist Claudia Julieta Duque was accorded protective measures.<sup>1656</sup> In addition, death threats were made against eight journalists in the form of a message signed by the Anti-Land Restitution Group [*Grupo Anti-restitución de Tierras*], which was distributed May 6, 2013, in Valledupar, César.<sup>1657</sup> On May 13, the IACHR was informed about the alleged existence of a plot to kill independent journalist Gonzalo Guillén and political

*contra la periodista Jineth Bedoya*. Available at: [http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-12525586.html](http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-12525586.html)

1649 Federación Colombiana de Periodistas (FECOLPER). January 27, 2013. *ACPS rechaza amenazas contra jefe de circulación del periódico 'Al Día'*. Available at: <http://www.fecolper.com.co/alertas/20832-acps-rechaza-threats-contra-jefe-de-circulacion-del-periodico-al-dia>; Reporters Without Borders. February 1, 2013. *Wave of Threats against Journalists in Northwest*. Available at: <http://en.rsf.org/colombia-wave-of-threats-against-01-02-2013,44012.html>

1650 El Tiempo. April 12, 2013. *Claudia Julieta Duque denunció nuevos seguimientos*. Available at: [http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-12738800.html](http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-12738800.html); Email message sent by Claudia Julieta Duque to the Office of the Special Rapporteur. March 22, 2013. Re: New security incidents – journalist Claudia Julieta Duque [*Nuevos incidentes de seguridad - periodista Claudia Julieta Duque*]. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

1651 El Espectador. March 22, 2013. *Denuncian amenaza a periodista en Ibagué*. Available at: <http://www.elespectador.com/noticias/nacional/articulo-411896-denuncian-amenaza-periodista-ibague>; Federación Colombiana de Periodistas (FECOLPER). March 21, 2013. *Amenazan a corresponsal del Canal El Tiempo, en Ibagué- Tolima*. Available at: <http://www.fecolper.com.co/alertas/20852-amenazan-a-corresponsal-del-canal-el-tiempo-en-ibague-tolima>-Fundación para la Libertad de Prensa (FLIP). April 16, 2013. *Periodista caleño sale de la ciudad por threats*. Available at: [http://www.flip.org.co/alert\\_display/0/2981.html](http://www.flip.org.co/alert_display/0/2981.html); Q'Hubo. April 17, 2013. *Amenazan a Periodista de Q'Hubo*. Page 10. Available at: [http://issuu.com/qhubocartagena/docs/q\\_hubo\\_cartagena\\_17\\_de\\_Abril\\_de\\_2013](http://issuu.com/qhubocartagena/docs/q_hubo_cartagena_17_de_Abril_de_2013)

1653 Federación Colombiana de Periodistas (FECOLPER). February 21, 2013. *Amenazan a reportero gráfico y dos periodistas en Barrancabermeja durante cubrimiento de explosión*. Available at: <http://www.fecolper.com.co/alertas/20840-amenazan-a-reportero-grafico-en-barrancabermeja-durante-cubrimiento-de-explosion-en-la-ciudad>; Vanguardia. February 21, 2013. *Explosión de carrotaque generó pánico en barrio de Barrancabermeja*. Available at: <http://www.vanguardia.com/judicial/197132-explosion-de-carrotaque-en-barrio-panico-en-barrio-de-barrancabermeja>

1654 Federación Colombiana de Periodistas (FECOLPER). January 30, 2013. *APA rechaza intimidaciones de grupos ilegales a periodistas de Medellín y pide garantías a las autoridades locales*. Available at: <http://www.fecolper.com.co/alertas/20835-apa-rechaza-intimidaciones-de-grupos-ilegales-a-journalists-de-medellin-y-pide-garantias-a-las-autoridades-locales>; Caracol Radio. January 30, 2013. *Periodistas denuncian que han recibido amenazas de combos delincuenciales en Medellín*. Available at: <http://www.Caracol.com.co/noticias/regional/journalists-denuncian-que-han-recibido-threats-de-combos-delincuenciales-en-medellin/20130130/nota/1833384.aspx>

1655 See, e.g., Office of the General Public Prosecutor of the Nation. February 9, 2012. *Casos relevantes por delitos cometidos en contra de periodistas*. Available at: <http://www.fiscalia.gov.co/colombia/noticias/casos-relevantes-por-delitos-cometidos-en-contra-de-journalists/>; Office of the General Public Prosecutor of the Nation. March 12, 2013. *Asegurados funcionarios del Das por tortura*. Available at: <http://www.fiscalia.gov.co/colombia/noticias/asegurados-funcionarios-del-das-por-tortura-contra-periodista/>

1656 In Communication from the State of Colombia, Official Letter MPC/OEA No.: 256/2013, dated February 22, 2013, that refers Note DIDHD/GAPDH No. 0234/0208, dated February 22, 2013, “Comments of the State of Colombia Regarding Actions Undertaken to Ensure and Protect Freedom of Expression.”, para. 13(v).

1657 Fundación para la Libertad de Prensa (FLIP). May 7, 2013. Aparece panfleto contra ocho periodistas en Valledupar. Available at: [http://www.flip.org.co/alert\\_display/0/3002.html](http://www.flip.org.co/alert_display/0/3002.html); Federación Colombiana de Periodistas (FECOLPER). May 8, 2013. FECOLPER condena amenazas al periodismo y exige medidas de protección a comunicadores. Available at: <http://www.fecolper.com.co/alertas/20860-fecolper-condena-threats-al-periodismo-y-exige-medidas-de-proteccion-a-comunicadores>; El Tiempo. May 7, 2013. Policía dice que garantiza seguridad a periodistas amenazados en César. Available at: [http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-12784311.html](http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-12784311.html); Reporters Without Borders. May 10, 2013. *Death Threats against Eight Journalists Over Land Restitution*. Available at: <http://en.rsf.org/colombia-death-threats-against-eight-10-05-2013,44598.html>

analysts León Valencia and Ariel Ávila, in connection with their research on paramilitary groups and the armed conflict in Colombia.<sup>1658</sup>

## Conclusion

939. The Inter-American Commission reiterates its concern over the serious acts of violence committed in the Colombian State between January 2012 and May 2013 against journalists and media workers in connection with their professional activities. The Commission emphasizes that acts of violence against journalists and members of the media for reasons related to their work violates the right of these persons to express and share ideas, opinions, and information, and also infringes on the right of citizens and societies as a whole to seek and receive information and ideas of any nature.<sup>1659</sup> Furthermore, the failure to punish crimes such as these encourages the repetition of similar acts of violence and can have a strong chilling effect on the exercise of freedom of expression, causing journalists and media workers to resort to self-censorship as the only means of protecting themselves.<sup>1660</sup> As the Inter-American Court has underscored, “journalism may only be exercised freely when those who carry out this work are not victims of threats, attacks, or other acts of harassment.”<sup>1661</sup> These actions not only constitute a particularly grave violation of the individual dimension of the right to freedom of expression, but also the collective dimension of this right.<sup>1662</sup> In this regard, the IACHR observes that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR, approved in 2000, establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

<sup>1658</sup> RCN La Radio. May 14, 2013. *Estructuras mafiosas no van a amedrentar al periodismo y sus líderes: Gobierno.* Available at: <http://www.rcnradio.com/noticias/revelan-plan-para-asesinar-dos-reconocidos-analistas-y-un-periodista-65920>; Fundación para la Libertad de Prensa (FLIP). May 16, 2013. *Plan para atentar contra el periodista Gonzalo Guillen y los investigadores León Valencia y Ariel Ávila.* Available at: [http://www.flip.org.co/alert\\_display/0/3008.html](http://www.flip.org.co/alert_display/0/3008.html); Reuters. May 14, 2013. *Colombia descubre plan para asesinar un periodista y dos investigadores.* Available at: <http://la.reuters.com/article/domesticNews/idLTASIE94D05820130514?pageNumber=1&virtualBrandChannel=0>

<sup>1659</sup> I/A Court H.R. *Case of Vélez Restrepo and family v. Colombia. Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 3, 2012. Series C No. 248. Paras. 142-149; IACHR. Office of the Special Rapporteur for Freedom of Expression. *Special Study on the Status of Investigations into the Murder of Journalists for Reasons that may be Related to their Work in Journalism. Period 1995-2005.* OAS/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 67. Available at: <http://www.cidh.org/relatoria/section/Asesinato de Periodistas INGLES.pdf>

<sup>1660</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. *Special Study on the Status of Investigations into the Murder of Journalists for Reasons that may be Related to their Work in Journalism. Period 1995-2005.* OAS/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 70. Available at: <http://www.cidh.org/relatoria/section/Asesinato de Periodistas INGLES.pdf>

<sup>1661</sup> I/A Court H.R. *Case of Vélez Restrepo and family v. Colombia. Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 3, 2012. Series C No. 248. Para. 209.

<sup>1662</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. *Special Study on the Status of Investigations into the Murder of Journalists for Reasons that may be Related to their Work in Journalism. Period 1995-2005.* OAS/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 67. Available at: <http://www.cidh.org/relatoria/section/Asesinato de Periodistas INGLES.pdf>

## 2. Investigations of crimes against journalists and media workers for exercising the right to freedom of expression

940. For more than a decade now, the IACHR and its Office of the Special Rapporteur for Freedom of Expression have closely monitored the status of investigations and criminal proceedings associated with crimes committed against journalists and media workers in Colombia for exercising their right to freedom of expression.<sup>1663</sup> Over these years, the Commission has noted with concern the persistent obstacles involved to uncovering evidence in the majority of cases involving murders, assaults, and threats committed against journalists, in order to advance the criminal proceedings initiated for such crimes.<sup>1664</sup> In general terms, the Commission has warned that levels of impunity are especially high in Colombia, particularly in the context of crimes committed against journalists in areas dominated by armed groups.<sup>1665</sup>

941. Because journalists constitute a group that is particularly affected by Colombia's internal armed conflict, in its 2005 report, *Impunity, Self-censorship and Armed Internal Conflict in Colombia: An Analysis of the State of Freedom of Expression in Colombia*, the Office of the Special Rapporteur for Freedom of Expression of the IACHR recommended that the State make the fight against the impunity surrounding crimes against journalists a priority element of its policy on truth, justice, and reparation,<sup>1666</sup>

<sup>1663</sup> See, *inter alia*, IACHR. *Annual Report 2012*. OAS/Ser.L/V/II.147. Doc. 1. March 5, 2013. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 119-148. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%2010%20ENG.pdf>; IACHR. *Annual Report 2011*. OEA/Ser.L/V/II. Doc. 69. December 30, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 101-118. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011p%20irnting.pdf>; IACHR. *Annual Report 2010*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 119-134. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%2002%20ENG.pdf>; IACHR. *Annual Report 2009*. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 105-134. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%20Anual%202009%202%20ENG.pdf>; and IACHR. Office of the Special Rapporteur for Freedom of Expression. *Special Study on the Status of Investigations into the Murder of Journalists for Reasons that may be Related to their Work in Journalism. Period 1995-2005*. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Available at: [http://www.cidh.org/relatoria/section/Asesinato de Periodistas INGLES.pdf](http://www.cidh.org/relatoria/section/Asesinato%20de%20Periodistas%20INGLES.pdf); IACHR. Office of the Special Rapporteur for Freedom of Expression. *Impunity, Self-censorship and Armed Internal Conflict in Colombia: An Analysis of the State of Freedom of Expression in Colombia*. OEA/Ser.L/V/II Doc. 51. 25 de agosto de 2005. Paras. 56-87. Available at: <http://cidh.org/relatoria/ShowDocument.asp?DocumentID=153>

<sup>1664</sup> IACHR. *Annual Report 2009*. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 119. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%20Anual%202009%202%20ENG.pdf>; and IACHR. Office of the Special Rapporteur for Freedom of Expression. *Impunity, Self-censorship and Armed Internal Conflict in Colombia: An Analysis of the State of Freedom of Expression in Colombia*. OEA/Ser.L/V/II Doc. 51. 25 de agosto de 2005. Paras. 84-87. Available at: <http://cidh.org/relatoria/ShowDocument.asp?DocumentID=153>

<sup>1665</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. *Impunity, Self-censorship and Armed Internal Conflict in Colombia: An Analysis of the State of Freedom of Expression in Colombia*. OEA/Ser.L/V/II Doc. 51. 25 de agosto de 2005. Paras. 65 and 66. Available at: <http://cidh.org/relatoria/ShowDocument.asp?DocumentID=153>

<sup>1666</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. *Impunity, Self-censorship and Armed Internal Conflict in Colombia: An Analysis of the State of Freedom of Expression in Colombia*. OEA/Ser.L/V/II Doc. 51. 25 de agosto de 2005. Recommendation 2. Available at: <http://cidh.org/relatoria/ShowDocument.asp?DocumentID=153>



with a view to discouraging the repetition of similar acts of violence and the chilling effect of these crimes on the exercise of freedom of expression.<sup>1667</sup>

942. In this context, the IACHR notes that significant progress was made over the past years in a number of criminal proceedings involving murders of and attacks against journalists. In this regard, the IACHR received information that in February 2012 the Specialized Criminal Court, Santa Marta Circuit [*Juzgado Penal del Circuito Especializado de Santa Marta*] sentenced paramilitary group member Edgar Ariel Córdoba Trujillo to term of imprisonment of 24 years and two months for the December 23, 2001 murder of journalist Álvaro Alonso Escobar in Fundación, department of Magdalena. According to the information received, Córdoba Trujillo pleaded guilty for the crimes of the murder of a protected person and conspiracy as co-perpetrator. The journalist was the director of news weekly *Región* and an outspoken critic of government officials and politicians with ties to armed groups.<sup>1668</sup>
943. On June 4, 2012, the Seventh Specialized Criminal Court, Bogotá Circuit [*Juzgado 7º penal del Circuito Especializado de Bogotá*], began the trial of the alleged mastermind behind the killing of journalist and intellectual Jaime Garzón. Garzón was murdered in Bogotá on August 13, 1999.<sup>1669</sup> The Commission also received information on the August 2, 2012 pre-trial detention of the former mayor of Magangué, located in the department of Bolívar, for his alleged involvement as one of the perpetrators in the murder of politician and journalist Rafael Enrique Prins, on February, 19, 2005. Prins was the director of the Magangué-based daily, *Apocalipsis*.<sup>1670</sup>
944. The IACHR also received information on the status of the criminal trial in the 2000 kidnapping, torture, and sexual abuse of Jineth Bedoya, which occurred while she was reporting on arms trafficking in Bogotá's Modelo prison. On February 9, 2012, the Office of the General Public Prosecutor of the Nation announced that three additional paramilitary group members would be tried in the same proceeding, owing to the fact that one of them confessed his involvement in September 2011.<sup>1671</sup> Moreover, according to official sources, in September 2012 the Office

<sup>1667</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. *Special Study on the Status of Investigations into the Murder of Journalists for Reasons that may be Related to their Work in Journalism. Period 1995-2005*. OEA/Ser.L/V/II Doc. 51. 25 de agosto de 2005. Para. 9. Available at: <http://cidh.org/relatoria/ShowDocument.asp?DocumentID=153>

<sup>1668</sup> Office of the General Public Prosecutor of the Nation. February 6, 2012. *Condena por homicidio de periodista*. Available at: <http://fgn.fiscalia.gov.co/colombia/noticias/condena-por-homicidio-de-periodista/>; Fundación para la Libertad de Prensa (FLIP). February 7, 2012. *Condenan a ex integrante de autodefensas por crimen de periodista en Magdalena*. Available at: [http://flip.org.co/alert\\_display/0/2546.html](http://flip.org.co/alert_display/0/2546.html); Proyecto Impunidad. February 8, 2012. *Condenan a paramilitar por el homicidio del periodista Álvaro Alonso Escobar*. Available at: <http://impunidad.com/noticia.php?id=814&idioma=sp>; Committee to Protect Journalists (CPJ). December 23, 2001. *Álvaro Alonso Escobar*. Available at: <http://cpj.org/killed/2001/alvaro-alonso-escobar.php>

<sup>1669</sup> Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Page 61. Available at: <http://www.flip.org.co/resources/documents/informe-2012.pdf>; Fundación para la Libertad de Prensa (FLIP). August 13, 2012. *Trece años sin Jaime Garzón*. Available at: [http://www.flip.org.co/alert\\_display/0/2741.html](http://www.flip.org.co/alert_display/0/2741.html)

<sup>1670</sup> Office of the General Public Prosecutor of the Nation. August 9, 2012. *Excalcalde de Magangué asegurado por homicidio de periodista*. Available at: <http://www.fiscalia.gov.co/colombia/noticias/excalcalde-de-magangué-asegurado-por-homicidio-de-periodista/>; Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Page 61. Available at: <http://www.flip.org.co/resources/documents/informe-2012.pdf>.

<sup>1671</sup> Office of the General Public Prosecutor of the Nation. February 9, 2012. *Casos relevantes por delitos cometidos en contra de periodistas*. Available at: <http://www.fiscalia.gov.co/colombia/noticias/casos-relevantes-por-delitos-cometidos-en-contra-de-journalists/>; El Espectador. February 10, 2012. *La mano oculta del bloque Capital*. Available at: <http://www.elespectador.com/impreso/judicial/articulo-325988-mano-oculta-del-bloque-capital>; El Universal. February 10,

of the General Public Prosecutor ordered the pre-trial detention without bail of the aforementioned paramilitary group members.<sup>1672</sup>

945. On March 12, 2013, a prosecutor with Colombia's National Human Rights and International Humanitarian Law Unit [*Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario*] issued security measures against three former officials of the Administrative Security Department (DAS) for their roles in the aggravated torture of journalist Claudia Julieta Duque. For the first time, the Office of the General Public Prosecutor of the Nation resorted to the use of international protocols to classify the crime of "aggravated psychological torture." In 2003 and 2004, Duque lodged complaints against former officials of the then Administrative Security Department (abolished in 2011), claiming she was being persecuted and threatened for her work in journalism. The Office of the General Public Prosecutor of the Nation determined that Duque had indeed been the victim of ongoing harassment by DAS officials in connection with her investigative journalism work on the murder of Colombian journalist Jaime Garzón, through which she had uncovered evidence linking agents of the State with that murder.<sup>1673</sup> As reported previously by this office, Claudia Julieta Duque had been systematically attacked, harassed, threatened, and intimidated in connection with her work as an investigative journalist.<sup>1674</sup> Following the decision issued by the Office of the General Public Prosecutor of the Nation, Duque filed additional complaints alleging that she was still being subjected to intimidation and suspicious behavior of strangers in the vicinity of her home and around her family.<sup>1675</sup>

2012. *Exparamilitar confiesa en caso de agresión a periodista colombiana*. Available at: <http://www.eluniversal.com.co/cartagena/nacional/exparamilitar-confiesa-en-caso-de-agresion-periodista-colombiana-64219>. Also see, IACHR. *Annual Report 2000*. OAS/Ser.L/V/II.111 Doc. 20 Rev. April 16, 2001. Chapter III (Precautionary Measures). Available at: <http://www.cidh.org/annualrep/2000eng/TOC.htm>

<sup>1672</sup> Office of the General Public Prosecutor of the Nation. September 13, 2012. *Fiscalía asegura a presuntos coautores de secuestro, tortura y violación de periodista*. Available at: <http://www.fiscalia.gov.co/colombia/noticias/fiscalia-asegura-a-presuntos-coautores-de-secuestro-tortura-y-violacion-de-periodista/>

<sup>1673</sup> Office of the General Public Prosecutor of the Nation. March 12, 2013. *Asegurados funcionarios del Das por tortura contra periodistas*. Available at: <http://www.fiscalia.gov.co/colombia/noticias/asegurados-funcionarios-del-das-por-tortura-contra-periodista/>; El Tiempo. March 12, 2013. *Exfuncionarios del Das, asegurados por tortura psicológica a periodista*. Available at: [http://www.eltiempo.com/justicia/fiscalia-asegura-a-siete-ex-das-por-tortura-sicologica-a-periodista-\\_12675202-4](http://www.eltiempo.com/justicia/fiscalia-asegura-a-siete-ex-das-por-tortura-sicologica-a-periodista-_12675202-4); Caracol Radio. March 12, 2013. *Medida de aseguramiento contra exfuncionarios del Das por tortura psicológica a periodista*. Available at: <http://www.Caracol.com.co/noticias/judicial/medida-de-aseguramiento-contra-exfuncionarios-del-das-por-tortura-psicologica-a-periodista/20130312/nota/1857481.aspx>; Knight Center for Journalism in the Americas. March 14, 2013. *Former Colombian Intelligence Officers go to Prison for "Psychological Torture" of Journalist*. Available at: <https://knightcenter.utexas.edu/blog/00-13329-former-colombian-intelligence-officers-go-prison-%E2%80%9Cpsychological-torture%E2%80%9D-journalist>; El Espectador. March 12, 2013. *'Lo de Claudia Julieta Duque fue tortura síquica': Fiscalía*. Available at: <http://www.elespectador.com/noticias/judicial/articulo-409780-de-claudia-julieta-duque-fue-tortura-siquica-fiscalia>

<sup>1674</sup> IACHR. *Annual Report 2012*. OAS/Ser.L/V/II.147. Doc. 1. March 5, 2013. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 134. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%2010%20P%20ENG.pdf>; IACHR. *Annual Report 2011*. OEA/Ser.L/V/II. Doc. 69. December 30, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 116-118. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011p%20irnting.pdf>; IACHR. *Annual Report 2010*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 149, 152, 162 and 164. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>; IACHR. *Annual Report 2009*. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 139 and 144. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%20Anual%202009%20%20ENG.pdf>

<sup>1675</sup> El Tiempo. April 12, 2013. *Periodista Claudia Julieta Duque denunció nuevos seguimientos*. Available at: [http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-12738800.html](http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-12738800.html); Email message sent by Claudia Julieta Duque to the Office of the Special Rapporteur. March 22, 2013. Re: New security incidents – journalist Claudia Julieta

946. The IACHR acknowledges a series of efforts undertaken—especially by the Office of the General Public Prosecutor of the Nation—to move forward with those investigations and legal proceedings for crimes against freedom of expression that are already in progress. In particular, the Commission noted that pursuant to the provisions of Directive No. 0001 of October 4, 2012, the Office of the General Public Prosecutor of the Nation launched a new system for assigning priority to criminal investigations and managing cases.<sup>1676</sup> The system can take into account, among other criteria, the particular status of the victim as a journalist, with a view to expediting priority in processing.<sup>1677</sup> This measure takes its place alongside the State’s previous decision to strengthen the department of crimes against journalists of the National Human Rights and International Humanitarian Law Unit [*Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario*]. According to the information received, the main objective of this decision is to speed up investigations into threats received by members of the media in Colombia.<sup>1678</sup> The IACHR looks favorably on the creation of specific and specialized investigative units tasked with expediting investigations into crimes against freedom of expression, when, as in the case of Colombia, the gravity of the situation so requires. Specifically, it views measures such as these essential to ensuring that investigations into crimes against journalists are concluded within a reasonable time frame, pursuant to relevant inter-American standards.

947. Notwithstanding the foregoing, the Commission has received information to the effect that obstacles remain to addressing the widespread situation of impunity in Colombia regarding these crimes in a comprehensive manner, including excessive delays in court proceedings, scant or no progress in the preliminary phase of investigations, and a low number of convictions. According to non-official sources, some 140 journalists have been murdered in Colombia since 1977 for reasons related to their professional activity. With regard to these crimes, the Office of the General Public Prosecutor of the Nation has only 91 open criminal cases,<sup>1679</sup> 53 of which are in the preliminary investigation stage and 35 are inactive. With regard to the remaining 49 cases, no information is available on the status of the

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Duque [*Nuevos incidentes de seguridad - periodista Claudia Julieta Duque*]. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>1676</sup> Office of the General Public Prosecutor of the Nation. Directive No. 0001. October 4, 2012. Available at: <http://www.fiscalia.gov.co/colombia/wp-content/uploads/2013/02/Directiva001.pdf>; Office of the General Public Prosecutor of the Nation. Resolution No. 01811. October 4, 2012. Available at: <http://www.fiscalia.gov.co/colombia/wp-content/uploads/2013/02/0-1811-12.pdf>

<sup>1677</sup> Office of the General Public Prosecutor of the Nation. March 15, 2013. *Priorización: Un nuevo sistema de investigación penal*. Available at: <http://www.fiscalia.gov.co/colombia/priorizacion/priorizacion-nuevo-sistema-de-investigacion-penal/>; Office of the General Public Prosecutor of the Nation. Undated. *Criterios de priorización*. Available at: <http://www.fiscalia.gov.co/colombia/priorizacion/criterios-de-priorizacion/>

<sup>1678</sup> Office of the General Public Prosecutor of the Nation. February 9, 2011. *La Fiscal General anuncia fortalecimiento investigativo por amenazas a periodistas*. Available at: <http://www.fiscalia.gov.co/colombia/noticias/la-fiscal-general-anuncia-fortalecimiento-investigativo-por-amenazas-a-periodistas/>; Colprensa/Europapress. February 10, 2011. *La Fiscalía colombiana agilizará las investigaciones sobre amenazas contra periodistas*. Available at: <http://www.europapress.es/latam/colombia/noticia-colombia-fiscalia-colombiana-agilizará-investigaciones-amenazas-contra-periodistas-20110210171045.html>

<sup>1679</sup> Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Pages 58-59. Available at: <http://www.flip.org.co/resources/documents/informe-2012.pdf>

investigation.<sup>1680</sup> According to information furnished by the State, as of January 2012, the total number of convictions for crimes against journalists stood at 18.<sup>1681</sup>

948. The Office of the Special Rapporteur was informed that on February 12, 2013, an oral trial was concluded before the Single Specialized Criminal Court of the Circuit of Pereira against four persons, among them, Ferney Tapasco González as the mastermind of the murder of the assistant director of the daily newspaper *La Patria*, José Orlando Sierra, which took place in 2002, in Manizales<sup>1682</sup>. The oral trial began on September 17, 2012<sup>1683</sup>. According to available information, in final arguments, the Public Prosecutor requested a “conviction” against the defendants and “that copies be forwarded” to the office of the Attorney General to enable it to continue investigating the participation of other persons also identified by witnesses at the trial as co-perpetrators in the murder of journalist Sierra<sup>1684</sup>. At the closing of this report no mastermind has been condemned.<sup>1685</sup>
949. One of the most alarming consequences of the inaction and protracted delays associated with the investigations of many cases in Colombia is the expiration of the statute of limitations on criminal proceedings.<sup>1686</sup> According to information received by the IACHR, last year the statute

<sup>1680</sup> Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Pages 58-59. Available at: <http://www.flip.org.co/resources/documents/informe-2012.pdf>

<sup>1681</sup> In Communication from the State of Colombia, Official Letter MPC/OEA No.: 256/2013, dated February 22, 2013, that refers Note DIDHD/GAPDH No. 0234/0208, dated February 22, 2013, “Comments of the State of Colombia Regarding Actions Undertaken to Ensure and Protect Freedom of Expression.”, paras. 10-11.

<sup>1682</sup> Diario la Patria. 11 de febrero de 2013. *Defensores de Tapasco y de tres acusados concluyen sus alegatos*; Diario la Patria. 8 de febrero de 2013. *Procuraduría pide condena por crimen de Orlando Sierra*; El Espectador. 8 de febrero de 2013. *Piden condena contra procesados por asesinato de Orlando Sierra*; Diario La Patria. 13 de febrero de 2013. “*Van 11 años de una injusticia con Tapasco*”: la defensa.

<sup>1683</sup> Office of the Attorney General. 18 de septiembre de 2012. *Avanza juicio por homicidio del periodista Orlando Sierra*; Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes: Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Pág. 61.

<sup>1684</sup> Diario la Patria. 11 de febrero de 2013. *Defensores de Tapasco y de tres acusados concluyen sus alegatos*; Diario la Patria. 8 de febrero de 2013. *Procuraduría pide condena por crimen de Orlando Sierra*; El Espectador. 8 de febrero de 2013. *Piden condena contra procesados por asesinato de Orlando Sierra*.

<sup>1685</sup> After the completion of this report, the Special Rapporteur received information indicating that on December 24, 2013 the Single Specialized Criminal Court of Pereira acquitted Ferney Tapasco and the other three people who were being investigated for the murder of Jose Orlando Sierra. Fundación para la Libertad de Prensa (FLIP). December 214, 2013. *Juez de Pereira absuelve a Ferney Tapasco por el asesinato del periodista Orlando Sierra* [Available in Spanish]; La Patria. December 25, 2013. *¿Ganará la impunidad?* [Available in Spanish]; Semana. December 24, 2013. *Ferney Tapasco inocente por homicidio de Orlando Sierra*; El Tiempo. 24 de diciembre de 2013. *Juez absuelve a Ferney Tapasco por crimen de Orlando Sierra* [Available in Spanish].

<sup>1686</sup> In 2011, the statute of limitations expired for the murders of at least seven journalists: Arsenio Hoyos, murdered in Granada, Meta on September 13, 1991; Carlos Julio Rodríguez and José Libardo Méndez, murdered in Florencia, Caquetá on May 20, 1991; and Julio Daniel Chaparro and Jorge Enrique Torres, murdered in Segovia, Antioquia on April 24, 1991, Rafael Solano Rochero, who died in Fundación, Magdalena on October 30, 1991; and Néstor Henry Rojas Monje, who died in Arauca on December 28, 1991. IACHR. *Annual Report 2011*. OEA/Ser.LV/II. Doc. 69. December 30, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 101. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirtning.pdf>; Fundación para la Libertad de Prensa (FLIP). September 14, 2011. *Prescribe caso del periodista Arsenio Hoyos, asesinado hace 20 años en Granada, Meta*. Available at: [http://flip.org.co/alert\\_display/0/2378.html](http://flip.org.co/alert_display/0/2378.html); Fundación para la Libertad de Prensa (FLIP). May 21, 2011. *Homicidios de los periodistas Carlos Julio Rodríguez y José Libardo Méndez prescriben a pesar de los llamados a la Fiscalía*. Available at: [http://flip.org.co/alert\\_display/0/2086.html](http://flip.org.co/alert_display/0/2086.html); Fundación para la Libertad de Prensa (FLIP). April 25, 2011. *Homicidios de los periodistas Chaparro y Torres prescriben a pesar de los llamados de sociedad civil a la Fiscalía*. Available at: [http://flip.org.co/alert\\_display/0/2054.html](http://flip.org.co/alert_display/0/2054.html); El Planeta. April 25, 2011. *Prescripción de asesinatos de periodistas causa indignación*. Available at: <http://elplaneta.co/article/prescripcion-de-asesinatos-de-periodistas-causa-indignacion>; Terra Noticias. April 18, 2011. *La SIP preocupada por prescripción de delitos contra periodistas en Colombia*. Available at: <http://noticias.terra.com.co/nacional/la-sip-preocupada-por>

of limitations ran out in the murder cases of journalists John Félix Tirado Castañeda, murdered on August 5, 1992, in the city of Cartago, department of Valle; José Domingo Cortés Soto, murdered in the city of Valencia on November 15, 1992; Gerardo Didier Gómez, murdered on February 11, 1993, near Cali; and Carlos Lajud Catalán, murdered on April 19, 1993, in Barranquilla.<sup>1687</sup> The statute of limitations is set to run out during the second half of 2013 in the cases of the murder of journalists Nelson de la Rosa Toscazo, Manuel José Martínez Espinosa, and Danilo Alfonso Baquero.<sup>1688</sup>

950. The Inter-American Court has established that the authorities responsible for the investigation should conduct their activities in an expedited manner, avoiding unjustified delays or hindrances in the proceedings, which can lead to impunity and infringe on due judicial protections under the law.<sup>1689</sup> Accordingly, the IACHR has indicated that “as a general rule, a criminal investigation must be carried out promptly to protect the interest of the victims, preserve evidence, and even to safeguard the rights of any person that is considered a suspect in the investigation.”<sup>1690</sup>
951. The IACHR and its Office of the Special Rapporteur for Freedom of Expression have reiterated that the impunity surrounding these types of crimes promotes self-censorship and therefore weakens democratic debate.<sup>1691</sup> In this regard, the Inter-American Court, in its judgment handed down in the case of *Vélez Restrepo vs. Colombia*, affirmed that impunity in these types of cases can cause “[reasonable] fear that this type of human rights violation might be repeated, and this could lead to self-censorship of their work; for example, as regards the type of news covered, the way the information is obtained, and the decision to disseminate it.”<sup>1692</sup>
952. Consequently, the IACHR has viewed favorably the Colombian Congress’ approval of Law No. 1426, signed by President Juan Manuel Santos on December 29, 2010, which increases from 20 years to 30 years the statute of limitations on the murder of journalists, human rights

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prescripcion-de-delitos-contra-periodistas-en-colombia,2a5920e92aa6f210VgnVCM3000009af154d0RCRD.html; El Tiempo. April 17, 2011. *A punto de prescribir proceso por asesinato de Daniel Chaparro*. Available at: [http://www.eltiempo.com/justicia/impunidad-en-asesinato-de-periodistas-daniel-chaparro-y-jorge-torres\\_9184276-4](http://www.eltiempo.com/justicia/impunidad-en-asesinato-de-periodistas-daniel-chaparro-y-jorge-torres_9184276-4)

<sup>1687</sup> Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Pages 58-59. Available at: <http://www.flip.org.co/resources/documents/informe-2012.pdf>; Fundación para la Libertad de Prensa (FLIP). April 19, 2013. *Asamblea de la FLIP exige respuesta de la Fiscalía frente a la prescripción de casos de asesinatos a periodistas*. Available at: [http://www.flip.org.co/alert\\_display/0/2986.html](http://www.flip.org.co/alert_display/0/2986.html); Fundación para la Libertad de Prensa (FLIP). *Seguimiento a investigación y prescripción*. Available at: <http://www.flip.org.co/prescripcion.html>

<sup>1688</sup> Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Pages 60 and 61. Available at: <http://www.flip.org.co/resources/documents/informe-2012.pdf>; Fundación para la Libertad de Prensa (FLIP). April 13, 2013. *Asamblea de la FLIP exige respuesta de la Fiscalía frente a la prescripción de casos de asesinatos a periodistas*. Available at: [http://www.flip.org.co/alert\\_display/0/2986.html](http://www.flip.org.co/alert_display/0/2986.html),

<sup>1689</sup> I/A Court H.R. *Case of Gómez Palomino v. Peru. Merits, Reparations, and Costs*. Judgment of November 22, 2005. Series C No. 136. Para. 85.

<sup>1690</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. *Special Study on the Status of Investigations into the Murder of Journalists for Reasons that may be Related to their Work in Journalism. Period 1995-2005*. OAS/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 60. Available at: [http://www.cidh.org/relatoria/section/Asesinato de Periodistas INGLES.pdf](http://www.cidh.org/relatoria/section/Asesinato%20de%20Periodistas%20INGLES.pdf)

<sup>1691</sup> See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework regarding the Right to Freedom of Expression*. OAS/Ser.L/V/II IACHR/RELE/INF. 2/09. December 30, 2009. Para. 179. Available at: [http://www.oas.org/en/iachr/expression/docs/publications/INTER-AMERICAN LEGAL FRAMEWORK OF THE RIGHT TO FREEDOM OF EXPRESSION FINAL PORTADA.pdf](http://www.oas.org/en/iachr/expression/docs/publications/INTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf); IACHR. *Annual Report 2010*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Office of the Special Rapporteur for Freedom of Expression. Chapter II: *2010 Special Report on Freedom of Expression in Mexico*. Para 717. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>

<sup>1692</sup> I/A Court H.R. *Case of Vélez Restrepo and family v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 212. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_248\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_248_ing.pdf).

defenders, and union members.<sup>1693</sup> This reform, however, does not have retroactive effect, and applies only to crimes committed subsequent to its entry into force.

953. In this same vein, this Commission welcomes the decision of the Office of the General Public Prosecutor of the Nation to classify cases involving the murder or physical assault of journalists as crimes against humanity, inasmuch as such crimes constitute a systematic and generalized attack against the civilian population by armed groups in the context of the conflict. According to information received by the IACHR, the murders of journalists Orlando Sierra,<sup>1694</sup> Guillermo Cano,<sup>1695</sup> and Eustorgio Colmenares,<sup>1696</sup> as well as the kidnapping and sexual violence against journalist Jineth Bedoya<sup>1697</sup> have been classified as crimes against humanity by the Office of the General Public Prosecutor of the Nation.
954. In this context, it is fitting to recall the language of the Joint Declaration on Crimes against Freedom of Expression adopted by the United Nations (UN) Special Rapporteur on the Right to Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur for Freedom of Expression, and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression, which states that "crimes against freedom of expression, and the crime of obstructing justice in relation to those crimes, should be subject to either unlimited or extended statutes of limitations (i.e., the time beyond which prosecutions are barred)."<sup>1698</sup>

<sup>1693</sup> Congress of the Republic of Colombia. December 29, 2010. Law No. 1426/2010. Available at: [http://www.secretariasenado.gov.co/senado/basedoc/ley/2010/ley\\_1426\\_2010.html](http://www.secretariasenado.gov.co/senado/basedoc/ley/2010/ley_1426_2010.html); Inter-American Press Association (IAPA)/IFEX. January 18, 2011. IAPA welcomes legal reform facilitating battle against impunity. Available at: [http://www.ifex.org/colombia/2011/01/20/statute\\_limitations/](http://www.ifex.org/colombia/2011/01/20/statute_limitations/)

<sup>1694</sup> Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes: Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Pages. 14, 60-61. Disponible en: <http://www.flip.org.co/resources/documents/informe-2012.pdf>; El Espectador. February 6, 2013. *Con procesos judiciales se censura la prensa en Colombia*. Disponible en: <http://m.elespectador.com/noticias/politica/articulo-403377-procesos-judiciales-se-censura-prensa-colombia>

<sup>1695</sup> Fundación para la Libertad de Prensa (FLIP). March 2010. *El olvido de la justicia: Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Page 15. Available at: <http://www.flip.org.co/resources/documents/a3ccce4e7ba43eca7e348fca342a7b5.pdf>; Semana. July 6, 2010. *El crimen de Guillermo Cano es de lesa humanidad*. Available at: <http://www.semana.com/nacion/articulo/el-crimen-guillermo-cano-lesa-humanidad/118949-3>; Knight Center for Journalism in the Americas. Undated. *Colombia declara asesinato del periodista Guillermo Cano como crimen lesa humanidad*. Available at: <http://knightcenter.utexas.edu:8080/es/blog/colombia-declara-asesinato-del-periodista-guillermo-cano-como-crimen-de-lesa-humanidad>

<sup>1696</sup> El Tiempo. March 11, 2013. *Crimen de periodista Eustorgio Colmenares, delito de lesa humanidad*. Available at: [http://www.eltiempo.com/justicia/crimen-de-eusorgio-colmenares-sera-delito-de-lesa-humanidad\\_12674488-4](http://www.eltiempo.com/justicia/crimen-de-eusorgio-colmenares-sera-delito-de-lesa-humanidad_12674488-4); Knight Center for Journalism in the Americas. March 12, 2013. *Fiscalía de Colombia declara asesinato de periodista como delito de lesa humanidad*. Available at: <https://knightcenter.utexas.edu/es/blog/00-13237-fiscalia-de-colombia-declara-asesinato-de-periodista-como-delito-de-lesa-humanidad>; Terra/ Agencia EFE. March 11, 2013. *Fiscalía colombiana dice asesinato periodista es crimen de lesa humanidad*. Available at: <http://noticias.terra.com.pe/internacional/fiscalia-colombiana-dice-asesinato-periodista-es-crimen-de-lesa-humanidad,7900e22722a5d310VgnCLD200000dc6eb0aRCRD.html>

<sup>1697</sup> Office of the General Public Prosecutor of the Nation. September 20, 2012. *Declaración del Fiscal General de la Nación, Eduardo Montealegre Lynett, sobre el caso de la periodista Jineth Bedoya Lima. Neiva (Huila), 20 de septiembre de 2012*. Available at: <http://www.fiscalia.gov.co/colombia/seccionales/declaracion-del-fiscal-general-de-la-nacion-eduardo-montealegre-lynett-sobre-el-caso-de-la-periodista-jineth-bedoya-lima-neiva-huila-20-de-septiembre-de-2012/>; IFEX/ Fundación para la Libertad de Prensa (FLIP). September 13, 2012. *Caso de periodista colombiana secuestrada declarado crimen de lesa humanidad*. Available at: [http://www.ifex.org/colombia/2012/09/14/bedoya\\_crimen\\_de\\_lesa\\_humanidad/es/](http://www.ifex.org/colombia/2012/09/14/bedoya_crimen_de_lesa_humanidad/es/); El Espectador. September 13, 2012. *Justicia en caso Jineth Bedoya*. Available at: <http://www.elespectador.com/impreso/judicial/articulo-374734-justicia-caso-jineth-bedoya>

<sup>1698</sup> The United Nations (UN) Special Rapporteur on the Right to Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur for Freedom of Expression, and the African Commission on Human and Peoples' Rights (ACHPR)

955. Lastly, the IACHR has taken note of concerns raised by civil society groups over the negotiations between the Colombian State and the FARC concerning the right to truth, justice, and reparations of journalists who were victims of grave acts of violence in the context of the conflict. The IACHR has likewise taken particular note of efforts to shed light on murders, assaults, and kidnapping of journalists in this regard.<sup>1699</sup>

### 3. Investigations into the illegal interception of communications and surveillance of journalists

956. In 2009, the Commission received disturbing information regarding the implementation, from 2002 through 2008, of a policy of systematic and sustained persecution by officials of the now defunct intelligence agency (DAS) of the Colombian State, the purpose of which was to conduct surveillance, discredit, and intimidate a number of public figures, including human rights defenders and journalists critical of the Álvaro Uribe Vélez administration.<sup>1700</sup> According to the information revealed thus far, the known targets of DAS activities included journalists Daniel Coronell, the former director of *Noticias Uno*; Claudia Julieta Duque, a reporter for *Radio Nizkor*; Carlos Lozano, the director of news weekly *VOZ*; Hollman Morris, the director of the 'Contravía' journalism program; Ignacio Gómez and Juan Luis Martínez of *Noticias Uno*; Norbey Quevedo and Ramiro Bejarano, the investigations editor and a columnist, respectively, of *El Espectador*; Alejandro Santos, the director of *Semana*; Edulfo Peña and Jineth Bedoya, journalists of *El Tiempo*, and Salud Hernández, an *El Tiempo* columnist; Félix de Bedout and Julio Sánchez Cristo of *W Radio*; Darío Arizmendi, the director of *Caracol Radio* and Fabio Callejas, also of *Caracol Radio*; and Gonzalo Guillen, correspondent with *El Nuevo Herald*, among others.<sup>1701</sup> In view of this situation, the Commission and its Office of the Special Rapporteur for Freedom of Expression urged the Colombian State to adopt the necessary corrective measures to ensure that its intelligence agencies discontinued their illegal surveillance and phone-tapping activities on journalists; to make adequate headway in all administrative, disciplinary, and criminal proceedings aimed at establishing the extent of these activities and identifying and punishing all those responsible; and to implement all mechanisms necessary to ensure communicators' rights to privacy, personal integrity, and the confidentiality of their sources.<sup>1702</sup>

<sup>1699</sup> Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. *Joint Declaration on Crimes against Freedom of Expression*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=905&IID=1>

Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Page 15. Available at: <http://www.flip.org.co/resources/documents/informe-2012.pdf>.

<sup>1700</sup> IACHR. Annual Report 2009. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 139-148. Available at:

<http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%20Annual%202009%202%20ENG.pdf>; IACHR. *Annual Report 2010*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 140-162. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>.

