

## 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: FIFTH REPORT ON THE SITUATION OF HUMAN RIGHTS IN COLOMBIA

#### I. INTRODUCTION

1. During 2018, the Commission has continued to follow up on the implementation of the Peace Agreement through its different monitoring mechanisms, particularly with public hearings, work visits, and letters. During that time, the State and civil society have submitted information on the human rights situation, specifically on the progress made and challenges involved.

2. 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”)<sup>1</sup> adopted by the Inter-American Commission on Human Rights (hereinafter “the IACHR” or “the Commission”) on December 31<sup>st</sup>, 2013, as a product of the IACHR’s *in loco* visit to Colombia in December 2012. In this framework, the IACHR also began following up on implementation of the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace between the government and the Fuerzas Revolucionarias Armadas de Colombia (FARC) in November 2016 (hereinafter the “Peace Agreement”).

3. In Chapter V of its annual reports from 2014 to 2017, the Commission followed up on the compliance with the recommendations made by the IACHR in its 2013 country report and report on the implementation of the Peace Agreement. In this report, the Commission takes into account the major challenge and efforts made by the State to implement the Peace Agreement, including the progress made and the significant challenges currently faced. The Commission uses this space to conduct this 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. The Commission reiterates that it maintains its conviction that the consolidation of peace is an essential requirement for the respect, guarantee, and effective enjoyment of human rights and full validity of the rule of law. 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 offers the State and Colombian society as a whole its cooperation in that effort, which will take years to complete.

4. In its report “Truth, Justice and Reparation” and its follow-up reports, the Commission has analyzed the human rights situation in Colombia. The IACHR also continues to confirm that the reality in Colombia remains complex as a result of the up-surge in violence with the appearance of armed actors following the signing of the Peace Agreement. This violence affects the sectors that face the greatest risk and that are the most vulnerable to violations of their human rights. The IACHR recognizes the efforts made by the State to establish a legal framework and the institutional structure necessary to implement the Peace Agreement.

5. Regarding compliance with the recommendations, the Commission reiterates its deep concern at the high number of attacks on human rights defenders and social leaders, leaving at least 213 people dead between January 1<sup>st</sup>, 2016 and October 2018, according to the United Nations Office of the High Commissioner for Human Rights (OHCHR). The Commission also observed that in 2018, Colombia continues to face a series

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<sup>1</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.

of challenges related to the security situation in rural areas where violence persists; human rights violations remain in impunity; the high number of individuals who remain disappeared; the situation of forced displacement; and the human rights situation of those belonging to historically discriminated groups, issues that will be addressed throughout this report. This in addition to the challenge of launching the Comprehensive Truth, Justice, Reparation, and Non-Repetition System (*Sistema Integral de Verdad, Justicia, Reparación y No Repetición*, SIVJRNR).

6. On September 26<sup>th</sup>, 2018, the Commission communicated the State that it envisioned to publish a fifth follow-up report on the recommendations contained in the Truth, Justice and Reparation report, in which decided to emphasize upon the recommendations that are the main focus of this report. Accordingly, it asked the State for information on compliance with those recommendations, without detriment to continuing to follow up on the implementation of all the recommendations contained in the Truth, Justice and Reparation report. On that same date, the IACHR asked the Office of the Ombudsperson of Colombia for information in the same terms and informed Colombian civil society organizations about the preparation of this fifth report to follow up on the recommendations and asked for them to submit any information on compliance in their area of expertise that they considered relevant.

7. The State submitted its response on December 3<sup>rd</sup>, 2018. The Office of the Ombudsperson of Colombia presented information on October 29<sup>th</sup>, 2018 and acknowledged the IACHR for its work. Civil society organizations also responded to the request for information. 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, which has provided the Commission with updated information for conducting its analysis.

8. In drafting this report, the Commission has also taken into account the information collected during its monitoring of the country's overall human rights situation; information received during public hearings; 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 other sources.

9. On February 21<sup>st</sup> 2019, the Commission transmitted the State a copy of the preliminary draft of this report, in accordance with article 59, paragraph 10, of its Rules of Procedure, and requested the State to submit its observations. On March 14<sup>th</sup>, 2019, the Commission received the observations and comments made by the State of Colombia, from which, as appropriate, were incorporated into this version<sup>2</sup>. On March 15<sup>th</sup>, 2019, the Commission received additional observations from the State of Colombia, from which the IACHR considered the most relevant points, particularly those related to the situation of human rights defenders and social leaders. The complete document is annexed to the present Report.<sup>3</sup> The final report was approved by the Commission on March 16<sup>th</sup> 2019.

10. In its observations, the State values and greets the Commission acknowledgements in regard of the challenges and responsibilities that Colombia faces, likewise recognizes that the IACHR Report gathers the vision of different actors, including the State, which provides balance and equilibrium to the document. Nevertheless, the State reiterates the IACHR the actions and measures taken to mitigate the impact that some situations may hold in the full and effective enjoyment of the human rights. Correspondingly, the State:

Equally, appreciates the assertive language that the IACHR maintains in this version of the Report. The State receives with plenty of satisfaction that the IACHR recognizes the difficulties that the entities face to effectively guarantee the rights, associated difficulties to the complexity of problems and regional contexts and not to the absence of will from the State to comply with its international obligations.

<sup>2</sup> Republic of Colombia, [Note MPC/OEA No.:238/2019, March 14th 2019](#), p. 1.

<sup>3</sup> Republic of Colombia, [Additional information to the Note MPC/OEA No.:238/2019, March 15th 2019](#).

Finally, it is very positive that the IACHR, for the first time in 5 years of follow-up to the recommendations made to the State, analyzes the level of compliance with each recommendation, indicating that in some cases they have already been complied. This analysis is of great value insofar as it represents a true exercise in evaluating the situation in Colombia and makes the Annual Report a tool for cooperating with the State in order to guarantee rights<sup>4</sup>.

However, the State requests to note that the comments made in the follow-up of the recommendations formulated by the IACHR in the *Report Truth, Justice and Reparation: Fourth Report on the human rights situation in Colombia*, open up a spectrum the deepens far more than the implementation analysis of the recommendations made in 2013 in the cited report. This is to be highlighted since, about several topics, the IACHR has not realized specific recommendations, regardless this, makes observations along these topics.<sup>5</sup>

11. The IACHR takes note on the acknowledgements manifested by the Colombian State, and reminisces that for this report, the IACHR decided to make emphasis to several recommendations indicated to the State, with a broader focus oriented towards the implementation of the Peace Agreements<sup>6</sup>, as it has been done since the reports Chapter V 2017, and reiterates the importance of the compliance of the recommendations by Colombia formulated in the report. Likewise, reiterates its disposition to collaborate with Colombia within its mandate framework and functions, in accordance to secure the full and effective enjoyment of human rights to all persons.

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 is focused on the current situation with regard to the Commission's recommendations and the measures taken by the State for their compliance. The section is divided thematically into eight parts, where the State's main progress and challenges in complying them are analyzed. The last block, relating to groups in particular situations of vulnerability, is itself divided into eight parts. 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. The Commission has reaffirmed on several occasions its commitment to monitor the implementation of the Peace Agreement, and to be carried out in accordance for Inter-American human rights norms and standards.

14. The Commission wishes to underscore the State's willingness to comply with its obligations before the Inter-American human rights system, reflected in its signing of a Cooperation Agreement between the Office of the Secretary General of the OAS and the Republic of Colombia for the implementation and dissemination of international human rights instruments. In the agreement, the parties agreed on the need to work together to enhance efforts to apply and disseminate international instruments on human rights. They also agreed on the importance of the Executive Secretary of the IACHR providing technical assistance in the process to implement the Peace Agreement in Colombia to ensure it is executed pursuant to international human rights standards.<sup>7</sup>

<sup>4</sup> Republic of Colombia, [Note MPC/OEA No.:238/2019, March 14th, 2019](#). P. 1.

<sup>5</sup> Republic of Colombia, [Additional information to the Note MPC/OEA No.:238/2019 from March 15th 2019](#). P.s. 1-2.

<sup>6</sup> IACHR. Note to the State of Colombia. Follow-up of recommendations compliance, from September 26th, 2018.

<sup>7</sup> [Cooperation agreement](#) signed by the Office of the Secretary General of the OAS for the Executive Secretariat of the Inter-American Commission on Human Rights and the Republic of Colombia for applying and disseminating international human rights instruments, signed on February 22, 2018, in Bogotá.

15. Broadly, regarding the implementation of the Peace Agreement, the Commission observes that in 2018, the guarantors of the peace process—Cuba and Norway—called on the State to comply with the Agreement.<sup>8</sup> Likewise, leaders of the defunct guerrilla group alerted that the government had failed to comply on a number of points.<sup>9</sup> Likewise, in October 2018, the United Nations Security Council reaffirmed its full and unanimous support for the peace process, while at the same time expressing its “serious concern about continued insecurity, drug trafficking and violence in some conflict-affected areas, including the persistent pattern of assassinations of community and social leaders.”<sup>10</sup>

16. The Kroc Institute for International Peace Studies of the University of Notre Dame, which was invited by the parties that signed the Peace Agreement to conduct technical supervision and verification and evaluate implementation, has highlighted the progress made toward implementation, as well as the obstacles encountered. The critical factors included the lack of effective security and protection guarantees for social leaders, human rights defenders, and former FARC combatants in prioritized territories; the uncertainties and delays in the process of political, economic, and social reintegration of former combatants; the lack of the regulatory and legislative changes needed to complete the implementation process; and the need for greater attention to peace in outlying areas and on crosscutting approaches on gender and ethnicity.<sup>11</sup>

17. The Commission observes that the implementation of the Peace Agreement involves multiple topics, and it will therefore give an initial assessment of the situation of security, legislative measures, reintegration processes, and the Comprehensive Truth, Justice, Reparation, and Non-Repetition System, addressing them in more detail in following sections.

18. With regard to matters of **security**, the Commission observes that as a result of the signing of the Peace Agreement, according to the State,<sup>12</sup> homicides have declined since the cease-fire, something that contrasts with the new situations of violence in territories that were previously occupied by the now-defunct FARC guerrilla group, which will be discussed later on.

19. To start with, the Commission underscores that, according to the Report to the Security Council of the United Nations Verification Mission in Colombia, the presidential and legislative elections held in 2018 “were the most peaceful and inclusive ever celebrated in decades.”<sup>13</sup>

20. In a hearing held before the IACHR during the 168<sup>th</sup> Period of Sessions, the State pointed to the positive effects of the Agreement, including a decrease in homicides and that thousands of families now live on their land without fearing for their lives. Civil society stated that the cease-fire, the laying down of arms, and the reintegration of more than 11,000 former combatants represent significant humanitarian progress, and according to studies by the Centro de Recursos para el Análisis de Conflictos –CERAC, at least 3,800 lives have been saved on account of the Peace Agreement, an indicator that the IACHR underscores as highly positive.

