

## CHAPTER V

### FOLLOW-UP TO RECOMMENDATIONS MADE BY THE IACHR IN ITS COUNTRY OR THEMATIC REPORTS

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

##### I. INTRODUCTION

1. The objective of this report is to follow up on the recommendations made in the report *Truth, Justice, and Reparation: Fourth Report on the Situation of Human Rights in Colombia* (hereinafter “Truth, Justice, and Reparation” or “the Report of the IACHR”) adopted by the Inter-American Commission on Human Rights (hereinafter “the IACHR” or “the Commission”) on December 31, 2013. In December 2012, the IACHR made an on-site visit to Colombia and subsequently prepared the country report that is the subject of this follow-up. That report was published in August 2014.

2. In Chapter V of its annual reports from 2014 to 2016, the Commission followed up on the implementation of the recommendations contained in the report Truth, Justice, and Reparation is made by the IACHR in its Report. In both the Report and the follow-up reports the IACHR has focused on the human rights impact of the violence that has stemmed from the armed conflict. With the advent of the peace process with the Revolutionary Armed Forces of Colombia (FARC), the Commission began incorporating in its follow-up reports aspects related to its monitoring of the negotiations and the signing of the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace by the government and the FARC on November 24, 2016 (hereinafter the “Peace Agreement”). The State has acknowledged that the signing of the Peace Accord is not peace in itself, but only the first step towards building a more just and equitable society in which the rights of persons and the negotiated and peaceful settlement of conflicts prevail over arms and violence. Colombia has indicated that the country has begun a process of cultural and institutional transformation to make it possible to overcome the structural causes of violence and to foster a scenario of growth as a society.<sup>1</sup>

3. In this report the Commission takes into account the major challenge and responsibility that Colombia has ahead of it and recognizes the first year of efforts made by the State to implement the Peace Agreement.<sup>2</sup> The Commission reiterates that it maintains its conviction that the consolidation of peace is an essential requirement for the exercise and observance of human rights. In this understanding, the IACHR also maintains its commitment to achieving peace in Colombia. Thus, through this report and other mechanisms available to it, it provides the State and Colombian society as a whole its cooperation in that effort.<sup>3</sup>

4. In its report Truth, Justice and Reparation and its follow-up reports, the Commission has analyzed the human rights situation, with particular attention to the context of the ongoing internal armed conflict and the impact it has had on the protection, enjoyment, and exercise of these rights. Through its constant monitoring of the overall human rights situation in Colombia, the IACHR has found that as a result of the conflict Colombia continues to grapple with additional complexities stemming from the violence that

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<sup>1</sup> Republic of Colombia, [Note S-GAIIID-17-067759 of August 29, 2017](#).

<sup>2</sup> See IACHR, Press Release No. 178/16, [IACHR Reaffirms its Support for the Peace Process in Colombia and Is Monitoring Compliance with Inter-American Standards](#), December 1, 2016.

<sup>3</sup> See IACHR, Press Release No. 178/16, [IACHR Reaffirms its Support for the Peace Process in Colombia and Is Monitoring Compliance with Inter-American Standards](#), December 1, 2016.

remains a part of daily life for its inhabitants, striking the sectors at greatest risk for, and most vulnerable to, human rights violations. This year, the IACHR recognizes the efforts undertaken by the State in relation to victims' access to and exercise of their rights, in particular in relation to the implementation and creation of the legal framework and institutional structure required for implementing the Peace Agreement, and the arduous and praiseworthy work that still lies ahead. The Commission has reaffirmed on several occasions its commitment to monitor the implementation of the Peace Agreement, saying that it should be done in a way that observes inter-American human rights standards.<sup>4</sup> The Commission uses this space for such monitoring on the understanding that in the transition to peace, the Colombian State's compliance with its international obligations in the area of human rights is part and parcel of the implementation of the Agreement.

5. Indeed, in 2017 the State took important steps to lay the institutional groundwork for implementing the Peace Agreement. This report sets out considerations in that respect, especially Chapter II on the implementation of the Peace Agreement and the sections relating to the recommendations on transitional justice and reparation mechanisms.

6. As for compliance with the recommendations, this year the Commission is especially concerned about the high number of attacks on defenders, which has left a toll of 52 people dead as of the date of approval of the instant report; the resurgence of illegal armed actors and the recruitment of FARC dissidents; and the crack down on social protest by the State security forces with excessive use of force. The Commission also notes that in 2017 several challenges remain in Colombia: the security situation in rural areas, where violence persists; human rights violations remaining in impunity; a high number of people continuing under the status of 'disappeared;' the increase in the number of forced displaced persons; and the rights of members of historically discriminated against groups. All of these issues will be further explored throughout this report.

7. On July 26, 2017, the Commission advised the State that it proposed to publish a fourth follow-up report on the recommendations contained in the *Truth, Justice and Reparation*, in which it had decided to place emphasis on the recommendations that are the main focus of this report. Accordingly, it requested the State for information on compliance with those recommendations, without prejudice to continuing to follow up on the implementation of all the recommendations contained in *Truth, Justice and Reparation*. In addition, on July 28, 2017, the IACHR asked the Office of the Ombudsperson (*Defensoría del Pueblo*) of Colombia for information in the same terms.

8. On July 27, 2017, the Commission informed Colombian civil society organizations about the preparation of this fourth report to follow up on the recommendations and asked for any information in their areas of expertise that considered relevant to submit on their implementation.<sup>5</sup>

9. The State presented its response on September 11, 2017, in which it thanked the Commission for its continuous support for the peace process and said that it valued the Commission's function of promoting and guaranteeing inter-American human rights standards, which are a core crosscutting theme of the Agreement.<sup>6</sup> The Office of the Ombudsperson of Colombia presented information on August 29, 2017 and thanked the IACHR for its work.<sup>7</sup> Civil society organizations also responded to the request for information.<sup>8</sup> The Commission is grateful for the detailed and meticulous information presented by the State, the Office of the Ombudsperson, and civil society organizations in response to its requests, enabling the Commission to gather information for its analysis.

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<sup>4</sup> IACHR, Press Release No. 178/16, [IACHR Reaffirms its Support for the Peace Process in Colombia and Is Monitoring Compliance with Inter-American Standards](#), December 1, 2016; IACHR, Press Release No. 122/16, [IACHR Welcomes the Signing of Agreement for the Construction of Peace in Colombia](#), August 29, 2016.

<sup>5</sup> The communication was sent to 36 civil society organizations.

<sup>6</sup> Republic of Colombia, Note S-GAID-17-067759 of August 29, 2017.

<sup>7</sup> Office of the Ombudsperson (*Defensoría del Pueblo*), Note of August, 2017.

<sup>8</sup> *Corporación Casa de la Mujer* and *Colombia Diversa* submitted information on August 25 and 27, 2017.

10. In drawing up this report the Commission has also taken into account the information collected in its monitoring of the country's overall human rights situation; information received during public hearings;<sup>9</sup> the reports issued every six months by the Mission to Support the Peace Process of the OAS (MAPP/OAS); input from the precautionary measures mechanism; and the requests for information made under Article 41 of the American Convention on Human Rights (hereinafter the "American Convention"); as well as information available from other public sources, and the decisions and recommendations of specialized international agencies, among others.

11. On November 27, 2017, the Commission transmitted to the State a copy of the preliminary draft of this report, in keeping with Article 59(10) of its Rules of Procedure, and asked it to submit its observations. On December 18, 2017, the Commission received the observations and comments of the State, which were incorporated in this report, where appropriate<sup>10</sup>. In its observations, the State expresses its appreciation and thanks for the Commission's acknowledgment of the challenges and responsibilities that lie ahead for Colombia, as well as for the reiterated commitment of the IACHR to the achievement of peace.

12. This report is divided into four sections: (I) introduction, (II) Implementation Process of the Peace Agreement, (III) Follow-up on Recommendations, and (IV) Conclusions. Section III considers the current situation in relation to the recommendations of the Commission and the measures adopted by the State to implement them. This section is divided into nine subsections, each one beginning with the recommendations on which the monitoring is focused this year, by subject matter, analyzing the main advances and challenges to the State in their implementation. In Section IV, the Commission presents its conclusions and reiterates the importance that the Colombian State implements fully the recommendations contained in its report.

## II. IMPLEMENTATION PROCESS OF THE PEACE AGREEMENT

13. In 2017 the Commission has monitored the implementation of the Peace Agreement through its different mechanisms, in particular through its hearings. At the hearings, both civil society and the State have presented certain concerns and noted the gains and challenges that have emerged in the process.<sup>11</sup> In addition, in their communications on the implementation of the Commission's recommendations, both the State and the Office of the Ombudsperson have referred to the implementation of the Agreement.

14. On the process of laying down of arms, transition to legality, and reintegration into civilian life of former members of the FARC, the State reported that it began with the concentration in 26 Transitional Local Zones for Normalization (*Zonas Veredales Transitorias de Normalización – ZVTN*) of 6,900 members of the FARC, who received lodging, basic services, food, kits for personal hygiene, and clothes, which guarantee minimum conditions of well-being.<sup>12</sup>

15. The State reported that the disarmament of the FARC became definitive on August 15, when the last of the United Nations containers in which all the weapons were placed was sealed. It indicated that the head of the United Nations Mission had confirmed that the containers were transporting a total of 8,112

<sup>9</sup> 2017 IACHR hearings on Colombia: [Investigation of Attacks on Human Rights Defenders in Colombia](#), [Guarantees of Non-Repitition in the Peace Accord in Colombia](#), [State Anti-Impunity Obligations and Special Justice for Peace in Colombia](#), [Situation of the Right to Freedom of Expression in Colombia](#), [Human Rights Situation of Afro-Descendants Affected by the Armed Conflict in Colombia](#), [Special Jurisdiction for Peace and Third-Party Responsibility in Colombia](#), [Situation of Human Rights Defenders and Social Leaders in Colombia](#), and [Investigations of Serious Human Rights Violations and Implementation of the Peace Agreement in Colombia](#).

<sup>10</sup> Republic of Colombia, Note S-GAIID-17-101743 of December 18, 2017.

<sup>11</sup> 2017 IACHR hearings: [Investigation of Attacks on Human Rights Defenders in Colombia](#), [Guarantees of Non-Repitition in the Peace Accord in Colombia](#), [State Anti-Impunity Obligations and Special Justice for Peace in Colombia](#), [Situation of the Right to Freedom of Expression in Colombia](#), [Human Rights Situation of Afro-Descendants Affected by the Armed Conflict in Colombia](#), [Special Jurisdiction for Peace and Third-Party Responsibility in Colombia](#), [Situation of Human Rights Defenders and Social Leaders in Colombia](#), and [Investigations of Serious Human Rights Violations and Implementation of the Peace Agreement in Colombia](#).

<sup>12</sup> Republic of Colombia, Note S-GAIID-17-067759 of August 29, 2017.

arms that nearly 1.3 million rounds of ammunition had already been incinerated, and that 17,000 kilos of munitions and explosives had been extracted from the caches. It also indicated that of the 873 caches, 510 had been located, and that 759 arms were extracted from them, as well as almost 300,000 munitions.<sup>13</sup>

16. According to media reports citing information from the United Nations, the process culminated on September 15 with the extraction and destruction of the arms found in 750 of the 998 caches reported by the FARC.<sup>14</sup> It was indicated that locating and dismantling the remaining caches had been entrusted to the Army.<sup>15</sup>

17. The State referred to the reintegration of former FARC combatants into civilian life as one of the greatest challenges and indicated that it was giving impetus to all actions needed to ensure that this would be a genuine guarantee of non-repetition. It reported that in December 2016 the National Reintegration Council (*Consejo Nacional de Reincorporación*) was created, made up of two representatives of the National Government and two of the FARC, in order to determine activities, establish the timetable, and follow up on the integration process.<sup>16</sup> In addition, it reported that, at the request of the Government, in July, the United Nations Security Council unanimously approved Resolution 2366, which established a second mission that will verify the reintegration of former FARC combatants into civilian life.<sup>17</sup>

18. The IACHR salutes the measures taken by the State with international support to monitor the process of laying down of arms and reintegration into civilian life of former FARC combatants.<sup>18</sup> As regards reintegration, there is a need to develop programs with differential approaches that consider gender and ethnic/racial identity.

19. The State also indicated that the Statute for the Opposition was approved; it defines the guarantees for political parties and movements that declare that they are in opposition to the Government; in other words, the political reintegration of the FARC, which it regards as one of the cornerstones of the Peace Agreement because it allows for the transformation of an armed organization into one that will engage in politics.

20. As regards political rights in relation to the transformation of the FARC into the Common Alternative Revolutionary Force (*Fuerza Alternativa Revolucionaria del Común*) and its transition to civilian life, it should be noted that, according to the United Nations Mission in Colombia, the founding congress was held from August 27 to September 1, 2017, with the participation of more than 1,200 FARC delegates. Rodrigo Londoño was named leader of the new party, and 15 members of the National Political Council were elected. They expressed their willingness to participate in the 2018 presidential elections to form part of a coalition government that supports the implementation of the Final Agreement.<sup>19</sup> In this regard, the Constitutional Court clarified in November that until such time as the Special Jurisdiction for Peace (JEP) imposes punishment on the former members of the guerrilla forces, the convictions handed down by the regular jurisdiction courts are suspended and, as is the disqualification from public office. In other words, in the meantime, they are allowed to participate in politics.<sup>20</sup>

<sup>13</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>14</sup> 1,238 firearms, which have been identified and collected at the General Arms Depot (*Deposito General de Armamento*); 488,489 rounds of ammunition for different caliber light weapons; 26,489 kg of explosive of various types; 39,849 m of detonating cord and slow-burning fuse; 4,277 hand and 40 mm grenades; 2,647 antipersonnel mines; 31,868 initiators/primers; 1,767 mortar rounds (including 81 mm, 60 mm, and rockets). Caracol, [ONU terminó extracción de 750 caletas de las FARC](#), September 15, 2017.

<sup>15</sup> Caracol, [ONU terminó extracción de 750 caletas de las FARC](#), September 15, 2017.

<sup>16</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>17</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>18</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>19</sup> United Nations, Security Council, Report of the Secretary-General on the United Nations Mission in Colombia, 26 September 2017, para. 3.

<sup>20</sup> Constitutional Court, release of November 14, 2017 review of Legislative Act 01 of 2017.

21. The State also noted that the Commission for Monitoring, Promoting, and Verifying Implementation of the Final Agreement (CSIVI), comprising representatives of the Government and of the FARC, is moving ahead with the designing of a Framework Plan for the implementation of the whole agreement, with terms of 10 and 15 years.<sup>21</sup> The purpose of the CSIVI is to support the process of implementation of the Peace Accord and settle any disputes that may arise as the process materializes.

22. In December 2016 the Constitutional Court approved the “fast track” as a prompt procedure for adopting laws for the implementation of the Peace Agreement. On December 30, Law 1820 (hereinafter the “Amnesty Law”) was approved through the fast track procedure. The Law sets out provisions on amnesties, pardons, for political crimes and crimes related to such crimes and special criminal justice treatment, especially, for agents of the State who have been convicted, prosecuted or charged with committing punishable conduct because of, on the occasion of, or with a direct or indirect relation to the armed conflict (see *infra* III. D. b). This law prohibits amnesties or pardons in cases of serious violations of human rights or international humanitarian law (IHL).<sup>22</sup>

23. In May, the Executive Branch issued 34 presidential decrees for the implementation of the Peace Agreement. The decrees address land reform, mining reform, education reform, rural electrification, the National Reintegration Council, the National Peace Council, and the Commission for Monitoring Peace.<sup>23</sup> As of June, 35 decrees, three legislative acts, and two statutes had been issued and approved. As of the adoption of this report, they were being reviewed by the Constitutional Court.<sup>24</sup> Seven proposed laws have also been presented.<sup>25</sup>

24. The legislative act that established the fast track procedure and Legislative Act No. 02 of 2017,<sup>26</sup> known as the legal armor plating of the Peace Agreement, were submitted for review by the Constitutional Court, which determined, with respect to the latter, that in order for the inclusion of the Peace Agreement in the country's legal framework to be constitutional, regulations for it had to be put in place by the competent organs, in accordance with the procedures envisaged in the Constitution.<sup>27</sup> It ruled that the fast track procedure was constitutional following amendments.<sup>28</sup>

<sup>21</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>22</sup> [Law 1820](#) of December 30, 2016.

<sup>23</sup> *El Tiempo*, [Santos, en maratón de decretos ley para implementación de la paz](#), May 29, 2017, and [Las claves de los decretos para acelerar la paz](#), May 30, 2017; *El Universal*, [Presidente Santos firmó 34 decretos para implementación del acuerdo de paz](#), May 30, 2017.

<sup>24</sup> In 2016, Decree Law (DL) 2204 of December 30 and Law 1820 of December 30. In 2017 DL 691 of April 27, DL 902 of April 29, DL 893 of May 28, DL 892 of May 28, DL 890 of May 28, DL 884 of May 26, DL 883 of May 26, DL 882 of May 26, Statute 03, DL 887 of May 26, Law 1830 of March 6, DL 154 of February 3, DL 277 of February 17; DL 671 of April 25, Legislative Act No. 03 of May 23, DL 903 of May 29, DL 901 of May 29, DL 898 of May 29, DL 897 of May 29, DL 895 of May 29, DL 891 of May 28, DL 249 of February 14, Legislative Act No. 01 of April 4, 2017, “by which a title of transitory articles is created in the Constitution to end the armed conflict and build a stable and lasting peace and further provisions are added,” DL 587 of April 5, DL 588 of April 5, DL 589 of April 5, DL 700 of May 2, DL 706 of May 3, DL 896 of May 29, DL 121 of January 26, DL 248 of February 14, DL 900 of May 29, DL 889 of May 27, DL 888 of May 27, DL 871 of May 25, DL 894 May 28.

<sup>25</sup> Proposed laws: Agricultural Innovation Law (*Ley de Innovación Agropecuaria*), Land Adjustment Law (*Ley de Adecuación de Tierras*), Political and Electoral Reform Act (*Acto Legislativo de Reforma Política Electoral*), Special Transitional Peace Constituencies Act (*Acto Legislativo de Circunscripciones Especiales Transitorias de Paz*), and Paramilitarism Prohibition Act (*Acto Legislativo de Prohibición del Paramilitarismo*). See [Chamber of Representatives](#) Congress of the Republic of Colombia.

<sup>26</sup> Legislative Act No. 02 of May 11, 2017.

<sup>27</sup> *El Espectador*, [Nadie podrá modificar el Acuerdo de Paz en 12 años: Corte Constitucional](#), October 11, 2017.

<sup>28</sup> Constitutional Court, Judgment C-331, 2017; Caracol, [Corte Constitucional tumba varios puntos del fast track. ¿Cuáles son?](#), May 18, 2017. See also La Silla Vacía, [Corte, “fast track” y paz](#), May 28, 2017; Análisis, [La sustitución constitucional, el “fast track” y el Acuerdo Final de Paz: análisis](#), May 25, 2017.



25. The State provided information about the creation of the Comprehensive System for Truth, Justice, Reparation, and Non-Repetition (hereinafter the “Comprehensive System”),<sup>29</sup> the main purpose of which is to provide satisfaction to victims of the armed conflict whose rights have been violated and to offer legal certainty for those who submit to it.<sup>30</sup> Its judicial component takes the form of the JEP (see *infra* III.C.a); its extrajudicial component comprises the Commission for the Clarification of the Truth, Coexistence, and Non-Repetition (hereinafter the “Truth Commission”), the Unit for the Search for Persons Presumed Disappeared in the context and by reason of the armed conflict (UBPD), and comprehensive reparation measures, all of which are supposed to operate in a coordinated and coherent way.<sup>31</sup>

26. It is worth noting with respect to the budget for implementing the Comprehensive System, that the Government announced that in the budget appropriation for 2017 passed by the Congress in July the necessary funds were allocated to ensure its autonomy and allow it to begin its work. It was reported that in the overall budget, the JEP has been allocated 70,000 million Colombian pesos; the UBPD, 31,746 million, and the Truth Commission, 12,500 million.<sup>32</sup>

27. The State said that the Selection Committee (*Comité de Escogencia*) was set up in April as an independent and impartial body that selected the officials to fill the senior positions in the Comprehensive System.<sup>33</sup> The Committee comprises the members of the Truth Commission, the Director of the UBPD, and the judges of the JEP. The function of the Committee was to ensure a public, participatory, independent, and impartial procedure. They also selected the Director of the Investigation and Indictment Unit, the foreign expert jurists who will act as *amici curiae* before the JEP, and its Executive Secretary. The shortlist of candidates for the position of Director of the Investigation and Dismantling Unit for criminal organizations will be announced in due course.<sup>34</sup> On September 25, they announced the 61 judges selected, 24 of whom will sit on the Special Peace Tribunal; another 24 will sit on the three judicial panels of the JVP, with 13 alternates, while 14 foreign jurists will accompany the process.<sup>35</sup>

28. The Commission hails the fact that 53 percent of the JEP are women, 10.53 percent are of African descent, 10.53 percent are indigenous, and 61 percent are from places other than Bogotá. The Commission notes that 16 percent of the judges have experience as human rights defenders, 10 percent have been judges in the regular courts, and 5 percent come from the military criminal jurisdiction. Furthermore, 10 percent have worked at the Office of the Attorney General of the Nation (FGN), while 16 percent have a background in public policy issues.<sup>36</sup> A more in-depth analysis of the JEP is made in the section on transitional justice (see *infra* III.D)

29. In relation to the Comprehensive System's truth component, the State reported that at a ceremony in April attended by victims of the conflict, legislative decrees were signed that brought into being the Truth Commission,<sup>37</sup> the UBPD,<sup>38</sup> and the Selection Committee.

<sup>29</sup> Legislative Act No. 01 of April 4, 2017, “by which a title of transitory articles is created in the Constitution to end the armed conflict and build a stable and lasting peace and further provisions are added.” Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>30</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>31</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>32</sup> Caracol, [Presupuestos e infraestructura de la JEP ya garantizados](#), September 26, 2017. These sums correspond approximately to US\$ 24,565,905; US\$ 11,140,606; y US\$4,387,083 respectively.

<sup>33</sup> Decree 587 of April 5, 2017. “By which the Selection Committee is formed to choose certain members of the Comprehensive System. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>34</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017. The shortlist of candidates for directors' positions will be announced on November 14, 2017.

<sup>35</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>36</sup> Caracol, [Así quedaron los tribunales y salas de la JEP](#), September 26, 2017.

<sup>37</sup> Decree 588 of April 5, 2017, which organizes the Commission for the Clarification of the Truth, Coexistence, and Non-Repetition. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

30. The State said that the goals of the Truth Commission are to help clarify what happened and provide an extensive explanation of the complexity of the armed conflict; to promote and contribute to recognition of the victims and of the responsibility of those who participated directly and indirectly in the armed conflict, as well as to inform society as a whole about what happened; and to promote harmonious coexistence throughout the country through a climate of dialogue and by creating opportunities for different voices to be heard. The State said that the Truth Commission will function for three years and have 11 members.<sup>39</sup>

31. It is also worth noting that the primary purpose of the National Center for Historical Memory (*Centro Nacional de Memoria Histórica* – CNMH) is to gather and recover any and all documentary, testimonial, and other evidence of violations under Article 147 of Law 1448 (Victims Law) of 2011. That information will be made available to interested parties, investigators, and the general public by means of museum-based, educational, and other activities designed to strengthen knowledge about Colombia's political and social history.<sup>40</sup> The CNMH has produced nearly 70 independent reports on the armed conflict by mandate of the Victims Law, which requires that measures be adopted to provide care, assistance, and comprehensive reparation to the victims of the internal armed conflict, among other provisions.<sup>41</sup>

32. The Office of the President enacted a decree appointing the Ministry of Defense to the Board of Directors of the CNMH.<sup>42</sup> That decision prompted much questioning of the impartiality and independence of the CNMH.<sup>43</sup> The Director of the CNMH and his team believes that including the Ministry of Defense or its delegate in the Board of Directors certainly create doubts in large numbers of social and political sectors, given the security forces' active participation in the internal armed conflict. They also said that the CNMH would continue to promote plurality of remembrance, with the victims as its primary focus.<sup>44</sup> In that regard, the Commission considers that the composition of the CNMH is critical for inspiring confidence in the citizenry and demonstrating independence, impartiality, and autonomy in its activities.

33. On the matter of land, the State provided information about the adoption of laws relating to the rural reforms envisaged in the Peace Agreement, including the land project that envisages distributing 3 million hectares among 600,000 families that have been without access to land; development programs in the areas worst affected by the conflict; the nationwide implementation of a modern land register; and tertiary road building, among other measures.<sup>45</sup>

34. As regards overall progress in implementing the Peace Agreement, it is worth noting that the Kroc Institute published a study in that regard.<sup>46</sup> Based on a quantitative assessment of over 3,000

<sup>38</sup> Decree 589 of April 5, 2017, which organizes the Unit for the Search for Persons Presumed Disappeared in the context and by reason of the armed conflict. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>39</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>40</sup> Banco de la República, Virtual library, [CNMH](#).

<sup>41</sup> Decree 502 of March 27, 2017, which modified the composition of the Board of Directors of the National Center for Historical Memory.

<sup>42</sup> Art. 6. The Board of Directors of the CNMH shall comprise the Minister of Justice and Law or their delegate, the Minister of Defense or their delegate, the Minister of Education or their delegate, the Minister of Culture or their delegate, the Director of the Administrative Department for Social Prosperity, who shall chair it, the Director of the Special Administrative Unit for Care and Comprehensive Reparation for Victims, and two victims' representatives chosen by the National Committee of Victims of the Armed Conflict. Decree 502 of March 27, 2017. Caracol, [El decreto que levantó la ampolla entre las víctimas del conflicto](#), April 16, 2017; VerdadAbierta, [Fuerza Pública puja por la memoria histórica](#), April 18, 2017.

<sup>43</sup> CNMH, [Comunicado](#), April 19, 2017; Indepaz, [Verdad histórica sin memoria oficial, a propósito del CNMH](#), April 18, 2017.

<sup>44</sup> CNMH, [Comunicado](#), April 19, 2017.

<sup>45</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>46</sup> Kroc Institute, *Peace Policy*, Madhav Joshi and Jason Quinn, [Implementation Progress in the Colombian Final Accord](#), October 11, 2017.

implementation events, the study calculated the degree of implementation for all 558 stipulations in the Peace Agreement. The study concluded that as of the end of August 2017, implementation activity had been initiated in 251 stipulations (45 percent of the total). Of the 558 total stipulations, 121 were rated at minimum (22 percent), 33 at intermediate (6 percent), and 97 at full implementation (17 percent). The study also found that significant progress has been achieved in short-term objectives such as establishing a ceasefire, laying down of arms, and setting up verification mechanisms for these themes. Of the 35 stipulations on those themes, 89 percent have been fully implemented and 9 percent are intermediate. It should be underscored that the study considered this to indicate that both parties in the Peace Agreement have made a strong commitment to ending the conflict and moving toward peace.<sup>47</sup>

35. For its part, *Observatorio de Seguimiento a la Implementación del Acuerdo de Paz* (OIAP), which monitors progress on the Peace Agreement, mentioned in its fourth report that the implementation process had only reached 18 percent, noting specifically that the current status has to do more with the themes of laying down of arms and the transformation of the FARC into a political party, and less with the themes of political reform and the points relating to the social and economic rights of rural communities in conflict zones.<sup>48</sup>

36. In its follow-up report on the peace process, *Cáritas Colombiana* considered that strengthening social, territorial, and regional networks as well as linkage strategies among state entities and their replication on the ground will be crucial for ensuring effective advocacy and integrating vulnerable communities in the various processes. It said that the Peace Agreement left a gaping hole in the territories' institutional capacity, with the result that there can be no thought of successful implementation without linkage between the national level and the departmental and municipal levels, so as to have clarity in the plans and programs that are being carried out and that can be offered in each region. The report underscored the importance of grassroots involvement in the Agreement's implementation and of consolidating a joint effort at the national, departmental, and local level, which would enable strategies to address the various threats that have emerged in the course of the period covered by this report.<sup>49</sup>

37. The Commission appreciates the efforts of the State to move quickly to implement the various components of the comprehensive system, as well as the complexity of that task. The Commission urges the State to continue those efforts so as to establish a working Comprehensive System with the victims as its central focus within a framework of respect for the human rights of all the actors in the conflict. At the same time, it notes that implementation of the items of the Peace Agreement relating to political reform, as well as to the social and economic rights of rural communities in the conflict zones is in the beginning stage. The Commission urges the Colombian State to move forward in the implementation of each and every one of the items of the Agreement, notwithstanding the current electoral context.

38. The Commission also takes note of the peace negotiations with the National Liberation Army (ELN). In that regard, the State has acknowledged that peace will only be complete if all illegal armed groups are engaged and committed to that process, and it reported that the negotiation table with the ELN was established in Quito, Ecuador, on February 7, 2017. It mentioned that the table concludes the exploratory stage and ushers in a new phase in the negotiations in which the points agreed on the agenda will be discussed: (1) societal participation in the construction of peace; (2) democracy for peace; (3) transformations for peace; (4) victims; (5) end of the armed conflict; and (6) implementation.<sup>50</sup> On September 4, the Government and the ELN announced that they had agreed to a bilateral and temporary ceasefire to take effect from October 1, 2017 to January 12, 2018, as well as several humanitarian measures and the establishment of a monitoring and verification mechanism that would involve the Government, the ELN, the United Nations, and

<sup>47</sup> Kroc Institute, *Peace Policy*, Madhav Joshi and Jason Quinn, [Implementation Progress in the Colombian Final Accord](#), October 11, 2017.

<sup>48</sup> OIAP, [¿Es posible una paz estable y duradera sin cumplir el acuerdo final?](#), October 1, 2017.

<sup>49</sup> *Cáritas Colombiana*, [La implementación del acuerdo de paz: oportunidades y desafíos](#), July 2017.

<sup>50</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.



the Catholic Church.<sup>51</sup> According to public information, on December 25, the ELN cast doubt on the continuity of the bilateral ceasefire it is holding with the Colombian Government, because of alleged offensives by the Armed Forces violating the bilateral agreement, and announced the withdrawal of its representatives from the Mechanism of Oversight and Verification. Despite the fragility of the ceasefire, as of completion of the drafting of this report, both the Government and the ELN had expressed their willingness to extend it. The IACHR is hopeful that the parties can overcome the challenges that are faced under the current ceasefire and are able to move forward in the negotiations toward peace.

39. The Commission finds this initial progress on the different regulatory and institutional aspects of the implementation of the Peace Agreement to be part of the State's efforts to implement the recommendations put forward by the IACHR in its report *Truth, Justice and Reparation*. In the sections that follow, the IACHR evaluates the situation of human rights in Colombia in relation to those recommendations and their implementation by the Colombian State.

### III. FOLLOW-UP OF RECOMMENDATIONS

#### A. Life, Humane Treatment, and Personal Liberty

- Adopt, as soon as possible, the measures necessary to prevent State agents from committing violations of human rights and international humanitarian law (IHL). 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.
- 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.
- 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.
- 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.
- 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.
- Continue making progress in recovering the bodies of the disappeared, identifying them correctly, and appropriately delivering them to their next of kin.
- 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.

#### a. Rights to Life, Humane Treatment, and Personal Liberty

40. In its report *Truth, Justice and Reparation* and its follow-up chapters the IACHR has referred to the State's obligation to intensify its efforts to ensure that the security forces respect the standards applicable to the use of force and to perform a serious, impartial, and effective investigation of all the cases that involve alleged violations of human rights and IHL. As this report shows, this year those issues remain a concern.

<sup>51</sup> United Nations, Security Council, Report of the Secretary-General on the United Nations Mission in Colombia, 26 September 2017, para. 12.

41. At the same time, the Commission notes that the Peace Agreement, in particular the ceasefire with the FARC, has had an impact in reducing homicide rates. The State has reported that homicide rates are the lowest they have been in 42 years, having averaged 25.3 per 100,000 inhabitants in 2016.<sup>52</sup> According to the State, as of June 2017, in the first 10 months since the end of hostilities between the Government and the FARC, at least 2,796 deaths directly related to the conflict have been averted.<sup>53</sup> The State believes the conflict's de-escalation permanent. It reported that the number of clashes went down by 50 percent between 2015 and 2016, and that to date in 2017 there has been a decline of 61 percent. It said that there is no effective FARC presence in 91 percent of the country's municipalities (96 percent for the ELN) and that this reduction has meant that from 2010 to 2016,<sup>54</sup> the number of security forces personnel murdered has fallen by 76.8 percent, and the number of wounded, by 37.8 percent. The State reported that this trend continued from January to May 2017, given that the number of wounded has gone down 33.9 percent and the number of murdered, by 21.5 percent.<sup>55</sup> It said that the downward track in the homicide rate has remained constant for the last four years.<sup>56</sup>

42. It is also worth noting that the number of kidnappings as also fallen. There were 188 kidnappings in 2016, marking a drop of 92 percent compared with 2000, which saw more than 3,000.<sup>57</sup>

43. In spite of this progress, Colombia continues to have one of the highest homicide rates in Latin America and ranks seventh among 20 countries in the region monitored by Insight Crime.<sup>58</sup> With respect to kidnappings, in May, the Government confirmed that an official with the United Nations Office on Drugs and Crime (UNODC) was abducted by suspected FARC dissidents;<sup>59</sup> he was released in July.<sup>60</sup> Also in that month it was confirmed that eight people were kidnapped by the ELN in the village of Sesegó (Chocó);<sup>61</sup> they were released the following day.<sup>62</sup>

44. That same month, Comité Cívico Departamental por la Salvación y la Dignidad del Chocó, a local civil society organization, called a strike in protest against the lack of security in the department and the fact that the national government had failed to live up to the 10-point agreement that ended the seven-day general strike in 2016.<sup>63</sup> On May 14, four people were reported injured by a bomb that exploded in Puerto Berrío, Antioquia; the attack was attributed to the Golfo Clan, a criminal gang.<sup>64</sup> In June, the People's

<sup>52</sup> In 2014, the UN reported that the rate of intentional homicides in Colombia was 27.9 per 100,000 population. President Juan Manuel Santos announced on June 14, 2016, that Colombia had attained a homicide rate of 25.9 per 100,000 population in the previous 12 months. IACHR, 2016 Annual Report, [Ch. IV. Colombia](#), par. 21.

<sup>53</sup> *Centro de Recursos para el Análisis de Conflictos (CERAC), Monitor del Cese el Fuego Bilateral y de Hostilidades*, Final Report, June 30, 2017, [Período de monitoreo: del 29 de agosto de 2016 al 27 de junio de 2017. Un conflicto largo, de terminación negociada](#). Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>54</sup> National Planning Department (DNP), Informe del Presidente Juan Manuel Santos al Congreso de la República 2017, p. 38. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>55</sup> DNP, Informe del Presidente Juan Manuel Santos al Congreso de la República 2017, p. 39. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>56</sup> *El País*, [Colombia cierra 2016 con la cifra más baja de homicidios en 42 años](#), December 31, 2016.

<sup>57</sup> *El País*, [Colombia cierra 2016 con la cifra más baja de homicidios en 42 años](#), December 31, 2016.

<sup>58</sup> *Insight Crime*, [Balance de InSight Crime sobre homicidios en Latinoamérica en 2016](#), January 17, 2017.

<sup>59</sup> *El País*, [Así fue el secuestro del funcionario ONU en Guaviare](#), May 4, 2017.

<sup>60</sup> Televisa news, [Liberan a funcionario de la ONU secuestrado por disidentes de las FARC](#), July 5, 2017; *El País*, [Disidencia de las Farc libera a funcionario de la ONU que fue secuestrado hace dos meses](#), July 5, 2017.

<sup>61</sup> *El Tiempo*, [ELN secuestró a los 8 jóvenes de Nóvita. Chocó, confirma Mindefensa](#), May 8, 2017.

<sup>62</sup> *Mundo*, [ELN libera ocho personas secuestradas en Colombia](#), May 9, 2017.

<sup>63</sup> *El Tiempo*, [Una vez más, Chocó le reclama al Gobierno Nacional](#), May 10, 2017.

<sup>64</sup> *El Tiempo*, [Cuatro heridos deja ataque con artefacto explosivo en Puerto Berrío](#), May 14, 2017.

Revolutionary Movement (MRP) reportedly detonated a bomb in a toilet in the Andino shopping mall in Bogota, killing four people and injuring nine others.<sup>65</sup>

45. One of the biggest concerns for domestic and international civil society organizations is the reconfiguration of armed actors in areas left by the FARC as well as the persistence of the conflict.<sup>66</sup> The Commission also notes that indigenous and Afro-descendent communities, LGBTI organizations, and the Marcha Patriótica political movement have reported a return to their territories of drug trafficking organizations and paramilitary groups, provoking violence and fear.<sup>67</sup>

46. The International Committee of the Red Cross (ICRC) emphasized that, in spite of the optimism generated by the peace agreement, it is concerned about the reconfiguration of these actors and drew attention to the continued conflict with other armed actors: ELN, Autodefensas Gaitanistas de Colombia (AGC), and People's Liberation Army (EPL). It said that for those reasons it was premature to talk about a post-conflict situation in the country.<sup>68</sup> It also documented 838 alleged violations of international humanitarian law in 2016 that affected 18,671 people and mentioned that the presence of mines, explosive devices (remnants of war and other improvised explosive devices) near populated areas, as well as the proliferation of weapons and stray bullets in urban areas are some of the threats faced by the civilian population.<sup>69</sup>

47. The IACHR is concerned by reports that dissident FARC fighters are being recruited by Colombia's main criminal groups. The FGN reported that Los Urabeños are offering such dissidents a high salary.<sup>70</sup> According to reports, the Departments of Meta, Caquetá and Guaviare have become hubs of dissident activity and networks of former FARC members now control key drug trafficking corridors, are involved in the drugs trade, and operate extortion networks.<sup>71</sup>

48. *Ideas para la Paz* reported that with the signing of the Peace Agreement the country entered a transition phase "characterized by a continuation of organized crime by a number of guerrilla groups and other armed organizations, actors, and criminal networks that have become more conspicuous or are taking shape."<sup>72</sup>

49. One of the major concerns reported by the OAS Mission to Support the Peace Process in Colombia (MAPP/OAS), for its part, is that, as the FARC forces have pulled out of the territories, organized armed groups (GAOs), organized criminal groups (GDOs), other illegal armed groups (especially the ELN), and ordinary criminals have gradually moved into some of these vacated areas. The MAPP/OAS reported that the perception in these territories is that the security forces have not positioned themselves adequately and effectively. Regions such as Southern Córdoba and Lower Cauca even see themselves as abandoned or unprotected by the security forces as a result of the peace process with the FARC.<sup>73</sup>

<sup>65</sup> *El Mundo*, [Un grupo de extrema izquierda, responsable de la bomba del Andino](#), June 25, 2017. Cf. *Las 2 Orillas*, [Falsos positivos judiciales, persecución y estigmatización](#), June 29, 2017.

<sup>66</sup> PBI, [Reconfiguración del conflicto armado en medio del proceso de paz](#), July 10, 2017; Servicio Jesuita de refugiados, [Comunicado of June 21, 2017](#); see, in general, [Front Line Defenders](#), Colombia: Human rights defender Ruth Alicia Lopez Guisao murdered, March 8, 2017. See also BBC, [Los grupos armados que están ocupando los territorios abandonados por las FARC en Colombia](#), July 20, 2017.

<sup>67</sup> Organización Nacional de los Pueblos indígenas de la Amazonia Colombiana (ONPIAC), [Los derechos humanos prioridad de los pueblos indígenas](#), 2017; see also IACHR, Hearing on [Investigation of Attacks on Human Rights Defenders in Colombia](#), 161st regular session, March 21, 2017.

<sup>68</sup> ICRC, [Humanitarian challenges 2017: ICRC Colombia Report](#).

<sup>69</sup> ICRC, [Humanitarian challenges 2017: ICRC Colombia Report](#).

<sup>70</sup> InSight Crime, [Los Urabeños reclutan a disidentes de proceso de paz con FARC](#), January 27, 2017.

<sup>71</sup> InSight Crime, [Nuevos grupos de disidentes de FARC comienzan a formarse en Colombia](#), August 4, 2017.

<sup>72</sup> BBC, [Los grupos armados que están ocupando los territorios abandonados por las FARC en Colombia](#), July 20, 2017.

<sup>73</sup> OAS, Twenty-third Report of the Secretary General to the Permanent Council on the MAPP/OAS, October 2017.

50. In its response to the draft of this report the State said that GAOs and GDOs are being dismantled and have gone from being national security threats to public security and citizen security challenges. It said that the dismantling efforts are being implemented with a multi-crime, territorial perspective and coordinated comprehensive prosecution measures designed to counter criminal mining, extortion, kidnapping, trafficking in persons, drug trafficking, contraband, illegal finance, cybercrime, and environmental crimes.<sup>74</sup>

51. It said that the power vacuums left in the territories are quickly being filled by other actors and give rise to disputes and attacks on community leaders and human rights defenders. It also said that there is a perception that former FARC members are repositioning themselves, that the ELN is expanding, and that new groups, attracted by legal and illegal economic gains, are taking over territory. The State also said that amid the vying for control over these areas there are growing adverse effects on communities.<sup>75</sup>

52. Furthermore, according to *Insight Crime*, all over the country criminalized guerrilla factions are emerging to occupy territory abandoned by the FARC while clashes continue between heavily armed groups in areas of strategic importance for drug trafficking and illegal mining.<sup>76</sup>

53. The Commission echoes the concern about illegal groups filling the power vacuum left in those territories. Accordingly, it reiterates its recommendation that the necessary measures be adopted to dismantle the illegal armed groups that have emerged since the demobilization of paramilitary structures as well as, now, dissident FARC factions. It also urges that effective measures be adopted against such illegal armed groups and that institutions be strengthened in those areas. The IACHR underscores that, aside from legal and operational measures, combating such groups requires broad, sustainable strategies designed to alleviate poverty and strengthen the rule of law in the worst affected areas.<sup>77</sup> Therefore, the Commission calls on the State to take the necessary steps to strengthen institutions and protect the rights of individuals in the parts of the country worst hit by the conflict and those vacated by the FARC, in particular through prevention and protection measures for groups in situations of vulnerability. Thus, for example, Item 4 of the Final Agreement to End the Armed Conflict, which concerns the issue of illicit drugs, calls for the design and implementation of long-term strategies with a sustainable-development approach in areas where already victimized populations have been subjected to police violence in the context of the policy of forced eradication of illicit crops.<sup>78</sup>

54. In its observations on the draft of this report the State referred to the country's defense and security policy. It said that the policy is being implemented nationwide through the plans of the armed forces (*Plan Victoria*) and the National Police (*Comunidades Seguras y en Paz*).<sup>79</sup> It also said that the Program for Eradication of Illicit Crops through Glyphosate Spraying (PECAT) was approved in December 2016. It also said that Decree 896 of 2017 created the Comprehensive National Illicit Crop Substitution Program (PNIS) as a mechanism that offers sustainable alternatives to farming communities through illicit crop substitution, not simply reduction programs.<sup>80</sup>

<sup>74</sup> An example is the "Agamenón II" military and police campaign aimed at bringing to justice or neutralizing members of the Golfo Clan. Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>75</sup> OAS, Twenty-third Report of the Secretary General to the Permanent Council on the MAPP/OAS, October 2017. See also *Human Rights Watch* (HRW), [Colombia: Civilians Killed in Riverside Community](#), March 27, 2017. Office of the Ombudsperson, Note of August 29, 2017, p. 11.