<sup>1701</sup> IACHR. Annual Report 2009. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 139. Available at:

<http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%20Annual%202009%202%20ENG.pdf>; IACHR. *Annual Report 2010*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 143-162. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>.

<sup>1702</sup> IACHR. August 13, 2009. Press Release 9/09. *IACHR Expresses Concern Over Intelligence Operations Related to Inter-American Commission Activities in Colombia*. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/59-09eng.htm>; IACHR. Annual Report 2009. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. *Annual Report of the Office of the*

957. As previously noted in this report, the IACHR continues to monitor developments in the proceedings initiated for these crimes by the Colombian authorities. The Commission welcomes the efforts made by the State thus far, and notes the specific progress made in some such proceedings. According to the information available, in 2009 the Office of the General Public Prosecutor of the Nation opened an investigation to determine the involvement of DAS officials and other government agencies in phone-tapping and surveillance activities carried out on public figures, including journalists.<sup>1703</sup> Initially, the investigation established the involvement of 52 public officials.<sup>1704</sup> As of the date of this report, 16 individuals have been convicted.<sup>1705</sup>

*Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 141. Available at:

<http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%20Anual%202009%202%20ENG.pdf>;

<sup>1703</sup> Fundación para la Libertad de Prensa (FLIP). December 3, 2010. *Informe. Espionaje contra periodistas: la justicia tiene la palabra*. Available at: <http://www.flip.org.co/resources/documents/1a64c388573b283ef6472a8591280e48.pdf>.

<sup>1704</sup> Fundación para la Libertad de Prensa (FLIP). December 3, 2010. *Informe. Espionaje contra periodistas: la justicia tiene la palabra*. Available at: <http://www.flip.org.co/resources/documents/1a64c388573b283ef6472a8591280e48.pdf>.

<sup>1705</sup> According to the information received, the Office of the General Public Prosecutor of the Nation obtained the confessions of a number of individuals under investigation, and intervened to bring an early end to some court proceedings by negotiating plea bargains with the involved DAS officials who, in exchange, received prison sentences of between six and eight years. Accordingly, on March 7, 2011, the Fourteenth Bogotá Fourteenth Judicial Circuit Criminal Court [*Juzgado 14 Penal del Circuito de Conocimiento de Bogotá*] sentenced the former DAS Chief, Fernando Alonso Tabares Molina, to an 8-year and two months term of imprisonment, and Deputy Chief of Counterintelligence, Jorge Alberto Lagos León, to an 8-year term of imprisonment. Fourteenth Bogotá Fourteenth Judicial Circuit Criminal Court. Ruling N.I. 131.374 of March 7, 2011. Available at: <http://www.derechos.org/nizkor/colombia/doc/tabares1.html>, and also available at:

<http://www.scribd.com/doc/50480547/Sentencia-Lagos-y-Tabares>. On August 5, 2011, the Bogotá Fourteenth Judicial Circuit Criminal Court [*Juzgado 14 Penal del Circuito de Conocimiento de Bogotá*] sentenced former DAS Deputy Chief of Analysis, Gustavo Sierra Prieto, to an 8-year and four months term of imprisonment. *El País*. August 6, 2011. *Ex subdirector del DAS recibe 8 años de cárcel* Available at: <http://www.elpais.com.co/elpais/colombia/ex-subdirector-del-das-recibe-8-anos-carcel>; *La información*. August 6, 2011. *Condenado a ocho años de cárcel un exsubdirector del espionaje colombiano por el caso de las 'chuzadas'*. Available at: [http://noticias.lainformacion.com/mundo/condenado-a-ocho-anos-de-carcel-un-exsubdirector-del-espionaje-colombiano-por-el-caso-de-las-chuzadas\\_VGYPiRCoA546iUbVZtvuP4/](http://noticias.lainformacion.com/mundo/condenado-a-ocho-anos-de-carcel-un-exsubdirector-del-espionaje-colombiano-por-el-caso-de-las-chuzadas_VGYPiRCoA546iUbVZtvuP4/);

*El Nuevo Día*. August 5, 2011. *Condenado a ocho años por 'chuzadas' exsubdirector de análisis del DAS*. Available at: [http://www.elnuevodia.com.co/nuevodia/mundo/colombia/106061-condenado-a-ocho-anos-por-chuzadas-exsubdirector-de-analisis-del-das?quicktabs\\_3=0#sthash.QdkQJadJ.dpuf](http://www.elnuevodia.com.co/nuevodia/mundo/colombia/106061-condenado-a-ocho-anos-por-chuzadas-exsubdirector-de-analisis-del-das?quicktabs_3=0#sthash.QdkQJadJ.dpuf). On August 11, 2011, the Sixth Specialized Criminal Court [*Juzgado Sexto Penal Especializado*] sentenced former DAS members Fabio Duarte Traslaviña and Germán Enrique Villalba Chávez to a 6-year and one month term of imprisonment. *El Espectador*. August 11, 2011. *Seis años de cárcel a exfuncionarios del DAS por 'chuzadas'*. Available at: <http://www.elespectador.com/noticias/judicial/articulo-291203-seis-anos-de-carcel-exfuncionarios-del-das-chuzadas>; *El Tiempo*. August 10, 2011. *Cárcel para dos ex funcionarios del DAS por 'chuzadas'*. Available at: [http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-10132225.html](http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-10132225.html); *WRadio*. August 10, 2011. *Condenados dos exfuncionarios del DAS por "chuzadas"*. Disponible en: <http://www.wradio.com.co/noticias/actualidad/condenados-dos-exfuncionarios-del-das-por-chuzadas/20110810/nota/1529610.aspx>

The IACHR was also informed of the 2011 judgment of the Supreme Court of Justice, which sentenced former DAS Director, Jorge Noguera Cotes, to 25 years' imprisonment for the crimes of homicide, criminal conspiracy and fraud by concealment and revelation of secrets [*concierto para delinquir y falsedad por ocultamiento y revelación de secreto*], in connection with the phone-tapping and surveillance activities carried out on public officials. *Semana*. September 14, 2011. *Jorge Noguera, condenado a 25 años de prisión*. Available at: <http://www.semana.com/nacion/articulo/jorge-noguera-condenado-25-anos-carcel/246385-3>; *El Tiempo*. September 14, 2011. *Condena a Jorge Noguera, la más alta contra un ex funcionario de Uribe*. Available at: [http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-10358145.html](http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-10358145.html); *El Espectador*. September 14, 2011. *Exdirector del Das Jorge Noguera, condenado a 25 años de prisión*. Available at: <http://www.elespectador.com/noticias/judicial/articulo-299180-exdirector-del-das-jorge-noguera-condenado-25-anos-de-prision>

The Commission also took note of the judgment handed down on June 8, 2012 by the Bogotá Fourteenth Judicial Circuit Criminal Court [*Juzgado 14 Penal del Circuito de Conocimiento de Bogotá*], sentencing former DAS Operations Director, Luz Marina Rodríguez, and the former DAS Anti-corruption Chief, Bernardo Murillo Cajamarca, for their roles in these crimes. The former DAS officials received a 6-year prison sentence for their roles in phone-tapping and surveillance activities on magistrates of the Supreme Court and senators of the Colombian Congress. *El Tiempo*. June 8, 2012. *Condenados dos funcionarios del DAS por seguimiento a magistrados*. Available at:



958. Based on the information available about these convictions, only six received sentences for illegal surveillance and phone-tapping activities targeting journalists. On November 30, 2012, the Third Bogotá Criminal Court of the Specialized Circuit in Clearing Backlogs [*Juzgado Tercero Penal del Circuito Especializado de Descongestión de Bogotá*] handed down 105-month prison sentences to former DAS director general, Enrique Alberto Ariza Rivas; former coordinator of the DAS technological development group, Jorge Armando Rubiano; former DAS deputy director of operations, Hugo Daney Ortiz; former DAS director general of operations, Jackeline Sandoval Salazar; and former DAS deputy director of analysis, Martha Inés Leal Llanos, for the crime of criminal conspiracy [*delito de concierto para delinquir*] and as co-perpetrators [*coautores impropios*] in the crimes of illegal interception of communications, illegal use of transmitting and receiving equipment, and arbitrary or unjust abuse of authority.<sup>1706</sup> The Court also convicted the former coordinator of the DAS “GRUVE” verifications group, José Alexander Velásquez Sánchez. The Court disqualified him from holding employment in the public service upon finding him guilty of multiple counts of arbitrary and unjust abuse of authority [*abuso de autoridad por acto arbitrario e injusto en concurso sucesivo y homogéneo*].<sup>1707</sup>
959. In its ruling, the Court indicated that from 2003 to 2004 the government officials involved were part of a DAS operative intelligence group known as “G3.” In this regard, the Court considered as proven that “the actions or activities carried out by the convicted G3 members constituted a real criminal enterprise established to orchestrate the commission of unspecified crimes, which later resulted in the illegal interception of communications, the ongoing use of transmitting and receiving equipment, and the arbitrary and unjust abuse of authority for the end purpose of obtaining, processing, and analyzing private information obtained from NGOs, the attorneys of human rights defenders, lawyers’ associations, journalists, and ultimately anyone with leanings or ideologies that clashed with or opposed those of the government in power (the Álvaro Uribe Vélez administration), through activities such as the tapping of land and mobile phones, the interception of electronic mail, and surveillance and monitoring without an order issued by the pertinent authorities”.<sup>1708</sup> Journalist Hollman Morris participated in these proceedings as a civil party.<sup>1709</sup>

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[http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-11930225.html](http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-11930225.html); *Semana*. June 8, 2012. *Condenados dos ex funcionarios del DAS por chuzadas* Available at: <http://www.semana.com/nacion/articulo/condenados-dos-exfuncionarios-del-das-chuzadas/258813-3>; *El País*. June 8, 2012. *Por chuzadas condenan a 6 años de cárcel a ex funcionarios del DAS*. Available at: <http://www.elpais.com.co/elpais/colombia/noticias/por-chuzadas-condenan-6-anos-carcel-exfuncionarios-del-das>.

<sup>1706</sup> Third Bogotá Criminal Court of the Specialized Circuit in Clearing Backlogs [*Juzgado Tercero Penal de Circuito Especializado de Descongestión de Bogotá*]. Case 2010-00020. Judgment of November 30, 2012. Available at: <http://www.derechos.org/nizkor/colombia/doc/das299.html>; Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Pages 62-63. Available at: <http://www.flip.org.co/resources/documents/informe-2012.pdf>; *La Patria*. 15 de December 2012. *Condenan a tres exfuncionarios del DAS por chuzadas*. Available at: <http://www.lapatria.com/nacional/condenan-tres-exfuncionarios-del-das-por-chuzadas-22016>

<sup>1707</sup> Third Bogotá Criminal Court of the Specialized Circuit in Clearing Backlogs [*Juzgado Tercero Penal de Circuito Especializado de Descongestión de Bogotá*]. Case 2010-00020. Judgment of November 30, 2012. Available at: <http://www.derechos.org/nizkor/colombia/doc/das299.html>.

<sup>1708</sup> Third Bogotá Criminal Court of the Specialized Circuit in Clearing Backlogs [*Juzgado Tercero Penal de Circuito Especializado de Descongestión de Bogotá*]. Case 2010-00020. Judgment of November 30, 2012, page 151. Available at: <http://www.derechos.org/nizkor/colombia/doc/das299.html>.

<sup>1709</sup> Third Bogotá Criminal Court of the Specialized Circuit in Clearing Backlogs [*Juzgado Tercero Penal de Circuito Especializado de Descongestión de Bogotá*]. Case 2010-00020. Judgment of November 30, 2012, page 30. Available at: <http://www.derechos.org/nizkor/colombia/doc/das299.html>.

960. Furthermore, the IACHR has been informed that a trial of high-ranking government officials was initiated, the defendants in which were accused of conducting abusive intelligence activities against journalist Daniel Coronell. According to the information available, the Office of the General Public Prosecutor of the Nation filed a request, dated June 17, 2011, seeking criminal indictments against the former administrative department director of the Office of the President of the Republic, Bernardo Moreno Villegas, and former DAS director, María del Pilar Hurtado Afanador.<sup>1710</sup> According to the request, “in 2007 and 2008, administrative department director of the Office of the President of the Republic Doctor Bernardo Moreno Villegas, and Doctor María del Pilar Hurtado Afanador, Director of DAS, carried out a number of illegal activities, primarily against magistrates of the Supreme Court of Justice, several members of the Congress, as well as a journalist and an attorney, whom they classified and treated as “political targets.”<sup>1711</sup> In 2012, the trial opened before the Criminal Chamber of the Supreme Court of Justice.<sup>1712</sup> In February 2013, the evidentiary phase of the trial had been completed.<sup>1713</sup> In 2010, María del Pilar Hurtado was granted territorial asylum in Panama. The State has issued a warrant for her arrest.<sup>1714</sup> In October 2010, the Office of the General Public Prosecutor of the Nation dismissed these government officials and banned them from holding public office for a period of 18 years.<sup>1715</sup> Another investigation has also been opened into the involvement of former DAS deputy director José Miguel Narváez Martínez in abusive intelligence activities targeting a number of public figures.<sup>1716</sup>

- <sup>1710</sup> Committee Against Torture. June 11, 2012. Consideration of reports submitted by States parties under article 19 of the Convention. Follow-up by the Government of Colombia to the concluding observations of the Committee against Torture. (CAT/C/COL/CO/4.Add.1). Para. 54, d. Available at: <http://www2.ohchr.org/english/bodies/cat/docs/followup/CAT.C.COL.CO.4.Add.1.doc>; Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Pages 62-63. Available at: <http://www.flip.org.co/resources/documents/informe-2012.pdf>; El Espectador. August 3, 2011. *Radican acusación contra Bernardo Moreno y María del Pilar Hurtado*. Available at: [http://www.elespectador.com/noticias/judicial/articulo-289180-radican-acusacion-contra-bernardo-moreno-y-maria-del-pilar-hurta](http://www.elespectador.com/noticias/judicial/articulo-289180-radican-acusacion-contra-bernardo-moreno-y-maria-del-pilar-hurta?q=noticias/judicial/articulo-289180-radican-acusacion-contra-bernardo-moreno-y-maria-del-pilar-hurta); Office of the General Public Prosecutor of the Nation. June 7, 2011. Indictment against María del Pilar Hurtado and Bernardo Moreno. Available at: <http://www.derechos.org/nizkor/colombia/doc/das262.html>.
- <sup>1711</sup> Office of the General Public Prosecutor of the Nation. June 7, 2011. Indictment against María del Pilar Hurtado and Bernardo Moreno. Available at: <http://www.derechos.org/nizkor/colombia/doc/das262.html>.
- <sup>1712</sup> Committee Against Torture. June 11, 2012. Consideration of reports submitted by States parties under article 19 of the Convention. Follow-up by the Government of Colombia to the concluding observations of the Committee against Torture. (CAT/C/COL/CO/4.Add.1). Para. 54, d. Available at: <http://www2.ohchr.org/english/bodies/cat/docs/followup/CAT.C.COL.CO.4.Add.1.doc>; Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Pages 62-63. Available at: <http://www.flip.org.co/resources/documents/informe-2012.pdf>
- <sup>1713</sup> Office of the General Public Prosecutor of the Nation. March 2013. Administrative Report 2012-2013. Page 27. Available at: <http://www.fiscalia.gov.co/colombia/wp-content/uploads/2012/01/InformedeGestion2012-2013.pdf>
- <sup>1714</sup> Fundación para la Libertad de Prensa (FLIP). December 3, 2010. *Informe. Espionaje contra periodistas: la justicia tiene la palabra*. Page. 4. Available at: <http://www.flip.org.co/resources/documents/1a64c388573b283ef6472a8591280e48.pdf>; El Espectador. 20 de November 2012. *Magistrado prorrogó orden de captura contra María del Pilar Hurtado*. Available at: <http://www.elespectador.com/noticias/judicial/articulo-388161-magistrado-prorrogo-orden-de-captura-contra-maria-del-pilar-hurt>; Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Pages 62 and 63. Available at: <http://www.flip.org.co/resources/documents/informe-2012.pdf>
- <sup>1715</sup> Fundación para la Libertad de Prensa (FLIP). December 3, 2010. *Informe. Espionaje contra periodistas: la justicia tiene la palabra*. page 3. Available at: <http://www.flip.org.co/resources/documents/1a64c388573b283ef6472a8591280e48.pdf>
- <sup>1716</sup> Third Bogotá Criminal Court of the Specialized Circuit in Clearing Backlogs [Juzgado Tercero Penal de Circuito Especializado de Descongestión de Bogotá]. Case 2010-00020. Judgment of November 30, 2012. Available at: <http://www.derechos.org/nizkor/colombia/doc/das299.html>.

961. As indicated previously, the IACHR received information indicating that in December 2011, the Office of the General Public Prosecutor of the Nation handed down indictments of former high-ranking officials of the now defunct DAS for their alleged involvement in the crime of aggravated psychological torture against journalist Claudia Julieta Duque Orrego.<sup>1717</sup> According to the available information, in March 2013, the Office of the General Public Prosecutor of the Nation ordered the pre-trial detention of seven individuals for this crime.<sup>1718</sup>
962. In addition, the IACHR received information that the Congressional Accusation and Investigation Committee of the House of Representatives [*Comisión de Acusación e Investigación de la Cámara de Representantes del Congreso*] opened a preliminary investigation into activities of former Colombian president Álvaro Uribe Vélez. During the Commission's recent visit to the country it took note of the developments in these proceedings. On September 6 and 7, 2012, the Accusation and Investigation Committee received the statements of the alleged victims whose communications had been intercepted,<sup>1719</sup> which included journalist Hollman Morris.<sup>1720</sup> Journalist Daniel Coronell provided his statement to the Committee in a closed-door session.<sup>1721</sup> After three years, the proceedings have not moved beyond the preliminary investigation phase.

#### 4. Protection mechanism for journalists and media workers

963. Over the past 12 years, the Inter-American Commission has monitored the steps taken by the Colombian State to protect at-risk journalists and media workers. In this regard, the IACHR notes that since establishing the "Program of Protection for Journalists and Media Workers" [*Programa de Protección a Periodistas y Comunicadores Sociales*]<sup>1722</sup> in 2000, the Colombian State formally acknowledged the vulnerable situation of this group and has provided it with special protection. At present, journalists and media workers are included among 16 special risk categories protected under the "Program for Prevention and Protection of the Rights to Life, Liberty, Integrity, and Security of Persons, Groups, and Communities," [*Programa de Prevención y Protección de los derechos a la vida, la libertad, la integridad y la seguridad de personas, grupos y comunidades*]<sup>1723</sup> established pursuant to Decree No. 4912 of December

<sup>1717</sup> Office of the General Public Prosecutor of the Nation. February 9, 2012. *Casos relevantes por delitos cometidos en contra de periodistas*. Available at: <http://www.fiscalia.gov.co/colombia/noticias/casos-relevantes-por-delitos-cometidos-en-contra-de-journalists/>; and Office of the General Public Prosecutor of the Nation. 22 de December 2011. *A indagatoria ocho personas por tortura psicológica a periodista*. Available at: <http://www.fiscalia.gov.co/colombia/noticias/a-indagatoria-ocho-personas-por-tortura-psicologica-a-periodista/>

<sup>1718</sup> Office of the General Public Prosecutor of the Nation. March 12, 2013. *Asegurados funcionarios del DAS por tortura contra periodista*. Available at: <http://www.fiscalia.gov.co/colombia/noticias/asegurados-funcionarios-del-das-por-tortura-contra-periodista/>

<sup>1719</sup> Colectivo de Abogados José Álvaro Restrepo. September 10, 2012. Press Release. *Se reanuda proceso en comisión de acusaciones contra Uribe Vélez*. Available at: <http://www.colectivodeabogados.org/Se-reanuda-proceso-en-Comision-de>

<sup>1720</sup> Testimony of Hollman Morris Rincón given September 7, 2012 before the Congressional Accusation and Investigation Committee, House of Representatives. Video available on YouTube: <http://www.youtube.com/watch?v=CEL6rDrFB6M>

<sup>1721</sup> Radio Caracol. March 24, 2011 *Daniel Coronell declara en investigación contra Uribe por 'chuzadas'*. Available at: <http://www.Caracol.com.co/noticias/judicial/daniel-coronell-declara-en-investigacion-contra-uribe-por-chuzadas/20110324/nota/1444434.aspx>; WRadio. March 24, 2011. *A puerta cerrada declaró el periodista Daniel Coronell por el caso de las Chuzadas*. Available at: <http://www.wradio.com.co/noticias/judicial/a-puerta-cerrada-declaro-el-periodista-daniel-coronell-por-el-caso-de-chuzadas/20110324/nota/1444559.aspx>

<sup>1722</sup> Office of the President of the Republic. Decree No. 1592 of August 24, 2000. Available at: <http://www.flip.org.co/resources/documents/430e5a615bc952a7785c77b42dbf5ce2.pdf>.

<sup>1723</sup> Office of the President of the Republic. Decree No. 4912 of December 26, 2011. Article 1. Available at: [http://wsp.presidencia.gov.co/Normativa/Decree No.s/2011/Documents/December/26/dec491226122011.pdf](http://wsp.presidencia.gov.co/Normativa/Decree%20No.s/2011/Documents/December/26/dec491226122011.pdf); Office of the President of the Republic. Decree No. 1225 of June 12, 2012. Article 6. Available at: <http://www.unp.gov.co/docs/decretos/dec122512062012.pdf>

2011. As described in the corresponding section of this report, under these regulations, journalists and media workers in situations of risk can request a series of protective and preventive measures, including contingency plans; self-protection training; patrol services and police routine checks; individualized protection procedures; temporary relocation services; communications systems that facilitate rapid contact with agencies of the State; armor-plating and security system installation services;<sup>1724</sup> as well as other unspecified protection measures “taking into account a differential approach, the degree of risk, and territorial considerations.”<sup>1725</sup> Requests for these measures are granted through an ordinary procedure which includes: gathering and analysis of the pertinent information and performance of a risk assessment study by the National Protection Unit [*Unidad Nacional de Protección*] (UNP); review of the case by the Committee to Assess Risks and Recommend Measures [*Comité de Evaluación de Riesgo y Recomendación de Medidas*] (CERREM – an inter-agency organ comprised of high-ranking government officials and civil society representatives), following which the CERREM issues a decision as to which measures should be adopted; implementation of the pertinent measures by the UNP, which also monitors the case; and finally, the periodic review of the case.<sup>1726</sup> In addition to the regular proceeding, the director of UNP may order, in cases involving imminent and exceptional risk, provisional protection measures without conducting a risk assessment.<sup>1727</sup>

964. In a communication dated February 22, 2013, the Colombian State indicated that the National Protection Unit (UNP) currently provides protection to 94 journalists in Colombia in a way that “respects their independence, via measures based on a differential approach that enables them to fully pursue their work as journalists.” The foregoing is “a result of the recommendations put forward by journalist organizations.”<sup>1728</sup> According to information furnished by the State, of the 94 journalists under protection, 37 are provided protection services that include “a vehicle and bodyguards,” and 57 are covered by protective measures “that include transportation-related support, temporary relocation services, communications systems, or armored vests.” The State also indicates that “included among the journalists under protection are the directors of prominent media organizations, national correspondents, local journalists, and even community journalists.” Additionally, the State noted that the UNP has invested a total of 7.750 million Colombian pesos (approximately US\$4,100,000).<sup>1729</sup> According to data furnished by the Fundación para la Libertad de Prensa (FLIP – a civil society organization and standing invitee of CERREM), from January through December 2012, the

<sup>1724</sup> Office of the President of the Republic. Decree No. 4912 of December 26, 2011. Articles 10 and 11. Available at: [http://wsp.presidencia.gov.co/Normativa/Decree No.s/2011/Documents/December/26/dec491226122011.pdf](http://wsp.presidencia.gov.co/Normativa/Decree%20No.s/2011/Documents/December/26/dec491226122011.pdf).

<sup>1725</sup> Office of the President of the Republic. Decree No. 4912 of December 26, 2011. Article 11. Para. 2. Available at: [http://wsp.presidencia.gov.co/Normativa/Decree No.s/2011/Documents/December/26/dec491226122011.pdf](http://wsp.presidencia.gov.co/Normativa/Decree%20No.s/2011/Documents/December/26/dec491226122011.pdf).

<sup>1726</sup> Office of the President of the Republic. Decree No. 4912 of December 26, 2011. Article 40. Available at: [http://wsp.presidencia.gov.co/Normativa/Decree No.s/2011/Documents/December/26/dec491226122011.pdf](http://wsp.presidencia.gov.co/Normativa/Decree%20No.s/2011/Documents/December/26/dec491226122011.pdf); Office of the President of the Republic. Decree No. 1225 of June 12, 2012. Article 7. Available at: <http://www.unp.gov.co/docs/decretos/dec122512062012.pdf>

<sup>1727</sup> Office of the President of the Republic. Decree No. 4912 of December 26, 2011. Article 9. Available at: [http://wsp.presidencia.gov.co/Normativa/Decree No.s/2011/Documents/December/26/dec491226122011.pdf](http://wsp.presidencia.gov.co/Normativa/Decree%20No.s/2011/Documents/December/26/dec491226122011.pdf).

<sup>1728</sup> In Communication from the State of Colombia, Official Letter MPC/OEA No.: 256/2013, dated February 22, 2013, that refers Note DIDHD/GAPDH No. 0234/0208, dated February 22, 2013, “Comments of the State of Colombia Regarding Actions Undertaken to Ensure and Protect Freedom of Expression.”, paras. 5-9. Also see: Office of the President of the Republic. Decree No. 4912 of December 26, 2011. Available at: [http://wsp.presidencia.gov.co/Normativa/Decree No.s/2011/Documents/December/26/dec491226122011.pdf](http://wsp.presidencia.gov.co/Normativa/Decree%20No.s/2011/Documents/December/26/dec491226122011.pdf).

<sup>1729</sup> In Communication from the State of Colombia, Official Letter MPC/OEA No.: 256/2013, dated February 22, 2013, that refers Note DIDHD/GAPDH No. 0234/0208, dated February 22, 2013, “Comments of the State of Colombia Regarding Actions Undertaken to Ensure and Protect Freedom of Expression.”, paras. 5-9. Also see: Office of the President of the Republic. Decree No. 4912 of December 26, 2011. Available at: [http://wsp.presidencia.gov.co/Normativa/Decree No.s/2011/Documents/December/26/dec491226122011.pdf](http://wsp.presidencia.gov.co/Normativa/Decree%20No.s/2011/Documents/December/26/dec491226122011.pdf).

protection program “processed 100 protection requests from journalists. Of these, 50 proved to be “extraordinary,” i.e., were found to warrant some type of protection measure; 40 proved to be “ordinary;” and 10 were returned, i.e., were not admitted.”<sup>1730</sup> These figures reveal an increase of 40 cases with respect to 2011, during which 60 requests for protection were processed.<sup>1731</sup>

965. In its 2005 report, *Impunity, Self-censorship and Armed Internal Conflict in Colombia: An Analysis of the State of Freedom of Expression in Colombia*, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission acknowledged “the efforts of the Colombian State in creating a program aimed at guaranteeing the right to freedom of expression, which has allowed for the protection of the physical integrity of an important number of Colombian journalists.”<sup>1732</sup> The Inter-American Commission wishes to acknowledge the ongoing support the program has received for more than a decade now, as well as the significant human and financial resources it has been allocated, the clarity of the legal framework and administrative procedures governing its implementation, and the various protection measures available for consideration by the CERREM. The IACHR also notes the significant decrease in the murders of journalists and social communicator for reasons that may be related to their work since the protection program was established in 2000.
966. However, the Commission notes some persistent challenges to implementing the protection program for journalists and media workers. Specifically, the IACHR notes the importance of establishing an effective coordination between the agencies of the State tasked with protecting journalists and media workers in situations of risk and the authorities in charge of investigating, prosecuting, and punishing those responsible for the alleged violations of the rights of this group, including threats, harassment, attacks, and the murder of journalists and media workers for reasons attributable to their profession. In this regard, the Commission notes the importance of the effective participation of the Office of the General Public Prosecutor of the Nation in CERREM meetings, as a special invitee, with a view to furnishing and receiving essential information regarding the situations under study and alleged human rights violations committed against journalists and media workers.
967. Moreover, the IACHR notes that in response to the illegal intelligence activities and acts of intimidation carried out by the Administrative Security Department (DAS) between 2002 and 2008,<sup>1733</sup> which targeted journalists and their families, the Colombian Government decided to abolish DAS and replace it with a new intelligence service. As a result, the National Protection Unit was established, in part, to take over the duties of the protection program previously carried out by the DAS, such as performing risk assessments and implementing protection measures.<sup>1734</sup> However, the IACHR expressed concern upon learning of plans to transfer 601

<sup>1730</sup> Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Page 55. Available at: <http://www.flip.org.co/resources/documents/informe-2012.pdf>

<sup>1731</sup> Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Page 55. Available at: <http://www.flip.org.co/resources/documents/informe-2012.pdf>

<sup>1732</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. *Impunity, Self-censorship and Armed Internal Conflict in Colombia: An Analysis of the State of Freedom of Expression in Colombia*. OEA/Ser.L/V/II Doc. 51. 25 de agosto de 2005. Para. 107. Available at: <http://cidh.org/relatoria/ShowDocument.asp?DocumentID=153>

<sup>1733</sup> IACHR. *Annual Report 2010*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 140-162. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>

<sup>1734</sup> Office of the President of the Republic. Decree No. 4065 of 31 October 2011, Whereas clause 2. Available at: [http://www.secretariassenado.gov.co/senado/basedoc/decreto/2011/decreto\\_4065\\_2011.html](http://www.secretariassenado.gov.co/senado/basedoc/decreto/2011/decreto_4065_2011.html); Office of the President of the Republic. Decree No. 4912 of December 26, 2011. Article 28. Available at: <http://wsp.presidencia.gov.co/Normativa/Decree.No.s/2011/Documents/December/26/dec491226122011.pdf>.

DAS bodyguards to the UNP and, consequently, this personnel would continue to work within the framework of the protection program. The Commission has urged the State to “ensure that the personnel who participate in the security schemes inspire trust in the beneficiaries of the protection,” thereby ensuring that “the assignment of personnel for protection include the participation of the beneficiaries.”<sup>1735</sup>

968. Finally, the IACHR reiterates the importance of accelerating—under the most suitable technical conditions—processes for measuring risk and the importance of ensuring that protection and prevention measures implemented to benefit journalists and media workers take into account the specific needs of this group. In this regard, the Commission recalls the Joint Declaration on Crimes against Freedom of Expression adopted by the United Nations (UN) Special Rapporteur on the Right to Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur for Freedom of Expression, and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression, which notes that specialized protection programs “should include a range of protection measures, which should be tailored to the individual circumstances of the person at risk, including his or her gender, need or desire to continue to pursue the same professional activities, and social and economic circumstances.”<sup>1736</sup>
969. In this regard, in Judgment T-1037/08, Colombia’s Constitutional Court affirmed the right of a journalist to take part in the design of a protection program that would enable her to continue carrying out her professional activities. In its judgment, issued in connection with a writ of *tutela* filed by journalist Claudia Julieta Duque -- who filed the action upon being dropped from the protection program approved by the State, despite receiving repeated threats--, the Constitutional Court determined that “in the case of a journalist who, in spite of receiving threats, decides to move forward with his or her investigations, he or she will likely require special schemes that take into account all of the involved rights. Specifically, it is clear that communicators will require a certain degree of privacy to conduct interviews while maintaining the confidentiality of their sources and make specific inquiries.”<sup>1737</sup> The Court concluded that, “in these cases it is therefore necessary to provide schemes specifically designed to ensure the safety of journalists, the necessary conditions for carrying out their work, and the important rights associated with the freedom of expression.”<sup>1738</sup> In this regard, the Commission notes that in recent years Colombia’s protection program has also recognized the need to adopt protection measures that will provide journalists who wish to continue their investigations the necessary conditions to perform their work.

<sup>1735</sup> IACHR. *Annual Report 2011*. Chapter IV. OAS/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 128. Available at: [http://www.oas.org/en/iachr/expression/docs/reports/annual/2012\\_03\\_21\\_Annual\\_Report\\_RELE\\_2011pirnting.pdf](http://www.oas.org/en/iachr/expression/docs/reports/annual/2012_03_21_Annual_Report_RELE_2011pirnting.pdf). Also see: IACHR. Office of the Special Rapporteur for Freedom of Expression. *Impunity, Self-censorship and Armed Internal Conflict in Colombia: An Analysis of the State of Freedom of Expression in Colombia*. OEA/Ser.L/V/II Doc. 51. 25 de agosto de 2005. Paras. 126-128. Available at: <http://cidh.org/relatoria/ShowDocument.asp?DocumentID=153>

<sup>1736</sup> The United Nations (UN) Special Rapporteur on the Right to Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur for Freedom of Expression, and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. Joint Declaration on Crimes against Freedom of Expression. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=905&IID=1>

<sup>1737</sup> Constitutional Court of Colombia. Judgment No. T-1037/08 of October 23, 2008, Whereas clause 21. Available at: <http://corteconstitucional.gov.co/RELATORIA/2008/T-1037-08.htm>

<sup>1738</sup> Constitutional Court of Colombia. Judgment T-1037/08, dated October 23, 2008. Whereas clause 21. Available at: <http://corteconstitucional.gov.co/RELATORIA/2008/T-1037-08.htm>

## 5. Collective reparations program for journalists

970. Colombia's collective reparations program was established pursuant to Decree No. 4800<sup>1739</sup> of 2011, and is implemented through the Special Administrative Unit for Victim Support and Reparations [*Unidad para la Atención and Reparación Integral de las Víctimas*]. Collective reparations are a component of full reparations, which comprise “restitution, indemnification, rehabilitation, measures of satisfaction, and guarantees of non-repetition, to which communities, organizations, and social and political groups are entitled, in political, material, and symbolic terms.”<sup>1740</sup> According to the provisions of Law No. 1448<sup>1741</sup> and Decree No. 4800<sup>1742</sup>, the subjects of collective reparations are “communities, social and political organizations, and social and political groups, as a result of violations of the collective and individual rights of their members—infringements that may have a collective impact and that resulted in the context of the armed conflict subsequent to January 1, 1985.”<sup>1743</sup>
971. As explained by the Special Administrative Unit for Victim Support and Reparations, the program begins with “registration of the collective subject, followed by the formulation of a reparations plan by the victims, implementation of the plan by the agencies of the National System for the Comprehensive Care and Reparation of Victims [*Sistema Nacional de Atención y Reparación Integral a las Víctimas*], and approval of the plan by the pertinent Territorial Committee for Transitional Justice [*Comité Territorial de Justicia Transicional*]. The plan, based on an assessment of harm exacted, may contain measures of satisfaction, restitution, rehabilitation, and guarantees of non-repetition.”<sup>1744</sup>
972. In the framework of the Victims and Land Restitution Law, the Special Administrative Unit for Victim Support and Reparations recognized journalists as a group that should benefit from collective reparations. On September 20, 2012, the Colombian Government initiated a series of consultations with journalists impacted by the armed conflict for the purpose of developing a strategy for collective reparations. These consultations will be carried out in different areas of the country and will include the participation of representatives of the National Center for Historical Memory and the Special Administrative Unit for Victim Support and Reparations [*Centro de Memoria Histórica y de la Unidad para la Atención y Reparación Integral a las Víctimas*].<sup>1745</sup>

<sup>1739</sup> Office of the President of the Republic. December 20, 2011. Decree No. 4800 2011. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=45063>

<sup>1740</sup> Special Administrative Unit for Victim Support and Reparations. Undated. *Reparación colectiva administrativa*. Available at: <http://www.unidadvictimas.gov.co/index.php/9-uncategorised/155-reparacion-colectiva>

<sup>1741</sup> Republic of Colombia. June 10, 2011. Victims and Land Restitution Law [*Ley de Víctimas y Restitución de Tierras*]. Article 3. Available at: <http://www.leydevictimas.gov.co/documents/10179/19132/completo.pdf>

<sup>1742</sup> Office of the President of the Republic. December 20, 2011. Decree No. 4800 2011. Article 223. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=45063>

<sup>1743</sup> Special Administrative Unit for Victim Support and Reparations. Undated. *Reparación colectiva*. Available at: <http://www.unidadvictimas.gov.co/index.php/en/conozca-sus-derechos/reparacion-integral>

<sup>1744</sup> Special Administrative Unit for Victim Support and Reparations. Undated. *Reparación colectiva administrativa*. Available at: <http://www.unidadvictimas.gov.co/index.php/9-uncategorised/155-reparacion-colectiva>

<sup>1745</sup> Special Administrative Unit for Victim Support and Reparations [*Unidad para la Atención y Reparación Integral a las Víctimas*]. September 20, 2012. *Gobierno consulta a periodistas Víctimas del conflicto sobre proceso de Reparación Colectiva*. Disponible en: <http://www.unidadvictimas.gov.co/index.php/en/sala-de-prensa/79-noticias/92-consulta-a-periodistas-victimas-proceso-reparacion-colectiva>; El Mundo. October 9, 2012. *Reparación para periodistas víctimas*. Available at: [http://www.elmundo.com/portal/noticias/derechos\\_humanos/reparacion\\_para\\_journalists\\_victimas.php](http://www.elmundo.com/portal/noticias/derechos_humanos/reparacion_para_journalists_victimas.php); Knight Center for Journalism in the Americas. September 24, 2012. *Colombian Government Consults Journalists Targeted by Violence In Reparation Process*. Available at: <https://knightcenter.utexas.edu/en/blog/00-11515-colombian-government-consults-journalists-targeted-violence-reparation-process>

973. In December 2012, the Office of the Mayor of Bogotá, with support of the Center for Memory, Peace and Reconciliation, commissioned a monument to honor all those affected by the armed conflict, which includes journalists.<sup>1746</sup>
974. On February 7, 2013, the forum “*Periodismo: Daño, Memoria y Reparación*” took place in the city of Bogotá, organized by the National Center for Historical Memory and the Special Administrative Unit for Victim Support and Reparations. Colombia’s president, Juan Manuel Santos, attended the event. According to the Unit, “the purpose of the event is to offer public recognition of the journalist victims of the armed conflict. The event is part of a collective reparation process the Unit seeks to move forward with journalists who have been victims of attacks in the context of the armed conflict, as well as the families of the communicators that have been murdered for this reason. The process is based on the recognition of serious violations of the rights to freedom of expression and freedom of the press suffered by journalists, and seeks to support the work of organizations that defend freedom of expression in the search for truth, justice, and integral reparation.”<sup>1747</sup>
975. In his address to launch the ‘Colombia sin Heridas’ alliance on February 19, 2013, President Santos indicated that efforts are under way to develop collective reparations plans with 32 communities and organizations that were victimized by the conflict.<sup>1748</sup> Some collectives have expressed the need to adopt individual reparation measures as well as differential measures based on the unique characteristics of the group. For example, in a press release the organization Tejido de Comunicación, stated that “in the department of Cauca we have been demanding and shaping a differential communication policy based on extensive and thorough consultations with the communities and our desire to see this policy come to fruition through the *Mesas de Concertación* forums, as this is an obligation of the State and the Government.”<sup>1749</sup>

## Recommendations

976. Considering what is indicated in this section, the Commission recommends to the Colombian State:
1. 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

<sup>1746</sup> Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012*. Page 15. Available at: <http://www.flip.org.co/resources/documents/informe-2012.pdf>; El Universal. 14 de December 2012. *Construyen en Bogotá homenaje a las víctimas del conflicto armado*. Available at: <http://www.eluniversal.com/internacional/dialogo-en-colombia/121214/construyen-en-bogota-homenaje-a-las-victimas-del-conflicto-armado>

<sup>1747</sup> Special Administrative Unit for Victim Support and Reparations [*Unidad para la Atención y Reparación Integral a las Víctimas*]. February 8, 2013. *Este 8 de febrero, homenaje a los y las periodistas en su día*. Available at: <http://www.unidadvictimas.gov.co/index.php/79-noticias/240-este-8-de-febrero-homenaje-a-los-y-las-journalists-en-su-dia>

<sup>1748</sup> Office of the President of the Republic. February 9, 2013. Address of President Juan Manuel Santos on occasion of the launch of the ‘Colombia sin Heridas’ alliance. Available at: [http://wsp.presidencia.gov.co/Prensa/2013/February/Paginas/20130219\\_06.aspx](http://wsp.presidencia.gov.co/Prensa/2013/February/Paginas/20130219_06.aspx)

<sup>1749</sup> Observatorio del derecho a la comunicación de los pueblos indígenas. February 7, 2013. *Colombia: Tejido de Comunicación cuestiona acto gubernamental de reparación a periodistas*. Available at: <http://clacpi.org/observatorio/?p=2759>; Agenda Propia. February 7, 2013. *Comunicadores indígenas del Cauca, rechazan reparación simbólica del Gobierno en el Día del Periodista*. Available at: <http://www.agendapropia.com/index.php/agenda-propia/informe-especial/1687-comunicadores-indigenas-del-cauca-rechazan-reparacion-simbolica-del-gobierno-nacional-en-el-dia-del-periodista>



necessary, the adoption of operation manuals or guidelines regarding respect for the right to freedom of expression.

2. Compile detailed, disaggregated criminal statistics on violence against journalists and the criminal prosecution of these crimes.
3. Continue to adopt the measures necessary to guarantee the security of those who are at special risk by virtue of exercising their right to freedom of expression, whether the threats come from state agents or private individuals. Especially, the State should continue to strengthen the “Program for Prevention and Protection of the Rights to Life, Liberty, Integrity, and Security of Persons, Groups, and Communities”. In order to achieve this, the State should accelerate processes for measuring risk and ensure that the protection and prevention measures implemented to benefit journalists and media workers take into account the specific needs of this group.
4. 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.
5. 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.
6. 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.

## F. *Discrimination against Lesbian, Gay, Bisexual, Trans and Intersex persons*

977. For several years the Inter-American Commission has been receiving worrisome information about the human rights situation of LGBTI persons<sup>1750</sup> in Colombia, in particular in relation to killings and other acts of violence against lesbians, gays, bisexuals, and trans women, and those perceived as such, and the impunity that prevails in relation to such crimes.<sup>1751</sup> In addition, the IACHR has issued pronouncements condemning the situations of violence and discrimination that LGBTI persons experience in Colombia, finding violations of their rights to life, integrity, personal liberty and security, and freedom of expression.<sup>1752</sup> In this respect, the IACHR has stressed the right of all persons to be free from discrimination and urged the Colombian State to implement actions to prevent and respond to such abuses, including adopting public policies and campaigns to combat discrimination.<sup>1753</sup>
978. During the visit the State recognized that there is a situation of historical discrimination and that currently progress is being made towards embracing a campaign to raise awareness.<sup>1754</sup> For its part, civil society stated that there are few initiatives on behalf of LGBTI persons, since there are no specific laws or public policies, only decisions of the Constitutional Court, which, the Inspector General has requested be annulled.<sup>1755</sup>
979. During the visit the IACHR held several meetings with state authorities and civil society organizations on the human rights situation of LGBTI persons. In its preliminary observations the IACHR highlighted the state measures aimed at making progress in public policies and awareness-raising campaigns on this subject. Nonetheless, the IACHR expressed great concern at the high levels of violence against these persons, the failure of the State to carry out the decisions of the Constitutional Court that recognize the rights of LGBTI persons<sup>1756</sup>, and the lack of an appropriate system for collecting specialized information on these persons.<sup>1757</sup>

<sup>1750</sup> The letters B (for *bisexual*), G (for *gay*), I (for *intersex*), L (for *lesbian*), T (por *trans*) have been used to describe communities, groups, or identities, as well as in some cases, acts of claimsmaking or protest. In this respect, the organization Global Rights has indicated: “Although the political, social, sexual and gender identities encompassed by LGBTI are not equally relevant in all communities and/or by all individuals, the category of LGBTI exists as a collective concept that has been claimed by some individuals and activist groups in many countries to assert their demand for recognition, space and legal personhood. In other words, it has been successfully used for political, social and economic organizing purposes. However, the LGBTI categorization contains several weaknesses. First, it lumps women, men, transgender and intersex people together, even though the human rights abuses they most commonly face may be significantly different. It also risks erasing differences of history, geography and politics, as well as other characteristics for which individuals face stigma and discrimination, such as their race, ethnicity, (im)migrant status, health status, language, etc. Finally, it may put out of sight culturally specific sexual and gender identities, giving the wrong impression that those identities originated in the West, and only recently.” Global Rights: Partners for Justice, *Demanding Credibility and Sustaining Activism: A Guide to Sexuality-based Advocacy*, 2010, p. 10.