21. With regard to homicide figures, the Commission notes with concern that in 2018 there was a rebound in violence, with 12,311 homicides, compared with 11,381 homicides in 2017.<sup>14</sup> This means that the murder rate increased by one point, as in 2018, it stood at 25 per 100,000 inhabitants, while in 2017 it stood at 24 per 100,000 inhabitants.<sup>15</sup>

<sup>8</sup> *El País*, “[Cuba y Noruega, preocupados por el cumplimiento del Acuerdo de Paz en el país](#)”, April 15, 2018.

<sup>9</sup> *El País*, “[Cuba y Noruega, preocupados por el cumplimiento del Acuerdo de Paz en el país](#)”, April 15, 2018.

<sup>10</sup> United Nations, [Security Council Press Statement on Colombia](#), October 11, 2018.

<sup>11</sup> Krock Institute for International Peace Studies, [Segundo Informe sobre el Estado Efectivo de Implementación del Acuerdo de Paz en Colombia](#), December 2016-May 2018, pg. 286.

<sup>12</sup> IACHR Hearing, [Human rights and following up on the peace agreement in Colombia](#), 168th Period of Sessions, May 2018.

<sup>13</sup> United Nations, [Report of the Secretary-General on the United Nations Verification Mission in Colombia](#), S/2018/723, July 20, 2018.

<sup>14</sup> InSight Crime, [Balance de Insight Crime sobre los homicidios en Latinoamérica en 2018](#), January 22, 2019.

<sup>15</sup> InSight Crime, [Balance de Insight Crime sobre los homicidios en Latinoamérica en 2018](#), January 22, 2019.

22. One of the biggest concerns for domestic and international civil society organizations is the reconfiguration and emergence of armed actors in areas left by the FARC as well as the persistence of the conflict and the emergence of new forms of violence. According to information and analysis from InSight Crime, during 2018, Colombia saw an increase in and diversification of criminal groups, including groups organized by former members of the Fuerzas Armadas Revolucionarias de Colombia (FARC). The analysis indicates that despite the progress made in 2017, Colombia maintains one of the highest homicide rates in Latin America.<sup>16</sup> In the hearing held in the framework of the 168th Period of Sessions of the IACHR, civil society also indicated that paramilitarism still exists in 28 of the 32 departments in the country and is one of the main risk factors for the implementation of the Peace Agreement. It also said that more than 50% of the murders committed over the last five years against human rights defenders are attributable to these paramilitary groups. In regard of this matter, during the hearing, the State noted that the main perpetrators of the homicides against human rights defenders, according to the Attorney General's Office, are individuals, local criminal organizations, the Gulf Clan, FARC and the ELN dissidents are by order of responsibility.<sup>17</sup> The IACHR also received information from indigenous communities, people of African descent, and human rights and land defenders reporting the return of armed groups to their territories, causing violence and fear.<sup>18</sup> In its observations to the project of the present report, the State reiterates the information presented in the hearing regarding the urgent measures adopted in respect to the situation of social leaders and human rights defenders; the work realized by the National Commission of Guarantees; the normative measures to enforce the public prevention policy; the reinforcement of the work of the Ombudsperson office; the protection collective route; and, the Permanent Directives No. 15 and 16 from 2016 expedited by the Minister of National Defense.<sup>19</sup>

23. Regarding the new dynamics of violence generated following the Peace Agreement, the Office of the Ombudsperson stated that some of the territories that were under FARC-EP control have been taken over by other armed groups such as the Ejército de Liberación Nacional (ELN), the Ejército Popular de Liberación (EPL), or groups that have emerged following the process to demobilize the Autodefensas Unidas de Colombia (AUC), such as the Autodefensas Gaitanistas de Colombia (AGC) or the Clan del Golfo. They also said the new illegal armed structures have emerged with a variety of interests in the illegal economies of drug trafficking, gold-mining, contraband, and extortion, along with FARC-EP dissident groups.<sup>20</sup>

24. Likewise, during its working visit on the situation of human rights defenders, the IACHR noted the existence of a serious problem of violence against human rights defenders and social and communal leaders, which has increased following the signing and implementation of the Peace Agreement, as described in the section of this report on the situation of human rights defenders.<sup>21</sup>

25. Regarding measures to address incidents of violence, the State reported that the National Police had ordered the formation of an elite squad with a multidimensional approach as an immediate State action against the organizations and conduct targeted by the agreement and to dismantle the criminal organizations responsible for homicides and massacres or that attack human rights defenders.<sup>22</sup> The State also said it had designed the Plan for Comprehensive Institutional Control of the Territory (*Plan de Control Institucional Integrado del Territorio*, PCI2T) jointly and in coordination with the General Command of the Armed Forces. The first phase would occupy and consolidate the areas formally influenced by the FARC-EP,

<sup>16</sup> InSight Crime, [Balance de Insight Crime sobre los homicidios en Latinoamérica en 2018](#), January 22, 2019.

<sup>17</sup> Información aportada por la sociedad civil en el marco de la Audiencia [Derechos Humanos y Seguimiento del Acuerdo de Paz](#), 168º periodo de sesiones, mayo de 2018; Republic of Colombia, Additional information to the Note MPC/OEA No.:238/2019, March 15th 2019. P. 3.

<sup>18</sup> IACHR, [Hearing on Afro Colombian victims of the armed conflict](#); IACHR, [Hearing on impunity in the murders of and attacks on human rights defenders](#); IACHR, [Hearing on the human rights situation of indigenous peoples in the context of the Peace Agreement](#); 2018.

<sup>19</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th 2019, p. 1.

<sup>20</sup> Office of the Ombudsperson of Colombia, contribution to follow-up on compliance with the recommendations included in the truth, justice, and reparation report, letter dated October 29, 2018.

<sup>21</sup> IACHR, Press Release No. 008 of 2019. [IACHR Completes Working Visit to Colombia to Assess Alarming Issue of Murders of Social Leaders and Human Rights Defenders](#).

<sup>22</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 21.

with a priority on 75 small villages that require the presence of the Security Forces to mitigate the risk of possible reoccurrence of criminal activity and arrival of new criminal actors there.<sup>23</sup>

26. Based on the foregoing, the Commission underscores the effect that the signing of the Peace Agreement has had to reduce homicides in Colombia. It also appreciates that the presidential and legislative elections held in 2018 were the most peaceful in decades. Nevertheless, the IACHR expresses its concern at the significant presence of illegal armed groups in Colombia, as well as the new dynamics of violence and the expansion and strengthening of other armed groups in territories where the now-defunct FARC guerrilla group operated previously. It therefore calls on the State of Colombia to, in the framework of the implementation of the Peace Agreement, adopt measures to guarantee the State's presence, especially in areas that have been the most affected by the armed conflict, and to disband and bring to justice all illegal armed groups. The Commission urges the State to, with the implementation of the agreement; enhance its violence prevention actions to avoid the spread and formation of armed groups that endanger the historic outcomes achieved toward building and consolidating peace.

27. Regarding **legislative measures**, the Commission observes that since 2018, a number of laws relevant to the implementation of the Peace Agreement have been passed and have taken effect.

28. In the hearing held during the 168th Period of Sessions of the IACHR, the State reported on the passage of 6 constitutional amendments, 42 laws, including decree laws; 53 decrees and other resolutions; and 2 presidential orders, all of which were crucial for implementation of the agreement. It highlighted that as of that time, 76% of the laws had been reviewed by the Constitutional Court, of which 91% passed constitutional review. It signed out that 16 institutions and offices had been established and modified, including the Commission for Monitoring, Promoting, and Verifying Implementation of the Final Agreement (CSIVI).

29. The State also reported on the issuance of Decrees N° 1417 and 1418 of August 3<sup>rd</sup>, 2018.<sup>24</sup> The former updates the organization and operation of the CSIVI, comprised of representatives of the government and former members of the FARC-EP. The latter establishes an Inter-Sector Committee to monitor implementation of the gender approach within the CSIVI.<sup>25</sup> The State also highlighted the adoption of measures to reestablish rights and contribute to the comprehensive reparation of children and adolescents who were victims of the armed conflict and who had left the illegal armed groups.<sup>26</sup>

30. Civil society stated that, in its opinion, there had been a lack of political will in the processing of legislative measures, demonstrated, for example, in the absence of members of Congress during discussions on matters related to the Peace Agreement, the priority given to other bills that were not part of the Agreement, and the delayed submission of documentation to the Constitutional Court on the laws passed for constitutional review, such as in the case of the Statutory Law.<sup>27</sup>

31. In particular, the Commission has taken note of the bills working their way through Congress that would establish 16 special transitory peace districts, the purpose of which under the Peace Agreement is to ensure the areas most affected by the conflict have representatives in Congress. However, the IACHR observes that the bill has not been passed due to lack of quorum.<sup>28</sup>

32. The Commission notes the significant progress made towards the issuance of a number of laws and constitutional review of those laws for effective implementation of the Peace Agreement enabling the institutions created for the agreement to be implemented. The IACHR expects this legislation to guarantee the rights of victims and that the State will adopt the legislative measures that remain pending to guarantee the political participation of the populations that suffered the most from the violence during the armed conflict.

<sup>23</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 21.

<sup>24</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>25</sup> [Decree 1,417 of 2018](#).

<sup>26</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>27</sup> IACHR Hearing, [Human rights and following up on the peace agreement in Colombia](#), 168th Period of Sessions, May 2018.

<sup>28</sup> RCN Radio "Curules de las víctimas y la reforma de la JEP se hundieron en el Congreso". November 14, 2018.

33. Regarding the **processes to reintegrate** former members of the FARC into civilian life, the State reported that once the laying down of arms had been completed and the Transitional Local Zones for Normalization (*Zonas Veredales Transitorias de Normalización*, ZVTN) established, the process to reintegrate former members of the FARC as political actors would begin. It underscored that more than 12,000 former combatants have moved on to civilian life, and a Reintegration Roadmap had been established through the Agency—a multidimensional model aimed at full reintegration of the former combatants into social, economic, and political life, with a gender approach.<sup>29</sup>

34. The United Nations Verification Mission in Colombia highlighted that the bilateral bodies in charge of promoting the implementation of peace—including the government and the *Fuerza Alternativa Revolucionaria del Común* (FARC), the National Reintegration Council (*Consejo Nacional de Reincorporación*), the Technical Table on Security and Protection, and the Commission for Monitoring, Promoting, and Verifying Implementation of the Final Agreement—continued to meet periodically, with the participation of the High Commissioner for the Post-conflict. The work of the National Reintegration Council began once again in September 2018.<sup>30</sup> It also highlighted the departmental reintegration tables, which foster the inclusion of reintegration needs in the areas of regional and local development. They were established in the departments of Antioquia, Chocó, el Cauca, el Meta, Santander, Sucre, and Valle del Cauca, with additional initiatives in Atlántico and Bolívar.<sup>31</sup>

35. The UN Mission stated that the reintegration process has been slow in several of its aspects. It said many former members of the FARC-EP remain deeply concerned over what they see as precarious conditions—legally, physically, and economically.<sup>32</sup> The MAPP/OAS also pointed to a need to prioritize specific decisions that key for the process, such as on the reintegration policy and on security for ex-combatants.<sup>33</sup> One of the most important aspects of reintegration into civilian life involves the granting of legal guarantees to ex-combatants.