<sup>76</sup> *Insight Crime*, [Colombia canta victoria antes de tiempo en disputa por antiguos territorios de FARC](#), March 9, 2017.

<sup>77</sup> Cf. IACHR, 2016 Annual Report, [Chapter V. Colombia](#), par. 37.

<sup>78</sup> International Drug Policy Consortium, [Global NGOs express concern about forced eradication in Colombia](#), August 18, 2017.

<sup>79</sup> The state referred to the Comprehensive Illicit Crop Substitution Plan and to the defense sector's Counter Narcotics Strategy (*Estrategia de Lucha Contra el Narcotráfico*). Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>80</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

55. According to the PNIS, as of November, approximately 135,000 smallholding families reported having 124,000 ha under coca. Those families have signed 63 collective agreements expressing their will to substitute illicit crops.<sup>81</sup> In that regard, Corporación Yira Castro considers that those figures are a reflection of the desire of hundreds of farming families to turn to legal crops, which right away imposes a fiscal challenge for the Government to meet the high demand in regions "that for many years have suffered total State neglect, a lack of infrastructure, education, and housing, and where the armed conflict has spread unchecked."<sup>82</sup> It said that the substitution policy is being implemented in tandem with forced eradication, even though families have letters of intent to substitute, creating a great deal of tension between smallholders and the security forces. It also said that eradicating those families' crops without any particular guarantees as regards housing, education, health care, and production projects ultimately creates humanitarian crises, since those households have no other source of income to meet their basic needs, leading them to move to other parts of the country or to return to growing coca; the latter course aggravates their situation by automatically disqualifying them from the PNIS and differential criminal treatment measures.<sup>83</sup>

56. It is worth highlighting that in October, the Commission condemned the events in which 7 smallholders were killed and another 20 people were injured in the context of a mobilization by farmers to protest against forced illicit crop eradication, noncompliance with item 4 of the Peace Agreement, and the PNIS. Locals blamed the violence on members of the National Police, while the Army and the police said that a holdout FARC group was responsible.<sup>84</sup>

57. In its report *Truth, Justice and Reparation* and its follow-up reports the IACHR has referred to the obligation of the State to adopt the measures necessary to prevent State agents from committing violations of human rights and international humanitarian law. In that regard, the Commission received information that residents of the district of Cuatro Bocas in the Municipality of San Martín, Cesar Department, are suffering persecution and constant abuse from the Mobile Anti-Riot Squad (ESMAD) owing to their activism against the fracking operations of an international energy company to extract oil in the area.<sup>85</sup> According to reports, on December 24, 2016, ESMAD personnel launched an arbitrary attack against a number of people while they were celebrating Christmas, in which buildings belonging to others were destroyed and several people were injured.<sup>86</sup>

58. With regard to the actions of ESMAD, the Commission reiterates its dismay and condemns the attack in Tumaco in October against the humanitarian mission and the journalists accompanying them. During the attack ESMAD and anti-drug police are said to have used stun grenades and gas. The humanitarian mission included individuals from the departmental government of Nariño, the Tumaco Municipal Human Rights Office, the Diocese of Tumaco, the UN Human Rights Office, the UN Verification Mission, and MAPP-OAS.<sup>87</sup>

59. The Commission has been informed about a series of reports of human rights violations allegedly committed by ESMAD (*infra* III.G and III.H.a and c).<sup>88</sup> In its report *Truth, Justice and Reparation* and

<sup>81</sup> Corporación Yira Castro, communication to the IACHR dated December 18, 2017.

<sup>82</sup> Corporación Yira Castro, communication to the IACHR dated December 18, 2017.

<sup>83</sup> Corporación Yira Castro, communication to the IACHR dated December 18, 2017.

<sup>84</sup> IACHR, Press Release No. 164/17, [IACHR Condemns the Killing of Colombian Farmers and a Community Leader and the Attack on a Humanitarian Mission and on Journalists](#), October 19, 2017.

<sup>85</sup> Self Bank, [Fracking. Una Nueva Técnica para Extraer Petróleo](#), September 15, 2016.

<sup>86</sup> *Acción Humana*, copy of the communication of December 25, 2016, sent to the president of the Republic, received December 29, 2016.

<sup>87</sup> IACHR, Press Release No. 164/17, [IACHR Condemns the Killing of Colombian Farmers and a Community Leader and the Attack on a Humanitarian Mission and on Journalists](#), October 19, 2017.

<sup>88</sup> IACHR, Press Release No. 76/17, [IACHR Expresses Concern over the Use of Force in Protests in Colombia](#), June 13, 2017; Comisión de Derechos Humanos de los Pueblos Indígenas, solicitud de Acción urgente, vulneración al derecho a la autonomía y erradicación forzada de cultivos de uso ilícito, March 31, 2017; ONIC, [Extralimitación de la fuerza pública deja heridos y consterna a los pobladores indígenas, campesinos y afrodescendientes de la costa pacífica nariñense](#), March 31, 2017; World Organisation against Torture



its follow-up reports, the IACHR has referred to the obligation of the State to intensify its efforts to ensure that the security forces respect the standards applicable to the use of force and to perform a serious, impartial, and effective investigation of all the cases that involve alleged violations of human rights and international humanitarian law (IHL) and has repeatedly recommended intensive training and education in human rights and IHL for state agents. The Commission urges the State to take immediate steps to ensure that this unit carries out its functions strictly within the boundaries of respect for human rights and to initiate appropriate criminal and disciplinary proceedings against those responsible for the alleged violations.

60. In its report *Truth, Justice and Reparation* and its follow-up reports, the IACHR has referred to the State's obligation to intensify its efforts to ensure that the security forces respect the standards applicable to the use of force and to conduct a serious, impartial, and effective investigation of all the cases that involve alleged violations of human rights and IHL. This year, the Commission notes as progress with regard to the prosecution of such cases and efforts to combat impunity that in April, 21 members of the security forces, including a general, were convicted of crimes against humanity against five young people who were "disappeared" in Soacha in 2007.<sup>89</sup> In that connection, it is worth highlighting that in passing judgment the judge said that "these were not combat killings [...]. The soldiers organized a criminal group. In each case there were repeated scenarios of forced disappearance and criminal conspiracy." She said that they were guilty of crimes against humanity.<sup>90</sup> On March 28 there were two additional reports alleging "false positives" in the Department of Soacha.<sup>91</sup>

61. As regards progress in investigations into human rights violations allegedly committed by public servants, the State reported that 58 convictions were handed down in 2016 under Law 600 of 2000 and that a total of 1,124 judgments were passed in 2017. As for progress in investigations of "false positives," in 2017 the State reported a total of 103 investigations in which the legal situation had been defined and 63 that resulted in convictions under Law 600 of 2000, as well as 12 indictments and 2 convictions under Law 906 of 2004.<sup>92</sup> The Commission urges the State to continue the investigations of human rights violations committed by agents of the State, in particular with regard to "false positives."

#### **b. Forced Disappearance, Disappearance, and the Missing Persons Unit (UBPD)**

62. In its report *Truth, Justice and Reparation* and its follow-up reports the IACHR has referred to the State's obligation to adopt the relevant measures to guarantee the effectiveness of the Urgent Search Mechanism (*Mecanismo de Búsqueda Urgente* – MBU) or any other mechanism that makes it possible to immediately recover disappeared persons, and to have a publicly accessible registry that is updated, unified, and vetted concerning persons who have been forcibly disappeared.

63. The Commission notes that in the year to September 26, 2017, the National Register of Missing Persons (*Registro Nacional de Desaparecidos* – RND) reported a total of 1,531 missing men and 1,152 missing women.<sup>93</sup> In August, the Institute of Forensic Medicine (*Instituto Nacional de Medicina Legal y Ciencias Forenses* – INML)—the national coroner's office—reported a historical total of 120,104 people who had gone missing, 20.9 percent of them during the armed conflict. Of that total, 6,119 had turned up dead and 29,343 reappeared alive; 84,642 people are still missing. As of August this year, 1,925 people had gone missing.<sup>94</sup> The

(OMCT), [Colombia: la falta de reparación integral a las víctimas: serio obstáculo para la erradicación de la tortura en Colombia](#), July 11, 2017.

<sup>89</sup> *Semana*, [Falsos positivos de Soacha: condenan a 21 militares a penas entre 37 y 52 años de prisión](#), April 3, 2017.

<sup>90</sup> *El Tiempo*, [Madres de Soacha piden que los "falsos positivos" no entren a la JEP](#), April 3, 2017.

<sup>91</sup> *Tele Sur*, [Denuncian dos nuevos casos de falsos positivos en Colombia](#), March 28, 2017.

<sup>92</sup> Republic of Colombia, Note S-GAIID-17-067759 of August 29, 2017.

<sup>93</sup> RND, *Consultas públicas*, [desaparecidos por año/género](#), September 26, 2017.

<sup>94</sup> INML figures published in *El Tiempo*, [La alarmante cifra de desaparecidos en Colombia](#), August 30, 2017.

ICRC, for its part, said that the whereabouts were unknown of a total of 85,900 people, for which reason it considered the problem of disappearances to be a priority for 2017.<sup>95</sup>

64. The State reported that as the administrator of the RND, the INML had implemented MBU follow-up fields in the SIRDEC system to enable users (more than 5,000 nationwide) to be immediately alerted when cases were activated and to monitor rapid search procedures for finding disappeared persons.<sup>96</sup> It said that as of July 31 there were 105 active MBUs.

65. The State also reported that Decree Law 589, passed on April 5, organizes the UBPD. It said that it is an independent and autonomous body of a humanitarian and extrajudicial nature. It directs, coordinates, and contributes to the implementation of humanitarian measures to search for and locate living persons presumed missing in the context and by reason of the armed conflict, and in the case of death, where possible, the recovery, identification, and dignified delivery of the remains. It is required to adopt a territorial, differential, and gender-based approach that responds to the particular characteristics of the victimization in each territory and population, with a particular focus on protection and priority assistance for women and children. With the participation of the victims and civil society, it adopts different courses of action to establish the whereabouts of women and girls presumed missing.<sup>97</sup>

66. As regards recovery and delivery of corpses, the State said that as of July 31, the FGN's Missing Persons Search, Identification, and Delivery Group had exhumed 322 cadavers, and that 47 delivery procedures involving 155 victims had been carried out.<sup>98</sup> It said that a differential approach was used in delivering bodies that took into account the uses and customs of the families and communities concerned.

67. The Office of the Ombudsperson has articulated a number of observations on UBPD's organizational law.<sup>99</sup> It said that steps taken to search for individuals should be independent of those to investigate the facts and determine responsibilities, which would ensure that the duty to search is carried out in equal conditions in all cases.<sup>100</sup> It also considers that for the UBPD to function properly, legislative measures should be adopted to give impetus to humanitarian efforts to alleviate the suffering of the relatives of victims of forced disappearance, as should measures in the area of access to information on gross violations of human rights and international humanitarian law, especially where the moratorium on intelligence files and data concerned.<sup>101</sup>

68. For its part, the Association of Relatives of Disappeared Detainees (*Asociación de Familiares de Detenidos Desaparecidos* – ASFADDES), reiterated this year that in Colombia it is not been possible "to establish the exact number of persons who have disappeared due to underreporting, because the prosecution unit classifies the conduct and it depends on the official concerned whether it is recognized or not." It underscored the importance of the extrajudicial and humanitarian nature of the UBPD and said that it hoped that the Unit "will be technical, adopt executive decisions, and devote itself exclusively to finding relatives, identifying them, and delivering them in a dignified way."<sup>102</sup>

69. The Commission values the creation and operationalization of the UBPD. The IACHR highlights the importance of this unit's work in relation to the recommendation on the recovery, identification,

<sup>95</sup> ICRC, [Humanitarian challenges 2017: ICRC Colombia Report](#).

<sup>96</sup> Missing Persons and Corpses Information System (*Sistema de Información Red de Desaparecidos y Cadáveres* – SIRDEC). Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>97</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>98</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>99</sup> Decree 588 of April 5, 2017.

<sup>100</sup> Arts. 2 and 29. Decree 589 of 2017. Office of the Ombudsperson, Note of August 29, 2017.

<sup>101</sup> Office of the Ombudsperson, Note of August 29, 2017.

<sup>102</sup> *Radio Paz*, [El daño nunca se supera: Asociación de Familiares de Detenidos Desaparecidos](#), July 4, 2017.

and delivery of the corpses of disappeared persons to their families, as well as the need for it to be provided with an appropriate budget for it to function effectively.

## B. Mechanisms of Protection

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

70. Since its report *Truth, Justice and Reparation*, the IACHR has highlighted the importance of the protection programs that Colombia has been implementing to guarantee the rights of persons at risk. In particular, the Commission has recognized the efforts made by the State to protect a large number of persons, the implementation of material measures of protection, and the creation of specific normative frameworks, among other actions that reflect a solid commitment by the State to protect persons who are at risk in Colombia. In 2017, the Commission has continued to monitor closely the protection program implemented primarily by the National Protection Unit (UNP) with the aim of contributing to the development of a comprehensive policy of protection for persons at risk from a human rights perspective.

71. This year, the Commission has given particular attention to monitoring the serious security situation of human rights defenders, the increase in attacks on them, and the protection provided by the State, the latter being examined in detail in another part of this report (*infra* III.I.h).

72. The UNP, which had a budget of more than 443,000 million Colombian pesos in 2017, implements protection programs, as well as supporting and advising subnational entities with responsibilities in the area of protection.<sup>103</sup> The UNP has reported that 85 percent of its protection arrangements are for human rights defenders.<sup>104</sup>

73. With regard to UNP activities, the State reported that between January 1 and March 30, the UNP carried out 1,361 risk assessments. Of those, it was determined that 533 cases were at "regular risk," 823 at "extraordinary risk," and 5 at "extreme risk." It also reported that as of July 2017, 6,067 individuals were being provided with protection measures to ensure their rights to life, safety, and physical integrity.<sup>105</sup> In addition, the State reported that the Protection and Assistance Program of the FGN had taken on a total of 525 cases as of July 31, 2017, which equated to a total of 1,654 individuals under protection. It said that between January 1 and July 31, the program admitted a total of 230 cases (819 beneficiaries). Of the 230 cases admitted, 134 have left the program through waivers, termination of obligations, or exclusions.<sup>106</sup>

74. The Office of the Ombudsperson, for its part, reported that for reasons to do with the UNP's budget, the representative of victims and displaced persons had ceased to attend meetings of the Committee for Risk Assessment and Recommendation of Protection Measures (CERREM), which was troubling since the

<sup>103</sup> UNP, Resolution 1 of 2017, dated January 2, 2017.

<sup>104</sup> Government of Colombia-IACHR, Training workshop on promotion and guarantees for the work of human rights defenders in Colombia, Statement by the director of the UNP, February 21, 2017.

<sup>105</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>106</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

effective participation of all representatives of groups requiring protection was not guaranteed.<sup>107</sup> It also said that, in spite of the training provided, when assessing risk officials did not take into account the rulings and judgments of the Constitutional Court or the legal framework. It said that a number of risk studies, for example, failed to consider “presumption of constitutional risk” for vulnerable groups, the probability of re-victimization, or the good-faith or well-founded-fear principles.<sup>108</sup>

75. The Office of the Ombudsperson also reported that the work that the UNP did in participation with the community was insufficient when it came to implementing protection measures, due to weaknesses in the area of follow-up and excessive delays.<sup>109</sup> It said that it had been appealing to authorities to adopt urgent protection measures for community leaders, human rights defenders and other protected individuals, as well as urging the FGN to examine the feasibility of assigning investigations of acts against rights defenders, among others, to the recently created Special Investigation Unit.<sup>110</sup>

76. In the course of its follow-up on precautionary measures, the IACHR has continued to receive information about significant delays in risk assessment procedures and the implementation of material protection measures.<sup>111</sup> In particular, information has been received on the excessive bureaucratization of the administrative procedures that the UNP is implementing, including deadlines that applicants consider unreasonable for submitting information and failure to communicate the results of risk assessments.<sup>112</sup>

77. Another issue of concern reported by a number of human rights defender organizations is the unwarranted delay in strengthening the protective measures in urgent situations or when the need arises to travel to areas in the country’s interior.<sup>113</sup> The Commission was told that beneficiaries either travel on their own to places of risk, or are unable to travel when they need to.<sup>114</sup> For example, the Inter-Church Justice and Peace Commission reported that Yomaira Mendoza, a beneficiary, was unable to travel to her farm, which is her place of work, owing to the lack of “suitable and effective measures” for her protection.<sup>115</sup> The Commission considers it particularly important that the State redouble its efforts to ensure effective protection for beneficiaries of the protection mechanism.

78. In the context of working meetings on precautionary measures, civil society organizations that work with women’s groups, indigenous peoples, and Afro-descendants have continuously noted the need to reinforce the application of the differential approach in the different procedures carried out by the UNP.<sup>116</sup> Reported examples cited of shortcomings, include the following: (i) risk studies do not take into consideration

<sup>107</sup> Office of the Ombudsperson, Note of August 29, 2017.

<sup>108</sup> Statement of the Ombudsperson of Colombia, [Hay un fenómeno criminal contra la paz](#), April 1, 2017. Office of the Ombudsperson, Note of August 29, 2017.

<sup>109</sup> Office of the Ombudsperson, Note of August 29, 2017.

<sup>110</sup> Special investigation unit against criminal organizations and conduct that threaten or attack rights defenders, social movements, political movements, or persons involved in the implementation of the peace agreements and peace-building efforts. Office of the Ombudsperson, Note of August 29, 2017.

<sup>111</sup> IACHR, Information received in the follow-up on Precautionary Measure PM-658-16, March 9, 2017; Information received in the context of Precautionary Measure PM-140-14, September 7, 2017. With respect to the 40 members of the Embera Chamí indigenous people who are beneficiaries of precautionary measures granted by the IACHR, it should be mentioned that the Commission received information that the UNP had withdrawn vehicle and bodyguard protection arrangements for a group of indigenous leaders, among them several of the beneficiaries. It was also reported that no progress had been made in agreeing on and implementing an effective collective protection program that included the “indigenous guard” (*guardia indígena*). Precautionary Measure PM-265-02, Members of the Embera Chamí Indigenous People, Colombia, October 26, 2017.

<sup>112</sup> IACHR, Information received in the context of Precautionary Measure PM-658-16 on July 5, 2017.

<sup>113</sup> IACHR, Information received in the context of Precautionary Measure PM-113-14 on April 7, 2017.

<sup>114</sup> IACHR, Information received in the context of Precautionary Measure PM-113-14 on April 7, 2017.

<sup>115</sup> IACHR, Information received in the context of Precautionary Measure PM-140-14 on September 7, 2017.

<sup>116</sup> Working meetings on precautionary measures held in 2017, in relation to the following matters: Erlendy Cuero Bravo (PM-658-16); Pregnant and Nursing Women of the Wayúu Indigenous Community (PM-51-15); Members of CAVIDA (PM-70-99); and X and Her Two Children (PM-141-10), among others.

different contexts, for instance, with respect to the situation of displaced women;<sup>117</sup> (ii) there is no collective risk assessment that considers the immediate families of human rights defenders or the organizations to which they belong;<sup>118</sup> (iii) no consideration is given to the need for measures that are culturally appropriate and consistent with needs that indigenous communities consider adequate on their lands, such as, for example, provision of protective elements for indigenous guards on "a collective protection path," as well as an absence of collective protection measures,<sup>119</sup> among others. The Commission has also received reports about failure to implement precautionary measures or scaling back of security arrangements for beneficiaries, particularly in relation to protection of human rights defenders.<sup>120</sup>

79. In its observations on the draft of this report, the State considered that protection measures should be consistent with the risk assessment and that to grant additional protection measures for each threat exceeds the criteria of reasonableness, especially when the situation of risk remains the same and the measures are suitable to address the situation.<sup>121</sup>

80. Mindful of these considerations, the Commission urges the State to redouble its efforts to implement differential approaches in light of the principle of consensus and context analysis. In that regard, the IACHR recalls that the need to implement differential approaches in a holistic way should be addressed taking into consideration the needs of each group; their history of discrimination, marginalization, and/or exclusion; the possible impact of the dynamics of the conflict on particular situations of risk; and factors related to the location of different communities in the interior or rural areas of Colombia.

81. In that connection, the Commission reiterates that a gender perspective and differential assistance also entails taking account of the special risk of violence in all its manifestations, including physical, psychological, sexual, economic, and spiritual, among others. That perspective also implies considering the specific risks to persons who have diverse or non-normative sexual orientations and gender identities and expressions, or whose bodies vary from the standard female or male body types. An intersectional and intercultural perspective should also be incorporated that takes into consideration the possible aggravation and frequency of attacks due to factors such as race, ethnicity, age, or economic position.<sup>122</sup> Such a perspective and assistance should predominate in all the State's actions

82. On the differential approach the State referred to Decree No. 2078 of 2017, which implemented the collective protection path under the Prevention and Protection Program of the Ministry of the Interior and the National Protection Unit. It said that, although the collective protection path mechanism was already being developed under Resolution No. 1085 of 2015, the decree strengthened the elements whereby not only UNP's protection measures, but also those offered by other entities, would ensure the relevant differential approach. It also mentioned a variety of measures implemented, such as electricity generation plants, river transportation, horses and asses to ensure mobility in rural areas, supplies to the indigenous guard, etc., which, it considered, indicate that it takes into account the need for culturally appropriate measures.<sup>123</sup>

<sup>117</sup> IACHR, Information received in the context of Precautionary Measure PM-658-16 on July 5, 2017.

<sup>118</sup> IACHR, Information received in the context of Precautionary Measure PM-658-16 on July 13, 2017.

<sup>119</sup> IACHR, Information received in the context of Precautionary Measure PM-180-01 on September 2, 2017.

<sup>120</sup> For example, in the case of Precautionary Measure PM-658/16, Erlendy Cuero Bravo, an Afro-descendent human rights defender, for whom measures were only implemented more than one year after the IACHR granted them (the beneficiary is the niece of the Afro-descendent leader Bernardo Cuero, who was murdered in June 2017), and Precautionary Measure PM-319-09. See UNP, Resolution No. 0935 of 2017, regarding Patricia Guerrero, a human rights defender.

<sup>121</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>122</sup> Cf. IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, par. 199.

<sup>123</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.



83. In relation to fulfillment of the recommendation on efforts to investigate acts that prompt individuals to enter and remain in protection programs, the State also referred to FGN Directive No. 0002 issued in November on guidelines for investigating crimes against human rights defenders with IACHR cooperation. The State considered that the information on implementation of the recommendations with which this section is concerned was provided to the IACHR in the regular reports corresponding to each precautionary measure, thematic hearings, working meetings, and requests for information, and that the annual report was not the appropriate space for transmitting such data.<sup>124</sup>

84. The IACHR is perturbed that on this occasion, the State has not provided detailed and consistent follow-up information on concrete progress in the investigations relating to the large number of people under the protection mechanism, which includes beneficiaries of precautionary measures granted by the Commission. The Commission considers such progress essential as an integral part of a State policy to prevent such acts.

85. The Commission finds that the failure to investigate acts that lead to protection measures results in the beneficiaries' continued exposure to risk and creates a snowball effect whereby the number of beneficiaries in the protection program is constantly growing. In the follow-up on the precautionary measures that it has granted, the IACHR has continued to receive reports of a lack of progress in investigations of the facts that led the precautionary measures to be granted in the first place.<sup>125</sup>

### C. Impunity and Obstacles in the Area of Justice

- Redouble efforts to overcome the grave situation of impunity in cases of serious human rights violations and breaches of international humanitarian law.
- 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.
- 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.
- 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.

86. The Commission has monitored the serious situation of impunity surrounding the gross human rights violations and breaches of international humanitarian law committed by all the conflict's actors in Colombia.<sup>126</sup> According to this year's reports, the levels of impunity have remained high. According to Somos Defensores, impunity in relation to attacks on human rights defenders this year is at 87%.<sup>127</sup> In addition, it was reported that the rate of judgments issued in cases of sexual violence was low.<sup>128</sup>

<sup>124</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>125</sup> IACHR, Information received on October 2, 2017, in the context of Precautionary Measure PM-180-01; Information received on August 2, 2017 in the context of Precautionary Measure PM-265-02.

<sup>126</sup> IACHR, 2016 Annual Report, [Ch. IV Colombia](#).

<sup>127</sup> Figures provided by Somos Defensores published in *El País*, [87% de homicidios de defensores de DDHH está en impunidad, dice ONG](#), September 13, 2017.

<sup>128</sup> IACHR, Hearing on [Special Jurisdiction for Peace and Third-Party Responsibility in Colombia](#), July 7, 2017, and hearing on [Investigations of Serious Human Rights Violations and implementation of the Peace Agreement in Colombia](#), October 23, 2017. CAJAR, CPDH, CCEEUU, CJYC, Request for Hearing, August 3, 2017. According to the Institute of Forensic Medicine, in 2016 there were more than 15,000 reported cases of sexual violence against women. While there were increases across several age groups, there was a "very significant" rise in girls 10 to 14 years old, with 574 more cases than in 2015. Impunity in 2016 reached 97 percent. *El Tiempo*, [El proceso judicial puede ser una segunda violación](#), May 22, 2017. At the hearing on July 5, 2017, on the situation of human rights of persons affected by the armed conflict, civil society organizations presented a dossier of 200 cases of Afro-Colombian women who had been victims of sexual violence and needed to be guaranteed care with a differential approach that took into account ethnic and gender considerations.

87. As regards the impunity surrounding crimes committed during the armed conflict, at the hearing on State anti-impunity obligations and the Special Jurisdiction for Peace (JEP), civil society organizations highlighted concerns regarding the Comprehensive System and the fight against impunity in cases of gross human rights violations and war crimes; and with respect to the victims' rights. They also mentioned high rates of impunity for violations committed by enterprises and business owners. In addition they said that the legislative act passed on differential criminal treatment for agents of the state omitted any reference to international human rights law and international criminal law in relation to command responsibility; and that the concurrent circumstances that the required made it impossible to establish such responsibility.<sup>129</sup>

88. In July, the Commission held a hearing on the JEP and third-party responsibility in Colombia at which organizations set out their concerns with respect to the Amnesty Law and Legislative Act No. 01 of 2017 on implementation of the Peace Agreement.<sup>130</sup> They considered those laws to be limiting since third parties who financed gross violations committed in the armed conflict could be excluded from prosecution in the JEP or be given special treatment if their activities and determinative participation was not proven. The State, for its part, said that the victims were the primary focus of the Peace Agreement and that the JEP sets out the ground rules for identifying, prosecuting, and punishing civilian third parties who played an active and determinative part in the most heinous crimes subject to mandatory jurisdiction, as well as for determining the legal situation of third parties with any responsibility in crimes who are willing to acknowledge their participation, whether direct or indirect. It also said that the JEP aims to rectify the impunity surrounding crimes by third parties.<sup>131</sup> At that hearing, civil society organizations also said that 15,299 attested copies were ordered issued in relation to different actors who may have participated in the crimes but on whom no follow-up had been done.<sup>132</sup> They also put forward observations about the participation of victims in the JEP that are addressed in section III.D.a.

89. In follow-up to this hearing, the IACHR sent a request for information to the State about assurances that third parties linked to crimes committed during the armed conflict would be effectively investigated, including those who played an indirect part; and about the results of the processing of the attested copies issued in the justice and peace jurisdiction, among other matters.<sup>133</sup> The State provided a detailed reply in which it said that the Peace Agreement provides that the FGN should present to the JEP an inventory of the attested copies referred to the regular courts under the Justice and Peace Law. It said that in keeping with that provision, the FGN was working on the consolidation of all investigations originating from the attested copies thus issued, including all other proceedings in the regular courts in which links were being investigated between civilian third parties and paramilitary structures that had emerged from other sources (reported complaints, ex officio). It said that the database contained a total record of 16,046 attested copies issued, of which approximately 7,000 corresponded to cases involving third parties.<sup>134</sup> It also said that the FGN's mission directorates reported a total of 7,842 proceedings that were initiated as a result of attested copies issued. Of those, approximately 2,873 resulted from attested copies issued against civilian third parties mentioned in voluntary testimony proceedings as having alleged links to paramilitary groups. The other 4,969

<sup>129</sup> Legislative Act No. 01 of April 4, 2017, by which a title of transitory articles is created in the Constitution to end the armed conflict and build a stable and lasting peace and further provisions are added. Creation of the Comprehensive System. IACHR, Hearing on [State Anti-Impunity Obligations and Special Justice for Peace in Colombia](#), March 21, 2017.

<sup>130</sup> Legislative Act No. 01 of April 4, 2017.

<sup>131</sup> IACHR, Hearing on [Special Jurisdiction for Peace and Third-Party Responsibility in Colombia](#), July 6, 2017.

<sup>132</sup> Attested copies are copies of procedural records sent to another judge or tribunal for examination and verification, and, as appropriate, to open investigations or initiate such procedures that might prove necessary as a result.

<sup>133</sup> Request for information sent to the State on July 31, 2017, under Article 41 of the American Convention on Human Rights.

<sup>134</sup> The State explained that the total number of attested copies issued does not match the total number of criminal proceedings that the FGN is pursuing in relation to such acts. That is, the fact that 16,046 attested copies were issued in the Justice and Peace jurisdiction does not mean that the FGN is pursuing 16,046 criminal proceedings, since in many cases the attested copies reinvigorated investigations that the FGN had already opened, while in other instances an applicant may have provided a statement on the same act, giving rise to multiple issuances of attested copies that were later joined in a single proceeding. In other words, several attested copies may have been issued in a given investigation. Republic of Colombia, Note S-GAIID-17-066456 of August 24, 2017.

are proceedings that mention former members of paramilitary structures that have not demobilized or Justice and Peace Law applicants, among others.<sup>135</sup>

90. As regards assurances that third parties linked to crimes committed during the conflict will be effectively investigated, the State reiterated that the JEP has jurisdiction over all crimes perpetrated in the armed conflict, including those committed by individuals who did not participate directly in the conflict (indirect participation), especially those who played a determinative or active part (that justifies the punishment of those third parties) in the most heinous and infamous crimes. The State considers this an important qualitative leap forward with respect to the Justice and Peace process. The State said that the judges on the Judicial Panel for Acknowledgment (*Sala de Reconocimiento*) of the JEP will determine in each case whether or not a contribution to the commission of a criminal offense, such as financing, amounts to determinative or active participation in an international crime. Each case will be treated separately under criminal law. If the JEP finds that participation in a crime was not determinative or active, it may adopt the treatment under criminal law that it deems appropriate, which may include waiver of criminal prosecution, provided that the beneficiary of such treatment under criminal law contributes to the provision of satisfaction for the victims' rights.<sup>136</sup>

91. The Constitutional Court, for its part, ruled in November that third parties could only come before the JEP voluntarily.<sup>137</sup> It also stated that State agents who did not belong to the security forces were subject to the same rules as third-party civilians, for which reason their access to the JEP was also voluntary.<sup>138</sup> That decision drew criticism from different quarters on the grounds that it departed from what was established in the Peace Agreement and that it would allow certain crimes to go unpunished because of the lack of progress in the regular courts on the cases concerned.<sup>139</sup>

92. On the subject of Legislative Act No. 01 of 2017, the Office of the Ombudsperson considered that the criteria established for determining the responsibility of members of the security forces—in relation to enforcement of domestic and international law in specific cases and how command responsibility should be determined—violated the State's obligation to respect, protect, and ensure human rights, particularly the human rights of victims, and ignore the principle of judicial independence.<sup>140</sup>

93. In addition, civil society organizations that took part in the March hearing also specifically said that the Act omitted any reference to international human rights law in relation to the determination of command responsibility (Transitory Article 23), failed to consider that international human rights law and IHL are complementary and overlapping, and established that IHL shall be used in special circumstances for making such a determination, as shall operational rules, the latter criterion being neither a regulatory provision nor recognized in international law. They also said that there was no justification for basing the legal status of State agents (Transitory Article 21) on the Colombian Criminal Code as it was in force at the time of the crimes; that made it impossible to establish responsibilities for conduct that Colombian law did not recognize as a crime at the time of its commission, including forced disappearance (criminalized in 2000). As a result, in cases like that of the persons disappeared from the Palace of Justice, the order to provide reparations and to investigate and punish the State agents guilty of those acts would go unfulfilled.<sup>141</sup>

<sup>135</sup> Republic of Colombia, Note S-GAIID-17-066456 of August 24, 2017, in response to the request for information from the IACHR in follow-up to the hearing on the JEP and third-party responsibility.

<sup>136</sup> Republic of Colombia, Note S-GAIID-17-066456 of August 24, 2017.

<sup>137</sup> Constitutional Court, Communiqué of November 14, 2017, Review of Legislative Act No. 01 2017.

<sup>138</sup> Constitutional Court, Communiqué of November 14, 2017, Review of Legislative Act No. 01 2017.

<sup>139</sup> See *Semana*, [Los 10 puntos con los que la corte puede haber salvado al JEP](#), November 15, 2017; *El País*, [La "montaña rusa" de la paz: logros y retos del primer año de la firma de los acuerdos](#), November 12, 2017.

<sup>140</sup> Transitory Article 24. [Legislative Act 1 of 2017](#). Office of the Ombudsperson, Note of August 29, 2017.

<sup>141</sup> IACHR, Hearing on [State Anti-Impunity Obligations and Special Justice for Peace in Colombia](#), March 21, 2017.

94. They also said that concurrent conditions were established for determining the effective command and control of the military or police superior that made it impossible to establish command responsibility, which would allow agents of the State responsible for extrajudicial executions (“false positives”) between 2002 and 2010 not to be held to account for crimes committed by troops under their command.<sup>142</sup> In that same connection, the Office of the Prosecutor of the International Criminal Court considered: “The definition of command responsibility included in transitory article 24 of the Legislative Act 01 departs from customary international law and may therefore frustrate Colombia’s efforts to meet its obligations to investigate and prosecute international crimes.”<sup>143</sup>

95. In its observations on the draft of this report, the State said that the above legislative act would be subject to the appropriate regulations in the Statutory Law on the JEP and that, as yet, it was not a text that had defined the legal minutiae that would be taken into account for the purposes of determining command responsibility. However, it said that this preliminary development envisaged the application of treaty-based and customary IHL standards for determining command responsibility in each individual case.<sup>144</sup>

96. The State reported that in 2016 and 2017, progress had also been made in investigations into cases of human rights violations committed by the FARC, ELN, and FARC dissidents. It said that 233 members of the FARC, ELN, and FARC dissident groups were sentenced in 2016. The State said that as of August 2017, the impetus given to the processing of cases involving the FARC, ELN, and FARC dissidents resulted in 294 people placed under investigation, 72 prosecuted, and 69 sentenced. As regards members of criminal organizations, it said that 937 people were under investigation, 800 were being prosecuted, and 677 had been sentenced.<sup>145</sup>

97. During the hearing in October 2017 on investigations of serious human rights violations and implementation of the Peace Agreement in Colombia, the organizations taking part said that members of insurgent groups and agents of the state involved in human rights violations associated with the armed conflict were being treated disparately when it came to identifying those responsible, which they considered could result in difficulties in enabling victims to receive reparation. They noted the widespread impunity for perpetrators of crimes committed during the armed conflict, in particular with respect to paramilitary groups.<sup>146</sup> They noted that there were no generals among the 787 members of the security forces who had been convicted (*infra* III.H.d). The organizations said that “the State’s weak appetite for combating paramilitarism” constituted a threat to the fulfillment of the Peace Agreements.<sup>147</sup> They also noted that the Congress of the Republic had accepted the majority of observations made by the Attorney General on Legislative Act No. 01 of 2017 and the Amnesty Law, granting him powers that were not envisaged in the Peace Agreement.<sup>148</sup>

98. The State, for its part, reiterated that the peace policy was comprehensive and included all actors in an independent and impartial way. It reported that persons associated with the FARC were formally

<sup>142</sup> IACHR, Hearing on [State Anti-Impunity Obligations and Special Justice for Peace in Colombia](#), March 21, 2017.

<sup>143</sup> ICC, [Amicus Curiae Brief from the Prosecutor of the International Criminal Court on the JEP](#), October 18, 2017.

<sup>144</sup> Transitory Article 24 of [Legislative Act No. 01 of 2017](#), Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>145</sup> Republic of Colombia, Note S-GAIIID-17-066456 of August 24, 2017.

<sup>146</sup> They said that of a total of 450 cases of sexual violence, 75 percent were under investigation, 16.2 percent had no investigation reported by the FGN and only 1.9 percent resulted in a conviction. IACHR, Hearing on [Investigations of Serious Human Rights Violations and Implementation of the Peace Agreement in Colombia](#), October 23, 2017. CAJAR, CPDH, CCEEUU, CJYC, Request for Hearing, August 3, 2017.

<sup>147</sup> IACHR, Hearing on [Investigations of Serious Human Rights Violations and Implementation of the Peace Agreement in Colombia](#), October 23, 2017. CAJAR, CPDH, CCEEUU, CJYC, Request for Hearing, August 3, 2017.

<sup>148</sup> IACHR, Hearing on [Investigations of Serious Human Rights Violations and Implementation of the Peace Agreement in Colombia](#), October 23, 2017. *Comité Permanente de Defensa de los Derechos Humanos, Solicitud de Audiencia Temática sobre la Situación de Defensores de Derechos Humanos y Líderes Sociales en Colombia*, August 3, 2017; *El Nuevo Siglo, Congreso Acoge 3 Peticiones del Fiscal sobre JEP*, January 27, 2017.

charged in 45.2 percent of the cases analyzed, and that members of the security forces were formally charged with crimes in 71.3 percent of cases. It said that 1,091 State agents and 459 members of the FARC had been convicted of crimes connected with the conflict. In addition, it reported that four lieutenant colonels were convicted in 2015. In addition, it argued that when one compared the number of people convicted in 2015 (5,334) with the number in 2017 (7,175), it showed that there had been a significant rise. Therefore, the State said that it was not possible to speak about inactivity on the part of the FGN.<sup>149</sup>

99. At the hearing on guarantees of non-repetition in the Peace Agreement in Colombia before the IACHR in March, the organizations taking part considered that the factors contributing to the lack of guarantees of non-repetition in the Agreement are the persistence of paramilitarism and the need for a reform of the State's security policy in order to make it less hawkish and to weed out public officials implicated in human rights violations, paramilitarism, and corruption.<sup>150</sup>

100. It is also worth noting that Colombia received a score of 37 out of 100 in Transparency International's Corruption Perceptions Index published in January 2017. The 2016 report said that the Colombian public sector was regarded as one of the most corruption-prone and ranked Colombia 83rd out of a total of 167 countries.<sup>151</sup> In March, the Attorney General announced that prosecutors were being investigated in connection with allegations of government bribery and alleged illegal donations from the Odebrecht regional web of corruption to the presidential campaigns of president Juan Manuel Santos and his rival, Oscar Iván Zuluaga. In addition, the Indictment Commission (*Comisión de Acusación*) of the Supreme Court of Justice (CSJ) and the FGN have opened corruption probes into former CSJ justices and the Anticorruption Prosecutor.<sup>152</sup> The IACHR has underscored that the fight against corruption is inextricably linked to the exercise and enjoyment of human rights.<sup>153</sup> In that connection, the Commission urges the State to be diligent in moving corruption investigations forward and not to allow those cases to go unpunished.

101. The Commission values the establishment of the JEP as an effort to overcome the grave situation of impunity in cases of gross violations of human rights and breaches of IHL, and it will continue to follow progress in its implementation in the Comprehensive System and its integration with the country's other jurisdictions in investigating and punishing gross violations of human rights and breaches of IHL. The Commission will also continue to monitor the assurances given for investigating third parties linked to crimes committed in the context of the armed conflict, the impetus given by the Colombian justice administration to processing the above-mentioned attested copies, and the results of efforts to combat corruption.

102. In addition, the IACHR recognizes the judgment adopted by the Council of State on November 15, 2017, in which it annulled the disciplinary proceeding instituted by the Internal Affairs Office (*Procuraduría General de la Nación* – PGN) against Gustavo Francisco Petro Urrego, erstwhile Mayor of Bogotá, which resulted in his removal and disqualification from public office for 15 years. The Council of State took into consideration the recommendations put forward by the IACHR in its report on merits adopted on October 25, 2017, on this matter.<sup>154</sup> The IACHR granted Gustavo Petro precautionary measures on March 18, 2014, recommending the immediate suspension of the effects of the decision issued and ratified by the PGN on

<sup>149</sup> IACHR, Hearing on [Investigations of Serious Human Rights Violations and Implementation of the Peace Agreement in Colombia](#), October 23, 2017.

<sup>150</sup> IACHR, [Guarantees of Non-Repetition in the Peace Accord in Colombia](#), March 21, 2017.

<sup>151</sup> Transparency International, [Corruption Perceptions Index 2016: Vicious Circle of Corruption and Inequality Must Be Tackled](#), January 25, 2017. Transparencia por Colombia, [Índice de percepción de la corrupción 2016: sin castigo, la corrupción se mantendrá. Investigación y sanción efectiva se hace urgente](#), January 25, 2017; El Tiempo, [Colombia es percibido como un país con un alto índice de corrupción](#), January 25, 2017.

<sup>152</sup> *Caracol*, [Paso a paso del escandaloso caso de corrupción en la Corte Suprema de Justicia](#), August 16, 2017; *El País*, [Claves para entender el escándalo de corrupción que sacude a la Corte Suprema](#), August 17, 2017; *El País*, [Los enredos del fiscal anticorrupción que cayó por corrupto](#), July 2, 2017.