<sup>1751</sup> See, among others, IACHR, *Hearing on the Situation of lesbian, gay, bisexual and transgender persons in Colombia*, November 5, 2009. Available (in Spanish only) at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=117&page=2>. IACHR, *Hearing Homicides of LGBTB persons and impunity in the Americas*, November 1, 2012. Available (in Spanish only) at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=129>.

<sup>1752</sup> IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV. Colombia, para. 144.

<sup>538</sup> IACHR, *Annual Report 2011*, OEA/Ser.L/V/II., Doc. 69, December 30, 2011, Chapter IV. Colombia, para. 145.

<sup>1754</sup> Information provided at the meeting with state authorities, Bogotá, December 3, 2012.

<sup>1755</sup> Information provided at the meeting with civil society, Bogotá, December 4, 2012.

<sup>1756</sup> The information forwarded to the IACHR in terms of violations of the human rights of these persons in Colombia has focused almost exclusively on the human rights of lesbian, gay, bisexual, and trans persons, and not in relation to intersex persons. The vast majority of information reflected in this chapter makes reference to the situation of rights of LGBTI persons and not LGBTI persons, which is why reference will be made to the acronym *LGBT* when dealing only with information related to

980. The IACHR notes that during the visit the delegation met with the Inspector General of the Nation, Alejandro Ordóñez Maldonado; Paula Andrea Ramírez Barbosa, Adjunct Offices of the Prosecutors for Criminal Matters and Prevention in Human Rights and Ethnic Affairs; and Ilva Myriam Hoyos Castañeda, Adjunct Offices of the Prosecutors for the Rights of Children, Adolescents, and the Family, who informed the IACHR of a series of measures aimed at protecting and guaranteeing the rights of LGBTI persons and those who defend their rights.
981. In addition, several civil society organizations have reported to the IACHR that the very Office of the Inspector General – the highest-level authority entrusted with the defense of human rights of all persons in Colombia – has filed legal actions<sup>1758</sup> and formulated legal opinions<sup>1759</sup> against LGBTI persons in proceedings brought to recognize their rights that have gone before the Constitutional Court.<sup>1760</sup> In addition, they report that the Inspector General expressed opinions openly opposed to LGBTI persons, such as considering relations between same-sex couples as “aberrations” and equating them with bestiality.<sup>1761</sup> In this respect, the IACHR takes note of the pronouncement of the Constitutional Court that affirms that every person who appears in the proceedings on constitutionality on behalf of the Office of the Inspector General is under an obligation to respect two unquestionable duties: to defend the Constitution, and to provide the legal bases for their positions.<sup>1762</sup>

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lesbian, gay, bisexual and trans persons; and reference will be made to *LGBTI*, when making reference to lesbian, gay, bisexual, trans and intersex persons.

<sup>1757</sup> IACHR, Annex to Press Release 144/12 issued upon completing the on-site visit to Colombia, IACHR'S Preliminary Observations on Its Onsite Visit to Colombia, December 7, 2012, No. 144A/12. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2012/144A.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/144A.asp).

<sup>1758</sup> See, for example, Appeal by the Procurator General of the Nation of the judgment issued by the Constitutional Court (Tutela 716 of 2011), in which same-sex couples are recognized as families. El País, *Parejas del Mismo Sexo Sí Constituyen Familia*: Constitutional Court, March 11, 2013. Available (in Spanish only) at: <http://www.elpais.com.co/elpais/colombia/noticias/parejas-mismo-sexo-si-constituyen-familia-corte-constitucional>.

<sup>1759</sup> According to the Constitution of Colombia (Articles 242(2) and 278(5)), the Procurator General of the Nation has the function of “giving an opinion in proceedings to review constitutionality.” See, for example, Legal Opinion by the Procurator General Mr. Alejandro Ordoñez Maldonado in the proceedings over joined cases D-8367 and D-8376 before the Constitutional Court; Judgment C-577/11 of July 26, 2011, writing for the Court, Gabriel Eduardo Mendoza Martelo; Legal Opinion presented by the Procurator General Mr. Alejandro Ordoñez Maldonado, given in proceeding D-7415 before the Constitutional Court, with the aim of extending the adoption of children to same-sex couples, February 25, 2009; Judgment C-802/09 of November 10, 2009, writing for the court, Gabriel Eduardo Mendoza Martelo. In a public hearing held in the context of the 147<sup>th</sup> period of sessions of the IACHR, the State said that the Office of the Inspector General has participated in relation to constitutionality proceedings, as well as *tutela* actions, providing opinions in defense of the legal order and in particular in relation to a provision of the Civil Code on marriage. IACHR, *Hearing on the Situation of Defenders of Sexual and Reproductive Rights in Colombia*, March 14, 2013. Available (in Spanish only) at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=2>.

<sup>1760</sup> IACHR, *Hearing on the Situation of Defenders of Sexual and Reproductive Rights in Colombia*, March 14, 2013. Available (in Spanish only) at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=2>.

<sup>1761</sup> Colombia Diversa, “Todos los Derechos, Pocos los Deberes”, *Situación de Derechos Humanos de Lesbianas, Gay, Bisexuales y Transgeneristas en Colombia 2008-2009*, p. 11; citing ORDOÑEZ, Maldonado Alejandro, *Ideología de Género: Utopía Trágica o Subversión Cultural*. 2006, pp. 108, 153.

<sup>1762</sup> Accordingly, the Constitutional Court has held that the duty to provide the legal bases for the positions of the Office of the Inspector General or the Inspector General is not satisfied by merely giving a legal appearance to any personal opinion they may have; rather, it must be related to the essential purpose of the Office of the Inspector General, which is to safeguard and promote human rights and to protect the public interest. Constitutional Court, Order 069/10, Cases D-7882 and 7909 joined, April 21, 2010 (Judge María Victoria Calle Correa). It is noteworthy that the Constitutional Court found no basis for a motion for recusal filed against the Inspector General, Mr. Alejandro Ordoñez, to give an opinion in the joined proceeding of the cases captioned D-7882 and 7909, related to same-sex marriage. On that occasion the Constitutional Court, while recognizing that the Inspector General had made criticisms and negative pronouncements against same-sex couples, indicated that these were his personal opinions and that the ground for recusal did not apply, since the Inspector General had not issued a prior opinion on the constitutionality of the provisions which the proceeding in question challenges. Constitutional Court, Order 069/10, Cases D-7882 and 7909 joined, April 21, 2010 (Judge María Victoria Calle Correa).

982. In this respect, the IACHR notes the importance of the right to freedom of expression and to the diversity of opinions so as to guarantee a pluralist debate, which is necessary in a democratic society.<sup>1763</sup> Nonetheless, the IACHR considers it important to take into account the State's obligation to prevent and respond to discrimination, as well as the context of discrimination and violence in Colombia in relation to LGBTI persons. Accordingly, the violence and discrimination against LGBTI persons in Colombia – exacerbated by the internal armed conflict – are aggravated by such pronouncements that endorse, in the public discourse and in the social mindset, the denial of the right to equality and non-discrimination based on the sexual orientation and gender identity of LGBTI persons. The IACHR reminds the Colombian State that it has the duty to respect and ensure the human rights of persons without any discrimination whatsoever based on sexual orientation or gender identity, categories that are protected by the American Convention on Human Rights in Article 1(1).<sup>1764</sup>
983. To commemorate the International Day against Homophobia and Transphobia on May 17, 2013, the IACHR expressed its concern on the rise in negative discourse by public officials against LGBTI persons, and against those who defend their rights. In this regard, the Commission indicated “[t]hese statements and actions by public officials –including some officials in charge of promoting human rights- have the effect of undermining the recognition of the rights of lesbian, gay, trans, bisexual and intersex persons, imperiling them and those who defend their rights, and hindering democratic debate”. The IACHR urged OAS Member States to

adopt measures to ensure that its public officials respect the rights of persons with diverse sexual orientations and gender identities and expressions in societies across the Americas. Public officers must respect the spaces where the claims made by human rights defenders are duly debated, considered and decided. The IACHR strongly recommends that, where these spaces do not exist, the State promote their existence as means of ensuring ensure democratic and pluralistic societies across the Hemisphere.<sup>1765</sup>

984. In relation to the exercise of the right to freedom of expression, the IACHR notes that on November 6, 2012, it forwarded a letter requesting information from the State in relation to the questionnaire sent by council member Marco Fidel Ramírez, of the Council of Bogotá, to the television station “Canal Capital” on October 26, 2012.<sup>1766</sup> In that questionnaire he is said to have requested information on the identity of the LGBTI persons who were on its payroll, the type of contract they have, their salaries, and the résumés of the members of the production team of “El Sofá,” a program that addresses issues related to the rights of LGBTI persons.<sup>1767</sup> In its response dated December 18, 2012, the State indicated that such request for information was due in part to indicia that Canal Capital was violating the principle of equality, with

<sup>1763</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework Regarding the Right to Freedom of Expression*, OEA/Ser.L/V/II, CIDH/RELE/INF. 2/09, December 30, 2009.

<sup>1764</sup> I/A Court H.R., *Case of Karen Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 91.

<sup>1765</sup> IACHR, Press Release No. 37/13, *The IACHR Calls Member States to Ensure Respect of the Rights of LGBTI Persons by Public Officials*, May 17, 2013, available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/037.asp](http://www.oas.org/en/iachr/media_center/PReleases/2013/037.asp).

<sup>1766</sup> IACHR, Letter sent by the IACHR to the Colombian State on November 6, 2012, pursuant to Article 41 of the American Convention, Re: Situation of Request for Information from Canal Capital on LGBTI persons submitted by the Council of Bogotá. The State answered this request for information by Note from the Mission MPC/OEA No. 1922/2012, December 20, 2012.

<sup>1767</sup> IACHR, *Annual Report 2012*, Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II.147, Doc. 1, March 5, 2013, para. 154.

respect to other “important communities that deserve equal treatment”.<sup>1768</sup> Also, the State indicated that the information requested was for statistical purposes, and that considering that Canal Capital had not responded to the questions posed, “the current situation of Canal Capital remains the same that existed before the questions were formulated”.<sup>1769</sup>

985. In this respect, the IACHR reiterates the pronouncement by the Special Rapporteur for Freedom of Expression, who expressed her concern “that a public servant would request information from a public media outlet with the sole purpose of reproducing discriminatory stereotypes that lack any reasonable basis and to reinforce segregationist and antidemocratic practices and policies that affect not only the individuals directly concerned but also society as a whole.”<sup>1770</sup>

## 1. Advances and setbacks in the legislation and the case-law

986. Since 2007 the Constitutional Court has been recognizing the same social, property, and inheritance rights for same-sex couples as for different sex couples in consensual union. In 2012, the Commission has observed the recognition of the rights of LGBTI persons in Colombia through judgments of the Constitutional Court guaranteeing a series of rights based on the principle of equality and non-discrimination. In this regard, the Commission applauds the domestic recognition of the rights of LGBTI persons, which has come about through judgments that have recognized the right of gay parents to adopt,<sup>1771</sup> that extend succession benefits to same-sex couples,<sup>1772</sup> that eliminate the prohibition on donating blood based on sexual orientation,<sup>1773</sup> as well as the judgment that recognizes that families made up of same-sex couples constitute a family, and affirmed the guarantee of their pension rights,<sup>1774</sup> among others.<sup>1775</sup>

987. In addition, the IACHR has received information related to the delay of more than three years by the Constitutional Court in issuing its judgment in the *tutela* action brought in the name of Ana Leiderman and Verónica Botero, a lesbian couple who have filed an application whereby the second seeks to adopt the biological daughter of the first.<sup>1776</sup> The IACHR recalls that with a view to protecting the paramount interest of children and adolescents access to justice must

<sup>1768</sup> Ministry of Foreign Affairs, Memorandum DIDHD/GAPDH No. 84579/1410, December 18, 2012, p. 4.

<sup>1769</sup> Ministry of Foreign Affairs, Memorandum DIDHD/GAPDH No. 84579/1410, December 18, 2012, p. 4.

<sup>1770</sup> IACHR, *Annual Report 2012*, Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression, Catalina Botero, Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II.147, Doc. 1, March 5, 2013, para. 155.

<sup>1771</sup> Constitutional Court, Judgment T-276, April 11, 2012.

<sup>1772</sup> Constitutional Court, Judgment C-238, March 22, 2012.

<sup>1773</sup> Constitutional Court, Judgment T-248, March 26, 2012.

<sup>1774</sup> Constitutional Court, Judgment T-716 of 2011 (writing for the Court Luis Ernesto Vargas Silva). It reiterated the concept of homo-parental family noted in Judgment C-577 of 2011. In 2013, on occasion of the motion to annul brought by the Office of the Procurator General with respect to Judgment T-716 of 2011, the Constitutional Court *en banc*, by Order 022 of 2013, once again held that some families are constituted by persons of the same sex.

<sup>1775</sup> For example, in early 2012, with a judgment issued in late 2011, the Constitutional Court also recognized that same-sex couples may publicly display their affection, and cannot be restrained from doing so for the sake of “good customs and morality.” Constitutional Court, Judgment T-909 of 2011 (writing for the Court Juan Carlos Henao Pérez).

<sup>1776</sup> This *tutela* action was resolved in favor of the moving parties in the first instance and on appeal. It was appealed by the Colombian Institute for Family Well-Being and was selected for review by the Constitutional Court in March 2010. It was assigned to the judge on April 26, 2010. Constitutional Court of Colombia, Consultation of Tutela Actions Filed, Case T 2597191. See, among others, *El Espectador*, *Corte Aplazó nuevamente decisión sobre adopción de parejas homosexuales*, July 19, 2012. Available at: <http://m.elespectador.com/noticias/judicial/articulo-361336-corte-aplazo-nuevamente-decision-sobre-adopcion-de-parejas-homos>; “Ana y Verónica siguen esperando,” January 8, 2013. Available at: <http://www.kienyke.com/historias/ana-y-veronica-siguen-esperando/>.

be guaranteed without unwarranted delays in proceedings over matters related to the rights of children, such as cases of adoption.<sup>1777</sup>

988. As regards legislative measures, the IACHR acknowledges the possibility according to the domestic criminal legislation of considering aggravating factors when imposing sentences regarding crimes that have been committed inspired by intolerance and discrimination related to sex or sexual orientation, among other considerations.<sup>1778</sup> Nonetheless, civil society reports that the prejudices that persist among judicial officers, judges, and prosecutors result in this aggravating factor not being applied in cases of homicides of LGBTI persons, even when there is evidence for doing so. To the contrary, they argue that instead attenuating factors are applied based on the consideration of these as crimes of passion.<sup>1779</sup> Moreover, the IACHR takes note of the adoption of Law 1482 of 2011, which criminalizes discrimination including acts of discrimination – carried out with the impediment, obstruction, or arbitrary restriction of the full exercise of rights – and harassment based on sexual orientation, among other categories.<sup>1780</sup>

989. Finally, the IACHR observes that with decision C-577/11, the Constitutional Court gave Congress two years to legislate on the right of same-sex couples to civil marriage; and that period expired on June 20, 2013.<sup>1781</sup> The IACHR learned that on December 4, 2012, the First Committee of the Senate passed a bill that defines marriage as a contract between two persons of different or the same sex.<sup>1782</sup> Nonetheless, on April 24, 2013, the Congress did not pass the bill in the second debate.<sup>1783</sup> The Commission notes that after June 20, 2013 a situation of uncertainty has arisen because although certain judges have interpreted the decision by the Constitutional Court as allowing the right for same sex couples to marry, and as such have proceeded to marry couples,<sup>1784</sup> some State entities, such as the Office of the Inspector General, have interpreted the opposite. This has meant that the Office of the Inspector General issued a directive aimed at public officials (including judges and public notaries) urging them not to interpret this decision in that sense.<sup>1785</sup> Additionally, the IACHR received information on the

<sup>1777</sup> Accordingly, the Inter-American Court has held that “owing to the importance of the interests in question, the administrative and judicial proceedings that concern the protection of the human rights of children, particularly those judicial proceedings concerning the adoption, guardianship and custody of children in early infancy, must be dealt with by the authorities with exceptional diligence and speed.” I/A Court H.R., Case of Fornerón and daughter v. Argentina. Merits, Reparations and Costs, Judgment of April 27, 2012 Series C No. 242, paras. 51, 57.

<sup>1778</sup> Article 58 of the Colombian Criminal Code establishes: “Article 58. The following are circumstances for aggravating the sentence, so long as it has not been provided otherwise: ... 3. That the punishable conduct is inspired by motives of intolerance and discrimination related to race, ethnicity, ideology, religion, or the beliefs, sex or sexual orientation, or any disease or disability of the victim.”

<sup>1779</sup> Colombia Diversa, Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011, p. 31.

<sup>1780</sup> Law 1482 of November 30, 2011, Diario Oficial No. 48,270 of December 1, 2011, “by means of which the Criminal Code is amended and other provisions are established.” Available at: [http://www.secretariassenado.gov.co/senado/basedoc/ley/2011/ley\\_1482\\_2011.html](http://www.secretariassenado.gov.co/senado/basedoc/ley/2011/ley_1482_2011.html).

<sup>1781</sup> Constitutional Court, Judgment C-577/11, July 27, 2011.

<sup>1782</sup> Noticias Caracol, *Matrimonio Igualitario en Colombia, aprobado en Primer Debate*, December 4, 2012. Available (in Spanish only) at: <http://www.noticiascaracol.com/nacion/articulo-280912-matrimonio-igualitario-colombia-aprobado-primer-debate>.

<sup>1783</sup> “Se Hunde el Proyecto de Matrimonio Igualitario,” April 24, 2013. Available (in Spanish only) at: <http://www.portafolio.co/economia/proyecto-matrimonio-igualitario-colombia>.

<sup>1784</sup> See for example, El Siglo, “First homosexual couple gets married in Colombia”, July 24, 2013. Available (in Spanish only) at: <http://www.elsiglo.com.ve/article/56579/Primera-pareja-homosexual-se-casa-en-Colombia-mosexual-en-Colombia->.

<sup>1785</sup> The Inspector General urged “the administrative authorities to respect the functions of the legislator and refrain from creating and imposing non-existent juridical institutions, and by no means, in detriment of fundamental rights and the comprehensive protection, which according to the Constitution, is afforded to marriage and the family”. See Office of the

disciplinary investigation conducted by the *Consejo Superior de la Judicatura* in Bogotá against the judge that declared the first gay couple legally married, initiated because of a complaint by the mayor of Bogotá.<sup>1786</sup>

## 2. Impunity in cases of violence against LGBTI persons in Colombia

### a. Killings and violations of integrity in the context of the armed conflict

990. For several years the IACHR has been receiving worrisome information regarding the high number of homicides, attacks, threats to life, and situations of police abuse perpetrated against LGBTI persons in Colombia, which have been documented in different zones and departments of the country by civil society organizations. The phenomenon commonly known as “social cleansing” by armed groups has been condemned by the IACHR, as of its Second Report on the Situation of Human Rights in Colombia, published in 1993.<sup>1787</sup>
991. In 2012, a total of 10 gay men and 11 trans persons were killed in the Caribbean region in the departments of Atlántico, Bolívar, Guajira, Cesar, Magdalena, and Sucre. Many of these 21 persons had previously received threats, directly or by means of threatening pamphlets in the areas where they resided.<sup>1788</sup> In this respect, in August 2012 the IACHR issued a press release making reference to the killings of two of these trans women, Sirena Paola (registered at birth as Álvaro José Orozco Gutiérrez) and Tania (registered at birth as Delimiro Ávila Mendoza). On that occasion the IACHR reminded the State that it is its obligation to investigate these killings at its own initiative, and it urged it to open lines of investigation that would take into account whether these assassinations were committed because of the gender expression, gender identity, or sexual orientation of the victims. The IACHR also urged the State to take actions to protect and ensure the right of LGBTI persons to a life free of violence.<sup>1789</sup> Also, the IACHR received information about the killing on July 23, 2013 of Wizy Romero (21), who was a trans woman widely known because of her leadership of the LGBTI movement in Barranquilla.<sup>1790</sup>

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Inspector General, Administrative directive No. 013 of 2013, “*Directrices, Recomendaciones y Peticiones en relación con el cumplimiento del resuelve quinto de la Sentencia C-577 de 2011*” (free translation by the IACHR). In this regard, the IACHR takes note of the statement by the presidency of the Constitutional Court indicating that (i) the Office of the Inspector General must strictly adhere to the Constitution and the law; (ii) that the *Ministerio Público* (Office of the Attorney General), which is part of the Office of the Inspector General is not authorized to disobey courts’ rulings; (iii) that the Judiciary is autonomous and independent from the other State bodies, and thus no State authority can interfere in the legitimate exercise of its constitutional attributions; and (iv) the competencies of State authorities such as public notaries must be respected when they act in compliance with decisions by the Constitutional Court; among others. See Press Release by Jorge Iván Palacio Palacio, President, Constitutional Court, June 2013, available (in Spanish only) at: [www.corteconstitucional.gov.co](http://www.corteconstitucional.gov.co).

<sup>1786</sup> El País, “Judge who formalized same sex union in Bogotá will be investigated”, July 31, 2013, available (in Spanish only) at: <http://www.elpais.com.co/elpais/colombia/noticias/investigaran-juez-formalizo-union-pareja-homosexual-bogota>.

<sup>1787</sup> IACHR, Second Report on the Situation of Human Rights in, Chapter VII. Right to Life. Cases of genocide due to “social cleansing.” OEA/Ser.L/V/II.84, Doc. 39 rev., October 14, 1993.

<sup>1788</sup> Caribe Afirmativo, *¡A mayor visibilidad, mayor riesgo!, Situación de los Derechos Humanos de la Población de Lesbianas, Gays, Bisexuales y Personas Trans en la Región Caribe*, 2012, pp. 13-30. See also, *Más de la Mitad de los Asesinatos a LGTB en Colombia este año a Transexuales*, interview with Wilson Castañeda Castro, Director of Caribe Afirmativo, September 6, 2012. Available (in Spanish only) at: <http://www.cascaraamarga.es/sociedad/56/2799.html>.

<sup>1789</sup> IACHR, Press Release No. 110/12, *IACHR Condemns Murder of Trans Women in Colombia*, August 30, 2012. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2012/110.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/110.asp).

<sup>1790</sup> This killing and another killing were included in the press release issued by the IACHR on acts of violence against LGBTI persons that took place during the month of July 2013. See IACHR, Press Release No. 60/13, “IACHR expresses concern about violence and discrimination against LGBTI persons, particularly youth, in the Americas”, August 15, 2013, available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/060.asp](http://www.oas.org/en/iachr/media_center/PReleases/2013/060.asp).

This brings the number of killings of LGBTI persons in the Caribbean region of Colombia to eleven during the first seven months of the year 2013.<sup>1791</sup>

992. Similarly, the Commission has been informed of the persistence of violence against trans women in Cali (department of Valle del Cauca). In late 2011, the situation of violence in Cali led the NGO World Organization against Torture (OMCT) to issue an appeal to President Juan Manuel Santos concerning the serious violence faced by trans women there.<sup>1792</sup> In 2012, this situation of violence continued to be reported by organizations in Cali, and as of August 2012, six homicides of trans women were reported.<sup>1793</sup> The IACHR, concerned about the high rate of assassinations of trans women in Cali, sent a letter pursuant to Article 41 of the American Convention in October 2012, requesting information from the Colombian State so as to learn of the state actions being taken to investigate, prosecute, and punish these acts, and also seeking information about measures to prevent this violence.<sup>1794</sup> In its response, the State reported on the status of the investigations; made reference to the directives issued by the National Police in 2009 and 2010 to mitigate the situations of attacks on LGBTI persons and in particular their implementation in that area through programs to raise the awareness and train the police.<sup>1795</sup>
993. According to the information received, most of the attacks against LGBTI persons have been perpetrated by members of illegal armed groups.<sup>1796</sup> As of 2007, it was noted that pamphlets were circulated on a massive scale in several departments threatening to kill LGBTI persons.<sup>1797</sup> These pamphlets described as military targets persons historically subject to exclusion and discrimination, including LGBTI persons, with the objective of removing or eliminating them from the places in which they exercise or sought to exercise territorial control.<sup>1798</sup> More specifically, in 2012 the organization Caribe Afirmativo documented the circulation of 11 pamphlets directly threatening LGBTI persons in Cartagena, Sincelejo, Santo Tomás, Sabanagrande, Baraona, and Soledad.<sup>1799</sup> These pamphlets were reportedly signed by illegal armed groups that came about after the demobilization of paramilitary organizations; they identify lesbians, gays, trans persons, and persons living with HIV as “military targets”;

<sup>1791</sup> Corporación Caribe Afirmativo, “A Trans women is Killed in Barranquilla”, 24 de julio de 2013.

<sup>1792</sup> World Organization against Torture (OMCT). Case COL 261108.VAW. Geneva, November 26, 2008.

<sup>1793</sup> Santamaría Fundación and Observatorio Ciudadano Trans, *Press Release 026, Homicide of Trans Woman (Lina Marcela Lozada Alzate)*, Cali, January 19, 2012; Santamaría Fundación and Observatorio Ciudadano Trans, *Press Release 027, Homicide of Trans Woman (Yury Álvarez Real)*, Cali, January 19, 2012; Santamaría Fundación and Observatorio Ciudadano Trans, *Press Release 029, Homicides of Trans Women in the Metropolitan area of Cali (La Zimba and Vicky)*, Cali, March 13, 2012; Santamaría Fundación and Observatorio Ciudadano Trans, *Press Release 031, Homicide of Trans woman (Nikol Corrales Bedoya)*, Cali, August 15, 2012; and Santamaría Fundación and Observatorio Ciudadano Trans, *Press Release 032, Homicide of Trans Woman (Isabela Cocuy Llanos)*, Cali, August 15, 2012.

<sup>1794</sup> IACHR, Letter sent to the Colombian State re: the situation of trans women in the department of Valle del Cauca. Request for Information – Article 41 of the American Convention, October 2, 2012.

<sup>1795</sup> State of Colombia, Ministry of Foreign Affairs, DIDHD/GAIID No. 87816/1237, November 2, 2012, pp. 9-12.

<sup>1796</sup> International Verification Mission on the Situation of Human Rights Protection in Colombia, November 28 to December 2, 2011, p. 14.

<sup>1797</sup> The organization Colombia Diversa has been reporting, at least since 2007, the circulation of threatening pamphlets in Barrancabermeja, Medellín, Pereira, and Bucaramanga. Colombia Diversa, *Todos los Deberes, Pocos los Derechos, Situación de derechos humanos de lesbianas, gay, bisexuales y transgeneristas en Colombia 2008-2009*, Chapter: Desplazamiento Forzado contra las Personas LGBT: reflexiones para la investigación e implementación de políticas públicas, Bogotá, 2011, p. 140.

<sup>1798</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: “La justicia es ciega ante la evidencia de crímenes por perjuicio” (Catalina Lleras), Bogotá, 2013, p. 12.

<sup>1799</sup> Caribe Afirmativo, *¡A mayor visibilidad, mayor riesgo!, Situación de los Derechos Humanos de la Población de Lesbianas, Gays, Bisexuales y Personas Trans en la Región Caribe*, 2012, p. 42.



they use pejorative terms to refer to the sexual orientation of persons and threaten them saying they should leave the various towns or else they would be assassinated.<sup>1800</sup>

994. Moreover, the IACHR has received information on such threats via circulation of pamphlets in Barrancabermeja (department of Santander) against those who defend the rights of LGBTI persons in March 2013.<sup>1801</sup> As indicated in the chapter of this report on the situation of human rights defenders, the IACHR has also received information on death threats against various activists in that locality, such as Ovidio Nieto of “Gente en Acción.”<sup>1802</sup>
995. According to information collected by the organization Colombia Diversa, at least 280 LGBTI persons were assassinated in 2010 and 2011.<sup>1803</sup> Of those 280 homicides, 58 were said to be due to prejudice, that is, motivated by the sexual orientation or gender identity, real or perceived, of the victim.<sup>1804</sup> In order to make this distinction, Colombia Diversa analyzed a series of patterns based on the group examined. Accordingly, in the case of lesbian women, it was taken into account that (i) the acts occurred in places where homosexuals socialize; (ii) they were assassinated with their partner; (iii) the fact that the victims were human rights defenders; (iv) that they had received discriminatory statements by the perpetrator; and, (v) the fact that the alleged perpetrators were members of illegal organizations.<sup>1805</sup> In the case of gay men, it was considered that: (i) they were assassinated as a couple; (ii) the incidents occurred in places where homosexuals socialize; (iii) the incidents took place at the victims’ residence; (iv) the excessive violence used to assassinate them; (v) the purported participation of homophobic groups; (vi) the purported participation of paramilitary groups; and (vi) the type of weapon used.<sup>1806</sup>
996. Finally, in the case of trans women, the factors that determined the classification of these as homicides due to prejudice were: (i) the occurrence of the incidents in places where homosexuals socialize or the pick-up zones of those who worked as prostitutes; (ii) the excessive violence with which the those homicides were committed; (iii) the existence of reports on risk in the Early Warning System (*Sistema de Alertas Tempranas*) of the Office of the Human Rights Ombudsman that warned of the risk to these persons in light of earlier threats; (iv) the alleged responsibility of trans-phobic groups; (v) the alleged responsibility of illegal

<sup>1800</sup> Caribe Afirmativo, *¡A mayor visibilidad, mayor riesgo!, Situación de los Derechos Humanos de la Población de Lesbianas, Gays, Bisexuales y Personas Trans en la Región Caribe*, 2012, p. 42.

<sup>1801</sup> Information provided to the IACHR by the organization Gente en Acción on March 6, 2013. Threatening pamphlets stated “Guerrilla defenders in camouflage you have 48 hours to leave the city all those who belong to the rebels in camouflage with the organizations of guerrillas, fags, vice-ridden persons, thieves, lesbians, trade unionists, women without a trade, they are supporting the guerrillas to retake the city now with the name of defenders.... We know your movements .... where your family members go to school and work.” Signed by the “Ejército Anti-restitución, Anti-guerrilla, Anti-movimientos gays, Anti-defensores de Derechos (camuflaje de guerrilla) Anti-sindicalista, Anti-feministas, Anti-víctimas.” March 6, 2013.

<sup>1802</sup> See the chapter of this report regarding the situation of human rights defenders.

<sup>1803</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: “La justicia es ciega ante la evidencia de crímenes por perjuicio” (Catalina Lleras), Bogotá, 2013, p. 14.

<sup>1804</sup> In the years under study, no case was reported of a bisexual person assassinated apparently due to prejudice, nor was any report received of a homicide perpetrated against any trans men, such that the figures presented of trans persons assassinated refer exclusively to trans women. Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: “La justicia es ciega ante la evidencia de crímenes por perjuicio” (Catalina Lleras), Bogotá, 2013, p. 18.

<sup>1805</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: “La justicia es ciega ante la evidencia de crímenes por perjuicio” (Catalina Lleras), Bogotá, 2013, p. 19.

<sup>1806</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: “La justicia es ciega ante la evidencia de crímenes por perjuicio” (Catalina Lleras), Bogotá, 2013, p. 20.

armed groups; and (v) the status of the victims as human rights defenders or LGBTI activists.<sup>1807</sup>

997. The civil society organizations also called attention to the fact that these cases remain in impunity. Accordingly, it was noted that while from 2006 to 2011, there were 542 homicides of LGBTI persons, in 300 of them there is no knowledge of the existence of criminal proceedings that have concluded or are under way, mainly because the vast majority of them refer to unidentified persons and are recorded as NN, i.e. no name.<sup>1808</sup> Of the remaining 242 homicides, almost half of the cases are in the preliminary inquiry stage (the perpetrators have yet to be identified), and nearly 32% were archived given the impossibility of establishing the identity of the perpetrators.<sup>1809</sup>

## b. Police abuse

998. The IACHR has been receiving information about cases of police abuse against LGBTI persons for several years. At a hearing held in November 2009, in the context of the IACHR's 137<sup>th</sup> period of sessions, the Commission received information on acts of violence, harassment and threats against members of the LGBTI community by agents of the National Police.<sup>1810</sup> In this regard, the IACHR continued receiving information on cases of police violence against LGBTI persons, which in 2010-2011 is said to have totaled 64 cases, most of which refer to physical and verbal assaults; the trans population was the group most affected. In addition, the cities said to have seen the largest number of incidents are Cartagena, Barranquilla, Cali, and Bogotá. Of the cases reported, only 20 disciplinary investigations have been initiated within the National Police; and five disciplinary sanctions have been imposed.<sup>1811</sup>

999. In 2012, in the Caribbean region 16 cases of police abuse of trans women, gay men, and lesbian women were reported in the departments of Atlántico (9), Bolívar (4), Magdalena (2), and Sucre (1).<sup>1812</sup> The vast majority of these incidents involve alleged physical assault by police agents, in some cases verbal attacks and threats to kill them if they reported what had happened. The victims of police abuse denounced in this region are trans women who are sex workers, hairdressers, students, LGBTI activists, and defenders of the rights of LGBTI persons. According to the information provided by the organization Caribe Afirmativo, most of these persons filed criminal complaints; and it is reported that investigations are under way, including disciplinary proceedings, in some of these cases.<sup>1813</sup>

<sup>1807</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: "La justicia es ciega ante la evidencia de crímenes por perjuicio" (Catalina Lleras), Bogotá, 2013, p. 21.

<sup>1808</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: "La justicia es ciega ante la evidencia de crímenes por perjuicio" (Catalina Lleras), Bogotá, 2013, p. 25.

<sup>1809</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: "La justicia es ciega ante la evidencia de crímenes por perjuicio" (Catalina Lleras), Bogotá, 2013, p. 26.

<sup>1810</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 79.

<sup>1811</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter II: "Orden sin libertad: abusos policiales contra lesbianas, gay, bisexuales y personas trans" (Mauricio Albarracín and Viviana Bohórquez Monsalve), Bogotá, 2013.

<sup>1812</sup> Caribe Afirmativo, *¡A mayor visibilidad, mayor riesgo!, Situación de los Derechos Humanos de la Población de Lesbianas, Gays, Bisexuales y Personas Trans en la Región Caribe*, 2012, pp. 50-61.

<sup>1813</sup> Caribe Afirmativo, *¡A mayor visibilidad, mayor riesgo!, Situación de los Derechos Humanos de la Población de Lesbianas, Gays, Bisexuales y Personas Trans en la Región Caribe*, 2012, pp. 50-61.

1000. In addition, civil society organizations noted that problems persist recording cases in response to reports and complaints due to moderate, serious, and very serious infractions committed by the police against the LGBTI population<sup>1814</sup>, as well as the absence of protocols and routes of attention and protection<sup>1815</sup>, failings in institutional coordination<sup>1816</sup>, gaps in monitoring and evaluation of the policy for preventing and responding to such situations<sup>1817</sup>, failure to adopt work plans<sup>1818</sup>, gaps in the monitoring and evaluation of cases, and lack of process and outcome indicators.<sup>1819</sup> In this regard, the IACHR takes note of the information provided by the State in its observations to the Draft Report, concerning the adoption of measures by the Office of the Attorney General and the Institute of Legal Medicine (Instituto de Medicina Legal) in order to include sexual orientation and gender identity variables in the forms used to file complaints and provide assistance to victims<sup>1820</sup>.
1001. The Commission has also received information that indicates that in those cities where there are public policies on human rights and on the LGBTI population and where there is active participation of the organs of the *Ministerio Público*, as well as greater social mobilization, the design of measures to respond to and prevent police abuse has improved.<sup>1821</sup> The Commission is of the opinion that these steps could lead to important improvements. The Commission also welcomes that, according to the information provided by the State in its observations to the Draft Report, the National Police is currently implementing the “Vulnerable Persons Protection Strategy” (“Estrategia de Protección a Personas Vulnerables”), encouraging a “culture of formal crime reporting” (“la cultura de denuncia formal”), which aims at ensuring that relevant agencies count on the information they need in order to have a comprehensive approach in the investigation of cases. However, the State acknowledges that criminal proceedings are hindered, among other reasons, by the fact that prosecutors generally do not have information to “identify” the victim as part of the LGBTI community<sup>1822</sup>. Its noteworthy that a group of trans women also agrees that the strategies that have been carried out in Bogotá to raise the awareness of members of the armed forces and National Police have curbed attacks by state

<sup>1814</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter II: “Orden sin libertad: abusos policiales contra lesbianas, gay, bisexuales y personas trans” (Mauricio Albarracín and Viviana Bohórquez Monsalve), Bogotá, 2013, p. 57.

<sup>1815</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter II: “Orden sin libertad: abusos policiales contra lesbianas, gay, bisexuales y personas trans” (Mauricio Albarracín and Viviana Bohórquez Monsalve), Bogotá, 2013, p. 63.

<sup>1816</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter II: “Orden sin libertad: abusos policiales contra lesbianas, gay, bisexuales y personas trans” (Mauricio Albarracín and Viviana Bohórquez Monsalve), Bogotá, 2013, p. 66.

<sup>1817</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter II: “Orden sin libertad: abusos policiales contra lesbianas, gay, bisexuales y personas trans” (Mauricio Albarracín and Viviana Bohórquez Monsalve), Bogotá, 2013, p. 58.

<sup>1818</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter II: “Orden sin libertad: abusos policiales contra lesbianas, gay, bisexuales y personas trans” (Mauricio Albarracín and Viviana Bohórquez Monsalve), Bogotá, 2013, p. 66.

<sup>1819</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter II: “Orden sin libertad: abusos policiales contra lesbianas, gay, bisexuales y personas trans” (Mauricio Albarracín and Viviana Bohórquez Monsalve), Bogotá, 2013, p. 66.

<sup>1820</sup> Observations of the State of Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, 2 december 2013, para. 591.

<sup>1821</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter II: “Orden sin libertad: abusos policiales contra lesbianas, gay, bisexuales y personas trans” (Mauricio Albarracín and Viviana Bohórquez Monsalve), Bogotá, 2013, p. 57.

<sup>1822</sup> Observations of Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, 2 december 2013, para. 590.

agents; but notes that nonetheless the situations of violence against trans women continue to occur due to the prejudices against them and due to abuse of authority.<sup>1823</sup>

### c. State response to violence against LGBTI persons: Insufficiency of measures to prevent violence and shortcomings in investigations into these acts

1002. Regarding impunity for assassinations and other acts of violence against LGBTI persons, the Human Rights Committee of the United Nations noted in 2010 with respect to Colombia “[t]he Committee notes the particular vulnerability of certain groups, such as ... lesbian, gay, bisexual and transgender (LGBT) persons. The Committee is concerned at the lack of criminal investigations and the slow progress of existing investigations, since many of them are still at the pre-investigation stage, thus contributing to continued impunity for serious human rights violations....”<sup>1824</sup>

1003. The IACHR is mindful of the issuance of the Directive on “guarantees and respect for the rights of the LGBTI community” by the Ministry of National Defense in 2010, which replaced Transitory Police Directive 058 of 2009, as a measure to prevent police abuse.<sup>1825</sup> As regards this Directive, the IACHR noted in 2011:<sup>1826</sup>

This directive sets out a number of criteria to encourage members of the police to respect and protect the LGBTI community. According to the information received by the Commission, under these directives a number of meetings have been held in different cities across the country<sup>1827</sup> at some of these meetings, agreements were reached to create, inter alia, work programs to encourage respect for and acceptance of the human rights of the LGBTI population; instructions for police conduct vis-à-vis the LGBTI population; active, ongoing training of members of the police force in every division, regarding the rights and measures for understanding sexual diversity and gender identities.<sup>1828</sup> While the Commission applauds these directives, which may well represent progress in the protection and recognition of the rights of LGBTI persons and of the defenders of the rights of these communities, the Commission has received information indicating that these directives are not being followed in practice.<sup>1829</sup>

<sup>1823</sup> General Secretariat of the Office of the Mayor of Bogotá D.C., Universidad Nacional de Colombia, Susana Herrera Galvis et al., *¡A mí me sacaron volada de allá! Relatos de Mujeres Trans Desplazadas Forzosamente hacia Bogotá*, April 2012, p. 193.

<sup>1824</sup> United Nations, Human Rights Committee, Concluding Observations, Colombia, CCPR/C/COL/CO/6, August 4, 2010, para. 12.

<sup>1825</sup> Ministry of National Defense, National Police, Permanent Administrative Directive No. 006. Guarantees and respect for the rights of the LGBT community, February 24, 2010.

<sup>1826</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 336.

<sup>1827</sup> Colombia Diversa, *Situación de los Derechos humanos de la Población LGBT. Informe Alternativo presentado al Comité de Derechos Humanos de Naciones Unidas*, May 2010, pp. 9-10.

<sup>1828</sup> See for example, *Compromisos de la Policía Metropolitana de Cartagena con la Población LGBTI*, available at: <http://www.caribeafirmativo.com/wp-content/uploads/2010/07/COMPROMISO-POLICIAL.doc>.

<sup>1829</sup> On September 9, 2009, Nathalia Díaz Restrepo, a member of the organization Santamaría Fundación, was a victim of police abuse in the city of Cali. As established in the complaint, when Nathalia was in the company of Lulu Muñoz walking in the Las Veraneras neighborhood at night, she was approached by police agents with license plates 241009 who asked to search them. Given her trans identity they asked that the search be performed by a woman. Nonetheless, the police refused to accede to that request, and proceeded to arrest them for refusing to be searched. While the arrest was being made, Nathalia appealed to Directive 058 of the National Police, to which one of the police agents responded, “we are not disrespecting that screwy treaty” (“ese tratado chimbo no lo estamos irrespetando”). As established in the complaint, not only was the arrest unjustified, but as it happened, established legal procedures were not followed, such as proper registration and facilitating a phone call. In addition, they allege that they were subjected to verbal abuse by the police officers. Colombia Diversa, *Situación de los derechos humanos de la población LGBT. Informe Alternativo presentado al Comité de Derechos Humanos de Naciones Unidas*, May 2010, p. 10.