36. Regarding the economic and social reintegration of former FARC members, the UN Mission noted as positive the approval thus far of 20 collective projects and 29 individual projects to generate income. Together, the projects are valued at US\$3.7 million and will benefit 1,340 former combatants (including 366 women). However, it noted that so far, funds have only been disbursed for seven of the collective projects and 29 of the individual projects, benefiting approximately 335 former combatants. Most of the productive initiatives are self-financed or have received some type of external support. The Mission indicated that it was particularly important to ensure that all the projects included elements of sustainability, such as enhancing the technical capacities of the cooperatives, access to lands and markets, and effective inclusion of a gender-based approach to the economic empowerment of women.<sup>34</sup>

37. Regarding political reintegration, the UN Mission highlighted that the FARC party currently occupies 9 of its 10 seats in Congress—five in the Chamber of Representatives and four in the Senate—and actively participates in floor debates, as well as in the constitutional, legal, and peace committees in both chambers.<sup>35</sup> The Commission notes that the FARC political party participated in the March 11<sup>th</sup>, 2018, legislative elections.<sup>36</sup>

<sup>29</sup> IACHR Hearing, [Human rights and following up on the peace agreement in Colombia](#), 168th Period of Sessions, May 2018.

<sup>30</sup> UN Security Council, Report of the Secretary-General on the [United Nations Verification Mission in Colombia](#), December 31, 2018.

<sup>31</sup> UN Security Council, Report of the Secretary-General on the [United Nations Verification Mission in Colombia](#), December 31, 2018, 24.

<sup>32</sup> UN Security Council, Report of the Secretary-General on the [United Nations Verification Mission in Colombia](#), December 2018, 94.

<sup>33</sup> OAS, Twenty-fifth Report of the Secretary-General to the Permanent Counsel on the Mission to Support the Peace Process in Colombia of the Organization of American States (MAPP/OAS), pg. 4.

<sup>34</sup> UN Security Council, Report of the Secretary-General on the [United Nations Verification Mission in Colombia](#), December 2018, 32 and 33. Verdad Abierta, [“Tan sólo 87 exguerrilleros de Farc cuentan con proyectos productivos apoyados por el Estado”](#), September 23, 2018.

<sup>35</sup> UN Security Council, Report of the Secretary-General on the [United Nations Verification Mission in Colombia](#), December 2018, 40.

<sup>36</sup> El Tiempo, [“En su debut, Farc obtuvo poco más de 85.000 votos”](#), March 12th, 2018.

38. At the same time, the IACHR welcomes and recognizes the efforts made by the State, with international support, to complete the disarmament process and move forward in reintegrating the former FARC combatants into civilian life. However, the Commission observes that progress has yet to be made in the implementation of the Peace Agreement on a number of matters, including execution of mechanisms of protection and the implementation as fast as possible of economic and social reintegration programs with differentiated approaches based on gender, race, and ethnicity, and with a special focus on children and young people.

39. The Commission takes note of civil society's alert regarding the lack of implementation of social and economic reintegration programs. The IACHR therefore calls on the Colombian State to effectively implement the reintegration programs so people who meet the conditions agreed upon in the Peace Agreement can perform sustainable productive activities that result in their inclusion in society, can have legal status, and can contribute to building the peace, as long as they fulfill the obligations also agreed to in the Agreement.

40. In its observations of the project to the present report, the State did not share this analysis and presented additional information on the progress made under the National Policy for the Social and Economic Reincorporation of Former FARC-EP Members enshrined in CONPES 3931 of 2018, in order to guarantee the integral reintegration of former FARC-EP members and their families into civilian life, in accordance with their interests and within the framework of the Agreement. It also presented information from the Agency for Reincorporation and Normalization (ARN) about the achieved results in relation to the accreditation of people, the reparation measures implemented, the accompanying lines; as well as actions of an interinstitutional and inter-systemic nature and the differentiated focus of ethnicity and gender<sup>37</sup>. Additionally, the State informed that the normative as well as the defined operation of mechanisms in Point 3 from the Peace Agreement were of the first ones to be effective. To present date, the National Protection Unit protects 231 persons in this Special Protection Program, for what it situated 891 protection agents, 258 bulletproof vehicles, 189 conventional vehicles and 198 means of communication.<sup>38</sup>

41. Regarding the **Comprehensive Truth, Justice, Reparation, and Non-Repetition System** ("SIVJRNR" or the "Comprehensive System"), the Commission notes that, in accordance with Point 5 of the Peace Agreement, the SIVJRNR is based on the recognition of victims as citizens, the importance of knowing the truth of what happened, recognition of responsibility by those who directly or indirectly participated in the conflict, the principle of satisfying the victim's rights to truth, justice, reparations, and non-repetition; and the premise of not exchanging impunities.<sup>39</sup>

42. Under the Agreement, the comprehensive system is comprised of the Special Jurisdiction for Peace (JEP); the Truth, Coexistence, and Non-Repetition Commission (CEV); and the Special Missing Persons Unit for finding people disappeared in the context of and because of the armed conflict (UBPD); as well as the measures for enhancing programs for comprehensive reparation and the guarantees of not repetition.

43. Regarding the administration of justice component of the Special Jurisdiction for Peace (JEP), the State indicated that since its creation with Legislative Act 01 of 2017, a process was launched to design the mechanism for impartially selecting its magistrates, provided for under Decree 587 of 2017. This process was completed in October 2017 with the selection of 38 permanent magistrates and 13 alternates, who were seated.<sup>40</sup> Likewise, the Commission observes that on March 15, 2018, the JEP opened its doors to the public and began receiving reports and requests to begin performing its work.<sup>41</sup> Regarding the regulations governing JEP operations, it indicated that Resolution 001 of March 9, 2018, issued by the Plenary, established the JEP's rules

<sup>37</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th, 2019. p. 2-5.

<sup>38</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th, 2019. p. 6.

<sup>39</sup> Final Agreement for the End of the Conflict and Building of a Stable and Lasting Peace. Point 5.1. November 24, 2016.

<sup>40</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018

<sup>41</sup> El Espectador, "[JEP abre sus puertas al público](#)," March 14, 2018.



of procedure and organization.<sup>42</sup> On July 18, the Congress of the Republic issued Law 1922 of 2018,<sup>43</sup> and through judgment C-080 of August 15, 2018, the Constitutional Court found the Statutory Law of the JEP constitutional, with amendments,<sup>44</sup> while there is still a presidential sanction at the time of the report elaboration.<sup>45</sup> In its observations to the project of the present report, the State has referred itself that the draft on the Statutory Law was analyzed by the Constitutional Court of Colombia during 2018, which made known the meaning of the study of the constitutionality of the norm in the Press Release No. 32 of August 15<sup>th</sup> 2018. However, the Court only published its sentence on December 19<sup>th</sup>, 2018 and ordered the return of the document to the Congress of the Republic for its adjustment, to furtherly send it to the President of the Republic for the presidential sanction<sup>46</sup>. The IACHR takes note of this observation offered by the Illustrious State of Colombia. In this regard, the Commission notes with concern that more than two years after the signing of the Peace Agreement and one year after its entry into operation, the JEP does not have a Statutory Law. The Commission urges the Colombian State to adopt the necessary measures to advance in the definition and entry into force of the regulatory framework of the JEP, in respect of the principle of separation of powers and the decisions of the authorities that have intervened in the approval and constitutionality review of the Draft Law. This is in order to advance with the implementation of the Peace Agreement and guarantee the rights of victims.

44. In the hearing held during the 168th Period of Sessions of the IACHR, civil society warned of the uncertainty caused by the failure resolve the status of more than 600 former members of the FARC who had requested application of Amnesty Law 1820 of 2016 before the Special Jurisdiction for Peace and whose requests have not been resolved.<sup>47</sup> In this regard, the Commission notes that under Law 1,820 of 2016, there are various ways to grant amnesty. Specifically regarding the handling of requests for amnesty of the Amnesty or Pardon Chamber of the JEP, according to publicly available information, 560 requests have been assigned to the Amnesty or Pardon Chamber, of which 320 have been admitted for processing, 14 have been rejected, and 17 have been remitted on grounds of competence. Also, in 108 requests, the Chamber has requested more information, and 101 requests remain pending a ruling on admission.<sup>48</sup>

45. Regarding the Truth, Coexistence, and Non-Repetition Commission (CEV), established by Decree N° 588 of 2017, the State did not provide information on its launch. However, the IACHR takes note that the CEV had begun its three-year mandate on November 28, 2018, holding the first truth conference, attended by 1796 people.<sup>49</sup> On September 11<sup>th</sup>, 2018, the IACHR and the CEV signed an agreement establishing a regulatory framework for the mechanisms of cooperation between the parties.<sup>50</sup>

46. In 2017, the State reported on Decree Law N° 589 of 2017, creating the Unit on the Search for Disappeared Persons (*Unidad de Búsqueda de Personas Desaparecidas*, UBPD). This body, which is humanitarian and extrajudicial in nature and operates independently and autonomously, is in charge of directing, coordinating, and contributing 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.<sup>51</sup> In 2018, the State

<sup>42</sup> Special Jurisdiction for Peace, General Rules of Procedure, [Resolution 001 OF 2018](#), Bogota, Colombia, March 9, 2018.

<sup>43</sup> [Law No. 1922 "Through which Rules of Procedure are adopted for the Special Peace Jurisdiction." Colombia, July 18, 2018.](#)

<sup>44</sup> [Judgment C-080/18, automatic constitutional review of Draft Statutory Law 08 of 2017 from the Senate, 016 of 2017 from the Chamber. "Statute on the Administration of Justice by the Special Jurisdiction for Peace." Colombia, August 15, 2018.](#)

<sup>45</sup> Caracol Radio, [Que pasa si el Presidente Duque no firma la Ley Estatutaria de la JEP?](#), February 9, 2019.

<sup>46</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th, 2019, p. 1.

<sup>47</sup> IACHR Hearing, [Human rights and following up on the peace agreement in Colombia](#), 168th Period of Sessions, May 2018.