<sup>153</sup> IACHR, [Resolution 1/17](#), Human Rights and the Fight against Impunity and Corruption, September 12, 2017.

<sup>154</sup> IACHR, Report on Merits No. 130/17, Case 13.044, *Gustavo Francisco Petro Urrego* (Colombia), October 25, 2017.



January 13, 2014, so as to ensure his enjoyment of his right to participate in government and to allow him to serve out the term for which he was elected as mayor of the city of Bogotá.

#### **D. Transitional Justice Applied to an Ongoing Armed Conflict**

- 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.
- 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.

103. The report Truth, Justice and Reparation and the follow-up reports have taken into account the normative mechanisms of transitional justice designed by the State—the Justice and Peace Jurisdiction and, since 2016, the JEP established by the Peace Agreement—in relation to the general standards on judicial guarantees and judicial protection, the considerations on their application bearing in mind international human rights law and IHL, which are considered complementary. This analysis looks at the international obligations of the State in that regard taking into account the consistent case-law of the organs of protection of the inter-American system and the normative points of reference of IHL applicable to it.

104. In that framework, the Commission has reiterated that: (i) overcoming impunity is essential for attaining justice and preventing the repetition of human rights violations; (ii) in any framework for transitional justice one component for establishing a lasting peace is that it be applied as a system of incentives useful for attaining truth, justice, and reparation for the victims, and that in designing normative mechanisms the international obligations of the State for guaranteeing these components should be fully observed, in their application and scope; and (iii) it is essential, if the peace accords and the transitional justice provisions are to facilitate the transition of Colombian society towards a stable and lasting peace, that they be developed in harmony with those obligations, and that they offer real possibilities of implementation.<sup>155</sup> The IACHR also notes that the diligent and effective implementation of a transitional justice framework in line with human rights standards can produce measures for preventing and averting the recurrence of acts of violence.

##### **a. Special Jurisdiction for Peace**

105. The Commission has monitored the progress made in establishing the JEP as a judicial component of the Comprehensive System that comprises 18 judges in three judicial panels: for Acknowledgement of Truth, Responsibility and Determination of Facts and Conduct; for Determination of Legal Situations; and for Amnesty and Pardon. The duration of its mandate will be a maximum of 20 years.<sup>156</sup>

106. The Peace Agreement establishes a time limit of two to three years for the FGN, the military criminal courts, the PGN, the Comptroller General, and the Congress to submit briefs to the JEP on ongoing investigations of conflict-related crimes. Those entities must ensure that their briefs are of high quality and exhaustive. That will make it easier for the JEP to act promptly in investigations, prosecutions, apportionment of responsibility, and determination of the truth.<sup>157</sup>

107. With respect to the JEP, the State highlighted its preeminence over other jurisdictions, its composition, the penalties it will impose, and the admissibility of actions for relief against the decisions of its judicial panels and sections, and mechanisms for resolving potential conflicts of jurisdiction.<sup>158</sup> It said that the

<sup>155</sup> IACHR, 2015 Annual Report, Chapter V, Colombia, March 17, 2016, par. 20.

<sup>156</sup> On the duration of the mandate, see Constitutional Court, Communiqué of November 14, 2017, Review of Legislative Act No. 01 2017.

<sup>157</sup> Office of the President of the Republic, [Decree Law 898](#), May 29, 2017.

<sup>158</sup> Republic of Colombia, Note S-GAII-17-067759 of August 29, 2017.

JEP will be governed by three basic bodies of rules: (i) a statutory law, which will govern, *inter alia*, the principles, organization, powers, proceedings, victim participation, and penalties; (ii) its Procedural Code, which will be drafted by its members and submitted to Congress for adoption in accordance to law; and (iii) its Rules of Procedure.

108. The Statutory Law was being debated in Congress as of the adoption of this report. The State said that the bill being discussed in the Congress adheres faithfully to the Peace Agreement, with the result that a high percentage of it coincides exactly with what was agreed on in Havana.<sup>159</sup>

109. In that regard, in November, during a reading of the proposed Statutory Law of the JEP, the Senate passed a provision banning from posts in the JEP "those who have brought or represented actions against the State involving claims relating to human rights, international humanitarian law, or international criminal law, or who belong or have belonged to organizations or entities that have exercised such representation [and] those who have brought actions before international human rights systems or tribunals or litigated against the Colombian State before such bodies, or who belong or have belonged to organizations or entities that have engaged in such activity." The adoption of that provision has been strongly questioned by civil society, which considers it unconstitutional, discriminatory, a constraint on defense of human rights, and a limitation on the human rights-based approach and the victim-centric perspective.<sup>160</sup> The Commission is of the view that if the Statutory Law is approved with such a limitation, it could prove an obstacle to the defense of human rights and the rights of victims in the framework of the JEP.

110. The Amnesty Law governs amnesties and pardons for the political crimes of rebellion, sedition, violent rioting, conspiracy, and seduction, usurpation, and unlawful retention of command, and related crimes.<sup>161</sup> Neither amnesty nor pardons, nor equivalent benefits, shall be granted for crimes against humanity, genocide, serious war crimes, hostage taking or other serious deprivation of liberty, torture, extrajudicial executions, forced disappearance, rape and other forms of sexual violence, child abduction, forced displacement, and recruitment of minors, as provided for in the Rome Statute. Neither amnesty nor pardons shall be granted for common crimes not committed in the context of and by reason of rebellion or which have been motivated by the opportunity of personal gain or benefit for a third party. The difference between the penalties depends on willingness to recognize the truth and responsibility. At all events, the law provides that any special treatment shall be contingent on the contribution to the satisfaction of the rights of the victims.<sup>162</sup>

111. In that connection, the Constitutional Court ruled in November that noncompliance on the part of former combatants with any of the conditions or penalties imposed by the JEP would result in the loss of special treatment, benefits, waivers, rights, and guarantees, as applicable. It said that such compliance will

<sup>159</sup> Republic of Colombia, Note S-GAIID-17-067759 of August 29, 2017.

<sup>160</sup> Signed by ABCPAZ; Alianza de organizaciones sociales y afines; Cinco Claves para un Tratamiento Diferenciado de la Violencia Sexual en la Paz; Congreso de los Pueblos; Coordinación Colombia Europa Estados Unidos (CCEEU); Colectivo de Mujeres, Paz y Seguridad; Conferencia Nacional de Organizaciones Afrocolombianas (CNOA); Coordinación Regional del Pacífico; Cumbre Agraria Campesina Étnica y Popular; Diálogo Intereclesial por la Paz DIPAZ; Foro Internacional de Víctimas; Colectiva de Mujeres Refugiadas, Exiliadas y Migradas; Grupo de Trabajo Género en la Paz (GPAZ); Grupo Ecuémico de Mujeres constructoras de Paz GEMPAZ; Movimiento de Víctimas de Crímenes de Estado (MOVICE); Organización Nacional Indígena de Colombia (ONIC); Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo; Punto de Encuentro por la Paz y la Democracia; Red de Comunidades Construyendo Paz en los Territorios (CONPAZ); Red Nacional de Mujeres; Red de programas de desarrollo y paz (REDPRODEPAZ); Red Universitaria por la Paz (Redunipaz) nodo centro; Ruta Pacífica de las Mujeres; and Red de Iniciativas y Comunidades de Paz desde la Base. CEEEU, [El compromiso con los derechos humanos es una cualidad, no una inhabilidad](#), November 17, 2017.

<sup>161</sup> Related offenses are: (a) those offenses related specifically to the development of the rebellion committed on the occasion of the armed conflict, such as death in combat consistent with international humanitarian law and the capture of combatants during military operations; or (b) those crimes in which the state and its current constitutional system are the victims of the conduct; or (c) conduct aimed at facilitating, supporting, financing, or concealing the development of the rebellion. Ministry of Justice and Law, [ABC Ley de Amnistía, Indulto y Tratamientos Especiales](#).

<sup>162</sup> Ministry of Justice and Law, [ABC Ley de Amnistía, Indulto y Tratamientos Especiales](#).

be rigorously verified by the JEP on a case-by-case basis. It also ruled that if the JEP finds that conditions with respect to permanent crimes have been breached, the proceeding shall be referred to the regular courts.<sup>163</sup>

112. At the same time, the State said that on February 17 Decree Law 277 of 2017 was passed, establishing a procedure for the effective implementation of the Amnesty Law.<sup>164</sup> That law sets out detailed and clearer rules governing the procedures to be followed by the country's judges, as well as the Executive Secretariat of the JEP and other competent authorities, in processing applications for the benefits of *de jure* amnesty and conditional release. Both the Amnesty Law and Decree Law 277 were undergoing the automatic constitutionality review process conducted by the Constitutional Court at the time of this report's adoption.

113. Civil society has put forward a series of observations regarding the regulatory framework of the JEP, particularly with respect to the full participation of victims; prosecution of third parties responsible for crimes, such as financiers, for example; the concept of war crimes under that framework; the prosecution of command responsibility crimes; and the lack of an express mention of international human rights law, among other issues addressed in this section.

114. At the hearing on the State's anti-impunity obligations and the JEP, the organizations that took part considered that the principle of victim participation is not applied across the entire system.<sup>165</sup> In follow-up to that hearing, the IACHR sent a request for information to the State about such assurances, among other matters.<sup>166</sup> The State replied that victims' organizations had up to two years in which to submit briefs to the Judicial Panel for Acknowledgement of Responsibility of the JEP following the System's entry into effect.<sup>167</sup> It said that those briefs are analyzed in order to select the most serious and infamous crimes for referral to the Tribunal for Peace, which punishes their perpetrators and gives those who participated in their commission an opportunity to recognize their responsibility. The Judicial Panel may request victims' organizations to provide information on any facts about which there are doubts.<sup>168</sup> The State said that the Executive Secretariat of the JEP, which is already operational, arranges for that information to be provided in a timely manner.<sup>169</sup> It also pointed out that acts of recognition of responsibility are attended by victims' organizations.<sup>170</sup> It said that a restorative justice approach is applied that makes victims the central focus, and that victims may submit appeals against decisions of the JEP that abridge their rights to the Appeals Section (*Sección de Apelaciones*). It said that they may also avail themselves of applications for relief (*acción de tutela*) against acts or omissions by the organs of the JEP.<sup>171</sup> With respect to the decisions of the JEP, it said that victims shall be heard in relation to the prioritization and selection of cases,<sup>172</sup> and that they shall be consulted to ensure that penalties are enforced in such a way as to repair and restore their rights.<sup>173</sup>

<sup>163</sup> For example, with respect to the crime of money laundering that allows the possession of illicit property. Constitutional Court, Communiqué of November 14, 2017, Review of Legislative Act No. 01 2017.

<sup>164</sup> [Decree 277](#) of February 17, 2017.

<sup>165</sup> IACHR, Hearing on [State Anti-Impunity Obligations and Special Justice for Peace in Colombia](#), March 21, 2017. On this point, the Office of the Ombudsperson had noted with concern that, despite victims' participation in the implementation of the Peace Agreement, that participation was not effective given that in the expanded space for participation established in the Agreement their proposals apparently received no response. Office of the Ombudsperson, Note of August 29, 2017.

<sup>166</sup> Request for information to the State of July 31, 2017.

<sup>167</sup> Final Agreement, Section 5.48.c, Victims. Republic of Colombia, Note S-GAIIID-17-066456 of August 24, 2017.

<sup>168</sup> Final Agreement, Section 5.48.k, Victims. Republic of Colombia, Note S-GAIIID-17-066456 of August 24, 2017.

<sup>169</sup> Special Agreement of August 19, 2016, paragraph 6.d, p. 282 of the Final Agreement. Republic of Colombia, Note S-GAIIID-17-066456 of August 24, 2017.

<sup>170</sup> Final Agreement, Section 5.47, final paragraph, Victims, p. 154. Republic of Colombia, Note S-GAIIID-17-066456 of August 24, 2017.

<sup>171</sup> Legislative Act No. 01 of 2017, Transitory Article 6. Republic of Colombia, Note S-GAIIID-17-066456 of August 24, 2017.

<sup>172</sup> In accordance with the standard of participation set out in judgment C-579/13 of the Constitutional Court. Final agreement, Section 5.20, Victims. Republic of Colombia, Note S-GAIIID-17-066456 of August 24, 2017.

<sup>173</sup> Final Agreement, pp. 172 and 173. Republic of Colombia, Note S-GAIIID-17-066456 of August 24, 2017.

115. In that regard, the Constitutional Court clarified that the JEP must determine the penalties for the most serious international crimes, which should be compatible with the purposes of international law, while avoiding impunity. It said that the JEP will establish in each specific case penalties that meet the necessary objectives of punishment, deterrence, retribution, rehabilitation, and restoration. It shall also determine if the penalties are consistent with the genuine intention that the convicted person answered to the crimes before justice, and shall weigh the punishment to ensure that it is commensurate with the seriousness of the crime, the degree of responsibility of the perpetrator, and the type and degree of restriction of liberty.<sup>174</sup>

116. As regards the application of the amnesty law to those who have demobilized, on July 10, the President issued the last of three decrees granting amnesty to a total of 6,005 FARC members who had completed the laying down of arms and been accredited by the Colombian Office of the High Commissioner for Peace. In relation to that, the United Nations mission in Colombia said that Decree 1252 of 2017 facilitates and accelerates judicial decisions in application of the Amnesty law. It noted that Decree 285 of 2017 designated 709 FARC members as “peace advocates” able to undertake peace-related tasks outside prison, despite ongoing judicial proceedings against them under the amnesty law. In addition, it mentioned that Decree 1274 of 2017, on one hand, granted conditional release to FARC members who had been charged with or sentenced for serious crimes but had not served more than five years of prison time and had been transferred to alternative detention facilities during the previous phase; and on the other, that it lifted all arrest warrants against FARC members, including those issued for extradition purposes.<sup>175</sup>

117. It was reported in the press that the FGN received a total of 278 applications for conditional release from members of the FARC, ELN, and other groups.<sup>176</sup> Of those applications, 24 were denied; as of April, the FGN was still analyzing applications. The UN Mission reported that as at 8 September 2017, a total of 2,590 FARC members had been released from prison, of an estimated total of 3,000 to 3,400.<sup>177</sup> The report from March of that year said that 72 members of the FARC benefited from provisions contained in the amnesty law and that at least another 1,000 applications under that law were being processed.<sup>178</sup>

118. With regard to the application of the Amnesty Law to agents of the State and the review of their sentences in the JEP, the Commission notes the release in April of army corporal Elvin Andrés Caro Mesa and army private Luis Emiro Sierra Padilla, the first two soldiers to be granted conditional release by the Seventh Sentence Enforcement Court of Medellín under the JEP. Both were serving a 31-year prison sentence confirmed by the CSJ for the murder of a Medellín student.<sup>179</sup> Also released, in May, was General (Ret.) Jaime Humberto Uscátegui, who was sentenced to 37 years in prison for his part in the Mapiripán massacre,<sup>180</sup> and, in September, General (Ret.) Rito Alejo del Río, who was under investigation for the murders of Jaime Garzón and Álvaro Gómez Hurtado, as well as the Mapiripán massacre.<sup>181</sup> According to the Ministry of Defense, approximately 5,500 members of the security forces could be investigated, prosecuted, or convicted for crimes

<sup>174</sup> Constitutional Court, Communiqué of November 14, 2017, Review of Legislative Act No. 01 2017.

<sup>175</sup> United Nations, Security Council, [Report of the Secretary-General on the United Nations Mission in Colombia](#), 26 September 2017, para. 9.

<sup>176</sup> On April 7, 52 FARC members were released from prison. Semana, [De regreso a la libertad 52 guerrilleros de las FARC](#), April 7, 2017.

<sup>177</sup> United Nations, Security Council, [Report of the Secretary-General on the United Nations Mission in Colombia](#), 26 September 2017, para. 9.

<sup>178</sup> It was also reported that since December 15, 2016, 177 FARC members had been released as result of pardons granted by the President of the Republic outside the framework of the Amnesty Law. United Nations, Security Council, [Report of the Secretary-General on the United Nations Mission in Colombia](#), 26 September 2017, para. 9.

<sup>179</sup> *El Tiempo*, [Ya están libres los dos primeros militares beneficiados por la JEP](#), April 19, 2017.

<sup>180</sup> *El Tiempo*, [“No le tengo miedo a la verdad”: general \(r\) Jaime Uscátegui](#), May 5, 2017. See, broadly, I/A Court H.R., Case of the “Mapiripán Massacre” v. Colombia, Judgment of September 15, 2005, Series C No. 134.

<sup>181</sup> *El Tiempo*, [General \(r\) Rito Alejo de Río ya está libre](#), September 28, 2017. *El Tiempo*, [Generales \(r\). listos para levantar la mano ante Justicia para la Paz](#), January 17, 2017, published on the website of the OHCHR. See, broadly, I/A Court H.R., Case of the “Mapiripán Massacre” v. Colombia, Judgment of September 15, 2005, Series C No. 134.

that may fall under the jurisdiction of the JEP by reason or in the context of the internal armed conflict, or in direct or indirect relation thereto.

119. In that connection, in the State's comments on the draft of this report, the Ministry of Defense clarified that as members of the security forces had not committed political crimes, they were not liable to amnesty or pardon but to special criminal treatments, a series of which were implemented prior to the entry into effect of the JEP, including transitional, conditional, and early release; deprivation of liberty at a military or police facility; suspension of arrest warrants; and revocation or modification of detention. All those treatments are contingent on the signing of a commitment to submit to the JEP. In addition, the Amnesty Law and the proposed Statutory Law on the JEP envisaged other types of special treatment for members of the security forces applicable through the JEP, such as termination of proceedings, suspended sentence, and extinction of liability because the penalty is deemed executed. Those who have benefited from such treatment have had to sign a document in which they undertake to: (i) submit to the JEP; (ii) contribute to the truth, non-repetition, and the reparation of the victims; (iii) meet the requirements of the Comprehensive System; (iv) serve the punishment imposed by the JEP; and (v) not do anything that would be grounds for loss of benefits.<sup>182</sup>

120. Since the Amnesty Law and Decree Law 706 went into force, 1,955 military personnel have expressed their intention to submit to the JEP. Of those, 812 have been granted access to transitional, conditional, and early release; 114 to deprivation of liberty at a military or police facility; and 243 to the measures envisaged in Decree Law 706 of 2017.<sup>183</sup>

121. The OHCHR, for its part, lamented that, “under the rule of law, an independent and impartial entity, unrelated to the potential beneficiaries of release, was not assigned with proposing those public officials to be considered for conditional release.” It also said that the Amnesty Law did not establish objective rights-related criteria to evaluate eligibility. And that it did not provide for an effective system to monitor and control the thousands of potential beneficiaries in order to prevent obstruction of justice and intimidation of victims and witnesses.<sup>184</sup>

122. The Office of the Ombudsperson, for its part, considers that the provision by which only officials belonging to the JEP can revoke, substitute, or amend the decisions adopted by them should not apply in cases where such decisions ignore or violate fundamental rights; in such instances actions for constitutional relief should be admissible as a suitable means of defense for protecting the infringed right.<sup>185</sup> The Office of the Ombudsperson also considered that the suspension of arrest warrants and revocation of detention orders as benefits for members of the security forces<sup>186</sup> ought to be contingent on compliance with the requirements set forth in Article 52 of Law 1820 of 2016.

<sup>182</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>183</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>184</sup> OHCHR, [Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia](#), Human Rights Council, Thirty-fourth session, p. 7; RCN, [ONU advierte que ley de amnistía y justicia para la paz podrían caerse en la Corte Constitucional](#), March 16, 2017.

<sup>185</sup> Article 4. Decree 706 of 2017. Office of the Ombudsperson, Note of August 29, 2017.

<sup>186</sup> Decree 706 of 2017. Article 6. Suspension of arrest warrants. By virtue of the preeminent and indivisible nature of the justice component of the Comprehensive System, in order to ensure that the treatment is implemented— symmetrically in some respects and differentially in others, though always in a fair, balanced, and simultaneous way—the relevant judicial authority, when dealing with investigations carried out under the procedure envisaged in Law 906 of 2004, shall suspend, at the request of the FGN and provided that the legal requirements are met, arrest warrants that have been or will be issued for members of the security forces in investigations or proceedings conducted against them for punishable acts committed by reason or in the context of the internal armed conflict, or in direct or indirect relation thereto.

In the case of investigations conducted under the procedure envisaged in Law 600 of 2000, the prosecutor carrying out the investigation shall adopt the respective measure.

Article 7. Revocation or substitution of detention. By virtue of the preeminent and indivisible nature of the justice component of the Comprehensive System, in order to ensure that the treatment is implemented—symmetrically in some respects aspects and differentially in others, though always in a fair, balanced, and simultaneous way—the relevant judicial authority, when dealing with



123. At the same time, in August, the CSJ determined that, despite the fact that many judicial proceedings relating to the armed conflict were suspended until the JEP starts to function, the investigations should proceed as normal. Although it will not be possible to enforce arrest warrants, conduct inquiries, hold trials, or pass sentence, it said that the work of securing evidence could move forward.<sup>187</sup> In that regard, the Commission notes that if it is not possible to advance those procedures because they cannot move forward, it is not clear how the investigations can be carried out effectively.

124. As regards the sanctions provided for in the Amnesty Law, it should be noted that the IACHR has recognized the possibility of imposing attenuated sanctions in contexts of transitional justice, as in the Justice and Peace proceedings.<sup>188</sup> In that respect, the IACHR has noted that the attenuated penalty should be applied as part of a system of incentives useful for the truth, for individually identifying and punishing those responsible, and for making reparation to the victims; in addition, the attenuated sanction should be proportional to the legal interest affected.<sup>189</sup> In that connection, the IACHR reiterates the need for the authorities that make up the JEP to rigorously enforce the requirements that condition access to an attenuated sentence, and to preserving it; and that contribute to developing a diligent and exhaustive investigation of the grave human rights violations subject to this legal regime, so that the imposition of reduced sanctions results from obtaining the full truth, and not depend exclusively on the confession of the accused.<sup>190</sup>

125. In that regard, the Commission reiterates that the organs of the Inter-American system have established that amnesty provisions, statutes of limitation, and grounds for excluding liability aimed at impeding the investigation and punishment of those responsible for serious human rights violations such as torture, summary, extralegal, or arbitrary executions, and forced disappearances, all prohibited for violating non-derogable rights recognized by international human rights law, are inadmissible.<sup>191</sup> The IACHR has consistently established that while the adoption of provisions aimed at giving amnesties to those responsible for the offense of rising up in arms against the State may be a useful tool in the context of efforts to achieve peace, both the amnesty laws and similar legislative measures that impede or consider concluded the investigation and prosecution of crimes under international law impede access to justice and render ineffective the obligation of the states party to respect the rights and freedoms recognized in the Convention and to guarantee their free and full exercise.<sup>192</sup>

126. Accordingly, the Commission will closely monitor the proceedings that are conducted in different jurisdictions—particularly the JEP—in relation to the correct administration of justice for crimes that constitute violations of international law in the area of human rights.

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investigations carried out under the procedure envisaged in Law 906 of 2004, shall, at the request of the FGN and provided that the legal requirements are met, revoke the detention order imposed or substitute it with a noncustodial measure in investigations or proceedings conducted against them for punishable acts committed by reason or in the context of the internal armed conflict, or in direct or indirect relation thereto.

<sup>187</sup> *Nación*, [Fiscalía no está maniatada para investigar sometidos a la JEP](#), August 16, 2017.

<sup>188</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), par. 41 and IACHR, Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II. Doc. Doc. 49/13, December 31, 2013, par. 254. 2016 Annual Report, Ch. V. Colombia, par. 137.

<sup>189</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), par. 38; and I/A Court H.R., Case of the Rochela Massacre v. Colombia, May 11, 2007, Series C No. 163, par. 196. 2016 Annual Report, Ch. V. Colombia, par. 137.

<sup>190</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), pars. 3, 38, and 41. 2016 Annual Report, Ch. V. Colombia, par. 137.

<sup>191</sup> I/A Court H.R., Barrios Altos Case (Chumbipuma Aguirre et al.) v. Peru, Judgment of March 14, 2001, Series C No. 75, par. 41. In this regard, see IACHR, Application to the I/A Court H.R., Barrios Altos v. Peru, par. 181; IACHR, 1992-1993 Annual Report, Report No. 28/92 v. Argentina, October 2, 1992, Report No. 29/92 v. Uruguay, October 2, 1992, and IACHR, Report on the Demobilization Processing Colombia, OEA/Ser. L/V/II.120 Doc.60, December 13, 2004, par. 39. IACHR, 2016 Annual Report, Ch. V. Colombia, par. 134.

<sup>192</sup> IACHR, Report on the Demobilization Process in Colombia, OEA/Ser. L/V/II.120 Doc.60, December 13, 2004, par. 38. IACHR, 2016 Annual Report, Ch. V. Colombia, par. 133.

127. In addition, as regards the Amnesty Law, the Office of the Ombudsperson believes it necessary to precisely define the content and scope of the category "conduct closely linked to the process of the laying down of arms."<sup>193</sup> It considers that, in defining its content, conduct should not be included that does not correspond to the political crimes and related conduct mentioned in Articles 15 and 16 of the Amnesty Law.<sup>194</sup> In addition, it says that the time limit of one year established for victims to present accusations or briefs in respect of beneficiaries of amnesties or pardons violates the victims' right to justice,<sup>195</sup> since the deadline should be counted from the adoption of the final decision granting the amnesty or pardon in each specific case, as that is the decision that consummates the impairment of the victims' legitimate right to contest the granting of such benefits. It also considers that eliminating criminal records from databases violates the right of victims to the truth and disregards the duty to preserve the historical memory of the internal armed conflict;<sup>196</sup> and that the benefit of counting the amount of time of deprivation of liberty for members of the armed forces—for the purposes of their retirement allowance—constitutes a disproportional and unnecessary measure that runs counter to the Constitution.<sup>197</sup>

128. Another of the matters of concern for civil society highlighted during hearings before the IACHR is that the definition of war crime in the constitutional reform (Transitory Article 21) is contrary to international standards in that it adds the term *systematically* ("de forma sistemática"). Civil society organizations also complained that the way in which financiers of armed groups or those who collaborate with such groups are judged (Transitory Article 16) makes it problematic and difficult to prosecute the joint working relationship that business groups and ranchers have with paramilitary groups, for example.<sup>198</sup> As mentioned above, the latter point was revisited at the hearing on the JEP and third-party responsibility in July.<sup>199</sup>

## b. Justice and Peace Jurisdiction

129. First, the Commission has closely monitored the transitional justice system established with the Law on Justice and Peace (Law 975 of 2005) and the process of demobilization of the AUC since it began in 2003 and over the following 13 years through various reports on its results, achievements, and challenges.<sup>200</sup>

130. In March this year, the trial began under Law 975 of 179 members of the FARC for 900 crimes—including homicide, forced disappearance, and displacement, among others—in which there were

<sup>193</sup> Arts. 3, 18, 20, 22 and 39. [Law 1820 of 2016](#). Office of the Ombudsperson, Note of August 29, 2017.

<sup>194</sup> Article 15 includes rebellion, sedition, violent rioting, conspiracy, and seduction, usurpation, and unlawful retention of command, and crimes related thereto in accordance to law. Article 16 includes seizure of aircraft, vessels or collective means of transport where it is not associated with hijacking/kidnapping; compulsion to commit an offence; breaking and entering of other people's homes; unlawful violation of communications; offer, purchase or sale of any instrument suitable for intercepting private communications between persons; unlawful violation of communications or correspondence of an official nature; unlawful use of communications networks; violation of the freedom to work; slander; libel; indirect slander and libel; damage to third party property; personal falsehood; material falsehood in a public document; obtaining a false public document; agreement to commit an offence; unlawful use of uniforms and badges; threats; instigation to commit an offence; fires; disturbance in public, collective or official transport services; possession and manufacture of hazardous substances or objects; manufacture, bearing or possession of firearms, parts or ammunition subject to restricted use, exclusive use by the armed forces or explosives; disturbance of democratic contests; constraining voters; electoral fraud; document registration fraud; voter corruption; fraudulent vote; contract without fulfilling legal requirements; violence against a public official; escape; and espionage.

<sup>195</sup> Article 39. [Law 1820 of 2016](#). Office of the Ombudsperson, Note of August 29, 2017.

<sup>196</sup> Article 48. [Law 1820 of 2016](#). Office of the Ombudsperson, Note of August 29, 2017.

<sup>197</sup> Para. 1. Article 51. [Law 1820 of 2016](#). Office of the Ombudsperson, Note of August 29, 2017.

<sup>198</sup> IACHR, [Guarantees of Non-Repetition in the Peace Accord in Colombia](#), March 21, 2017.

<sup>199</sup> IACHR, Hearing on [Special Jurisdiction for Peace and Third-Party Responsibility in Colombia](#), July 6, 2017.

<sup>200</sup> See Report on the Demobilization Process in Colombia, OEA/Ser. L/V/II.120 Doc.60, December 13, 2004, Follow-up on the Demobilization Process of the AUC in Colombia: Digest of published documents (2004-2007), IACHR; and Statement by the Inter-American Commission on Human Rights on the Application and Scope of the Justice and peace Law in Colombia (2006), and annual reports of the IACHR.

7,000 victims.<sup>201</sup> The trial came in the context of the public release by the Office of the Comptroller for the Defense, Justice, and Security Sector of a report analyzing the results and costs of the transitional justice mechanisms under the Justice and Peace Law and its amendments. According to the report, from 2006 to 2016, 11 billion pesos were invested and 47 judgments passed in which 195 applicants were convicted, equivalent to 8.2 percent of those applying for the benefits of the special law. The report also stated that the compensation ordered for victims was mainly defrayed with funds from the national budget, not with assets returned by those convicted.<sup>202</sup>

131. The State reported that in 2016 and in the year to August 2017, a total of 52 judgments were handed down on 250 applicants (to the Justice and Peace Law) in relation to 6,004 acts that involved 28,055 victims. It said that in the second half of the year indictment hearings were held for applicants (to the Justice and Peace Law) in relation to the macro-structure or area of Salvatore Mancuso in which there were 11,046 registered acts and 29,945 victims; *Bloque Central Bolívar*, with 2,188 registered acts and 3,846 victims; *Llanos Orientales*, with 1,200 registered acts and 3,056 victims; *Bloques Calima-Bananero-Mineros*, with 2,950 registered acts and 3,808 victims; *Autodefensas Campesinas del Magdalena Medio (ACMM) – Autodefensas Campesinas de Puerto Boyacá*, with 2,002 registered acts and 4,745 victims; and Antioquia and Chocó, with 3,088 registered acts and 3,998 victims.<sup>203</sup>

132. Based on the foregoing, the Commission values the progress reported by the State and reiterates that a serious situation of impunity persists in relation to the gross human rights violations and breaches of international humanitarian law committed by all the conflict's actors in Colombia. Taking into account that the Justice and Peace jurisdiction remains the only judicial forum for the administration of justice for crimes committed by members of paramilitary groups, the Commission still considers that the State should continue to move forward resolutely to overcome this situation, bearing in mind its international obligations in that regard.<sup>204</sup>

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

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

133. The Commission has monitored the reform of the police and military criminal justice system. In its 2015 report, the IACHR expressed concern that the reform implemented under Legislative Act 01 of 2015 established that international humanitarian law could be exclusively applied to punishable conduct committed during armed conflict and stressed the need for a comprehensive interpretation of both bodies of law: international human rights law as well as international humanitarian law.

134. In its observations on the draft of this report, the state said that in the framework of an armed conflict—regardless of whether or not that conflict is of an international nature—the rules of international human rights law are always applied in accordance with the rules of international humanitarian law, bearing in mind that the latter constitute special law governing armed conflict, which is not to say that they are exclusive; on the contrary, they are considered complementary. Therefore, Legislative Act No. 01 of 2015 does not ignore the observance of human rights in conflict situations, which are observed at all times, as the Constitutional Court found.<sup>205</sup> It said that the legislative act in question seeks to establish international

<sup>201</sup> Agencia EFE, [Se inicia el juicio contra 179 miembros de las FARC por 900 delitos](#), March 23, 2017.

<sup>202</sup> Caracol Radio, [En 10 años de Ley de Justicia y Paz solo se han condenado 195 postulados](#), April 24, 2017; Office of the Comptroller General of the Republic/Office of the Comptroller for the Defense, Justice, and Security Sector, [Análisis sobre los resultados y costos de la ley de justicia y paz](#), April 22, 2017.

<sup>203</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>204</sup> IACHR, 2015 Annual Report, Chapter V, Colombia, par. 112; and 2016 Annual Report, Chapter V, Colombia, par. 118.

<sup>205</sup> Constitutional Court, Judgment C-579/2013. Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

humanitarian law as a regulating framework in the context of an armed conflict, excluding from military and police criminal jurisdiction types of conduct that, by their nature, are at odds with the performance of duty and extraneous to military and police functions, in accordance with international standards in the area of human rights.

135. Elaborating further, the State explained that the jurisprudence of the Constitutional Court has been consistent on this subject and that in 2015 the Congress of the Republic passed Legislative Act 01 of 2015. It said that the new constitutional provision provides that “[i]n the investigation and trial of punishable conduct by members of the security forces in connection with an armed conflict or a clash that meets the objective criteria required under international humanitarian law, the provisions and principles of said law shall apply.”<sup>206</sup> It also highlighted that conduct contrary to the constitutional and legal functions of the security forces continues to be excluded from the military and police criminal jurisdiction and, therefore, are investigated and tried by the regular courts.<sup>207</sup>

136. The Commission thanks the State for the information provided on the aforementioned jurisprudential developments and the clarification regarding standards in the prosecution, investigation, and punishment of human rights violations.

#### F. Reparation Mechanisms

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

137. In its report *Truth, Justice and Reparation* and its follow-up reports the IACHR has monitored the implementation of the Victims and Land Restitution Law (Law 1448). In that regard, it notes that the Single Registry of Victims (RUV) reported a total of 8,504,127 registered victims as at July 31, of whom 8,115,153 are victims of the conflict, the rest being those included in the enforcement of Judgment C-280/2013 and Order 119 of 2013.<sup>208</sup> The State underscored that of that total number of people included as victims under the terms of Article 3 of the Victims Law, 6,646,456 are eligible for assistance and reparation.<sup>209</sup>

138. It is worth noting that at the hearings held on Colombia in March and June, the organizations that took part noted the lack of regulations governing reparations by businesses and business owners for human rights violations committed by them, as well as the high rates of impunity for such violations.<sup>210</sup>

139. In its response to the request for information sent by the Commission in follow-up to the July hearing,<sup>211</sup> the State said on the subject of reparations that, “regardless of whether their participation was direct or indirect, anyone opting for the alternative sanctions envisaged in Section 5(60) of the Final Agreement is required, among other things, to make reparation to the victims.”<sup>212</sup> It said that anyone wishing to access the sanctions has the possibility of presenting to the Judicial Panel for Acknowledgment a detailed

<sup>206</sup> Constitution of Colombia, Article 221. Republic of Colombia, Note S-GAIID-17-101743 of December 18, 2017.

<sup>207</sup> See Constitutional Court, Judgment C-84/2016. Republic of Colombia, Note S-GAIID-17-101743 of December 18, 2017.

<sup>208</sup> [RUV](#).

<sup>209</sup> Republic of Colombia, Note S-GAIID-17-067759 of August 29, 2017.

<sup>210</sup> IACHR, Hearing on [State Anti-Impunity Obligations and Special Justice for Peace in Colombia](#), March 21, 2017, and hearing on [Special Jurisdiction for Peace and Third-Party Responsibility in Colombia](#), July 6, 2017.

<sup>211</sup> Request for information to the State of July 31, 2017.

<sup>212</sup> Republic of Colombia, Note S-GAIID-17-066456 of August 24, 2017.

plan, whether individual or collective, for carrying out reparation or restorative work, infrastructure projects, or activities, which must be consulted with the representatives of the victims who reside in the place of implementation. The State added that specific comprehensive reparation measures for peacebuilding are to be carried out by the Government, the FARC, and different sectors of society that may bear some type of responsibility in the conflict, including acts of early acknowledgment of collective responsibility, concrete contributions to reparations, strengthening of collective reparation programs, national collective reparation plans, and creation of rural development plans with a territorial-based focus.<sup>213</sup>

140. The State also describes the main progress made by the National System for Comprehensive Victim Assistance and Reparation (SNARIV) in 2016 as regards provision of care and assistance to victims of the conflict. It said that the Victims Unit has improved its process for delivering humanitarian aid and has implemented a procedure for measuring need, which has enabled it to determine when requesting households do not require delivery of the humanitarian aid components, unlike the previous model in which all requests were viable. In that connection, it said that close to 40 percent of households have moved beyond minimum subsistence needs threshold and, therefore, will not be targeted by this measure. It said that for 2017 the amount of resources allocated to the Victims Unit for providing humanitarian assistance was increased to 616,000 million pesos.<sup>214</sup>

141. It said that as at December 31, 2016, 1,157,452 households had made requests for humanitarian assistance. Of those, 724,425 were households that were victims of forced displacement with needs in at least one minimum subsistence component, and therefore qualified for a humanitarian assistance payment. The other 433,027 households were found not to have any minimum subsistence needs and therefore had their humanitarian assistance suspended.<sup>215</sup>

142. The State reported that of the 724,425 eligible households, a total of 673,710 received at least one humanitarian assistance check in 2016. It said that in all, 1,051,232 checks were issued for a total investment of 608,925 million pesos, representing progress of 93 percent toward the annual target indicator for humanitarian assistance. They explained that the remaining 50,715 households first applied in 2016 but only received assistance in 2017.<sup>216</sup>

143. As regards the RUV, the State mentioned that registration in it entails official recognition of the existence of harm occasioned by armed actors and acknowledgment of the victims as being eligible for assistance and reparation. It noted that through the victims' statements the State acquires information from the primary source about the circumstances of the time, modality, and location of victimizations, and about the territorial dynamics of the conflict, information essential for establishing the truth.<sup>217</sup>

144. As regards comprehensive reparation under the Victims Law, the State said that progress was being made both individually and collectively in all five of its components—satisfaction, rehabilitation, compensation, restitution, and guarantees of non-repetition—and that each action was geared toward contributing to effective enjoyment of rights for those who had been victims of the armed conflict and the resumption of their life plans.<sup>218</sup>

145. As regards individual reparation, the State said that as at December 2016, 640,000 Care, Assistance, and Comprehensive Reparation Plans (PAARI plans) had been formulated, an instrument that provides information about the victims' circumstance and enables them to access the plans, programs, and

<sup>213</sup> Republic of Colombia, Note S-GAIIID-17-066456 of August 24, 2017.

<sup>214</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>215</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>216</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>217</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>218</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.



projects offered by the Victims Unit. It added that the Victims' Comprehensive Psychosocial and Health Care Program (PAPSIVI) had provided assistance to 262,881 people.<sup>219</sup>

146. As to the Group Emotional Recovery Strategy (ERE-G), in 2016, 30,000 individual victims received assistance in relation to acknowledgment, processing, and giving new significance to the harm and suffering caused by the armed conflict. The State said that as at December 2016, the Victims Unit had paid out 472,919 million pesos in compensation to 23,845 individuals. In 2016, 2,035 people received compensation; 24,404 checks for a total of 99,321 million pesos were issued in recognition of an administrative indemnity for children and adolescents, which were placed in a trust for them and will be made available to them when they reach the age of majority.<sup>220</sup>

147. The State said that in 2016, the Victims Reparation Fund provided 13,568 million pesos in compensation to 593 victims. Of that amount, 1,880 million pesos (13.86 percent) was provided by Justice and Peace Law applicants, or funds obtained from their financial returns. In addition, 161,992 million pesos (1.19 percent) from the Fund for Rehabilitation, Social Investment, and Fight against Organized Crime (FRISCO) was used to provide reparation to victims acknowledged in judgments adopted in the Justice and Peace system. The State mentioned that the Government's contribution of 11,526 million pesos (84.95 percent) to provide reparation to victims came from the National Budget.<sup>221</sup>

148. In relation to collective reparation, the State reported that as at end-2016, the Victims Unit's Collective Reparation Program had accumulated a total of 104 Comprehensive Collective Reparation Plans and 121 entitled groups, for which community rehabilitation, satisfaction, restitution, and compensation measures were implemented, as were guarantees of non-repetition. Of those 121 groups (in all of which at least two measures have been implemented), psychosocial rehabilitation was underway in 87 through the *Entrelazando* strategy.<sup>222</sup>

149. The State also reported that in 2016, measures contained in the collective comprehensive reparation plans were incorporated in Municipal Development Plans and Territorial Action Plans, which allowed resources to be allocated for implementing reparation measures, enabling 57 groups eligible for collective reparation to benefit via the local development category. In addition, progress was made with implementing the *Entrelazando* strategy in 150 groups eligible for collective reparation.<sup>223</sup> As regards victims of crimes against sexual freedom and integrity, 7.1 percent have been accepted into the Comprehensive Reparation Strategy for Victims of Sexual Violence.<sup>224</sup>

150. With respect to memory and truth, the State reported the creation and launch of the Human Rights and Historical Memory Archive as a contribution to the right to the truth and non-impunity, investigations to uncover the facts, those responsible, and the conditions that made the armed conflict possible; the design and construction of a National Museum of Remembrance as a space to dignify the victims and promote a culture of respect for human rights; the promotion of local remembrance initiatives based on the acknowledgment of different accounts of the armed conflict, and strengthening of non-judicial mechanisms to contribute to the truth about the demobilized population and other actors.<sup>225</sup>

151. As regards progress in relation to the process of land restitution, the State said that as at July 11, 2017, 104,745 restitution requests had been received from 71,509 titleholders, corresponding to 92,395

<sup>219</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>220</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>221</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>222</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>223</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>224</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>225</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

properties.<sup>226</sup> The State also said that 59 percent of the requests (61,470) had been admitted by the Ministry of National Defense and that, of those, in 46,021 cases the administrative procedure had concluded with the registration of the request or its non-registration and rejection. The State reported that of the cases in which the administrative procedure had been finalized, 27,025 resulted in nonregistration in the appropriated land registry, while 18,996 were registered. Of the registered cases, 13,855 are being considered by judges,<sup>227</sup> who have proffered 2,581 judgments benefiting 28,170 persons and ordering the restitution of 214,770 hectares.<sup>228</sup>

152. On the subject of restitution to ethnic communities, the State reported that there are 38 confirmed cases and 36 cases under confirmation; 28 suits have been filed and 27 precautionary measures ordered as a preventive mechanism in cases in which there is an imminent risk of harm to ethnic communities' lands. The State also said that six judgments have been issued restoring the land rights of seven ethnic communities.<sup>229</sup>

153. The State also noted that judges and magistrates specializing in cases of land restitution have issued judgments ordering measures in addition to the legal and material restitution of the property, in order to give impetus to the spirit of comprehensive reparation envisaged in the Victims Law.<sup>230</sup>

154. The State said in relation to that set of orders that the Land Restitution Unit (URT) is responsible for ensuring compliance with the judgments relating to productive projects, housing, utility liability and financial debt relief, compensation to victims and blameless good-faith third parties, second occupants, administration of agribusiness productive projects, and payment of judicial costs. It said that, to date, 14,942 orders have been issued to the URT,<sup>231</sup> and that 18,945 million pesos in ordered compensation has been paid through the URT.