1004. The IACHR finds that according to the information received in the context of the instant report, police abuse against the LGBTI population persists despite the directives of the National Police and the efforts to eradicate it.<sup>1830</sup> In this respect, for example, police abuse was reported by the Police Command in Santa Marta, Magdalena, directed against a group of young human rights defenders from the organization Redemis, on March 24, 2012, precisely as they were going to conduct training on Directive 006 of 2010.<sup>1831</sup> In its observations to the Draft Report, the State informed that disciplinary proceedings have been brought against a police officer for “verbal aggression” and that formal charges were going to be presented in that case.<sup>1832</sup>
1005. It was noted that Directive 006 of 2010 has a preventive approach, but does not have specific or effective mechanisms for attending to or protecting the rights of the population, which suggests the need to design a new policy with a rights-based approach.<sup>1833</sup> Civil society organizations also reported other irregularities and shortcomings in the design and implementation of this Directive, namely: (i) inconsistency in the creation of institutionalized settings for exchanging points of view (“working roundtables”), depending on the local and departmental authority in question, and lack of criteria for establishing whether these roundtables are for prevention or for protection and response in specific cases; and (ii) problems associated with the “liaison officer” (designated by each department police command as the focal point regarding response and prevention measures), considering that in most cases they are mid- or low-level officers, who in turn, allegedly, are the officers reported by LGBTI persons as the assailants, making them “judge and party,” among other issues.<sup>1834</sup> As regards the processing of complaints and reports of police abuse, it was reported that the Office of the Inspector General and the regional procurators’ offices fail to follow-up on and apply the prosecutor’s preferential power when complaints of police abuse against LGBTI persons are lodged.<sup>1835</sup>
1006. The Colombian State, for its part, has told the IACHR that the Office of the Attorney General “is working on the preparation and adoption of protocols for the investigation and reparation for those crimes with the greatest impact.”<sup>1836</sup> More specifically, the State highlighted four measures taken by the Office of the Prosecutor: (i) construction under way of a database with cases of crimes committed against LGBTI persons; (ii) in the context of the guidelines issued by the National Directorate of Public Prosecutors, the prosecutors have been urged to immediately adopt actions and measures to protect victims and their families; (iii) the practice

<sup>1830</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter II: “Orden sin libertad: abusos policiales contra lesbianas, gay, bisexuales y personas trans” (Mauricio Albarracín and Viviana Bohórquez Monsalve), Bogotá, 2013. See also, Caribe Afirmativo, *¡A mayor visibilidad, mayor riesgo!, Situación de los Derechos Humanos de la Población de Lesbianas, Gays, Bisexuales y Personas Trans en la Región Caribe*, 2012.

<sup>1831</sup> Caribe Afirmativo, *¡A mayor visibilidad, mayor riesgo!, Situación de los Derechos Humanos de la Población de Lesbianas, Gays, Bisexuales y Personas Trans en la Región Caribe*, 2012, p. 60.

<sup>1832</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GA/ID-13-048140, 2 december 2013, para. 593.

<sup>1833</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter II: “Orden sin libertad: abusos policiales contra lesbianas, gay, bisexuales y personas trans” (Mauricio Albarracín and Viviana Bohórquez Monsalve), Bogotá, 2013, p. 54.

<sup>1834</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter II: “Orden sin libertad: abusos policiales contra lesbianas, gay, bisexuales y personas trans” (Mauricio Albarracín and Viviana Bohórquez Monsalve), Bogotá, 2013, pp. 61-62.

<sup>1835</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter II: “Orden sin libertad: abusos policiales contra lesbianas, gay, bisexuales y personas trans” (Mauricio Albarracín and Viviana Bohórquez Monsalve), Bogotá, 2013, p. 63.

<sup>1836</sup> State of Colombia, Ministry of Foreign Affairs, DIDHD/GA/ID No. 87816/1237, November 2, 2012, p. 13.

of legal technical committees that seek to identify the difficulties in investigations, and to identify all evidence and strategies conducive to clearing up the crimes as quickly as possible; and (iv) as necessary, a determination will be made as to the need to form working groups in the investigations so as to determine the context of criminal patterns that cause the greatest vulnerability to the rights of these persons.<sup>1837</sup> In its observations to the Draft Report, the State informed that the National Police “started to implement positive actions”, consisting in “training and sensitizing on social groups” and the “dissemination of Directive 006”<sup>1838</sup>. Moreover, the State affirmed that the Presidential Program on Human Rights and Humanitarian International Law (“Programa Presidencial de Derechos Humanos y DIH”), within the Board of Urgent Cases (Mesa de Casos Urgentes), “is doing a special follow-up on the measures adopted by the National Police [...] as part of the “Vulnerable Persons Protection Strategy” (“Estrategia de Protección a Personas Vulnerables”), and the enforcement of Directive 006”<sup>1839</sup>.

1007. The measures reported by the State, which are general in nature, appear not to be sufficient to effectively address the problem of violence against LGBTI persons in Colombia, in particular when one contrasts the reports sent by civil society regarding the persistence of serious acts of violence – including a large number of assassinations – that occur in a generalized context of threats and intimidation against LGBTI persons in Colombia and which, as observed, extends throughout the national territory.
1008. The Commission received information on serious problems in the investigation of cases of assassinations of LGBTI persons that limit its effectiveness and tend to contribute to impunity. Accordingly, civil society has revealed that the authorities generally approach investigations into such acts as if they were crimes of passion,<sup>1840</sup> and that the investigators’ prejudices are manifested in the inadequate collection of evidence and the failure to adequately preserve the crime scene,<sup>1841</sup> as well as the conduct of the process without establishing or bearing in mind the motives of such crimes.<sup>1842</sup> It was also indicated that normally, when the judgment is handed down, the judges generally attenuate the sentence rather than aggravating it despite the existence of sufficient evidence for an aggravated sentence.<sup>1843</sup>

<sup>1837</sup> State of Colombia, Ministry of Foreign Affairs, DIDHD/GAIID No. 87816/1237, November 2, 2012, p. 15.

<sup>1838</sup> Observations of the State of Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIID-13-048140, 2 december 2013, para. 587.

<sup>1839</sup> Observations of the State of Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIID-13-048140, 2 december 2013, para. 592.

<sup>1840</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: “La justicia es ciega ante la evidencia de crímenes por perjuicio” (Catalina Lleras), Bogotá, 2013, p. 28.

<sup>1841</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: “La justicia es ciega ante la evidencia de crímenes por perjuicio” (Catalina Lleras), Bogotá, 2013, p. 28.

<sup>1842</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: “La justicia es ciega ante la evidencia de crímenes por perjuicio” (Catalina Lleras), Bogotá, 2013.

<sup>1843</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: “La justicia es ciega ante la evidencia de crímenes por perjuicio” (Catalina Lleras), Bogotá, 2013, p. 31.

1009. Accordingly, civil society calls into question the extent to which – based on the prejudices that exist – these crimes are characterized as crimes of passion from early on in the investigations, leading to the investigators not formulating other hypotheses or opening lines of investigation that bear in mind whether the motive of these assassinations may have been the victim’s sexual orientation and/or gender identity. This is reflected in the evidence collection phase and causes impunity in these cases.<sup>1844</sup> In this regard, the IACHR finds that it is illustrative of this situation that, in its observations to the Draft Report, the State reiterated that “in relation to murders, a minimal portion is attributed to homophobia and the rest are regarded as crimes of passion or motivated on personal revenge”<sup>1845</sup>.

1010. In this respect, the IACHR has stated the following<sup>1846</sup>:

Another frequent obstacle to proper investigation, prosecution and punishment of those responsible for crimes committed against LGBTI persons –an obstacle found across the region- is that most crimes committed against LGBTI persons are classified as crimes of passion; the lines of investigation pursued are not tailored to determining whether the crime was in fact a crime of passion or a crime committed because of the victim’s sexual orientation or preference.

### 3. Forced displacement of LGBTI persons, in particular trans women

1011. In addition to the threats, situations of violence, and assassinations by armed groups directed against LGBTI persons in the context of the armed conflict, another aspect of the intersection of armed conflict and non-normative sexual orientations and gender identities is the forced displacement of LGBTI persons. In its observations to the Draft Report, the State noted that, in general, trans persons are “the most vulnerable group at a national level”, because gender expression gives them more visibility and increases their vulnerability and the violation of their human rights. The State pinpointed that “although it is true that in a large number of proceedings the perpetrator could not be identified, there are 9 cases in which perpetrators have already been sentenced and 90 cases in the preliminary investigation stage”<sup>1847</sup>.

1012. The IACHR notes a study from 2012 on the experiences of trans women who have been displaced from various departments of Colombia (Antioquia, Sucre, Norte de Santander, Cundinamarca, Vichada, Valle, Cauca, Huila, Tolima, and Meta) towards Bogotá.<sup>1848</sup> This study reveals that the three main reasons for which trans women, and in general persons with non-normative gender identities, are expelled from local or regional territories are: (i) direct threats by armed actors that come about in the wake of trans women being identified as “undesirable,” in an exercise of their control over the territories; (ii) the risk of forced recruitment – which is applied to the whole population – has specific implications for trans

<sup>1844</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: “La justicia es ciega ante la evidencia de crímenes por prejuicio” (Catalina Lleras), Bogotá, 2013, p. 29.

<sup>1845</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, 2 december 2013, para. 589.

<sup>1846</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 337.

<sup>1847</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, 2 december 2013, para. 600.

<sup>1848</sup> General Secretariat of the office of the Mayor of Bogotá D.C., Universidad Nacional de Colombia, Susana Herrera Galvis et al., *¡A mí me sacaron volada de allá! Relatos de Mujeres Trans Desplazadas Forzosamente hacia Bogotá*, April 2012.

women in that they would be recruited as men, and so would have to renounce their life projects related to their feminization; (iii) the context of war and the socioeconomic conditions in the country, factors which, together with rejection by their families, in many cases, make the gender transition of trans women extremely difficult.<sup>1849</sup> Thus the intersection between the risks associated with living in a context of armed conflict and rejection by their families due to their gender identity leads them to abandon their local territories and their family ties.<sup>1850</sup>

1013. Once displaced to Bogotá it is common for trans women to settle in peripheral neighborhoods or directly in the Tolerance Zone of the Barrio Santa Fe, characterized as a “ghetto” or space for confining the population so as to keep trans persons distant from society, and at the same time in a territory they appropriate and in which they feel safer.<sup>1851</sup> Without prejudice to that, trans women report that they are victims of systematic physical violence, sometimes at the hands of other trans women<sup>1852</sup> as well as third persons<sup>1853</sup> and the police.<sup>1854</sup> There are also indicia that some criminal bands in Bogotá monitor the movements and prostitution work of some trans women.<sup>1855</sup>
1014. Trans women who have had to leave their places of origin for reasons related to the armed conflict are not always identified as victims of forced displacement; as a result, they do not have access to the state measures of attention and reparation available to the general population. Trans women who are identified as displaced do not have access to these measures either due to the lack of information or, in certain cases, the fact that they themselves discard this possibility, on indicating that these policies do not incorporate differential perspectives that answer to their specific needs.<sup>1856</sup>
1015. The IACHR takes note of the pronouncements of the Constitutional Court that seek to protect the rights of displaced LGBTI persons. Accordingly, in 2003 the Constitutional Court argued that attention to the displaced population should be based on affirmative actions and differential approaches sensitive to the “sexual option,” among others (such as gender,

<sup>1849</sup> General Secretariat of the Office of the Mayor of Bogotá D.C., Universidad Nacional de Colombia, Susana Herrera Galvis et al., *¡A mí me sacaron volada de allá! Relatos de Mujeres Trans Desplazadas Forzosamente hacia Bogotá*, April 2012, p. 186.

<sup>1850</sup> General Secretariat of the Office of the Mayor of Bogotá D.C., Universidad Nacional de Colombia, Susana Herrera Galvis et al., *¡A mí me sacaron volada de allá! Relatos de Mujeres Trans Desplazadas Forzosamente hacia Bogotá*, April 2012, p. 187.

<sup>1851</sup> General Secretariat of the Office of the Mayor of Bogotá D.C., Universidad Nacional de Colombia, Susana Herrera Galvis et al., *¡A mí me sacaron volada de allá! Relatos de Mujeres Trans Desplazadas Forzosamente hacia Bogotá*, April 2012, p. 191.

<sup>1852</sup> Violence among trans women is due in large part to the rivalry among them, given the competition for scant working opportunities. Social and cultural factors “cast” trans women into hairdressing or prostitution, as if these lines of work naturally corresponded to them, as if they had no skills in other areas. As an aggravating factor, these lines of work are attributed little social value, are poorly paid, and do not offer satisfactory job benefits. General Secretariat of the Office of the Mayor of Bogotá D.C., Universidad Nacional de Colombia, Susana Herrera Galvis et al., *¡A mí me sacaron volada de allá! Relatos de Mujeres Trans Desplazadas Forzosamente hacia Bogotá*, April 2012, pp. 187, 189.

<sup>1853</sup> General Secretariat of the Office of the Mayor of Bogotá D.C., Universidad Nacional de Colombia, Susana Herrera Galvis et al., *¡A mí me sacaron volada de allá! Relatos de Mujeres Trans Desplazadas Forzosamente hacia Bogotá*, April 2012, p. 191.

<sup>1854</sup> General Secretariat of the Office of the Mayor of Bogotá D.C., Universidad Nacional de Colombia, Susana Herrera Galvis et al., *¡A mí me sacaron volada de allá! Relatos de Mujeres Trans Desplazadas Forzosamente hacia Bogotá*, April 2012, p. 193.

<sup>1855</sup> This study clarifies that while trans women who participated in the research did not explicitly mention feeling impacted by any armed group in Bogotá, this does not mean that the internal armed conflict does not have an impact in Bogotá. In addition, that report indicates that it is possible that the interviews did not specifically point to this, due to the fear experienced by trans women or due to the normalization of the relations with these armed actors. General Secretariat of the Office of the Mayor of Bogotá D.C., Universidad Nacional de Colombia, Susana Herrera Galvis et al., *¡A mí me sacaron volada de allá! Relatos de Mujeres Trans Desplazadas Forzosamente hacia Bogotá*, April 2012, p. 192.

<sup>1856</sup> General Secretariat of the Office of the Mayor of Bogotá D.C., Universidad Nacional de Colombia, Susana Herrera Galvis et al., *¡A mí me sacaron volada de allá! Relatos de Mujeres Trans Desplazadas Forzosamente hacia Bogotá*, April 2012, p. 193.



ethnicity, and disability).<sup>1857</sup> The Constitutional Court also interpreted the concept of “family” and “family reunification” contained in Article 2(4) of Law 387 of 1997 so as to argue that the prerogatives contained therein for the family members include, in addition to relatives, “spouses and permanent partners.”<sup>1858</sup>

1016. The IACHR attaches positive value to this framework for protection and interpretation of the rights of LGBTI persons who have been displaced. Nonetheless, the IACHR also takes note of statements by United Nations agencies indicating that there is a gap in the design “of a differential approach sensitive to the sexual option” by the State and the National System for Integral Attention to the Displaced Population (“SNAIPD”, Spanish acronym).<sup>1859</sup> In this regard, the IACHR observes that the State should design and adopt effective measures to give adequate attention to LGBTI persons who are displaced. These measures should start with a differential approach in the policy designed to respond to the displaced population that takes into account the intersections with non-normative sexual orientations and gender identities.

#### **4. Other structural challenges in the state response that hinder a comprehensive and effective approach to the issues affecting LGBTI persons in Colombia**

##### **a. Non-existence of disaggregated official information**

1017. Civil society has repeatedly reported that there is no annual reports of official information, statistics, or figures that make it possible to make visible and examine the human rights situation of LGBTI persons in Colombia. In particular, it is reported that information systems that register violations against LGBTI persons in a differentiated manner are still lacking. It is not known how many LGBTI victims have been identified as such,<sup>1860</sup> thus it is not possible to provide official figures to help determine the scope of discrimination.<sup>1861</sup> The same gap in information occurs in relation to LGBTI persons who have been forcibly displaced,<sup>1862</sup> rendering these situations invisible and hindering an effective state response.

1018. Yet the IACHR was also informed by the State that the National Police has the qualitative and quantitative analyses produced by the Center for Criminology Investigations and the Observatory of Crime, which have a variable that “makes it possible to systematize the information by violations committed against persons of the LGBTI community.” The sources for this information-gathering process are the “urgent acts” (*actos urgentes*) and judicial

<sup>1857</sup> Constitutional Court, Judgment T-602, July 23, 2003, Case T-698846 (writing for the Court, Jaime Araújo Rentería).

<sup>1858</sup> In addition, it held that “Articles 5, 7, and 15 of Law 975 of 2005, 11 of Law 589 of 2000, 14 and 15 of Law 971 of 2005, and 2 of Law 387 of 1997 will be found constitutional so long as it is understood that, as the case may be, their provisions, conditions being equal, also apply to the members of same-sex couples.” Constitutional Court, Judgment C-029 of January 28, 2009, Case D-7290 (writing for the Court, Rodrigo Escobar Gil).

<sup>1859</sup> See, among others, UNHCR, *Balance de la política pública de atención integral a la población desplazada por la violencia*, 2006, pp. 34 and 37; Colombia Diversa, *Todos los Deberes, Pocos los Derechos, Situación de derechos humanos de lesbianas, gay, bisexuales y transgeneristas en Colombia 2008-2009*, Chapter: “Desplazamiento Forzado contra las Personas LGBT: reflexiones para la investigación e implementación de políticas públicas,” Bogotá, 2011, p. 144.

<sup>1860</sup> Colombia Diversa, “Punteo”. Document presented to the IACHR during the onsite visit in December 2012.

<sup>1861</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: “La justicia es ciega ante la evidencia de crímenes por perjuicio” (Catalina Lleras), Bogotá, 2013, p. 9.

<sup>1862</sup> Colombia Diversa, *Todos los Deberes, Pocos los Derechos, Situación de derechos humanos de lesbianas, gay, bisexuales y transgeneristas en Colombia 2008-2009*, Chapter: “Desplazamiento Forzado contra las Personas LGBT: reflexiones para la investigación e implementación de políticas públicas”, Bogotá, 2011, p. 133.

procedures of each case.<sup>1863</sup> Nonetheless, the IACHR does not have sufficient information to determine the effectiveness of these information systems or its impact on an effective state response to the issue.

1019. Colombian civil society has expressed its concern over the lack of information systems that take into account the forms of violence to which LGBTI persons are subjected, even though some procurators' offices indicate that there is a way to record the violations that affect LGBTI persons.<sup>1864</sup> Even though at present there is more information from official sources, this is arguably in response to the systematization of the violations by LGBTI human rights organizations, and not to the existence of official information systems that record them.<sup>1865</sup> The lack of unified information systems not only renders invisible the violations perpetrated against this population, but undercuts the consistency of the information collected by the state authorities.<sup>1866</sup> In this regard, the IACHR urges the State to create systems of information that make it possible to compile and produce official nationwide statistics on acts of violence against LGBTI persons, or those perceived as such.

## **b. Lack of a public policy for LGBTI persons**

1020. In April 2013 the State confirmed that "it has yet to issue an exclusive national public policy for the LGBTI sector."<sup>1867</sup> During the visit, the Ministry of Interior informed the IACHR that the Government was launching a public campaign to raise awareness as to the rights of LGBTI persons.<sup>1868</sup> Information was received concerning Decree 4530 of 2008, which ordered that the Ministry of Interior, through the Bureau for Indigenous Affairs, Minorities, and Rom, was to design programs for technical and social assistance and support for this population, in addition to authorizing the Ministry of Interior and Justice to create public policy guidelines for guaranteeing the rights of the LGBTI population.<sup>1869</sup> In this context meetings have been held between the Ministry of Interior and leaders of the LGBTI population in which it was agreed to

<sup>1863</sup> State of Colombia, Ministry of Foreign Affairs, DIDHD/GAID No. 87816/1237, November 2, 2012.

<sup>1864</sup> Civil society indicated that several of the procurators' offices confirmed that there is a form for recording the violations of which LGTB persons are victims through the Mission Information System (*SIM: Sistema de Información Misional*), which apparently "contains some references to sexual preference." Nonetheless, they do not make specify how it operates, nor does it include differentiated variables based on the victim's sexual orientation or gender identity. It is clear that there is no unified information system, for each of the local ombudsman's offices refers to a different information system: some to a registry system that derives from the Internal Control System, which has nothing to do with the registration of human rights violations; others mention Law 1448 of 2011, which refers only to the forms for victims' statements in the context of the armed conflict, thus it does not cover all victims; and others refer to databases or archives created by some local ombudsman's offices without a unified criterion. Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: "La justicia es ciega ante la evidencia de crímenes por perjuicio" (Catalina Lleras), Bogotá, 2013, p. 10.

<sup>1865</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: "La justicia es ciega ante la evidencia de crímenes por perjuicio" (Catalina Lleras), Bogotá, 2013, p.9.

<sup>1866</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: "La justicia es ciega ante la evidencia de crímenes por perjuicio" (Catalina Lleras), Bogotá, 2013, p. 11.

<sup>1867</sup> Ministry of Foreign Affairs of Colombia, *Document "LGTBI,"* received by the IACHR May 3, 2013, p. 8.

<sup>1868</sup> Information provided at the meeting with state authorities, held in Bogotá, December 3, 2012.

<sup>1869</sup> The IACHR was informed that this decree was subsequently amended by Article 1 of Decree 2893 of 2011 and then by Article 26 of National Decree 4085 of 2011. Ministry of Foreign Affairs of Colombia, *Document "LGTBI,"* received by the IACHR May 3, 2013, p. 3.

create a Technical Support Committee made up of LGBTI activists and leaders and to hold regional meetings.<sup>1870</sup>

1021. The State also reported that on November 7, 2012 an agreement was signed by the Vice President of the Republic, the Ministry of Interior, the Office of the Inspector General, the National Police, and the Office of the Attorney General for the purpose of giving impetus to and strengthening the actions associated with the Roundtable on Urgent cases (*Mesa de Casos Urgentes*) from the LGBTI social sectors, which has been operating since September 15, 2011.<sup>1871</sup> The agreement provides for: (i) identifying cases and monitoring of the situation to ensure, from the institutions, that measures are taken to ensure specific affirmative actions in response to the violation of rights of persons in the LGBTI social sectors, (ii) coordinating with the national-level state agencies to take actions to mitigate the situations of vulnerability of the LGBTI social sectors, (iii) articulate the efforts of national agencies to further the commitments and initiatives of the regional and local institutions, giving priority to and channeling the information to expedite the resolution of cases, (iv) informing and creating forums for dialogue so that civil society may learn about measures with a differential approach and be an active part of the processes to ensure they go forward.<sup>1872</sup>
1022. The State reports that since the creation of the Roundtable for Urgent Cases several cases have been monitored that were referred by civil society organizations involving crimes against LGBTI persons, including cases of police abuse. The State reiterated that the Board of Urgent Cases is implementing “a series of affirmative actions with the aim of reducing the number of violations of human rights” and highlighted the coordinated work of the National Police, the National Unit of Protection (“Unidad Nacional de Protección”) and the Office of the Attorney General.<sup>1873</sup> The IACHR recognizes and values the progress made by the State through this Roundtable including its decentralization in the departments where there has been an increase in the number of complaints. In its observations to the Draft Report, the State highlighted the decentralization of the Roundtable to the city of Barranquilla, “given the high numbers of reports and the circulation of flyers with threats against trans women sex workers and HIV positive gay men”<sup>1874</sup>. Accordingly, the State reported that various visits have been made to the department of Atlántico due to the threatening pamphlets that have been circulating with ever greater intensity, and commitments have been adopted and mechanisms put in place aimed at reducing discrimination against and curbing physical and symbolic attacks on LGBTI persons. The State also reported on different actions that have been taken thanks to the Roundtable of Urgent Cases in the departments of Valle del Cauca and Bolívar.<sup>1875</sup>
1023. Civil society organizations indicated that despite the existence of a “Roundtable for Urgent Cases” chaired by the Ministry of Interior and which includes the participation of the Attorney

<sup>1870</sup> IACHR, Annex to Press Release 144/12 issued on culminating the on-site visit to Colombia, IACHR'S Preliminary Observations on Its Onsite Visit to Colombia, December 7, 2012, No. 144A/12. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2012/144A.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/144A.asp).

<sup>1871</sup> Presidential program of Human Rights and International Humanitarian Law, OFI12-00131721/ JMSC 34020, November 22, 2012.

<sup>1872</sup> Presidential Program on Human Rights and International Humanitarian Law, OFI12-00131721/ JMSC 34020, November 22, 2012.

<sup>1873</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, 2 december 2013, para. 588.

<sup>1874</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, 2 december 2013, para. 588.

<sup>1875</sup> Ministry of Foreign Affairs of Colombia, *Document “LGTBI,”* received by the IACHR May 3, 2013 and observations of the State of Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, 2 december 2013, para. 599.

General and the National Police – which was established while the national LGBTI policy was being designed – it was inefficient because there were no clear criteria as to which cases should be evaluated by it.<sup>1876</sup> In addition, civil society considered that the work team of the Ministry of Interior did not have sufficient technical capability to effectively address the situation of LGBTI persons, a circumstance that would be reflected in the similarity between the approach to the issues facing LGBTI persons and the way in which the problems facing indigenous peoples are addressed.

1024. The IACHR recognizes the efforts of the State on public policy matters, through the issuance of decrees, ordinances, and agreements at the district level (Bogotá), at the departmental level (Valle del Cauca), and at the municipal level (municipality of Medellín).<sup>1877</sup> The IACHR also values the efforts made by the State to encourage the development of community work on behalf of the LGBTI population and to foster the development of the Municipal and Inter-municipal Autonomous Roundtables in San Andrés, Sincelejo, and Quibdó.<sup>1878</sup>
1025. The Commission praises the information provided by the State in its observations to the Draft Report on the progress made in the process of implementing public policies for LGBTI persons and the components of those policies which have been fully implemented, such as: (i) the drafting of the “Conceptual and Political framework with gender, rights, intersectional, territorial and differential approaches: definitions and principles and a theoretical development on sexuality and gender and the processes of social emancipation of [LGBTI] minorities”; ii) participative consultation in the development of public policy; iii) the development of the second component of the drafting process, called “Base line” (“Línea base”); and iv) the interinstitutional administration carried out by the Ministry of the Interior “to include LGBTI groups in the different State plans and projects”<sup>1879</sup>. Moreover, the IACHR, takes note of the agreement that the Ministry of the Interior would be about to celebrate with the National Administrative Department of Statistics (“Departamento Administrativo Nacional de Estadística – DANE”), to carry out a diagnostic evaluation on the violation of human rights of the LGBTI community.<sup>1880</sup>
1026. Without prejudice to the foregoing, the IACHR observes that there is no consistent public policy with regard to the rights of LGBTI persons at the national level. Although during and after the visit, the authorities informed that they are working on it, civil society organizations were consistent in indicating that after three years of meetings, there is not enough progress.<sup>1881</sup> The Commission then urges the corresponding State authorities to double its efforts towards the development of a comprehensive public policy, in consultation with civil society organizations and other relevant actors.

<sup>1876</sup> Colombia Diversa, “Punteo”. Document presented to the IACHR during the onsite visit in December 2012.

<sup>1877</sup> Decrees 608 and 256 of 2007 and Decision 371 of 2009 (Bogotá), Ordinance 490 of 2011 (Valle del Cauca), and Decision 329 of 2011 (Municipality of Medellín). Ministry of Foreign Affairs of Colombia, *Document “LGTBI,”* received by the IACHR May 3, 2013, pp. 3 and 4.

<sup>1878</sup> Ministry of Foreign Affairs of Colombia, *Document “LGTBI,”* received by the IACHR May 3, 2013, p. 12.

<sup>1879</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, 2 december 2013, para. 594-597.

<sup>1880</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, 2 december 2013, para 598.

<sup>1881</sup> IACHR, Annex to Press Release 144/12 issued upon the culmination of the on-site visit to Colombia, *IACHR'S Preliminary Observations on Its Onsite Visit to Colombia*, December 7, 2012, No. 144A/12. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2012/144A.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/144A.asp).

## Conclusions

1027. The IACHR observes that lesbian, gay, bisexual, trans and intersex persons have historically been subject to discrimination and violence based on their sexual orientation and gender identity in Colombia; this situation was exacerbated by the armed conflict, as manifested primarily in two aspects: acts of violence (assassinations, attacks, and threats) by armed groups, who turn them into military targets, and forced displacement. This situation of discrimination and violence is aggravated by a social and political context in which there is a highly politicized dispute over the recognition of certain rights of LGBTI persons. In addition, the IACHR observes that while there have been gains in state measures to prevent and punish violence against these persons, they have not been effective. Accordingly, one observes that the situation of violence is generalized throughout the country and focused on gay men, trans women, lesbian women, as well as activists and defenders of the human rights of LGBTI persons.
1028. As regards preventing violence and situations of police abuse, the IACHR observes that there are failings in the implementation of Directive 006 of 2010. The IACHR also takes note of the serious flaws in the investigations of acts of violence against LGBTI persons. In particular, the homicides of LGBTI persons continue to be characterized prematurely as crimes of passion, thus hindering an effective investigation and thereby contributing to impunity.
1029. While there have been gains in the availability of official information, there is still a need for unified state information systems, the lack of which renders invisible the situations of violence against LGBTI persons. In respect of public policy, the IACHR observes that after three years of negotiations a public policy has yet to be adopted. In addition, the IACHR will be awaiting an examination of the results of the agreement signed in November 2012 among the different state entities to give impetus to the “Roundtable for Urgent Cases” (*Mesa de Casos Urgentes*), which is criticized by civil society organizations for the lack of clear criteria on how to process cases.

## Recommendations

1030. Based on the above considerations, the IACHR makes the following recommendations to the Colombian State:
1. Adopt the measures necessary to ensure that the rights of LGBTI persons to equality and non-discrimination are respected by the various state authorities and offices.
  2. 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.
  3. Adopt the state measures necessary to ensure that effective investigations are undertaken in cases of assassinations and acts of violence against LGBTI persons, including the lines of investigation that make it possible to consider whether they were committed based on the real or perceived sexual orientation, gender identity, or gender expression of the victims. To strengthen the capacity of authorities in charge of investigating and responding to cases of discrimination and violence against LGBTI persons.

4. Adopt the state measures necessary to effectively implement Directive 006 of 2010 with a view to preventing cases of police abuse. Consider adopting additional measures not only to train and raise the awareness of staff in the area of the human rights of LGBTI persons, but also to more globally address LGBTI persons and the protection of their rights by the police and judicial officers.
5. Adopt the necessary and effective state measures so that disciplinary investigations and proceedings can go forward against public servants who perform acts of verbal or physical violence against LGBTI persons.
6. Adopt measures for properly applying the existing legal provisions, as applicable, by judicial officers in the cases of violence against LGBTI persons.
7. Design and implement effective measures for providing adequate attention to LGBTI persons who have been displaced; adopt a different approach to the impact of the armed conflict specifically on LGBTI persons. Based on these measures, perform trainings and conduct awareness-raising campaigns for public servants who work with the forcibly displaced population as to the needs and rights of LGBTI persons.
8. Design and promote information and registration systems with official data gathered nationwide, which make it possible to make visible and effectively address the human rights violations committed against LGBTI persons.
9. Adopt state measures needed to establish greater clarity as to the selection criteria for cases for the “Roundtable for Urgent Cases” (*Mesa de Casos Urgentes*).
10. Design, adopt, and implement a comprehensive national public policy for protecting the rights of LGBTI persons.

## ***G. Persons Deprived of Liberty***

### **1. Prison system: overview, main challenges and need for a criminal justice policy in conformity with human rights standards**

1031. In this section the Inter-American Commission offers a general overview of the main aspects of the Colombian prison system, and analyzes what it considers to be the most serious problems it is currently facing: overcrowding and the rapid growth of the prison population, and the shortcomings in the provision of health services in the prisons. In addition, the Commission refers briefly to other relevant issues of concern observed during the on-site visit, such as the failure to separate pre-trial detainees from convicted prisoners, the lack of drinking water in some prisons, arbitrary detentions, the situation of LGBTI persons, and the juvenile detention centers. Finally, the IACHR refers to how monitoring of the centers where persons are deprived of liberty could be improved.

1032. The IACHR is aware that these are not the only challenges the Colombian State faces when it comes to respecting and ensuring the rights of persons deprived of liberty. There are other issues of concern with regard to food, family visits, allegations of cruel, inhuman, and degrading treatment, prison staff, women deprived of liberty, and opportunities for study

and work. Nonetheless, in view of the nature, brevity, and purpose of this report, these issues will not be analyzed here, which is not to imply that they are less important than those addressed.

## 2. General aspects

1033. The Republic of Colombia is a state party, among others, to the American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture; and it accepted the compulsory jurisdiction of the Inter-American Court of Human Rights. The Colombian State is also a party to the following universal human rights instruments from the United Nations system: the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.<sup>1882</sup> By means of all these international instruments the Colombian State acquired binding obligations to respect and ensure the fundamental rights of persons deprived of liberty in its jurisdiction.
1034. The domestic law applicable to persons deprived of liberty includes the Constitution<sup>1883</sup>, the Criminal Code<sup>1884</sup> (considerably modified in the course of a decade), the Code of Criminal Procedure<sup>1885</sup>, the Prison and Jail Code<sup>1886</sup>, and related legislation and regulations.
1035. The Enforcement of Sentences and Security Measures judges are the competent judicial authorities for matters related to the enforcement of criminal sanctions once there is a final ruling. They have a legal mandate to oversee the criminal procedure after the conviction, the execution of the sentence.<sup>1887</sup> By way of contrast, it is up to the National Prison Institute (INPEC) the actual enforcement of criminal convictions, the pre-trial detention and other precautionary measures, the application of security measures and the control of the accessory criminal sanctions set in the Criminal Code.<sup>1888</sup>
1036. The INPEC was established in 1992 as a public entity under the Ministry of Justice, with legal entity, its own budget and administrative autonomy<sup>1889</sup>; today it maintains that relationship with the current Ministry of Justice and Law.<sup>1890</sup> The Director of the INPEC is “an agent of the

<sup>1882</sup> Available at: <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

<sup>1883</sup> In particular its Articles 28, 29, 30, 32, and 34, on the right to personal liberty, the right to due process, the presumption of innocence, the principle of legality and favorability, *habeas corpus*, flagrancy, prohibition of penalties involving exile, life imprisonment, and confiscation.

<sup>1884</sup> Law 599 of 2000, Diario Oficial No. 44,097 of July 24, 2000.

<sup>1885</sup> Law 906 of 2004, Diario Oficial No. 45,657 of August 31, 2004.

<sup>1886</sup> Law 65 of 1993, Diario Oficial No. 40,999 of August 19, 1999.

<sup>1887</sup> Law 906 of 2004, Code of Criminal Procedure, Articles 38 and 41.

<sup>1888</sup> Law 65 of 1993, Prison Code, Articles 14 and 35.

<sup>1889</sup> INPEC was legally established by Decree 2160 of 1992 (D.O. No. 40,703 of December 31, 1992) “By which the General Directorate of Prisons of the Ministry of Justice is merged with the Revolving Fund of the Ministry of Justice.” This provision establishes the legal nature, objectives, functions, and internal organization of the INPEC. Also relevant to the structure and functioning of the INPEC is the Code on Prisons and Jails; Decree 407 of 1994 (D.O. No. 41,233 of February 21, 1994) “By which the personnel regime of the National Prison Institute is established”; Decree No. 270 of 2010 (D.O. No. 47,607 of January 29, 2010) “By which the modification to the structure of the National Prison Institute INPEC is approved, and the functions of its offices are determined”; and Decree No. 4151 of 2011 (D.O. 48,242 of November 3, 2011) “By which the structure of the National Prison Institute INPEC is modified and other provisions are issued.”

<sup>1890</sup> Decree 2897 of 2011 (D.O. No. 48,158 of August 11, 2011) “By which the objectives, organizational structure, and functions of the Ministry of Justice and Law are determined and the Administrative Sector of Justice and Law is constituted.”

President of the Republic and officer who is freely appointed and removed.”<sup>1891</sup> The INPEC has a Directing Council (Consejo Directivo); five departments or *direcciones* (Custody and Surveillance, Regional, Services and Treatment, School of Training, and Corporate Management); and six advisory offices.

1037. According to information provided by National Penitentiary Institute (INPEC) in the course of the visit, this authority manages all 144 penitentiaries nationwide, divided into six regional bureaus. The table below presents the information on the regional structure of the INPEC, its departments, the number of prisons, their official capacity, and actual prison population.

Region	Prison Establishment <sub>s</sub> <sup>1892</sup>	Departments	Actual Capacity	Total population
Central	42	Amazonas, Boyacá, Caquetá, Cundinamarca, Huila, Meta, Tolima and Casanare	28,481	38,122
West	25	Cauca, Nariño, Putumayo, and Valle	14,414	22,016
Northeast	22	Antioquia and Chocó	8,414	15,399
North	16	Atlántico, Bolívar, Cesar, Córdoba, Guajira, Magdalena, San Andrés and Sucre	7,180	12,327
East	16	Arauca, Cesar, Norte Santander and Santander	7,142	11,829
Viejo Caldas	23	Boyacá, Caldas, Quindío, Risaralda and Tolima	10,095	14,191
<b>Totals</b>	<b>144</b>		<b>75,726</b>	<b>113,884</b>

Source: INPEC.

1038. In regard to the data used in this report, it should be noted that the considerations offered by the Commission regarding the levels of occupation and overcrowding are drawn on the official data on the capacity of the various prisons.<sup>1893</sup>

1039. Of the total 113,884 persons deprived of liberty as of December 31, 2012, 79,313 are said to be convicted and 34,571 facing criminal charges; that means that persons in pre-trial detention account for 30.35% of the prison population. In addition, there were in all 8,497

<sup>1891</sup> Decree 2160 of 1992, Article 8.

<sup>1892</sup> In its observations to the draft of the instant report, the State informed that on december 2013, the *INPEC* is now administering a total of 138 prisons, taking into account that some prisons were gruped in the form of penitentiary complexes. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note 5-GIID-13-048140, December 2, 2013, para. 601.

<sup>1893</sup> The official data on the capacity of the prisons is not necessarily exact and does not necessarily follow precise technical criteria; nonetheless, they are used in this report for practical reasons. In this regard, the Constitutional Court, in its Judgment T-153-98, verified the inability of the INPEC and the Ministry of Justice to establish precise technical criteria on the number of places in the prisons, and consequently of the prison system's capacity. This is based on the following factors: (i) most of the prisons have collective cells in which no standard for the minimum area per prisoner is taken into account; (ii) most of the prisons built were planned for a given capacity but assigned another, given the adaptations and expansions; (iii) most of the prisons adapted did not have any technical calculation of their housing capacity and operating capacity; (iv) the improvements and expansions changed all the records and the option for quantitative rationalizing of the capacity, even at those sites that were built recently; and (v) in fact, the deficient conditions – physical, hydraulic, electric, etc. – of the prisons are such that many cells cannot be used. Other factors also introduce imprecision in the statistics; see for example: El Tiempo, *El Inpec desconoce la identidad de 28 mil presos bajo su custodia*, April 18, 2010. Available at: <http://www.eltiempo.com/archivo/documento/CMS-7621228>.



women deprived of liberty, accounting for 7.46% of the prison population.<sup>1894</sup> The prisoners in the 30 to 54 year age group accounted for 51.75% of the total population, and those ages 18 to 29 years accounted for 42.69%.<sup>1895</sup> The prison system included 918 indigenous persons; 4,067 Afro-Colombians; 874 foreigners; 2,843 older adults; 942 disabled persons; 36 breast-feeding mothers and 137 pregnant mothers; and 157 children ages 3 or under (children of women who have been imprisoned).<sup>1896</sup>

1040. According to the official statistics of the State, of the total persons deprived of liberty (defendants and convicts), the most common forms of crime (in the tens of thousands) were the following: robbery (31,402); homicide (28,312); fabrication, trafficking, and possession of firearms or munitions (24,298); trafficking, producing, or possessing narcotics (23,004); and conspiracy to engage in criminal conduct (10,313). In order of prevalence, the following crimes follow: extortion (4,985), sexual acts with a person under 14 years of age (4,921), fabrication, trafficking, and possession of firearms and munitions for the exclusive use of the armed forces (3,813), abusive carnal access to a person under 14 years of age (3,709), and kidnapping for extortion (3,052).<sup>1897</sup>
1041. Consequently, of all the prisoners who have been tried, 43% were sentenced to 0 to 5 years in prison; 25% to 6 to 10 years; 18% to 11 to 20 years; 8.3% to 21 to 30 years; and 4.2% to 31 or more years in prison.<sup>1898</sup>
1042. Of a total of 35,182 persons held in pre-trial detention, as of January 31, 2013, 38.33% had been detained for 0 to 5 months, 39.35% from 6 to 15 months, 13.12% from 16 to 25 months, 4.54% from 26 to 35 months, and 4.65% for more than 35 months.<sup>1899</sup>
1043. Colombia also has a large number of departmental, district, and municipal jails that are not administered directly by the INPEC<sup>1900</sup>, of which no statistics are kept; it is clear that the central government does not know exactly how many exist. Thus, the Commission understands that there exists a large number of persons deprived of liberty are held in centers that largely escape the monitoring and oversight of the State, whose administrative conditions are precarious, and whose guard staff lacks training for working in prisons. In its observations to the present report the State pointed out that the INPEC keeps a monthly record on those places of deprivation of liberty.<sup>1901</sup>
1044. In the context of Colombia's prisons the Constitutional Court has played an important role in developing the content and scope of fundamental rights of persons deprived of liberty. Through its judgments, some of which constitute significant gains in the case-law in the

<sup>1894</sup> INPEC, Consolidated Statistics: Population of Prisoners in Prisons and Regional Facilities as of December 31, 2012. Available at: [http://www.inpec.gov.co/portal/page/portal/Inpec/SeccionInpeccomoinstitucion/Consolidado\\_estadistico](http://www.inpec.gov.co/portal/page/portal/Inpec/SeccionInpeccomoinstitucion/Consolidado_estadistico).

<sup>1895</sup> INPEC, General summary, population by years served, December 2012.

<sup>1896</sup> INPEC, Population of prisoners in exceptional conditions in prison establishments, December 2012.

<sup>1897</sup> INPEC, Consolidated figures nationally, population of prisoners by crime – crimes of prisoners in prisons, December 2012.

<sup>1898</sup> INPEC, Regional summary, population of convicts – Years of prison imposed, December 2012.

<sup>1899</sup> INPEC, Population of persons accused, prisons, – months of detention as of January 31, 2013.

<sup>1900</sup> According to Law 65 of 1993, it is the responsibility of the mayors and governors to provide detention facilities for those persons under pre-trial detention, while they are awaiting trial (Article 17).

<sup>1901</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note 5-GIID-13-048140, December 2, 2013, para. 603.

region<sup>1902</sup>, this court has protected fundamental rights of persons deprived of liberty for the last 20 years. In this connection, Judgment T-153/98 is of special importance. In that decision the Constitutional Court found that the generalized violation of the fundamental rights of prisoners caused by the structural shortcomings in the prison system – in particular overcrowding – was tantamount to an unconstitutional general situation in the prisons.<sup>1903</sup> Accordingly, it ordered a series of specific measures that had to be adopted jointly by the different authorities.<sup>1904</sup> In addition, there are other institutions whose legal powers include prison monitoring functions, such as the Office of the General Prosecutor of the Nation and the Office of the Human Rights Ombudsman.