<sup>48</sup> Special Jurisdiction for Peace, [Result for 2018 and Projection for 2019](#), January 2019.

<sup>49</sup> [Truth Commission](#)

<sup>50</sup> [Cooperation agreement between the IACHR and the Truth, Coexistence, and Non-Repetition Commission of Colombia](#). These mechanisms include guidelines in the agreement for advisory services and exchange of information on the internal armed conflict in Colombia. Likewise, the agreement covers the different special cooperation relationships between the parties, including the development of research projects; the exchange and delivery of bibliographical material, archives, and relevant information; and the exchange of professional staff to strengthen research and investigation programs. The agreement also includes terms to identify and implement joint programs, projects, and activities of interest to the parties during the execution of the agreement.

<sup>51</sup> IACHR, Annual Report 2017, Chapter V, [Follow-up of Recommendations Issued by the IACHR in the report "Truth, Justice, and Reparation."](#)

reported on the issuance of a series of legal provisions aimed at implementing the agency.<sup>52</sup> However, the unit's operating budget was only approved in the last quarter of 2018.<sup>53</sup>

47. The Commission finds progress has been made on the different regulatory and institutional aspects of the implementation of the Peace Agreement to be part of the State's efforts to apply the recommendations put forward by the IACHR in its report *Truth, Justice and Reparation*. The Commission takes note of the importance of the entry into force of several legal provisions for effective implementation of the entities created in the framework of the Peace Agreement and will continue to follow up on the entry into force of some of the legal provisions that remain pending, such as the Statutory Law of the JEP.

48. The Commission appreciates the efforts made by the State to move quickly to implement the various components of the comprehensive system, as well as the complexity of that task. The Commission particularly recognizes the State's effort to launch the Special Jurisdiction for Peace and the Truth, Coexistence, and Non-Repetition Commission. Likewise, the Commission urges the State to continue with its efforts to establish a fully functioning Unit on the Search for Disappeared Persons (USDP) in order to have a Comprehensive System whose central focus is the victims in the framework of respect for the human rights of all the actors involved in the conflict, and achieve full coordination and articulation with all the components of the SIVJNRN, as well as of the other State institutions.

49. **Regarding lands**, the State reported on the issuing of laws related to the Rural Reform provided for in the Peace Agreement. It specifically reported on the issuing of Decree N° 756 of 2018,<sup>54</sup> which gives the National Land Agency the authority to proceed to award lands directly to associations or cooperative organizations. Additionally, in the IACHR hearing to follow up on implementation of the Peace Agreement, the State highlighted the results of its two strategies on illegal crops: the forced eradication of illegal crops (between January and the end of May 2018, 64,000 ha of illegal crops were expected to have been forcibly eradicated); and the voluntary crop substitution program (with the signing of agreements with 69,000 families to substitute their crops).<sup>55</sup>

50. Regarding this point, the MAPP/OAS underscored the progress made by the Colombian Government toward implementing the National Comprehensive Program on the Substitution of Illegal Crops (*Programa Nacional Integral de Sustitución de Cultivos Ilícitos*, PNIS) Nevertheless, it noted difficulties in its effective implementation. Specifically, little progress was noted on technical assistance, unproductive projects, and on the formalization of lands and territories; and new risks had raised surrounding security for leaders who have participated in its implementation, among other things. It was also noted that the conflicts surround the swiftness with which the forced eradication has been carried out in contrast to the slow progress made toward substituting illicit crops, along with the presence of armed actors in these territories.<sup>56</sup>

51. With regard to points 6.1.12 of the Peace Agreement, known as the **Ethnic Chapter**, civil society has expressed concern about the lack of effective implementation of many of the points agreed there. With respect to participation, they pointed out the lack of institutional, technical and operational guarantees and conditions for the Special High Level Instance with Ethnic Peoples, interlocutor before the Commission for the Follow-up, Promotion and Verification of the Implementation of the Final Agreement (CSIVI), can carry out its work. At the same time, they pointed out the greatest concern in relation to the security situation, reflected in the large number of murders of indigenous leaders after the signing of the Agreement, as detailed in this

<sup>52</sup> [Decree 288 of 2018 partially establishes the structure of the UBPD, February 15, 2018](#); [Decree 289 of 2018, UBPD Nomenclature, February 15, 2018](#); [Decree 290 of 2018, Partial UBPD staff, February 15, 2018](#); [Decree 1393 of 2018, UBPD Nomenclature, August 2, 2018](#); [Internal structure of the UBPD August 2, 2018](#).

<sup>53</sup>W Radio, "[Entrará en funcionamiento la Unidad de Búsqueda de Personas dadas por Desaparecidas](#)", September 3, 2018. See *El Tiempo*, "[La Unidad de Búsqueda de Desaparecidos no tiene dinero para funcionar](#)", July 25, 2018.

<sup>54</sup> [Decree 756 May 2018](#). Whereby a paragraph is added to Article 2(14)(16)(1) of Decree 1,071 of 2015, Sole Regulatory Decree on Agricultural, Fisheries, and Rural Development Administrative Actors regarding the special land grant programs, Colombia, May 4, 2018.

<sup>55</sup> IACHR Hearing, [Human rights and following up on the peace agreement in Colombia](#), 168th Period of Sessions, May 2018.

<sup>56</sup> OAS, Twenty-fifth Report of the Secretary-General to the Permanent Counsel on the Mission to Support the Peace Process in Colombia of the Organization of American States (MAPP/OAS), pg. 3.

report, and the existing delays in applications for legalization of protection of territories, filed with the National Land Agency.<sup>57</sup>

52. The Commission has closely followed the major efforts made by the State to consolidate the peace, and recognizes that the acts of violence committed by illegal actors who remain armed continue to threaten implementation. In this regard, the IACHR reminds the State of the importance of—parallel to its efforts to implement and consolidate the Peace System—attending to its obligation to structure effective responses on the issue of citizen security and combat the criminal organizations that are committing serious acts of violence in outlying areas, particularly against the lives of human rights defenders, social leaders, and populations that have historically suffered from violence at the hands of armed groups on their territory.

53. Based on all this, the Commission recognizes the measures taken by the Colombian State to implement the Peace Agreement, especially the measures related to the operation of the institutions of the Comprehensive Truth, Justice, Reparation, and Non-Repetition System, and takes note of the measures still lacking in that system and to ensure effective compliance with the other points of the Agreement.

### III. FOLLOW-UP OF RECOMMENDATIONS

#### A. Life, personal integrity, and individual freedom

- 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 United Self-Defenses (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 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.

#### 1. Right to life, personal integrity and individual freedom

54. Regarding the recommendation to adopt **the measures necessary to prevent State agents from committing violations of human rights and of international humanitarian law**, including investigations into the facts and training on rights, the State pointed to the functioning of the Special Jurisdiction for Peace and to training programs for the Security Forces.<sup>58</sup>

55. Regarding the investigation of actions taken by State agents, Colombia pointed to the launch of the Special Jurisdiction for Peace and several of the most important decisions that it has taken to begin the investigation and prosecution of conduct committed during the armed conflict, including the opening of four cases by the Chamber on the Recognition of Truth, Responsibility, and Determination of the Facts and

<sup>57</sup> National Indigenous Organization of Colombia- ONIC, [Pronunciamiento de la Instancia Especial de Alto Nivel con Pueblos Étnicos](#), August 2, 2018.

<sup>58</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

Conduct.<sup>59</sup> Also, it noted that the Office of the Attorney General of the Nation has sent reports to the JEP making it possible to open those cases, one of which is Case 003, “deaths improperly categorized by State agents as combat deaths.”<sup>60</sup>

56. The National Movement of Victims of State Crimes stated that the conditions for prosecuting State agents as provided for under the Peace Agreement were changed with the adoption of the regulations governing the JEP, and that the changes would impact the ability to conduct serious, impartial, and effective investigations.<sup>61</sup> It questioned why the transitional Article 24 of the Constitution included operating rules as a source of law for legally characterizing facts committed in the framework of the conflict without taking into account international human rights law as an application framework for establishing command responsibility. It also questioned why, under Article 7 of Law 1,922 of 2018, the Ministry of Justice could intervene in procedures before the JEP involving the Security Forces.

57. In its observations on the draft of this report, the State referred to the Constitutional Court's analysis, in Ruling C-674 of 2018, of the criteria governing command responsibility and concluded that they do not dilute the State's duty to investigate, judge and punish those most responsible for the victims. The State added that the Court confirmed that command responsibility in the terms of transitory Article 24 can only be applied to members of the security forces and distinguishes this figure from that of the highest officials, with which it can be concluded that through this figure the most serious crimes of other actors in the conflict will not go unpunished. In addition, enquired to clarify that in accordance with Article 7 of Law 1922 of 2018 it is not the Ministry of Justice who can intervene in the proceedings under the competence of the JEP, but the Ministry of Defense.<sup>62</sup> The IACHR takes note of this observation provided by the Illustrious State of Colombia.

58. The National Indigenous Organization of Colombia (ONIC) indicated that between October 2017 and February 26, 2018, 13 members of indigenous populations were murdered, allegedly by agents of the Security Forces, local police, Military, or ESMAD.<sup>63</sup> They also asked for those responsible for these actions to be investigated and punished.

59. Regarding intensive human rights training, the State reported that in the framework of Directive 2 of 2018, entitled “strengthening permanent plans for the integration of human rights law and international humanitarian law [...]” it had trained 1,535 members of the Security Forces as of July 31, 2018. It also submitted a table showing that 5,622 members of the National Police had been trained on human rights and international humanitarian law; and that 1,387 activities had been conducted to dialogue with social leaders, union leaders, indigenous communities, and populations that have historically faced discrimination.<sup>64</sup> On its observations to the draft of the present report, the State updated the data and informed that during 2018 the State give capacitation to 2.851 members of the Public Forces, 22.189 members of the National Army, and a total of 277.155 members of the National Army.<sup>65</sup> Regarding this, the IACHR appreciates the progress made by the State on training its agents on human rights and international humanitarian law.

60. In this regard, the Commission observes that in the framework of the implementation of the Peace Agreement between the FARC and the Government of Colombia, transitional justice measures have been adopted to investigate and prosecute State agents during the armed conflict. The Commission will continue monitoring the progress of the investigations and expects them to be conducted seriously, impartially, and effectively, pursuant to inter-American standards. Still, the Commission urges State institutions to continue

<sup>59</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018. Pg. 17-18.

<sup>60</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018. P. 7.

<sup>61</sup> Movimiento Nacional de Víctimas de Crímenes del Estado, comments on compliance with recommendations. Report on Truth, Justice and Reparation in Colombia, October 24, 2018, pg. 8.

<sup>62</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th 2019. p. 6-8.