155. The State also said that the Program on Family Productive Projects had assisted 2,523 families as at December 31, 2016, delivering 61,329 million pesos in incentives in 17 of the country's departments.<sup>232</sup>

156. The State also highlighted that 5,438 families had benefited from restitution orders, and that a total of 4,521 (84 percent of families with restitution orders) were already materially enjoying ownership, understood as verifiable habitation, use, or return to the place of work.<sup>233</sup>

157. The Office of the Ombudsperson, for its part, offered a number of observations with respect to the Victims Law. It noted that humanitarian assistance had been suspended, which had nothing to do with supply and the inspection of registered households. As regards access to administrative compensation, it reported that six years had passed since the Victims Law was issued, yet 93 percent of victims had not received the administrative compensation payment. It also said that the majority of reparations ordered in Justice and Peace judgments had still to be carried out because the budget appropriations and applicants' assets had been insufficient for that purpose and many of the assets had not been monetized.<sup>234</sup>

<sup>226</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>227</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>228</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>229</sup> The Andágueda River Embera Reservation (Chocó), the Renacer Negro Community Council, the Wayuu Settlement in Nuevo Espinal (La Guajira), the Menkue, Misaya and La Pista Reservation of the Yukpa (Cesar), and the Embera Eyákera–Dogibi Reservation (Chocó). Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>230</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>231</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>232</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>233</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>234</sup> Office of the Ombudsperson, Note of August 29, 2017.

158. As regards financing of the Victims Law, the Office of the Ombudsperson noted that the increases seen had to do with budget hikes made in the SGP and that,<sup>235</sup> though the Victims Unit had assured the Constitutional Court that it would implement a financed extension of the Victims Law, that had not been reflected in any formal or viable way. It said that its materialization could not yet be verified.

159. On the subject of collective reparation, the Office of the Ombudsperson said that no significant progress had been reported in cases already identified by the now defunct Justice and Peace Reparations Commission prior to the implementation of the Victims Law. It noted a lack of coordination between the central government and the territorial level. It said that there is no institutional strategic plan for land restitution aimed at overcoming the obstacles in the judicial phase.<sup>236</sup>

160. The Office of the Ombudsperson also reported that victims' participation roundtables at the municipal, departmental, and national levels were functioning and that they had a Participation Protocol in place. However, it noted that it had identified a number of difficulties, including an absence of dialogue, scant consensus on public policy between roundtable members and territorial entities, a failure to share planning instruments,<sup>237</sup> and a lack of follow-up with Effective Participation Roundtables. It believed that this had to do with the low political and budgetary priority that some governors and mayors assigned to ensuring the right to effective participation for victims, denying them recognition as political actors.

161. The Office of the Ombudsperson also considered that perceptions with regard to the reparation approach of the compensation had pushed up expectations unrealistically. It said that victims did not know exactly how much they would receive and the longer they waited, the more their expectations waned.<sup>238</sup>

162. It is also worth noting that MAPP/OAS found that implementation of the ethnic decrees remained incipient,<sup>239</sup> and public officials, the ethnic territorial authorities, and the ethnic communities are unaware of their scope and content. Furthermore, the territory-based care model still had problems in terms of inclusiveness, functioning, and maintenance. It said that victims had low confidence in the possibility of obtaining reparation, given the slow implementation of the care circuits established for the effective enjoyment of rights.<sup>240</sup>

163. It should be highlighted that the World Organization against Torture and the Colombian Coalition against Torture, which completed their mission to assess Colombia's compliance with its international obligations to eradicate torture and other abuse in July 2017, concluded that few victims were receiving comprehensive reparation, which constituted a serious obstacle to eradicating torture in Colombia. It said that in the framework of the measures that were being adopted to provide medical and psychosocial assistance to registered victims, it was concerned at "the lack of coordination among institutions, the lack of specialized training at entities that provide health care, the absence of medium-and long-term rehabilitation measures, and the failure to observe the principle that care should be comprehensive and free."<sup>241</sup>

164. Based on the foregoing, the Commission again acknowledges the efforts of the State to implement the recommendations analyzed in this section and the progress made in that regard with a view to implementing the Victims Law with a differential approach and allow for greater participation of the victims.

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<sup>235</sup> Budget assigned exclusively for health and education for all Colombians universally, without consideration to specific populations. Office of the Ombudsperson, Note of August 29, 2017.

<sup>236</sup> Office of the Ombudsperson, Note of August 29, 2017.

<sup>237</sup> Development Plans and Territorial Action Plans. Office of the Ombudsperson, Note of August 29, 2017.

<sup>238</sup> Office of the Ombudsperson, Note of August 29, 2017.

<sup>239</sup> [Decreets Law](#) 4633 of 2011, 4634 of 2011, and 4635 of 2011.

<sup>240</sup> OAS, Twenty-third Report of the Secretary General to the Permanent Council on the MAPP/OAS, October 2017.

<sup>241</sup> OMCT, [Colombia: la falta de reparación integral a las víctimas: serio obstáculo para la erradicación de la tortura en Colombia](#) (available in Spanish), July 11, 2017.

However, the Commission notes that the obstacles and challenges it verified with regard to the effective implementation of the Comprehensive System persist. Consequently, the IACHR maintains its recommendations regarding the overall framework of existing reparation mechanisms in Colombia.

### G. Forced Internal Displacement

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

165. In recent years the IACHR has observed how the humanitarian crisis caused by forced displacement has become one of the main human rights challenges facing the Colombian State now and over the coming decades. On this point, the State has said that the adoption and implementation of the Peace Agreement could make a fundamental contribution to preventing forced displacement. The IACHR agrees with that assertion.<sup>242</sup>

166. In 2017, the IACHR continued to receive reports on incidents of forced displacement in Colombia among indigenous peoples, Afro-descendant communities, social leaders and human rights defenders and LGBTI persons, as a consequence of the armed conflict or as a result of the use of violence by illegal armed groups.

167. With regard to the adoption of measures aimed at preventing forced displacement, civil society organizations reported to the IACHR that prevention measures have failed to stop displacement, as demonstrated by the fact that Colombia has the world's largest internally displaced population as a result of human rights abuses and violations of international humanitarian law.<sup>243</sup> According to the Office of the United Nations High Commissioner for Refugees (UNHCR),<sup>244</sup> Colombia's internally displaced population numbers 7,410,816, an increase of half a million compared with 2016, with no returns of internally displaced persons or other decreases reported.

168. As at September 1, 2017, a total of 8,532,636 people were registered in the RUV, of whom 8,208,564 are victims of the armed conflict.<sup>245</sup> Some 85.14% of these people were victims of forced displacement or, in numeric terms, 7,265,072 individuals.<sup>246</sup> With respect to the figures provided by the RUV, the Internal Displacement Monitoring Centre (IDMC) has noted that, in spite of the signing of the Peace Agreement in November, the violence has continued, with thousands of people newly displaced.<sup>247</sup> Thus, the Centre notes that the downward trend in internally displaced persons was reversed in 2017, and that in the first half of the year, the armed conflict caused 56,000 new displacements, an increase of 10 percent compared to the same period in 2016.<sup>248</sup> At the same time, the IDMC noted that 80 percent of displaced people live

<sup>242</sup> IACHR, 2016 Annual Report, Chapter V, Follow-up of the Recommendations Issued by the IACHR in Its Country or Thematic Reports, April 27, 2016, par. 163. IACHR, Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, December 31, 2013, par. 533.

<sup>243</sup> UNHCR, [Global Trends: Forced Displacement in 2016](#), June 19, 2017, p. 36.

<sup>244</sup> According to the UNHCR report, the large number of registered internally displaced persons in Colombia comes from the total cumulative figure recorded in the Government's Victims Registry, which commenced in 1985. UNHCR, [Global Trends: Forced Displacement in 2016](#), June 19, 2017, Annex, Table 2, p. 66.

<sup>245</sup> Victims Unit, RUV as at September 1, 2017.

<sup>246</sup> Victims Unit, RUV as at September 1, 2017.

<sup>247</sup> Internal Displacement Monitoring Centre (IDMC), [Global Report on Internal Displacement 2017](#), p. 29.

<sup>248</sup> IDMC, [Mid-year Update 2017. Colombia](#), July 2017.

below the poverty line, including between 33 percent and 35 percent who live in extreme poverty.<sup>249</sup> It also said that various obstacles prevent the implementation of durable solutions: the prolonged conflict and insecurity in areas of origin due to the lack of a state presence and high levels of crime and violence; lack of skills and education to compete in urban labor markets; insecurity of land tenure and the illegal status of settlements where internally displaced persons live; the weak capacity of local authorities as a result of insufficient funds; internally displaced persons are not integrated into regular state action; and limited resources allocated by donors for durable solutions.<sup>250</sup> The IACHR observes that while this represents progress, the RUV is mainly intended to facilitate the provision of reparations from the Government to the victims, in accordance with the Victims Law. As such, no account is taken of individuals who are no longer displaced, either because they have found a durable solution, or because they have died. According to the IDMC, that means that at present there is no registration mechanism that takes account of those who have found a solution to their situation and the consequent decline in the number of displaced persons.

169. In that connection, the State informed the IACHR about the coordinated actions of the security forces and the bilateral ceasefire declared by the Government and the FARC, which have reduced the intensity of the armed confrontation in a number of territories and allowed the total number of internally displaced people gradually to come down year-by-year.<sup>251</sup> Thus, the State indicated a 24.23 percent decline in number of people expelled compared with the previous year, from 84,151 people expelled to 20,395. With respect to intake of people, the figures presented by the State showed a decrease of 25.13 percent from the previous year, from 86,349 people to 21,700. Finally, as regards declared persons, the figures showed a drop of 31 percent, from 134,996 to 42,245.<sup>252</sup>

170. In that connection, in its annual report to the Human Rights Council, the OHCHR reported 47 emergencies in 2016 stemming from new massive forced displacements in hard-to-reach areas in Antioquia, Arauca, Cauca, Chocó, Córdoba, Nariño, Norte de Santander, and Valle del Cauca.<sup>253</sup> The emergencies affected approximately 13,864 people, primarily Wounnan, Emberá and Emberá Doviida indigenous, Afrodescendent, and smallholder communities. The OHCHR also observed that a number of families were forced to flee their homes to avoid the recruitment of their children by the ELN, which subjects girls, in particular, to sexual violence, commercial sexual exploitation and trafficking. The OHCHR also welcomed decision 373 of 2016 of the Constitutional Court with regard to in follow-up to Sentence T-025 of 2004 regarding forced displacement, which declared that the “unconstitutional state of affairs” regarding victim registration and participation had been resolved.<sup>254</sup> However, the OHCHR noted that other aspects of the unconstitutional situation regarding displacement, including prevention, protection, education, justice and non-repetition, are yet to be fully resolved, and it recommended that the State redouble its efforts to end forced displacement.

171. In 2017, the Commission continued to receive reports of mass displacement. According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), the main causes of internal displacement in Colombia are armed conflict, violence linked to control over illicit economies, including drug trafficking or illegal mining, and violence associated with land conflicts.<sup>255</sup> According to official information, 6,873 people were displaced in mass events during the first four months of 2017, which represents an increase of 20 percent in relation to the same period the previous year and accounts for 63 percent of the total number

<sup>249</sup> IDMC, [Global Report on Internal Displacement 2017](#), p. 29.

<sup>250</sup> IDMC, [Global Report on Internal Displacement 2017](#), p. 30.

<sup>251</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>252</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>253</sup> Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, A/HRC/34/3/Add.3, thirty-fourth session.

<sup>254</sup> Judgment by which the Constitutional Court declared the unconstitutional state of affairs in the situation of internal displacement.

<sup>255</sup> Office for the Coordination of Humanitarian Affairs (OCHA), *Breaking the Impasse: Reducing protracted internal displacement as a collective outcome*, p. 92.



of internally displaced persons registered in Colombia in 2016.<sup>256</sup> According to OCHA, the mass displacement events occurred as a result of the presence and actions of the ELN, EPL, and post-demobilization armed groups.<sup>257</sup> OCHA reported that 70 percent of persons internally displaced in mass events in the first quarter of 2017 were concentrated in Chocó. In addition to the foregoing, in the same period, the armed conflict caused transport restrictions and access constraints to goods and services for 11,774 people, while 41,455 people were affected by natural disasters.<sup>258</sup> The main causes of constraints on mobility and use of goods and services are the unilateral actions of the ELN and of unknown armed groups. OCHA reported that the departments most affected by the restrictions on access are Chocó, with 5,884 people affected by 10 events, and Valle del Cauca, with 1,603 people affected by 4 events.<sup>259</sup>

172. As an example, the Commission notes with disquiet that on September 23, the displacement was triggered of no fewer than 11 family groups comprising at least 45 people as a result of intense fighting between the Army and a non-state armed group in the Hicarí area of Norte de Santander.<sup>260</sup> They fled the villages of Buena Suerte and La Laguna for other villages in the municipality and neighboring municipalities. As a result of the displacement, all school activities were suspended in order to protect the children's lives. It is particularly troubling that this was the second time that that population was forced to flee as a result of clashes between armed actors present in the zone.<sup>261</sup> Fighting was also reported between the ELN and the AGC in the Department of Chocó in March, causing the displacement of more than 300 people, including several indigenous and Afro-descendent families.<sup>262</sup> Violence was also reported in the Department of Cauca which led to the displacement of indigenous communities from Las Peñas, La Sierpe, and Unión Málaga, among others.<sup>263</sup>

173. In that connection, the Commission also received information from the Office of the Ombudsperson regarding the documentation of 51 massive forced displacement events in 2017 in the Departments of Nariño, Antioquia, Choco, Cauca, Norte de Santander, Valle del Cauca, and Risaralda that affected 6,726 people belonging to 1,733 families.<sup>264</sup> A civil society organization reported that between October and December violent clashes in the Departments of Chocó,<sup>265</sup> Nariño,<sup>266</sup> Córdoba,<sup>267</sup> and Cauca<sup>268</sup> displaced 2,565 people belonging to a total of 689 families. Similarly, figures provided by the Office of the United Nations High Commissioner for Refugees (UNHCR) indicate that in the year to November 2017, a total of 13,384 people belonging to 3,532 families were affected by 64 massive displacement events in the Departments of Antioquia, Chocó, Valle del Cauca, Cauca, Nariño, Putumayo, Norte de Santander, Arauca and Risaralda.<sup>269</sup>

<sup>256</sup> OCHA, Colombia: Humanitarian Situation Snapshot (January – April 2017), p. 1.

<sup>257</sup> OCHA, Colombia Humanitarian Fund (January – March 2017), April 26, 2017, p. 1.

<sup>258</sup> OCHA, Colombia Humanitarian Fund (January – March 2017), April 26, 2017, p. 1.

<sup>259</sup> OCHA, Colombia Humanitarian Fund (January – March 2017), April 26, 2017, p. 1.

<sup>260</sup> OCHA, Colombia: *Desplazamiento Municipio en Hicarí* (Norte de Santander), Flash Update No. 1, September 29, 2017.

<sup>261</sup> OCHA, Colombia: *Desplazamiento Municipio en Hicarí* (Norte de Santander), Flash Update No. 1, September 29, 2017.

<sup>262</sup> *Diario El Tiempo*, [Más de 300 desplazados en Chocó por combates entre Eln y Bacrim](#), March 5, 2017.

<sup>263</sup> *Diario El Tiempo*, [Indígenas de Cauca Denunciaron Desplazamiento por Hombres Armados](#), February 21, 2017.

<sup>264</sup> Office of the Ombudsperson, Note of August 29, 2017.

<sup>265</sup> OCHA, Colombia: *Desplazamiento masivo en Alto Baudó* (Chocó), Flash Update No. 2, November 15, 2017.

<sup>266</sup> OCHA, Colombia: *Desplazamientos masivos en los municipios de Tumaco y Barbacoas* (Nariño), Flash Update No.1, November 15, 2017; OCHA, Colombia: *Desplazamiento masivo y restricciones a la movilidad en Magüí Payán* (Nariño), Flash Update No. 1, December 5, 2017.

<sup>267</sup> OCHA, Colombia: *Desplazamiento masivo en Tierralta* (Córdoba), Flash Update No. 2, December 8, 2017.

<sup>268</sup> OCHA, Colombia: *Desplazamiento masivo y restricciones a la movilidad en el municipio de Suárez* (Cauca), Flash Update No. 1, December 12, 2017.

<sup>269</sup> UNHCR, 2017 report on massive displacements, January–November 2017.

174. On this score, civil society organizations have claimed that the perpetrators of forced displacement have focused on victims who bring claims for restitution of land of which they were unlawfully dispossessed, as well as on defenders of the land rights of rural communities, among others.<sup>270</sup> They say that acts of violence against displaced persons are part of complex strategies designed to intimidate displaced persons in order to keep them from seeking reparation for injuries and restitution of land.<sup>271</sup> Such acts were also noted by OCHA, which recorded 227 events of threats against civilians, and a total of 27,231 people with mobility restrictions and access constraints to goods and services caused by armed violence.<sup>272</sup> In addition, MAPP/OAS has reported that the vying for control over the areas vacated by the FARC is causing new harm and displacement events.<sup>273</sup>

175. The State, for its part, reported that, in keeping with the Victims Law, the Victims Unit has introduced an interagency process for restoring the rights of displacement victims that will bring them socioeconomic stability, a sense of territorial identity, and acknowledgment and dignification for returned and resettled families.<sup>274</sup> The State reported that since 2016, it has worked with 80,500 households, formulated 40 return and resettlement plans, and implemented 1,555 special support schemes for displaced persons. It has also instituted a Return and Resettlement Process designed to help forcibly displaced households that have returned to their place of origin or been resettled under the aegis of Resolution 00434 adopted on May 12, 2016, by the Victims Unit.

176. The State also reported that since 2010, more than 25 million square meters of land have been declared free of antipersonnel mines. Under that initiative, 166 municipalities are free of antipersonnel mines; 14 mine-free municipalities were handed over following demining work; and 8 municipalities have been declared free of suspected antipersonnel mines. Thus, over the past year, Colombia reduced the number of municipalities reporting some form of contamination with nonconventional weapons by 25 percent, from 673 to 507.<sup>275</sup>

177. In this same vein, while the Commission recognizes the efforts made by the Colombian State, it cannot help but express concern over the situation of particular risk faced by people returning to the territories from where they were displaced, particularly as a consequence of threats and other forms of violence, as well as the indiscriminate effects of landmines. Therefore, the commission urges the State to strengthen its steps to protect displaced persons who return to their territories and recommends that it ensure the right of every displaced person to make a reasoned and voluntary decision regarding the durable solution that is in their best interests, is safest, and meets their needs.

178. In relation to the prosecution of cases of forced displacement, the State reported that, spearheading the criminal inquiries into such cases, the Office of the Attorney General has opened investigations in the regular courts under the criminal proceedings envisaged in Laws 600 of 2000 and 906 of 2004, as well as under the special procedure provided in Law 975 of 2005. Thus, the State reported that the Transitional Justice Information System (SIJYP) has registered a total of 163,917 victims of forced displacement, 6,046 of whom were registered between January 1 and July 31, 2017. In that same period, charges were brought in relation to 2,492 forced displacement events that involved 8,515 victims; 106 applicants were sentenced for 1,276 forced displacement events; and 7 people were convicted for 25

<sup>270</sup> *Comisión Colombiana de Juristas*, [Panorama de violaciones al derecho a la vida, libertad e integridad de líderes sociales y defensores de derechos humanos en 2016 y primer semestre de 2017](#), October 2017, pp. 7, 32, and 105.

<sup>271</sup> *Comisión Colombiana de Juristas*, [Restitución de Tierras y Empresas: Oportunidades y Desafíos](#), April 2017, pp. 14 and 18.

<sup>272</sup> OCHA, Colombia: Humanitarian Situation Snapshot (January – April 2017), p. 1.

<sup>273</sup> OAS, Twenty-third Report of the Secretary General to the Permanent Council on the MAPP/OAS, October 2017. See also *Human Rights Watch* (HRW), [Colombia: Civilians Killed in Riverside Community](#), March 27, 2017. Office of the Ombudsperson, Note of August 29, 2017, p. 11.

<sup>274</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>275</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

displacement events. In addition, the State mentioned the existence of 16,376 victims recognized in decisions adopted by the Judicial Panels for Justice and Peace of District Courts.<sup>276</sup>

179. The IACHR urges the State to do more to investigate, prosecute, and punish the crime of forced displacement. The Commission notes that failure effectively to investigate events that lead to internal displacement helps to perpetuate the vulnerability of victims and the recurrence of such crimes, as well as obstructing their access to justice.

180. Finally, with regard to the recommendation of the IACHR concerning the differentiated impact of the armed conflict on indigenous communities, the Office of the Ombudsperson reported that, in keeping with Judgment T-025/04, Decision 004/09 ordered that a program of human rights assurances and protection plans be formulated in agreement with indigenous peoples identified as being at risk. However, there has been a feeble institutional response in terms of including differential assistance, prevention, and protection policies for such peoples. As a result, indigenous peoples consider that this program has remained a dead letter since its implementation was neither funded nor adopted by government at the national, departmental, or municipal level.<sup>277</sup>

181. In light of the foregoing and of the far-reaching consequences of the problem of internal displacement in Colombia, the Commission maintains its recommendations that the State investigate, prosecute, and punish the crime of forced displacement and urges it to bolster measures to protect displaced persons who return to their territories.

## H. Economic, social, and cultural rights (ESCR)

- Continue to adopt measures for the reduction of poverty and extreme poverty.

182. In its report Truth, Justice and Reparation, the Commission said that although Colombia has experienced solid economic development in recent years, there has been no concomitant improvement in the lives of all Colombians, particularly certain especially vulnerable groups, which continue to face obstacles to the full enjoyment of their civil, political, economic, social, and cultural rights.<sup>278</sup> The IACHR continued this year to monitor access to ESC are in Colombia and finds that challenges persist in that regard.

183. In reference to the right to health, the Office of the Ombudsperson highlighted that 93.38 percent of the population has health insurance,<sup>279</sup> which, it considers, demonstrates the Government's efforts to expand health care coverage. Having said that, it is of the opinion that certain obstacles impede effective provision of health care services: (i) persistent violations of the right to health due to a lack of availability, quality, and access to different health care services; (ii) the nonexistence of priority health care for minors, pregnant women, older persons, victims of violence and armed conflict, displaced persons, and people with orphan diseases and disabilities—in other words, there are no care services with a differential approach; (iii) the insurance models have not shown that contractual incentives function with the necessary speed, completeness, and scope to provide a sufficient response in crisis situations affecting the right to health of vulnerable and remote populations; (iv) difficulties of access to health care services for ethnic minorities and people living in rural and remote areas; (v) insufficiency of the health care providers network; (iv) barriers in access to emergency services, given that health care facilities are more than 270 percent over capacity; (vii) difficulties in securing appointments to see GPs and even more so for specialists, in particular for chronic diseases and illnesses that are costly to treat; (viii) judicialization of the right to health, as a mechanism for ensuring its enjoyment.<sup>280</sup>

<sup>276</sup> Republic of Colombia, Note S-GAIID-17-067759 of August 29, 2017.

<sup>277</sup> Office of the Ombudsperson, Note of August 29, 2017.

<sup>278</sup> IACHR, Truth, Justice and Reparation, OEA/Ser.L/V/II, December 31, 2013, pars. 595-596.

<sup>279</sup> According to figures reported by the Social Security Comprehensive Information System (SISPRO). Office of the Ombudsperson, Note of August 29, 2017.

<sup>280</sup> Office of the Ombudsperson, Note of August 29, 2017.

184. With respect to economic rights, since May, thousands of teachers have been on an indefinite strike and a march in Bogotá organized by the Colombian Teachers Federation (FECODE) to demand better pay and protest at the violation of the commitment adopted in 2015. The “taking of Bogotá” was joined by a number of trade unions from different sectors (60,000 demonstrators in Bogotá and 350,000 nationwide).<sup>281</sup> The strike impacted access to education for students. The State promised teachers a salary increase of 6 percent in 2017 and an additional 3 percent in 2018.<sup>282</sup>

185. The IACHR notes that the civic strikes that took place in Buenaventura and Chocó in 2017 were to demand access to employment, housing, clean water, education, health, and other ESCR (see *infra*, III.I.a). The IACHR welcomed the constructive dialogue between representatives of the groups of demonstrators and the Government, which ended with an agreement on June 6, after which the strike was lifted.<sup>283</sup> It also welcomes the agreements signed by the State with the Buenaventura Civic Strike Committee, which include the creation of an exclusive investment fund for social programs that cover investments in health, education, housing, and infrastructure.<sup>284</sup>

186. In relation to those demonstrations, the Commission reiterates its concern at the excessive force used by ESMAD to suppress peaceful protest, including the deployment of teargas against peaceful demonstrators, among them children, older persons, and people with disabilities.<sup>285</sup> The protests left 19 people with wounds caused by firearms.<sup>286</sup> The IACHR urged the State to investigate whether excessive force was used and to adopt urgent and reasonable measures to fully guarantee the rights to peaceful assembly and freedom of expression.

187. The State, for its part, has said that Colombia is faced with a unique opportunity for starting to think about the country in a new way, incorporating the territories into that process, with the approach of society building itself and reducing the social and economic disparities between the countryside and cities, the real cause of armed conflicts.<sup>287</sup>

188. On the subject of land, the Yira Castro Corporation reported that nearly 74 percent of women own fewer than 5 hectares, in contrast to men, 62 percent of whom own between 5 and 100 hectares. It said that, if one adds up the total amount of land owned by women, they account for 44.9 percent of the total land in rural areas, compared with 36.9 percent for men. As for ownership of productive land, it noted that 1 percent of the rural population control 80 percent of the country's productive land, which means that the remaining 99 percent, including women, only have access to 20 percent of productive land.<sup>288</sup> It also noted that while 30 percent of the urban population in Colombia is poor, that is true for 65 percent of people in rural areas, resulting in a multidimensional poverty index for the rural sector of 44.7 percent.

189. It is worth mentioning that the 2017 Melbourne Mercer Global Pension Index has given Colombia a score of 61.7 out of 100, placing it in the top half of the 30 national pension systems evaluated by the report, the second-highest ranked Latin American country. The report also mentioned that Colombia's

<sup>281</sup> Caracol, [Fecode iniciará para indefinido](#), May 9, 2017; Telesur, [Fecode mantiene protestas en Colombia en pro de los maestros](#), June 12, 2017, LatinNews Daily, Main Briefing, May 17, 2017.

<sup>282</sup> LatinNews Daily, Main Briefing, May 17, 2017.

<sup>283</sup> IACHR, Press release 76/2017, [IACHR Expresses Concern over the Use of Force in Protests in Colombia](#), June 13, 2017.

<sup>284</sup> *El País*, [Los seis acuerdos claves para el futuro de Buenaventura](#), June 6, 2017.

<sup>285</sup> IACHR, Press Release No. 76/17, [IACHR Expresses Concern over the Use of Force in Protests in Colombia](#), June 13, 2017.

<sup>286</sup> Observatorio de Discriminación Racial (ODR), Dejusticia, and PCN. [Hearing on the human rights situation of Afrodescendants affected by the armed conflict](#), July 5, 2017. 163rd session, held in Lima, Peru, July 2017.

<sup>287</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>288</sup> Corporación Yira Castro, communication to the IACHR dated December 18, 2017.

national pension system has some risks and shortcomings that should be addressed, such as lack of coverage, a low level of household savings, and a relatively low retirement age.<sup>289</sup>

190. The Office of the Ombudsperson, for its part, also reported that major challenges persist with respect to individuals entitled to special protection under the Constitution, such as victims of the armed conflict or people in rural areas, particularly internally displaced persons. It said that, in spite of a series of public policies introduced by the Government for ensuring access to and enjoyment of the rights to housing and income generation for displaced persons, they have not been guaranteed the effective enjoyment of those rights. It said that major flaws are visible in the formulation and design of public policies for ensuring the rights of returned and resettled people in rural areas that constrain the prospects for overcoming their situation of extreme vulnerability.<sup>290</sup>

191. It is also worth noting that the OHCHR said that the Peace Agreement, particularly the points related to integrated rural reform and the solution to the illicit drug problem, provides the opportunity to meet these challenges in a holistic manner. It said that addressing ESCR would help overcome violence and exclusion, and enhance the exercise of civil and political rights. Among other things, the OHCHR reported on the impact of water source contamination due to illegal mining on the health of indigenous communities along the Caquetá River in Caquetá and Amazonas. It also reported irregular vaccination access for boys and girls, in spite of the vaccination plans envisaged in national law, and that improvement in statistical information quality about the health situation is required.<sup>291</sup>

192. The State also mentioned that ESCR are a priority for the Government, hence its development of an institutional structure in the social inclusion and reconciliation sector.<sup>292</sup> In that connection, it noted that in 2016 the income poverty gap fell from 1.7 to 1.5, while the extreme poverty gap decreased from 3.7 to 3.2. It reported that the national poverty rate declined from 37.2 percent in 2010 to 28.0 percent in 2016, and that extreme poverty fell by 12.3 percent to 8.5 percent over the same period. Likewise, it mentioned that over that time in rural areas the incidence of poverty went down from 49.7 percent to 38.6 percent, with extreme poverty dropping from 25.0 percent to 18.1 percent, meaning that 1.5 million people made their way out of poverty, while 1.1 million people emerged from extreme poverty in Colombia's rural areas.

193. It also reported that unemployment in Colombia fell to 8.7 percent as at June 2017, when an estimated 22,800,000 Colombians had jobs. In addition, it said that between 2015 and 2016, the Gini coefficient, which measures income distribution, went from 0.522 to 0.517 for the country as a whole, the third consecutive annual decrease.<sup>293</sup>

194. The State also mentioned that the country has made significant strides in relation to multidimensional poverty, which was recorded at 17.8 percent in 2016 for the country as a whole, 2.4 percentage points lower than in 2015 (20.2 percent). It said that nationwide, the poverty rate decreased from 20.2 percent to 17.8 percent over the same period. In urban areas, poverty contracted from 14.4 percent to 12.1 percent, while in rural areas it was down from 40.4 percent to 37.6 percent. It noted that as a result, between 2012 and 2016, 5.1 million people made it out of multidimensional poverty.<sup>294</sup>

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<sup>289</sup> LatinNews Daily, Main Briefing, October 24, 2017.

<sup>290</sup> Office of the Ombudsperson, Note of August 29, 2017.

<sup>291</sup> Human Rights Council, [Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia](#), A/HRC/34/3/Add.3, thirty-fourth session.

<sup>292</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>293</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>294</sup> The State reported that *Prosperidad Social* helps to reduce multidimensional poverty by implementing strategic programs in the areas of entrepreneurship, employability, capacity building, comprehensive rural interventions, conditional cash transfers, the *Unidos* Network, and social infrastructure and housing improvement projects, among other measures. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.



195. For its part, the Office of the Ombudsperson reported that for the period from 2014 to 2016 (the last year for which statistics are available), according to the National Department of Statistics (DANE), there was a reduction in poverty from 28.5 percent to 28 percent, and in multidimensional poverty, from 21.9 percent to 17.8 percent; extreme poverty went from 8.1 percent to 8.5 percent. With respect to income distribution (Gini coefficient), it said that “[b]etween 2015 and 2016 ... it fell from 0.522 to 0.517 for the country as a whole, completing three years of consecutive decreases. The Gini coefficient for municipal seats went from 0.498 in 2015 to 0.495 in 2016, while in urban centers and remote rural areas, it rose from 0.454 in 2015 to 0.458 in 2016,” marking another year of improvement according to those statistics.<sup>295</sup>

196. It also said that *Prosperidad Social* and the National Agency for Poverty Relief (*Agencia Nacional para la Superación de la Pobreza*) coordinate their efforts on poverty relief and social inclusion targeting people who reside in the country's most vulnerable areas.<sup>296</sup> It says that *Prosperidad Social* boosts coordination among different sectors with the objective of overcoming poverty, social inclusion, and reconciliation of the sectors most affected by violence.

197. The State reported on progress in a series of social programs, including the following: *Más Familias en Acción*, *Ingreso para la Prosperidad* (More Families in Action, Income for Prosperity) for building income-generation capacities and skills; the *Unidos* Strategy, for strengthening and promoting improvements in living standards and income generation capacities for households and communities, as well as the implementation of strategies on entrepreneurship,<sup>297</sup> employability,<sup>298</sup> capacity building,<sup>299</sup> and comprehensive rural interventions.<sup>300</sup> With regard to the Comprehensive Rural Interventions Strategy, the State reported a number of programs implemented in its framework, including IRACA, *Familias en su Tierra* (Families on Their Land), and *Familias Rurales* (Rural Families), which have benefited 94,917 households; and the Food Security Network Program (ReSA), which has benefited 1,254,928 households.

198. The commission values the progress reported by the state in the area of ESCR, particularly in relation to overcoming poverty and extreme poverty. The Commission notes, however, that challenges persist in terms of enjoyment of and access to the right to health, labor rights, and, in particular, access to ESCR for people living in rural areas, in addition to the impact of extractive industries on water sources. Therefore, it exhorts the State to strengthen its actions in those areas.

<sup>295</sup> Office of the Ombudsperson, Note of August 29, 2017.

<sup>296</sup> *Prosperidad Social*, [Mapa social](#), Office of the Ombudsperson, Note of August 29, 2017.

<sup>297</sup> Programs such as the following are implemented in the context of the entrepreneurship strategy: *Mujeres productivas* (Productive Women), *Emprendimiento Colectivo* (Collective Entrepreneurship), *Capitalización* (Capitalization), *Recuperación de Activos Improductivos* (Unproductive Asset Recovery), *Ruta de Ingresos y Empresarismo* (Income and Business Path), *Programa de Atención Inicial* (Initial Assistance Program), *Desarrollo Económico Incluyente* (Inclusive Economic Development), *Emprendimiento Individual Produciendo por mi Futuro y mi Negocio* (Individual Entrepreneurship Producing for My Future and Business). Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>298</sup> Programs such as the following are implemented under the Employability Strategy: *Empleo para la Prosperidad* (Employment for Prosperity), *Incentivo a la Capacitación para el empleo* (Vocational Training Incentive), *Programa de Empleo Temporal* (Temporary Employment Program), and *Programa Empleo de Emergencia* (Emergency Employment Program). The Employment for Prosperity Program seeks to facilitate labor market entry for the population targeted by *Prosperidad Social* through technical or supplementary training, strengthening crosscutting skills, psychosocial support, and access to job opportunities in the labor market. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>299</sup> Through the capacity-building strategy, the current administration has delivered 38,376 million pesos to 481,293 individuals involved in the projects *Mujeres Ahorradoras en Acción* (Women Savers in Action), *Listas para Ahorrar* (Ready to Save), *Habilidades Socioemocionales* (Socioemotional Skills), and *Trabajemos Unidos* (Let's Work Together). Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>300</sup> *Prosperidad Social* helps to reduce multidimensional poverty by implementing strategic programs in the areas of entrepreneurship, employability, capacity building, comprehensive rural interventions, conditional cash transfers, the *Unidos* Network, and social infrastructure and housing improvement projects, among other measures. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

## I. Groups Especially Affected by the Armed Conflict

### 1. The Invisibility of Afro-descendent, Raizal and Palenquero Persons

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

199. In its report Truth, Justice and Reparation, the Commission noted its concern regarding situations such as the poverty and exclusion of the Afro-Colombian population; the failure to clarify the human rights violations perpetrated against Afro-Colombians and the obstacles to the effective enjoyment of their collective property rights to the land, among others.<sup>301</sup> The IACHR noted that the disparities between the social and economic conditions of Afro-descendants and the rest of the population in Colombia are closely tied to the social exclusion suffered historically by this population,<sup>302</sup> which it considers entails a situation of racism and structural discrimination.<sup>303</sup>

200. As regards the ethno-differential approach, the State said that one of the best practices used in the framework of the victims policy is to continue the "new heads strategy" which aims to provide outgoing heads of departmental and municipal administrations with guidelines so that their performance reports—as both mayors and governors—and development plans include the incorporation of the ethno-differential approach, with training workshops held for that purpose.<sup>304</sup>

201. As regards progress in the area of prior consultation, the State reported that the last meeting of the National Forum on Prior Consultation (*Espacio Nacional de Consulta Previa*), held in Bogota in July, discussed different proposed laws and decrees, including the decree containing the Forum's rules of procedure and the proposed Afro-Colombian Equal Opportunity Law, which aims to recognize the fundamental right to ethnic identity of black communities and Afro-Colombian people. It also informed that a methodology had been agreed upon for the prior consultation process in the framework of the fast-track procedure, which are consultations on the rules governing implementation of the Peace Agreement. In addition it reported on the implementation of the decade for people of African descent, in the framework of which various activities for recognition of Afro-descendants and for learning about governance, peace, and discrimination. It also mentioned the approval of the self-recognition census methodology, among other things.<sup>305</sup>

202. The IACHR hails the new self-recognition census methodology adopted in keeping with the recommendations contained in its report Truth, Justice and Reparation, and it encourages the State to continue to research and produce data disaggregated by gender and ethno-racial origin that evinces the realization of rights by the Afro-descendent population and their situation in different parts of the country.<sup>306</sup> The

<sup>301</sup> IACHR, Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II, December 31, 2013, par. 616.

<sup>302</sup> IACHR, Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II, December 31, 2013, par. 619.

<sup>303</sup> IACHR, Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II, December 31, 2013, par. 621.

<sup>304</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>305</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>306</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

Commission also values the steps taken by the State to implement the ethnic chapter of the Peace Agreement and encourages it to make sustained progress to that end. It also urges it to increase its efforts to apply a differential approach in public policies and combat the persistent disregard of the Afro-descendant population. The IACHR underscores that the effective participation of historically marginalized groups in governmental organs and institutions that play key roles in rights promotion is a critical part of advancing policies and programs that take the local realities of these groups into consideration.

203. The Commission salutes the consolidation of the Legal Commission for Protection of the Rights of Black Communities or Afro-Colombian People in the framework of Law 1833 of 2017 aimed at ensuring protection for collective and individual rights of Afro-descendants in the Colombian Congress.<sup>307</sup> That is a step toward bringing the country's laws into line with its international obligations on prior consultation in relation to collectively owned territories. In that regard, the Commission would like to remind the State that it not only has a positive international duty to adopt—in good faith and in a culturally appropriate way—rules that ensure effective realization of the right to prior consultation of Afro-descendent communities in order to obtain their free and informed prior consent. In addition, it also has the obligation to abolish incompatible provisions and to refrain from adopting laws that are contrary to or obstruct the observance and full assurance of the right to consultation.

204. During the hearing on the human rights situation of Afro-descendants affected by the armed conflict, the organizations taking part denounced their disregard and the lack of progress in implementing the ethnic chapter of the Peace Agreement. They said that the lack of public policies with an ethnic and gender-based focus has worsened the situation of Afro-descendent populations in the Pacific region. Victimization of the Afro-Colombian population in the context of the mobilization and strike organized in the municipality of Buenaventura. They also referred to the re-victimization of Afro-Colombian women who require assistance under the Victims Law and, in particular, Decree Law 4635 of 2011; the disregard of Afro-descendants in the laws governing the Peace Agreement and constraints in the rules governing the ethnic chapter; violation of the right to prior consultation in the fast track process by which the rules governing the Peace Agreement (except the ethnic chapter) were adopted.<sup>308</sup>

205. For its part, the State explained that it recognizes the heightened impact of the armed conflict on Afro-descendent populations but highlighted the agreements signed with the Buenaventura Civic Strike Committee, which include the creation of an exclusive investment fund for priority projects in the region. The State also stressed the legal mechanisms for comprehensive assistance and reparation to victims of the internal armed conflict, as well as mechanisms to provide assistance, care, comprehensive reparation, and land restitution for victims belonging to black, Afro-Colombian, Raizal and Palenquera communities.

206. The IACHR asked the State to provide information about specific measures that it proposes to adopt to promote access to economic, social, and cultural rights for Afro-descendants in the Pacific region. The Rapporteur on the Rights of People of African Descent and against Racial Discrimination reiterated the importance of compiling statistics disaggregated by gender and ethnicity on the women victims of excessive use of force in Buenaventura, and reiterated the importance that the State ensure the right of Afro-descendant populations to engage in peaceful demonstration. The Commission called on the State of Colombia to adopt the necessary measures to ratify the Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance.

207. In its observations on the draft of this report, the State said that the differential assistance that it provides aims to reduce gender gaps by recognizing and promoting access to and effective enjoyment of women's rights, as well as to identify and address specific harm arising from gender-based victimization and

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<sup>307</sup> With the direct participation of the state in restoring the rights to: (i) life, quality of life, and a healthy environment; (ii) humane treatment; (iii) protection; (iv) liberty and personal safety; (v) identity; (vi) health; (vii) education (viii) a family and not to be separated from it, among others. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, p. 34.

<sup>308</sup> *Consejo Nacional de Paz Afrocolombiano (CONPA)*, request for a hearing on the human rights situation of Afro-descendants affected by the armed conflict, March 29, 2017. [Hearing on the human rights situation of Afro-descendants affected by the armed conflict](#), July 5, 2017.

power disparities. It also mentioned the creation of the Women and Gender Group in the Victims Unit and to CONPES 3784, which contains public policy guidelines for risk prevention, protection, and safeguards for the rights of women victims of the armed conflict.<sup>309</sup> (See *supra* III.I.d).