1045. The Inter-American Commission also observes that historically the prison system has been one of the areas in which the Colombian armed conflict has had a significant impact, largely due to the political and military power of the members of the armed groups. This has been reflected very directly in some serious violent incidents in certain prisons in the past<sup>1905</sup>, and in many of the criminal justice and prison rules and measures adopted. Accordingly, the presence of members of armed groups in prisons has led in many cases to the continuance of the conflict inside the prisons and has led to the adoption of measures to favor or disfavor the interests of each actor as the dynamics of political negotiation required. Such situations has been particularly evident in prisons such as La Picota, where high-level members of these groups are held, and which are also subject to different regulatory regimes.<sup>1906</sup>
1046. The Inter-American Commission has taken note that the highest-level authorities of the State said that the challenges facing the prison system constitute a priority matter on the National Government's agenda.<sup>1907</sup>

<sup>1902</sup> In this sense, notable examples include: Judgment T-571-08 on the exercise of prisoners' right to resist, for example by staging hunger strikes; Judgment T-429/10 on the work of the prisoners in prison; Judgment T-062/11 on the treatment of sexual minorities in prisons; Judgment T-830/11 on the right to family unity for persons deprived of liberty who are transferred to prisons in locations far from their homes; Judgment T-324/11 on the right to health; and Judgment T-474/12 on conjugal visits.

<sup>1903</sup> In this respect, the Constitutional Court affirmed: "Colombia's prisons are characterized by overcrowding, serious shortcomings in public and assistance services, the rule of violence, extortion, and corruption, and the lack of opportunities and resources for the self-actualization of the prisoners." Constitutional Court, Judgment T-153/98, of April 28, 1998 (writing for the Court, Eduardo Cifuentes Muñoz).

<sup>1904</sup> Along the same lines, and before this judgment of the Constitutional Court, the IACHR observed in its December 1997 on-site visit to Colombia the existence of numerous and serious problems within the prison system that led it to note the deplorable prison conditions as one of the most worrisome human rights problems in Colombia at the time. And like the Constitutional Court, the Commission urged the State to adopt the administrative, judicial, and legislative measures needed to resolve the serious crisis in the prisons. IACHR, Press Release No. 20/97, paras. 12 and 38.

<sup>1905</sup> Thus, for example in this context in May 2000 the Inter-American Commission issued precautionary measures to protect the life and integrity of those self-denominated political prisoners in wards 1 and 2 of the Modelo prison in Bogotá. According to the information available when granting the measure, on April 27, 2000, the prisoners who were members of paramilitary groups held in cellblock No. 5 of that prison violently attacked the prisoners in cellblock No. 4, resulting in 47 prisoners killed and 17 injured. Similarly, in March 2004, the IACHR granted precautionary measures to 108 prisoners at the Palo Gordo prison in Girón, Santander, asking the Government of Colombia to adopt the measures needed to separate the members of the groups in conflict to avoid situations that would endanger the life and integrity of the prisoners. Both precautionary measures were lifted by the Inter-American Commission in July 2010.

<sup>1906</sup> Established, for example, by Resolution 06305 of June 29, 2009, which defined the special rules for the internal regime for the prisons and wards with prisoners from the justice and peace proceedings; Resolution 3277 of April 3, 2007, by which some articles are added to the rules of the internal regime of the High and Medium Security Prison of Bogotá (includes the ERE ward); and Resolution 302 of May 2005, issuing the rules of the internal regime for the High and Medium Security Prison and Establishment for Special Confinement, also known as La Picota. Information produced by the Legal Office of the Metropolitan Prison Complex of Bogotá (La Picota), and provided by INPEC.

<sup>1907</sup> The official position of the current administration in Colombia has been to recognize this issue. As a close antecedent, a few months before the on-site visit the Vice Minister for Criminal Justice Policy, Farid Samir Benavides, stated at the Third Meeting of Authorities Responsible for Prison Policies, of the OAS, that Colombia is facing the following fundamental

1047. In this respect, the IACHR considers positively the measures that have been adopted by the Ministry of Justice and Law to address the collapse of the Colombian prison system, such as those geared to expediting plea bargaining, and expanding the prison capacity and the number of judges in charge of the enforcement of sentences. In this regard, the IACHR took note of the statements made by the Minister of Justice and Law according to which the goal is to increase the housing capacity of the prison system – 20,000 new slots in national prisons by expanding them, and the construction of six mega-prisons that would add an additional 26,000 slots–; that work is being done on a document aimed at changing the current model of criminal justice policy; and that the Superior Council of the Judiciary has been asked to appoint a larger number of judges in charge of the enforcement of sentences. The Director General of the INPEC told the delegation that progress has been made professionalizing the prison service and that work is under way on a new Prison Code and on a master plan for prison management.<sup>1908</sup>
1048. It is also evident that in the last 15 years the Colombian State has made considerable progresses in terms of governability of the prisons<sup>1909</sup>, particularly in those prisons with members of armed groups, which is reflected in the reduction in the number of serious violent incidents in the prisons in recent years.
1049. It is also pertinent to recognize the important role of the human rights delegates (called *consules de derechos humanos*) and the human rights committees organized within the penitentiaries, who have contributed to foster a culture of respect and to keep the authorities informed on several of the needs of the prison population.
1050. Notwithstanding the gains noted, the Inter-American Commission highlights that Colombia continues to face serious problems with respect to observing the human rights of persons deprived of liberty. Particularly serious is the constant increase in the prison population, which results in truly critical levels of overcrowding and in the sanitary shortcomings and limitations in the health services delivery in the prisons.<sup>1910</sup>

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challenges: “*lack of infrastructure, overcrowding with an upward trend, lack of staff, punitive trend, and proposed legislation that stiffens penalties.*” He also “*highlighted the relationship between citizen security and criminal justice policy and the need to guarantee the use of restorative policies, with the objective of working to construct citizenship.*” Rapporteur’s Report, Delegate of Uruguay, OEA/Ser.K/XXXIV, GAPECA/doc.16/12, September 25, 2012.

<sup>1908</sup> In this regard, the Commission takes note of the additional information of April 4, 2013, submitted by the *Dirección de Derechos Humanos and DIH*, of the Minister of Foreign Affairs of the Republic of Colombia, document: “*Fact Sheet Carceles*”. Moreover, in the workshop on “*Standards of the Inter-American Human Rights System on Prison Matters,*” organized by the Rapporteurship on the Rights of Persons Deprived of Liberty during the on-site visit, the Coordinator for Human Rights of the INPEC presented information on human rights-related activities carried out by the INPEC on the following issues: strengthening the human rights policy, awareness-raising efforts, international scenarios for human rights, precautionary and provisional measures, preventive actions, prisoners entering the ERONS, and monitoring. The document is available at: <http://www.oas.org/es/cidh/ppl/actividades/paises.asp>. Similarly, the directors of the prisons visited by the delegation provided information on positive actions carried out within the scope of their authority.

<sup>1909</sup> In this regard there is a significant difference between the reality observed by the Commission in its 1997 visit and the current situation. See in this respect IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102. Doc 9 rev. 1, February 26, 1999, Chapter XIV, sections: 2. *Internal violence*, and 3. *Lack of control of the prisons and its effects on the capacity of the State to repress illegal conduct*.

<sup>1910</sup> IACHR, Press Release 144A/12, *IACHR’S Preliminary Observations on Its Onsite Visit to Colombia*, Annex to Press Release 144/12 issued on culminating the on-site visit to Colombia, December 7, 2012. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/144A.asp>.

### 3. Overcrowding and rapid growth of the prison population

1051. At the time of the on-site visit of the IACHR, the total capacity of the prison system was 75,726 while the prison population had a total of 113,884 persons, thus the general level of occupation was 150%. In other words, there is 50% overpopulation<sup>1911</sup>, which clearly constitutes serious overcrowding. This level of overcrowding is not only greater than what existed in 1998, when the Constitutional Court declared the unconstitutional general situation<sup>1912</sup>, but it is also the highest in the history of Colombia.
1052. To fully understand the dimension of the overcrowding problem in Colombia, the specific situation of some prisons is enlightening.<sup>1913</sup> In effect, the Commission found that the Metropolitan Jail and Prison Complex (“La Picota”) housed 7,788 prisoners, whereas its housing capacity is 4,973, for a level of occupation of 156.6%; and that the Prison Establishment of Bogotá (“La Modelo”) had 7,381 inmates, when its housing capacity is 2,907, which its level of occupation came to 254%. These levels, which are alarming, are much more serious if one considers in detail the situation in specific sectors of those prisons.
1053. At La Picota, for example, not only were alarming rates of overcrowding observed, but also the disproportionate impact on the vast majority of inmates, in contrast to a sector of the population benefited by a series of privileges. In fact, the average level of occupation from the first to seventh cellblocks of the medium-security ward – where as a general rule there are no high-profile prisoners – was 447%; that is, the level of overcrowding was 337% beyond its official capacity. Indeed, the fourth and fifth cellblocks of that ward had levels of occupation of 559.85% and 566.67% respectively. In contrast, at that same prison, wards ERE 1 and 2 for special prisoners, where former law enforcement authorities and other former public servants are located, had an average level of occupation of 104.46%, slightly above capacity. Moreover, ward ERE 3 for special prisoners, where the prisoners under the Law on Justice and Peace are being held, is occupied at only 69%; and ward ERE South for special prisoners, where the inmates associated with the “*parapolítica*” scandal are being held, were also below capacity, with a level of occupation of 86%. This is in addition to another series of services and facilities available to the prisoners in these wards for special prisoners.
1054. The outlook at the Modelo prison is different. Here, with fewer internal inequalities, overcrowding is even more serious than at La Picota. The IACHR is particularly concerned about the conditions observed in cellblocks 4 and 5; cellblock 4 has a capacity for 633 persons and houses 1,735 prisoners; whereas cellblock 5, with a capacity of 571, houses 1,757 inmates. Similarly, the situation observed in other highly overcrowded cellblocks is as follows: cellblock 1A has a capacity for 225, and houses 773 inmates; cellblock 1B, 204 places/712 inmates; cellblock 2A, 203 places/722 inmates; cellblock 2B, 204 places/721 inmates; the cellblock for older adults (over 60 years of age), 72 places/137 inmates.

<sup>1911</sup> INPEC, Consolidated Statistics: Population of Prisoners in Prisons and Regional Establishments as of December 31, 2012.

<sup>1912</sup> Judgment T-153-98, point 10. According to the statistical report issued by the Planning Office of the INPEC in processing this judgment, as of October 10, 1997, overcrowding nationally was 45.3%.

<sup>1913</sup> The statistical information regarding the Metropolitan Prison Complex of “La Picota” and the Prison Establishment of Bogotá “La Modelo” presented in this report was provided to the delegation by the directors of the prisons at the time of the respective visits.

1055. At this prison the Commission observed a general picture contrary to human dignity. The overpopulation of some cellblocks is such that the cells, hallways, bathrooms, and showers are crowded with persons who even sleep on the floor in these places, in a situation known as “being in the street” (“*estar en carretera*”), others do so on hammocks and in any corner they get themselves into. As a consequence, the health and hygienic conditions in the most populated cellblocks are absolutely deplorable and insalubrious; one observes that many prisoners urinated or defecated into plastic bags and bottles, and that the common bathrooms of the cellblocks and hallways, used by hundreds of prisoners, are overflowing with excrement. Conjugal visits took place in improvised tents called “*cambuches*” (lean-tos). In addition, as at La Picota, there was no actual separation of convicted prisoners and pre-trial detainees.<sup>1914</sup>
1056. The disproportionate number of prisoners at this prison has resulted in huge logistical complications for the entry of visitors, which has led the authorities to adopt a rotating system for family members to enter the prison (the so called “*pico y placa*”<sup>1915</sup>). Even though this measure has helped better organize family visits, it should not become established as the rule to follow all the time, but should be seen as an exceptional measure while the serious problem of overcrowding at this prison is resolved. All the prisoners interviewed by the Commission stated their disagreement with this measure, for many of them depend on what their family members provide them to meet many of their most basic personal and material needs. In its comments to the draft of the present report Colombia informed that since the visit of the IACHR on December 2012, there have been some improvements in the situation observed by the Commission, and that there is an “important difference” now. Moreover, the State pointed out that the administrative measures regarding the visits are consistent with a strategy aimed at the improvement in the access for family members to the penitentiaries, making the visiting experience more decent.<sup>1916</sup>
1057. Such situations caused by overcrowding are also found in other prisons of Colombia. As of the IACHR visit, there were over 30 prisons at which level of overpopulation was 100% or more; which means that those prisons were occupied at least at the double of their capacity. Of this subgroup, the following six prisons had levels of overpopulation of 200% or more; accordingly, the following are occupied at a level at least three times their capacity: the EPMSC of Caloto (200%), the Villahermosa prison in Cali (234.4%), the EPMSC in Magangué (203%), the EPMSC-ERE of Valledupar (252%), the Rodrigo de Bastidas prison in Santa Marta (218%), and the Bellavista prison of Medellín (207%). Yet the prison with the greatest overcrowding in Colombia was the one at Riohacha, in the department of La Guajira, with a level of overpopulation of 394%.<sup>1917</sup>

<sup>1914</sup> Fifteen years earlier, in the course of its on-site visit in 1997, the IACHR visited this same prison. At that time it concluded that its conditions “constitute cruel, inhuman and degrading treatment of detainees.” IACHR, Press Release No. 20/97, para. 38.

<sup>1915</sup> The “*pico y placa*” system is used to reduce and control the traffic in the capital city of Colombia during the rush hours (from 6:00 to 8:30 A.M. and from 3:00 to 7:30 P.M.). It consists in the prohibition to certain vehicles to run certain days of the week, depending on the last number of their plate. For example if the last number of a plate is uneven, the car is not allowed to run during the rush hour of the uneven day of the week.

<sup>1916</sup> Observations of the Government of Colombia to the Report of the Inter-American Commission on Human Rights, Note 5-GIID-13-048140, December 2, 2013, para. 606.

<sup>1917</sup> INPECE, Consolidated Statistics: Population of Prisoners in Prisons and Regional Establishments as of December 31, 2012.

1058. Overcrowding generates constant friction between the prisoners and increases the levels of violence in the prisons; it makes it difficult for the prisoners to have a minimum of privacy; it reduces the spaces for access to showers, bathrooms, the yard, etc.; it facilitates the spread of disease; it creates an environment in which health, sanitary, and hygienic conditions are deplorable; it constitutes a risk factor for fires and other emergency situations; it hinders the classification of prisoners by category; it causes serious problems in the management of medical services and the implementation of security arrangements; it favors the establishment of systems of corruption in which the prisoners have to pay for the spaces and access to basic resources; it impedes access to opportunities for work and study; it makes prison management terribly difficult; and it constitutes, above all, a genuine barrier to serving the ultimate aim that the American Convention – and the Colombian Prison Code – assigned to prison sentences.<sup>1918</sup> In the Commission’s view, a collapsed prison system is incapable of offering the conditions for adequate rehabilitation and social reinsertion of persons convicted.
1059. The serious overcrowding in the Colombian prisons was one of the main structural deficiencies observed by the Commission during its on-site visit in December 1997, when the general level of occupation of the prison system was 142%.<sup>1919</sup> The IACHR observes with concern that 15 years later this problem, far from having been resolved, has gradually worsened.
1060. In addition, other treaty bodies such as the Human Rights Committee and the Committee Against Torture of the United Nations (CAT) have placed emphasis on the seriousness of this situation, and have indicated that the Colombian State “should adopt effective measures to improve material conditions in prisons, reduce the current overcrowding and properly meet the basic needs of all persons deprived of their liberty.”<sup>1920</sup>
1061. In this respect the Commission reiterates to the State that according to international human rights law, subjecting persons deprived of liberty to certain levels of overcrowding can itself constitute a form of cruel, inhuman and degrading treatment in violation of prisoners’ right to humane treatment under Article 5 of the American Convention.<sup>1921</sup>
1062. In this regard, the European Court of Human Rights recently established that to determine the violation of the right to humane treatment derived from the lack of individual space of a person deprived of liberty one should consider three essential elements: (a) that each prisoner should have an individual space in the cell for sleeping; (b) each prisoner should have a space in the cell no less than three square meters of floor space; and (c) the total space of the cell

<sup>1918</sup> IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II, December 31, 2011, paras. 455-456.

<sup>1919</sup> The IACHR considered prison overcrowding a “crucial element” of the violations of the human rights of persons deprived of liberty in Colombia. And it concluded: “In practice, the Colombian prison system is overwhelmed by prison overcrowding.” IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102. Doc 9 rev. 1, February 26, 1999, Chapter XIV, para. 5.

<sup>1920</sup> See, among others, United Nations, Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations and recommendations of the Human Rights Committee: Colombia, CCPR/C/COL/CO/6, August 6, 2010, para. 21; United Nations, Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, Conclusions and recommendations of the Committee against Torture; Colombia, CAT/C/COL/CO/4, May 4, 2010, para. 21.

<sup>1921</sup> IACHR, Press Release 144A/12, *IACHR’S Preliminary Observations on Its Onsite Visit to Colombia*, Annex to Press Release 144/12 issued upon culminating the on-site visit to Colombia, December 7 2012. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/144A.asp>; IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II, December 31, 2011, para. 460; IACHR, Press Release 76/11 – *IACHR Recommends Adoption of a Comprehensive Public Policy on Prisons in Uruguay*. Washington, D.C., July 25, 2011, Annex, para. 21.

should be such that it enables prisoners to move about freely among the furniture. The European Court spells out, moreover, that it is desirable for each prisoner to have at least four square meters of space, and that in a space of less than three square meters, and in the absence of some of the elements mentioned, there is a strong presumption that the right to humane treatment has been violated.<sup>1922</sup>

1063. The Inter-American Commission considers it essential, as a measure against overcrowding, that the domestic legislation establish adequate mechanisms to immediately remedy any situation in which persons deprived of liberty are housed in numbers greater than the established capacity, and that this situation should be subject to effective judicial oversight.<sup>1923</sup> This derives from the very mandate contained in Article 25 of the American Convention, which states: “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention.” For this duty of judicial protection to have useful effect and to offer real possibilities of protection, the States should “ensure that the competent authorities shall enforce such remedies when granted.” Specifically, this means that those judicial decisions that order the adoption of measures aimed at correcting individual or collective situations of overcrowding should be effectively enforced.
1064. The IACHR also observes that during the six years prior to its on-site visit, Colombia’s prison population grew 85%, as follows<sup>1924</sup>: 2007: 63,603 prisoners, 2008: 69,979, 2009: 75,992, 2010: 84,444, 2011: 100,451, and 2012: 113,884. In those six years the prison population increased by 50,281 persons, at the following annual pace: 2007-2008: 6,376 new prisoners, 2008-2009: 6,013, 2009-2010: 8,452, 2010-2011: 16,007 (during 2011 the average monthly increase was 1,334 prisoners), and 2011-2012: 13,433.
1065. As noted by the high-level authorities, this increase in the number of persons deprived of liberty is due to recent legislative reforms that have increased the list of offenses and drastically reduced prisoners’ access to plea bargaining; as well as an interpretation of the adversarial criminal justice system, by the criminal judges, which does not accord priority to the principle of liberty. In this respect, the Minister of Justice and Law recognized that 30% of the detentions of persons in prison occurred in 2011 and 2012. During the on-site visit there was a judicial work stoppage that had been ongoing for more than 50 days, affecting a wide range of pending legal proceedings of persons deprived of liberty.
1066. As in other countries of the region, the Commission observes that the steady increase of the prison population in Colombia is the predictable consequence of the following factors: (i) the implementation of repressive policies that propose the deprivation of liberty as a fundamental response to citizen security needs; (ii) the constant use of pre-trial detention; (iii) the obstacles to responding adequately to the distinct phases of the criminal process and allowing for the release of persons deprived of liberty; and (iv) the lack of adequate infrastructure to house the growing prison population.

<sup>1922</sup> European Court of Human Rights, *Case of Ananyev and Others v. Russia*, Judgment of January 10, 2012 (First Section of the Court), paras. 144-148.

<sup>1923</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, approved by the IACHR by Resolution 1/08 at its 131<sup>st</sup> Regular Period of Sessions, March 3 to 14, 2008, Principle XVII.

<sup>1924</sup> According to a report presented to the IACHR during the visit by the Public Interest Law Group at the School Law, Universidad de los Andes, taking INPEC statistics as the source.

1067. In this respect, the IACHR observes that since 2004, the year in which the adversarial system was established in the Colombian domestic law, there has been a series of legal reforms that despite not being all of them incompatible with the American Convention, they have had an impact on the increase of the prison population:

1	Law 890 of 2004 <sup>1925</sup>	Reforming the Criminal Code. New offenses are created <sup>1926</sup> ; the minimum and maximum terms are increased for all crimes. <sup>1927</sup> This statute also modified the possibility of accessing the alternative measure of conditional suspension of the sentence, determining it applies once two-thirds of the sentence has been serviced, when previously it only required three-fifths, and it subjected it being granted to full payment of the fine and reparation to the victim. <sup>1928</sup>
2	Law 1121 of 2006	Eliminates reductions in sentences for crimes of extortion, terrorism, and kidnapping.
3	Law 1142 of 2007	Pre-trial detention is extended to 12 crimes; the sentences are increased for others, and limits are imposed for replacing pre-trial detention in a prison establishment by other measures to secure appearance at trial. <sup>1929</sup>
4	Law 1181 of 2007	Increased the penalties for the crime of failure to pay child support.
5	Law 1220 of 2008	Increases the penalties for crimes against public health.
6	Law 1236 of 2008	New crimes are created and penalties for crimes against sexual integrity are increased.
7	Law 1257 of 2008	The penalties are increased for violence and discrimination against women.
8	Law 1273 of 2009	New crimes against intellectual property are defined.
9	Law 1329 of 2009	New offenses are created against sexual exploitation and exploitation of children and adolescents.
10	Law 1356 of 2009	Grounds for aggravation of sentences are established for offenses committed in sports scenarios.
11	Law 1357 of 2009	Penalties are increased for several offenses such as the illegal acceptance of money.
12	Law 1426 of 2010	Creates a new ground for aggravation for homicides committed against journalists, human rights defenders, and public servants.

<sup>1925</sup> According to a study by the Public Interest Law Group at the School of Law, Universidad de los Andes, with the promulgation of this law there was an increase of nearly 4,000 persons in the total number of prisoners accused, and of nearly 5,000 in the total number of persons convicted. *Situación carcelaria en Colombia: Informe sombra presentado al Comité de Derechos Humanos de Naciones Unidas*, May 2010, para. 22. Document also presented to the IACHR.

<sup>1926</sup> Crimes against cyber security to punish espionage, sabotage, and the usurcellblockn of intellectual property; crimes of seizure and contraband of fuels; crimes against archeological patrimony; and specific crimes against evidence and other infractions, to preserve the integrity of witnesses, avoid the destruction of evidentiary material, and other aspects that involve crimes of this sort.

<sup>1927</sup> The minimum and maximum terms of all prison sentences were increased by one-third.

<sup>1928</sup> The Constitutional Court, by Judgment C-823 of August 10, 2005, declared this provision constitutional on a conditional basis, "in the understanding that if it is shown before the judge of enforcement of sentences – and the victim and the Public Ministry had an earlier opportunity to controvert such a showing – that the convict is insolvent, the failure to have paid reparation to the victim shall not impede the exceptional granting of release on probation (*libertad condicional*).” Moreover, this provision restricting release on probation, like those contained in the statutes cited that were promulgated in that period, are regressive in relation to the letter and spirit of Law 415 of 1997, which was promulgated to reduce overcrowding in the prisons.

<sup>1929</sup> According to the Justice Studies Center of the Americas (JSCA), as of the end of 2007, "in percentage terms detentions increased almost tenfold (from 4.74% to 38.65%), with respect to the new cases." JSCA, *Prisión Preventiva y Reforma Procesal en América Latina. Evaluación y Perspectivas*, Santiago, Chile, 2008, p. 235. In this respect, the Corporación Excelencia en la Justicia noted that "one of the causes for the overcrowding index to be growing in recent years was the implementation of Law 1142 of 2007 which, among other things, does not allow for criminal justice benefits nor does it allow for substitute measures for persons who were convicted of willful or premeditated crimes (*delitos dolosos o preterintencionales*) within the five previous years, and also set an increase in the sentences for some of the offenses defined in the Criminal Code." Excerpt taken from: <http://www.cej.org.co/index.php/todos-los-justiciometros/824-evolucion-de-la-situacion-carcelaria-en-colombia>.



- 13 Law 1453 of 2011 Law on Citizen Security. Increases the penalties for several offenses; creates new offenses and facilitates the imposition of measures to ensure appearance at trial; increases the terms of pre-trial detention<sup>1930</sup>; and establishes exclusions for criminal justice benefits and alternative sentences. According to the INPEC, Law 1453 of 2011 has resulted in 3,000 new prisoners entering the prisons each month.<sup>1931</sup>
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- 14 Law 1474 of 2011 Introduces new criminal law definitions, such as private corruption, unjust administration, the omission of control in the health sector, embezzlement by different official earmarking vis-à-vis social security resources, embezzlement with intent in relation to social security resources, fraud in subsidies, agreements that restrict competition, particularly influence-peddling. It also increased the terms of criminal prescription and excluded from benefits crimes against the public administration related to corruption.

1068. As for the use of pre-trial detention, the IACHR notes that the recent amendments to the Code of Criminal Procedure evidence a clear tendency to favor the use of this measure. Accordingly, Law 1142 of 2007 added a fourth ground for the application of pre-trial detention, establishing that it applies when the person had been arrested for conduct constitutive of a crime or misdemeanor within the previous year, so long as there was no preclusion or acquittal in the preceding case (Art. 26). Law 1453 of 2011 aggravated this provision on extending the term of application of this norm from one to three years (Art. 60).

1069. In addition, Law 1142 of 2007 established that to ascertain whether releasing a criminal defendant posed a danger to the community it will suffice to consider the seriousness and modality of the punishable conduct (Art. 24). While the Constitutional Court declared the constitutionality of this article in the understanding that the judge, to reach this determination, must always weigh the other considerations established in the law (Art. 310 of the Code of Criminal Procedure)<sup>1932</sup>, subsequently Law 1453 of 2011 re-established that to ascertain whether releasing the defendant is dangerous to the safety of the community the seriousness and modality of the punishable conduct will suffice, in addition to “the constitutional purposes of pre-trial detention” (Art. 65). In practice, this modification does not add anything whatsoever in terms of ensuring the right to personal liberty, rather it apparently maintains and reinforces the flexibility accorded the judicial officer to maintain the detention of a person looking only to the “seriousness and modality of the punishable conduct.”

<sup>1930</sup> According to a report presented to the IACHR during the visit by the Public Interest Law Group at the School of Law of the Universidad de los Andes, “from June 2011, the month in which the law came into force, and April 2012, there was a 12.9% increase in criminal modalities of the prison population, from 139,560 to 157,522. In this regard one must bear in mind that a prisoner may be involved in one or more crimes. According to the INPEC, the modality with the sharpest increase is robbery, with 3,695 new transgressors, followed by trafficking, manufacture or possession of narcotics, with 3,502. In general this law has substantially modified the trend towards a growing prison population in 2011; thereby it makes sense that there are 16,000 new prisoners with respect to 2010.” In addition, according to the Public Interest Law Group, it is worrisome that on promulgating laws that say that robbery is a special ground for prosecution, the socioeconomic distribution of the prison population was not taken into account. There is a predominance of persons from strata 1, 2, and 3, who together account for 79.4% of the total; this information was known to the Government from the time the Law on Citizen Security was first introduced. Source: INPEC, Ministry of Justice and Law. *Caracterización y perfilación criminológica y penitenciaria de la población condenada y privada de libertad en los centros de reclusión del INPEC – Propuesta para el direccionamiento del tratamiento penitenciario en Colombia*, Bogotá 2012. This research was said to have been done from 2007 to 2009.

<sup>1931</sup> See in this respect Caracol Radio, *Inpec impugna fallo de tutela que impide nuevos traslados de reclusos a La Modelo*, February 1, 2013. Available at: <http://www.caracol.com.co/noticias/judicial/director-del-inpec-lanza-ultimatum-a-directores-por-irregularidades-en-carceles/20130206/nota/1837810.aspx>.

<sup>1932</sup> Constitutional Court, Judgment C-1198/08, December 4, 2008 (writing for the court Nilson Pinilla Pinilla).

1070. In this regard, it is worth recalling that according to the American Convention and the standards of the Inter-American System the decision of imposing the pre-trial detention on a person accused requires an individualized analysis of the circumstances, taking into account the evidence of the need for preventing interferences in the investigation, or to ensuring the presence of the accused on trial.
1071. Moreover, Law 1142 of 2007 established that for granting a measure in lieu of pre-trial detention, in addition to any of the circumstances already established in the Code of Criminal Procedure being present, the defendant should not be accused of any of the more than 18 offenses listed in a paragraph that said law introduces (Article 27). Subsequently, pursuant to Law 1474 of 2011 five more offenses were added to this list (Article 39).<sup>1933</sup>
1072. In this context, the United Nations High Commissioner indicated to the State that fighting impunity “requires a criminal policy that upholds human rights, emphasizes crime prevention and strengthens training and education.” In this respect, she noted that Law 1453 of 2011 (Law on Citizen Security) “accords priority to a substantial increase in the sentences, restricts the grounds for release and alternatives to deprivation of liberty, and expands the procedural terms.”<sup>1934</sup>
1073. The Inter-American Commission is aware that determining criminal justice policy is a sovereign power of the State, and that this includes the power to determine criminal offenses and the corresponding penalties. Nonetheless, exercising these powers should be consistent with the legal regime created by the provisions of international human rights law that the State, also in the exercise of its sovereign powers, has undertaken to observe. In that regard, the IACHR considers that Article 7 of the American Convention and Articles I and XXV of the American Declaration require the States to recourse to the deprivation of liberty only insofar as necessary to satisfy a pressing social need and in a way proportional to that need.<sup>1935</sup> In this vein, the United Nations Rapporteur on Torture has observed, “Any deprivation of personal liberty, even if justified for certain reasons, such as the investigation of crime and the punishment of convicts, carries the risk of directly interfering with human dignity, as it severely restricts individual autonomy and makes detainees powerless.”<sup>1936</sup>

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<sup>1933</sup> After this latest amendment, the offenses excluded from substitution are the following: those that fall under the jurisdiction of specialized circuit criminal judges; trafficking immigrants; carnal access or sexual acts with inability to resist; family violence; aggravated larceny; aggravated robbery; aggravated fraud; use of false documents related to stolen vehicles or motorcycles; manufacture, trafficking, and possession of firearms or munitions for personal use when the offense coincides with that of conspiracy to engage in criminal conduct, or the accused’s record of guilty judgments in force for the same crimes; manufacture, trafficking and possession of weapons and munitions for the exclusive use of the armed forces; manufacture, import, trafficking, possession, and use of chemical, biological, and nuclear weapons; embezzlement due to appropriation for an amount over 50 times the monthly legal minimum wage; extortion by public official; bribery for own benefit; bribery for giving or offering; illicit enrichment; transnational bribery; improper interest in the signing of a contract; contract without complying with legal requirements; Influence peddling; repeated, continuous concealment; concealment to cover up aggravated robbery in combination with conspiracy to engage in criminal conduct; receipt of stolen vehicle or its essential parts, or merchandise or fuel carried by said vehicle.

<sup>1934</sup> United Nations, Human Rights Council, Annual Report of the High Commissioner for Human Rights. Addendum. Report of United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19th session, A/HCR/19/21/Add.3, January 31, 2012, para. 9.

<sup>1935</sup> The same interpretation has been rendered by the Working Group on Arbitrary Detentions with respect to Article 9 of the International Covenant on Civil and Political Rights, analogous to Article 7 of the American Convention. United Nations, Working Group on Arbitrary Detentions, Annual Report submitted to the Human Rights Council, E/CN.4/2006/7, December 12, 2005. paras. 61-63.

<sup>1936</sup> United Nations, Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, A/64/215, August 3, 2009, para. 47.

1074. In this regard, the exceptional nature of the application of pre-trial detention, in keeping with the criteria of necessity and proportionality, is an element that must be part of any criminal justice policy that upholds the standards of the Inter-American System. Thus, the American Convention established a legal order according to which “No one shall be subject to arbitrary arrest or imprisonment.” (Article 7(3)). And every person “shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.” (Article 7(5)). Moreover: “Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law.” (Article 8(2)). For more than two decades the organs of the Inter-American system have interpreted and applied these provisions, establishing that the following standards can be derived from them:

(i) Pre-trial detention should be the exception and not the rule; (ii) the legitimate and permissible purposes of pre-trial detention should be procedural in nature such as to avoid the accused taking flight or obstructing the process; (iii) consequently, the existence of indicia of responsibility is not sufficient reason to decree the preventive detention of a person; (iv) even if there are procedural purposes, pre-trial detention has to be absolutely necessary and proportionate, in the sense that no less burdensome means exist for achieving the procedural purpose sought and that do not disproportionately affect personal liberty; (v) all the previous aspects require an individualized justification that cannot be based on presumptions; (vi) pre-trial detention should be decreed for the time strictly necessary for the procedural purpose, which implies a periodic review of the elements that gave rise to it as a possibility; and (vii) maintaining pre-trial detention for an unreasonable time is tantamount to anticipating the penalty.

1075. As for the context in which these standards are applied, the Commission observes that the mere fact that the percentage of persons subjected to pre-trial detention at a given moment is not considered high does not necessarily mean that the application of this measure is really exceptional, as international law commands. In this regard, there are relevant indicators generally not counted in the states’ official statistics, as for example the percentage of cases in which the prosecution seeks pre-trial detention, or in which the judge applies it as a means of assuring appearance at trial versus those cases in which pre-trial detention is decreed. In addition, there are factors subsequent to the application of this measure related for example to procedural aspects of criminal proceedings that have a direct impact on the issuance of judgments of first instance, and that definitely contribute to the total number of persons held in pre-trial detention remaining stable.

1076. In addition to creating a *de facto* situation at odds with respect for personal liberty, the excessive use of pre-trial detention becomes onerous for the State, for it answers to the illegal harm caused by its citizens.<sup>1937</sup> As the Minister of Justice acknowledged to the Commission, at present there are any number of proceedings for damages before the Council of State, which it considered should lead the authorities to rethink pre-trial detention.

1077. Moreover, the Commission has received information according to which it has been documented that in Colombia pre-trial detention is also used to “coerce defendants to cooperate accepting the charges or providing evidence against other suspects”; that is why

<sup>1937</sup> In this respect, see, for example, RCN Radio, *El Estado enfrenta más de 12 mil demandas por detenciones injustas*, December 4, 2012. Available at: <http://www.rcnradio.com/noticias/estado-colombiano-enfrenta-mas-de-12-mil-demandas-por-detenciones-injustas-36645>.

"prosecutors charged and request pre-trial detention, even if they do not have sufficient evidence." That is, using pre-trial detention as a tool for investigations<sup>1938</sup>. This in a context where there are definitely important social pressures, media and even from the public authorities themselves about the effectiveness of criminal justice against crime and impunity<sup>1939</sup>. In this regard, the Commission reiterates that an essential condition for the proper functioning of the adversarial system is that judges "must be, must be perceived to be, and must feel that they indeed are, fully independent and sufficiently strong to ensure the principle of equality of arms, to guarantee the rights of detainees and to protect them from any abuse by the authority detaining them."<sup>1940</sup>

1078. Restrictions and impediments have been imposed on the concession of criminal justice benefits in recent legislation. This circumstance has negative effects both for the prison system in general, because it has a direct impact on the increase of the prison population; and for the individual situations of those prisoners who, impeded or restricted by rule of law from the possibility of acceding to such criminal justice benefits, lose a major incentive for maintaining good conduct and participating in productive activities.<sup>1941</sup> The existence of legal concepts such as alternative criminal penalties finds its reason within a logic in which the main aim of penalties entailing deprivation of liberty is the reinsertion or reintegration of the prisoner to society.
1079. In this respect, the Commission considers it relevant to recall that Article 5(6) of the American Convention is a provision with its own scope and content, in light of whose mandate the State should adopt comprehensive public policies aimed at the social readaptation and personal rehabilitation of the convicts. This implies that convicts should be given the assistance and opportunities necessary to develop their individual potential and contend positively with their return to society.<sup>1942</sup> Excluding a large group of prisoners *a priori* from the possibility of gaining access to legal provisions whose purpose within the process of enforcing the sentence is to prepare the prisoner for the return to liberty, and, therefore, life in society raises serious questions of compatibility with the mandate contained in Article 5(6) of the American Convention.
1080. Another factor closely related to the previous one is the insufficiency of Judges of Criminal Enforcement (Jueces de Ejecución Penal) to handle the demand of the prison population. For example, the three prisons in the city of Bogotá administered by the INPEC, there were 11,198 convicted prisoners<sup>1943</sup> whose proceedings had to be handled by 19 judges in charge of the execution of sentences. It is foreseeable that this demand will rise if current trends in the growth of the prison population persist.<sup>1944</sup>

<sup>1938</sup> DPLF, *Independencia judicial insuficiente, prisión preventiva deformada – Los casos de Argentina, Colombia, Ecuador y Perú*, 2013, p. 98.

<sup>1939</sup> In this regard, see: DPLF, *Independencia judicial insuficiente, prisión preventiva deformada – Los casos de Argentina, Colombia, Ecuador y Perú*, 2013, pp.s 65-113.

<sup>1940</sup> United Nations, Working Group on Arbitrary Detention, *Report on Mission to Ecuador*, A/HRC/4/40/Add.2, adopted October 26, 2006, par. 81.

<sup>1941</sup> In this regard, the directors of prisons interviewed by the delegation during the visit emphasized the impact that this law on citizen security has had in the increase and conduct of the prison population.

<sup>1942</sup> IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II, December 31, 2011, paras. 605, 608, and 609.

<sup>1943</sup> INPEC, Consolidated Statistics: Population of Prisoners in Prisons and Regional Establishments as of December 31, 2012.

<sup>1944</sup> The shortage of judges in charge of the execution of sentences in Colombia to handle the procedural needs of the prisoners has also been a point emphasized by the UN Working Group on Arbitrary Detentions. United Nations, WGAD, Report of the Working Group on Arbitrary Detention, Mission to Colombia (1 to 10 October 2008), A/HRC/10/21/Add.3, February 16, 2009, paras. 77 and 78.

#### 4. Shortcomings in the delivery of health services in the prisons

1081. In the course of the visit the Inter-American Commission continued to receive consistent reports about the poor quality of health services provided in prisons by the company CAPRECOM, a situation that was expressly recognized by various authorities, and which has been widely publicized by the press in recent years.<sup>1945</sup> In this regard, civil society organizations told the IACHR that the health system for the prison population collapsed, that the medical care service has not been seeing patients regularly, and that many prisoners have died due to the lack of medical care.
1082. In a report by the Office of the General Prosecutor, specifically devoted to the issue of the health services provided in prisons – in the wake of the “high volume of petitions sent by persons deprived of liberty” – this institution concluded that despite the contract between CAPRECOM and INPEC, it has not been possible to provide health care and medicines so as to represent genuine respect for the fundamental rights of persons who make up the prison population to a dignified life, to health care, and to humane treatment.<sup>1946</sup>
1083. In that report, whose preparation included visits to 14 prisons, the Office of the Prosecutor identified, among others, the following shortcomings and irregularities: (a) the INPEC handed over to CAPRECOM areas of health without setting aside any space or resources; (b) in some prisons the health areas do not have the minimum elements essential and in good working order so as to perform a general medical consultation; (c) in most prisons the areas for health services have yet to be built, remodeled, or adapted, in their infrastructure, to the demands established by health regulations; (d) in most of the prisons the number of physicians, dentists, physical therapists, and all other health aides contracted by CAPRECOM are insufficient, which has a serious negative impact on the prison population, especially in those prisons with critical levels of overcrowding; (e) there are no clear or unified criteria for drawing up the list of prisoners who require medical care; in some cases this function is performed by prisoners

<sup>1945</sup> In this respect see, for example: El Tiempo.com, *En penitenciarías de Medellín continúa el paro de personal médico*, December 19, 2012. Available at: <http://m.eltiempo.com/colombia/medellin/en-penitenciaras-contina-el-paro-de-personal-medico-en-medellin/12460884>; El Tiempo.com, *Metrosalud ya no atenderá más presos del Valle de Aburrá*, September 21, 2012. Available at: <http://m.eltiempo.com/colombia/medellin/metrosalud-ya-no-atender-ms-presos-del-valle-de-aburr/12241785>; El Tiempo.com, *Al hacinamiento se sumó la crisis de salud en 110 cárceles del país*, September 4, 2012. Available at: <http://m.eltiempo.com/justicia/tesis-de-salud-en-crceles-del-pas/12191842>; El Tiempo.com, *Destapan dos modalidades de desfalco al sistema a través de Caprecom*, August 22, 2012. Available at: <http://m.eltiempo.com/vida-de-hoy/salud/destapan-dos-modalidades-de-desfalco-al-sistema-a-travs-de-caprecom/12151442>; El Tiempo.com, *Graves denuncias sobre fallas en la atención médica en cárcel de Cali*, July 25, 2012. Available at: [http://www.eltiempo.com/justicia/fallas-en-el-servicio-medico-en-las-carceles-colombianas\\_12064161-4](http://www.eltiempo.com/justicia/fallas-en-el-servicio-medico-en-las-carceles-colombianas_12064161-4); El Tiempo.com, *Se prepara decreto para reformar la atención de salud en las cárceles*, July 16, 2012. Available at: <http://m.eltiempo.com/vida-de-hoy/salud/reforma-a-la-salud-de-los-internos-de-las-crceles-en-colombia/12036030>; El Tiempo.com, *Caprecom no prestará más el servicio de salud en cárceles*, July 13, 2012. Available at: <http://m.eltiempo.com/justicia/prestacin-del-servicio-de-salud-en-las-crceles/12029216>. Semana, *Ministra de Justicia dice que Caprecom no atenderá más a los presos*, October 25, 2012. Available at: <http://www.semana.com/nacion/articulo/ministra-justicia-dice-caprecom-no-atendera-mas-presos/266843-3>; Semana, *Crisis carcelaria: muerte en los cellblocks*, September 8, 2012. Available at: <http://www.semana.com/nacion/articulo/crisis-carcelaria-muerte-cellblocks/264377-3>; El Espectador, *Detectan dos casos de tuberculosis en la cárcel Modelo de Bogotá*, 30 de agosto de 2012. Available at: <http://www.elespectador.com/noticias/judicial/articulo-371250-detectan-dos-casos-de-tuberculosis-carcel-modelo-de-bogota>; El Espectador.com, *Cárceles: una olla de presión*, June 11, 2012. Available at: <http://www.elespectador.com/noticias/nacional/articulo-385553-carceles-una-olla-de-presion>.