<sup>63</sup> Communication from the ONIC. Follow-up report on compliance with the recommendations of the Truth, Justice, and Reparation report on Colombia. P. 7.

<sup>64</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018. Pg. 17-18.

<sup>65</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th 2019. p. 8.

investigating reports of human rights violations committed by State agents that are outside the jurisdiction of the JEP. In this regard, the recommendation remains in partial compliance, and the Commission will continue to monitor the measures taken by the State regarding this matter.

61. Regarding the recommendation that the State **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**, the State indicated that “regarding the autonomy of the magistrates, Colombia has a legal framework that allows for provisional suspension under strict conditions, which at all times guarantees due process and the presumption of the innocence of those investigated,” pointing to progress in the investigation of the specific incidents of violence indicated by the social organizations and included in the 2017 Annual Report.<sup>66</sup> In this regard, the ONIC indicated that regarding reports of human rights violations committed by the Security Forces, no response has been received on the progress of the investigations.

62. Regarding the opening of disciplinary processes, the State provided information on actions brought by the Human Rights Office of the Attorney General against members of the ESMAD in connection with a number of facts.<sup>67</sup> These include the investigation into incidents that took place on December 24, 2016, in the town of Cuatro Bocas, San Martín municipality, when residents of the town reported they were the victims of persecution and constant abuse by the ESMAD because of their anti-fracking activism.<sup>68</sup> However, no information has been provided to indicate suspension from active service or any results from those disciplinary processes.

63. The Commission finds that in the same sense as the previous recommendation, the operation of the Special Jurisdiction for Peace is dealing with situations of possible violations of human rights and IHL, for which reason it will follow-up on the decisions adopted in that jurisdiction and maintain the status of compliance with this recommendation as pending.

64. Regarding the recommendation that the State **take measures to dismantle the self-defense groups who did not participate in the collective demobilization efforts carried out between 2003 and 2006**, the State pointed to measures taken by the National Police and parts of the military to occupy and consolidate areas where the FARC-EP previously had influence.<sup>69</sup> It added that the Armed Forces have, in their normal units, carried out offensive military actions and actions aimed at securing territorial control, security, and defense. Likewise, they reported on the execution of joint, coordinated, and interagency operations in high-risk areas to stay on the offensive against the structures of organized armed groups, including the Ejército de Liberación Nacional (ELN), leftover FARC groups, common criminals, and the armed group Pelusos, as well as provide support to the National Police and other State institutions against organized criminal groups and criminality with the aim of weakening them strategically and enhancing territorial control, for which they continued to confiscate weapons, explosives, and drugs.<sup>70</sup>

65. The Movimiento Nacional de Víctimas de Crímenes de Estado recognize the commitment expressed by the Government of Colombia to dismantle paramilitarism in Point 3(4) of the Peace Agreement. It added that the Congress of the Republic adopted Legislative Act 05 of 2017 prohibiting “the establishment, promotion, instigation, organization, instruction, support, tolerance, concealing or favoring, financing, or public and/or private employment of armed civilian groups with any kind of illegal aim, including the so-called self-

19. <sup>66</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018 P.

p. 19. <sup>67</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018,

<sup>68</sup> *Self Bank, Fracking, Una Nueva Técnica para Extraer Petróleo*, September 15, 2016.

IACHR, *annual report, Chapter V Colombia “Forced disappearance and the Search Mechanism,”* 2017, para. 57.

22. <sup>69</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018 P.

p. 21. <sup>70</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018,

defense groups, paramilitaries, and their support networks, structures, or practices, security groups with illegal purposes, or other equivalent groups.”<sup>71</sup> It also asked the IACHR to follow up on the codification of crimes related to such conduct and its application.

66. The Commission takes note of provisions in the Constitution that decisively prohibit paramilitary groups. It will follow-up on their application, as well as their effect on the reports filed by organizations on the actions of armed groups. The Commission is aware of the statements from civil society included in the section on the implementation of the Peace Agreement that report the existence of new violent groups on the territory where the FARC-EP operated. The IACHR therefore finds that the State has partially complied with this recommendation.

67. Regarding the recommendation to **adopt the corresponding measures to ensure that extrajudicial executions are investigated in the competent jurisdiction, i.e. the regular jurisdiction**, the State reported that the Public Prosecutor was implementing an investigation strategy that would begin by investigating the material perpetrators of the conduct and move progressively higher up the chain of command to battalion commanders and members of the Joint Chiefs of the Brigades. It reported that the Human Rights Office of the Office of the Attorney General of the Nation is pursuing 2,423 active investigations, processing 5,106 soldiers, and 1,683 have been convicted. It indicated that in 2015, only 837 were convicted, meaning that the 1,683 convicted in 2018 represent a 50% increase in convictions.<sup>72</sup> On its observations made to the draft of the present report, the State, through the Attorney General's Office, updated these data to March 1<sup>st</sup>, 2019, reporting that it is conducting 2,308 active investigations; in which 7,802 people are being prosecuted (there may be repetitions because there are prosecuted with more than one investigation). 1,709 people have been convicted.<sup>73</sup>

68. The State also indicated regarding the progress on prioritizing and investigating such conduct that through Order 005 of July 17, 2018, the Chamber on Recognition of Truth, Responsibility, and Determination of Facts and Conduct of the JEP decided to assume jurisdiction in Case 003 based on Report 5 presented by the Office of the Attorney General of the Nation, entitled “Deaths improperly classified by State agents as combat deaths.” This case involves at least 1,741 victims of extrajudicial executions classified as combat deaths, allegedly committed by members of the Security Forces between 1984 and 2011.<sup>74</sup>

69. The National Movement of State Crime Victims stated that the JEP was becoming a mechanism of impunity for extrajudicial executions, as “almost all the conduct investigated as this crime by the Office of the Attorney General of the Nation was transferred to that jurisdiction, *a priori* assumed to be related with the armed conflict.”<sup>75</sup> The same organization noted that 1,109 members of the Security Forces investigated for extrajudicial executions were granted early release, without providing guarantees to victims and no clarity on any conditions that might apply.<sup>76</sup>

70. The Commission notes the progress presented by the State in the struggle against impunity, particularly the judicial sanction of those responsible for human rights violations through an increase in convictions. Additionally, in the same regard as expressed in the first recommendation of this chapter, the Commission takes note of the first cases before the Special Jurisdiction for Peace and will follow-up on its decisions, including the decision adopted in the framework of Case 003 on “deaths improperly categorized by State agents as combat deaths.” The Commission will be observing how the JEP judges rule with regard to this conduct during the armed conflict, the guarantees provided to victims so they can participate in the process,

<sup>71</sup> Movimiento Nacional de Víctimas de Crímenes del Estado, comments on compliance with recommendations. Report on Truth, Justice and Reparation in Colombia, October 24, 2018, pg. 5.

<sup>72</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 30.

<sup>73</sup> Republic of Colombia, Additional Information to the Note MPC/OEA No.:238/2019, March 15<sup>th</sup>, 2019. p. 10.

<sup>74</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 7-8.

<sup>75</sup> Movimiento Nacional de Víctimas de Crímenes del Estado, comments on compliance with recommendations. Report on Truth, Justice and Reparation in Colombia, October 24, 2018, pg. 7.

<sup>76</sup> Movimiento Nacional de Víctimas de Crímenes del Estado, comments on compliance with recommendations. Report on Truth, Justice and Reparation in Colombia, October 24, 2018, pg. 7.

and the pursuit of a serious, impartial, and effective investigation. It will therefore continue to categorize this recommendation as pending compliance.

## 2. Forced disappearance, disappearance, and the Missing Persons Search Unit

- 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.

71. Regarding the recommendation to **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, the State submitted information provided on a timely basis indicating that the National Registry of the Disappeared (RND) was established in 2000 and an office for public inquiries was implemented in 2008 that allowed examination of reports on disappeared persons, bodies subjected to forensic autopsies, and bodies identified but not claimed, by name and identification document number, with disaggregated information.<sup>77</sup> The State also pointed to the Statistical Forensic Information Location Program, implemented in 2009 containing data broken down by sex, case status, type of disappearance, and age range.<sup>78</sup> The State also clarified that the National RND is public, updated, and regularly vetted.<sup>79</sup>

72. Regarding this, the Commission notes that in previous years,<sup>80</sup> the number of people identified by the RND was not the same as the number reported by civil society organizations. According to the RND, as of December 27, 2018, 2,311 men and 1,470 women had disappeared in Colombia, and it did not specify the total number of the disappeared.<sup>81</sup> For its part, the International Committee of the Red Cross said the official figures reflected underreporting, as many families are afraid to report the disappearance of their loved ones. It estimates the total number of disappeared people stands at 88,500,<sup>82</sup> while the Centro de Memoria Histórica puts the figure at close to 83,000.<sup>83</sup> Santander is an example of this under-counting by the government: There, the Asociación de Familiares de Detenidos – Desaparecidos (ASFADDES) states that 1,400 victims are officially registered, even though estimates put the total number of disappeared persons at between 5,000 and 6,000.<sup>84</sup>

73. Based on this, the IACHR urges the State to redouble its efforts to establish the number of people disappeared in accordance with the conditions and standards stipulated, recalling the relevance of having a registry that is publicly accessible, up-to-date, unified, and clean, with information disaggregated not only by age and gender but also by ethnicity, town, and other relevant demographic elements. In this regard, the Commission concludes that the State has partially complied with the recommendation.

74. Regarding the recommendation to **guarantee the effectiveness of the Urgent Search Mechanism or any other mechanism that makes it possible to immediately recover disappeared persons**, the State reported that as the administrator of the RND, the Institute of Forensic Medicine (*Instituto*

p. 24. <sup>77</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018,

p. 25. <sup>78</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018,

p. 27. <sup>79</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018,

<sup>80</sup>IACHR, [2017 Annual Report, Ch. V. Co, "Forced Disappearance, Disappearance, and the Missing Persons Unit \(UBPD\)"](#) para. 63.

<sup>81</sup> RND, "[Consultas públicas, desaparecidos por año/género](#), December 27, 2018.

<sup>82</sup> CICR, "[#AquíFaltaAlguien, campaña por los desaparecidos en Colombia](#)," 2018.

<sup>83</sup> *El País*, "[Colombia busca y exhuma a sus desaparecidos](#)," December 21, 2018.

<sup>84</sup> *El Tiempo*, "[Tras un año, aún no hay respuesta en casos de desaparecidos de Lebrija](#)," September 12, 2018.