208. In relation to the Afro-descendent population, the State said that there are four categories of self-recognition in Colombia, in keeping with their historical origin and demands. The State said that individuals recognize themselves as belonging to black, Afro-Colombian, *Palenquera*, and *Raizal* communities. It said that the Victims Unit orders assistance, care, comprehensive reparation, and land restitution measures to be provided to victims from black, Afro-Colombian, *Raizal*, and *Palenquera* communities; registers victims in an ethno-differentiated way; conducts characterization surveys to measure levels of vulnerability in this population; seeks to coordinate individual and collective compensation for the Afro-descendent population in matters of comprehensive reparation; and holds differential assistance information days for improving access to the system, among other measures. The State also mentioned that such activities are carried out in coordination with SNARIV and in accordance with the prior consultation methodology for the development and implementation of collective reparation plans for black, Afro-Colombian, *Raizal*, and *Palenquera* communities, in addition to the coordinated support provided in keeping with decisions on specific follow-up for the Afro-descendent population adopted by the Constitutional Court in relation to Judgment T-025 of 2004.<sup>310</sup>

209. The Commission notes that this year reports have continued about the disproportionate impact of the violence related to the armed conflict on the Afro-descendent population,<sup>311</sup> and that the need persists for special protection for Afro-Colombian leaders of both sexes, who receive constant threats. In June, the Commission condemned the murder of Bernardo Cuero, a prominent human rights defender and Afro-descendant leader.<sup>312</sup> The Commission underscored the need for risk analyses and protection measures to be adequate and effective and, as such, to be suitable to protect defenders in situations of imminent risk, with a specific approach tailored to Afro-descendent leaders.

210. The Commission also repudiated the murder of Jhon Jair Cortés, an Afro-descendent community leader, who was murdered on October 17. Mr Cortés, who worked to shed light on the humanitarian emergency and violence affecting the members of the Afro-descendant and indigenous communities of rural Tumaco, had reported the killings and injuries of the demonstrators on October 8. He had received threats and, along with the other 18 members of the Community Council, was under protection of the UNP.<sup>313</sup>

211. As was mentioned, the civic strikes in Buenaventura and Chocó, areas with a high percentage of Afro-descendants in their population, were held to demand access to employment, housing, clean water, education, health, and other ESCR,<sup>314</sup> reflecting the unequal access to those rights. The Commission was also concerned that the peaceful protests were put down with excessive force (see *supra*, III.H).

<sup>309</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>310</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>311</sup> The most widely occurring events in the black, *Raizal* and *Palenquera* population in Valle are forced displacement (around 792,000 people); threats (approximately 41,000 incidents reported), homicide (at least 34,700 direct and indirect victims), fighting and harassment (14,195 incidents reported) and crimes against sexual liberty and integrity (2,584 cases reported). El País, [32 de cada 100 personas víctimas del conflicto en el Valle son afrodescendientes](#), May 19, 2017.

<sup>312</sup> IACHR, Press Release No. 77/17, [IACHR Condemns the Killing of Bernardo Cuero in Colombia](#), June 16, 2017.

<sup>313</sup> IACHR, Press Release No. 164/17, [IACHR Condemns the Killing of Colombian Farmers and a Community Leader and the Attack on a Humanitarian Mission and on Journalists](#), October 19, 2017. See Corporación Justicia y Dignidad, [El Estado y el gobierno de Colombia son los responsables de la Masacre de Alto Mira y Frontera en Tumaco la CIDH debe pronunciarse urgentemente y la CPI debe tomar nota](#), October 8, 2017. See also UNHCR, [ACNUR lamenta profundamente el asesinato de José Jair Cortés, del Consejo Comunitario de Alto Mira y Frontera en Tumaco, y Alerta sobre el riesgo que enfrentan sus otros miembros](#), October 19, 2017.

<sup>314</sup> IACHR, Press release 76/2017, [IACHR Expresses Concern over the Use of Force in Protests in Colombia](#), June 13, 2017. See Consejo Nacional de Paz Afrocolombiano, [Otro proceso de paz sin afrocolombianos, comunidad internacional respalda inclusión de afrocolombianos en el proceso de paz](#), December 15, 2015.

212. While the Commission values the progress reported by the State in terms of the ethno-differential approach and census methodology, it calls on the State to adopt the necessary measures to prevent acts of violence such as those that have occurred and that continue to be committed against Afro-descendent leaders, as well as to strengthen existing protection mechanisms. In addition, the IACHR reiterates the importance of diligently ensuring the right to peaceful demonstration and the need to channel the activities of ESMAD with a focus on respect for human rights. The IACHR also urges the State to continue to adopt laws, policies, and programs with an ethno-racial perspective aimed at providing a structural response to the ongoing situation of discrimination and violence faced by the Afro-descendent population

## 2. Violence against Children and Adolescents

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

213. The IACHR has repeatedly stated that the recruitment and use of children and adolescents in the context of the armed conflict is one of the matters of most concern to the IACHR due to the seriousness, systematic nature, and invisibility of this violation of the rights of the child.<sup>315</sup>

214. This year, as at May, the FARC said that there could still be 21 minors in its structure. The Government refuted that figure and assured that there were at least 170.<sup>316</sup> In August, as the FARC were handing over the last of their weapons to the UN, the disengagement of minors from their ranks concluded and it was reported that a total of 112 adolescents had been rescued in humanitarian operations since September 2016.<sup>317</sup>

215. In that connection, the United Nations Mission in Colombia reported that on August 15 and 16, 34 minors were removed from FARC camps with the support of the ICRC. The Mission said that between September 2016 and August 2017, 122 minors formerly associated with the FARC began the reintegration process, which implied their registration as victims, their inclusion in the special program of reintegration “*Camino diferencial de vida*” (A Different Path for Life), which seeks restoration of rights, reparation, social inclusion, and reintegration, and involves the Family Well-being Institute (ICBF) and their being granted access to the administrative program of rights restitution.<sup>318</sup>

216. The ICRC, for its part, received 24 minors who left the guerrilla camps as part of the Peace Agreement. As at August, the FARC had handed over 86 minors, who were taken by UNICEF and government personnel to transition shelters, from which some have already escaped. According to the Office of the Presidential Adviser on Human Rights, at least 39 have been reclaimed by their families.<sup>319</sup> The minors now out of those areas who do not have families will be enrolled in a special program. Those who decide not to accept the plan designed for them will receive support from the State, which will examine their situation and offer them guarantees for the restoration of their rights.<sup>320</sup>

217. With respect to the integration into civilian life of the demobilized minors, the State provided more information about the “*Camino diferencial de vida*” program, which envisages special measures for the reintegration of minors leaving the ranks of the FARC prior to the conclusion of the laying down of

<sup>315</sup> IACHR, 2016 Annual Report, Chapter V, Colombia, par. 226.

<sup>316</sup> *El País*, [Los niños salen de las FARC](#), August 16, 2017.

<sup>317</sup> *El País*, [Los niños salen de las FARC](#), August 16, 2017.

<sup>318</sup> United Nations, Security Council, Report of the Secretary-General on the United Nations Mission in Colombia, 26 September 2017, para. 62.

<sup>319</sup> *El País*, [Los niños salen de las FARC](#), August 16, 2017.

<sup>320</sup> *El País*, [Los niños salen de las FARC](#), August 16, 2017.



arms, in order to provide them with tools for rebuilding and consolidating their life plans within a framework of full rights restoration. It said that, given their victim status, they will be afforded all the comprehensive reparation measures that the State provides, including compensation, rehabilitation, satisfaction, restitution, and guarantees of non-repetition,<sup>321</sup> and that the consolidation of their life plans will take place within the process of reintegration with a differential approach, which will be designed by the National Reintegration Council.

218. The State reported that a total of 132 minors left the ZVTNs, 98 of them before August 13, 2017. It said that as at end August, a total of 39 young people had initiated their family reintegration process.<sup>322</sup> The State also mentioned that the ICBF has a Specialized Care Program for minors who have been victims of illicit recruitment and been disengaged from organized armed groups operating outside the law,<sup>323</sup> and that through that Program, between January and July 2017, 203 minors had initiated an Administrative Process for Rights Restoration.

219. As regards special measures of care for girl victims of forced recruitment, the State reported that the above program adopts an approach tailored to gender and ethnic differences, disabilities, and intersectionality,<sup>324</sup> within a series of coordinated and interlocking measures that contribute to comprehensive reparation with a focus on protection.

220. According to information received, the number of cases of recruitment of minors has decreased: 279 cases in 2013, 50 in 2016, and 5 as at August 2017.<sup>325</sup> This is explained by the fact that FARC recruitment fell from 197 cases in 2013 to just 2 in 2017. The State also observed that the number of cases of recruitment has fallen in all departments except Córdoba, Quindío, Risaralda, Amazonas, Boyacá and Vichada, where it has risen. It explained that this rise could be due to the increase in actions by GAO and dissident FARC groups, as well as growth in activities associated with the use of minors, especially in the coffee belt. On the subject of prevention of forced recruitment, the State said that it had carried out at least one of the 28 strategies and programs in 988 municipalities.

221. The State emphasized that, though the strategies, programs, and projects to prevent forced recruitment of minors offer acceptable territorial coverage, it is impossible to deny that one of the most significant challenges in executing the recruitment prevention policy has to do with interagency articulation and coordination among the family well-being, victims, and human rights systems.<sup>326</sup>

222. The MAPP/OAS also noted its concern at the dynamics of recruitment and the use of minors and young people as a strategy by illegal armed groups to expand their control of territories. It noted that the use of minors and young people can vary in line with social and gender roles.<sup>327</sup> In that regard, in some territories it has identified a strategy used by illegal armed groups in which they abduct girls between the ages of 10 and 13 from their homes in order to serve as “wives” for the men in the group; the girls are then sexually exploited and made to perform domestic work in the group. The boys and adolescent males, for their part, are used as informants or to collect extortion money for the purposes of carrying out activities of a more operational nature.

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<sup>321</sup> This includes enrollment in income generation programs and training incentives, connection with institutional offerings in terms of career guidance, appropriate orientation with respect to what SENA offers in each case, vocational training, skills certification, entrepreneurship, and labor intermediation. Family reintegration, restoration of affective ties, and inclusion of minors and their families in different housing improvement programs. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>322</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>323</sup> Resolution No. 1525 of February 23, 2016. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>324</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>325</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>326</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>327</sup> OAS, Twenty-third Report of the Secretary General to the Permanent Council on the MAPP/OAS, October 2017.

223. The IACHR highlights, as it did in its report *Truth, Justice, and Reparation*, that there are elements in common in the minors' circumstances, the way in which they join armed groups, and the effects that the experience has on their ability to adapt successfully to civilian life and reintegrate themselves in the family and community following their liberation. Accordingly, the State should ensure that programs highlight that situation and that measures and plans are adopted to address it. Reintegration programs should include all demobilized minors—regardless of their origin—and, to the extent possible, their families and communities, with a view to ensuring a sustainable reintegration process that respects their rights.

224. In that connection, in its observations on the draft of this report, the State said that the Reintegration and Normalization Agency (ARN) had designed a Reintegration Path with a differential approach targeting individuals who were recruited by organized armed groups operating outside the law as minors and who disengaged after reaching the age of majority. It said that that differential assistance includes their recognition as victims of illegal recruitment as well as promoting age-appropriate activities that envisage family and community inclusion. It clarified that this assistance begins once the disengaged persons reach majority of age and the ICBF has restored their violated rights.<sup>328</sup>

225. The State also reported on the expansion of the target group of the reintegration programs for minors following the ruling of the Constitutional Court that established the obligation to certify all victims of the crime of illegal recruitment in the context of the armed conflict,<sup>329</sup> regardless of the illegal armed group from which they had disengaged, including criminal groups, a decision that allowed access for those individuals to the reintegration processes offered by the State.<sup>330</sup>

226. With respect to information about violations of the right of minors not to participate in armed conflicts, the State said that the Technical Secretariat for a Prevention of Recruitment, which reports to the Office of the Presidential Adviser on Human Rights, had identified between 2013 and May 2017, 53 verified events, 26 threats of recruitment, 21 non-institutional disengagements, 5 recruitments, and 1 disengagement, involving, in all, 171 persons under 18 years old.<sup>331</sup>

227. As regards investigation of the crime of forced recruitment, the State reported that there are 4,860 registered victims of illicit recruitment attributable to self-defense groups that collectively demobilized and were prosecuted under the Justice and Peace Law. The State also mentioned that, of that number, 316 victims were registered between January 1 and July 31, 2017. Likewise, it reported that in 2017, charges have been brought in proceedings before the Judicial Panels for Justice and Peace of the country's superior district courts against 96 acts of illicit recruitment involving 102 victims of that crime. In addition, it said that as at August, 46 applicants had been convicted under the Justice and Peace Law for 279 acts of illicit recruitment, and that 1,250 victims of that crime had been recognized in judgments.<sup>332</sup>

228. *Defence for Children*, for its part, also reported the continuation of violence against children by post-demobilization groups, as well as by the National Liberation Army (ELN) and FARC-EP dissidents. The organization considers that subject of disengagement of children and adolescents should be a priority issue on the negotiating agenda between the Colombian Government and the ELN.<sup>333</sup>

229. The Internal Affairs Office made a similar announcement, warning of reports of recruitment of minors by FARC dissidents and other armed groups that continue to operate in Colombia. It believes that

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<sup>328</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>329</sup> Constitutional Court, Judgment C-069 of February 18, 2016. Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>330</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>331</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>332</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>333</sup> Defence for Children International, [More Efforts Needed to Protect Children Affected by the Conflict](#), March 22, 2017.

the main challenge following the disarmament of the FARC is to prevent "children from again having to give up school for the bush and guns."<sup>334</sup>

230. The Office of the Ombudsperson, for its part, considers that, as part of the implementation of the Peace Agreement, with respect to equal treatment for disengaged minors and their reintegration in civilian life, priority should be given to minors' rights to health and education during the disengagement process, and that the judicial treatment of minors should be commensurate with their status as victims of the armed conflict and the crime of illicit recruitment, which would result in the waiver of any criminal actions brought against them.<sup>335</sup>

231. At the same time, the Office of the Ombudsperson considers that the category *abduction of minors*, which has been identified as one of the types of conduct not eligible for amnesty or pardon,<sup>336</sup> should be excluded from the text since neither the provisions of domestic law, nor the Rome Statute, nor any other international legal instruments applicable to the transitional justice process, define such conduct, which precludes its application.

232. The Commission concurs with that observation. The term *international abduction* used in private international law differs from the language used in international humanitarian law,<sup>337</sup> which refers to recruitment or capture of children by armed groups to participate in hostilities.

233. The IACHR values the considerable progress made with regard to the protection of the children and adolescents most affected by the armed conflict, particularly their demobilization, which concluded in August, and the implementation of the special reintegration program. The IACHR recommends that the State continue to make every effort necessary to ensure that minors who have been recruited are disengaged and to compare and contrast all available records to that end. The IACHR considers it critical that the State continue to make resolute efforts to prevent recruitment of minors by armed groups and FARC dissidents, and to strengthen its invaluable efforts in the demobilization, rehabilitation, and social reintegration of children and adolescents, giving particular attention to new armed structures.<sup>338</sup>

### 3. Impacto diferenciado del conflicto armado y los pueblos indígenas en Colombia

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

<sup>334</sup> *El País*, [Los niños salen de las FARC](#), August 16, 2017.

<sup>335</sup> Office of the Ombudsperson, Note of August 29, 2017.

<sup>336</sup> Arts. 23, 30, 46, 47, 52, and 57. [Law 1820 of 2016](#). Office of the Ombudsperson, Note of August 29, 2017.

<sup>337</sup> Term used in private international law. Hague Convention on Civil Aspects of International Child Abduction, October 25, 1980.

<sup>338</sup> IACHR, 2016 Annual Report, [Ch. IV. Colombia](#), par. 240.

material possession of the land so that the traditional use and exploitation of the territory and its management by the traditional authorities can be restored.

- Bring the process of forming, expanding and clearing the indigenous reserves to a swift conclusion, bearing in mind the inter-American standards on indigenous peoples' right to collective property.

234. In its Truth, Justice, and Reparation Report, the Commission expressed its concern at the close relationship between the occupation of indigenous territories, human rights violations in acts of armed violence, forced displacement, the murder of indigenous persons, and extractive industry settlements. In 2017, the Commission continued to receive worrisome information regarding impairment of the rights of indigenous persons in those areas.

235. As these lines were written, reports were continuing to come in regarding a series of human rights violations against a number of different indigenous peoples. In March 2017, the Awá indigenous people reported human rights violations against individuals in the district of Llorente – Municipality of Tumaco, perpetrated by the Mobile Anti-Riot Squad (ESMAD) and the National Police as part of their policy of repression of the civilian population in the Department of Nariño, on Colombia's Pacific Coast.<sup>339</sup> The Commission also condemned the violent deaths of two members of the Awá indigenous people in the municipality of Tumaco on October 5, during an attack in connection with a campesino protest against the forced eradication of crops used for illicit purposes and against noncompliance with Point 4 of the Peace Accord and with the PNIS (see *supra* II. above). The IACHR voiced its profound concern at information provided by persons from the area to the effect that members of the National Police were allegedly responsible for those deaths and it urged the authorities to conduct an exhaustive analysis of the facts of the case.<sup>340</sup>

236. As already mentioned, in 2017, violence against defenders of the human rights of indigenous peoples was another matter of grave concern to the IACHR. In this regard, the Commission on Human Rights of Indigenous Peoples reported that Wayúu leader and defender Rafael Lubo Aguilar had been murdered by a hired assassin on December 11, 2016. Likewise, it was reported that on January 5, 2017, other leaders of the community and next of kin of the deceased had received death threats<sup>341</sup> and that there had been delays in conducting criminal investigations into the facts. The Commission also pointed to the need to jointly engage in risk evaluation studies and to assess the possibility of granting or reinforcing emergency protection measures, to address the imminent risk to the communities that had joined the Association of Indigenous Municipal Councils (ACIN).

237. The Commission also received information, in 2017, regarding the murder of Josefina Cuetia Ramos, on April 4, and regarding her husband, Ricardo Cuetia, who was seriously wounded in the Jambaló reservation, in the Department of Cauca.<sup>342</sup> It was likewise informed of the murder, on April 19, of the Governor of the Kite Kiwe Indigenous Municipality, Gerson Acosta Salazar<sup>343</sup> and of the murder of the indigenous governor, Aulio Isararama Forastero, in the Catru Dubaza Ancoso reservation, of the Alto Baudó Chocó community, in October<sup>344</sup>.

238. The Commission was also apprised of what indigenous organization have denounced as a sudden and vicious irruption of the ESMAD into the indigenous communities of La Trina and Guascal, in the Department of Cauca, in October, during which the ESMAD used the indigenous community members' homes

<sup>339</sup> Commission on Human Rights of Indigenous Peoples, request for urgent action, violation of the right to autonomy and forced eradication of crops used for illicit purposes, March 31, 2017; ONIC, [Extralimitación de la fuerza pública deja heridos y consterna a los pobladores indígenas, campesinos y afrodescendientes de la costa pacífica nariñense](#), March 31, 2017.

<sup>340</sup> See IACHR, Press Release, No. 164/17, [IACHR Condemns the Killing of Colombian Farmers and a community leader and the Attack on a Humanitarian Mission and on Journalists](#), October 19, 2017.

<sup>341</sup> Aura Barros, Armando Gouriyú Valbuena, Custodio Valbuena Gouriyú and María Tayde Valbuena. Commission on Human Rights of Indigenous Peoples, Request for Urgent Action to address threats against Wayúu leaders, April 6, 2017.

<sup>342</sup> ACIN, communication of April 2017.

<sup>343</sup> *El Espectador*, [Asesinan a Gerson Acosta Salazar, líder indígena del Cauca](#), April 19, 2017.

<sup>344</sup> *El Espectador*, [No Cesán Crimines de Líderes Sociales: Asesinan a Gobernador Indígena en Chocó](#), October 25, 2017.

as shields. The organizations likewise reported that, in Buenaventura, Jhon Anderson Ipia was seriously wounded by a cluster bomb tossed by the ESMAD and lost at least one finger. They pointed out that in less than three days some 13 people were wounded in the departments of *Valle del Cauca* and *Caldas*, in operations by government forces.<sup>345</sup>

239. For its part, the State stressed that following an agreement between the Government, the FARC, and organizations representing ethnic peoples, the Ethnic Peoples Authority (*Alta Instancia con Pueblos Étnicos*) was formed to monitor implementation of the agreements, comprised of delegates of representative peoples. It acts as a consultative and representative body and interlocutor with the Commission for Monitoring, Promoting, and Verifying the Implementation of the Final Agreement (CSIVI) in all matters related to the interpretation, implementation, and follow-up to the Peace Agreement and ensures the mainstreaming of an ethnic and cultural perspective.<sup>346</sup>

240. The State explained that in the various Consensus-Building Roundtable Discussions between the Government and the indigenous peoples prior consultations have begun on several legislative initiatives relating to implementation of the Peace Agreement, such as the draft Lands and Rural Development Act, the National Agriculture and Livestock Census, and the decrees needed for fast track implementation of the Peace Agreement<sup>347</sup>.

241. As regards the measures designed to protect indigenous peoples under the Peace Agreement framework, the State reported that work has begun on the design of a roadmap for the comprehensive implementation of the Ethnic Chapter of the Agreement and on the construction of a roadmap in line with the Implementation Master Plan for effective mainstreaming of the ethnic perspective. The State indicated that this Plan would take into account the special circumstances of women and of ethnic peoples, particularly those affected by the armed conflict.<sup>348</sup> The State likewise underscored the following protection measures implemented by the Land Restitution Unit (URT)<sup>349</sup> in territories affected by the armed conflict:

- Fifteen protection measures in the territories of 23 indigenous peoples,<sup>350</sup> in which registration of the measure in the reservation matriculation page has been requested. Billboards referring to the reservations are being designed and put up, in coordination with the community, at strategic spots in the territories. Reservation amelioration work has begun, as have administrative procedures for constituting and expanding territory;
- As internal precautionary measures, in the Tumaco-Barbacoas province of the department of Nariño, heavy machinery used for illegal and environmentally damaging mining activities was destroyed. Diagnostic assessments are to be carried out of harm done to the environment and to the health of the community by mining activities and the spraying of glyphosate herbicides, and the Organizational Reinforcement and Binational Plan will be implemented to prevent and respond to new instances of illegal mining activity and other threats.
- As an internal precautionary measure on behalf of a number of indigenous reservations,<sup>351</sup> there were requests for, inter alia, the design and implementation of a strategy to prevent the forced

<sup>345</sup> ONIC, OPIAC, Confederación Indígena Tayrona (CIT), Gobierno Mayor de Autoridades Indígenas de Colombia (AICO), and the Commission on Human Rights of Indigenous Peoples, urgent report of November 1, 2017.

<sup>346</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>347</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>348</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>349</sup> Within the framework of Decree Law 4633 of 2011. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>350</sup> The Inga, Awá, Nasa, Embera Chamí, Cubeo, Desano, Tucano, Tuyuca, Tatuyo, Curripaco, Wanano, Yurutí, Siriano, Piratapuyo, Bará, Carapana, Maku, Tariano, Makuna, Pijao, Tukano, Piratapuyo, and Tule peoples.

<sup>351</sup> Puerto Libia Tripicay; Dearade Biakirude; Dominico, Londoño and Apartadó; Aguaclara and Bella Luz along the Amporá river; the Jurubida-Chori and Upper Baudó rivers; Puerto Alegre and La Divisa; the Catru-Dubasa and Ancoso rivers; Chigorodó Mema; Sirena Berrecuy; the Rorreido and Chimani rivers; Patio Bonito; Do Imama Tuma and Bella Luz; Bellavista-Unión Pitalito; El Piñal; Puerto Chichiliano; Bajo Grande; Santa Rosa de Ijua; Ordo Sivirú Aguaclara; La Jagua-Guachal-Pitalito; the Pavasa river and Quebrada Jella; the



recruitment of children and adolescents by Organized Armed Groups (GAO) and Organized Criminal Groups (GDO) in the Baudó basin; the design, coordination, and implementation of an educational strategy to raise awareness of the risks posed by mines in the river basin; and agricultural and agroindustrial projects.<sup>352</sup>

- Protection has also been provided for the population living in Embera Chamí - Caldas. A request has been put in to complete the procedure for converting (expanding) the indigenous reserve into a reservation covering the whole of the territory. Environmental damage caused by mining has been repaired and illegal mining activities have been suspended. Current activities are geared to organizational capacity-building, self-governance, and education with an ethnic perspective.<sup>353</sup>

242. The Commission takes note of the steps taken by the State to protect its indigenous peoples and encourages it to continue boosting protection given the armed conflict that is still under way in that area and its particular impact on those peoples. Here it is worth reiterating that the IACHR remains concerned about the impacts on indigenous and Afro-descendent communities of armed clashes in this area between the ELN and the Autodefensas Gaitanistas (AGC) paramilitary group.<sup>354</sup> These communities have been subjected to forced displacement and to demographic and territorial control mechanisms imposed through threats and intimidations, and they have had to put up with the deployment of improvised explosive devices in their territories.<sup>355</sup> The Commission therefore calls upon the State to redouble its efforts to guarantee and ensure observance of their human rights.

243. The IACHR has also received information regarding the forced displacement of communities pertaining to the Wounaan peoples of Antioquia and Embera del Chocó in January and February 2017, induced in connection with paramilitary groups remaining as a result of the withdrawal of the FARC.<sup>356</sup>

244. The State reported that it had engaged in Collective Reparation Program activities mostly geared to indigenous communities. It stated that it was currently busy classifying the damage and impacts they had suffered and designing and formulating a comprehensive, collective reparation plan that included prior consultations with the communities and was aimed at restoring trust in the State. It emphasized that more than 104 comprehensive reparation plans had been carried out benefiting 121 communities.<sup>357</sup>

245. The State pointed out that the *Entrelazando* (bonding) strategy was being pursued to bring about psychosocial rehabilitation, aimed at reconstructing the social and cultural fabric in collective reparation communities. The idea is to foster recovery from emotional damage and restore ethical values through collective grieving processes and to promote the restoration, creation, or reconstruction of social mores based on harmonious coexistence, exchanges, and the rebuilding of social relations disrupted or impaired by acts of violence.<sup>358</sup>

246. The Ombudsperson's Office, too, highlighted the fact that a social strategy had been devised to boost and ensure the return of indigenous peoples to their ancestral lands. In that context, it pointed out

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Purricha river; the Orpua river; Puerto Libre on the Pepé river; Quebrada Quera; Santa Cecilia de la Quebrada Oro Chocó and Trapiche on the Pepé river. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>352</sup> See URT. A precautionary measure will be adopted to protect more than 37,000 people in the Upper, Middle, and Lower Baudó basin, September 11, 2017.

<sup>353</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>354</sup> See National Organization of Indigenous Peoples of the Colombian Amazon-region (OPIAC), [Los derechos humanos prioridad de los pueblos indígenas](#), 2017; See also: IACHR, Hearing, [Colombia: Attacks on human rights defenders](#), 161st session, March 21, 2017.

<sup>355</sup> URT. A precautionary measure will be adopted to protect more than 37,000 people in the Upper, Middle, and Lower Baudó basin, September 11, 2017.

<sup>356</sup> National Organization of Indigenous Peoples of the Colombian Amazon-region (OPIAC), [Los derechos humanos prioridad de los pueblos indígenas](#), 2017.

<sup>357</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>358</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

that day-long discussions had been held aimed at forging Consensus with Indigenous Authorities to implement the Indigenous Rural Support Model in community territories, which resulted in: 163 Indigenous Reservations and 101 Community Councils committed to working together to overcoming the hardships experiences by households located in indigenous territories.<sup>359</sup>

247. Nevertheless, the Ombudsperson's Office reported that institutional facilities are not yet in place to address the needs for care and assistance and culturally appropriate measures for the displaced population as per the Constitutional Court's instructions in Decision (*Auto*) 004/09 and that funds have still not been allocated to ensure compliance with the actions agreed upon in December 2011 with respect to the human rights guarantees program.<sup>360</sup>

248. The Ombudsperson's Office also pointed out that it had advised the Constitutional Court about the failure to comply with instructions given in Decisions 004 and 005/09 and about the ongoing, and in some cases exacerbated, humanitarian crisis and risk of the physical and cultural extinction of the county's ethnic groups.<sup>361</sup> It went on to say that there was a lacuna in public policy for preventing and protecting at-risk indigenous peoples from forced displacement.

249. This year, regarding the right to be consulted, the organizations taking part in the hearing on the situation of Afrodescendants affected by the conflicts stated that not all the bills or decrees that the peoples think might affect them have been subject to prior consultation. They considered that the Government unilaterally decides what projects are to be consulted and said that protocols, i.e., agreements, had been reached concerning only four of the five projects submitted to the Standing Committee (*Mesa Permanente*) for Consensus-Building with Indigenous Peoples and Organizations (MPC).<sup>362</sup>

250. On the other hand, as regards the situation of the children and breastfeeding or pregnant women<sup>363</sup> of the Wayúu People in La Guajira, who are beneficiaries of precautionary measures granted by the IACHR, the representatives of those beneficiaries said that the State had conducted rigorous follow-up to verify the conditions under which the beneficiaries' right to life was being protected. However, there were reportedly still concerns about the provision of drinking water and food in sufficient quantities and about access to the emergency health care system in cases in which it is needed, for instance, for children suffering from malnutrition<sup>364</sup>.

251. For his part, the Governor of La Guajira reported that in the first quarter of 2017 deaths of children from malnutrition fell 42% compared to the same period in 2016.<sup>365</sup> The applicant for precautionary measures stated that the Government was attending to the indigenous population in ways tailored to its needs. "The National Government finally understood that its intervention was necessary, for the impact of actions to be reflected in outcomes, such as those we see today in a lower mortality rate for our children."<sup>366</sup> He added that the work done by the Ministry of Health in coordination with the Shipia Wayúu Association to gain access to the communities via consensus-building has meant that actions undertaken are effective and actually reach

<sup>359</sup> Ombudsperson's Office, Note of August 29, 2017.

<sup>360</sup> Ombudsperson's Office, Note of August 29, 2017.

<sup>361</sup> Ombudsperson's Office, Note of August 29, 2017.

<sup>362</sup> CONPA, application for a hearing on the human rights situation of Afrodescendants affected by the armed conflict, March 29, 2017. [Hearing on the human rights situation of Afrodescendants affected by the armed conflict](#), July 5, 2017.

<sup>363</sup> IACHR, PM 51/15, supplemented on January 26, 2017.

<sup>364</sup> Working meeting held on February 23, 2017, in Bogotá. PM 51/15, Children and adolescents of the communities of Uribía, Manaure, Riohacha and Maicao of the Wayúu people, in the department of the Guajira, Colombia. See also OHCHR, [Annual Report of the OHCHR on the situation of human rights in Colombia](#), Spanish unofficial translation, 34th session, Human Rights Council, par. 48.

<sup>365</sup> *El Heraldo*, [Muertes por desnutrición en La Guajira han disminuido 42%](#), May 2017.

<sup>366</sup> *El Heraldo*, [Muertes por desnutrición en La Guajira han disminuido 42%](#), May 2017.

the entire population covered by the protection measures.<sup>367</sup> Nevertheless, those applying for precautionary measures have continued to report that Wayúu children are still dying.

252. In this regard, it is worth underscoring that the OHCHR has reported that Prosperidad Social, with its support, is developing a pilot scheme for monitoring policies and programs addressing the Wayúu people's right to food and water.<sup>368</sup> At the same time, it reported that Afro-Colombian and indigenous children in Chocó are still dying from preventable diseases, due to the limited availability of and access to health care and the lack of drinking water and basic sanitation.<sup>369</sup>

253. The Commission acknowledges the efforts by the State to develop a comprehensive plan to address the needs of the Wayúu people, through a quest for basic and long-term solutions. The IACHR also acknowledges that in February 2017, thanks to a direct intervention by the President of the Republic, the ministers responsible for health, water, and food were charged with temporarily managing those resources in the department of La Guajira through direct actions in situ and it encourages the State to continue implementing that precautionary measure.

254. In light of the above, the Commission appreciates the actions taken by the State and encourages it to continue implementing the right to consultation on the Lands and Rural Development Act, along with actions to step up protection of the members of its indigenous communities, while continuing without interruptions its program of both collective and individual reparation, as applicable. At the same time, the Commission urges the State to redouble its efforts to avoid acts of violence against indigenous persons, especially human rights defenders, to implement the precautionary measures granted by the IACHR, and to avoid forced displacements.

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

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

255. In its Truth, Justice, and Reparation Report,<sup>370</sup> the Commission signaled its grave concern at the suffering experienced by women in Colombia due to the violence and discrimination exacerbated by the

<sup>367</sup> *El Heraldo*, [Muertes por desnutrición en La Guajira han disminuido 42%](#), May 2017.

<sup>368</sup> OHCHR, [Annual Report of the OHCHR on the situation of human rights in Colombia](#), Spanish unofficial translation, 34th session, Human Rights Council, par. 47.

<sup>369</sup> OHCHR, [Annual Report of the OHCHR on the situation of human rights in Colombia](#), Spanish unofficial translation, 34th session, Human Rights Council, par. 52.

<sup>370</sup> IACHR, [Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia](#), OEA/Ser.L/V/II, December 31, 2013, par. 860

armed conflict and it pointed out the importance of giving consideration to their specific needs in the State's efforts to safeguard their rights.<sup>371</sup>

256. The State reported on the National Council for Economic and Social Policy's 2013 paper, known as CONPES 3784, which contains public policy guidelines for risk prevention, protection, and safeguards for the rights of women victims of the armed conflict. It stated that the implementation report for that CONPES showed that 85% of the 223 actions envisaged were in fact implemented. With respect to objective (i) of generating and strengthening strategies to prevent risks or violations, protection of women's rights, and guarantees of non-repetition, the State indicated that 89% of the actions had been carried out. With regard to objective (ii) of promoting the exercise of the civic rights of women victims across the whole range of social and cultural contexts, 92.6% of the actions were implemented, while, under objective (iii) of strengthening inter-agency coordination and the range of opportunities for women victims of the armed conflict, just over three-quarters (77%) of the actions envisaged in the CONPES were in fact executed. The State also pointed out that the strategy for strengthening and coordinating efforts by State entities at both the national and subnational levels to incorporate the gender perspective in the provision of care and assistance to women victims of the armed conflict had been fully (100%) implemented, while in the institutional capacity-building strategy, including national and subnational actions to respond institutionally to women victims' needs for care, assistance, and full restoration of their rights, only 63% of the public policy commitments were met.<sup>372</sup>

257. Worth highlighting is the figure reported in the 2016 report of the International Committee of the Red Cross (ICRC), presented in 2017, for the number of women and girl victims of crimes against their liberty and sexual integrity in connection with the armed conflict since the 1980s: 17,100.<sup>373</sup> The report states that a sample of 100 cases handled by the ICRC between 2014 and 2016 points to worrying trends: 20% of the women had an undesired pregnancy and 41% had been victims of gang rapes perpetrated by between three and eight people.

258. For its part, the Ombudsperson's Office voiced its discontent with the scant progress made with providing care, assistance, and comprehensive reparation for victims of sexual violence. It stressed that their first need is for dignified treatment by public servants, given the consequences of the harm done to them. They also need timely access to reparation measures, a suitable community environment, and non-repetition. The Office also pointed out that the budget allocation referred to in the Victims Act is still pending.<sup>374</sup>

259. In its observations on the draft of this report, the State indicated that several attempts have been made to identify the reasons why women do not denounces the deeds done to them and that some of those reasons cannot be blamed on the State or on the nature of its institutional response. Rather they point to the part played by gender inequality -- among other factors -- in the way acts of violence are interpreted, made to seem natural, and justified.<sup>375</sup> The State points out that the National Government and the Victims Unit are fully aware of the enormous harm done by the crime of sexual violence and therefore have the political will to achieve progress with respect to women's rights and against sexual violence, particularly since they recognize the disproportionate impact of the armed conflict on women's lives.<sup>376</sup>

<sup>371</sup> IACHR, [Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia](#), OEA/Ser.L/V/II, December 31, 2013, par. 860.

<sup>372</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>373</sup> ICRC, [Armed Conflict, Violence, and Humanitarian Challenges in Colombia](#), 2017 Annual Report; See *El Espectador*, [Mujeres y niñas, las víctimas más vulnerables por cuenta de conflictos armados](#), December 3, 2015.

<sup>374</sup> Ombudsperson's Office, Note of August 29, 2017.

<sup>375</sup> 31% say that they can solve the problem on their own; 18% argued that the harm done was not so serious as to merit a denunciation; 17% fear further aggression from their attacker; 15% feel ashamed or humiliated about filing a complaint; 10% say they don't know where to go to file a complaint; 7% think that those episodes won't happen again; 7% think that such acts of aggression are part of normal life; and 4% state that they have no faith in the Colombian justice system. Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>376</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

260. The State acknowledges the under-registration of sexual violence offenses. It indicates that several State institutions are implementing the *Reconstruyendo* (Reconstructing) Strategy, which is designed to bring institutions closer to women victims of sexual violence through women victims' organizations. Thus, the Sub-Directorate for Valuation and Registration of the Victims Unit is helping with prioritization, follow-up, and evaluation of victims' statements.<sup>377</sup>

261. As regards the administration of justice in sexual violence cases relating to the armed conflict, the Commission has been keeping track<sup>378</sup> of actions taken by the Colombian State pursuant to rulings (*Autos*) 092 of 2008<sup>379</sup>, 098 of 2013<sup>380</sup> and 009 of 2015<sup>381</sup> of the Constitutional Court. In this area, the Ombudsperson's Office has reported that high levels of impunity persist<sup>382</sup>. Some of the challenges it listed are: the lack of clear and precise information<sup>383</sup>, the lack of a comprehensive will-coordinated strategy, differences in provisions based on the armed actor involved, the lack of guarantees for those filing complaints, the lack of clarity in the guidelines for caring for victims, and weak legal guidance/support.<sup>384</sup> For its part, the *Casa de la Mujer* reported that the entities responsible for making comprehensive reparation to the women victims acknowledged in Rulings 092 of 2008, 098 of 2013, and 009 of 2015 and confidential annexes thereto lacked clear and precise information on their cases. As of July 17, 2017, the Unit for Victims stated that it had identified 1,190 women who are now included in the Single Registry of Victims and 1,103 of whom had been located. However, those figures do not match those of the Monitoring Working Group (*Mesa de Seguimiento*) or the documents drawn up by the Casa de la Mujer.<sup>385</sup>

262. On this, the State explained that consideration should be given to the fact that the aforementioned information sources are very different as are the sources of their information, information-gathering methods, and periodicity of their investigations, as well as other variables, hence the differences in their findings.<sup>386</sup>

263. It is worth highlighting the fact that, during the IACHR hearing on serious human rights violations and implementation of the Peace Agreement<sup>387</sup>, civil society organizations voiced their concern at

<sup>377</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>378</sup> IACHR, [2016 Annual Report](#), April 2017, Chapter V Colombia, par. 261.

<sup>379</sup> The Constitutional Court found that sexual violence during the armed conflict posed a specific gender risk and was characterized by being "habitual, widespread, systematic, and hidden (*invisible*)."<sup>379</sup> The Court ordered a series of measures designed to do away with impunity and the obstacles identified in said Ruling, in such a way as to ensure that responding to the issue would be accorded top priority. Constitutional Court, [Ruling No. 092](#), April 14, 2008.

<sup>380</sup> Judgment of the Constitutional Court on Forced Displacement: Follow-up on prevention and protection of the right to life, integrity, and personal safety of displaced women leaders and women in organizations working on behalf of the displaced population. Constitutional Court, [Ruling No. 098](#), Tuesday, May 21, 2013.

<sup>381</sup> The Constitutional Court examined compliance with Ruling 092 and found that the acts and risks constituting sexual violence against women in the context of the armed conflict and forced displaced were continual and it reiterated that sexual violence is practiced by all parties involved, including paramilitary, guerrillas, the security forces, and criminal gangs. The Court asserted that the sexual violence had not been practiced just occasionally or in isolated incidents. Rather, it had been the product of deliberate rewards and punishments established by the top echelons in all the organizations for all combatants. Constitutional Court, [Ruling No. 009](#), Tuesday, January 27, 2015.

<sup>382</sup> Ombudsperson's Office, Note of August 29, 2017.

<sup>383</sup> *Casa de la Mujer*, fourth monitoring report on compliance with the recommendations of Colombia's Truth, Justice, and Reparation Report, Communication in response to the draft of Chapter V of the 2017 Annual Report of the IACHR, August 25, 2017.

<sup>384</sup> SISMA *Mujer*, [Access to Justice for Women Victims of Sexual Violence. Sixth Monitoring Report on Auto 092 of 2008 and First Monitoring Report on Auto 009 of 2015](#), Working Group to Monitor Compliance with Autos 092 and 009, March 2016.

<sup>385</sup> *Casa de la Mujer*, fourth monitoring report on compliance with the recommendations of Colombia's Truth, Justice, and Reparation Report, Communication in response to the draft of Chapter V of the 2017 Annual Report of the IACHR, August 25, 2017.

<sup>386</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>387</sup> IACHR, [Hearing on investigations into serious human rights violations in the context of implementation of the Peace Agreement](#), October 23, 2017.



the generalized impunity for perpetrators of crimes committed in connection with the armed conflict, especially those perpetrated by paramilitary groups. They cited as an example that of the 456 cases of sexual violence committed during the conflict, 74% are under investigation, 4.7% were shelved or subject to restraining orders due to the court's lack of jurisdiction (*resoluciones inhibitorias*), and 16.2% were apparently not even investigated or no records of an investigation kept. Indictments have been issued in 2% of the cases and judgments handed down in 1.1% of cases.<sup>388</sup>

264. With regard to the Protocol for Investigating and Prosecuting Sexual Violence adopted by the Office of the Attorney General of the Nation (FGN) in 2016, the Commission welcomes the incorporation of a gender perspective in investigations. In addition, the State reported that the 2016-2020 Strategic Plan, "Oversight of People, For People, and By People" establishes, as one of five priorities in investigation and prosecution, the combating of violence, especially culpable homicide, sexual violence, and domestic violence.<sup>389</sup> Accordingly, the Commission calls upon the State to continue those efforts and ensure that the rules and regulations are actually enforced.

265. At the same time, given that these are ongoing challenges for the justice system and the high rates of impunity, the IACHR reiterates its recommendations and calls upon the State to take the necessary steps to ensure effective compliance with the above-mentioned rulings and to continue its effort to enhance access to justice for women victims of human rights violations in connection with the armed conflict. The Commission further reiterates that the State is duty-bound to investigate and throw light on, prosecute, try, and punish grave violations of women's human rights. It stresses the importance of redoubling efforts to combat impunity by pursuing investigations that result in effective punishment of perpetrators and comprehensive reparation for victims. The Commission also urges the State to provide and promote education with a gender perspective to prevent future acts of violence and discrimination against women in connection with the armed conflict.