<sup>1946</sup> Office of the General Prosecutor of the Nation, Preventive action on “Monitoring the Public Policy on Health Services Delivery in the Prisons,” (“Seguimiento a la Política Pública de Prestación del Servicio de Salud en los Centros Penitenciarios y Carcelarios”), Office of the Procurator Delegate for Prevention in Human Rights and Ethnic Matters, Group of Prison Affairs, June 14, 2011, p. 27.

who exercise some form of representation in the cellblocks or wards and the guards themselves (“*pabelloneros*”), in very few cases it is performed by a nurse or nursing aide from CAPRECOM<sup>1947</sup>; (f) the failure of CAPRECOM to make a timely payment to the health services providers or health services entities has stood in the way of securing appointments with specialists or for diagnostic exams; (g) irregularities were reported in the delivery of medicines to the interns; (h) a considerable number of the dentistry units are in poor condition; (i) the laboratory equipment in prisons is underused; (j) there are several administrative failures, such as no vehicles, insufficient guard staff, and the need for more effective methods for programming and organizing the transfer of prisoners to the appointments and treatments they need; and (k) there is no clear policy of treatment for the prison population with mental health problems; the availability of psychiatrists is very limited, and the time they can dedicate to the patients and to prescribing them their specific drugs is minimal, accordingly often prisoners cease taking these drugs because they are not able to renew them on time.<sup>1948</sup>

1084. In this report the Prosecutor issued some recommendations on the situation observed, and even ordered that a request be forwarded to the Office of the Prosecutor Delegate for Government Contracting to undertake an investigation into the “purported breach by CAPRECOM of its obligations to the suppliers of drugs, and in the payment of salaries to its employees.”<sup>1949</sup> Nonetheless, the Inter-American Commission does not have information on the outcome of those investigations or of others that have been carried out on the management of this company.
1085. In another report of the Prosecutor, released a few months before the visit by the IACHR, this institution, after evaluating the general situation of the prisons in Bogotá, concluded that the unconstitutional general situation declared by the Constitutional Court in 1998 continued to persist, also considering as one of the main problems detected that “the health system in the

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<sup>1947</sup> This situation is particularly worrisome because independent of the quality of health services, this situation represents an obstacle or de facto interference in the minimum possibilities of access by the prisons to such services. In this respect, the IACHR fully agrees with the view of the Office of the Attorney General, in that the determination of the so-called “triage” should not be assigned to representatives of the prisons in each cellblock or to the guards. As the report by the Prosecutor indicates, this is due to the lack of the minimal relevant knowledge and their status, in some cases, of persons detained, and in others as security staff, not health professionals, “which makes them permeable, albeit not in every case, to take on subjective conduct that impacts on authorizing exit to the doctor of persons who in some cases do not need to do so, and in others it does not allow those who need to see a doctor to do so” (p. 29). For the Commission this is a relevant situation that goes beyond the mere provision of health services, and has to do with the uses and customs of the prisons and aimed directly and exclusively to prison administration. In its report on the *Situation of the Human Rights of Persons Deprived of Liberty in the Americas*, the Commission notes such problems related to access to medical services as one of the main challenges facing the prisons in the region.

<sup>1948</sup> Office of the General Prosecutor of the Nation, Preventive action for “Monitoring the Public Policy on Health Services Delivery in the Prisons” (“Seguimiento a la Política Pública de Prestación del Servicio de Salud en los Centros Penitenciarios y Carcelarios”), Office of the Procurator Delegate for Prevention in Human Rights and Ethnic Matters, Group of Prison Affairs, June 14, 2011, pp. 24, 28-35.

<sup>1949</sup> Office of the General Prosecutor of the Nation, Preventive action for “Monitoring the Public Policy on Health Services Delivery in the Prisons” (“Seguimiento a la Política Pública de Prestación del Servicio de Salud en los Centros Penitenciarios y Carcelarios”), Office of the Procurator Delegate for Prevention in Human Rights and Ethnic Matters, Group of Prison Affairs, June 14, 2011, p. 37.

prisons is insufficient.”<sup>1950</sup> As in the above-cited report, the Prosecutor concluded that the health of the prisoners was also negatively affected by:

The conditions of overcrowding, lack of infrastructure and adequate health care, together with the serious deficiencies in the supply of public services – mainly water supply and sewerage – and the scarcity of guards or personnel for carrying out the referrals to the Public Health Institutions or basic or specialized care.<sup>1951</sup>

1086. For example, at the El Buen Pastor women’s prison, the delegates of the Office of the Prosecutor found, among other situations, that the seriousness of the health conditions of those prisoners who sought medical care is weighed in the first instance by persons who are not duly trained to do so, which in emergency cases is a significant risk factor. In addition to the difficulties in access to health care, there are scant medical personnel, there being only two physicians and one physical therapist for more than 2,000 women prisoners, leading to major delays in access for general consultations and even greater delays for specialized external consultations.<sup>1952</sup>
1087. At the Modelo prison it was noted that the Mental Health Unit does not have a full-time psychiatrist or any psychiatrist on weekends, holidays, or evening hours, even though there are approximately 45 prisoners in that ward, plus those who are in other cellblocks that also require this type of specialized care. In addition, a dental examination room was set aside in the Mental Health Unit that has not been operating due to the lack of an available professional. Serious shortcomings have been reported in the physical therapy and nursing services for patients with physical limitations, and even in providing facilities and resources for the mobility of persons who cannot move about on their own. The disabled prisoners who do not control their sphincters or cannot move are not given diapers or any nursing care, as a result of which their blankets are always dirty with excrement. On the date of the visit the representatives of the Prosecutor at that prison (as of October 2012) had pending nearly 650 referrals of prisoners for general surgery, orthopedics, ophthalmology, echography, biopsies, diagnostic imaging, and other specialties, a delay that goes back two years<sup>1953</sup>, and All this in a general environment which, as the Inter-American Commission itself saw, is characterized by overcrowding and by the extremely serious health and hygienic conditions.
1088. After the visit, it was known that the Director of the La Modelo prison in Bogota filed himself a petition of tutela against CAPRECOM on July 20, 2013. In this lawsuit, the public officer alerted among other things, that as of that date, there were about 753 requests for specialized medical treatment that had not been served by CAPRECOM; that the provision of medical service was not permanent as agreed in the contract; that no pharmacy existed or a timeline for the treatment of inmates with HIV; that there were no basic items like vials, gauze and cotton, and

<sup>1950</sup> Office of the General Prosecutor of the Nation, Report of results of preventive action No. 366466/111046000000, Official note PDMPAP/PDMDHAE/No. 14847 of November 21, 2012 by the Procurator Delegate to the Public Ministry of Criminal Matters and Prevention in Human Rights and Ethnic Matters, pp. 103 and 106.

<sup>1951</sup> Office of the General Prosecutor of the Nation, Report of results of preventive action No. 366466/111046000000, Official Note PDMPAP/PDMDHAE/No. 14847 of November 21, 2012 from the Procurator Delegate to the Public Ministry of Criminal Matters and Prevention in Human Rights and Ethnic Matters, p. 104.

<sup>1952</sup> Office of the General Prosecutor of the Nation, Report of results of preventive action No. 366466/111046000000, Official Note PDMPAP/PDMDHAE/No. 14847 of November 21, 2012 of the Procurator Delegate to the Public Ministry of Criminal Matters and Prevention in Human Rights and Ethnic Matters, pp. 22-24.

<sup>1953</sup> Office of the General Prosecutor of the Nation, Report of results of preventive action No. 366466/111046000000, Official Note PDMPAP/PDMDHAE/No. 14847 of November 21, 2012 of the Procurator Delegate to the Public Ministry of Criminal Matters and Prevention in Human Rights and Ethnic Matters, pp. 65-71.

that deficiencies in the provision of health services have been the cause the deaths of some inmates<sup>1954</sup>.

1089. In view of these considerations, the Inter-American Commission reiterates the criterion long established in the Inter-American System that providing adequate medical care to persons deprived of liberty is a fundamental obligation on the State that derives directly from its duty to respect and ensure the rights to life and humane treatment (Articles 1(1), 4, and 5 of the American Convention).<sup>1955</sup> With regard to the content and general scope of the right of persons deprived of liberty to medical care, Principle X of the Principles and Best Practices of the IACHR establishes:

Persons deprived of liberty shall have the right to health, understood to mean the enjoyment of the highest possible level of physical, mental, and social well-being, including amongst other aspects, adequate medical, psychiatric, and dental care; permanent availability of suitable and impartial medical personnel; access to free and appropriate treatment and medication; implementation of programs for health education and promotion, immunization, prevention and treatment of infectious, endemic, and other diseases; and special measures to meet the particular health needs of persons deprived of liberty belonging to vulnerable or high risk groups, such as: the elderly, women, children, persons with disabilities, people living with HIV-AIDS, tuberculosis, and persons with terminal diseases.<sup>1956</sup>

1090. Along the same lines, the Colombian Constitutional Court has said that the right to health is a right that should remain intact during the relationship of special subjection in which persons deprived of liberty find themselves vis-à-vis the State. This clearly implies the duty of the State to guarantee to prisoners “effective access to the health service in a timely, adequate, and dignified manner, to which end it should offer the medical care, social assistance, therapeutic, or surgical care that persons deprived of liberty require as a matter of necessary and which have been ordered by the attending physician.”<sup>1957</sup>
1091. Starting from a broad conception of maintaining health conditions in places where persons are deprived of liberty, the Inter-American Commission underscores that priority attention should be given to the structural, health, and hygienic conditions of those places: that they have sufficient points for entry of air and natural light; that prisoners are to be given food and water of sufficient quantity and quality; that appropriate medical exams be performed of the prisoners upon intake; and that adequate treatment be given to those who come in with contagious diseases. Emphasis should also be placed on implementing education programs and health promotion; human resources training; immunization, prevention, and treatment of infectious, endemic, and other diseases; and the distribution of condoms and lubricants, among other similar measures.<sup>1958</sup> Indeed, the conditions of the cells used for solitary confinement imposed as a disciplinary punishment should be evaluated by the medical

<sup>1954</sup> *Semana*, *Caprecom estaría dejando morir a internos de La Modelo*, 23 de julio de 2013. Available at: <http://www.semana.com/nacion/articulo/caprecom-estaria-dejando-morir-internos-la-modelo/351761-3>

<sup>1955</sup> IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II, December 31, 2011, para. 519.

<sup>1956</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, approved by the IACHR by Resolution 1/08 at its 131<sup>st</sup> Regular Period of Sessions, held March 3 to 14, 2008, Principle X.

<sup>1957</sup> Constitutional Court, Judgement T-324-11, of May 4, 2011, Writing for the Court: Jorge Iván Palacio Palacio, point 5.3. See also: Constitutional Court, Judgment T- 1168, of December 4, 2003, writing for the Court: Clara Inés Vargas Hernández; and Constitutional Court, Judgment T-277, of June 15, 1994 (writing for the Court Carlos Gaviria Díaz).

<sup>1958</sup> In this respect see for example: IACHR, Press Release 56/11 - *Office of the Rapporteur on the Rights of Persons Deprived of Liberty Concludes Visit to Suriname*. Washington, D.C., June 9, 2011, Annex, para. 13.



authorities, as a means of preventing psycho-physical alterations and even the occurrence of suicides in those cells.<sup>1959</sup> The other relevant factor that has a serious impact on the health conditions of persons deprived of liberty is the overcrowding, which generates, among other things, oversaturation of the health services; the spread of all types of contagious diseases; and the impossibility of having spaces to adequately treat those prisoners who need special treatment.<sup>1960</sup>

1092. As regards to the quality of medical services, this principle establishes: “Treatment shall be based on scientific principles and apply the best practices.” Consistent with that, the “Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment”<sup>1961</sup> establish as a fundamental principle that health personnel entrusted with the medical care of persons deprived of liberty have a duty to “provide them ... treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.” (Principle 1)
1093. The Inter-American Commission has also established that “even when the State has outsourced prison health care to private companies or agencies – as is the case of Colombia, for example – it remains responsible for the adequacy of such care.” Accordingly, the duties of the State to regulate and oversee the health services provided by third person agents are greater in the case of persons deprived of liberty.<sup>1962</sup>
1094. In its response to the draft of the instant report, the State of Colombia stated that the General Directorate of the INPEC has issued the Resolution No. 001505 of May 31, 2013, by which it decreed an “state of emergency in all prisons and penitentiaries nationwide”, in response to the crisis faced by the penitentiary system, which “hampers its adequate functioning”. Likewise, the State said that on September, 2012, the *INPEC* issued the Resolution (*Directiva permanente*) No. 00011, named “civic campaigns for the prisons and penitentiaries”, by which there have been taking place several health campaigns in different national penitentiaries.<sup>1963</sup>
1095. Furthermore, the IACHR has been informed that beginning in 2013, there will be a gradual replacement of the company CAPRECOM as private contractor entrusted to provided health services in prisons, and that the new concessionaries will provide the health services according to a “specialized handbook” (“manual tecnico”) to be drafted with the guidance of the Ministry of Health and Social Protection<sup>1964</sup>. In its observations to the draft of the present report, the State indicated that it is currently in the process of complying with the Decree No. 2496 of December 6, 2012, which opens the possibility for other private health providers,

<sup>1959</sup> This obligation derives from the general duties of physicians or the competent health authority to inspect, evaluate, and advise the authorities of the prisons on sanitary and hygienic conditions, and to constantly supervise the health conditions of the persons subjected to solitary confinement as a disciplinary sanction. See in this respect rules 26.1 and 32.3 of the Standard Minimum Rules for the Treatment of Prisoners; and Rule 44(b) and (c) of the European Prison Rules.

<sup>1960</sup> IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II, December 31, 2011, paras. 557 and 558.

<sup>1961</sup> Adopted by the United Nations General Assembly in its Resolution 37/194, of December 18, 1982. Another ethical reference is the *Oath of Athens*, adopted by the International Council of Prison Medical Services in 1979.

<sup>1962</sup> IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II, December 31, 2011, paras. 531 and 532.

<sup>1963</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note 5-GIID-13-048140, December 2, 2013, para. 608.

<sup>1964</sup> Additional information of April 4, 2013, submitted by the *Dirección de Derechos Humanos and DIH*, of the Minister of Foreign Affairs of the Republic of Colombia, document: “Fact Sheet Carceles”, p. 9.

different than CAPRECOM, to participate in the provision of health services in prisons. In the meantime, APRECOM will continue providing these services to the prison population.<sup>1965</sup>

1096. Notwithstanding the foregoing, the IACHR observes with concern that problems in the health services for persons deprived of liberty was another serious shortcoming noted by the Commission after its 1997 on-site visit and that evidently has not been resolved by the State. On that occasion the IACHR considered that if the State did not meet its obligation to see to the physical and mental integrity of the persons under its custody, by act or omission, it would violate Article 5 of the Convention and, in case of death, Article 4 of the same instrument.<sup>1966</sup> These standards continue to be relevant.

## 5. Other relevant aspects

### a. Failure to separate defendants in criminal proceedings from convicts

1097. Another shortcoming observed by the Commission, and largely a consequence of the serious overcrowding, is the failure to separate persons facing trial from convicted prisoners. For example, at the time of the visit, 2,257 of the 7,788 prisoners at La Picota were defendants; and of the 7,381 prisoners at the Modelo prison, 4,194 were also defendants. At both penitentiaries the Rapporteurship verified that as a general rule the defendants and the convicts are mixed together. This situation is also found in many other prisons in Colombia, even though the Prison and Jail Code (Código Penitenciario y Carcelario, also known as “Prison Code” or “National Prison Code”) provides, in theory, that the establishments called *cárceles* will be for the pre-trial detention of persons accused; and the *penitenciarías*, by way of contrast, will be for convicts (Articles 21 and 22). So for example at the *cárcel* of Villahermosa in Cali there were 2,729 defendants and 2,845 convicts; at the EPMSC-ERE in Valledupar 542 accused, 359 convicts; at the Rodrigo Bastidas *cárcel* in Santa Marta 468 accused, 527 convicts; at the Bellavista *cárcel* of Medellín 1,957 defendants, 5,487 convicts; and the Riohacha *cárcel* 423 accused and 71 convicts.<sup>1967</sup>

1098. Confining persons facing criminal charges with convicts was another issue that the Inter-American Commission emphasized after its 1997 visit; it appears, based on what was found 15 years later, that one can conclude that this situation continues to be essentially the same.<sup>1968</sup> The failure to separate persons facing trial from convicts is contrary to the regime established by Article 5(4) of the American Convention and the duty of the State to give the defendants different treatment in keeping with respect for the rights to personal liberty and to the presumption of innocence (Article 8(2) of the American Convention).<sup>1969</sup>

<sup>1965</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights, Note 5-GIID-13-048140, December 2, 2013, para. 612.

<sup>1966</sup> IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102. Doc 9 rev. 1, February 26, 1999, Chapter XIV, paras. 30-33.

<sup>1967</sup> INPEC, Consolidated Statistics: Population of Prisoners in Prisons and Regional Establishments as of December 31, 2012.

<sup>1968</sup> IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102. Doc 9 rev. 1, February 26, 1999, Chapter XIV, para. 27-29. The failure to separate persons facing trial from convicts, as a result of overcrowding, was also one of the points on which the Constitutional Court placed most emphasis in its Judgment T-153-98, points 36 and 37.

<sup>1969</sup> IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II, December 31 2011, para. 457.

## b. Arbitrary detentions

1099. The Inter-American Commission was informed by civil society organizations that arbitrary detentions of certain groups continue. In this sense, they referred to the use of the offense of “blocking roads” as a mechanism for repressing the social protest; and that on certain dates, such as the “day of love and friendship,” massive arrests are made of young people for being in a public place after 11:00 p.m. According to the information received, in just three days of applying this measure (September 15 and 16 and October 31, 2012) a total of 1,578 children and adolescents were arrested.<sup>1970</sup> In addition, it was reported that at least 150 persons are detained daily in Bogotá under the argument that they are being held to protect them, and that this figure is considerably higher on weekends and pay days.
1100. In this respect, the Commission reiterates that according to Article 7(3) of the American Convention, no one shall be subject to arbitrary arrest or imprisonment. In the specific case of Colombia, the IACHR reiterates – just as the HRC and the CAT have done<sup>1971</sup>– the recommendations made to the State by the United Nations Working Group on Arbitrary Detentions (WGAD), among which is: “Put a stop to mass detentions that deprive persons of liberty even though no individual arrest warrant has been obtained in advance and the individual has not been caught in flagrante delicto...”<sup>1972</sup>
1101. In the case of persons under 18 years of age, international law establishes that their arrest shall occur only as a last resort and for the shortest possible period (Convention on the Rights of the Child, Article 37(b) and Beijing Rules 13 and 19). The IACHR, following the case-law of the I/A Court H.R., considers that massive detentions of children are incompatible in principle with respect for the right to the presumption of innocence, the requirement that there must be a judicial warrant in order to proceed with the arrest (except in situations of flagrante delicto), and the obligation to notify the parents or guardians of any children and adolescents arrested.<sup>1973</sup>

## c. LGBTI

1102. The Commission received information according to which, despite the recent judgments of the Constitutional Court and some guidelines from the INPEC that order the prison staff to respect the rights of LGBTI persons who are deprived of liberty<sup>1974</sup>, serious challenges persist in respecting and ensuring the human rights of these persons. The IACHR was informed that the most worrisome situations have to do with: (i) prohibitions and obstacles to the enjoyment of the right to intimate visits for same-sex couples; (ii) unlawful limitations on the right of trans

<sup>1970</sup> See in this regard, Confidencial Colombia.com, *73 niños aún no regresan a su casa tras toque de queda*, November 1, 2012. Available at: <http://confidencialcolombia.com/es/1/201/3228/73-ni%C3%B1os-a-%C3%BAAn-no-regresan-a-casa-tras-toque-de-queda-toque-queda-ni%C3%B1os-instituto-colombiano-bienestar-familiar-guillermo-asprilla-coronel-mariano-botero.htm>.

<sup>1971</sup> See, among others, United Nations, Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations and recommendations of the Human Rights Committee: Colombia, CCPR/C/COL/CO/6, August 6, 2010, para. 20; United Nations, Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, Conclusions and recommendations of the Committee against Torture; Colombia, CAT/C/COL/CO/4, May 4, 2010, para. 20.

<sup>1972</sup> United Nations, WGAD, Report of the Working Group on Arbitrary Detention, Mission to Colombia (1 to 10 October 2008), A/HRC/10/21/Add.3, February 16, 2009, para. 103(e).

<sup>1973</sup> I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 137. This judgment also establishes all those safeguards that should be observed in cases involving detention of children and adolescents, such as the reinforced duty to guarantee when children and adolescents are deprived liberty.

<sup>1974</sup> See, for example, Circular 011 of February 18, 2003 and Permanent Directive 0010 of July 5, 2011.

persons to express their gender identity; and (iii) disciplinary punishments for public displays of affection between same-sex couples, especially lesbians. With respect to this last point, the Commission states its profound concern over the information received with respect to the application of solitary confinement as punishment for that conduct.

1103. Activist from civil society reported that some prison officials have been acting according to an irregular interpretation of Judgment T-622 of 2010 of the Constitutional Court in order to argue that disciplinary sanctions should be imposed on lesbian woman who express affection for their partners (without engaging in obscene acts). It was also indicated that to date there has yet to be compliance with Constitutional Court Judgment T-062-11, by which the court ordered the Director of the INPEC “to reform the regulatory provisions regarding the regime of the prisons and jails to make them compatible with the protection of the constitutional rights of prisoners to a diverse sexual identity or option.”
1104. In its visit to the Modelo prison in Bogotá, the IACHR team met with a group of trans women deprived of liberty who said that the change in attitude of the authorities after the judgments of the Constitutional Court on *tutela* actions has been minimal, and that their most urgent need is for a representative to act as an interlocutor vis-à-vis the authorities. They explained that in practice they depend on those prisoners who serve as representatives for human rights in the cellblocks, who in many cases feel shame or are reluctant to the causes of the trans women.
1105. With respect to the situation of L LGBTI persons, groups, or communities deprived of liberty, the IACHR considers that the principle of equality and non-discrimination entails, among other things, that under no circumstance will there be discrimination against persons deprived of liberty on grounds of their gender identity or sexual orientation. In addition, the measures aimed at protecting the rights of persons who are in a particular situation of risk, such as sexual minorities, will not be considered discriminatory.<sup>1975</sup>
1106. The IACHR underscores that LGBTI persons are a part of the population deprived of liberty, and therefore the State must ensure their life and integrity and enable them to freely develop their gender identity without this implying any detriment to their quality of life. In this regard, the principle of humane treatment entails that every person deprived of liberty will be treated with respect for the dignity inherent to the human person.<sup>1976</sup> From which it is derived the respect for free development of prisoners’ personality and sexual orientation. Therefore, every measure whose application entails an interference, obstacle, or impediment to LGBTI persons being able to freely develop their personality should respect the criteria of legality, proportionality, necessity and legitimate aim. Otherwise, it could constitute arbitrary and abusive meddling in their private life, and depending on the specific circumstances, a possible violation of the right to humane treatment.
1107. The State must also guarantee that LGBTI persons are not excluded on grounds of their sexual orientation from work or study programs, or other similar activities organized in prisons.
1108. In the same vein, the authorities in charge of persons deprived of liberty should not seek to impose patterns of conduct on them that are contrary to their own personality and sexual orientation. According to the legal regime established by the American Convention:

<sup>1975</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, approved by the IACHR by Resolution 1/08 at its 131<sup>st</sup> Regular Period of Sessions, March 3 to 14, 2008, Principle II.

<sup>1976</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, approved by the IACHR by Resolution 1/08 at its 131<sup>st</sup> Regular Period of Sessions, March 3 to 14, 2008, Principle I.

“Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners” (Article 5(6)). Therefore, the imposition of certain values on the convicts related for example to sexuality, morality or good manners falls outside the scope of the aims that the American Convention assigned to punishments consisting on deprivation of liberty. The reform and social readaptation of the convicts refers to the capacity they acquire to successfully reinsert into society respecting the law.

1109. In a broad sense, the Commission considers that the measures taken in favor of LGBTI persons deprived of liberty, must be carefully studied, and preferably dialogued with organizations and professionals in this field, in order to prevent further stigmatizing or counterproductive effects. Finally, the IACHR urges the competent authorities to fully implement the ruling of the Constitutional Court in its judgment T-062 of 2011.

#### **d. Situation observed at the El Redentor center**

1110. In the visit by the IACHR to the facilities of the El Redentor Work School it was found that it has workshops, classrooms, libraries, areas for sports and recreation, and specialized staff; so in principle it offers the basic services for serving the purposes of the sentence.<sup>1977</sup> The delegation also observed that this center has a protocol for responding to emergency situations, and internal rules known as the “Connivance Pact” (“Pacto de Convivencia”), of which the youths are informed when they enter, and that contains a marked emphasis on the international standards applicable to juvenile offenders. The El Redentor Work School is the only center in Bogotá for children and adolescents who have been convicted and sentenced.

1111. At the same time, the IACHR observed with concern that while this center has capacity for 320 prisoners, its population at the time of the visit had already reached 339 youths; and that according to the authorities in charge of administering it, it does not have an adequate infrastructure. But above all, there is an even larger population of youths who remain there after the age of 18. Indeed, at the time of the visit, 150 of the youths held there are 18 years old or older. The director of this institution expressed alarm with respect to this situation, which is worsening over time, especially because the center does not have a suitable infrastructure for a population of young adults; nor does it have the labor, education, and health services appropriate to their stage of development; moreover, it lacks mechanisms to satisfy needs such as conjugal or intimate visits, which are relevant in the case of adults. The increase in the population of young adults is a serious problem that alters the very nature of the institution and requires that its administration reformulate the provision of a series of services that have been thought through and designed for a population with different needs.

1112. According to the director of the El Redentor Work School, the legislative reforms introduced during the prior year have had a considerable impact on the increase of the population of this establishment and the number of young adults. In effect, Article 90 of Law 1453 of 2011 (“Law on Citizen Security”) imposed some relevant changes to the content of Article 187 of the Code of Children and Adolescents<sup>1978</sup>, such as the repeal of the provision that established that the punishment of deprivation of liberty could continue until adolescents reach the age of 21 years. Past that age the adolescents convicted and sentenced may remain in the centers for persons up to the age of 26 years; and those who are found liable for serious offenses

<sup>1977</sup> IACHR, Press Release 144A/12, *IACHR'S Preliminary Observations on Its Onsite Visit to Colombia*, Annex to Press Release 144/12 issued on culminating the on-site visit to Colombia, December 7, 2012. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/144A.asp>.

<sup>1978</sup> Law 1098 of 2006, Diario Oficial No. 46,446 of November 8, 2006.

(kidnapping, intentional homicide, extortion and other aggravated offenses against sexual liberty, integrity, and identity) should serve the time of the punishment imposed by the judge, without the possibility of benefits that reduce sentences. In addition, as the sentences increased for several offenses due to the impact of Law 1453 of 2011, the number of forms of criminal conduct for which sentences including deprivation of liberty could be imposed on persons under the age of 18 also rose.

1113. Beyond the considerations about this legal reform, from the standpoint of international human rights law standards on juvenile criminal justice, there is no doubt that the reform, as the Commission found at El Redentor, has had a direct negative impact on the centers for juvenile offenders. According to publicly available information, the director of the Colombia Institute for Family Well-being (ICBF) stated in early 2012: “In the last two years the number of children tied to crimes and found criminally liable has increased, and this has filled up the spaces available in the ICBF’s program.”<sup>1979</sup>
1114. In light of the foregoing, the IACHR emphasizes that the juvenile criminal justice systems have among their fundamental objectives promoting the reintegration into society of juvenile offenders, offering them the opportunities they need to be able to take on a constructive role in society.<sup>1980</sup> With a view to this objective, the States should consider alternatives to the prosecution of infractions of the criminal laws as well as alternatives to the deprivation of liberty.<sup>1981</sup> Accordingly, the exercise of the criminal law powers of the State should be exceptional and limited to the most severe offenses; and they should be governed by the principle of the best interest of the child.<sup>1982</sup> In this regard, international human rights law has established the fundamental principle that the incarceration of children and adolescents should be used only as a last resort, and for the shortest appropriate period of time.<sup>1983</sup>

## e. Lack of water

1115. In the course of the visit the Inter-American Commission continued receiving information on the regular supply of drinking water in several of the prisons in Colombia, in particular at those in Valledupar, Riohacha, and Guaduas. Similarly, the IACHR team found that structure “three” of La Picota, corresponding to the ERON: National-level Establishment for Confinement (Establecimiento de Reclusión del Orden Nacional), water was available only four times a day, for one hour each time.<sup>1984</sup> At the time of the on-site visit the ERON had a population of 3,033 prisoners.

<sup>1979</sup> El Colombiano, *ICBF reconoció fallas en atención de los menores infractores*, February 17, 2012. Available at: [http://www.elcolombiano.com/BancoConocimiento/I/icbf\\_reconocio\\_fallas\\_en\\_atencion\\_de\\_los\\_menores\\_infractores/icbf\\_reconocio\\_fallas\\_en\\_atencion\\_de\\_los\\_menores\\_infractores.asp](http://www.elcolombiano.com/BancoConocimiento/I/icbf_reconocio_fallas_en_atencion_de_los_menores_infractores/icbf_reconocio_fallas_en_atencion_de_los_menores_infractores.asp). In this respect, see also, for example, El Tiempo, *Los menores reclusos en Colombia están hacinados*, August 30, 2012. Available at: [http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-12178921.html](http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-12178921.html).

<sup>1980</sup> Article 40 of the Convention on the Rights of the Child; see IACHR, *Report on Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II. Doc. 78, July 13, 2011, paras. 30 and 34; IACHR, Report No. 62/02, Case 12,285, Merits, *Michael Domingues*, United States, October 22, 2002, para. 83; I/A Court H.R., *The “Streetchildren” Case (Villagrán Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, para. 194.

<sup>1981</sup> IACHR, *Report on Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II. Doc. 78, July 13, 2011, Recommendations, paras. 15 and 16.

<sup>1982</sup> IACHR, *Report on Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II. Doc. 78, July 13, 2011, para. 32.

<sup>1983</sup> IACHR, *Report on Juvenile Justice and Human Rights*, OEA/Ser.L/V/II. Doc. 78, July 13, 2011, paras. See in this regard, Convention on the Rights of the Child, Article 37(b); Beijing Rules, Rule 19; and Havana Rules, Rules 1 and 2.

<sup>1984</sup> The failure to provide drinking water on a regular basis at the ERON or structure tree at La Picota, which was built more recently, was also found by the Office of the Procurator General. Report of results of preventive action No. 366466/111046000000, Official Note PDMPAP/PDMDHAE/No. 14847 of November 21, 2012 of the Procurator Delegate to the Public Ministry of Criminal Matters and Prevention in Human Rights and Ethnic Matters, pp. 53-54.

1116. Special mention should be made of the prison at Valledupar (E.P.A.M.S-C.A.S), which since it was opened more than 10 years ago has been plagued by structural problems that have affected several aspects, including the supply and distribution of water to the prison population.<sup>1985</sup> This situation has been extensively documented from the outset by national and international human rights agencies<sup>1986</sup> (including the IACHR<sup>1987</sup>), and the media, among others. According to the information provided by civil society organizations during the visit, at the Valledupar prison there is water supply for the prisoners from 15 to 30 minutes at different times of the day, and the service only reaches the second and third floors, thus the prisoners must fill drums and take them to the higher floors. There is no schedule for providing the service, nor an established order for getting in line to collect water, which causes constant and violent clashes among the prisoners. This situation was recognized by the prison authorities. At the moment of the on-site visit to Colombia, the prison housed 1,363 prisoners. In this regard, the Commission takes notes of the information provided by the State, according to which the provision of water has been “normalized”, after the aqueduct was set aside to provide water exclusively to the penitentiary, along with other investments and measures that have been worked out in order to solve the situation.<sup>1988</sup>
1117. The lack of water, as is foreseeable, gives rise to serious problems of sanitation and health and hygiene. For example, unable to use the toilets, the prisoners have to defecate in newspapers or bags that they are forced to throw out the windows so that the material doesn’t accumulate in their cells. In some instances traces or particles of feces have been detected in the food that is served to the prisoners at the prison in Valledupar.<sup>1989</sup> In addition, the lack of water has

<sup>1985</sup> In this respect it is important to recall that the United Nations High Commissioner on Human Rights, in her Report on the human rights situation in Colombia in 2000, noted in particular: “The Controller-General’s audit reports on INPEC make disquieting remarks about its financial and administrative management, the awarding of contracts for civil engineering work, and structural deficiencies at several prisons, including Valledupar, which was inaugurated only recently, and Girardot.” United Nations, Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2001/15, March 20, 2001, para. 166. In addition, in another United Nations report, the mission that visited that prison – presented at the time by the Ministry of Justice as a “model” or “pilot plan” – found “serious irregularities and abusive practices that give rise to cruel, inhuman or degrading treatment or punishment, including primarily serious deficiencies in infrastructure, including flooding of cells, malfunctioning or overwhelmed sanitary systems, and lack of showers in some cellblocks and very restricted access to running and drinking water.” And “inadequate basic services, including fecal contamination of the food....” United Nations, High Commissioner for Human Rights, Office in Colombia, Informe sobre Centros de reclusión en Colombia: un estado de cosas inconstitucional y de flagrante violación de derechos humanos, para. 39, Bogotá, October 31, 2001. Available at: <http://www.hchr.org.co/documentoseinformes/informes/tematicos/informe%20carceles.htm>.

<sup>1986</sup> In 2012 the Office of the United Nations High Commissioner in Colombia prepared a report with recommendations to the competent authorities on the situation of the prison at Valledupar (Cesar). United Nations, Human Rights Council, Annual Report of the High Commissioner for Human Rights. Addendum. Report of United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19th session, A/HCR/19/21/Add.3, January 31, 2012, para. 111.

<sup>1987</sup> In 2011 the Commission received information from various sources according to which the prison was undergoing a serious health crisis resulting mainly from the lack of regular water supply. In addition, it has been reported that at that prison there is a lack of medical care and repeated acts of torture, cruel, inhuman and degrading treatment by the security personnel. The lack of water also has direct consequences on the hygienic and health conditions; is the cause of constant brawls among prisoners and situations of violence in the prison; and has a negative effect on the provision of other basic services, such as providing food in good condition. In this respect, the IACHR sent the State a request for information pursuant to Article 41 of the Convention, which it answered on June 27, 2011.

<sup>1988</sup> Observations of the Government of Colombia to the Report of the Inter-American Commission on Human Rights, Note 5-GIID-13-048140, December 2, 2013, para. 618.

<sup>1989</sup> In this respect see also, El Tiempo, *Hallan rastros de excrementos en comida de la cárcel de Valledupar*, June 14, 2011. Available at: <http://m.eltiempo.com/justicia/crisis-sanitaria-en-la-crcel-de-valledupar/9615248>; and El Espectador.com, *En las profundidades del infierno*, June 6, 2011. Available at: <http://www.elespectador.com/impreso/nacional/articulo-275536-profundidades-del-infierno>.

other serious consequences, such as cutaneous diseases in the prisoners due to lack of personal hygiene.

1118. In view of the foregoing considerations, the Commission reiterates that every person deprived of liberty should have access to water for his or her consumption and personal hygiene. The failure to supply drinking water is a serious breach by the State of its duties to guarantee the rights of the persons under its custody.<sup>1990</sup> According to the International Committee of the Red Cross, the minimum required per person to cover all one's needs is 10 to 15 liters of water each day, so long as the sanitary facilities are working adequately; and the minimum quantity of water that prisoners should be able to store in their cells is 2 liters per person per day if they are closed for periods of up to 16 hours; and from 3 to 5 liters per person per day if they are confined for more than 16 hours at a time or in case of hot weather or climate. The International Committee of the Red Cross has indicated that the minimum quantity of water a person needs to survive is from 3 to 5 liters per day. This minimum may increase depending on the climate or weather and the amount of physical exercise the prisoners get.<sup>1991</sup>
1119. The Commission clearly considers that even if there isn't agreement among the various institutions of the State as to which is responsible for the failure to supply water at the Valledupar prison, the State has the unavoidable legal duty to provide it to the prisoners, both for their consumption and to satisfy their basic needs. Supplying water to persons deprived of liberty is not only a basic requirement for maintaining minimum conditions of health and hygiene in prisons, but is essential for being able to consider the act of confinement compatible with human dignity.

## **f. Monitoring the institutions where persons are deprived of liberty**

1120. Finally, the Inter-American Commission notes the value of independent monitoring of establishments for the deprivation of liberty (understood broadly) as an essential mechanism for respecting and guaranteeing the fundamental rights of persons in the custody of the State. As the Inter-American Court of Human Rights stated: "The way a detainee is treated must be subject to the closest scrutiny, taking into account the detainee's vulnerability."<sup>1992</sup> Accordingly, in the view of the Commission, the prison administration in general should be governed by strict criteria of transparency, openness, and independent monitoring.

1121. In this regard, the Commission notes the important work done by institutions such as the Office of the Procurator General and the Office of the Human Rights Ombudsman; nonetheless, it recognizes the need to strengthen the institutional mechanisms for independent monitoring of the places in which persons are deprived of liberty. With a view to this objective, the Commission echoes what has been said by the CAT, the WGAD, and the United Nations High Commissioner urging Colombia to ratify the Optional Protocol to the Convention against

<sup>1990</sup> I/A Court H.R., *Case of Pacheco Teruel et al. v. Honduras*. Merits, Reparations and Costs. Judgment of April 27, 2012 Series C No. 241, para. 67(c); I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010 Series C No. 218, paras. 215 and 216.

<sup>1991</sup> IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II, December 31, 2011, para. 483; International Committee of the Red Cross (ICRC), *Water, Sanitation, Hygiene and Habitat in Prisons* (2005), pp. 34-36.

<sup>1992</sup> I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18 2003. Series C No. 100, para. 126.



Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>1993</sup> The IACHR is convinced that the most effective way to prevent torture is to open the places where persons are deprived of liberty to public inspection<sup>1994</sup> and independent monitoring.

## Conclusions

1122. The Inter-American Commission values the efforts made by the Colombian State to improve prison management, for example, in terms of governability and security in the prisons, professionalization of prison staff, and other initiatives being taken by the Ministry of Justice and Law. Nonetheless, the Commission observes that the situation of persons deprived of liberty continues to be one of the most pressing challenges in relation to the current status of human rights in Colombia. In this regard, the main problem that the Colombian prison system has been facing for decades is the steady increase in the prison population, a structural deficiency that corresponds primarily to how criminal justice policy is designed. The logical consequence is the serious overcrowding of the prisons.
1123. The IACHR is concerned that for decades the official position of the Colombian State vis-à-vis this problem has been fundamentally to recognize it and to propose a solution for it, namely expanding the housing capacity of the prison system, primarily by building prisons. Nonetheless, it has also been shown clearly over the years that this strategy, to date, has not offered a solution to the problem. As the IACHR showed in due course, in mid-1997 the housing capacity of the prison system was 28,000, and it housed a prison population of 40,000 prisoners, for a level of occupation of 142%.<sup>1995</sup> Fifteen years later the IACHR observed that while the official housing capacity of the prison system was 75,726, the total prison population increased to 113,884 persons, which represents a level of occupation of 150%.
1124. In this regard, the Inter-American Commission has sustained that expanding capacity – whether by building new prisons or remodeling the existing ones – is no doubt one essential measure for addressing overcrowding, especially when the existing facilities are old, precarious, and inadequate. Yet this measure alone does not represent a sustainable solution over time.<sup>1996</sup> As was already established, in the six years prior to the visit the number of persons deprived of liberty increased as follows: 2007-2008: 6,376 new prisoners entering, 2008-2009: 6,013, 2009-2010: 8,452, 2010-2011: 16,007, and 2011-2012: 13,433.
1125. Merely increasing capacity in the prisons is not a suitable solution to overcrowding, because the growth of the prison population is definitely a direct consequence of the implementation of the State's criminal justice policy. Therefore, neither building new prisons nor adopting other palliative measures in the short run is going to be a sustainable solution over time, for they don't have any impact on how the State exercises its punitive power. Moreover, the systematic

<sup>1993</sup> See, among others, United Nations, Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, Conclusions and recommendations of the Committee against Torture; Colombia, CAT/C/COL/CO/4, May 4, 2010, para. 22; United Nations, Human Rights Council, Annual Report of the High Commissioner for Human Rights. Addendum. Report of United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19th session, A/HRC/19/21/Add.3, January 31, para. 118(d); and United Nations, WGAD, Report of the Working Group on Arbitrary Detention, Mission to Colombia (1 to 10 October 2008), A/HRC/10/21/Add.3, February 16, 2009, para. 103(a).

<sup>1994</sup> See, United Nations, Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/13/39, February 9, 2010, para. 56.

<sup>1995</sup> IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102. Doc 9 rev. 1, February 26, 1999, Chapter XIV, para. 5.

<sup>1996</sup> IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II, December 31, 2011, para. 461.

construction of prisons as a way to solve the increase in the number of persons deprived of liberty is fiscally unsustainable. One must bear in mind that this does not only imply the high cost of building new structures, but also the uniform expansion of all administrative functions, services, and operating costs associated with the prisons. Moreover, it has been shown that many of these new prisons built as of 2000 – following the U.S. model introduced in the context of Plan Colombia, such as the above-mentioned prison at Valledupar and the ERONs – have had serious infrastructure defects<sup>1997</sup> in essential aspects such as their hydraulic systems.

1126. In this context, the Inter-American Commission underscores that overcrowding is not only the lack of physical space available for housing the prisoners, but constitutes a true distortion of the prison system, which has very serious consequences in aspects such as health conditions, access to education and work programs, internal security in the prisons, and clearly it completely undercuts the conventional, constitutional, and legal purpose of punishment consisting of deprivation of liberty. Indeed, the consideration of overcrowding and its consequences was precisely the basis for determining the unconstitutional general situation found by the Constitutional Court in 1998. Stabilizing the growth of the number of persons deprived of liberty is essential for the planning and implementing any public policy on prison management.
1127. The Inter-American Commission has established the fundamental principle that the State, on depriving a person of liberty, places itself in the situation of guarantor of that person's fundamental rights, especially his or her right to life and integrity. This means that the act of confinement entails a specific and substantive commitment to protect the human dignity of those held under the State's custody.<sup>1998</sup> In other words, it should only recur to incarceration when it is in a position to guarantee conditions of confinement compatible with respect for the dignity inherent to every human being. Therefore, when the collapse of a prison system or a given prison makes it materially impossible to offer such conditions, the State cannot continue placing persons in such spaces, because on doing so it is deliberately placing the person in a situation that violates his or her fundamental rights. In effect, in a state under the rule of law, the aim of retribution of the sentence never justifies its use entailing the continuing violation of the detainees' human rights.
1128. The Commission considers that the magnitude of the challenges the Colombian prison system faces merits decisive action, judicial as well as political and administrative. These actions should necessarily include implementing a criminal justice policy that upholds human rights and is sustainable, as the result of a serious and sensible analysis based on technical considerations and not the popular punitive discourse that is embraced by certain political sectors. At the same time, the eventual processes of privatization of the building and management of prisons should be conducted at every stage with the utmost transparency and with a view to technical, legal, and economic criteria in which objective consideration is given to the experiences of other countries of the region.

<sup>1997</sup> In this respect see, for example, in addition to what has been indicated in the preceding parts of this section, the following reports by the Office of the Comptroller General of the Republic: *Balance de la política penitenciaria y carcelaria de Colombia (2006-2010)*, July 20, 2010. Available at: <http://relatoresmaticos.uniandes.edu.co/images/stories/relatorias/PRISIONES-OCT2011/ENT.ESTATALES/CONTRALORIA/balancedelapolitica2010.pdf>; and Audit Report, *Proyecto de construcción y dotación de infraestructura penitenciaria y carcelaria del orden nacional Ministerio del Interior y Justicia-Fonade-INPEC*, as of June 30, 2011. See also: Fundación Comité de Solidaridad por los Presos Políticos (CSPP), *El Modelo Eron: la implementación de las nuevas cárceles en Colombia*, 2012, ISBN: 978-958-99204-5-9.

<sup>1998</sup> IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II, December 31, 2011, para. 53; IACHR, *Special Report on the Human Rights Situation at the Challapalca Prison*, Peru, October 9, 2003, para. 113; IACHR, Report No. 41/99, Case 11,491, Merits, *Minors in Detention*, Honduras, March 10, 1999, para. 135.