*Nacional de Medicina Legal y Ciencias Forenses, INML*) had implemented Urgent Search Mechanism (*Mecanismo de Búsqueda Urgente, MBU*) follow-up fields in the Disappeared and Corpse Information Network (*Sistema de Información Red de Desaparecidos y Cadáveres, SIRDEC*)<sup>85</sup> 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. It stated that 2018 saw 39 new MBU requests and 175 incidents of information on MBUs.<sup>86</sup> Along the 2018 year, 6,000 new cases were reported nationally of disappeared persons, from which more than half of them are part of this condition<sup>87</sup>. It also reported that, in compliance with the 2018 Action Plan of the CBPD, the MBU pamphlet was being updated in order to provide a pedagogical tool to improve officials' understanding of the mechanism to enhance its effectiveness at the national level.<sup>88</sup> The State also reported that Decree 290 of 2018 partially staffed up the UBPD, while Decree 1,393 of 2018 established its internal structure.<sup>89</sup> On its observations to the draft on the present report, the state remitted information of the Defense Ministry in regard of the attention of the Public Force, in accordance to its capacity, has been attending as a priority the requests of judicial authorities related to the development of the Urgent Search Mechanism or of the crime investigation of forced disappearances, as well as the technical scientific procedures to be improved within them; and the support of the Attorney General's Office.<sup>90</sup> Additionally, the State recalled that for several years the State has been actively working to prevent and deal with cases of enforced disappearance of persons, and that this commitment is not limited to the mechanisms created in the Peace Agreement.<sup>91</sup>

75. The Commission notes that the UBPD is the extrajudicial and decentralized agency in charge of directing, coordinating, and contributing 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.<sup>92</sup>

76. The IACHR underscores the importance of the implementation of the UDPD in 2018 and takes note that the Unit has already met with more than 500 families in 25 locations throughout the country, as well as with a number of organizations. The IACHR also observes that the UDPD is developing a series of methodologies for searching for disappeared persons through prior consultation with affected communities and a national search plan with differentiated approaches. Likewise, the IACHR underscores the existence of a specific office under the UDPD on victim participation and to encourage their involvement during the search process.<sup>93</sup>

77. Therefore, the Commission understands the recommendation to be partially complied with, as the State created the Unit on the Search for Disappeared Persons but the effective implementation of search mechanisms remains pending. The IACHR underscores that it is crucial for the Unit to be provided with all the staff it needs, to reach interagency coordination agreements at the national level, and to establish mechanisms of collaboration with bordering countries. Continued involvement of the victims is also crucial to ensure the search for disappeared persons is comprehensive.

78. Regarding the recommendation to **recover the bodies of disappeared persons, identify them, and turn them over to relatives**, the State indicated that with the implementation of the "National Plan for the Search, Identification, and Dignified Turning over of Remains of Individuals Classified As Disappeared

<sup>85</sup> Disappeared and Corpse Information Network System, Republic of Colombia, Letter S-GAIID-17-06775 of August 9-29, 2017.

<sup>86</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 29.

<sup>87</sup> El Tiempo, En 2018, [otros 1050 nombres a la lista de los muertos que nadie reclama](#), 29 de diciembre de 2018.

<sup>88</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 29.

<sup>89</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 43.

<sup>90</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th, 2019. p. 9.

<sup>91</sup> Republic of Colombia, Additional information to the Note MPC/OEA No.:238/2019, March 15th, 2019. p. 12.

<sup>92</sup> IACHR, Annual Report 2017, Chapter V, Follow-up of Recommendations Issued by the IACHR in the report "Truth, Justice, and Reparation."

<sup>93</sup> UDPB Institutional Bulletin.



in the Context of an by Reason of the Armed Conflict - Cemetery Intervention,” the National Institute of Forensic Medicine (INMLCF) had so far examined seven cemeteries nationally. It also indicated that since the creation of the Search Subunit—today called the Group on the Search for, Identification of, and Turning over of Disappeared Persons—the following results have been obtained: 9,367 bodies exhumed; 1,637 bodies with a potential identity; 1,870 unidentified bodies; 4,453 bodies identified and turned over; and 2,959 digs carried out.<sup>94</sup> Up to December 2017, 26,395 persons would have been reported as inhumed and non-identified.<sup>95</sup> On March 14<sup>th</sup>, 2019, the Attorney General’s Office reported that 4,608 fully identified bodies would have been surrendered.<sup>96</sup>

79. The State also pointed to the Disappeared and Corpse Information Network System implemented in 2007, which allows for the entry, query, and crosschecking of information in support of processes to search for disappeared persons, identify bodies, and conduct interagency investigations of the cases; the system currently has more than 11,000 users from a variety of agencies and organizations.

80. For its part, the Office of the Ombudsperson reported on a joint strategy with the entities comprising the Committee on the Search for Disappeared Persons (*Comisión de Búsqueda de Personas Desaparecidas*, CBPD) which vets the records and update the information in order to ensure the data is trustworthy. Regarding the effectiveness of the urgent search mechanisms, it underscored that they have been an effective legal tool for preventing forced disappearances. However, it said the processes for training officials needed to be enhanced, as it continued to receive information directly from relatives on difficulties in directing the complaints and getting a quick response. This specifically involved a lack of clarity on timelines, routes, and institutional responsibilities, and sometimes they were even asked to wait for 72 hours before filing a report.<sup>97</sup>

81. In this regard, the State stated in its observations on this report that National Police Directive No. 007 of 2011 establishes that the National Police may not require 72 hours to receive a report of a disappearance<sup>98</sup>, which is assessed by the IACHR as a positive measure.

82. In a hearing during the 168th Period of Sessions of the IACHR on actions taken to safeguard evidence in the search for disappeared persons, civil society alerted to the need to ensure the work related to the Hidroituango hydroelectric dam project in the Choco River basin does not obstruct the search for and identification of people disappeared in the area.<sup>99</sup> During the hearing, the State recognized that it still did not have a complete picture of the individuals disappeared in the area. It also reported that during the search work carried out in the dry riverbed, no human remains have been found, and that the exhumations had been conducted in other areas. As a result of this work, the National Prosecutor’s Office reported that 195 exhumations, 23 prospectations, 115 bodies identified and handed over to relatives, 22 bodies in the process of identification in laboratories and 58 bodies in the condition of unidentified had been carried out.

83. The IACHR appreciates the efforts made by the State to recover and identify the bodies of disappeared persons and turn them over to the relatives, which, according to the information received, has identified and turned over 4,608 bodies. At the same time, given the magnitude of the phenomenon, the Commission urges the State to redouble its efforts and enhance its forensic capacities. In this regard, the IACHR concludes the State has partially complied with the recommendation.

<sup>94</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018. 29.

<sup>95</sup> Informe elaborado por Alirio Uribe Muñoz, Iván Cepeda Castro, las UTL de ambos congresistas, el Centro de Investigación y Educación Popular/ Programa por la paz (CINEP/ PPP), el Colectivo Sociojurídico Orlando Fals Borda, la Comisión Intereclesial de Justicia y Paz, la Corporación Claretiana Norman Pérez Bello, la Corporación Vida y Paz del Guaviare, la Corporación Equipo Colombiano Interdisciplinario de Trabajo Forense y Asistencia Psicosocial (EQUITAS), el Movimiento de Víctimas de Crímenes de Estado (Movice) y el Observatorio de Derechos Humanos y Derecho Internacional Humanitario de la Coordinación Colombia Europa Estados Unidos “Resultados de la Implementación de las medidas inmediatas humanitarias y la situación actual de los cementerios municipales”, 6 de marzo de 2018.

<sup>96</sup> Republic of Colombia, Additional information to the Note MPC/OEA No.:238/2019, March 15<sup>th</sup>, 2019. p. 13

<sup>97</sup> Office of the Ombudsperson of Colombia, contribution to follow-up on compliance with the recommendations included in the truth, justice, and reparation report, letter dated October 29, 2018, pg. 5.

<sup>98</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14<sup>th</sup> 2019, p. 9.

<sup>99</sup> IACHR, [Hearing on measures to protect evidence of forced disappearance](#), 168th Period of Sessions, May 2018.

## B. Protection mechanisms

- 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.

84. Regarding the recommendation **urging the State to implement the measures necessary to guarantee adequate participation, communication, and coordination with the beneficiaries in the protection processes**, the State submitted a table showing the spaces for participation in the National Protection Unit's processes. The table shows that for risk evaluation, an interview is conducted with the individual requesting protection, and that person can contribute the information deemed appropriate; for the decision on which measures of protection to implement, the representatives participate in the Risk Evaluation and Measures Recommendation Committee (*Comité de Evaluación de Riesgo y Recomendación de Medidas*, CERREM); and there is a special committee for cases involving precautionary and provisional measures from the Inter-American human rights system. Likewise, in order to follow-up on the effectiveness of the measures, the beneficiaries can submit comments, requests for risk evaluation, and requests for measures to be adjusted.<sup>100</sup>

85. The ONIC said the CERREM acts only as a communication channel, not a channel for participation, as communities are not given the opportunity to challenge measures or propose the ones they feel are appropriate. It also noted that in addition to individual protection measures, there must be collective protection measures.<sup>101</sup> Likewise, the IACHR has received information on the lack of communication regarding the risk evaluation results obtained and a lack of informational fluidity on the requests for protection and State follow-up.<sup>102</sup>

86. The Office of the Ombudsperson reported that the peoples' delegates to the Prevention and Protection Program are present during analysis of the groups they represent before the CERREM. However, it indicated that the representatives of the victim population and of displaced individuals no longer attend this committee's meetings for budgetary reasons.<sup>103</sup> In this regard, it expressed that although progress has been made on participation in the work, the progress is insufficient, as failures persist in the implementation of protection measures and excessive delays in their execution.<sup>104</sup>

87. The Commission observes that although there is a space in which representatives of the population targeted by the measures and UNP officials can meet, the participation and dialogue is insufficient, according to civil society organizations and the Office of the Ombudsperson. Consequently, the IACHR urges

<sup>100</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 32.

<sup>101</sup> Communication from the ONIC. Follow-up report on compliance with the recommendations of the Truth, Justice, and Reparation report on Colombia. P. 7.

<sup>102</sup> Information submitted by civil society in the framework of the following hearings held by the IACHR: [Human rights situation of indigenous peoples in the context of the Peace Agreement; Hearing on Afro-Colombian victims of the armed conflict](#), 2018.

<sup>103</sup> Office of the Ombudsperson of Colombia, contribution to follow-up on compliance with the recommendations included in the truth, justice, and reparation report, letter dated October 29, 2018, pg. 6.

<sup>104</sup> Office of the Ombudsperson of Colombia, contribution to follow-up on compliance with the recommendations included in the truth, justice, and reparation report, letter dated October 29, 2018, pg. 7.

the UNP to make effective the participation of the beneficiaries in the different processes of the protection program and expand its dialogue with ethnic communities on adequate measures for executing collective protection plans. The Commission emphasizes that fluid and individualized dialogue on the conditions of each individual and population and the suitability of the measures for the population receiving them are central to effectively addressing the risks from which protection is requested. Therefore, the Commission concludes the State has partially complied with the recommendation and will continue to follow up on it.