266. It is worth noting that in its observations on the draft version of this report the State indicated that the Ministry of National Education had prepared a pioneering paper in Latin America on Inclusive Higher Education Policy Guidelines, which outlines a strategy envisaging an open and generous educational model that addresses diversity with respect to access to and completion of high quality education for population groups covered by special protection clauses in the Constitution, with a view to narrowing social divides. The State also provided information regarding the development of the Higher Education Inclusion Index as a tool for addressing the challenge of achieving inclusive higher education.<sup>390</sup>

267. According to the Single Registry of Victims (RUV), of the 8,504,127 victims registered in relation to all acts of violence throughout Colombia, 4,064,710 are women.<sup>391</sup> Instances of violent acts against

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<sup>388</sup> IACHR, [Hearing on the Special Jurisdiction for Peace and third parties' liability](#), July 7, 2017.

<sup>389</sup> According to information provided by the State, the targets for 2020 established in the Plan with respect to gender-based violence include: (i) Doubling the rate of indictments for culpable homicide, while maintaining the same conviction rate; (ii) doubling the indictment and conviction rates for sexual violence cases; (iii) doubling indictments on domestic violence charges; (iv) halving the number of reports of murders of victims who had previously complained of domestic or sexual violence. Investigating entities have also consolidated strategies for implementing Law 1719 of 2014 and Law 1761 of 2015, such as: the publication, dissemination, and follow-up to laws in regions in which Prosecutors' Offices have a presence; training courses on judicial investigation techniques, with specialized approaches to sexual violence in connection with the armed conflict and femicide; and investigation using specially tailored methodologies. Moreover, pursuant to Article 205 of the Code of Criminal Procedure and Article 17 of Law 1719 of 2014, investigations into these kinds of violence must be initiated immediately, ex officio, and as a matter of urgency, irrespective of the time or place where the crime was committed. In addition, investigations must be conducted within a reasonable period of time, following the recommendations in that regard and concerning assessment of evidence contained in Article 19 of the aforementioned Law and using contextual investigation tools. Specialized teams have also been consolidated in local branches of Public Prosecutors' Offices of to provide support and technical assistance with the investigation of sexual violence cases (both those connected with the armed conflict and others) and femicides. Republic of Colombia, Note S-GAIID-17-067759 of August 29, 2017.

<sup>390</sup> Republic of Colombia, Note S-GAIID-17-101743 of December 18, 2017.

<sup>391</sup> Single Registry of Victims (RUV), [Reporte General](#), August 1, 2017. For further details, see Republic of Colombia, Note S-GAIID-17-101743 of December 18, 2017.

women continued to be registered in 2017, especially threats, sexual violence, homicides, and displacement.<sup>392</sup> According to information from *Casa de la Mujer*, the situation in Cauca illustrates the persistence of violence against women. In that department, threats against women leaders -- most of them victims of the conflict -- as well as against their organizations have continued, allegedly perpetrated by FARC dissidents or groups formed following the demobilization of the paramilitaries.<sup>393</sup>

268. As indicated in information provided by civil society, women repeatedly and worriedly identify potential risks of sexual violence with regions in which there are "temporary normalization zones" (ZVTN), or extractive industries, or either nonexistent or precarious State institutions.<sup>394</sup> The Commission therefore reiterates its call to the State to adopt the measures required to strengthen institutions and protect women's human rights, especially the rights of women in vulnerable circumstances, through prevention and protection measures in the parts of the country hardest hit by the conflict and areas from which the FARC have departed. (See *supra* III. A.).

269. Regarding maltreatment of women and girls, the OAS Mission to Support the Peace Process in Colombia (MAPP/OAS) has reiterated that there are still deliberate acts of gender-based violence against them in connection with the armed conflict.<sup>395</sup> It pointed out that the maltreatment consisted of acts of sexual violence, manipulation, threats, forced displacements, and selective murders. It added that activities generating financial liquidity in the communities attract men to those areas, exacerbating the risks of acts of violence against women and girls. As an example, it stated that in some territories the *Clan del Golfo* [Tr. a particularly dangerous narco-paramilitary group] has focused on recruiting and involving women in its illegal armed units to perform a series of illegal actions ranging from the provision of intelligence information to money laundering to leading bands of hired assassins, to mention just a few.

270. In this regard, the Information System on Attacks on Human Rights Defenders reported that of the 335 attacks registered thus far in 2017, 24% had been against women: an indication of how they are caught up in the turf wars between illegal armed actors and the upsets associated with the presence of dissident FARC groups, especially in areas cultivating crops for illicit use.<sup>396</sup>

271. Also underscored is the involvement of rural women in the armed conflict, who have been dispossessed and have had to abandon their land. According to Victims Unit statistics, of the 8,270,81 victims registered, half are women.<sup>397</sup> *Corporación Yira Castro* informed about the situation of rural women in subjects like the access to land. It stated that according to the last National Agricultural Census in 2015 about 45% of the rural *population* is women, being them the poorest people in the sector, even though they account for 36.6% of national agricultural output. The *Corporación* likewise considers that, in the Peace Agreement, the gender perspective "does not go beyond talk of inclusion", and envisages no real and effective measures capable of rebuilding the life plans of rural women.<sup>398</sup>

<sup>392</sup> RUV, [Enfoque Diferencial: Mujeres y Hechos Violentos](#), August 1, 2017.

<sup>393</sup> *Casa de la Mujer*, Fourth monitoring report on compliance with the recommendations of the Truth, Justice, and Reparation Report on Colombia. Communication in response to the draft of Chapter V of the 2017 Annual Report of the Inter-American Commission on Human Rights, August 25, 2017.

<sup>394</sup> *Casa de la Mujer*, Fourth monitoring report on compliance with the recommendations of the Truth, Justice, and Reparation Report on Colombia. Communication in response to the draft of Chapter V of the 2017 Annual Report of the Inter-American Commission on Human Rights, August 25, 2017.

<sup>395</sup> Third Report of the Secretary General to the Permanent Council on the OAS Mission to Support the Peace Process in Colombia (MAPP/OAS), October, 2017.

<sup>396</sup> SIADDH, Report for January-June 2017 *Corporación Yira Castro*, communication to the IACHR of December 18, 2017.

<sup>397</sup> Victims Unit figures at December 1, 2017. *Corporación Yira Castro*, communication to the IACHR of December 18, 2017.

<sup>398</sup> It considers that the only gender specific measure established in the National Comprehensive Program for the Substitution of Crops for Illicit Use (PNIS) ordains that women shall be responsible for collecting economic assistance, without ensuring, however, that the funds are invested in meeting their needs. *Corporación Yira Castro*, communication to the IACHR of December 18, 2017.

272. The *Corporación* further told the IACHR that Point 1 in the Peace Agreement on rural reform contains 31 provisions specifically about a gender perspective, which should encourage the development of measures guaranteeing women the closing of historical gaps and progressive advances in terms of land tenure, use, and property, the rights associated therewith, and recognition of the care economy. It stated that of the 10 Decrees issued only four incorporate that perspective, but none of the measures have proved to be more than declaratory mainstreaming of the guiding principles of each Law or Decree.<sup>399</sup> The *Corporación* also points out that a sufficient budget allocation is needed to actually implement public policies on gender, along with indicators to measure implementation of gender-sensitive public policies through their impact and efficacy in rebuilding the life projects/careers of rural women victims of the conflict.<sup>400</sup>

273. The Commission welcomes the efforts undertaken to incorporate the gender perspective into eight key themes<sup>401</sup> of the Peace Agreement as well as the participation of women's organizations in that process.<sup>402</sup> Similarly, the Commission acknowledges the work done on integrating a specialized approach tailored to women in the JEP,<sup>403</sup> with a view to applying it in all phases and procedures in the system, especially to women who have suffered from or taken part in the conflict.<sup>404</sup> The Commission also reiterates that it acknowledges the efforts Colombia has gone to promote women's participation in the composition in the Judicial Divisions and Tribunal for Peace, and in the bodies relating to the JEP and the Comprehensive System (see *supra* III). The fact that 53% of the members of the Tribunal and Divisions of the JEP are women<sup>405</sup> represents a major step toward incorporating a gender perspective into Colombia's institutional framework for peace.<sup>406</sup>

274. The State provided information regarding progress made toward installing the Special Body to Help Guarantee a Gender Perspective in Implementation of the Final Agreement<sup>407</sup> within the framework of the Commission for Monitoring, Promoting, and Verifying Implementation of the Final Agreement (CSIVI). The Commission likewise welcomes the fact that the Presidential Counsel for Women's Equity (CPEM), together with the Office of the High Commissioner for Peace, drew up the document entitled "Women as Protagonists

<sup>399</sup> *Corporación Yira Castro*, communication to the IACHR of December 18, 2017.

<sup>400</sup> *Corporación Yira Castro*, communication to the IACHR of December 18, 2017.

<sup>401</sup> Eight core themes in the Peace Agreement focus on a gender perspective: access to ownership and formal title of land in rural areas on an equal footing with men; guarantees for economic, social, and cultural rights of women and of persons with different sexual orientations and gender identity in rural areas; promotion of women's participation in representative and decision-making positions and settlement of conflicts, as well as equal participation of women in the decision-making bodies established under the agreement; prevention and protection measures to address the specific risks faced by women; access to truth, justice, reparation, and guarantees of non-repetition, reflecting the different ways in which the conflict affected women; public recognition, non-stigmatization, and dissemination of the work done by women actively engaged in political life; institutional efforts to strengthen women's organizations and their participation in political and social affairs; and the implementation of information systems in which the data are broken down by gender. Humanas, [Cinco Claves para un Tratamiento Diferencial de la Violencia Sexual en los Acuerdos sobre la Justicia Transicional en el Proceso de Paz](#), September 2016.

<sup>402</sup> El País, [Colombia, un proceso de paz con perspectiva de género](#), September 21, 2016.

<sup>403</sup> Congreso de la República, [Acto Legislativo 01 de 2017: "De las normas para la Terminación del Conflicto Armado y la Construcción de una Paz Estable y Duradera"](#), April 4, 2017.

<sup>404</sup> *Alianza Cinco Claves (Red Nacional de Mujeres, Corporación Humanas y Corporación Sisma Mujer), Situación de los Derechos de las Mujeres en el marco del Proceso de Paz de Colombia* [Situation of Women's Rights in the context of the Peace Process in Colombia], request for hearing in connection with the 165th period of sessions of the IACHR, August 2, 2017.

<sup>405</sup> Comité de Escogencia [Selection Committee], [Comunicado 18](#), September 26, 2017.

<sup>406</sup> UNDP Colombia, [El PNUD celebra el proceso de selección de integrantes del Sistema Integral de Verdad, Justicia, Reparación y No Repetición \[The UNDP welcomes the process for selecting members of the Comprehensive Truth, Justice, Reparation, and Non-Repetition System\]](#), September 26, 2017.

<sup>407</sup> Participating in this exercise were 818 women's organizations responding to the invitation to put up candidates for three-person slates in subnational constituencies and two-person candidacies at the national level. This special body was supported by the CPEM and the Ministry of the Interior, as well as the Office of the Procurator-General of the Nation (PGN) as guarantor of the one-day meetings held in each department. Also present at those forums were UN Women, the Swedish Embassy, and the International Federation of Women (FEDIM). In April and May 2017, there were 32 departmental assemblies, with candidacies put up by 29 departments. Nation-wide there were two full-day meetings to brief women's organizations and LGBTI groups, resulting in two pairs of women candidates and one pair of LGBTI organizations. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

of the Peace-Building Process," which provides practical guidelines for implementing the Peace Agreement, which underscores the key role of women in peace-building and the manner in which the gender perspective was incorporated into each of the points in the Peace Agreement proposing specific actions for women.<sup>408</sup>

275. The State also reported on the scope of the inter-agency strategy implemented to combat impunity and provide comprehensive care to victims of gender-based violence in connection with the armed conflict. Known as "Red Construyendo para la Garantía de los derechos de las Mujeres" [Network Working to Forge Guarantees for Women's Rights], this strategy derives from the need to coordinate plans for helping women survivors of sexual violence in connection with the conflict and strengthening subnational institutions in that field.<sup>409</sup> The Commission encourages the State to continue its effort and specifically to pursue the two lines of work identified for strengthening women's organizational mechanisms, on the one hand, and, on the other, providing guidance to public servants.

276. The State also provided information regarding progress made with respect to the gender equity policy (CONPES 161) and the policy to prevent risks, protect, and guarantee the rights of women victims of armed conflict (CONPES 3784) within the framework of the 2014-2018 National Development Plan. The CPEM proposed a mechanism for the participation of women's organizations and women victims in the monitoring and evaluation of those policies. The Commission takes note of the efforts made to embrace input from women and their organizations and to include them in new action plans, with a view to reinforcing proper care. The State also reported on the CPEM's training activities aimed at including concrete actions in subnational development plans geared to creating the conditions for genuine and effective equality between women and men and at strengthening opportunities for women's participation in the monitoring of the national regulatory framework.<sup>410</sup>

277. As regards public health and gender violence, the State reported on progress made with developing the regulatory, conceptual, and operational framework for the Integrated Gender-based Violence Information System (SIVIGE), which serves to unify concepts and variables for the analysis of gender-based violence based on different sources of information.<sup>411</sup>

278. Concerning reparation measures, the Commission acknowledges the efforts made by the State while at the same time underscoring the slow pace of progress in this field. The Victims Unit has generated opportunities for dialogue, construction, and strengthening of women victims' life plans from a human rights perspective through a comprehensive reparation strategy involving three phases: registration, accompanied by counseling and psychological and social care; financial counseling and safeguards for respect of rights; exchanges of know-how and information regarding everything related to symbolic acts. The IACHR has received reports, in this regard, that there are still lacunae as regards individual care for victims and psychological counseling for them. The reports indicated that of the 1,033 cases of women victims of sexual violence identified and prioritized by the Constitutional Court and mentioned in Ministry of Health reports, 884 women at some point received medical care for their physical health, but only 78 (8.6%) received mental and psychosocial health care, which is vital in the response to this type of violence.<sup>412</sup> Concerning compensation, according to information provided by the Ombudsperson's Office only 436 women have received some. Of them, 122 have received some kind of follow-up support (acompañamiento).<sup>413</sup>

279. On this matter, the State reported that health care for women victims of any form of violence includes the right to receive comprehensive physical and mental health care and that the Ministry of Health and Social Protection officially adopted the Comprehensive Health Care Policy, which contains both a strategic

<sup>408</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>409</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>410</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>411</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>412</sup> Ombudsperson's Office, Note of August 29, 2017.

<sup>413</sup> Ombudsperson's Office, Note of August 29, 2017.

component for setting the long-term priorities of the health sector and an operational component regarding the Comprehensive Health Care Model. It stated that the Comprehensive Health Care Roadmaps were one of the actions taken to implement the Model. In this context, it pointed out that over 4,420 health professionals in the Regional Directives for Health, Health Promotion Entities (EPS), and Health Services Provides (IPS) had been certified as trained to treat victims of sexual violence. The State also stressed that, pursuant to the Victims Act, the Comprehensive Psychosocial and Health Care Program for Victims (PAPSIVI) had provided psychological and social care to more than 314,921 victims, 197,496 of whom are women.<sup>414</sup>

280. The Commission welcomes the fact that, as part of the Comprehensive System, the State is committed to making comprehensive reparation, with a gender and regional perspective, that covers health care, with particular emphasis on victims of sexual violence. The Commission has been keeping track of implementation of the Health Care Protocol for Victims of Sexual Violence, established by Judgment C-754/15 of the Constitutional Court,<sup>415</sup> and it continues to receive information regarding barriers to access to the health and physical and emotional recovery services that are part of the process of comprehensive reparation for victims of sexual violence. The IACHR has been told about the scant information from the victims; difficulties due to the lack of qualified personnel and of the funds needed to run health establishments; the shortage of hospital beds; and the difficulties finding cost-free, quality, and humane care.<sup>416</sup> In addition, civil society reports draw the Commission's attention to improve coordination between the mechanisms envisaged for the Victims Unit and Ministry of Health procedures for the provision of care.<sup>417</sup> Thus, the Commission calls upon the State to ensure women's cost-free access, without discrimination, to specialized physical and mental health care services that take into account the gender-specific impacts of the armed conflict on women's bodies and their lives, especially in the regions traditionally dominated by armed actors, as a form of reparation and restoration of their fundamental rights.

281. Regarding the implementation of dissemination and awareness raising campaigns directed at the general public on respect for and promotion of women's rights, the Commission notes with appreciation the activities of a number of public institutions, including their partnerships with private TV and radio channels and stations for the broadcasting of advertisements on women's rights, the commemoration of symbolic days, and a series of nationwide and local campaigns. In addition, according to information provided by the State, the CPEM has continued to develop teaching and communication strategies to promote women's rights and the protection measures available to them. The State has likewise provided information regarding the development of cost-free and online services, such as the app *LegalApp*<sup>418</sup> and the Ministry of Justice's Single Regulatory Information System (SUIN-Juriscal) portal<sup>419</sup>, for improving and facilitating access to justice system services and familiarity with women's fundamental rights. Nevertheless, the Ombudsperson's Office has stressed that, while efforts are being made to highlight women's rights, they have not yet acquired the necessary strength or impact.<sup>420</sup> Accordingly, the Commission recalls that the prevalence of male chauvinist

<sup>414</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>415</sup> IACHR, [2016 Annual Report](#), April 2017, Chapter V Colombia, par. 262.

<sup>416</sup> *Alianza por la Salud de las Mujeres* [Partnership for Women's Health], request for hearing on health care for women victims of violence, especially sexual violence, in the context of implementation of the Final Agreement in Colombia, in connection with the 165th period of sessions of the IACHR, July 26, 2017.

<sup>417</sup> From the work done by the Unit for Care and Comprehensive Reparation for Victims (UARIV), it transpires that, of all the women victims identified in the Rulings (*Autos*), only 2% have accessed the Emotional Recovery Strategy's services for individuals and 19.2% that for groups. For its part, the Ministry of Health reported that as of February 2017, 13% of all women victims had received psychosocial care through the Comprehensive Psychosocial and Health Care Program for Victims (PAPSIVI). *Casa de la Mujer*, Fourth monitoring report on compliance with the recommendations of the Truth, Justice, and Reparation Report on Colombia. Communication in response to the draft of Chapter V of the 2017 Annual Report of the Inter-American Commission on Human Rights, August 25, 2017.

<sup>418</sup> A technological tool that can be consulted cost-free and which provides information about how to do the paperwork needed to make use of a justice system-related service. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>419</sup> The SUIN-Juriscal (Single Regulatory Information System) provides citizens with cost-free legal information (laws, decrees, and constitutional jurisprudence). SUIN-Juriscal has introduced an advance search feature on the subject of violence and discrimination against women. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>420</sup> Ombudsperson's Office, Note of August 29, 2017.



stereotypes constitutes a form of discrimination against women and helps fosters the view that violence against them is somehow normal. The IACHR therefore reiterates its call to the Colombian State to get rid of gender stereotypes and to continue its efforts to promote and highlight women's rights.

282. The Commission welcomes the State's efforts to incorporate a differentiated (ethnic and gender-specific) perspective into Colombia's peace-building mechanisms. For instance, the State reported that the CPEM had translated some sections of existing public policies and regulations on behalf of women into the Tukano, Shikuanai, and Emperara Siapidara languages: a process that had involved dialogue and the sharing of those advances with indigenous organizations and communities, particularly with the help of indigenous women.<sup>421</sup>

283. With regard to the legal framework and demobilization programs, the Commission reiterates its acknowledgment of the efforts made by all the parties to the negotiations to include a gender perspective in the Peace Agreement, given the significant part played by women combatants during the conflict and their specific needs in connection with the demobilization process. According to figures provided by the Agency for Reincorporation and Normalization (ARN), of the 50,706 people who have joined the demobilization process, 6,775 (13.4%) are women. The State reported that, through its Gender Mainstreaming Strategy and Plan, the ARN has set itself the goal of building the gender perspective into the Reintegration Roadmap and, to achieve that, has been providing the professionals engaged in reintegration with the preparation and tools they need to work with women in their work plan.<sup>422</sup>

284. For its part, the Ombudsperson's Office considers that actual implementation of the differentiated approach is fraught with a series of challenges. For example, while Decree 154 of 2017 establishing the National Commission on Security Guarantees under the Peace Agreement framework makes reference to the effective participation of women, women's organizations are not actually represented on the Commission. At the same time, the Ombudsperson's Office considers that in the Amnesty Act the inclusion of a gender perspective is not clear for either former women combatants or victims.<sup>423</sup>

285. In light of the above-mentioned information, the Commission once again expresses its appreciation of the State's efforts and calls upon it to redouble its efforts to boost its judicial response to cases of sexual violence; the mechanisms for protecting women human rights defenders; and comprehensive reparation for women victims.

## 5. Journalists and media workers (social communicators)<sup>424</sup>

- Continue to adopt adequate preventive mechanisms in order to avert violence against media workers, including the public condemnation of all acts of aggression, the training of public officials, particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines regarding respect for the right to freedom of expression.
- Compile detailed, disaggregated criminal statistics on violence against journalists and the criminal prosecution of these crimes.
- Carry out diligent, impartial, and effective investigations of the murders, attacks, threats, and acts of intimidation committed against journalists and media workers. This entails the creation of specialized units and special investigative protocols, as well as the identification and exhaustion of all possible case theories related to the professional work of the victim.
- Prosecute, under impartial and independent courts, within the standards established by international law, the persons responsible for the crimes committed in retaliation for the exercise of

<sup>421</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>422</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>423</sup> Ombudsperson's Office, Note of August 29, 2017.

<sup>424</sup> This section of the report was prepared by the Office of the Special Rapporteur for Freedom of Expression.

the right to freedom of expression, and make adequate reparation for their victims and family members.

286. The Commission has repeatedly voiced its concern at the murders and attacks against journalists and other social communicators for reasons that may be related to the exercise of their right to freedom of expression<sup>425</sup>, and it has pointed to the intimidating and deterrent effects of those attacks. Attacks against journalists and other media workers constitute the most abject form of censorship and violate the right of societies and citizens to seek and receive any kind of information.<sup>426</sup>

287. Accordingly, the Commission welcomes the fact that in 2016 there were no reports of journalists murdered for exercising their profession and notes with concern the murder of a woman journalist in 2017, which is currently under investigation. The Commission observes that there are ongoing challenges with respect to freedom of expression. Violence, kidnappings, and threats against journalists and media workers continue. In 2017, there were also cases of stigmatizing remarks against journalists uttered by government officials in elective office. Likewise, according to the information available, some of the attacks against journalists were committed by members of the security forces while the reporters were covering matters of public interest. There are also ongoing obstacles to investigations into the above-mentioned assaults and threats.

288. The Commission and its Special Rapporteurship acknowledge the progress made in 2017 with investigations and administration of justice in relation to specific cases of homicides and other crimes against journalists in Colombia. Nevertheless, they reiterate their concern at the still high levels of impunity associated with dozens of murders committed in the past two decades and hundreds of other attacks, as well as at the drawn-out nature of many trials and at complaints of omissions during proceedings. The Commission appreciates the efforts made to maintain the protection program for journalists and human rights defenders, while at the same time noting the information provided by civil society regarding the existence of hurdles obstructing the implementation and monitoring of those protection measures.

289. The Commission and its Special Rapporteurship underscores the special circumstances in Colombia today and the opportunities they afford for strengthening peace and democracy based on the Final Peace Agreement reached in 2016, including the implementation of the measures agreed upon to strengthen the rights to freedom of expression, association, and assembly, as well as political rights in general; At the same time, they note the views of civil society regarding that importance of ensuring that, in their design and day-to-day operations, the Special Jurisdiction for Peace (JEP) and the other mechanisms that form part of the Comprehensive System for Truth, Justice, Reparation, and Non-Repetition incorporate standards of transparency guaranteeing the right to information and to reconstruction of the truth and memory to which the victims and society as a whole are entitled. They likewise call to mind the importance of ensuring that those various mechanisms address the impact of the conflict on freedom of expression, journalists, and the media, as a mainstay of the democratic system.<sup>427</sup>

<sup>425</sup> IACHR, [Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia](#). OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013, par. 924.

<sup>426</sup> IACHR, [Annual report for 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III, Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Par.1.

<sup>427</sup> Antonio Nariño Project (PAN). [Los retos para el acceso a la información en la implementación del Acuerdo Final entre el Gobierno y las Farc \[Challenges for access to information in the implementation of the Final Agreements between the Government and the FARC\]](#). April 2017 Pp. 15 and 30; FLIP. [Agenda de libertad de prensa y Paz: cómo implementar los acuerdos de paz en clave de libertad de expresión](#). November 2016. P. 37.

## 1. Protection of journalists

290. More than a decade ago Colombia was one of the most dangerous countries for journalists in the Hemisphere; it was a time when dozens of journalists were murdered while exercising their profession.<sup>428</sup> It is encouraging to see that the murder rate has declined in recent years and that public policies have been implemented to protect at-risk communicators. That said, with regard to 2017, the Special Rapporteurship for Freedom of Expression was alarmed to receive information that on October 8 radio reporter Efigenia Vásquez Astudillo was murdered in the Cauca Department of Colombia. According to the information available, the communicator working for the indigenous radio station Renacer Kokonuko died from bullet wounds during a police operation to evict members of the Pueblo Kokonuko community demonstrating in Puracé, in the Cauca Department.<sup>429</sup> In a press release issued on the same day, the National Indigenous Organization of Colombia (ONIC) stated that the journalist had been murdered by the Police Mobile Anti-Riot Squad (ESMAD). Several organizations pointed out that the journalist had been doing her job at the time.<sup>430</sup> In 2017, the IACHR also continued to document with concern multiple cases of threats, acts of aggression, and harassment of journalists in retaliation for practicing their profession.

291. On July 5, in connection with the 163rd period of sessions of the IACHR, a public hearing was conducted on the "Situation of the Right to Freedom of Expression in Colombia, which was attended by representatives of *Fundación para la Libertad de Prensa* (FLIP) and a delegation of the State.<sup>431</sup> The petitioning organization underscored the fact that as of that date in 2017 no murders of journalists practicing their profession had been recorded since 2016. However, it stated that, from the start of that year up to the date of the hearing, 439 journalists had been attacked. Civil society representatives maintained that those data showed that there were still "silenced zones in Colombia" and a "pattern of self-censorship" in those regions. According to that information, in 71 cases the perpetrators of the attacks were government officials and in 39 cases members of the security forces<sup>432</sup>. The organization stressed that this indicated that government officials continue to play a part in triggering violence against journalists and the media. In the case of the security forces, the FLIP acknowledged some effort to reduce reprisals against the press, but said that they "continue to indulge in recurrent attacks" against journalists and that there had been "serious cases" of journalists covering protests being wounded by shots fired by soldiers and of the confiscation of journalists' equipment and materials during coverage of events. For its part, the State ratified its commitment to freedom of expression and the practice of journalism in Colombia and reported on measures adopted to strengthen existing protection and investigation mechanisms: a subject addressed in later sections of this report.

<sup>428</sup> According to the report, between December 1977 and August 2015, 152 journalists were murdered in Colombia for reasons related to their reporting. IACHR. [Annual report for 2016. Report of the Office of the Special Rapporteur for Freedom of Expression. 2016](#). Chapter II: Situation of Freedom of Expression in the Region. OEA/Ser.L/V/II. Doc. 22/17. Par. 310). See also [Annual report for 2016. Report of the Office of the Special Rapporteur for Freedom of Expression. 2016](#). Chapter IV (Silenced Zones: Highly Dangerous Areas for the Exercise of Freedom of Expression). P. 13.

<sup>429</sup> National Indigenous Organization of Colombia (ONIC). [Asesinada joven comunicadora indígena del Pueblo Kokonuko](#). October 8, 2017. Pazifiko Noticias /You Tube. October 9, 2017. [Efigenia Vásquez, comunicadora indígena de Coconuco, otra víctima del Estado](#); *Comisión Nacional de Comunicación de y para Pueblos Indígenas* [National Communication Committee of and for Indigenous Peoples]- CONCIP of the Permanent Committee for Consultation –MPC. [CONCIP-MPC denuncia, rechaza y demanda justicia ante el asesinato de la comunicadora Kokonuco Efigenia VásquezAstudillo](#). October 11, 2017; *Federación Colombiana de Periodistas* [Colombian Federation of Journalists] (FECOLPER). [Policía Nacional ataca a periodistas y es señalada de asesinar a comunicadora indígena](#). October 9, 2017; *Fundación para la Libertad de Prensa* [Foundation for Freedom of the Press] (FLIP). [FLIP condena muerte de comunicadora indígena en el Cauca](#). October 9, 2017; Proclama. October 9, 2017. [Policía se pronuncia sobre muerte en Coconuco](#); *El Espectador*. October 9, 2017. ["Ignorantes, cobardes": Onic a Esmad por muerte de periodista indígena](#); *El Tiempo*. October 11, 2017. [Periodista en Cauca murió por disparo de arma múltiple: Medicina Legal](#). FLIP. [Comunicadora indígena Efigenia Vásquez fue asesinada mientras realizaba labores como periodista](#). October 25, 2017.

<sup>430</sup> On October 30, the Special Rapporteurship issued a press release expressing its profound concern at the murder and urging the State to conduct an investigation with all due diligence and to punish those responsible. See: IACHR-SRFE [Press Release R171/17](#). October 30, 2017.

<sup>431</sup> IACHR. 163rd Period of Sessions. Public Hearing: [Situation of the Right to Freedom of Expression in Colombia](#). July 5, 2017

<sup>432</sup> IACHR. 163rd Period of Sessions. Public Hearing: [Situation of the Right to Freedom of Expression in Colombia](#). July 5, 2017, [Video. Computer graphics [*Infografía*]. Minute 3:34]

292. The IACHR and its Special Rapporteurship further take note of the murder of press photographer Elmer Agudelo Vidales at the entrance to his home in Palmira. The local police allegedly reported that that crime had had nothing to do with the practice of journalism, but had been related to a previously reported personal problem. It offered a reward for identification of the perpetrator(s) of the crime. The Colombian Federation of Journalists (FELCOPER) urged the authorities in charge of the investigation "not to rule out the hypothesis that his murder was related to his reporting activities."<sup>433</sup> According to the information available, the alleged murderer of the photographer was arrested in September and was being held in custody pending the completion of investigations.<sup>434</sup> The State said that the investigation was under way.<sup>435</sup>

293. Attacks using firearms, threats, and intimidation against journalists and other media workers continued in various parts of Colombia in 2017. According to information in the public domain, on January 12, journalists Cristian Herrera and Andrés González were attacked by unknown individuals in Cúcuta, in the department of Norte del Santander while they were traveling in a National Protection Unit (UNP) vehicle, given that Herrera had reportedly been a beneficiary of the protection mechanism since 2014. Despite shots and blows at the vehicle none of those inside it was hurt<sup>436</sup>. On January 27, journalist Edwin Montiel, Director of the *Frontera Stereo* radio station in Maicao, in the department of La Guajira, was the target of an attempted murder when unknown individuals shot at his vehicle as he was returning home, hitting the vehicle several times. The journalist, who turned out to be unharmed, reportedly alleged that the attack was related to his work at the radio station and his reporting on public security on the border with Venezuela.<sup>437</sup> As this report was going to press, the State reported that the journalist still benefited from protection measures.<sup>438</sup> On March 13, the Colombian Journalists' Federation issued an alert concerning threats against the following journalists due to their professional work: Laura Toscana, María Bustamante, David Márquez, and José Sarmiento, on the department of Sucre, journalist Lucio Torres, of Cartagena, and others<sup>439</sup>. The State reported that additional information was requested to the journalists. The State also reported that Torres had been granted protection measures.<sup>440</sup> On May 14, journalist Ricardo Ruidiaz reportedly received death threats while his radio program 'Rompecabezas arma corazones' was being broadcast by the *Colmundo Radio* radio station, in the city of Bogotá. In recent months, the journalist reportedly denounced crimes against minors, especially girls, attributed to the Clan del Golfo.<sup>441</sup> Likewise, on November 23, unknown individuals reportedly tossed a grenade at the reporter while he was entering his home in Bogotá in a vehicle assigned for his protection. The device failed to explode and no one was hurt. The journalist maintained that the police response was improper, given that one of the police officers had allegedly picked up the grenade and then made

<sup>433</sup> FECOLPER. Asesinan en Palmira al reportero gráfico Elmer Agudelo Vidales. August 27, 2017; FLIP. Colombia: Federación Internacional de Periodistas (FIP) lamenta asesinato de periodista en Palmira. August 28, 2017; El Tiempo. September 3, 2017. La hipótesis sobre la muerte de reportero gráfico en Palmira; El Espectador. August 29, 2017. Inician investigaciones para identificar autores del asesinato del fotógrafo Elmer Agudelo

<sup>434</sup> *El País*. September 2017. La investigación detrás de la captura de 'El Bimbo', presunto homicida de Élder Agudelo.

<sup>435</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>436</sup> However, processing of the case continued. [Colombia: Los periodistas Cristian Herrera y Andrés González logran escapar de un intento de asesinato](#). January 14, 2017; Mission to Support for the Peace Process in Colombia (MAPP/OAS). [Press release: MAPP/OAS Condemns Attack against Journalists in Cúcuta](#). January 14, 2017; FIP. [Colombia: ataque a periodistas con armas de fuego](#). January 13, 2017.

<sup>437</sup> FLIP. [Periodista de Frontera Stereo fue víctima de un atentado en Maicao](#). January 28, 2017. El Heraldo. January 28, 2017. [Periodista de Maicao denuncia atentado en su contra](#); FECOLPER. [Impactan con arma de fuego vehículo en el que se movilizaba director de Frontera Stereo](#). January 28, 2017.

<sup>438</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>439</sup> FECOLPER. [ARREMETIDA CONTRA LA PRENSA EN COLOMBIA: cinco \(5\) periodistas amenazados en el Caribe, una \(1\) periodista intimidada en Meta y tres \(3\) reporteros despojados de sus equipos de trabajo en Cauca](#). March 13, 2017; El Heraldo. March 14, 2017. [Reporteros de EL HERALDO en Sucre denuncian que recibieron amenazas](#); El Tiempo. March 17, 2017. [Periodista amenazado denunció a pastor Arrázola](#).

<sup>440</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>441</sup> FLIP. [Periodista de Colmundo Radio recibió amenazas mientras transmitía su programa en vivo](#). May 16, 2017; La FM May 15, 2017. [Ricardo Ruidiaz, investigador de Colmundo, denunció supuestas amenazas por parte de Clan del Golfo](#).

contradictory public statements, first saying that the grenade had been a toy and then that it had been a stun grenade.<sup>442</sup> The journalist has been provided protective measures.<sup>443</sup> At the same time, on July 7, journalist Claudia Gurisatti, Director of *Noticias RCN* and of *NTN24*, complained that she had been the butt of a harassment campaign in social media that could pose a threat to her personal integrity.<sup>444</sup> The Committee for the Protection of Journalists (CPJ) likewise complained that documentary film maker and human rights defender Bladimir Sánchez had once again been threatened. in the early hours of July 30, 2017.<sup>445</sup> The National Protection Unit is currently providing protection measures for this journalist.<sup>446</sup> In another case, on August 23, Mauricio Cardoso, a journalist for *Extra Caquetá* was wounded after three men pushed him off his motorbike as he was driving to his home in Florencia and attacked him with a knife. His attackers allegedly warned him that they would murder him for being a "snitch" (*sapo*). One of the men had allegedly pointed a gun at the journalist threatening to shoot him.<sup>447</sup> The State reported that the journalist had been granted protection measures.<sup>448</sup>

294. In the past year the Rapporteurship was concerned at information it received regarding the kidnapping of journalists in Colombia. On June 17, Dutch journalists Derk Johannes Bolt and Eugenio Ernest Marie Follender were kidnapped by the ELN in Norte de Santander in the Catatumbo region. They were released in the early hours of June 24 and handed over to a Commission of the Ombudsperson's Office. According to the FLIP, the organization is believed to have committed four kidnappings in this region in the past three years.<sup>449</sup> The Office of the Special Rapporteur documents other circumstances in which the ELN was said to have participated. One such incident involved journalists working for the daily *El País* newspaper: Hugo Mario Cárdenas López, who had been told by the State that he enjoyed protection measures<sup>450</sup>, Oswaldo Paéz Fonseca, and Octavio Villegas Salinas, who were allegedly intimidated on March 9 by armed individuals while working on a story in rural areas in the municipality of Tambo, in the Cauca Department. Their intimidators allegedly confiscated their journalists' equipment.<sup>451</sup> According to the information available, on March 28 a circular attributed to ELN guerrillas had been put out attacking the radio station in the department

<sup>442</sup> FLIP. [FLIP rechaza las constantes amenazas de las que ha sido víctima el periodista Ricardo Ruidíaz](#). November 3, 2017; FLIP. FLIP. [Periodista de Colmundo Radio recibió amenazas mientras transmitía su programa en vivo](#). May 16, 2017; La FM May 15, 2017. [Ricardo Ruidíaz, investigador de Colmundo, denunció supuestas amenazas por parte de Clan del Golfo](#); FLIP. November 23, 2017. [Lanzan granada a vehículo de periodista en Bogotá](#); NC Radio. November 24, 2017. [Director de la Fundación Amigos Unidos denunció atentado en su contra](#); Radio Caracol. November 24, 2017. [Director de una fundación fue víctima de un atentado en Bogotá](#).

<sup>443</sup> Republic of Colombia, Note S-GAII-17-101743 of December 18, 2017.

<sup>444</sup> "Gracias a los muchos que me apoyan en este momento de matoneo en redes. Quienes me estigmatizan con mentiras ponen en peligro mi integridad". Twitter account of Claudia Gurisatti @CGurisattiNTN24. [July 7, 2017](#); El Espectador. July 7, 2017. [Claudia Gurisatti denuncia "momento de matoneo en redes"](#).

<sup>445</sup> Comité para la Protección de los Periodistas (CPJ) – *Committee to Protect Journalists* ([CPI. Documentalista colombiano recibe reiteradas amenazas de muerte](#)). August 1, 2017; IACHR. Annual report for 2016. 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. OEA/Ser.L/V/II. Doc. 22/17 March 15, 2017. Par. 318.

<sup>446</sup> Republic of Colombia, Note S-GAII-17-101743 of December 18, 2017.

<sup>447</sup> Asociación de trabajadores de los medios de comunicación del Caquetá [Association of Media Workers of Caquetá] (ASOTMEC). [Press release](#). August 24; FLIP. [La FLIP condena el grave ataque del que fue víctima periodista del Extra Caquetá](#). August 25, 2017; La Silla Vacía. September 10, 2017. [Lo que callan los periodistas de Caquetá](#).

<sup>448</sup> Republic of Colombia, Note S-GAII-17-101743 of December 18, 2017.

<sup>449</sup> FLIP. [La FLIP espera condenas ejemplares para el ELN por el secuestro de los periodistas holandeses](#). June 24, 2017; FECOLPER/ [Facebook](#). June 19, 2017; Colombia Estéreo. June 22, 2017. [Federación de Periodistas pide inmediata liberación de secuestrados por el ELN](#). RSF. [RSF pide la liberación inmediata de dos periodistas holandeses retenidos por el ELN en Colombia](#). June 21, 2017; El Espectador. June 24, 2017. [Periodistas holandeses fueron liberados](#); El Tiempo. June 24, 2017. [Periodistas holandeses liberados por ELN dicen estar bien](#).

<sup>450</sup> Republic of Colombia, Note S-GAII-17-101743 of December 18, 2017.

<sup>451</sup> El País. March 9, 2017. [El País rechaza agresión del ELN a dos de sus periodistas](#); El Espectador. March 23, 2017. ["Pensamos que nos iban a fusilar": periodista de El País retenido por el ELN](#); Sociedad Interamericana de Prensa (SIP). [Condena la SIP agresión e intimidación a periodistas en Colombia y México y ciberataque en Venezuela](#) [IAPA condemns aggression and intimidation against journalists in Colombia and Mexico and the cyber-attack in Venezuela]. March 10, 2017; FLIP. [Hombres identificados como miembros del ELN hostigaron a periodistas en Cauca](#). March 9, 2017; Fecolper. [Obstruyen el trabajo periodístico y roban elementos de prensa a reporteros del Diario El País de Cali](#). March 10, 2017.



of Arauca called *LA Voz del Cinaruco* and the *LA Silla Vacía*<sup>452</sup>portal. The State reported that several journalists for *La Voz del Cinaruco* are currently being protected<sup>453</sup>.

295. During this period, the Office of the Special Rapporteur also kept track of hostility toward the press in the form of stigmatizing statements against journalists by high-ranking government officials. For instance, on June 1, 2017 Senate Assistant Secretary Saúl Cruz complained at a plenary meeting of Congress that he had been attacked by a group of reporters working for *Noticias Uno*. Several senators assumed the denunciation was true and called for an investigation into the facts and punishments under criminal law for the reporters. Later on, videos and witnesses showed that the Assistant Secretary had faked a physical assault. The Office of the Procurator-General of the Nation (PGN) reportedly initiated disciplinary inquiries and ordered a three-month suspension from office for Saúl Cruz.<sup>454</sup> Subsequently, according to the State, the PGN punished that same official with eight months suspension from that office for the same incident along with special disqualification for the same length of time.<sup>455</sup> Other incidents of this kind involved the social media: for instance, on May 15 Senator Álvaro Uribe Vélez used his twitter account to accuse journalist Julián Martínez of *Noticias Uno*, of being pro-FARC<sup>456</sup>. On May 16, the Senator posted another tweet calling *Semana* journalist Daniel Samper a “bandit” and “abuser of new-born girls.”<sup>457</sup> Later on, in another tweet on July 14, he called him a “child rapist”.<sup>458</sup> In a series of communiqués and an open letter organizations devoted to defending freedom of the press and dozens of well-known people warned that that kind of behavior was intended to silence critical journalism.<sup>459</sup> Finally, Samper took the case to court and on August 2 the Criminal Division of the Superior Court of the Bogotá Judicial District granted him protection of his constitutional right (*amparo*) and ordered Senator Uribe to issue a form and precise retraction of his accusations against the plaintiff in the same medium in which he had made them, explaining that his affirmations had not been based on any evidence available, so that what he had said about the journalist was not true. The lawmaker expressed his disagreement with the court's ruling but obeyed its order in a communication issued on August 5 in which he retracted his assertions but still criticized the journalist's work. In that same period **there were other** public instances of harassment and stigmatizing statements reportedly perpetrated by authorities and local political figures against journalists<sup>460</sup>.