1129. In this context, the Commission reminds the State that accomplishing the goals of citizen security is a complex task that answers to an equally complex social reality, and that therefore it cannot be limited to using the criminal law, but rather should unfold in at least the following dimensions:

(1) primary prevention, which are measures directed at the entire population, and have to do with programs in public health, education, employment and instruction in observance of human rights and building a democratic citizenry; (2) secondary prevention, which involves measures that focus on individuals or groups who are more vulnerable to violence and crime, using targeted programs to reduce the risk factors and open up social opportunities; and (3) tertiary prevention, which involves individualized measures directed at persons already engaged in criminal conduct, who are serving a sentence or have recently completed their sentence. Particularly important here are the programs that target persons serving prison sentences.<sup>1999</sup>

1130. Accordingly, respect for the fundamental rights of persons deprived of liberty is not in conflict with the aims of citizen security, but to the contrary is an essential element for attaining them. An adequately functioning prison system is a necessary mechanism for ensuring citizen security and a proper administration of justice.<sup>2000</sup>

## **Recommendations**

1131. Based on the foregoing, the Inter-American Commission recommends to the Colombian State that it:

1. Adopt the administrative, legal, and judicial measures aimed at stabilizing and reducing the growth of the prison population, within a period of five years. This endeavour should include at its core the design and effective implementation of a model of criminal justice policy that upholds human rights in which the considerations set forth in this report are taken into account.
2. Effectively implement all those judicial decisions handed down by the Constitutional Court or other courts with jurisdiction that order the adoption of specific measures related to prison overcrowding. In addition, continue implementing all those measures that have an immediate short-term impact designed to relieve the problem of overcrowding.
3. Conduct a national census, in a period not to exceed six months, of all those detention centers that are not directly administered by the INPEC. That census should show the number, location, and responsible authority at each of those establishments and include statistics on the capacity of each one and the average number of persons kept in them.

<sup>1999</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, para. 155.

<sup>2000</sup> IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II, December 31, 2011, paras. 10 and 11.

4. Increase the number of judges in charge of the enforcement of sentences in those jurisdictions or districts with the highest levels of convicted prisoners.
5. 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.
6. Implement effective measures to ensure the separation of convicted prisoners from detainees awaiting trial, so as to gradually do away with the practice of mixing the two categories of prisoners. In addition, ensure that persons awaiting trial have conditions of detention compatible with the principle of the presumption of innocence, in keeping with the Standard Minimum Rules for the Treatment of Prisoners.
7. 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.
8. End the practice of massive detentions without a prior and individualized judicial arrest warrant or caught in flagrante delicto, particularly in the case of persons under the age of 18.
9. Assure, through the National Prison Institute (INPEC), the effective implementation of what was provided for in its Judgment T-062 of 2011 on the fundamental rights of LGBTI persons deprived of liberty. In particular, as regard to the process of reforming the regulations of the INPEC along the lines expressed in that judgment. In addition, maintain a constructive dialogue with organizations and activists specialized in the human rights of LGBTI persons for the purpose of making progress in the processes of respecting and ensuring the fundamental rights of these groups in the prisons.
10. Conduct a specialized study on the effects of Law 1453 of 2011 (“Law on Citizen Security”) on the population of juveniles deprived of liberty, and based on the results and other technical considerations adopt the necessary measures to preserve the good management of the detention centers for juvenile offenders under the age of 18, and to preserve the nature of these centers in spite of the increase in the number of inmates of 18 years old or more.
11. 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.
12. Ratify the Optional Protocol of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## **H. The aggravated risk to human rights defenders**

1132. During its visit the Inter-American Commission verified once again the essential role that human rights defenders have played and continue to play in reporting human rights violations committed during the armed conflict, as well as their valuable contributions to the process of seeking and consolidating peace in Colombia. In addition, the Commission found that precisely because of this fundamental work, human rights defenders continue to be targets of serious attacks on their rights perpetrated by the parties of the conflict with the aiming of hushing up their complaints.
1133. On prior occasions the Commission has said that one argument raised historically during the conflict by some members of paramilitary groups and their sympathizers, and even by some officials of the State, was to accuse human rights defenders of assisting the dissident armed groups. This perception of a supposed relationship of human rights defenders with any of the parties to the conflict was noted consistently as a factor of stigmatization that has contributed to human rights defenders being the targets of serious violations. Throughout the conflict, the IACHR has received consistent information according to which the illegal armed groups and even the security forces of the State have erroneously presumed, based on their legitimate activities to foster and protect human rights and based on criticisms by the government, that human rights defenders may be involved in illegal activities or that they are combatants and therefore legitimate targets of attack.
1134. During the on-site visit the IACHR verified that the foregoing assessment, which is contrary to the fundamental role human rights defenders have played in the search for peace, has persisted to date in the illegal armed groups, who continue perpetrating acts directly against the rights of human rights defenders. In this context, the Commission continued receiving complaints about the groups that call themselves “Águilas Negras”, “Rastrojos,” “Urabeños,” and the “Anti-Restitution Army” that perpetrate several forms of violence against human rights defenders considering that the human rights defenders are working with subversive groups, or are obstacles to the full realization of their own activities.
1135. During its visit the Commission learned of major efforts being undertaken by the Colombian State aimed at getting society and public servants to recognize the work of human rights defenders as a legitimate and necessary activity for democracy and peace-building. The Commission values that to deal with this situation, the State has encourage the strengthening of spaces for dialogue between the authorities and civil society. An example of this has been the implementation of public policies such as the “National Board of Guarantees for human rights defenders, social and community leaders,” which begun in 2009, created by mutual agreement with the civil society and that allows direct opportunities for dialogue with state authorities, for the design and implementation of strategies and actions to defend the work of human rights defenders<sup>2001</sup>. The State has indicated that the national guarantees process has had as one of its main pillars the recognition of the legitimacy of the work of defending human rights and it’s non-stigmatization. In its observations on the Draft Report, the State reiterated that it continues to work in partnership with civil society organizations, and with the support of the international community in the design of the agenda and areas of work of the National Board of Guarantees including the formulation of the “public policy on ensuring

<sup>2001</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Nota S-GAIIID-13-048140, December 2, 2013, paragraphs 624-625.

the defense of human rights”.<sup>2002</sup>. In this regard, the Commission notes positively that the implementation of this and other initiatives as to the National Protection Unit and the National Roundtable on Guarantees, can help human rights defenders carry out their activities in better security conditions.

1136. Notwithstanding this situation, the Commission continued receiving information in the course of its visit on the failure to investigate and punish public officials who could be involved in the violations of the rights of defenders, along with the persistence of some discrediting discourse by state agents that aggravates the situation of risk. In addition, according to information received by the IACHR, several of the policies pursued by the State require constant monitoring and redesign to ensure that they fully meet their objectives.
1137. One serious problem perceived during the visit is the persistence of impunity in cases involving violations of the rights of human rights defenders. As the IACHR observed, there has not been notable progress in the investigations related to attacks, assaults, and harassment despite the intimidating effect of these violations in the community of those who work in activities to defend those hardest hit by the conflict.
1138. In general, the IACHR considers that the situation of human rights defenders continues requiring the Colombian State to step up its efforts to consolidate a culture of respect for the work of those who defend human rights. The Commission deems it important that the State adopt effective and comprehensive public policies, and continue to advance in strengthening that exist, to protect human rights defenders at risk as a result of their work, and to investigate the violations committed against them, and punish the persons responsible.

## 1. Attacks against the life and integrity of human rights defenders

1139. The activity of human rights defenders in Colombia is closely tied to reporting the human rights violations that have occurred in the context of the armed conflict to determine the truth and punish the persons responsible, as well as giving impetus in the process of restitution of lands to the populations that were displaced by violence. On this visit the Commission verified that it was precisely those human rights defenders who carry out the preliminary activities so essential for building peace in Colombia with full respect for human rights who are most subject to disappearances, murder, and threats as a result of the violence generated by the armed conflict.
1140. The IACHR observed in its visit that the responsibility for these acts of violence is generally attributed to groups that act outside the law and which, according to civil society organizations, come from illegal armed groups that have emerged in the wake of the demobilization of the paramilitary organizations. The Commission also noted that precisely in view of the nature of the *Autodefensas* and the origins of the new illegal armed groups, some human rights defenders suggest that security forces of the State could be involved in planning and executing attacks and other aggressive acts.
1141. The Commission considers that only through strong government backing for the work of human rights defenders and effectively punishing public officials who may be responsible for

<sup>2002</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Nota S-GAIIID-13-048140, December 2, 2013, paragraphs 624-625.

violations of their rights can the State progressively eradicate the unlawful stigmatization that human rights defenders have suffered during years of conflict where they have been treated as “subversive” groups, and therefore steer away from the perception of an association between the activities of illegal armed groups and state authorities. The IACHR believes it is essential for the State to strengthen its public policies for protecting human rights defenders at risk, and to adopt measures aimed at consolidating and legitimating definitively the role of human rights defenders in society.

1142. As regards the information received during the visit, the Commission learned that from July 1996 to May 2012 at least 290 human rights defenders suffered impacts on their right to life<sup>2003</sup> and, according to civil society, the current administration has seen an increase of 36.84% in the violations of this right with respect to the previous administration.<sup>2004</sup> By way of example of the persistence of these impairments of rights to this day, the IACHR received information from the Office of the Human Rights Ombudsman according to which the Early Warning System indicates that of all risk scenarios reported, 70% identify risk to human rights defenders.<sup>2005</sup> Civil society organizations reported that during the first six months of 2012, 163 defenders were victims of some type of aggressive act that put their life and integrity at risk<sup>2006</sup>; of these cases, 81 were reportedly threats, 29 assassinations, 29 assassination attempts, 17 arbitrary detentions, 3 presumed disappearances, 3 cases of stolen information, and 1 case of sexual violence.<sup>2007</sup>

1143. With respect to assassinations, the Commission observed that many of them are by members of illegal armed groups and may be accompanied by torture or perpetrated by machine-gun fire from powerful high-caliber weapons.<sup>2008</sup> Many of the assassinations are preceded by assassination attempts, threats, arbitrary detentions, and even sexual violence, and are

<sup>2003</sup> Colombian Commission of Jurists, *Listado de víctimas de violencia sociopolítica en Colombia Violaciones a los derechos humanos y violencia política. Derecho a la vida. Violaciones en contra de defensoras y defensores de derechos humanos en Colombia. Nombre de las víctimas según, fecha y lugar de ocurrencia julio de 1996 a mayo de 2012.*

<sup>2004</sup> Colombian Commission of Jurists, *Colombia: sigue esperando la hora de los derechos humanos Informe sobre la situación de derechos humanos y derecho humanitario 2010-2012*, p. 22.

<sup>2005</sup> The principal illegal armed actors generating risk to human rights defenders are the illegal armed structures that emerged after the demobilization of the Autodefensas, which call themselves Águilas Negras, Los Urabeños, Los Paisas, the ERPAC, Los Rastrojos, and other regional or local armed structures identified as the source of the threat in 65 of the 81 situations of risk reported, accounting for 80%. Human Rights Ombudsman, *Comisión Interamericana de Derechos Humanos. Informe sobre situación de defensores y defensoras de derechos humanos. Comentarios.*

<sup>2006</sup> Programa No Gubernamental Somos Defensores, *Un camino solitario*, 2012. Available at: [http://www.somosdefensores.org/index.php?option=com\\_content&view=article&id=88:amenazas-cumplidas&catid=8:novedades&Itemid=3](http://www.somosdefensores.org/index.php?option=com_content&view=article&id=88:amenazas-cumplidas&catid=8:novedades&Itemid=3).

<sup>2007</sup> Programa No Gubernamental Somos Defensores, *Un camino solitario*, 2012. Available at: [http://www.somosdefensores.org/index.php?option=com\\_content&view=article&id=88:amenazas-cumplidas&catid=8:novedades&Itemid=3](http://www.somosdefensores.org/index.php?option=com_content&view=article&id=88:amenazas-cumplidas&catid=8:novedades&Itemid=3).

<sup>2008</sup> The Commission received information on the situation of Jaime Alberto Chazatar Bastidas (indigenous), Víctor Manuel Hilarión Palacios (peasant), Milciades Trochez Conda (member of the Guardia Indígena), brothers Herminson and Alexander de Jesús Morales Zamora (members of the indigenous council), Mauricio Arredondo and his wife Janeth Ordóñez (community leader), Gilberto Paí Canticús and Giovanni Rosero (members of the Awá indigenous community), Inga Aurelina Adarme (Inga people), Argemiro Cárdenas Agudelo (director and manager of a community radio station), Nancy María Miramá and her husband Libardo Guerrero Narváez (social leaders), Daniel Aguirre Piedrahita (union leader), Juan Manuel Jaramillo Paque (Personero of Caloto), Julio Dagua Corpus (community leader), Yeison Campos Cucubana (member of Makaguan indigenous community), Yamit Bailarin Suescún (indigenous), Pablo Gutiérrez (indigenous leader), Jeremías Ipia Mestizo (Nasa indigenous leader), Israel Mendaz (community leader), Carlos Darío Arce Bernaza (indigenous leader), Alberto Cunda Poscué (peasant leader), Segundo Machado Parra (community leader), José Rumualdo Sáenz Domicó (indigenous), Alex Alejandro Benavidez Ayala (youth leader), Efraín Amézquita (trade union leader), Pedro Burgos (community leader). Programa Somos Defensores. *Un camino solitario. Informe Enero-Junio 2012. Sistema de Información sobre Agresiones contra Defensoras y Defensores de Derechos Humanos en Colombia – SIADDHH.*

committed in the victims' homes, often in the presence of their children and other family members.<sup>2009</sup>

1144. As regards the presumed disappearances, the Commission observes based on the information received that several of them involve social leaders who have played an important role in upholding the human rights of the social sectors hardest hit during the conflict, and that those disappearances are perpetrated amidst an absence of effective measures of protection by the State, and for the purpose of silencing the reports put out by human rights defenders. In one example of such a case, the Commission received information on the alleged disappearance of Hernán Henry Díaz at some time April 25 to 27, 2012<sup>2010</sup>, a “recognized peasant leader, member of the social, peasant, afrodescendant and indigenous organizations of the department of Putumayo, a member of the agricultural workers’ union Federación Nacional Sindical Unitaria Agropecuaria (FENSUAGRO); and a leader of the social and political movement Marcha Patriótica.”<sup>2011</sup> In view of this information, the IACHR decided to request the State for information based on Article XIV of the Inter-American Convention on Forced Disappearance of Persons.. On June 11, 2012, the IACHR granted precautionary measures on behalf of Mr. Henry Díaz to protect his life and integrity and for the State to report on the actions taken to determine his whereabouts. To date the Commission has not received any more information as to the situation of Mr. Henry Díaz.<sup>2012</sup>
1145. The IACHR also received information in 2012 on the situation of Javier Silva Pérez, who is said to be a peasant and community leader in the district (*corregimiento*) of El Morro, Casanare; it is said that he was last seen on April 21, 2012, in the city of Yopal, riding a motorcycle<sup>2013</sup>; there is no news as to his whereabouts. Information was also received on the situation of Martha Cecilia Guevara Oyola, who is said to be a community leader in San Vicente del Cagúan, an activist with the “Marcha Patriótica”, and who was last seen on April 20, 2012 when

<sup>2009</sup> Programa Somos Defensores. *Un camino solitario. Informe Enero-Junio 2012. Sistema de Información sobre Agresiones contra Defensoras y Defensores de Derechos Humanos en Colombia – SIADDHH*, p. 32.

<sup>2010</sup> Coordinación Colombia-Europa-Estados Unidos, *En Colombia las desapariciones forzadas no son asunto del pasado. Las desapariciones forzadas en Colombia siguen cometiéndose y el Gobierno promueve nuevas medidas que garantizan su impunidad*, November 2, 2012, p. 3.

<sup>2011</sup> See, among others, Protection online, *Henry Díaz, dirigente campesino y sindicalista*, May 9, 2012, Available at: <http://www.protectionline.org/Hernan-Henry-Diaz-dirigente,11683.html>; El Espectador.com, *Defensoría asume búsqueda de integrante de “Marcha Patriótica”*, April 27, 2012, Available at: <http://www.elespectador.com/noticias/judicial/articulo-342221-defensoria-asume-busqueda-de-integrante-de-marcha-patriotica>; El Espectador.com, *Directivos de Marcha Patriótica buscarán al líder desaparecido Henry Díaz*, May 7, 2012. Available at: <http://www.elespectador.com/noticias/nacional/articulo-344523-directivos-de-marcha-patriotica-buscaran-al-lider-desaparecido-p>; Programa Somos Defensores. *Un camino solitario. Informe Enero-Junio 2012. Sistema de Información sobre Agresiones contra Defensoras y Defensores de Derechos Humanos en Colombia – SIADDHH*, p. 33. Available at: [http://www.somosdefensores.org/index.php?option=com\\_content&view=article&id=88:amenazas-cumplidas&catid=8:novedades&Itemid=3](http://www.somosdefensores.org/index.php?option=com_content&view=article&id=88:amenazas-cumplidas&catid=8:novedades&Itemid=3). Coordinación Colombia-Europa-Estados Unidos, Observatorio de derechos humanos y derecho humanitario, *Desapariciones forzadas en Colombia. En búsqueda de la justicia*, May 2012, p. 20. Fundación Nydia Erika Bautista, *Informe sobre la situación de las desapariciones forzadas a la Comisión Interamericana de Derechos Humanos*, November 3, 2012, p. 8.

<sup>2012</sup> IACHR, *Precautionary measures granted in 2012*. Available at: <http://www.oas.org/es/cidh/decisiones/cautelares.asp>.

<sup>2013</sup> See, among others, Asociación Internacional por la Paz en Colombia y en el Mundo, *Colombia: Boletín de la Comisión Intereclesial de Justicia y Paz*, May 6, 2012. Available at: <http://www.aipazcomun.org/spip.php?article2292>; Programa No Gubernamental Somos Defensores, *Un camino solitario*, 2012, p. 33. Available at: [http://www.somosdefensores.org/index.php?option=com\\_content&view=article&id=88:amenazas-cumplidas&catid=8:novedades&Itemid=3](http://www.somosdefensores.org/index.php?option=com_content&view=article&id=88:amenazas-cumplidas&catid=8:novedades&Itemid=3); Red de Hermandad y Solidaridad con Colombia, *Desaparecido dirigente comunal de El Morro, Casanare*, n.d., Available at: <http://www.redcolombia.org/index.php/regiones-mainmenu-62/oriente-mainmenu-63/casanare-mainmenu-65/1795-desaparecido-dirigente-comunal-de-casanare.html>.



preparing to attend the launch of the “Marcha Patriótica” political movement in the city of Bogotá, Colombia.<sup>2014</sup>

1146. According to a report by the Office of the High Commissioner published in 2012, in large measure the threats and harassment were expressed through pamphlets, email messages, and following persons. Such acts were attributed mainly to groups such as the “Ejército Revolucionario Popular Antiterrorista de Colombia” (ERPAC), “Los Paisas”, “Los Rastrojos”, and Los “Urabeños”, and on occasion the FARC-EP. As that office also reported, “there has been uncorroborated information on the involvement of State agents, including members of civilian and military intelligence services, in illegal and clandestine operations.”<sup>2015</sup>
1147. As examples of the threats described during the visit, the IACHR was informed of the threat allegedly signed by the group “Los Rastrojos” that had been left in August 2012 in the offices of the NGO “Gente en Acción”, and which contained death threats against several activists, among them LGBTI activist “Ovidio Nieto Jaraba”; “William Mendoza”, president of the Barrancabermeja section of the Sindicato Nacional de Trabajadores del Sistema Agroalimentario (SINALTRAINAL); and Human Adbala Choser, a local human rights defender, who was accused of “provoking and organizing protest marches” and supporting the guerrillas.<sup>2016</sup>
1148. In addition, the organization ASFADDES reported that on July 27, 2012, it received a phone call in which there was a recording offering two free spaces in a cemetery; on August 30 they were photographed; on September 4 persons parked in front of their domicile, and on September 6 they received a text message with threats from the group “Los Urabeños”.<sup>2017</sup> In addition, the organization Fundación Nydia Erika Bautista reported that on November 21, 2012, a police officer had been looking into the third-floor offices, after having parked a vehicle registered with the parking garage of the Council of Bogotá. In its comments to the draft report, the State indicated that the case remains under investigation by the National Police.<sup>2018</sup> The organization has measures of protection first assigned in mid-2011 and have been annually renewed during 2012 and 2013.<sup>2019</sup> The investigations into these facts was said to have been archived in September 2011, without further advances.<sup>2020</sup>

<sup>2014</sup> See, among others, CIMACNOTICIAS, *ONG exige a gobierno colombiano encontrar a dirigente colombiana*, May 3, 2012. Available at: <http://www.cimacnoticias.com.mx/site/12050303-BREVES-DE-CIMAC-3-M.49611.0.html>; Programa No Gubernamental Somos Defensores, *Un camino solitario*, 2012. Available at: [http://www.somosdefensores.org/index.php?option=com\\_content&view=article&id=88:amenazas-cumplidas&catid=8:novedades&Itemid=3](http://www.somosdefensores.org/index.php?option=com_content&view=article&id=88:amenazas-cumplidas&catid=8:novedades&Itemid=3); El Financiero, *Marcha patriótica denuncia ataques contra sus integrantes*, April 28, 2012, available at: [http://www.elfinanciero.com.mx/index.php?option=com\\_k2&view=item&id=17352:marcha-patri%C3%B3tica-denuncia-ataques-contra-sus-integrantes&Itemid=26](http://www.elfinanciero.com.mx/index.php?option=com_k2&view=item&id=17352:marcha-patri%C3%B3tica-denuncia-ataques-contra-sus-integrantes&Itemid=26).

<sup>2015</sup> United Nations, Human Rights Council, Annual Report of the High Commissioner for Human Rights. Addendum. Report of United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19th session, A/HCR/19/21/Add.3, January 31, 2012, para. 16.

<sup>2016</sup> Amnesty International, *Colombia: Colombian Human Rights Activists Threatened*, August 24, 2012. Available at: <https://www.amnesty.org/es/library/asset/AMR23/030/2012/es/fd256210-1326-4645-bcfb-a78119bf9e07/amr230302012es.html>.

<sup>2017</sup> Fundación Nydia Erika Bautista, *Informe sobre la situación de las desapariciones forzadas a la Comisión Interamericana de Derechos Humanos*, November 3, 2012, p. 9.

<sup>2018</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Nota S-GAIIID-13-048140, December 2, 2013, paragraph. 629.

<sup>2019</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Nota S-GAIIID-13-048140, December 2, 2013, paragraph. 629.

<sup>2020</sup> Fundación Nydia Erika Bautista, *Informe sobre la situación de las desapariciones forzadas a la Comisión Interamericana de Derechos Humanos*, November 3, 2012, p. 10.

1149. In addition, on August 30, 2012, in the context of the International Day of the Victims of Enforced Disappearances, Martha Díaz, the president of the “Asociación de Familiares Unidos por un Solo Dolor” (AFUSODO), was said to have been threatened via an email in which she was declared a military target and warned to leave the city immediately. In that same email threats were also reported to have been made against the organizations “ASOCOLEMAD” and “Mujeres al Derecho”. These threats were said to have come after members of these organizations demanded a meeting with representatives of the Human Rights Unit of the Office of the Attorney General to explain the irregularities in relation to the timely delivery of the remains of their loved ones.<sup>2021</sup>
1150. During the visit the IACHR also learned of threats that were sent by email to the organizations. For example, the Commission received information about the threat allegedly made by the “Ejército Antirestitución” on July 4, 2012 from the email address antirestitucion@gmail.com to the emails of Yessika Hoyos, attorney with the Colectivo de Abogados José Alvear (CCAJAR); Iván Cepeda Castro, Representative to the House; communications area of CCAJAR; and the protection area of the Movimiento Nacional de Víctimas de Crímenes de Estado (MOVICE: National Movement of Victims of State Crimes). In that email 13 human rights defenders and political leaders were declared to be military targets and stigmatized as guerrilla fighters; their names and photographs were included in that email.<sup>2022</sup>
1151. Another form of violence used against human rights defenders on which the Commission received information consisted of supposed “rewards” offered by illegal groups for the purpose of ending the lives of human rights defenders. In this respect, the IACHR learned of the situation of José Humberto Torres, a human rights attorney in the Atlantic Coast region, and a political delegate to the National Government in the context of the National Roundtable on Guarantees, that in March 2012 learned that paramilitary groups had made him a target and were offering to pay 200 million Colombian pesos (approximately US\$100,000) to whoever were to assassinate him.<sup>2023</sup> Mr. Torres is a beneficiary of precautionary measures from the IACHR and has a protection scheme under the responsibility of the National Protection Unit.<sup>2024</sup>
1152. During its visit the Commission also learned of human rights defenders being followed and attacked. For example, the Commission learned that in May 2012 Father Alberto Franco, a member of the Comisión Intereclesial de Justicia y Paz, was followed by two men on a motorcycle in Bogotá for one hour. According to the information available, human rights defender Danilo Rueda was also followed by persons on a motorcycle, and overheard a woman tell the persons on the motorcycle “yes, he is one of those from *justicia y paz*.”<sup>2025</sup> On August 8,

<sup>2021</sup> Fundación Nydia Erika Bautista, *Informe sobre la situación de las desapariciones forzadas a la Comisión Interamericana de Derechos Humanos*, November 3, 2012, p. 11.

<sup>2022</sup> MOVICE, *Denuncia Pública: Amenaza del “Ejército Antirestitución,”* Available at: <http://www.movimientodevictimas.org/pronunciamientos/denuncias-publicas/item/2961-denuncia-p%C3%BAblica-amenaza-del-llamado-%E2%80%9Cej%C3%A9rcito-antirestituci%C3%B3n%E2%80%9D-en-montes-de-mar%C3%ADa.html>.

<sup>2023</sup> See, among others, El Espectador.com, *José Humberto Torres, una cabeza con precio*, March 15, 2012. Available at: <http://www.elespectador.com/impreso/judicial/articulo-332674-jose-humberto-torres-una-cabeza-precio>; Protectiononline, *José Humberto Torres, abogado defensor: ofrecen recompensa por asesinarle*, March 15, 2012. Available at: <http://www.protectionline.org/Jose-Humberto-Torres-abogado.html>; OMCT, *Colombia: Amenaza de muerte contra el Sr. José Humberto Torres*, March 16, 2012. Available at: <http://www.omct.org/es/human-rights-defenders/urgent-interventions/colombia/2012/03/d21678/>.

<sup>2024</sup> See OMCT, *Colombia: Amenaza de muerte contra el Sr. José Humberto Torres*, March 16, 2012. Available at: <http://www.omct.org/es/human-rights-defenders/urgent-interventions/colombia/2012/03/d21678/>.

<sup>2025</sup> Comisión Intereclesial de Justicia y Paz, *Seguimientos a integrantes de la Comisión de Justicia y Paz*, May 9, 2012. Available at: <http://justiciaypazcolombia.com/Seguimientos-a-integrantes-de-la>.

2013 Liliana Ávila and Manuel Garzon, members of the Comisión Intereclesial, were followed by a person on a motorcycle when they were traveling in a vehicle. In addition, on August 22, 2013 the defender Danilo Rueda was again approached by two unknown men who tell him “Guerrilla. Death to the *Justicia y paz* members”<sup>2026</sup>. The members of the Comisión Intereclesial de Justicia y Paz are beneficiaries of precautionary measures granted by the Commission since September 2003<sup>2027</sup>. According to the organization’s register, since 1999 they have suffered more than 95 threats against them<sup>2028</sup>.

1153. Given the aforementioned scenario, the Commission is profoundly concerned because all these attacks, aggressive conduct, and threats contribute to a climate of hostility towards the work of human rights defenders in Colombia, such that the activities of defense and promotion of human rights could be perceived as risky activities. The IACHR observed during its visit that several civil society organizations expressed fear of pursuing their work in unsafe conditions without any perception that they were receiving support from the authorities.<sup>2029</sup>
1154. With respect to the geographic distribution of attacks and other aggressive acts, according to the “Somos Defensores” program, the largest number have occurred in the departments of Nariño, Putumayo, Cauca, Santander, Norte de Santander, and Arauca.<sup>2030</sup> In addition, during its visit the Commission received information from Antioquia according to which in 2010 there were 108 cases of attacks on human rights defenders, in 2011 164 attacks, and as of November 2012, there had been 374 cases in 2012, 318 of which were individual attacks and 56 collective attacks.<sup>2031</sup> Of the total number of incidents on record, 238 were individual threats, 95 homicides, 106 persons forcibly displaced, 55 cases of collective and individual persecution – understood as acts of harassment, being photographed and followed – and 11 cases of alleged judicial persecution by the Attorney General through the use of paid witnesses said to have been prepared by members of the armed forces or National Police to foster the detention of innocent peasants and leaders belonging to community organizations or the social and political movement known as Marcha Patriótica.<sup>2032</sup> In addition, it was reported that in

<sup>2026</sup> Comisión Intereclesial de Justicia y Paz. Ref. MC-629-03. Medidas cautelares. Información Adicional. Miembros de la Comisión de Justicia y Paz, August, 22, 2013.

<sup>2027</sup> CIDH, *Precautionary measures granted in 2003*, parr. 24. Disponible en: <http://www.cidh.oas.org/medidas/2003.sp.htm>.

<sup>2028</sup> Comisión Intereclesial de Justicia y Paz. Ref. MC-629-03. Medidas cautelares. Información Adicional. Miembros de la Comisión de Justicia y Paz, August, 22, 2013.

<sup>2029</sup> Information received at the meeting held with human rights defenders, Bogotá, December 3, 2012.

<sup>2030</sup> Programa No Gubernamental Somos Defensores, *Un camino solitario*, 2012. Available at: [http://www.somosdefensores.org/index.php?option=com\\_content&view=article&id=88:amenazas-cumplidas&catid=8:novedades&Itemid=3](http://www.somosdefensores.org/index.php?option=com_content&view=article&id=88:amenazas-cumplidas&catid=8:novedades&Itemid=3).

<sup>2031</sup> In Urabá, in the course of 2010, 2011, and 2012 a total of 110 attacks were reported, including the assassination of 15 social and community leaders and six persons leading movements to claim lands. In addition, 35 leaders in this subregion were threatened, and there were five collective threats and 16 cases of individual and forced disappearance. In the lower Cauca river region (Bajo Cauca) (ASOCBAC). In northeast Antioquia 44 attacks on human rights defenders were reported during the period 2010 to 2012, 17 of which were cases of persecution against peasant and trade union organizations. In the Western subregions there were 18 cases of attacks from 2010 to 2012, by making accusations, taking photographs, blacklisting and persecution of human rights defenders and presidents of the neighborhood associations known as *juntas de acción comunal*. According to information from the community, members of Mobile Brigade No. 11 of the National Army along with demobilized persons who participate in the military operations are the ones responsible for this situation. In the southwest of Antioquia three cases of attacks were reported in 2010, 2011, and 2012. With respect to Eastern Antioquia, five attacks were reported. In the middle Magdalena valley subregion, two attacks were reported against journalists by agents of the National Police. In southern Córdoba in the course of 2012 six cases were reported of attacks on members of the Asociación Campesina para el Desarrollo del Alto Sinú. Fundación Sumapaz para el Nodo Antioquia de la Coordinación Colombia – Europa - Estados Unidos (CCEEU) and Proceso Social de Garantías Antioquia, *Balance Regional de la Situación de Defensores de Derechos Humanos de Antioquia*, pp. 1, 9, 12-18.

<sup>2032</sup> Fundación Sumapaz para the Antioquia Node of the Coordinación Colombia - Europa- Estados Unidos (CCEEU) and Proceso Social de Garantías Antioquia, *Balance Regional de la Situación de Defensores de Derechos Humanos de Antioquia*, p. 2.

2012 the attacks were mainly against youth and peasant leaders and human rights organizations<sup>2033</sup>, while the leading aggressor is said to be the paramilitary structures, accounting for 64% of the cases, followed by members of the armed forces and National Police, with 24%, in 10% of the cases the assailant cannot be identified precisely, and 2% are attributed to the FARC-EP.<sup>2034</sup>

1155. While the perception of risk from the civil society organizations vis-à-vis the activities of armed groups is widespread, the Commission observed that bearing in mind as criteria identifying the serious nature of the violations of rights and the continued reiteration of the acts directed against them, some groups of human rights defenders have been at special risk that is evident in the information the IACHR received in related to assassinations, other acts of aggression, and harassment of their activities to defend and promote human rights.
1156. In this respect, according to a mission report from the “Observatorio para la Protección de Defensoras y Defensores” published in 2012, among the groups of defenders hardest hit are those who work for justice, the truth, reparation and restitution of lands, indigenous and peasant leaders, defenders of the environment, union leaders and members of trade unions, the defenders of LGBTI persons, and the organizations and journalists who report human rights violations.<sup>2035</sup>
1157. With respect to the situation of trade union leaders and persons associated with unions, the IACHR has monitored their situation of vulnerability throughout the conflict. The Commission has observed that as trade unions are centers of organized political expression for presenting their labor and social demands<sup>2036</sup> and a point of convergence for denouncing human rights violations committed by sectors of both the State and private business, trade union leaders have historically been targets of the most serious human rights violations during the armed conflict.<sup>2037</sup>
1158. Civil society organizations noted during the visit that there are crucial elements for being able to understand anti-union violence in Colombia: (i) the circumstances in which an extremely large number of crimes are committed in which one can detect some patterns of conduct that have been repeated continuously; (ii) the discrediting of the role of the unionists and the

<sup>2033</sup> Fundación Sumapaz for the Antioquia Node of the Coordinación Colombia – Europa - Estados Unidos (CCEEU) and Proceso Social de Garantías Antioquia, *Balance Regional de la Situación de Defensores de Derechos Humanos de Antioquia*, p. 5. The Commission also received specific information on the situation of the community known as Comuna 8 of Medellín, in which there were said to have been 29 acts of aggression against human rights defenders in 2012, mostly individual threats (13 cases); 7 assassinations, two of which were against children and adolescents; and 5 individual forced displacements. In the case of Comuna 13, during the same period of 2012 there were at least 181 acts of aggression, 111 of which were individual threats, 67 individual forced displacements, and 3 assassinations of youth leaders from the cultural sector belonging to the hip-hop groups Son Batá and the Red Elite de Hip-Hop. Fundación Sumapaz for the Antioquia Node of the Coordinación Colombia- Europa- Estados Unidos (CCEEU) and Proceso Social de Garantías Antioquia, *Balance Regional de la Situación de Defensores de Derechos Humanos de Antioquia*, p. 8.

<sup>2034</sup> Fundación Sumapaz for the Antioquia Node of the Coordinación Colombia - Europa- Estados Unidos (CCEEU) and Proceso Social de Garantías Antioquia, *Balance Regional de la Situación de Defensores de Derechos Humanos de Antioquia*, p. 3.

<sup>2035</sup> El Observatorio para la Protección de los Defensores de Derechos Humanos, *Colombia: Continúa la inseguridad para los defensores de derechos humanos, en particular los líderes de comunidades desplazadas. Informe de Misión*. May 2012. Available at: [http://fidh.org/IMG/pdf/rapportcolombie\\_obs12\\_full.pdf](http://fidh.org/IMG/pdf/rapportcolombie_obs12_full.pdf).

<sup>2036</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, para. 209.

<sup>2037</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 264.

construction of a false image of them as “subversives”; and (iii) the context of impunity and the role of the Colombian authorities with respect to protecting and/or repressing trade union activism.<sup>2038</sup>

1159. As for the continuity of the acts of aggression, according to a study coordinated by the Office of the United Nations Development Program (UNDP) in Colombia, from 1984 to March 2012 some 2,800 trade unionists were murdered, with nearly 94.4% of the cases in impunity; in addition, there were, on record, 216 forced disappearances, 83 cases of torture, and 163 kidnappings.<sup>2039</sup> From January to August 2012, 13 unionized workers were assassinated.<sup>2040</sup> In addition, according to the records of other union organizations, from February 14, 2011 to April 30, 2012, there were approximately 32 homicides, 531 threats, 62 acts of harassment, 46 cases of forced displacement, 13 arbitrary arrests, and 11 assassination attempts.<sup>2041</sup> In the first four months of 2012 there were 122 cases of violations of the rights to life, liberty, and integrity, including seven homicides.<sup>2042</sup>
1160. The IACHR notes that in her report for 2011, the High Commissioner indicated that the Presidential Human Rights Program reported the deaths of 20 unionists from January to October of 2011, (including 12 unionized teachers), which represents a 34% drop with respect to the same period the previous year.<sup>2043</sup> In addition, the Commission observes that the State reported that in 2012 there were eight deaths of unionists, a lower number than in previous years, and 452 judgments were handed down in relation to offenses committed against unionists; the State also offered protection to 1,273 unionists who are beneficiaries of measures of protection.<sup>2044</sup>
1161. The Commission values the efforts by the State to design a domestic policy that makes it possible to tackle the problems faced by trade union leaders by adopting protective measures. Nonetheless, the IACHR is concerned about the persistence of acts of aggression committed against unionists, which makes it necessary to immediately optimize the measures adopted by the State and constantly evaluate their effective implementation.
1162. The IACHR has also specially monitored the attacks on the leaders of displaced persons and those claiming restitution of lands; many of these attacks are related to the violence generated by the confrontations of armed groups in areas from which communities have been displaced, as well as with the interests of groups that oppose the activities whereby displaced persons are claiming their rights.<sup>2045</sup> On this aspect, the IACHR notes that the High Commissioner has

<sup>2038</sup> European Center for Constitutional and Human Rights, *Communication to the Office of the Prosecutor of the International Criminal Court: Trade Union Violence in Colombia as Crime against Humanity*, October 9, 2012, p. 15.

<sup>2039</sup> UN News Centre, *Colombia: PNUD revela asesinato de unos 2800 sindicalistas*, March 13, 2012. Available at: <http://www.acnur.org/t3/noticias/noticia/colombia-pnud-revela-asesinato-de-unos-2800-sindicalistas/>

<sup>2040</sup> Grupo de Investigación Social Siglo XXI, *Denuncian asesinato de 13 sindicalistas en Colombia*, August 19, 2012. Available at: <http://www.gisxxi.org/noticias/denuncian-asesinato-de-13-sindicalistas-en-colombia-durante-2012-la-radio-del-sur/>.

<sup>2041</sup> Central Unitaria de Trabajadores, Confederación General del Trabajo, Confederación de Trabajadores de Colombia, *Informe a presentar en la 101° Conferencia de la OIT 2012*, pp. 9-10.

<sup>2042</sup> Central Unitaria de Trabajadores, Confederación General del Trabajo, Confederación de Trabajadores de Colombia, *Informe a presentar en la 101° Conferencia de la OIT 2012*, p. 13.

<sup>2043</sup> United Nations, Human Rights Council, Annual Report of the High Commissioner for Human Rights. Addendum. Report of United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19th session, A/HCR/19/21/Add.3, January 31, 2012, para. 19.

<sup>2044</sup> State of Colombia, *Avances en Materia de Derechos Humanos*.

<sup>2045</sup> International Verification Mission on the Situation of Human Rights Protection in Colombia, November 28 to December 2, 2011, p. 12. During February 2012, it was reported that threats were being made to human rights defenders of the Asociación Agraria de Santander (ASOGRAS), peasants and leaders of land restitution movements in Santander, and against 12 women, among them the Ombudsman Delegate for Children, Youth and Women, several organizations and persons

said: “Of particular concern are the homicides, threats and harassment against those advocating for the rights of displaced persons, in particular leaders of women’s groups, and for the restitution of lands, especially in Cauca, Sucre and Urabá.”<sup>2046</sup>

1163. During its visit the IACHR learned of information from the Office of the UN High Commissioner for Human Rights in Colombia according to which from February 27 to 29, 2012, two pamphlets circulated with death threats against leaders, non-governmental organizations, and international organizations. One of the pamphlets was directed specifically against women involved in the land restitution processes. The threats have been attributed to the groups called “Águilas Negras-Bloque Capital” and “Los Rastrojos: Comandos Urbanos”.<sup>2047</sup> Also according to that Office, on July 4 a pamphlet circulated signed by the self-styled “*grupo de antirrestitución*” (“anti-restitution group”) in which several human rights defenders are threatened. The pamphlet accuses several organizations of “taking the land from decent citizens to give it to the guerrillas.”<sup>2048</sup>
1164. Civil society organizations noted that bearing in mind the persistence of the internal armed conflict and the fact that illegal armed groups continue to operate, the legal actions of claiming rights expose the victims of displacement even more so to new human rights violations.
1165. According to the Office of the Human Rights Ombudsman, from 2006 to 2011, 71 leaders of land restitution processes in 14 departments of Colombia, including Atlántico, Bolívar, Sucre, Córdoba, Guajira, Antioquia, Meta, and Tolima, among others, were victims of homicides. The reports on risk from the Early Warning System of the Office of the Human Rights Ombudsman warned of possible violations of the rights of the population of 463 municipalities in 30 departments.<sup>2049</sup> It was also indicated that in Urabá the characteristics of the conflict in the region dilute the possibility of establishing a direct line of responsibility to a specific actor when examining the attacks suffered by persons claiming lands.<sup>2050</sup>
1166. Among the problems associated with violence related to displacement of indigenous and Afrodescendant communities from their ancestral lands, the IACHR learned during its visit of the persistence of the attacks against the life and integrity of indigenous and Afrodescendant leaders, many of which are intended to curtail their activities of defense and protection of territories and natural resources, and in defense of their autonomy and cultural identity.<sup>2051</sup>

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dedicated to the defense of human rights including UN agencies in Bogotá, allegedly by the paramilitary group Águilas Negras. In those cases the pamphlets made reference to the participation of these persons and organizations in the processes of accompanying victims in land restitution efforts. Colombian Commission of Jurists, *Informe de seguimiento a las recomendaciones del Relator Especial sobre Ejecuciones Extrajudiciales, Sumarias o Arbitrarias*, June 14, 2012. Executive Summary, para. 16.

<sup>2046</sup> United Nations, Human Rights Council, Annual Report of the High Commissioner for Human Rights. Addendum. Report of United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 16<sup>th</sup> session, A/HRC/16/22, February 3, 2011, para. 11.

<sup>2047</sup> OHCHR Colombia, *Rechazo a las amenazas contra defensoras y defensores de derechos humanos*, March 7, 2012. Available at: <http://www.hchr.org.co/publico/comunicados/2012/comunicados2012.php3?cod=1&cat=88>.

<sup>2048</sup> OHCHR Colombia, *Oficina de la ONU para los Derechos Humanos condena amenazas contra defensoras y defensores de derechos humanos*, July 6, 2012. Available at: <http://www.hchr.org.co/publico/comunicados/2012/comunicados2012.php3?cod=10&cat=88>.

<sup>2049</sup> Colombian Commission of Jurists, *Colombia: sigue esperando la hora de los derechos humanos Informe sobre la situación de derechos humanos y derecho humanitario 2010-2012*, p. 26.

<sup>2050</sup> See *Contexto general de los casos de reclamantes de tierras en Urabá*. IPC, *Riesgo de los defensores de derechos humanos reclamantes de tierras en el Urabá antioqueño*. Information received at the meeting with civil society organizations, Medellín, December 5, 2012.

<sup>2051</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 298.