88. Regarding the recommendation that the **National Protection Unit and the competent authorities implement the differentiated approaches**, the State reported that among its institutional strategies, it established a "roadmap for institutional action to prevent and protect vulnerable people and communities," in the framework of the implementation of the Peace Agreement.<sup>105</sup> It noted that it adopted Decree 660 of April 17, 2018, creating and establishing the regulations for the "Comprehensive Security and Protection Program for Outlying Communities and Organizations."<sup>106</sup> It also reported that in 2018, the National Protection Unit conducted 33 training sessions, in which 399 of its officials participated.<sup>107</sup>

89. The ONIC indicated that two obstacles to the differentiated approach are (i) that the UNP does not take into account the cultural nature of the peoples, as evidenced by the adoption of individual protection arrangements and improper application of collective protection arrangements; and (ii) that the UNP hires armed personnel for the protection arrangements, which prevents the Indigenous Guard from taking part, even though the Guard is trusted by the beneficiaries of the measures.<sup>108</sup> Also, during the hearings held by the IACHR in 2018, the IACHR received information on an increase in attacks on and threats against social leaders and representatives of indigenous and Afro-descendant communities, who argue progress needs to be made on the collective measures given the ineffectiveness of the individual measures, and that the collective measures must include the effective participation of those affected.<sup>109</sup>

90. The Office of the Ombudsperson reported that often, UNP officials do not take into account the rulings and judgments of the Constitutional Court, such as the presumption of constitutional risk, the potential for re-victimization, the application of the principle of good faith, and the criteria of reasonable fear (judgment T-898/13 and Order 119 of 2013). It indicated that the officials also failed to take into account the protection of internally displaced people in the context of the finding of unconstitutionality by the Constitutional Court in judgment T-025 of 2004.<sup>110</sup> Regarding the differentiated approach, it highlighted the importance of enhancing incorporation of the gender approach in risk analysis; providing psychosocial support prior to adopting a measure; and the need to provide specific training on gender, especially to the male security guards assigned to female leaders and to individuals with non-binary sexual orientations and gender identities.<sup>111</sup>

91. The Commission takes note of the training conducted for the individuals who work in the UNP. However, it observes that according to information from the Office of the Ombudsman and civil society, the differentiated approaches are not effectively applied to the measures of protection. Specifically, the Commission is concerned by several of the issues raised by ethnic groups who say the collective measures are improperly applied. Therefore, the Commission finds that compliance is partial and urges the State to conduct

<sup>105</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018. P. 31.

<sup>106</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018. P. 41.

<sup>107</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018. P. 35.

<sup>108</sup> Communication from the ONIC. Follow-up report on compliance with the recommendations of the Truth, Justice, and Reparation report on Colombia. P. 14.

<sup>109</sup> Petition filed by the Corporación Humana in the framework of the [Hearing on Afro-Colombian victims of the armed conflict](#), 169th Period of Sessions, October 2018.

<sup>110</sup> Office of the Ombudsperson of Colombia, contribution to follow-up on compliance with the recommendations included in the truth, justice, and reparation report, letter dated October 29, 2018, pg. 7.

<sup>111</sup> Office of the Ombudsperson of Colombia, contribution to follow-up on compliance with the recommendations included in the truth, justice, and reparation report, letter dated October 29, 2018, pg. 7 and 8.

a deep analysis on the needs of the groups or individuals targeted by the measures and to apply differentiated approaches in order for the protection provided by its agencies to be effective.

92. On its observations to the present report, the State reported that it conducts a face-to-face and personalized interview in the place where the person requesting protection resides and that by the time protection measures are defined, the regulation of the Committee for Risk Assessment and Recommendation of Measures - CERREM - allows for the virtual or electronic participation of representatives of the target populations of such measures, in order to prioritize the budget to the protection of persons.<sup>112</sup> Equally, reported that, in relation to ethnic groups, it adopts concerted measures with a collective approach as requested by the communities, and that the National Protection Unit has 40 escorts who are members of the Indigenous Guard, without weapons.<sup>113</sup> The IACHR takes note of this observation delivered by the Illustrious State of Colombia.

93. Regarding **the recommendation that the State double its efforts to investigate the facts leading people to enter and remain in the protection programs**, the State did not submit specific information on compliance with this obligation. Regarding this, the ONIC said there was no preventative measure of investigation, and that the Office of the Attorney General of the Nation had not been efficient in finding those responsible for the crimes, even when the indigenous organizations provided sufficient evidence. It stated that therefore, it was not possible to address the reasons why people enter and remain in the protection programs, "but even so, the State chooses to deny or withdraw security measures despite the risks that persist for the civilian population."<sup>114</sup>

94. The Commission notes that in different parts of their briefs, the State and the Office of the Ombudsperson referred to measures of investigation related specifically to human rights defenders. The State indicated that in 2017, the Office of the Attorney General of the Nation issued Directive 002 of 2017, prepared in cooperation with the IACHR, which establishes guidelines,<sup>115</sup> for investigating crimes committed against human rights defenders and pointed to the progress made toward solving the murders of human rights defenders and social leaders. The Office of the Ombudsperson referred to the calls made to national authorities to take measures to protect life and personal integrity, including to the Office of the Attorney General of the Nation, which was asked to consider the possibility of assigning investigations into crimes against human rights defenders and social leaders to the Special Investigation Unit that focuses on dismantling criminal organizations and conspiracies.<sup>116</sup>

95. The IACHR takes note of the measures to investigate attacks on human rights defenders, which it will discuss in detail in the section of this report on that group. The Commission also observes that the State did not report measures to investigate the general cases of people entering and remaining in the protection system unrelated to human rights defenders. Therefore, the Commission concludes it does not have enough information to evaluate compliance with this recommendation and will continue monitoring.

## LEGAL AND CONSTITUTIONAL FRAMEWORK

### C. Impunity and obstacles to 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.

<sup>112</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14<sup>th</sup>, 2019. p. 10.

<sup>113</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14<sup>th</sup>, 2019. p. 11.

<sup>114</sup> Office of the Ombudsperson of Colombia, contribution to follow-up on compliance with the recommendations included in the truth, justice, and reparation report, letter dated October 29, 2018, pg. 15.

<sup>115</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018. P. 124.

<sup>116</sup> Office of the Ombudsperson of Colombia, contribution to follow-up on compliance with the recommendations included in the truth, justice, and reparation report, letter dated October 29, 2018, pg. 9.

- 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 United Self-Defenses (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.

96. Regarding the recommendation to **redouble efforts to overcome the serious situation of impunity**, the State noted that in the context of the post-conflict and peace building period, the Office of the Attorney General of the Nation has concluded it would be relevant to take measures to ensure access to justice for the victims of the armed conflict and other unrest.<sup>117</sup> It noted that since 2017, an intervention plan has been under preparation for 500 municipalities that includes enhancing the presence and investigative capacity of the Office in municipalities at greater risk during the post-conflict period.<sup>118</sup> It stated that during the first phase of the "500 municipalities" plan, proposals included the appointment of 207 new prosecutors in 106 municipalities, a goal that was reached; opening offices of the Office of the Public prosecutor and 39 municipalities that previously did not have that institutional presence; and allowing support visits to monitor the management of 32 sectional offices and five municipalities with a newly established presence of the Office of the Public Prosecutor or that were prioritized based on post-conflict risk.<sup>119</sup>

97. In 2018, civil society reported that impunity in cases of human rights violations remained very high. It stated that despite the plans and programs, little progress is evident, and they indicated that as of July 2017, the impunity rate for violations of the rights to life, liberty, and integrity stood at around 90%. They underscored that in cases of forced disappearance, impunity stood at 98.68%, while for extrajudicial executions it stood at 88.43%. With regard to investigations into sexual violence in the context of the armed conflict, they underscored that for the 627 cases selected by the Constitutional Court in 2008 and 2015 for the adoption of measures to protect women victims of forced displacement as a result of the armed conflict, as of June 2017, judgments had been reached in only 2.18% of the 2008 cases and 1.13% of the 2015 cases.<sup>120</sup>

98. Specifically with regard to measures to address impunity in cases involving human rights defenders, the Commission has taken note of the State's report,<sup>121</sup> although it has been called into question by civil society, as will be presented in the section on human rights defenders.<sup>122</sup>

99. The Commission notes the measures reported by the State to combat impunity for grave human rights violations, specifically the violations related to attacks on human rights defenders. The IACHR finds that the actions reported have not yet resolved the situation of impunity, for which reasons the Commission will continue to conduct follow-up. Regarding the operation of transitional justice institutions, the IACHR notes that the State faces a significant challenge of realizing the right to access to justice for an enormous number of victims of grave human rights violations. It will therefore monitor its work and its contributions to the fight against impunity in Colombia.

100. Regarding the recommendation **to endow the justice system with the human, financial, technological, and any other resources needed for it to adequately perform its functions**, the State reported that based on paragraph 7 of Article 27 of Decree 3,011 of 2013, the Ministry of Justice adopted

<sup>117</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 44.

<sup>118</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 45.

<sup>119</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 45.

<sup>4</sup> Presentation made by a coalition of civil society platforms and organizations for EPU COLOMBIA on the occasion of the UN Human Rights Council evaluation of Colombia in the framework of the Universal Periodic Review, May 10, 2018.

<sup>121</sup> IACHR, Hearing [Impunity in the murders and attacks on human rights defenders](#). 170th Period of Sessions, December 2018.

<sup>122</sup> IACHR, Hearing [Impunity in the murders and attacks on human rights defenders](#). 170th Period of Sessions, December 2018.

measures to allocate resources to ensure the participation of victims in the Reparation Incidents Hearing in the framework of the Justice and Peace Act (Law 975 of 2005), "delivering support for transportation and food to the victims."<sup>123</sup> It added that under an agreement with the Pan American Development Foundation (PADF), "approximately 5,100 victims have been aided in 2018, as the justice system was effectively provided with the financial resources necessary to guarantee the victims effective access to justice."<sup>124</sup>

101. Civil society pointed to the need to guarantee specific human and financial resources to increase the number of prosecutors, judicial police, and judges dedicated exclusively to investigating violations of human rights and international humanitarian law, with an investigation methodology that uses a differentiated approach based on sexual orientation, gender identity, ethnicity, and women's rights.<sup>125</sup>

102. In this section, the Commission refers to the content in the section on the implementation of the Peace Agreement and the launch of the comprehensive System for Truth, Justice, Reparation, and Non-Repetition—that is, the Special Jurisdiction for Peace (JEP), the Truth, Coexistence, and Non-Repetition Commission (CEV), and the Unit for the Search for Persons Presumed Disappeared (UBPD).