296. On July 26, the Office of the Special Rapporteur for Freedom of Expression issued a communiqué in which it expressed its concern at several episodes of stigmatization and violence against journalists in Colombia and stated once again that government officials have a duty to engage in public

<sup>452</sup> FLIP. [El ELN estigmatiza y pone en riesgo a La Silla Vacía y a la Voz del Cinaruco](#). March 30, 2017; Violeta Stero FM. March 30, 2017. [Periodistas de Arauca rechazan señalamientos del ELN](#); *La Voz del Cinaruco*. March 30, 2017. [El Costo de la Verdad](#).

<sup>453</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>454</sup> FLIP. [FLIP condena agresión de congresistas en contra de Noticias Uno](#). June 24, 2017. *El Espectador*. June 5, 2017. [Procuraduría abrirá indagación preliminar al subsecretario del Senado](#); *El Tiempo*. June 6, 2017. [El poder de Saúl Cruz, el funcionario que fingió agresión de la prensa](#); *Semana*. (undated) [La agresión de un periodista de Noticias Uno que nunca sucedió](#); *El Tiempo*. June 6, 2017. [Saúl Cruz se disculpa con Noticias Uno por haber mentado por agresión](#).

<sup>455</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>456</sup> “A Noticias Uno, su periodista Pro Farc Julián Martínez y a su directora dra Orozco les repetiré la respuesta de 2013 a su repetido infundio”. Twitter account of Álvaro Uribe Vélez @AlvaroUribeVel. [May 15, 2015](#); Fundación para la libertad de Prensa. [Álvaro Uribe Vélez estigmatiza a periodista de Noticias Uno](#). May 15, 2017.

<sup>457</sup> “Eso dice este bandido de Samper Ospina, cobarde maltratador de niñas recién nacidas”. Twitter account of Álvaro Uribe Vélez @AlvaroUribeVel. [May 16, 2017](#); *Semana*. May 20, 2017. [Daniel Samper, el youtuber, ahora en la mira de Uribe](#).

<sup>458</sup> “Federico Escobar protesta por ofensa del violador de niños, Samper Ospina, a Antioquia, ofensa publicada en *Semana*”. Twitter account of Álvaro Uribe Vélez @AlvaroUribeVel. [July 14, 2017](#).

<sup>459</sup> FLIP. [Press release](#). July 14, 2017; Fecolper. [Statement](#), July 17, 2017. ; *Semana*. July 15, 2017. [La carta de los periodistas a Uribe por el trino contra Daniel Samper](#).

<sup>460</sup> FECOLPER. [Pronunciamento](#). July 17, 2017; FECOLPER. [Alcalde de Ibagué asegura que periodistas crean pánico con noticias y hace llamado para que “no deterioren la imagen de la ciudad con escándalos”](#), August 2, 2017; FLIP. [Periodista de La Silla Vacía fue víctima de intimidaciones](#). January 16, 2017; *La Silla Santandereana*. January 16, 2017. [Óscar Iván Díaz amedrenta a La Silla Santandereana](#); Fecolper. [La Corporación de Periodistas y Comunicadores Sociales de Santander, CPS, rechaza las intimidaciones a la periodista Jineth Prieto](#). January 17, 2017.

discourse that helps prevent violence against journalists, which requires that they abstain from making statements that expose journalists and media workers to greater risk of acts of violence.<sup>461</sup> In light of the occurrences described in this report, the Office of the Special Rapporteur reiterates the need to strengthen comprehensive prevention, protection, and prosecution measures aimed at eradicating violence against journalists and media workers in Colombia. In its observations on the draft version of this report, the State indicated that such occurrences "are isolated incidents that do not reflect a pattern of stigmatization or violence against journalists on account of their profession" and it claimed that "they clearly demonstrate that it is not State policy to attack journalists."<sup>462</sup>

297. The Office of the Special Rapporteur was also advised of attacks allegedly involving State agents on journalists and media workers covering police procedures and demonstrations. On February 10 there was a complaint that reporter Esteban Peralta (of the *Campo Televisión* channel) was attacked in Santa Marta, Magdalena by National Police officers<sup>463</sup>. On March 21, journalists Martha Elena Monroy and Helmer González, who work for the *La Patria* newspaper, were reportedly briefly detained by National Police officers in the municipality of Aguadas, Caldas<sup>464</sup>. The Colombian Federation of Journalists complained that on May 9 alternative journalist Pedro García was hit by a bullet while covering the Minga Indígena (indigenous march) in the municipality of Cornito in the department of Cauca; on that occasion, too, an indigenous child taking part in the protest was killed by a bullet.<sup>465</sup> On July 1 *Colombia Informa* denounced the illegal detention of its correspondent in Santander, María Montiel, when she was covering demonstrations by the La Mata community in the Ayacucho district of Cesar. The report alleged that she had been illegally detained for 31 hours.<sup>466</sup> In August, the FLIP complained that, while covering the miners' strike in the municipalities of Segovia and Remedios, in Antioquia, journalist Francisco Pérez of *Teleantioquia Noticias* had been attacked by private individuals and agents of the Mobile Anti-Riot Squad, who had tried to take away his camera and had accused him of being disruptive and threatening<sup>467</sup>. On October 8 a humanitarian mission accompanied by a group of journalists who were in Tumaco to follow up on serious events in the area a few days earlier, in which several people had died in clashes between campesinos and the police, were attacked on the street by National Police using several stun grenades. Gunshots were reportedly also heard during the attack.<sup>468</sup>

298. According to information provided by the State, as of July 31, 2017, 139 journalists and social communicators throughout Colombia were protected by the National Protection Unit. Nearly two-thirds of them (63%) were located in 24 departments and 37% in Bogotá.<sup>469</sup> The State likewise reported the implementation, as of September 2016, of the Risk Assessment Protocol for Journalists and/or Social

<sup>461</sup> IACHR – SRFE (Special Rapporteurship for Freedom of Expression). Press release 106/17 of July 26, 2017. [Office of The Special Rapporteur expresses concern over stigmatization and violence against journalists in Colombia](#).

<sup>462</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>463</sup> FLIP. [Miembros de la Policía Nacional agredieron a un periodista en Santa Marta](#). February 10, 2017; RCN Radio. February 10, 2017. [Indignación en Santa Marta por fuerte agresión a periodista por parte de policías](#); El Espectador. February 10, 2017. [Policías impidieron que periodista grabara cuando golpeaban y pateaban a un ciudadano](#).

<sup>464</sup> FLIP. [La Policía no tenía motivos para detener a los periodistas de La Patria](#). March 23, 2017; La FM March 21, 2017. [Policía retiene a equipo periodístico de La Patria](#); El Colombiano. March 21, 2017. [Policía retuvo en Caldas a periodistas del diario La Patria](#); FECOLPER. [CIPEC. Exige sanciones disciplinarias contra los policías que retuvieron a periodistas](#). March 22, 2017.

<sup>465</sup> Association of Indigenous Councils [Cabildos] of Northern Cauca (ACIN). [Fuerza Pública acaba con la vida de Daniel Felipe Castro Basto](#). May 9 2017; Regional Council of the Cauca (CRIC). [CRIC rechaza vil asesinato de Daniel Felipe Castro Basto por parte de la Policía Nacional](#). May 9, 2017; La Opinión/Colprensa. May 10, 2017. [Investigan protesta indígena que dejó un muerto en Cauca](#); Noticias Caracol. May 10, 2017. [Las acusaciones mutuas entre fuerza pública e indígenas tras desmanes en Cauca donde murió un menor](#); Fecolper. [Impactan con arma de fuego a periodista alternativo en cubrimiento de Minga Indígena](#). May 10, 2017.

<sup>466</sup> *Colombia Informa*. July 1, 2017. [Policía golpea y detiene ilegalmente a corresponsal de Colombia Informa en Santander](#); FLIP. July 1, 2017. [Periodista de Colombia Informa fue dejada en libertad. FLIP pide investigaciones](#)

<sup>467</sup> El Tiempo. August 29, 2017. [Critican falta de garantías a periodistas que cubren el paro minero](#); FLIP. [Se silencia a la prensa durante paro minero en Nordeste antioqueño](#). August 30, 2017.

<sup>468</sup> FLIP. [FLIP condena ataques de la Policía a periodistas y comisión civil en Tumaco](#). October 9, 2017; Fecolper. [Policía Nacional ataca a periodistas y es señalada de asesinar a comunicadora indígena](#). October 9, 2017.

<sup>469</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.P. 53.

Communicators, which takes into account the specific circumstances and particularities to be observed at each stage of the risk assessment process, when the beneficiaries are journalists and/or social communicators. The State stressed that that Protocol has been developed in conjunction with the FLIP and the Colombian Federation for Journalists (FELCOPER).<sup>470</sup> During 2017, while civil society organizations recognized the part played by the National Protection Unit (UNP) in reducing the number of murders of journalists in recent years, they insisted that there are still hurdles to implementing protection arrangements. Thus, for example, on February 2, the FLIP told the National Government that it was withdrawing from the Committee for Assessing Risks and Recommending Measures (CERREM) due to discrepancies with some of the criteria applied for risk assessment. It also underscored the inadequacy and ineffectiveness of the regulatory framework for prevention, investigation and prosecution governing the activities of the Committee.<sup>471</sup> For its part, FELCOPER pointed to the importance of improving administrative procedures in such a way as to avoid spending too much time on studying risk levels and to the need to enhance contextual analysis, so as to take into account the specific factors associated with freedom of expression and the practice of journalism.<sup>472</sup> During the public hearing on July 5, the FLIP also maintained that the response to the risks that journalists face was "poorly coordinated" [*desarticulada*]. Accordingly, the organization pointed to the need to establish a National Prevention System involving all three branches of government.<sup>473</sup> In its observations on the draft version of this report, the State pointed out that in the past three years the national Protection Unit had conducted more than 450 risk assessments. It pointed out that while an assessment is being conducted the situation is monitored by an analyst who is empowered to order emergency measures in the event of an imminent risk.<sup>474</sup>

299. The Commission appreciates the Colombian State's sustained efforts over the years to reduce violence against journalists by implementing the UNP protection program. Despite that, it reiterates the need to continue strengthening and perfecting that system through effective coordination between the State bodies responsible for protecting at-risk journalists and social communications and the authorities responsible for investigating, prosecuting, and punishing those who perpetrates threats, acts of harassment, attacks, and murders of those professionals for doing their job.<sup>475</sup>

300. The State reported that it has declared journalists and their family members as eligible for collective reparation within the framework of the Victims Act and that it currently has a paper containing preliminary documentation of the harm done by the protagonists of the armed conflict to journalists doing their job of informing the public. It indicated that so far the document had been validated by the Technical Secretariat of the Committee to Promote the Collective Reparation process and it announced that it was expecting it to be approved by that National Committee in August 2017, a step that would contribute to the development of the Comprehensive Collective Reparation Plan (PIRC).<sup>476</sup>

301. The State also reported that the process of drawing up the Public Policy to Guarantee the Right to Freedom of Expression of Persons Practicing Journalism in Colombia had reached "a stage at which it was ready to be formalized by a National Government Decree." However, the Commission also received information to the effect that in 2017 civil society organizations had issued a warning to the public that said process was at a standstill.<sup>477</sup> The Commission observes that the program for developing that public policy

<sup>470</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.P. 53.

<sup>471</sup> FLIP. [La FLIP decide salir del comité de evaluación de riesgo a periodistas](#). February 7, 2017.

<sup>472</sup> FECOLPER. [La Fecolper continuará participando en CERREM de periodistas](#). February 16, 2017.

<sup>473</sup> IACHR. 163rd Period of Sessions. Public Hearing: [Situation of the Right to Freedom of Expression in Colombia](#). July 5, 2017, [Video. March 26, 2014, 1:12 p.m. – 2:15 p.m.

<sup>474</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>475</sup> IACHR. Truth, Justice and Reparation: [Fourth Report on the Human Rights Situation in Colombia](#). OEA/Ser.L/V/II. Doc. 49/13. December 31, 2013. Par. 966.

<sup>476</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.Pp. 53-54.

<sup>477</sup> International Federation of Journalists (IFJ) [Colombia: FIP y FECOLPER se reúnen con el Gobierno para garantizar condiciones laborales dignas](#). April 5, 2017; [#DíadelPeriodista](#). Twitter account of the Colombian Federation of Journalists @FECOLPER.. [August 4, 2017](#); La Región. August 12, 2017. [Vulneraciones a ejercicio del periodismo en Colombia: FECOLPER](#) [note attached]; FLIP. [Carta abierta al presidente Santos por el caso Carvajal en la Corte IDH](#). August 28, 2017.

has remained at the design stage for the past two years and that in the current context it is especially important that it be implemented as soon as possible.

302. As in previous years, the Commission wishes to reiterate "the urgent need that the State (...) establishes, as State policy in the short-, medium- and long-term, investigation as a measure of prevention."<sup>478</sup> In connection with the aforementioned public hearing, the FGN reported that one of its strategic objectives for the following four years was to accord priority to combating violence and, as part of that, violence against particular segments of the population. It acknowledged that there are still shortcomings with the recording and compilation of information and in connectivity and coordination between units conducting judicial inquiries and other entities. As a result of that realization a "specific strategy" had been developed for journalists that would make investigations more effective and efficient. The FGN also reported that the idea is to ensure continuity in the provision of more in-depth training for officials and to standardize a methodology for investigating threat offenses, based on the work being done with civil society. Such measures would complement those adopted in recent years.<sup>479</sup> For their part, civil society representatives reiterated the need to establish a special unit within the FGN to investigate violence against journalists based on their profession, within the broader framework of an integrated system.<sup>480</sup>

## 2. Pursuit of justice/ law enforcement

303. The Office of the Special Rapporteur welcomes the deportation on January 30, 2017, from the United States back to Colombia, of Fabio López Escobar, a fugitive from justice following his conviction in 2015 as a co-perpetrator of the murder of journalist Orlando Sierra in 2002.<sup>481</sup>

304. The Office of the Special Rapporteur was also advised of major progress achieved in the case of the murder of journalist Flor Alba Núñez in Pitalito, Huila, on September 10, 2015.<sup>482</sup> On September 8, 2017, in a public hearing in Neiva, the Third Specialized Criminal Court judge sentenced Juan Camilo Ortiz to 47 years, 6 months, and 2 days in prison for the murder of the journalist. The judge's ruling underscored that the motive for the crime had been the victim's profession. However, local organizations pointed out the need for the investigation to continue because the other perpetrator of the murder has not been brought to trial nor have the authorities identified the instigators of the crime. The Public Prosecutors' Office reported that it was continuing its investigations.<sup>483</sup>

305. On the other hand, several murders of journalists committed in Colombia are about to prescribe due to the statute of limitations. According to the information available, on February 2 the FLIP deplored the prescription of the case of the murder of journalist Santiago Villalba committed in 1997 in

<sup>478</sup> IACHR. Annual Report for 2015 [Chapter V. Follow-up of Recommendations Issued by the IACHR in its Country or Thematic Reports Follow Up on the Recommendations made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015 Par. 85.

<sup>479</sup> IACHR. Public Hearing: [Situation of the Right to Freedom of Expression in Colombia](#). July 5, 2017, [Video. Minutes 24:25 to 30:23].

<sup>480</sup> IACHR. Public Hearing: [Situation of the Right to Freedom of Expression in Colombia](#). July 5, 2017, [Video. Minutes 14:20 - 15:33].

<sup>481</sup> El Espectador. January 30, 2017. [Deportado a Colombia Fabio López Escobar, condenado por el crimen del periodista Orlando Sierra](#); El Heraldo January 31, 2017. [Asesino de Orlando Sierra llegó a Colombia deportado de EEUU](#); Knight Center for Journalism in the Americas. January 30, 2017. [United States deports man convicted of murdering Colombian journalist Orlando Sierra](#); CIDH. [Annual report for 2015. 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. OEA/Ser.L/V/II. Doc. 48/15, December 31, 2015, Par. 341.

<sup>482</sup> IACHR. [Annual report for 2015. 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. OEA/Ser.L/V/II. Doc. 48/15, December 31, 2015, Par. 350.

<sup>483</sup> FGN. [Condenado presunto autor del homicidio de periodista Flor Alba Núñez](#). August 11, 2017; FECOLPER. [Caso Flor Alba Núñez Vargas. Se gana una batalla, más no la guerra](#). September 8, 2017; FLIP. [Condena contra el autor material del homicidio de Flor Alba Núñez: un paso en la lucha contra la impunidad](#). September 8, 2017; El Espectador. September 8, 2017. [Condenan a 47 años de prisión a homicida de la periodista Flor Alba Núñez](#). El Tiempo. September 8, 2017. [Condenan a 47 años de cárcel a asesino de periodista Flor Alba Núñez](#).

Sincelejo, for lack of sufficient information about the case<sup>484</sup>. According to supplementary information furnished by the FLIP after the hearing had ended, of the 153 cases of journalists murdered for exercising their profession in Colombia since 1977, 76 prescribed, i.e., almost half, while the "vast majority of the murders - 128 - have met with total impunity."<sup>485</sup>

306. As regards other offenses committed against freedom of expression, the Commission and its Special Rapporteurship underscore as an advance the fact that in September 2017 the CSJ sentenced the former Director of the former Administrative Department of Security (DAS), Jorge Aurelio Noguera Cotes to seven years and ten months imprisonment as a co-perpetrator of the offense of aggravated conspiracy to commit crime, after being found guilty of intercepting communications and illicit surveillance and shadowing of human rights defenders, NGOs, political leaders, and journalists.<sup>486</sup> The Criminal Cassation Division found that Noguera Cotes, together with then advisor José Miguel Narváez and members of the Office of the Director-General of Intelligence, had designed and organized the so-called G-3, a group that operated between March 2003 and October 2005, "established to conduct full-time interception, without a court order, of telephone, mail, and fax communications and monitoring of persons who neither practiced nor were accused of any illicit activity whatsoever and whose only fault (in the G3's eyes) was to be in opposition to the national Government." The ruling dated September 6, 2017 further ordered that "copies of the proceedings (...) be forwarded to the Accusations Commission of the Chamber of Representatives so that, should it deem fit, it could proceed to investigate former President Álvaro Uribe Vélez for involvement in the conduct referred to in this ruling, should it not already have done so." In substantiating its decision in that respect, the Court stated that "several of the victims, including Claudia Julieta Duque and Alirio Uribe Muñoz, had pointed out that the shadowing and (wire-tapping) interceptions had occurred during the government of Álvaro Uribe Vélez who had called them traffickers in human rights and terrorists, labels they associated with the crimes committed by the DAS during his term in office."<sup>487</sup> The former President published a statement denying that he had given illegal orders to those responsible for the DAS.<sup>488</sup>

307. During 2017, there were several judicial proceedings related to trials for serious acts of psychological torture perpetrated against journalist Claudia Julieta Duque by officials of the former DAS because of her investigation of the murder of Jaime Garzón, another journalist, in 1999. In October, the FGN declared the offenses committed against the journalist to be a crime against humanity and indicted the former Deputy Director of the DAS, Emiro Rojas Granados, and the former Intelligence Detective of the DAS, Néstor Pachón Bermúdez.<sup>489</sup> According to the International Federation of Journalists, in November 2017, the FGN and the PGN had called for the conviction of Ronal Harbey Rivera Rodríguez and Rodolfo Medina Alemán, former Colombian Intelligence agents, accused of torturing the journalist.<sup>490</sup> Meanwhile, on April 24, Enrique Alberto Ariza Rivas, the former head of Intelligence at the DAS, had reportedly been deported from the United States after the journalist herself had denounced him while she was in that country. In addition, on June 23, 2017, William Alberto Merchán was placed in pre-trial detention, for being a former Counter-Intelligence detective of the DAS under investigation since May 2016. At the time of his arrest, Merchán was working as an official in

<sup>484</sup> FLIP. [Verdad a medias en el caso de Santiago Rodríguez Villalba](#). February 2, 2017.

<sup>485</sup> FLIP, Response to questions asked by the IACHR in the hearing on July 5 and August 8, 2017, received by the Office of the Special Rapporteur on September 19, 2017.

<sup>486</sup> CSJ. Criminal Cassation Division [Sentencia de única instancia SP13920-2017](#), September 6, 2017; CSJ. September 11, 2017. [Corte Suprema dita nueva condena contra exdirector del DAS Jorge Noguera](#); FLIP. [La Corte Suprema de Justicia condena al exdirector del DAS por interceptaciones a periodistas](#). September 11, 2017.

<sup>487</sup> CSJ, Criminal Cassation Division [Sentencia de única instancia SP13920-2017](#), September 6, 2017; CSJ. Point 8.4.

<sup>488</sup> Centro Democrático. [Constancia sobre nueva acusación por interceptaciones ilegales](#). September 12, 2017.

<sup>489</sup> Equipo Nizkor. [Caso de Claudia Julieta Duque es un crimen de lesa humanidad: Fiscalía](#). October 25, 2017; Fundación para la Libertad de Prensa [Foundation for Freedom of the Press] (FLIP). [El caso de Claudia Julieta Duque fue calificado como crimen de lesa humanidad](#). October 26, 2017; El Tiempo. October 26, 2017. [Fiscalía dice que el caso de la periodista Duque es de lesa humanidad](#).

<sup>490</sup> International Federation of Journalists [Fiscalía y Procuraduría piden condena contra torturadores de periodista Claudia Julieta Duque. December 7, 2017](#).



the FGN's Program for Protecting Victims and Witnesses.<sup>491</sup> In December, it further transpired that the FGN had allegedly decided not to investigate the former Director of DAS, Jorge Noguera Cote, for psychological torture and threats against journalist Claudia Julieta Duque. According to the information available, with respect to the threats, the Fifth Tier Prosecutor before the Court allegedly stated that "as the acts constituting the threats occurred between March 2003 and October 25, 2005" the offense had prescribed. With regard to the torture offense, the prosecutor allegedly announced that there was no evidence of Noguera Cote "having thought up, participated or intervened in, or having encouraged it." The journalist announced that she would appeal the FGN decision.<sup>492</sup>

308. According to the Information available, in the case of journalist Jineth Bedoya, the Public Prosecutors' Office had called for the conviction of former paramilitary Alejandro Cárdenas Orozco, for aggravated violent rape, and of former paramilitary Jesús Emiro Pereira for the crimes of non-aggravated abduction, aggravated torture, and aggravated violent sexual act.<sup>493</sup> On August 9 it transpired that the Criminal Division of the CSJ had confirmed the expulsion from the Special Justice and Peace Jurisdiction of both paramilitary for the abduction, torture, and rape of the journalist.<sup>494</sup> In connection with this case, civil society organizations complained that the journalist had had to declare for the twelfth time regarding the facts of the case and the sexual assault against her in connection with the investigations for these proceedings.<sup>495</sup>

309. In another case, the PGN announced on May 23 the confirmation by a higher court of the dismissal and general disqualification for 13 years of the three National Police patrol officers who allegedly had attacked to journalists working for the City TV channel in Bogotá, when they were filming a person being arrested by the police. According to the court ruling, they were guilty of grave willful misconduct (*falta grave a título de dolo*).<sup>496</sup>

310. Despite the progress made in respect of the aforementioned cases, the Commission expresses its concern at the fact that impunity is still all too common in cases of crimes against journalists, with most such resolutions being subject to unwarranted delays in the proceedings. The FLIP reported in July that the impunity rate for murders of journalists was still 99.7% and 100% in cases involving threats against them, while the prescription rate of investigations into murders of journalists and media workers was 44.7%.<sup>497</sup> Likewise, the IACHR notes that, according to the findings of an investigation published by the FIP in August 2017, "of all attacks against reporters investigated between September 1986 and April 2017, only 0.2 of every 10 cases reached the trial stage or resulted in a conviction,"<sup>498</sup> The report pointed out that these data

<sup>491</sup> Semana. April 24, 2017. "[La justicia cuando quiere, puede](#)": [Claudia Julieta Duque](#); International Federation of Journalists (IFJ). [Colombia: el juicio contra dos torturadores de Claudia Julieta Duque entra en su etapa final](#). June 15, 2017; Caracol Radio. June 23, 2017. [Capturan a funcionario de la Fiscalía por tortura a Claudia Julieta Duque](#); El Espectador. June 23, 2017. [Capturan a funcionario de la Fiscalía implicado en caso de tortura psicológica contra periodista](#).

<sup>492</sup> El Tiempo. December 08, 2017. [Se abstienen de investigar a Jorge Noguera por tortura a periodista](#); El Espectador. December 9, 2017. [Fiscalía se abstiene de investigar a Jorge Noguera por amenazas a periodista](#).

<sup>493</sup> El Espectador. August 8, 2017. [Fiscalía pide condena contra alias 'JJ' y 'Huevo de Pisca' por secuestro de Jineth Bedoya](#); FLIP. [FLIP solicita a juez condenar a Cárdenas Orozco y Pereira Rivera en el caso de Jineth Bedoya](#) Lima. August 10, 2017. [Equipo Nizkor. Alegato final de la Fiscalía en el caso Jineth Bedoya](#). August 8, 2017.

<sup>494</sup> El Espectador. August 9, 2017. [Corte Suprema confirmó expulsión de "Panadero" y "J.J." de Justicia y Paz](#); El Tiempo. August 10, 2017. ['Panadero' y 'J.J.' salen de Justicia y Paz, tendrán 40 años de cárcel](#).

<sup>495</sup> El Tiempo. March 1, 2017. [Bedoya pide investigar al general \(r\) Leonardo Gallego en su caso](#); IFEX. [Víctima nuevamente: la periodista colombiana Jineth Bedoya fue llamada al estrado por 12ª vez](#). February 27, 2017; FIP. [Colombia: La incesante lucha de Jineth Bedoya, periodista torturada y abusada por paramilitares](#). March 24, 2017; El Tiempo. March 1, 2017. [Jineth Bedoya señala al general \(r\) Leonardo Gallego de participar en su secuestro](#); Caracol Radio. March 2, 2017. [Niego enfáticamente señalamientos de Jineth Bedoya: general Gallego](#).

<sup>496</sup> PGN. May 23, 2017. [Boletín 387. Procuraduría confirma destitución e inhabilidad por trece años a miembros de la policía por agresión a periodistas de City TV](#); El Tiempo. May 23, 2017. [Confirman destitución a policías que agredieron a periodistas](#).

<sup>497</sup> IACHR. Public Hearing: [Situation of the Right to Freedom of Expression in Colombia](#). July 5, 2017, [Video. Minutes 14:33 - 15:00].

<sup>498</sup> International Federation of Journalists (IFJ) [El silenciamiento de los periodistas y la estruendosa impunidad en Colombia. Informe especial para la Federación Internacional de Periodistas y su filial FSC-CCOO realizado por Claudia Julieta Duque y Marvin David Del Cid](#). August 9, 2017.

are taken from figures provided by the FGN and correspond to 637 cases registered in a 31-year period, in which 733 journalists were victims of various crimes. The document pointed out that, based on the data obtained, the impunity rate for murders of journalists is 95.23%. The same document states that only 1 of 304 investigated cases involving threats against journalists led to a conviction.

311. The Commission and its Special Rapporteurship acknowledge progress made in the actions described above, while reiterating statements they have already made regarding the high levels of impunity and the large number of cases involving homicides and other crimes against journalists because of their profession that have prescribed. At the same time, the Commission and the Special Rapporteurship emphasize that, in accordance with inter-American standards, State must guarantee due diligence in investigating human rights violations, which implies, inter alia, that those investigations are conducted in a timely, impartial, and effective manner.

312. In conclusion, in light of the above information, the IACHR reiterates its recommendation that the Colombian State continue striving for diligent, impartial, and effective investigations of the murders, attacks, threats, and acts of intimidation committed against journalists and media workers, and that it prosecute, through 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.

313. The IACHR recommends that the State continue to adopt adequate preventive mechanisms in order to avert violence against media workers, including the public condemnation of all acts of aggression, the training of public officials, particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines regarding respect for the right to freedom of expression, and that it continue to compile detailed, disaggregated criminal statistics on violence against journalists and the criminal prosecution of these crimes.

314. The IACHR recommends that the State continue adopting effective protection measures to guarantee the safety of persons exposed to special risk because of their exercise of their right to freedom of expression. The State must 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 ensure the Program's financial sustainability and accelerate, under appropriate technical conditions, 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. The IACHR points out once again that it is necessary for the protection mechanism to function in coordination with the authorities responsible for pursuing the criminal investigations, so as to avert the repetition of threats.

315. In particular, the IACHR encourages the State, as part of the commitment it took on in connection with the Peace agreements, to implement regulatory reforms that ensure: a) that all parts of the country have plural and diverse media including community broadcasting; and b) the adoption of a regulation establishing objective and transparent mechanisms for allocating State advertising.

316. Finally, the IACHR urges Colombia to continue making headway with implementation of the Collective Reparation Program for journalists and media workers and with the adoption of a public policy for journalists.

## **6. Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons**

- 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.

317. Regarding the rights of LGBTI persons, the IACHR noted in the Truth, Justice, and Reparation Report a history of discrimination and violence based on prejudices associated with diverse sexual orientations and gender identities. It also identified shortcomings in the prevention of police violence, together with other challenges. At the same time, the IACHR took note of serious failings with respect to investigations into murders and other acts of violence against LGBTI persons.

318. The Commission acknowledges that the Peace Agreement incorporates the gender perspective and includes the LGBTI population as eligible for special protection. There are also specific references to access by LGBTI persons, on an equal footing, to: land; economic, social, and cultural (ESC) rights for LGBTI persons in rural areas; prevention and protection measures; and to truth, justice, reparation, and guarantees of non-repetition for persons affected by the armed conflict. The Commission welcomes the fact that the State has initiated the process of training LGBTI victims of the armed conflict to strengthen their participation in the development of public policies.<sup>499</sup> The Commission likewise underscores that two women in the LGBTI movement have been chosen to join the Special Women's Body (*Instancia Especial de Mujeres*) to guarantee mainstreaming of the gender perspective in the Peace Agreement.<sup>500</sup>

319. The IACHR welcomes the fact that, for the first time, the charge of femicide has been brought in the murder of a trans woman in the Municipality of Garzón, in the Department of Huila<sup>501</sup>. It also welcomes the publication by the National Institute of Forensic Medicine (INML) of "Guidelines and Recommendations for judicial investigation, care, and prevention of deaths in which femicide is suspected," which includes protections for LGBTI victims.<sup>502</sup> The Commission also underscores the entry into force in January 2017 of the new Police Code, which includes protection of LGBTI persons<sup>503</sup> and fines for people or establishments that discriminate against LGBTI persons or attack them<sup>504</sup>. The Commission likewise notes that the Ombudsperson's Office keeps a record of differentiated attention to the persons requesting its services. The records show that in first quarter 2017, 22% of the people it attended to are lesbians or gay and persons who describe themselves as bisexual; 12% are trans persons. Fifteen people who went to the Ombudsperson's Office described themselves as intersex.<sup>505</sup>

320. At the same time, the Commission observes that in 2017 there were still high levels of violence and aggression against LGBTI persons. In the first seven months of the year, 13 LGBTI persons were murdered, nine of them being trans women.<sup>506</sup> The IACHR also received information regarding the persistence of hostile and violent environments surrounding people who defend the rights of LGBTI persons. According to the Ombudsperson's Office, between January and May 2017, there were 107 cases of violence against the diverse population, 38 being attacks on trans persons.<sup>507</sup>

321. It is worth noting that, during the hearing on investigations into attacks on human rights defenders, participating organizations had pointed out that the National Protection Unit (UNP) had not effectively protected LGBTI leaders and they reiterated their request to the State, reported to the IACHR since

<sup>499</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>500</sup> *Caribe Afirmativo*, [Dos mujeres del movimiento LGBT harán parte de la Instancia Especial de Mujeres](#), July 26, 2017.

<sup>501</sup> *Colombia Diversa, Caribe Afirmativo and Santamaría Fundación*, [Entre el miedo y la resistencia](#), June 2017.

<sup>502</sup> *Instituto Nacional de Medicina Legal and Ciencias Forenses*, [Guía de recomendaciones para la investigación judicial, atención y prevención de las muertes con sospecha de feminicidio](#), October 2016.

<sup>503</sup> Colombian Congress, [Law No. 1801](#), July 29, 2016

<sup>504</sup> *El Tiempo*, [Nuevo Código de Policía multará sitios donde expulsen a parejas LGBTI](#), February 18, 2017; *Caribe Afirmativo*, [Nuevo Código de Policía: ¿garantizará derechos a las personas LGBTI?](#), January 30, 2017.

<sup>505</sup> *Defensoría del Pueblo*, [En un año se triplicaron casos de discriminación a personas LGBTI](#), May 17, 2017.

<sup>506</sup> *Sistema de Información de Violaciones de Derechos Humanos contra Personas LGBT (SIVIDH)*, [Violencia Nacional](#), August 1, 2017.

<sup>507</sup> Ombudsperson's Office, Note of August 29, 2017.

October 2014,<sup>508</sup> about amending Decree 4912 of 2011<sup>509</sup> to include them expressly as persons eligible for protection.<sup>510</sup>

322. In its observations on the draft version of this report, the State indicated that Decree 4912 of 2011 refers to activists and leaders of organizations defending human rights, without specifying any particular right or group or defining the characteristics of activists or leaders of those organizations. The State considers that activists and leaders of LGBTI rights are currently covered by the protection program, since the UNP protects human rights defenders regardless of which rights they defend. It points out that the request by LGBTI activists that the aforementioned Decree explicitly mention all the persons identified as covered by protection is unviable inasmuch as the protection would be for their sexual preference or gender identity, not to defend a given category of human rights.<sup>511</sup>

323. Excessive police violence against LGBTI persons in Colombia has also continued, including personal injuries and cases of torture especially against trans women and sex workers.<sup>512</sup> According to information received by the IACHR, threats against LGBTI persons are still routine in Colombia and many go unpunished because they are not considered to be real threats.<sup>513</sup> Civil society sources have also told the Commission that very little progress has been made with investigations into murders of LGBTI persons.<sup>514</sup>

324. The IACHR notes with concern that, despite some progress by the State toward combating violence against LGBTI persons, such violence is still embedded in society and is conducive to discrimination. Accordingly, the IACHR urges the State to continue taking steps that recognize the rights of LGBTI persons; to step up protection for persons defending LGBTI rights; to redouble its efforts to ensure that investigations into crimes against LGBTI persons are effective and prompt; to provide training to State agents, especially the police, on LGBTI issues; and to adopt appropriate measures to ensure social inclusion of the LGBTI population.

## 7. Persons Deprived of Liberty

- Adopt the administrative, judicial and legislative measures needed to ensure that the pre-trial detention of persons who have not been convicted with a firm judgment is used as the measure of last resort and for the shortest possible time, in keeping with the international standards presented in this report, so as to bring about a reduction in the number of persons subjected to this precautionary measure.
- Adopt effective measures to ensure the delivery of adequate medical and psychiatric care at every prison and jail in the country. Implement mechanisms of external supervision and monitoring of the health services that are provided in prisons. And make adequate reparation, in keeping with domestic law, to all those persons who have suffered harm stemming from the deficient provision of health services in the prisons, as well as the family members of those who have died as a result of this cause.
- Adopt, on an urgent basis, effective measures to guarantee the supply of drinking water and water to satisfy other needs of persons deprived of liberty in the prisons, in keeping with the international minimum standards set forth in this report.

<sup>508</sup> IACHR, Hearing on complaints of violence against LGBTI persons in the Colombian Caribbean, October 27, 2014.

<sup>509</sup> [Decreto por el cual se organiza el programa de prevención y protección de los derechos a la vida, la libertad, la integridad y la seguridad de personas, grupos y comunidades del Ministerio del Interior y de la UNP.](#)

<sup>510</sup> IACHR, Public Hearing [Investigating attacks on human rights defenders in Colombia](#), March 21, 2017. *Caribe Afirmativo*, [Caribe Afirmativo denuncia violencia contra activistas LGBT del país](#), March 27, 2017.

<sup>511</sup> Republic of Colombia, Note S-GAIID-17-101743 of December 18, 2017.

<sup>512</sup> *Caribe Afirmativo*, [No paran las agresiones por parte de agentes de la Policía: denuncian mujeres trans](#), February 2, 2017; Colombia *Diversa*, *Caribe Afirmativo* and *Santamaría Fundación*, [Entre el miedo y la resistencia](#), June 2017.

<sup>513</sup> *Caribe Afirmativo*, [En Colombia 108 personas LGBT fueron asesinadas el año pasado](#), June 29, 2017.

<sup>514</sup> Colombia *Diversa*, *Caribe Afirmativo* and *Santamaría Fundación*, [Entre el miedo y la resistencia](#), June 2017.

- Ratify the Optional Protocol of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

325. As regards the rights of persons deprived of liberty, the IACHR has identified in the Truth, Justice, and Reparation Report and in its follow-up reports major challenges with respect to: a) overcrowding in prisons; b) non-exceptional use of pre-trial detention; c) medical and psychiatric care in penitentiaries, especially as regards women and indigenous persons; d) water supplies for drinking and for other needs of persons deprived of liberty; and e) failure to ratify the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

326. Concerning persons deprived of liberty, the State reported that the intramural penitentiary and prison population totaled 115,628 inmates as of July 31. It also pointed out that the downward trend since December 2016 continued, with 2,904 (2.4%) fewer inmates now compared to then. The State noted that since 2016 overcrowding has decreased: from 51.2% in December 2016 to 46.9% in June 2017. Less than one third (30.8% or 35,650 inmates) of the population behind bars had been indicted, 32,842 (92.1%) of whom were men, 2,808 (7.9%) women.<sup>515</sup> The *World Prison Brief*, for its part, reported that the prison population rate in Colombia is 226 inmates per 100,000 inhabitants as of late 2017.<sup>516</sup>

327. With respect to overcrowding, the State reported that the overcrowding rate was 46.4% at September 30, 2017.<sup>517</sup> According to press reports at end-August, the population deprived of liberty totaled 120,000 in facilities designed to hold at most 80,000.<sup>518</sup>

328. The State also reported that in July, in an effort to design, formulate, and execute legislative measures to help solve the overcrowding problem and make criminal policy more coherent, the Ministry of Justice and Law had submitted bill 014 of 217 to the Senate. "Strengthening criminal and prison policy in Colombia."<sup>519</sup>

329. At the same time, Colombia remains concerned about prison conditions, particularly as regards lack of medical care and food deficiencies.<sup>520</sup> On this, the State explained that the Penitentiary and Prison Services Unit (USPEC) had ordered the necessary steps for administering the resources allocated to the National Fund for the Health of Persons Deprived of Liberty. Those resources are to be used to finance the provision of comprehensive health services<sup>521</sup> for both inmates and, if necessary, the extramural prison population.

330. As regards the Constitutional Court's declaration of a state of penitentiary<sup>522</sup> and prison emergency, the State pointed out that it had been extended through June 30, 2017. It pointed out that the declaration extending the state of emergency called for the following courses of action: 1) the strengthening of public health promotion and prevention measures; 2) maintenance, rehabilitation and equipping of health

<sup>515</sup> As for the duration of detention of those indicted, the State pointed out that there were 8 different groups, by months of detention. 31.6% (11,278) had been detained for between 0 and 5 months; 21.5% (7,659) for between 6 and 10 months; and 13.3% (4,736) for between 11 and 15 months. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>516</sup> Based on an estimated national population of 51.03 million. *Institute for Criminal Policy Research & Birkbeck University of London, World Prison Brief*, Colombia.

<sup>517</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>518</sup> *Caracol, Preocupa Situación de Hacinamiento Carcelario en Colombia*, August 25, 2017.

<sup>519</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>520</sup> Dejusticia, *Informe de la Comisión de Seguimiento de la Sociedad Civil a la Sentencia T-388 de 2013*, January 31, 2017.

<sup>521</sup> They include intramural and extramural care, dentistry and mental health, lab services, care for HIV patients, medicines, health prevention work and promotion, authorizations for medical procedures, etc. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>522</sup> Resolution 2390 of May 10, 2016, INPEC declares a State of Penitentiary and Prison Emergency in effect as of December 31, 2016.



facility areas; 3) a health information system; and 4) prevention of deaths from disease among the prison population.<sup>523</sup>

331. With respect to medical and psychiatric care, the State pointed out that, as of April 2017, among other activities, 504 health patrols (*brigadas en salud*) had treated 17,622 inmates; 1,680 civic health days had been held, reaching 44,696 inmates; 18,628 medical and 11,986 dental check-ups had been performed; 1,145 inmates had been identified as candidates for forensic check-ups to determine whether they were suffering from illnesses incompatible with detention (following 525 check-ups of this kind, 146 inmates were allowed to switch to house arrest); a new matrix was introduced to improve tracking of the demand for health care services.<sup>524</sup>

332. For its part, the Office of the Ombudsperson stated that the [Tr. lack of] provision of appropriate medical and psychiatric health care in the country's prisons was the single most intense violation of the rights to life and health of the population deprived of liberty. Furthermore, in its view, the implementation of previous and subsequent rules had generated delays in rendering those rights effective.<sup>525</sup>

333. Regarding the health of indigenous persons deprived of liberty, there is an evident need to guarantee specific approaches to their health care needs. There were reports of prison authorities not being aware of certain cultural differences of indigenous peoples.<sup>526</sup> Thus, the fact that members of different indigenous peoples may be held in the same establishment tends to mean that they get the same treatment, regardless of the specific characteristics of each people. At the same time, the Ombudsperson's Office underscores the importance of authorizing the practice of the traditional medicine of the various ethnic groups in order to ensure correct application of a differentiated approach recognizing their cultural diversity.<sup>527</sup> Here, the Commission reiterates that differentiated care involves taking all manifestations of a person into account, including their spiritual side, as well as the intersectional and intercultural approach<sup>528</sup> that should be a hallmark of all the State's activities (see III.D *above*).

334. Concerning measures to ensure drinking water supplies, the State reported that it was ensuring as continuous a supply of drinking water as possible in detention centers nationwide. It said that major efforts had been undertaken to ensure that water treatment plants were working and supplying inmates with water. It further reported that in 2016 it had begun entering into maintenance and operations contracts for catchment, treatment and storage systems for drinking water,<sup>529</sup> and had authorized a potable water treatment system for existing wells in detention centers. It added that funds had been raised to construct and maintain drinking water plants in the 32 establishments; that operations and maintenance contracts had been drawn up for water treatment plants in 18 of them; and that the remainder had access to drinking water supplied by each municipality's public utilities providers.<sup>530</sup>

335. In April 2017, the press reported that 38,413 of the total prison population of 118,952 were still being held under pre-trial detention.<sup>531</sup> Regarding measures adopted to ensure only exceptional use of pre-trial detention, the State stressed that in connection with Law 1786 of 2016 -which amended certain

<sup>523</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>524</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>525</sup> Ombudsperson's Office, Note of August 29, 2017.