1167. As an example of the continuation of violence against indigenous leaders, the IACHR received information during its visit about the assassination of Lizandro Tenorio, a leader in northern Cauca and a member of the Nasa people. After receiving at least three threats in 2012, he was reportedly assassinated on August 12 by two men who came to his house on a motorcycle, shook his hand, and then shot him several times. According to the information available, Mr. Tenorio participated in the dialogues for peace in the area.<sup>2052</sup>
1168. As regards Afrodescendant human rights defenders, the Commission received information on 86 cases of violations of fundamental rights from the organizations of displaced persons and victims, Afro-Colombian organizational initiatives, leaders and human rights defenders from 2008 to 2010, as well as 32 cases of assassinations and threats from 2009 to 2011.<sup>2053</sup> In particular, the Commission also received information according to which from March 23 to 28, 2012, Manuel Ruiz, human rights defender from the community of Aparadorcito and an Afrodescendant leader in Curbaradó and Jiguamiandó, was kidnapped, tortured, and assassinated. Manuel and his son, Samir de Jesús Ruiz Gallego, were kidnapped on March 23, on the road that runs from Mutatá (Antioquia) to Apartadocito. The same day, Manuel communicated with his family by telephone about his kidnapping and about his captors' demanding a ransom of 2.5 million pesos. The next day, members of the group had communicated to Manuel Ruiz's family that he and his son Samir had been assassinated and thrown under the bridge at Riosucio (Chocó). On March 27, at the mouth of the Pavarandó river, Manuel Ruiz's body was found with signs of torture, while the corpse of his son Samir was reportedly found on March 28, in the same area. For now, Manuel Ruiz's family is displaced once again.<sup>2054</sup> The victim had asked the National Government for measures of protection, but had only received a cell phone.<sup>2055</sup>
1169. As regards the situation of judicial officers, the Commission observed in its visit to Colombia that the work done by judges, prosecutors, public defenders committed to respecting and protecting human rights and democratic principles has played a fundamental role in peace-building. Nonetheless, a situation of personal insecurity of judicial officers persists in some sectors of the administration of justice, which is visible in the large number of attacks on their life and integrity perpetrated by illegal armed groups.
1170. In that regard, the IACHR received information on threats and acts of intimidation suffered by judges and prosecutors.<sup>2056</sup> The information available to the IACHR indicates that in Colombia

<sup>2052</sup> See, among others, El Espectador.com, *Indígenas del Cauca insisten en diálogo con Santos: Amenazas dilatan negociación*, August 13, 2012. Available at: <http://www.elespectador.com/impreso/politica/articulo-367275-amenazas-dilatan-negociacion>; El Tiempo.com, *Indígena asesinado era un médico tradicional*, August 13, 2012. Available at: [http://www.eltiempo.com/colombia/cali/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-12124983.html](http://www.eltiempo.com/colombia/cali/ARTICULO-WEB-NEW_NOTA_INTERIOR-12124983.html); Radio Caracol, *Asesinan a líder indígena en el norte del Cauca*, August 12, 2012. Available at: <http://www.caracol.com.co/noticias/judicial/asesinan-a-un-lider-indigena-en-el-norte-del-cauca/20120812/nota/1743000.aspx>.

<sup>2053</sup> AFRODES, *Información de Violación Desproporcionada de los Derechos Fundamentales de las Comunidades Afrocolombianas*, December 4, 2012, Annex.

<sup>2054</sup> Colombian Commission of Jurists, *Colombia: sigue esperando la hora de los derechos humanos Informe sobre la situación de derechos humanos y derecho humanitario 2010-2012*, pp. 23-24.

<sup>2055</sup> Fundación Nydia Erika Bautista, *Informe sobre la situación de las desapariciones forzadas a la Comisión Interamericana de Derechos Humanos*, November 3, 2012, p. 8.

<sup>2056</sup> Civil society noted the case of judge Gloria Constanza Gaona of the Specialized Court for the Circuit of Saravena, who had before her the case of the children from Tame reportedly assassinated by members of the military. FIDH – Coordinación Colombia-Europa-Estados Unidos, *Colombia. La guerra se mide en litros de sangre. Falsos positivos, crímenes de lesa humanidad: más altos responsables en la impunidad*, July 2012, pp. 57, 58.

there have been 750 cases of threats to judicial officers in the four years prior to 2011.<sup>2057</sup> In addition, in 2012 the IACHR received information about the murders of human rights defenders, in particular the assassination in Medellín of Jorge Alberto Restrepo González, first municipal judge with functions of overseeing guarantees, who was reportedly found shot after withdrawing money from a bank.<sup>2058</sup> The IACHR also learned in January 2012 of the assassination of military criminal judge Gerson Reyes Castellanos, who was shot dead in the neighborhood Barrio Popular of Granada (Meta) by hit men on a motorcycle.<sup>2059</sup> Both cases are under investigation to determine the possible motives. The Commission also received information that indicated that some military judges who have attempted to perform their work of referring cases of extrajudicial executions to the regular criminal courts were victims of harassment and threats, including military criminal judge Alexander Cortés Cárdenas.<sup>2060</sup>

1171. During the visit, the Commission received the testimony of the former Procurator for Criminal Judicial Matters of Medellín, Jaime Castro Ortiz, who was terminated by the Procurator General after being forced to resign from the Workers Union of the General Prosecutor of the Nation. Mr. Castro indicated that for the last three years he was the target of threats related to giving impetus to proceedings against members of the military and police for extrajudicial executions, and judges and prosecutors in corruption cases. He indicated that although he had measures of protection because his level of risk was considered extraordinary, since he was terminated, he has not received any response to the request of protection that put to the National Protection Unit in June 2012.<sup>2061</sup>
1172. The Commission considers that if the State does not guarantee the security of its judges as well as prosecutors and public defenders from all kinds of pressure, including situations of insecurity directly aimed at attacking their person and family and those aimed at undercutting their stability and professional future, the exercise of the judicial function may be seriously impaired, impeding judicial protection for the victims of human rights violations and thwarting the possibilities of consolidating peace in Colombia. Hence the need for the State to provide effective protection to judicial officers in the face of any act that may be translated into an impairment of the independence and impartiality their activities require.
1173. As regards women human rights defenders, the IACHR notes that the situation of discrimination to which they are subjected due to the historical role and stereotyped concepts of gender are aggravated by having to perform their work in risky conditions stemming from the armed conflict and among actors from the armed groups. The IACHR has continued receiving numerous complaints about the violence that affects women in communities marked

<sup>2057</sup> See, among others, Diario El País, *En medio de una manifestación sepultan a una jueza asesinada en Arauca*, March 24, 2011. Available at: <http://www.elpais.com.co/elpais/judicial/hoy-cumpliran-exequias-jueza-asesinada-en-saravena-5>; Comisión Colombiana de Juristas, *Asesinato de jueza que investigaba crimen de niños sacude Colombia*, March 23, 2011, Available at: [http://www.coljuristas.org/prensa/2011/afp\\_23-03-2011\\_01.html](http://www.coljuristas.org/prensa/2011/afp_23-03-2011_01.html); El Tiempo, *Jueces han recibido 750 amenazas en cuatro años*, March 23, 2011. Available at: [http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-9055660.html](http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-9055660.html).

<sup>2058</sup> See, among others, El Colombiano, *Juez fue asesinado en el Centro de Medellín*, September 10, 2012. Available at: [http://www.elcolombiano.com/BancoConocimiento/J/juez\\_fue\\_asesinado\\_en\\_el\\_centro\\_de\\_medellin/juez\\_fue\\_asesinado\\_en\\_el\\_centro\\_de\\_medellin.asp](http://www.elcolombiano.com/BancoConocimiento/J/juez_fue_asesinado_en_el_centro_de_medellin/juez_fue_asesinado_en_el_centro_de_medellin.asp); “José Alvear Restrepo” Lawyers Group, *Asesinato Juez Primero Municipal de Envigado Jorge Alberto Restrepo González*, July 23, 2012. Available at: <http://www.colectivodeabogados.org/Asesinado-juez-primero-municipal>.

<sup>2059</sup> El Tiempo, *Sicarios asesinaron a juez militar en el Meta (Granada)*, January 17, 2012. Available at: [http://www.eltiempo.com/colombia/llano/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-10953022.html](http://www.eltiempo.com/colombia/llano/ARTICULO-WEB-NEW_NOTA_INTERIOR-10953022.html).

<sup>2060</sup> Colombian Commission of Jurists, *Informe de seguimiento a las recomendaciones del Relator Especial sobre Ejecuciones Extrajudiciales, Sumarias o Arbitrarias*, June 14, 2012. Executive Summary, para. 4.

<sup>2061</sup> Testimony of Jaime Castro Ortiz, former Procurator for Criminal Justice Matters – Medellín. Information received at the meeting with civil society organizations, Medellín, December 5, 2012.



by a patriarchal historical conception in which women are subject to social stereotypes that degrade their sexual life, or are accused of attacking pre-established moral values or social institutions.<sup>2062</sup> In this regard, the IACHR received information from the “Somos Defensores” program according to which in 2012 there were 92 attacks on human rights defenders, six of which were assassinations of women leaders of movements for claiming rights.<sup>2063</sup> The Commission also learned of a threat made in 2012 by the group “Águilas Negras” through a pamphlet in which they issued a “death sentence” to the women’s rights organizations “SISMA Mujer”, “Casa de la Mujer”, and “Ruta Pacífica de la Mujer”.<sup>2064</sup>

1174. As regards LGBTI human rights defenders, the IACHR has noted that the attacks have taken place in a context of structural violence and discrimination, which has been aggravated by the armed conflict. During its visit the IACHR received testimony from LGBTI rights defenders who indicated that some state authorities as well as private sectors engage in discriminatory conduct against them based on their sexual orientation or gender identity. This situation of discrimination has led to sustained violence against those persons who promote, defend, and seek to develop equality of rights for LGBTI persons. In this regard, the IACHR received information during its visit according to which in 2010 and 2011 at least four LGBTI human rights defenders were murdered, and it was noted that most of these incidents had occurred in smaller towns, not in capital cities as in previous years.<sup>2065</sup>
1175. The IACHR reiterates that attacks on human rights defenders and acts of intimidation may silence the opinions of human rights defenders, including the criticism and complaints these persons may bring against the armed forces, the Government, and others. On many occasions human rights defenders have to devote a large part of their efforts to ensuring greater security for their activities in defense of human rights. The IACHR has also found that many threats remain for long periods of time, condemning the victims and their families to a life of uncertainty and fear.
1176. The Commission considers that the State should urgently continue to adopt measures to protect the life and physical integrity of human rights defenders who are threatened, in consultation with the persons affected.<sup>2066</sup> The Commission also recalls that one fundamental means of preventing such attacks is the State’s obligation to undertake exhaustive and independent investigations into violations of the rights of human rights defenders and to punish the persons responsible, both the direct perpetrators and those who planned and ordered the violations.<sup>2067</sup>

<sup>2062</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the America*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 283.

<sup>2063</sup> Programa Somos Defensores, *El Efecto Placebo, Informe Anual 2012, Sistema de Información sobre Agresiones contra Defensoras y Defensores de Derechos Humanos en Colombia*, 2012. Available at: <http://www.somosdefensores.org/index.php/extensions/68-ultimo-informe-siaddhh/412-proteccion-sin-prevencion-un-efecto-placebo>.

<sup>2064</sup> Semana, *Organizaciones de mujeres denuncian amenazas por “Bloque Capital” o “Águilas Negras”*, March 2, 2012. Available at: <http://www.semana.com/nacion/articulo/organizaciones-mujeres-denuncian-amenazas-bloque-capital-aguilas-negras/254312-3>. See also, El Tiempo, *Águilas Negras amenazas a organizaciones de mujeres*, March 2, 2012. Available at: [http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-11264324.html](http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-11264324.html).

<sup>2065</sup> Colombia Diversa, *Impunidad Sin Fin, Informe de Derechos Humanos de Lesbianas, Gay, Bisexuales, y Personas Trans en Colombia, 2010-2011*, Chapter I: “La justicia es ciega ante la evidencia de crímenes por perjuicio” (Catalina Lleras), Bogotá, 2013.

<sup>2066</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, recommendation 6.

<sup>2067</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, recommendation 21.

## 2. Intelligence activities subsequent to the liquidation of the Administrative Security Department (DAS: Departamento Administrativo de Seguridad)

1177. The IACHR, through its hearings and annual reports, has monitored the abusive intelligence activities directed against human rights defenders in Colombia by the DAS. As early as February 2009 the IACHR, in a press release<sup>2068</sup>, voiced its concern over the intelligence activities of the DAS which, as was publicly known, were perpetrated against human rights defenders and public figures.<sup>2069</sup>

1178. After the visit, the Commission appreciates the efforts of the State to effectively dismantle the DAS and investigate those responsible for the intelligence activities perpetrated against human rights defenders. Nevertheless, the Commission notes that in the process of liquidation of the DAS and the start of operation of the Unidad Nacional de Protección there are still some important challenges to overcome by the Colombian State.

1179. In September 2011, the IACHR learned that the Supreme Court of Justice convicted Jorge Noguera Cotes, director of the DAS from 2002 to 2005, and sentenced him to 25 years of prison for homicide and association with paramilitary organizations.<sup>2070</sup> In addition, other directors of the DAS, who held the position from 2005 to 2008, and more than 40 public servants working in the institution – as well as others who were high-level officials in the previous administration – are being investigated in judicial proceedings for abuses and illegal activities.<sup>2071</sup>

1180. During the visit civil society organizations noted that three years after the problem was reported, there have been only two decisions in the regular courts convicting the persons responsible for these crimes<sup>2072</sup> and most of the convictions have resulted from the acceptance of charges by defendants through anticipated judgments<sup>2073</sup> or pre-agreements with the Office

<sup>2068</sup> IACHR, Press Release 9/09. *IACHR Concerns about Intelligence Activities in Colombia*, Washington D.C., February 26, 2009.

<sup>2069</sup> Colombian Commission of Jurists, Escuela Nacional Sindical, *Que os duelan las sangres ignoradas. Informe sobre violaciones a los derechos de los y las sindicalistas y la situación de impunidad 2009-2010, 2002-2010. Cuaderno de Derechos Humanos No. 22*, Colombia, October 2010, p. 10.

<sup>2070</sup> European Center for Constitutional and Human Rights, *Communication to the Office of the Prosecutor of the International Criminal Court: Trade Union Violence in Colombia as Crime against Humanity*, October 9, 2012, p. 14 (no. 147), citing *Supreme Court of Justice* (writing for the court Alfredo Gómez Quintero), Record No. 331, Judgment of September 14, 2011, pp. 116-117. Original quote: “In view of what has been put forth, the participation of Jorge Aurelio Noguera Cotes in the instant case can be characterized legally as that of perpetrator, drawing on a whole legal structure that was under his command, i.e. the DAS, to make it available to an illegal military apparatus, with a hierarchical chain of command as was the Bloque Norte of the Autodefensas, whose leader was Rodrigo Tovar Pupo, alias ‘Jorge 40,’ under which operated the Frente José Pablo Díaz commanded by Edgar Ignacio Fierro, alias ‘Don Antonio,’ who gave the order to kill the professor and sociologist.”

<sup>2071</sup> United Nations, Human Rights Council, Annual Report of the High Commissioner for Human Rights. Addendum. Report of United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19th session, A/HCR/19/21/Add.3, January 31, 2012, para. 24.

<sup>2072</sup> The 14<sup>th</sup> trial judge (juez 14 de conocimiento) sentenced the former operational director of the DAS Luz Marina Rodríguez, and the former chief of anti-corruption of the same agency, Bernardo Murillo Cajamarca, in the proceeding brought against them for the scandal involving extensive wiretapping. The court found the former officials guilty of the crime of breach of public duty by act, on considering that according to the testimony collected throughout that judicial proceeding, it was found that Murillo and Rodríguez knew first hand of the tracking by the DAS of members of the Supreme Court. See *El Espectador*, *Condenados a seis años exfuncionarios del DAS por chuzadas*, June 8, 2012. Colombian Commission of Jurists, *Informe de seguimiento a las recomendaciones del Relator Especial sobre Ejecuciones Extrajudiciales, Sumarias o Arbitrarias*, June 14, 2012. Executive Summary, para. 18.

<sup>2073</sup> On August 11, 2011, an anticipated guilty verdict was handed down against former DAS detectives Fabio Duarte Traslaviña and Germán Enrique Villalba Chávez, the latter in charge of illegally following members of human rights organizations in

of the Attorney General.<sup>2074</sup> In other cases, the Attorney General has recognized the “principle of prosecutorial discretion” (“*principio de oportunidad*”),<sup>2075</sup> with the suspension of the criminal action against some former officers of the DAS in exchange for them becoming prosecution witnesses.<sup>2076</sup>

1181. In the proceedings that continue, civil society organizations noted the indictment by the Superior Court of Bogotá in its capacity as judge of control of guarantees, against María del Pilar Hurtado, former director of the DAS, and Bernardo Moreno, former Secretary General of the Presidency of the Republic. Both officials are accused of “having conspired to commit, on an ongoing basis and systematically, crimes against members of the Supreme Court of Justice, members of Congress, attorneys, journalists, and other figures.”<sup>2077</sup> As regards the procedural situation of the case pending in the Committee of Accusations of the House of Representatives against Álvaro Uribe, the statements by the victims of wiretapped communications were received in the Committee on Accusations September 6 and 7, 2012<sup>2078</sup> and the proceeding continues in the preliminary inquiry stage.<sup>2079</sup>
1182. In addition, it is a matter of special concern that, according to a report by civil society, in September 2011, alleged officials of the DAS sold and leaked intelligence information to illegal groups and others who had a particular interest in it<sup>2080</sup>, because they expected to be dismissed due to the suppression of that institution as of the entry into force of Decree 4065 of October 31 2011<sup>2081</sup>.

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Europe. See *El Espectador*, *Seis años de cárcel a exfuncionarios del DAS por 'chuzadas'*, August 12, 2011; *El Tiempo*, *Condenan a dos ex funcionarios del DAS*, August 11, 2011, *El Tiempo*, *Otro ex DAS se acoge a sentencia anticipada*, January 7, 2011.

<sup>2074</sup> Fernando Alonso Tabares Molina, former Director General of Intelligence of the DAS, Jorge Alberto Lagos León, former Deputy Director of Intelligence, and Gustavo Sierra Prieto, former Deputy Director for Analysis, were convicted after engaging in pre-agreements with the Attorney General in which they accepted their responsibility. The judgments were handed down on August 5, 2011, for the first two, and on March 7, 2011, for the last. See *El Tiempo*, *Juez deja en firme condena para Lagos y Tabares*, March 7, 2011; *El Espectador*, *Ocho años de cárcel a ex detective del DAS Gustavo Sierra por 'chuzadas'*, August 5, 2011.

<sup>2075</sup> The principle of prosecutorial discretion (*principio de oportunidad*) was introduced to Colombia’s criminal legislation by Law 906 of 2004, by which the Code of Criminal Procedure was issued. This statute establishes an exception to the duty of the Attorney General to investigate, prosecute, and punish all illegal conduct that comes to its attention as it gives it the authority to suspend, interrupt, or renounce criminal prosecution. Clearing up judicial backlogs is the main basis for the principle of prosecutorial discretion. The concept can only be applied to cases for which it has been so provided by law, and so long as the failure to criminally prosecute does not have a disproportionate impact on the rights to truth, justice, and reparation. Both characteristics should be satisfied concurrently for its application to be lawful. Constitutional Court, Judgment C-738 of 2008.

<sup>2076</sup> This is the case of German Albeiro Ospina Arango, former Coordinator of the GONI Group; Martha Inés Leal Llanos, former Deputy Director of intelligence operations; Alba Luz Flórez Gelvez, detective; and William Gabriel Romero Sánchez, former deputy director for human sources, who were granted prosecutorial discretion in exchange for information that was given to the authorities. Colombian State: “Información sobre el seguimiento a las recomendaciones formuladas por el Comité en los párrafos 12 a 17 de que trata el documento ‘Examen Cuarto Informe periódico de Colombia’ (CAT/C/COL/4).”

<sup>2077</sup> Colombian State, “Información sobre el seguimiento a las recomendaciones formuladas por el Comité en los párrafos 12 a 17 de que trata el documento ‘Examen Cuarto Informe periódico de Colombia’ (CAT/C/COL/4).”

<sup>2078</sup> Colectivo de Abogados José Alvear Restrepo, Press Release, *Se reanuda proceso en comisión de acusaciones contra Uribe Vélez*, September 10, 2012. Available at: <http://www.colectivodeabogados.org/Se-reanuda-proceso-en-Comision-de>.

<sup>2079</sup> Colombian Commission of Jurists, *Informe de seguimiento a la recomendación 16 del Comité de Derechos Humanos de la ONU*.

<sup>2080</sup> See, among others, *Semana*, *Los papeles secretos del DAS*, September 17, 2011. Available at: <http://www.semana.com/nacion/articulo/los-papeles-secretos-del-das/246567-3>; *El Mundo*, *Denuncian venta de información de agencia secreta colombiana*, September 18, 2011. Available at: <http://www.elmundo.com.ve/noticias/economia/internacional/denuncian-venta-de-informacion-de-agencia-secreta.aspx>; *El Tiempo*, *Aún hay peligro de filtraciones, pero es menor: Director del DAS*. Available at: [http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-10390167.html](http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-10390167.html).

<sup>2081</sup> Available at: <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Octubre/31/dec406531102011.pdf>.

1183. In addition to impunity with respect to the intelligence activities, civil society underscored that with the dissolution of the DAS, these officials had been incorporated in the National Police as civilian personnel, while 3,218 former staff of the DAS were incorporated in the Office of the Attorney General, 3,218 former DAS staff were transferred to shore up the Office for Protection of Victims and Witnesses and the Technical Investigations Corps (CTI: Cuerpo Técnico de Investigación), where they work as judicial police. The transfer was done without any filter to vet or scrutinize so as to remove those officials implicated in the illegal intelligence activities or with paramilitary groups, and that might facilitate cleaning up the State's security and intelligence agencies.<sup>2082</sup>
1184. According to civil society organizations, as the DAS was dissolved<sup>2083</sup> the security schemes of the Protection Program that were assigned to it, were gradually assigned to private security companies. According to several organizations, this gradual privatization of the personnel in charge poses several obstacles to their own security and to the performance of their activities. These include the historic ties some security companies are said to have with paramilitary groups; the possible participation of demobilized persons in the possible protection schemes, and the lack of experience of the security companies performing an activity that originally carried out only by the State.<sup>2084</sup>
1185. While the Commission values the efforts made by the State to ensure that the personnel in charge of protection are no longer from the DAS, considers that the State should ensure that the persons who participate in the security schemes of the National Protection Unit generate confidence in the beneficiaries of the protection and are not part of the former paramilitary structures or *autodefensas* or those who were part of the former DAS and could have been involved in intelligence activities. One fundamental element for winning the trust of the defenders who are beneficiaries of protection is that the State ensure that the assignment of the personnel be done with the participation of the persons benefiting from the measures.<sup>2085</sup>
1186. On the other hand, the IACHR observes that the State of Colombia adopted a new Law on Intelligence and Counter-intelligence in 2011. Speaking of this law, the High Commissioner highlighted the need to adopt comprehensive reform measures that include a process for updating, rectifying, annulling, or keeping confidential personal information in intelligence files, and the need to ensure that public servants who report abuses or refuse to carry out illegal orders are protected.<sup>2086</sup> In addition, the High Commissioner indicated that military intelligence services need a public set of regulations that frames and delimits their actions<sup>2087</sup>, and that the Office of the Procurator General should go further in carrying out its preventive

<sup>2082</sup> Colombian Commission of Jurists, *Informe de seguimiento a la recomendación 16 del Comité de Derechos Humanos de la ONU*.

<sup>2083</sup> According to information received by the IACHR, the government indicated that the decree liquidating the DAS would be postponed until a new intelligence law was approved. *Semana, Reforma al Estado, más que tres nuevos ministerios*, July 7, 2011. Available at: <http://www.semana.com/politica/reforma-estado-tres-nuevos-ministerios/159879-3.aspx>.

<sup>2084</sup> Letter from civil society organizations to Mr. Germán Vargas Lleras, Minister of Interior and Justice, May 20, 2011. Available at: [http://www.abcolombia.org.uk/downloads/8C8\\_CARTA\\_MIJ\\_PROGRAMA\\_PROTECCION11.pdf](http://www.abcolombia.org.uk/downloads/8C8_CARTA_MIJ_PROGRAMA_PROTECCION11.pdf).

<sup>2085</sup> I/A Court H.R., *In the matter of Mery Naranjo et al.* Provisional measures with regard to Colombia. Order of the Court of March 4, 2011, Third operative paragraph.

<sup>2086</sup> United Nations, Human Rights Council, Annual Report of the High Commissioner for Human Rights. Addendum. Report of United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19th session, A/HCR/19/21/Add.3, January 31, 2012, para. 26.

<sup>2087</sup> United Nations, Human Rights Council, Annual Report of the High Commissioner for Human Rights. Addendum. Report of United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19th session, A/HCR/19/21/Add.3, January 31, 2012, para. 28.

and disciplinary functions.<sup>2088</sup> For their part, civil society organizations considered that this law is plagued by two structural defects: (i) the regulation of key aspects on intelligence and counter-intelligence uses vague and imprecise concepts; and (ii) there is a lack of adequate, independent, and effective mechanisms of control to oversee intelligence and counter-intelligence activities so as to prevent arbitrary acts and excesses.<sup>2089</sup>

1187. The IACHR observes that this law on intelligence and counter-intelligence provides that “in no case shall intelligence and counter-intelligence information be collected, processed, or disseminated based on ... membership in a trade union, a social organization, or a human rights organization....”<sup>2090</sup> Nonetheless, the IACHR considers that it is up to the State to adopt all measures necessary to ensure that intelligence activities are not undertaken anew against human rights defenders; among them, the State should investigate and punish all persons who participated in the intelligence activities against human rights defenders unlawfully performed by the DAS.
1188. The IACHR has also found in the course of the visit that for several years Colombia has refused to give human rights defenders access to their personal information that could be found in the intelligence files of the Administrative Security Department (DAS). Despite the recommendations of the IACHR and the United Nations<sup>2091</sup>, the State has not adopted a law that makes possible the effective exercise of the right to *habeas data*, such that persons subject to arbitrary intelligence activities can have access to their data and thereby ask that it be corrected, updated, or, as the case may be, removed from intelligence files.<sup>2092</sup>
1189. The Commission shall continue monitoring the proceedings to punish the persons responsible for intelligence activities directed against human rights defenders, and urges the State of Colombia to guarantee the right to *habeas data* for those human rights defenders who wish to have access to the information records on them in the intelligence files.

### 3. Criminalizing the work of human rights defenders

1190. The Commission observes that one of the obstacles noted by Colombian civil society organizations repeatedly in the visit was the practice of criminal proceedings being instituted or judicial complaints lodged without any basis against human rights defenders in retaliation for their work. In addition, along with the improper use of the criminal law to subject human rights defenders to unwarranted proceedings, the Commission observed that on many occasions such proceedings are accompanied by a discourse aimed at discrediting the individual defender or defenders involved. Such criminalization not only has the effect of

<sup>2088</sup> United Nations, Human Rights Council, Annual Report of the High Commissioner for Human Rights. Addendum. Report of United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 19th session, A/HCR/19/21/Add.3, January 31, 2012, para. 29.

<sup>2089</sup> Colombian Commission of Jurists, *Informe de seguimiento a la recomendación 16 del Comité de Derechos Humanos de la ONU*.

<sup>2090</sup> Law 1621 of 2013. Available at: <http://wsp.presidencia.gov.co/Normativa/Leyes/Documents/2013/LEY%201621%20DEL%2017%20DE%20ABRIL%20DE%202013.pdf>.

<sup>2091</sup> See, among others, United Nations, Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2006/9, 62<sup>nd</sup> session, January 20, 2006, Recommendation on prevention and protection, para. 6; Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, A/HRC/4/48, Fourth session, March 5, 2007, Chapter VII - Recommendations, para. 125; Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, A/ HRC/7/39, Seventh session, February 28, 2008, para. 63.

<sup>2092</sup> IACHR, *Annual Report 2009*, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, Chapter IV. Colombia, para. 137.

intimidating their work but can also lead to a halt in the work of defending human rights while their time, resources, and energies have to be dedicated to their own defense.<sup>2093</sup>

1191. In that regard, during the visit the IACHR continued to receive information about the use of criminal statutes aimed at obstructing the work of human rights defenders. In this respect, the Commission received testimony from human rights defenders according to which authorities, on receiving complaints from human rights defenders concerning acts allegedly carried out by groups such as “Aguilas Negras” or “Los Rastrojos,” merely deny their existence or fail to pursue any investigation, but to the contrary proceed to bring criminal actions against persons lodging complaints for “false accusation,” which would draw out over time, making it impossible for defenders to pursue complaints against such groups.<sup>2094</sup>
1192. In addition, during the visit the IACHR received information on massive detentions<sup>2095</sup> and arrests<sup>2096</sup>; as well as the initiation of judicial proceedings based on military intelligence reports<sup>2097</sup>; reopening of proceedings by the Office of the Prosecutor and the Attorney General even though it has not been possible to establish the veracity of the testimonies and intelligence reports<sup>2098</sup>; and prosecution of human rights defenders based on the uncorroborated testimony of demobilized paramilitaries seeking benefits under Law 975 on Justice and Peace.<sup>2099</sup>
1193. The Commission reiterates to the Colombian State that criminalizing the work of human rights defenders is a complex obstacle that has a multifaceted impact on the free exercise of the defense of human rights and may turn out to be in violation of the obligations to respect and ensure the rights involved as a result of such criminalization. The Commission is of the view that the State should ensure that the authorities or third persons not manipulate the punitive power of the State and its organs of justice with the aim of harassing those who are devoted to activities in defense of human rights. In addition, public servants should refrain from making

<sup>2093</sup> IACHR, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II., Doc. 54, December 30, 2009, para. 619.

<sup>2094</sup> The IACHR has previously received information on the use of this criminal statute against human rights defenders. IACHR, *Hearing on the situation of human rights defenders in Colombia and implementation of precautionary measures*, October 28, 2010. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=120&page=2>.

<sup>2095</sup> The organization referred to the situation of 11 persons from the Asociación Campesina de Caloto; Rigoberto Guarín Vallejo, President of the Asociación Campesina de Caloto (ASTROZONAC Caloto); Orfa Odilia Rojas Ruiz, member of the Asociación Campesina de Caloto (ASTROZONAC Caloto); and Wilson Valencia Pilcúe, of the indigenous community of the municipality of Caldono. According to the organization, these persons were detained on several occasions and judicial investigation was begun against them for various crimes. Corporación Colectiva de Abogados Suyana, *Normatividad y planes estatales que atentan contra las garantías de oposición y la protesta social*.

<sup>2096</sup> In that regard, it was indicated that (i) in April 2012, in the municipality of Anorí, 22 peasants, some of them members of the Asociación Campesina del Norte de Antioquia, were detained by order of special prosecutor 29; (ii) on August 26, 2012, 27 residents of the municipality of Ituango were reportedly detained by the same prosecutor and subsequently were released when no grounds were found for issuing the measure against them. Fundación Sumapaz for the Antioquia Node of the Coordinación Colombia - Europa - Estados Unidos (CCEEU) and Proceso Social de Garantías Antioquia, *Balance Regional de la Situación de Defensores de Derechos Humanos de Antioquia*, pp. 11-12.

<sup>2097</sup> In this respect it was explained that in Caquetá, for example, Mobile Brigade 22 had issued a military intelligence report in which it accused several human rights defenders of “forming part of the structure of the FARC.” After the report was made public, the defenders mentioned reportedly suffered harassment and threats. In addition, it was indicated that those reports were used to bring judicial proceedings against defenders even though there is clear case-law and directives from the National Directorate of Prosecutorial Offices that establish that military intelligence can in no circumstance be introduced as evidence in a criminal proceeding. International Verification Mission on the Situation of Human Rights Protection in Colombia, November 28 to December 2, 2011, p. 20.

<sup>2098</sup> International Verification Mission on the Situation of Human Rights Protection in Colombia, November 28 to December 2, 2011, p. 25.

<sup>2099</sup> International Verification Mission on the Situation of Human Rights Protection in Colombia, November 28 to December 2, 2011, pp. 25-26.

statements that stigmatize human rights defenders or that suggest that human rights organizations act improperly or illegally, not to mention subjecting them to criminal proceedings for doing their legitimate work of promoting or protection human rights.

1194. Finally, the Commission appreciates the information received according to which government officials have made speeches addressed to legitimate the defenders work in the in the search for peace in Colombia. In this regard, the Commission was informed of the statements said by the Minister of the Interior, Fernando Carrillo on May 3, 2013, in the city of Barrancabermeja. He announced that "although the role of defenders of Human Rights has been important to address the internal armed conflict, it will be especially important in an eventual post-conflict stage. Also, as the Minister stated that "post-conflict leaders are defenders of Human Rights"<sup>2100</sup>. The Minister Carrillo Flórez announced that he will participating in acts of recognition to the work of defenders in different places such as Nariño, Sucre, Chocó, Putumayo, Arauca and Valle del Cauca, and two meetings of the Committee for Risk Assessment and Recommendation on Measures (CERREM) in Nariño and Arauca<sup>2101</sup>.

#### 4. Impunity in the investigations related to violations of the rights of human rights defenders

1195. The IACHR reiterates that the most effective means for protecting human rights defenders in the hemisphere is to effective investigate the acts of violence against them and punish the persons responsible.<sup>2102</sup> The State has the obligation to combat impunity by all legal means available, for it fosters the chronic repetition of human rights violations and the total defenselessness of the victims and their family members.<sup>2103</sup>

1196. During the visit the Commission received information from civil society organizations according to which there have not been substantial gains in clarifying, investigating, or punishing the persons responsible for human rights violations directed against human rights defenders. In this regard, the IACHR received worrisome information according to which in cases of violations committed against defenders, such as assassinations, forced disappearances, robberies, assassination attempts, and threats, in some regions impunity is greater than 90%.<sup>2104</sup> In addition, a large number of the defenders said they preferred not to report the attacks they suffer due to the justified distrust of local, regional, and even national institutions. In addition is the widespread fear of reporting assaults out of fear of retaliation from armed groups, which would show a clear link between the State institutions and the armed actors operating in the regions.<sup>2105</sup>

<sup>2100</sup> Ministerio del Interior, *Los líderes del posconflicto serán los defensores y defensoras de derechos humanos*, 3 de mayo de 2013. Disponible en: <http://www.mininterior.gov.co/sala-de-prensa/noticias/los-lideres-del-postconflicto-seran-los-defensores-y-defensoras-de-derechos-humanos>; Ola Política, *Rechazan estigmatización a defensores de derechos humanos*, 7 de mayo de 2013, disponible en: <http://www.olapolitica.com/?q=content/rechazan-estigmatizaci%C3%B3n-defensores-de-derechos-humanos>

<sup>2101</sup> Ministerio del Interior, *Los líderes del posconflicto serán los defensores y defensoras de derechos humanos*, May 3, 2013.

<sup>2102</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, para. 202.

<sup>2103</sup> I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 299; I/A Court H.R., *Case of Baldeón García v. Peru*. Judgment April 6, 2006. Series C No. 147, para. 168.

<sup>2104</sup> International Verification Mission on the Situation of Human Rights Protection in Colombia, November 28 to December 2, 2011, p. 15.

<sup>2105</sup> International Verification Mission on the Situation of Human Rights Protection in Colombia, November 28 to December 2, 2011, p. 18.

1197. While the State has adopted measures to fight impunity such as *Directive 012* “Guidelines for guaranteeing the right of human rights defenders to perform their work,” of July 15, 2010, issued by the Office of the Procurator General, Memorandum 080 of June 3, 2008 of the Office of the Attorney General in which guidelines were established under which criminal investigations should be pursued for the crimes of threats against, among others, human rights defenders, the Commission observes that those instruments have not had a significant impact in the investigations related to crimes against human rights defenders.
1198. In addition, one of the problems identified by the IACHR that favors impunity is the lack of specialized protocols for investigation that make it possible to effectively coordinate and join investigations into acts of aggression and harassment against human rights defenders and their organizations. On several occasions the IACHR has received information according to which many threats or attacks are received by the civil society organizations and by armed groups are not investigated in a systematic and unified manner, but by various authorities each in isolation of the others. In this respect, the IACHR reiterates that as part of the due diligence required in investigations into violations of the rights of a human rights defender, that authority should take into account his or her activity to identify the interests that could have been affected in the course of that activity, and thereby be able to establish lines of investigation and hypotheses as to the crime.<sup>2106</sup> The Commission also considers that coordination and, as the case may be, unifying the investigations into the crimes committed against civil society organizations or human rights defenders, could contribute to progress in the investigations by identifying the number of incidents, and the nature of these incidents, and possibly patterns of attacks or other acts of aggression or harassment against human rights defenders.
1199. Finally, the IACHR considers that in order to make progress in fighting impunity it is essential for the public servants in charge of investigating crime and imparting justice, from the highest level, to be aware of the key role of human rights defenders in seeking peace in Colombia and in consolidating a democratic society so as to act diligently in the cases in which violations of their rights are reported.

## **Recommendations**

1200. In view of what is stated in this section, the Commission recommends to the Colombian State that it:
1. Step up its efforts to consolidate a culture of respect for those who defend human rights, both at the different levels of the State and in the citizenry in general through promotion and educational activities aimed at publicly recognizing the contribution of human rights defenders to upholding human rights in the context of the armed conflict and in seeking peace and the consolidation of democracy in Colombia.
  2. Ensure that the authorities of the State or private persons not use the punitive power of the State and its organs of justice to criminalize human rights defenders in retaliation for their activities protecting human rights. In addition, ensure that its officials refrain from making statements that stigmatize human rights defenders or

<sup>2106</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 236.



that suggest that the human rights organizations act improperly or unlawfully because of their work to promote and/or defend human rights.

3. 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.
4. Guarantee the effective participation of the human rights defenders who are the beneficiaries of the measures in question in all procedures to adopt, implement, monitor, or lift special measures of protection. In particular, the Commission recommends to the State that it ensure that the personnel who participate in the security schemes for human rights defenders are designated with the participation of and coordinating with the beneficiaries so as to build confidence.
5. Develop a public policy aimed at fighting impunity in cases involving violations of the rights of human rights defenders through exhaustive and independent investigations that make it possible to punish both the direct perpetrators and those who planned and ordered the violations. The Commission recommends as part of this policy that the State establish specialized protocols for coordination among prosecutors and, as the case may be, unify the investigations into crimes committed against same civil society organizations and same human rights defenders to give impetus to the investigations and possibly determine of patterns of attacks, other acts of aggression, and harassment.
6. 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.

CHAPTER 7  
CONCLUSIONS



## CONCLUSIONS

1201. The Commission notes that Colombia is engaged in a process of negotiations with the FARC, which could lead to the end of the internal armed conflict in the short or medium terms. Given that circumstance, attention must be paid to the State's obligations toward the past, the present, and the future. Regarding the past, the Commission has on repeated occasions stated that the serious human rights violations committed during the armed conflict cannot go unpunished. As the established precedent of the inter-American human rights system affirms, the State must exhaust all the available means to cast light on and investigate the human rights violations committed and to punish the perpetrators.<sup>2107</sup> In addition, all the actions and measures taken in that regard must be focused on the victims' needs and expectations, in order to repair the harm inflicted.
1202. Regarding the present, the Commission believes the State must ensure that the peace accords respect the principles established by international human rights law and its other international obligations, and that it must ensure, as long as the situation of internal armed conflict continues, that all victims of human rights violations are treated in accordance with the principle of equality before the law, that the protections and guarantees for preventing human rights violations are strengthened, and that the victims enjoy access to mechanisms that guarantee comprehensive redress for the human rights violations they have suffered.
1203. Regarding the future, the Commission believes that the effective reintegration of demobilized combatants into civil society and the dismantling of the illegal armed groups that have arisen following the demobilization of the paramilitary organizations are essential elements in ensuring a lasting social peace; it also believes the State must design a policy that respects human rights and addresses the strengthening of the police and the withdrawal of the armed forces, the consequences of a prolonged internal armed conflict, the presence of illegal armed groups and organized crime, the unequal levels of institutional presence in different regions of the country, and the special situation of risk faced by specific groups.
1204. The Commission notes that impunity is a problem that cuts across all the cases in which human rights and international humanitarian law have been violated, and that it serves to protect all the players in the illegal armed conflict as well as the agents of the State. As long ago as 1990, the Commission said that forging peace was indissolubly linked to investigating, judging, and making reparations for human rights violations, especially those committed by state agents or by those relying on their support or acquiescence. The search for an authentic peace should be grounded in the observance of human rights. The rule of law should provide the formulas for making a determination as to the truth, to try those who violate the laws in force and make reparation to the victims. In order to respond lawfully and effectively to

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<sup>2107</sup> The Commission puts on the record that, in the State's observations on the Draft Report, it stressed that there is no "consistent legal precedent" regarding the obligation to investigate, prosecute and punish human rights violations in contexts of transition from armed conflict to peace (Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, par. 632). This is consistent with the points examined in Chapter III of the instant report, with regard to which the IACHR has already addressed the respective considerations on the subsisting duty to investigate such violations, in keeping with the international obligations of the State.

violations of fundamental rights, the administration of justice requires laws in line with society's needs, and in line with general principles such as the right of access to justice, the impartiality of the court or judge, the procedural equality of the parties, and the enforceability and effectiveness of court decisions.<sup>2108</sup>

1205. The State has noted that it shares the views raised in the previous paragraph and that “full satisfaction of the victims’ rights” will not be possible “if there is no end to the armed conflict.”<sup>2109</sup> Additionally, the State has said that it is convinced that an appropriate and effective institutional and regulatory structure is an essential prerequisite for safeguarding its citizens’ rights.<sup>2110</sup> The Commission applauds the range of policies, actions, programs, institutions, and legislation put in place by the Colombian State in order to meet its international human rights obligations. However, the Commission notes that structural human rights challenges still exist and that there is a major shortfall between the current legal provisions and their effective enforcement, together with differences in the levels of institutional strength and development between the Capital District and the other jurisdictions of Colombia.
1206. The Commission also notes that in some cases, the powers and authorities of different agencies overlap, and this situation leads to a waste of human and technical resources and the emergence of dynamics that undermine the effectiveness of those mechanisms. This lack of coordination and interconnection among different state institutions has placed a disproportionate burden on the victims, who are forced to repeat the same formalities before different agencies, without obtaining a swift and timely response, and this discourages their participation. The Commission appreciates the State recognizing that there are “structural challenges,” with regard to which it is adopting an institutional model aimed at overcoming such obstacles and which “provides integrative care and promotes the participation of the territorial and national institutional framework.”<sup>2111</sup>
1207. The IACHR reaffirms its commitment to working with the Colombian State in its search for solutions to the problems and challenges that have been identified. The Commission is offering this report’s analyses and recommendations with the intent of supporting the State in the implementation of specific, constructive measures in favor of its inhabitants’ fundamental rights. The State has reiterated that “nothing would contribute more to the protection of human rights than the end to the armed conflict.”<sup>2112</sup> On this score, the Commission recognizes that in fact, several of the measures adopted to tackle the serious human rights situation caused by the prolonged internal armed conflict indicate that the State has understood and acknowledged the seriousness of the problems that exist, and they showcase the State’s commitment toward effectively dealing with the obstacles faced by victims of human rights violations in Colombia, which are essential elements in making resolved progress with the implementation of the necessary protections and guarantees.

<sup>2108</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, Final Considerations.

<sup>2109</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, para. 633.

<sup>2110</sup> State of Colombia, *Progress with Human Rights*.

<sup>2111</sup> In its observations on the Draft Report, the State noted that the Model of Integrative Care, Assistance and Reparation to Victims (MAARIV), implemented by the Victims Unit would be designed to make an institutional offering possible that is focused on the human rights and care of the victims. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, para. 636.

<sup>2112</sup> Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, para. 631.