<sup>526</sup> Dejusticia, [Informe de la Comisión de Seguimiento de la Sociedad Civil a la Sentencia T-388 de 2013](#), January 31, 2017.

<sup>527</sup> Dejusticia, [Informe de la Comisión de Seguimiento de la Sociedad Civil a la Sentencia T-388 de 2013](#), January 31, 2017.

<sup>528</sup> Cf. Measures to Reduce Pre-trial detention, OEA/Ser.L/V/II.163 Doc. 105, July 3, 2017 199.

<sup>529</sup> In particular, in the Quibdó, Itsmina, Apartado, Nariño, Socorro, and Neiva facilities. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>530</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>531</sup> *Contagio Radio*, [La alarmante situación de las cárceles colombianas](#), April 12, 2017.

provisions in Law 1760 of 2015<sup>532</sup>-, the Ministry of Justice, the FGN, and the Higher Council of the Judiciary had been ordered to draw up a Plan of Action to determine whether preventive detention to ensure appearance at trial (*medidas de aseguramiento*) would continue and to promote the possibility of alternatives given the problems associated with pre-trial detention.<sup>533</sup>

336. On this, the State reported that the Regional Round Table Committees of the Accusatory Oral Criminal Procedure System had been reactivated to address the provisions of Laws 1760 and 1786 and to expedite proceedings at the regional level. It pointed out that the FGN, in coordination with the Higher Council of the Judiciary, had been devising suitable measures for completing each of the proceedings covered by the four extension hypotheses contemplated in the aforementioned laws. On this, it also reported that, as of July 24, there were 13, 339 potential beneficiaries of Law 1786, 10, 550 of whom were being held inside prisons, and 2,484 were under house arrest. 358 cases were still being reviewed.<sup>534</sup>

337. The State stressed that releases were not automatic. Rather, a hearing was needed to establish that none of the exceptions established in the regulations applied. It also stated that Laws 1760 and 1786 do not entail releasing persons convicted of a crime in a court of law. On the contrary, their purpose was to uphold the principle of presumption of innocence (until a person is proven guilty) and to ensure that people are tried within a reasonable period of time with the opportunity to remain free during the judicial proceedings.<sup>535</sup>

338. Here, it is worth reiterating that, in its report on measures to reduce the use of pre-trial detention in the Americas, the Commission recognized Colombia's actions to find alternatives to it.<sup>536</sup> The Commission also reiterates that, when designing and implementing policies and services that seek to reduce the use of pre-trial detention in respect of individuals and groups at special risk, States need to ensure the participation of civil society and of the beneficiaries of those actions. The idea, there, is to ensure that policies are imbued with a human rights perspective and make it possible to conceive of beneficiaries as persons entitled to rights, not just as the recipients of the benefits those rights entail.<sup>537</sup>

339. Referring to the strengthening of National Penitentiary and Prison Policy, the State mentioned that in 2016 a study had been conducted of the proportionality of the punishments provided for in criminal legislation and that that study had provided information on the impact of legislative reforms between 2001 and 2016 on the punishments and penalties established in the Criminal Code. It pointed out that Phase II of the project had begun in 2017, aimed at reviewing and analyzing proportionality in the judicial and penitentiary systems.<sup>538</sup>

340. The State also noted that the Higher Council for Criminal Policy had made progress toward putting together a National Criminal Policy Plan.<sup>539</sup> It pointed out that the broad outlines of the Plan had served as a point of reference for the design of the Ten Year Justice Plan, so that both policy documents, despite their different scopes, are aligned with one another through principles they share, which means that they can be used in combination.

341. The State also reported on progress with designing the CONPES on criminal policy, a document that pursues the same strategic lines as the National Criminal Policy Plan and seeks to implement

<sup>532</sup> Law partially amending Law 906 of 2004 in relation to measures to ensure appearance at trial [Tr. i.e. pre-trial detention] .

<sup>533</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>534</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>535</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>536</sup> IACHR. Measures to Reduce Pre-trial Detention, OEA/Ser.L/V/II.163 Doc. 105, July 3, 2017, p. 15.

<sup>537</sup> IACHR. Measures to Reduce Pre-trial Detention, OEA/Ser.L/V/II.163 Doc. 105, July 3, 2017, p. 171.

<sup>538</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>539</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

criminal policy strategies conducive to the rationalization of criminal law and based on efficiency, coherence, and sustainability criteria.<sup>540</sup>

342. The State reported the creation in 2016 of the Criminal Policy Information System, an online tool that -- pursuant to Constitutional Court Judgment T-762/15 -- enables any citizen to access official information regarding statistics and regulations related to Criminal and Penitentiary Policy.<sup>541</sup> It mentioned that work was continuing in 2017 on finding a technological solution for addressing the criminal policy information problem and enhancing the Criminal Policy Portal so as to make it easier to navigate.

343. For its part, the Ombudsperson's Office reported that it is a member, with the right to vote, of the Higher Council of Criminal Policy, in which it promotes the incorporation of a criminal policy based on the following principles: prevention, use of criminal law as a last resort (*ultima ratio*); effective resocialization of convicts as the paramount purpose of deprivation of liberty; and exceptional use of pre-trial detention. In addition, for criminal policy to be coherent, not off-the-cuff, it should not be populist. Rather, it should always heed the human rights of persons deprived of their liberty.<sup>542</sup>

344. As regards the situation of LGBT persons deprived of liberty, the Commission notes with concern the greater risks to which said segment of the population is exposed, due to the prejudices regarding their sexual orientation or gender identity. To mention only the most serious acts of violence, there have been cases of collective attacks on LGBT persons engaging in relations with their partner or showing signs of affection inside prisons; unwarranted and disproportionate use of force by prison (INPEC) guards; sexual violence, torture, and other cruel, inhuman, or degrading treatment or punishments, especially during extensive periods in solitary confinement in Special Treatment Units (UTE).<sup>543</sup> In this context, the Colombia Diversa organization points out that violations of due process and the absence of guarantees against possible reprisals -- as well as the fact that INPEC is both judge and jury when it comes to alleged acts of aggression by custodians and guards -- all mean that the victims do not file complaints.

345. On this matter, the State reported that the National Penitentiary and Prison Institute (INPEC) has issued General Rules of Procedure for the National Detention Centers (ERON) under its responsibility, in which it upholds the guiding principles of a human rights and differential treatment approach. The State also reported that the woman in charge of Criminal Policy at the Ombudsperson's Office is implementing a project in some national detention centers, which serves as an independent complaint mechanism. It involves setting up a series of channels for complaints (or attention routes), through which the population deprived of liberty can denounce torture or cruel and inhuman treatment to entities outside INPEC.<sup>544</sup> According to the State, if a case of torture or maltreatment is reported the mechanism is activated and the complaint is immediately forwarded to the National Institute of Forensic Medicine for it to conduct the appropriate medical examination, as required by the Protocol of Istanbul.<sup>545</sup>

346. Here it needs to be reiterated, yet again, that the differentiated approach and attention that should be paramount in all State actions, implies taking into consideration the specific risks faced by persons whose sexual orientations and gender identities and expressions differ from what is regarded as the norm or whose bodies or appearance do not match feminine and masculine stereotypes. (See *III.D* above)<sup>546</sup>.

<sup>540</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>541</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>542</sup> Ombudsperson's Office, Note of August 29, 2017.

<sup>543</sup> Colombia Diversa, "[Muchas Veces me Canso de ser Fuerte](#)": [ser Lesbiana, Gay, Bisexual o Trans en las Cárceles de Colombia](#), April 23, 2017.

<sup>544</sup> The project is currently a pilot scheme being tried out in women's prisons in Bogotá and Pereira, in the EPAMSCAS (high and medium security prisons) of Valledupar and Dorada, and in the EPMSC (medium security prisons) in Cali, Cartagena, Barranquilla, and Quibdó. Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>545</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>546</sup> Cf. IACHR. Measures to Reduce Pre-trial Detention, OEA/Ser.L/V/II.163 Doc. 105, July 3, 2017 199.

347. As regards women deprived of liberty, the civil society commission for follow up to Judgment T-388/13 has reported on the health crisis in penitentiaries and prisons, which affects women differently from men in aspects to do mainly with sexual and reproductive health. It pointed out the shortage of specialists, specific treatments, and the provision and follow-up to contraceptive methods. The report states that the findings of routine medical exams, such as smear tests, are recorded in medical histories without the women being told what they were and numerous hurdles have to be overcome to get an appointment to be able to consult those records. This violates the right to access to information, which includes the right to request, receive, and disseminate information and ideas relating to health matters.<sup>547</sup> The same commission has also reported serious acts against the life and bodily integrity of persons deprived of liberty in the UTE.

348. The IACHR is concerned by the fact that the Ombudsperson's Office has ascertained the existence of institutional blocking mechanisms in the "La Tramacúa" prison in Valledupar that have prevented inmates' complaints from reaching the supervisory bodies.<sup>548</sup> That same Office noted that the few complaints that did get through were not processed either quickly or with due diligence by the competent authorities. Accordingly, the Commission encourages the Ombudsperson's Office to continue implementing its mechanism for preventing torture in establishments where such a mechanism is needed and urges the State to investigate and punish the officials responsible for blocking complaints, as well as to reinforce existing mechanisms to prevent the occurrence of cruel, inhuman and/or degrading treatment amounting to torture in the establishments under its control.

349. On this matter, the State reported that in 2015, in a joint effort led by the Ombudsperson's Office with the PGN, FGN, the Institute for Forensic Medicine, and INPEC, a pilot scheme was established for the installation of an independent complaint mechanism<sup>549</sup> in the High Security Penitentiary in Valledupar, as part of efforts to comply with an order issued by the Constitutional Court and as a tool for overcoming the difficulties mentioned in its report. The State said that one of the achievements of the pilot scheme was increased trust in the mechanism on the part of persons deprived of liberty, which in turn afforded the Ombudsperson's Office an opportunity to talk with and counsel both prison officers and inmates regarding the prevention of acts amounting to torture or cruel, inhuman and/or degrading treatment or punishments. That being so, it is important to mention that in 2017 the Ombudsperson's Office presented the project to the UNDP and to the Swedish Embassy, with a view to achieving implementation of the mechanism in seven more prisons and its continuation in the EPAMSCAS in Valledupar.<sup>550</sup>

350. Regarding the recommendation about ratifying the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the Ombudsperson's Office said it had stressed the importance of that ratification to the Office of the President, the Office of the Vice President, and the Ministry of Foreign Affairs, all of which "argue that ratification of the aforementioned international instrument is not necessary because Colombia has sufficient oversight bodies to address the defense of the human rights of persons subject to arrest and imprisonment"<sup>551</sup>. In light of the above, the IACHR reiterates the importance of universal ratification of international and inter-American instruments to ensure full observance and guarantees for human rights at the national level<sup>552</sup>, so that it

<sup>547</sup> Dejusticia, *Centro de Investigación en Política Criminal de la Universidad Externado, Colombia Diversa, Corporación Humanas, Equipo Jurídico Pueblos, Fundación Comité de Solidaridad con los Presos Políticos, Semillero Interuniversitario de Abolicionismo Penal, Universidad del Sinú*. Dejusticia, [Informe de la Comisión de Seguimiento de la Sociedad Civil a la Sentencia T-388 de 2013](#), January 31, 2017.

<sup>548</sup> Ombudsperson's Office, Note of August 29, 2017.

<sup>549</sup> The mechanism consists of: letterboxes installed in each of the patios in the above-mentioned establishments; b) an Ombudsperson's Office telephone number for complaints and denunciations; c) an Ombudsperson's Office e-mail address for complaints and denunciations; and d) interviews with inmates by staff from the Ombudsperson's Office or Office of the Attorney General during inspection visits. Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>550</sup> The project is currently a pilot scheme being tried out in women's prisons in Bogotá and Pereira, in the EPAMSCAS (high and medium security prisons) of Valledupar and Dorada, and in the EPMSC (medium security prisons) in Cali, Cartagena, Barranquilla, and Quibdó. Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>551</sup> Ombudsperson's Office, Note of August 29, 2017.

<sup>552</sup> IACHR, [Universalization of the Inter-American System of Human Rights](#), OEA/Ser.L/V/II.152 Doc. 21, August 14, 2014.

maintains its recommendation regarding ratification of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

351. In light of the above considerations, the Commission recognizes the various efforts made by the Colombian State to comply with the recommendations put forward in this section with a view to achieving a penitentiary system in line with international human rights standards. Given that the situation of persons deprived of liberty still gives cause for concern, the IACHR reiterates its recommendations and urges the State to continue taking steps to reduce the use of pre-trial detention and guarantee the exercise of human rights in prisons, especially the rights to health and water.

#### **8. The aggravated risk to which human rights defenders are exposed**

- 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.
- 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 that suggest that the human rights organizations act improperly or unlawfully because of their work to promote and/or defend human rights.
- 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.
- 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.
- 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.
- 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.

352. In the Truth, Justice, and Reparation Report and its follow-up reports, the IACHR has identified serious challenges with respect to the situation of human rights defenders in Colombia, especially as regards guarantees for their protection, their precarious security situation, and the impunity with which crimes against them are treated. In 2017, the Commission was particularly worried about the security of human rights defenders given the increase number of attacks against them.

353. In connection with its monitoring of the situation of human rights defenders in the context of implementation of the Peace Agreement, the Rapporteurship on Human Rights Defenders was in Bogotá in February 2017, taking part in a workshop organized by the State on promotion of, and guarantees for, the



work done by defenders.<sup>553</sup> The Rapporteur took advantage of that visit to meet with authorities and human rights defenders, who provided information and described the challenges Colombia faces on this issue.

354. During that visit, the IACHR stressed that the part played by human rights defenders in the transition to peace in Colombia is paramount and, indeed, essential. Consequently, it is vital that the State strengthen systems to prevent attacks on this group of persons and to protect them.<sup>554</sup> Compliance with the obligation to investigate violations against defenders with all due diligence is an important preventive and non-repetition measure and a way to forge safe conditions for their work.

355. On this matter, the *Somos Defensores* program reported that between January and March 2017, 193 human rights defenders were victims of some kind of attack, a 70% increase over the figure for the same period in 2016, when there were 113 instances.<sup>555</sup> In the first half of 2017, the same organization documented a more than 30% increase in murders of human rights defenders in Colombia,<sup>556</sup> while 335 defenders were victims of some kind of attack placing their lives and physical integrity at risk and obstructing their legitimate and legal work in defense of human rights. The organization pointed out that in first half 2017, there was an increase of approximately 6% in individual attacks against defenders compared to first half 2016.<sup>557</sup>

356. Likewise, between November 24, 2016 and July 11, 2017, the Peace and Reconciliation Foundation recorded 181 violent acts against social leaders or human rights defenders, 55 of which were homicides.<sup>558</sup> For its part, in October, Marcha Patriótica reported 120 murders of social leaders.<sup>559</sup>

357. It is in that, post-Agreement, context that the risk for defenders has increased. This violence currently stems from several sources, such as: protagonists of the armed conflict who are carrying it on and have refused to demobilize; and those who are against the progress and results that may come from the truth, justice, and reparation mechanisms established by the Peace Agreement or resent the success it may have in ending the armed conflict in Colombia.

358. Among the sources of violence against defenders, MAPP/OAS has observed that the concentration of the FARC carried out to facilitate their demobilization, disarmament, and reincorporation process has left power vacuums in the provinces that are quickly being filled by other actors at odds with the law. This, in turn, has led to disputes and attacks against leaders and human rights defenders.<sup>560</sup>

359. For its part, between January 1, 2016 and February 20, 2017, the Ombudsperson's Office recorded 120 murders, 33 attacks, and 27 other acts of aggression against social leaders and human rights

<sup>553</sup> IACHR, Press Release No. 23/17, [IACHR Examines Progress and Challenges in the Protection of Human Rights Defenders in Colombia](#), March 6, 2017.

<sup>554</sup> IACHR, Press Release No. 23/17, [IACHR Examines Progress and Challenges in the Protection of Human Rights Defenders in Colombia](#), March 6, 2017.

<sup>555</sup> Programa Somos Defensores, [Boletín Trimestral Sistema de Información sobre Agresiones contra Defensores de Derechos Humanos en Colombia](#) (SIADDHH), April 2017.

<sup>556</sup> Agencia de prensa IPC, [Que la paz no nos cueste la vida](#), quoting: Somos Defensores “Felices con la paz, pero nos están matando”, August 9, 2017.

<sup>557</sup> Programa Somos Defensores, [Informe Enero – Junio 2017 Sistema de Información sobre Agresiones contra Defensores y Defensoras de Derechos Humanos en Colombia - SIADDHH](#), August 17, 2017, p. 60.

<sup>558</sup> Fundación Paz y Reconciliación, [Informe No. 2: Cómo va la paz](#), July 18, 2017.

<sup>559</sup> *El Espectador*, [No cesan crímenes de líderes sociales: asesinan a gobernador indígena en Chocó](#), October 25, 2017.

<sup>560</sup> MAPP/OAS. Twenty-third Report of the Secretary General to the Permanent Council on the OAS Mission to Support the Peace Process in Colombia (MAPP/OAS).

defenders.<sup>561</sup> According to the United Nations High Commissioner for Human Rights, at least 41 human rights defenders were murdered in Colombia in the first four months of 2017.<sup>562</sup>

360. Throughout 2017, the IACHR had to voice its enormous concern<sup>563</sup> at the plight of human rights defenders in Colombia, which has got worse and worse, despite a context of efforts to implement the Final Agreement. In December 2016, the OHCHR likewise emphasized its concern at the increase in violence against social leaders in rural areas of Colombia.<sup>564</sup>

361. A number of civil society figures have monitored and warned about this increased risk for defenders.<sup>565</sup> The Ombudsperson's Office also pointed out that, despite its warnings and actions taken by the authorities, defenders are still at risk. Information provided by that Office shows that between January 1 and July 5, 2017, 52 murders of leaders and human rights defenders were reported, bringing the total to 186 between January 1, 2016 and July 5, 2017. Of the 52 murders in first half 2017, 23% were committed in the Department of the Cauca; 15% in the Department of Antioquia; 11.5% in Nariño, and another 11.5% in Valle del Cauca.<sup>566</sup> For its part, UNHCR reported that 78 leaders had been murdered by November 2017.<sup>567</sup>

362. The Ombudsperson's Office also drew attention to the violence and routine threats endured by key players in the peace-building process in Colombia.<sup>568</sup> That same Office has also voiced its concern that the leaders of the Victims' Participation Roundtables are exposed to threats and risk because of their participation and denunciations and the impact they have on the land restitution process. It pointed out that, in 2015, 2016, and thus far in 2017, 39 cases of alleged threats had been identified.<sup>569</sup> It indicated that violence against leaders and defenders formed part of a pattern of risk shaped by the convergence of three factors, each with its own regional dynamics: i) the changed scenario with respect to armed clashes with the FARC; ii) the expansion of the ELN to areas formerly controlled by the FARC; and iii) the expansion and strengthening of the Autodefensas Gaitanistas de Colombia (AGC) and the mushrooming of illegal armed structures and criminal organizations in areas considered strategic for control over illegal economic activities.<sup>570</sup>

363. It also stated that, based on Early Warning System monitoring and threats against leaders of Victims' Participation Roundtables, between 2013 and 2015 51 alleged threats had been identified (against

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<sup>561</sup> Ombudsperson's Office in Colombia. *Al menos 120 líderes y defensores de DD.HH. han sido asesinados en los últimos 14 meses*, March 3, 2017.

<sup>562</sup> The Office of the United Nations High Commissioner for Human Rights (OHCHR), [Al menos 41 defensores de derechos humanos han sido asesinados este año en Colombia](#), May 1, 2017.

<sup>563</sup> IACHR, Press Release No. 164/17, [IACHR Condemns the Killing of Colombian Farmers and a community leader and the Attack on a Humanitarian Mission and on Journalists](#), October 19, 2017; No. 77/17, [IACHR Condemns the Killing of Bernardo Cuero in Colombia](#), June 16, 2017 and No. 23/17, [IACHR Examines Progress and Challenges in the Protection of Human Rights Defenders in Colombia](#), March 6, 2017.

<sup>564</sup> El Tiempo, [ONU entrega informe sobre 14 defensores de DDHH asesinados en 2017](#), May 1, 2017; HRW, [Colombia: defensores en riesgo](#), April 24, 2017.

<sup>565</sup> IACHR, Public Hearings on [investigating attacks on human rights defenders in Colombia](#), March 21, 2017 and [on the situation of defenders and social leaders in Colombia](#), October 23, 2017; OAS, Twenty-third Report of the Secretary General to the Permanent Council on the OAS Mission to Support the Peace Process in Colombia (MAPP/OAS), October 2017; HRW, [Colombia: defensores en riesgo](#), May [?] 24, 2017; PBI Colombia, [Grave aumento de asesinatos de quienes defienden los derechos humanos en Colombia](#), March 21, 2017. RCN, [tasa de homicidios de 2016 en Colombia es la más baja desde 1974](#);

<sup>566</sup> Ombudsperson's Office, Note of August 29, 2017, p. 28.

<sup>567</sup> UNHCR, [ACNUR se muestra preocupado por el incremento de asesinatos de líderes comunitarios en Colombia \[UNHCR concern at increasing murders of local leaders in Colombia\]](#), November 17, 2017.

<sup>568</sup> Ombudsperson's Office, Note of August 29, 2017.

<sup>569</sup> Ombudsperson's Office, Note of August 29, 2017.

<sup>570</sup> Ombudsperson's Office, Note of August 29, 2017, p. 29.

about 8% of all representatives), with 39 more alleged threats identified between 2015 and (thus far in) 2017.<sup>571</sup>

364. In May 2017, OHCHR drew attention to the risks faced by defenders, in Colombia in particular, and pointed out that, like journalists and other representatives of civil society, activists were exposed to enormous risks in going about their work. OHCHR said it had received information concerning at least 41 murders of human rights defenders in Colombia in just four months, far more than in the same period in previous years.<sup>572</sup>

365. The Somos Defensores report describes five types of aggression against human rights defenders: murders, attacks, threats, arbitrary detentions, and arbitrary use of criminal proceedings. Based on its analysis of the statistics, this report highlights a significant increase in the numbers of murders, attacks, and arbitrary arrests, and a slight decline in the number of threats. Worth noting, too, is the fact that arbitrary use of criminal proceedings in first half 2017 was roughly similar to the levels of the previous year.<sup>573</sup>

366. In December, the Minister of Defense stated in an interview<sup>574</sup> that murders of social leaders had "in the vast majority of cases really been about the boundaries of properties, fighting over women (jealousy), claims disputes, and fighting about illicit incomes." He said that there was no organization running the killing of social leaders. For its part, the Observatory for the Protection of Human Rights Defenders deplored those statements that "not only trivialized an extremely serious problem in Colombia but also contravened obligations to protect individuals and organizations defending human rights and rendered them even more vulnerable."<sup>575</sup> The Washington Office on Latin America (WOLA) also issued a statement saying that the Minister's remarks were not only insensitive and inaccurate but also a slap in the face for all Colombian activists risking their lives every day to forge peace and a better Colombia.<sup>576</sup> It is worth point out that the PGB urged the FGN to initiate an investigation into the Minister's comments.

367. Here, the IACHR reiterates to the State the need to adopt comprehensive and well-coordinated mechanisms between various State entities and officials to improve their system for protecting defenders and to combat impunity for attacks and threats against human rights defenders as a way of guaranteeing non-repetition, among other actions that might help strengthen protection of the part played by defenders in defense of human rights, in the quest for stable and lasting peace, and to consolidate democracy in Colombia.

368. Based on data provided by the Ombudsperson's Office and the *Somos Defensores* program, it is alarming to conclude that in 2017, as of the date of this report, homicides had increased by 31%. They went from 35 cases reported in first half 2016 to 51 defenders murdered in the first six months of 2017.<sup>577</sup> It should also be pointed out that in the whole of 2016 50 defenders were murdered, the lowest figure since 1974.<sup>578</sup>

<sup>571</sup> Ombudsperson's Office, Note of August 29, 2017.

<sup>572</sup> United Nations, [Colombia: 41 Human Rights Defenders Murdered in Colombia in 4 Months, UN Raises Alarm](#), May 1, 2017.

<sup>573</sup> Programa Somos Defensores, [Informe Enero – Junio 2017 Sistema de Información sobre Agresiones contra Defensores y Defensoras de Derechos Humanos en Colombia - SIADDHH](#), August 17, 2017, p. 61.

<sup>574</sup> NoticiasUnoColombia, [El Ministro de Defensa dice que a los líderes sociales los matan por líos de faldas de vecinos](#), December 16, 2017.

<sup>575</sup> Observatorio para la Protección de los Defensores de Derechos Humanos, Press Release, Colombia: Defense Minister: ¡No son "líos de faldas", son ataques contra el derecho a defender derechos! [These are not jealous squabbles about women, they are attacks on the right to defend rights!], December 20, 2017.

<sup>576</sup> See also WOLA, [Colombia's Defense Minister Dismisses Killings of Human Rights Defenders](#), December 18, 2017.

<sup>577</sup> Programa Somos Defensores, [Informe Enero – Junio 2017 Sistema de Información sobre Agresiones contra Defensores y Defensoras de Derechos Humanos en Colombia - SIADDHH](#), August 17, 2017, p. 61.

<sup>578</sup> PBI Colombia, [Grave aumento de asesinatos de quienes defienden los derechos humanos en Colombia](#), March 21, 2017. RCN, [tasa de homicidios de 2016 en Colombia es la más baja desde 1974](#), December 26, 2016. It is to be noted that OHCHR reported 60 defenders murdered in Colombia in 2016. HRW, [Colombia: defensores en riesgo](#), April 24, 2017.

369. According to Peace Brigades International, the main perpetrators of these attacks are what they call neo-paramilitary groups<sup>579</sup>. At the same time, senior government officials, such as the Minister of Defense and the Minister of the Interior, as well as the Attorney General (FGN), have allegedly come out with statements to the effect that in the murders, attacks, and threats against defenders "there is no indication so far of any systematic organization that would allow us to state with certainty that there is a black, invisible hand behind all this directed against human rights leaders."<sup>580</sup>

370. For its part, MAPP/OAS has found that, with regard to the acts of violence directed against social leaders, it is not possible to discern a single pattern or national trend that explains all instances of violence. Nevertheless, MAPP/OAS underscores certain patterns that do explain the violent acts, such as: i) denunciation of the leader when an armed actor enters a zone; ii) complaints of bad administrative practices or the claiming of rights with respect to natural resources and defense of the territory; iii) political work associated with advocacy for peace; iv) community work to establish new forums and/or movements to represent the community; and v) intimidation/silencing of certain leaders whose work exposes or jeopardizes illegal economic activities in an area that directly benefit the illegal armed actor.<sup>581</sup>

371. MAPP/OAS also found ongoing risk of threats and intimidation against women leaders of women's organizations, for performing activities related to the defense and promotion of human rights. The MAPP/OAS report states that those acts of intimidation are directed against those women's family members, especially their children: a clear indication that they are meant to affect assets and relations that women consider valuable and important. Such phenomena can be found in municipalities, such as Barrancabermeja in Santander and Vistahermosa in Meta.<sup>582</sup>

372. At the same time, with regard to protection, civil society organizations have extensively questioned the way the UNP is managed, both on account of alleged corruption inside it and because of its alleged ineffectiveness in responding to situations of risk.<sup>583</sup> Attention has been brought to its essentially reactive approach and a lack of flexibility in its offers of protection, including failure to adopt a diversified approach tailored to special groups and failure to coordinate investigation and preventive activities. The *Somos Defensores* program has singled out the following principal shortcomings: i) ineffectiveness in implementing collective protection measures; ii) the cancellation of transportation assistance for at-risk persons; and iii) failure to handle the voice communication functions of the Alarm Button given to beneficiaries.<sup>584</sup>

373. At the March 2017 hearing before the IACHR, requested by the Colombian State, on investigations into attacks against human rights defenders, the State described several advances in the development and implementation of comprehensive public policies for the protection of such defenders built around the core factors of prevention, protection, and prosecution.<sup>585</sup> The State pointed to the huge importance of guarantees for the work of human rights offenders in ensuring the genuine success of the peace process and it recognized defenders as indispensable allies of the State, as peace-builders, and as active participants in a political and civilized solution to the armed conflict. For their part, the organizations participating in the hearing, underscored the ongoing stigmatization, persecution, and violence against defenders in Colombia, despite the signing of the Peace Agreement. They emphasized the lack of differential and collective approaches to risk analyses and protection mechanisms, tailored to the circumstances of both

<sup>579</sup> PBI Colombia, [Grave aumento de asesinatos de quienes defienden los derechos humanos en Colombia](#).

<sup>580</sup> *Contagio Radio*, [Asesinatos de líderes sociales son práctica sistemática: somos defensores](#), December 9, 2016.

<sup>581</sup> Twenty-third Report of the Secretary General to the Permanent Council on the OAS Mission to Support the Peace Process in Colombia (MAPP/OAS), October, 2017.

<sup>582</sup> Twenty-third Report of the Secretary General to the Permanent Council on the OAS Mission to Support the Peace Process in Colombia (MAPP/OAS), October, 2017.

<sup>583</sup> CAJAR, CCP, CIJP et al, Request for a Hearing 161st Period of Sessions - Situation of Human Rights Defenders, p. 6.

<sup>584</sup> CAJAR, CCP, CIJP et al, Request for a Hearing 161st Period of Sessions - Situation of Human Rights Defenders, p. 6.

<sup>585</sup> IACHR, Public Hearing [Investigating attacks on human rights defenders in Colombia](#), March 21, 2017.

Afrodescendent and LGBTI persons. The organizations likewise pointed to the ongoing persecution of members of the *Marcha Patriótica* movement and complained of the State's "in denial" attitude which failed to acknowledge the continuing presence of paramilitary groups; ignored in its investigations the criminal structures behind the violence; and refused to admit the systematic nature of the violence.<sup>586</sup>

374. In the October hearing on the situation of defenders and social leaders, the organizations taking part once again stressed that systematic and generalized violence against those social actors had increased in Colombia. This time, they pointed out that, in 2016, 116 defenders had been murdered. By October 2017 they said that a further 126 defenders had been murdered. They also underscored the statistics showing a substantial increase in overall violence, with persecution patterns pointing to the systematic nature of the violations of leaders' human rights. The organizations stated that the systematic nature of the violence was evidenced by both temporal and geographic distribution factors. For instance, they underscored the fact that defenders had been murdered in 26 of the country's 32 departments.

375. During the hearing, the organizations' analyses for 2016 showed the following concentrations: Department of the Cauca (69 homicides); in Antioquia, (36); in Nariño (27); in Valle del Cauca (17); in Córdoba (12); and in Chocó (13). They pointed out that 18 of the leaders had been murdered in regions in which State Security Forces (*Fuerza Pública*) were carrying out operations to eradicate crops grown for illicit uses and in which there was a large military presence. At the same time, the organizations reiterated that in those areas the FARC had been present and that now they were being taken over by criminal group and organizations that were successors to the paramilitary groups. As an additionally worrisome factor, the organizations stated that 12 of the murders had allegedly been committed by State Security Forces. They also pointed out that as of October 2017 protection measures had been extended to 383 defenders.<sup>587</sup>

376. For its part, the State reiterated that it rejects and condemns the murders of human rights defenders, who play a central part in the peace process. It announced, furthermore, that it is going to take the necessary steps to go after those responsible and to pursue preventive actions in this area. Accordingly, the State stressed that the following core policy directives have been established: 1) No stigmatization; 2) Actions by State Security Forces to establish a presence in the regions; 3) Judicial actions to put a stop to impunity and to investigate and throw light on the crimes involved; 4) Protective actions; 5) State support ("*oferta del Estado*"); 6) Immediate policies to provide protection; 8) International coordination. The State likewise pointed out that half (50%) of all cases of murders of human rights defenders had been successfully investigated (with the facts ascertained): a rate that it said was higher than for other homicides. As regards the numbers of human rights leaders murdered, the State announced that in 2016 there were 63 murders and (thus far) in 2017, 48.

377. The Ombudsperson's Office is also concerned at the risks faced by social leaders and defenders and said it was constantly keeping track of the situation.<sup>588</sup> In its analysis, it recommended that the Government adopt both prevention and protection measures given the importance of non-repetition for a number of victimized social sectors, especially social leaders and human rights defenders, in connection with implementation of the Peace Agreement. The Ombudsperson's Office considers that the FGN's investigative units and the judicial police need boosting with sufficient human and logistical resources to gather evidence in rural areas where most of the homicides and threats against social leaders and human rights defenders have been identified.<sup>589</sup>

<sup>586</sup> Several members of the general public sat with posters which read: "Let peace not cost us our lives!" IACHR, Public Hearing [Investigating attacks on human rights defenders in Colombia](#), March 21, 2017.

<sup>587</sup> IACHR, [Hearing on the situation of human rights defenders and social leaders in Colombia](#), October 23, 2017.

<sup>588</sup> Between 2016 and (thus far) in 2017, the Ombudsperson's Office issued 13 risk reports and 9 Monitoring/Follow-up Notes (*Notas de Seguimiento*), which are documents drawing attention to threats faced by human rights defenders. Ombudsperson's Office, Note of August 29, 2017.

<sup>589</sup> Ombudsperson's Office, Note of August 29, 2017.



378. With respect to that recommendation, the Ombudsperson's Office reports that it has a *Visión Web* information system for registering and managing petitions, which receives complaints by citizens of human rights violations. It pointed out that, according to the information stored in that system, 57% of all complaints of human rights violations filed between 2011 and 2016 concern defenders, campesinos, indigenous persons, trade union leaders, social leaders, displaced leaders, and women.<sup>590</sup>

379. The IACHR appreciates the fact that the Peace Agreement contains several sections referring to risk prevention and protection for human rights defenders. It attaches particular importance to the guarantee that the necessary measures will be implemented to effectively and comprehensive step up actions against the criminal organizations and behavior responsible for murders and massacres of human rights defenders, including the criminal organizations that have been described as successors to the paramilitary groups and their support networks.<sup>591</sup>

380. The IACHR welcomes the fact that the Peace Agreement envisages strengthening mechanisms to protect the work done by human rights defenders and their organizations, especially those working in rural areas, by developing, in coordination with human rights organizations (including those working in rural areas) a protocol for their all-round protection.<sup>592</sup> The Commission is also pleased to see that comprehensive security and protection measures will be promoted that contain actions against stigmatization; broad dissemination mechanisms; campaigns legitimizing and recognizing human rights defenders, in both rural and urban areas; as well as the establishment and dissemination of community and public interest media to promote human rights and peaceful coexistence. The Commission notes that that program provides for the participation of a number of civil society organizations.<sup>593</sup> The Commission further highlights the importance of designing, preparing, and implementing a National Human Rights Plan with the effective participation of organizations of human rights defenders and of social organizations and movements as contemplated in the Peace Agreement,<sup>594</sup> that gives due consideration to the general duty to protect them and to prevent violations of their rights to life and personal integrity, and to the specific factors, such as gender, race, ethnicity, and displacement that may exacerbate the risks they face.

381. The Commission also welcomes the fact that, within the FGN, A Special Investigation Unit has been set up to dismantle the criminal organizations and conduct responsible for murders and massacres, that attack human rights defenders and social or political movements, or that threaten or attacks persons participating in the implementation of the agreements and peace-building, including the criminal organizations that have been called the successors to the paramilitary groups and their support networks.<sup>595</sup> The State reported that this Unit comprises an Elite Corps of 1,088 police officers, led by 120 experts in criminal investigation and 40 analysts, who will head a comprehensive investigation model aligned with the FGN to dismantle the criminal organizations and conduct responsible for murdering social leaders.<sup>596</sup> This Unit also comprises 150 members of an Immediate Response Task Force (*Grupo de Reacción Inmediata*), made up of the Special Operations Commando, the National Police and Counter-terrorism Intervention Unit, JUNGLA Commandos, and the Carabineros' Mobile Squads. So far, joint work between the National Police and

<sup>590</sup> Ombudsperson's Office, Note of August 29, 2017, p. 29.

<sup>591</sup> National Government of Colombia and the FARC, [Final agreement to end the conflict and establish stable and lasting peace in Colombia](#), Point 3.4. Agreement on security guarantees and efforts to combat the criminal organizations and conduct responsible for homicides and massacres directed against human rights defenders, social or political movements, or that threaten or attack persons participating in the implementation of the agreements and peace-building, including the criminal organizations that have been called the successors the paramilitary groups and their support networks. November 24, 2016, p.78.

<sup>592</sup> [Peace Agreement](#), November 24, 2016, p. 191.

<sup>593</sup> [Peace Agreement](#), November 24, 2016, p. 93. See: Presidencia de la República [Office of the President of the Republic], [Comisión Nacional de Garantías de Seguridad escucha a voceros de organizaciones sociales](#), March 21, 2017.

<sup>594</sup> [Peace Agreement](#), November 24, 2016, p. 191.

<sup>595</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017; Peace Agreement 3.4.4. and FGN, [Resolución 2903](#) of August 24, 2016. Decree 898 of May 29, 2017. *Caracol*, [El decreto que revolucionará la Fiscalía](#), May 30, 2017.

<sup>596</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017; MSN Noticias, [La policía de Colombia lanza "cuerpo élite" para proteger a defensores de DDHH](#), June 16, 2017. September 16, 2017.

the FGN has got to the bottom of 32 of the 84 murders committed in 2016 and (so far) in 2017, according to United Nations records.<sup>597</sup> According to information provided by the State, attached to its observations on the draft of this report, the FGN had managed to ascertain the circumstances surrounding 62 of the 134 murders committed from 2016 through December 2017, which, in the State's view, represented a 47.01% improvement.<sup>598</sup>

382. The State also reported on the establishment of the National Commission on Security Guarantees<sup>599</sup> to dismantle the criminal organizations and conduct responsible for homicides and massacres, that attack human rights defenders and social or political movements, or that threaten or attack persons participating in the implementation of the agreements and peace-building, including the criminal organizations that have been called the successors to the paramilitary groups and their support networks,<sup>600</sup> and on its installation on February 23, 2017. The State also pointed to the installation in December 2016 of the Unified Command Post (PMU) to keep track of and analyze attacks on human rights defenders and social leaders.<sup>601</sup> The State reported that in February 2017 meetings had been held in the departments of the Cauca, Antioquia, and Norte de Santander: the departments with the largest number of alleged murders of defenders. It stated that, according to the PMU's analytical data, proceedings were under way in 24 of the attacks reported by the OHCHR, and in 4 of them a conviction had been handed down.<sup>602</sup>

383. At the same time, the IACHR underscored that the Public Prosecutors' Office issued Directive No. 002 on June 14, 2017 on "Guidelines for the effective protection of the rights of human rights defenders and their organizations, members of political movements, political and social leaders and their organizations" as a measure designed to continue enhancing recognition of the important work done by defenders;<sup>603</sup> while the FGN issued Directive No. 0002 on guidelines for the investigation of crimes committed against human rights defenders, adopted in November 2017 with cooperation from the IACHR.

384. The Commission notes with appreciation the State's efforts to protect defenders of rights, and in particular, the establishment of the National Security Guarantees Commission, the Elite Police Corps, and other bodies responsible for protecting defenders and preventing attacks on them. It also values the findings of the investigations that have been carried out. Nevertheless, in a context of persisting increases in threats against and murders of human rights defenders, the IACHR reiterates its recommendation that the State redouble its efforts by adopting comprehensive and effective public policies for protecting at-risk defenders, paying particular attention to those groups of defenders that might find themselves in circumstances in which they are especially vulnerable. In addition to such protection measures, the State must also heed its duty to prevent acts of violence and to effectively investigate the sources of risks to defenders, with a view to deactivating them.

#### IV. CONCLUSIONS

1. Based on the information and considerations in this report, the IACHR reiterates the need for the State of Colombia to continue working to implement the recommendations contained in the Truth, Justice,

<sup>597</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017, p. 65. See also: United Nations, [Report of the Secretary General on the United Nations Mission in Colombia](#), September 26, 2017.

<sup>598</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017. Supplementary Information

<sup>599</sup> Decree 154 of Friday, February 03, 2017. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>600</sup> [Peace Agreement](#), November 24, 2016, pp. 80 and 81. According to the Agreement, the National Commission may invite the following to its meetings: representatives of political parties and movements, the OHCHR and other specialized national and international organizations present in the regions. Whenever it deems fit, it may also call on experts in the subject.

<sup>601</sup> A body headed by the Ministry of National Defense, with participation by the Office of the President of the Republic, the Ministry of the Interior, the Presidential Advisory Office on Human Rights (*Consejería Presidencial para los Derechos Humanos*), the Armed Forces High Command (*Comando General de las Fuerzas Militares*), the Office of the Director-General of the National Police, the FGN, and the UNP. Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>602</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

<sup>603</sup> Republic of Colombia, Note S-GAIIID-17-067759 of August 29, 2017.

and Reparation Report: Fourth Report on the Human Rights Situation in Colombia, and to preserve and improve on results achieved so far.

2. The Commission acknowledges that the State continues to develop important public policies in respect of human rights in its efforts to address the complex circumstances of the victims of the armed conflict and to care for and protect persons at risk, with a significant investment of human and financial resources to achieve those ends. The Commission will continue to work with the State in the quest for solutions to the problems and challenges identified in this report and to accompany, within the scope of its mandate, the implementation and monitoring of the measures adopted by the State as part of its efforts to effectively address the obstacles faced by the victims of human rights violations in Colombia and to comply with its international obligations.

3. The Commission likewise underscores the notable effort by the State to implement the Comprehensive System, with a view to achieving stable and lasting peace in Colombia through regulatory and institutional implementation of the various mechanisms envisaged in that System. Along those same lines, the IACHR calls upon the State to take into account the considerations put forward by both the Ombudsperson's Office and various civil society actors regarding certain matters entailed in said implementation, especially regarding the Amnesty Law, so as to improve operational aspects and adjust it in line with international human rights standards. The Commission reiterates its commitment to continue offering the State and Colombian society its unstinting support in those endeavors and to continue, within its sphere of competence, closely monitoring implementation of the Peace Agreement.