103. The IACHR finds that the information contributed by the State is incomplete and does not indicate significant efforts to provide resources to the justice system. Although the IACHR has highlighted the launch of institutions of the Comprehensive System provided for under the Peace Agreement, the Commission will continue to monitor the continuity and consolidation of these institutions within the justice system with adequate resources to fulfill their constitutional and legal mandates. The Commission calls on the State to fully account for the actions it has taken to provide the civilian justice system with the resources it needs to operate fully and guarantee access to justice.

104. In its observations on the present report, the State rejected the assertion contained in the previous paragraph, and reiterated to the IACHR that the National Government has provided the necessary resources to the justice system. To date, legal action has been taken to grant legal personality and financial capacity to the entities created under the Peace Agreement. For example, the Unit for the Search of Persons Found Disappeared in the Context and Due to the Armed Conflict was assigned a total of COP\$81.661.148.000 [\$26.3 million]; the Commission for Truth Clarification, Justice, Reparation and Non-Repetition was assigned \$81.480.700.000 [\$26 million USD]; and the Special Jurisdiction for Peace was assigned COP \$292.465.828.023 <sup>126</sup> [\$93.2 million USD]. The Commission takes this information presented by the Illustrious State of Colombia.

105. Regarding the recommendation to **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**, the State indicated that in compliance with the constitutional principle of harmonious collaboration, the Presidency of the JEP has met with representatives of the Colombian high courts, with the Office of the Attorney General of the Nation, and with authorities from the International Criminal Court.<sup>127</sup> It added that in the framework of the development of transitional justice, the main way of coordinating judicial authority has been the delivery of reports from the Office of the Attorney General of the Nation to the Recognition and Truth Chamber of the JEP.<sup>128</sup>

<sup>123</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 45.

<sup>124</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 45.

<sup>125</sup> Presentation made by a coalition of civil society platforms and organizations for EPU COLOMBIA on the occasion of the UN Human Rights Council evaluation of Colombia in the framework of the Universal Periodic Review, May 10, 2018.

<sup>126</sup> Distributed between: Peace Tribunal and Justice Offices (COP \$103.049.541, 676); Investigation Unit and Accusation (COP \$34.929.766,960); Executive Secretariat (COP \$64.128.314,473). Along other resources assigned for the investment. Republic of Colombia, Additional information to the note MPC/OEA No.:238/2019, March 15<sup>th</sup>, 2019. p. 14-15.

<sup>127</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 50.

<sup>128</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 50.

106. The ONIC said that regarding the JEP's activities, although it recognizes that progress has been made on the ethnic approach with the appointment of the Magistrates, it recommends that regarding support, representation, and defense for individual and collective victims and for indigenous appearing parties, that a differentiated approach be applied.<sup>129</sup> The organization also reported on potential interference by the Office of the Attorney General of the Nation with the JEP, which was reported by the JEP Magistrates and its Presidency. According to publicly available information referenced by the ONIC, the Office of the Public Prosecutor had conducted a judicial inspection of the JEP and taken a digital copy of the processes pursued for crimes of kidnapping against former members of the FARC.<sup>130</sup>

107. On the observations to the present report, the State remitted additional information of the JEP that pointed out that "having in mind the difficulties to access the Colombian system of justice expressed in different scenarios by the indigenous groups, black communities, afrocolombian, raizales and palanqueras and the Rome town (Gitano), and as a way to materialize the ethnic scope, the Special Jurisdiction for Peace, along its Rules of Procedure created the Ethnic Commission as a permanent institution to promote the effective implementation of ethnic scope in the judicial component of SIVJRGN". Likewise, added that the participation of magistrates belonging to these groups has been guaranteed and a work plan is being developed impacting all areas of the JEP.<sup>131</sup>

108. The Commission also takes note of publicly available information indicating that in March 2018, the Supreme Court of Justice delivered the first 18 case files to the JEP, including a case involving the senior leadership of the former guerrilla group and former soldiers.<sup>132</sup>

109. Based on the information received, the Commission finds that the State has partially complied with this recommendation and will continue to monitor the situation given the significant importance of articulating and coordinating justice institutions in the framework of the transitional justice process. The IACHR underscores the importance of fluid cooperation and coordination among the civilian justice system institutions—which for decades have investigated and punished grave human rights violations—with the Special Jurisdiction for Peace, which faces the challenge of guaranteeing the rights of victims and investigating, trying, and punishing those responsible for the violations. The Commission reiterates its call for the State to take the measures necessary to ensure coordination among these judicial bodies is efficient and enables compliance with each of their constitutional mandates.

110. Regarding the recommendation to **solve the human rights violations perpetrated by State agents and the demobilized members of the self-defense militias and determine the actions of illegal armed groups**, the State reported that the Office on Transitional Justice had pushed for the investigation and prosecution of the senior authorities, the mid-level officers, and the other members of the GAOML subject to the provisions of Law 975 of 2005, reaching judgments in the Chamber of Justice and Peace regarding 6,098 incidents of homicide, 2,442 forced disappearances, and 13,770 acts of forced displacement.<sup>133</sup> Likewise, it reported that the Office of the Public Prosecutor formed the Mechanism for Inter-Agency Coordination against Organized Crime (Mecanismo de Articulación Interinstitucional contra el Crimen Organizado, MAICO) as a tool for exchanging information and strategic distribution of objectives and responsibilities among the different prosecutors and police departments investigating organized crime, as well as the Coordinated Forces against Organized Crime (*Fuerzas Articuladas contra el Crimen Organizado*, FACON) comprised of a lead prosecutor and a lead judicial police investigator.<sup>134</sup>

<sup>129</sup> Communication from the ONIC. Follow-up report on compliance with the recommendations of the Truth, Justice, and Reparation report on Colombia. P. 7.

<sup>130</sup> Caracol Radio. [JEP rechaza intromisión de Fiscalía en caso de secuestros atribuidos a Farc](#). April 10, 2018.

<sup>131</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14<sup>th</sup>, 2019, p. 11.

<sup>132</sup> Supreme Court of Justice of Colombia. [Supreme Court of Justice delivers first case files to the JEP](#). March 22, 2018.

<sup>133</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 46.

<sup>134</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 47.

111. Civil society stated that the involvement of illegal armed groups in new forced disappearances in the country is noteworthy, especially in areas where the armed conflict continues and cases have been reported of threats by so-called Gaitanistas de Colombia self-defense groups.<sup>135</sup> The ONIC said that the self-defense groups persist and have strengthened recently. They stated that they were not aware of any measures aimed at dismantling these illegal groups and bringing them to justice, and said that State agents who enter indigenous territory to combat illegal groups were violating human rights and international humanitarian law.<sup>136</sup> The Attorney General's Office clarified that since 2017 the Specialized Directorate against Criminal Organizations has made 4.697 accusations, 4.408 accusations and 2.538 convictions.<sup>137</sup>

112. In a hearing during the 168th Period of Sessions of the IACHR, civil society expressed concern at the effects of Judgment C-674/17 of the Constitutional Court, finding that third parties could voluntarily appear before the JEP. The organizations indicated that the decision making the JEP jurisdiction voluntary cast uncertainty on compliance with the obligation to investigate and punish non-State and State agents who were not part of the armed forces, such as mayors, governors, and officials.<sup>138</sup> Regarding this, the State indicated during the hearing that the Constitutional Court's decision did not mean that third-party responsibility would be excluded from the Comprehensive System or that any impunity would be guaranteed. It underscored that the JEP, although voluntary, would continue to be an option for trying these cases.

113. Likewise, the organizations reported that the regular courts had so far not made substantial progress regarding the economic groups who benefited from the conflict and the armed groups. They held that, in the framework of the Justice and Peace Act of 2005, in only 31% of the cases had certification been issued for investigating third-party responsibility, and in only 10% had judicial action been launched. As of today, it is not known if the investigation has produced any results or substantial progress. They noted that the few investigations that have moved forward have not been able to dismantle the complex criminal structures (money-laundering, drug dealing), but only establish individual responsibility.<sup>139</sup>

114. During that hearing, the State held that the Office of the Attorney General of the Nation has carried out a strategy of systematization, investigation and litigation of facts in which the actions of individuals and state agents were determined in alliances with groups outside the law. In relation to the construction of an inventory of processes originated or associated to the copies of Justice and Peace, it is nourished from two sources. On the one hand, the Directorate of Transitional Justice, which has 16.724 associated copies, as of December 31<sup>st</sup>, 2018, to approximately 2.403 filed cases involving at least one civilian third party or an agent of the non-combatant state. The 16.724 proofs do not necessarily translate into an equal number of filers, bearing in mind that in some cases a filer may have one or more proofs. The other source comes from the missionary directorates of the Attorney General's Office, which have reported 7.842 processes associated with these compulsions, of which approximately 2.873 are related to processes involving civil third parties and state agents. By December 2018, 6.125 processes were systematized.<sup>140</sup>

115. Regarding compliance with this recommendation, the Commission takes into account the measures reported by the State. However, it does not find that specific results have been obtained in terms of solving the grave human rights violations, for which reason it finds the State has partially complied with this recommendation. In this regard, the IACHR reiterates the importance of solving the human rights violations committed by those groups, either through the Special Jurisdiction for Peace, Justice and Peace, or through civilian courts. Therefore, the IACHR finds that the State has not complied with the recommendation and will continue monitoring. Additionally, in the sense of what was presented in the section on **security** on the implementation of the Peace Agreement, the Commission expresses concern at the emergence of new incidents of violence and the actions of illegal armed groups that continue operating on Colombian territory.

<sup>135</sup> Fundación Nydia Erika Bautista, follow-up report for the Inter-American Commission on Human Rights, November 2018. 11.

<sup>136</sup> Communication from the ONIC. Follow-up report on compliance with the recommendations of the Truth, Justice, and Reparation report on Colombia. P. 21.

<sup>137</sup> Republic of Colombia, Additional Information to the Note MPC/OEA No.:238/2019, March 15<sup>th</sup>, 2019. p. 17.

<sup>141</sup> IACHR Hearing, [Human rights violations committed by civilians](#), 168th Period of Sessions, May 2018.

<sup>139</sup> IACHR Hearing, [Human rights violations committed by civilians](#), 168th Period of Sessions, May 2018.

<sup>140</sup> Republic of Colombia, Additional Information to the Note MPC/OEA No.:238/2019, March 15<sup>th</sup>, 2019, p. 18.



#### D. Transitional justice applied to an 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. [In the current context, information is requested on the laws governing implementation of the mechanisms provided for in the Peace Agreements under inter-American standards.]
- 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.
- 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 that may be introduced on this subject matter. Clarify the human rights violations perpetrated by State agents and persons who have demobilized from the United Self-Defenses (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.

116. Regarding the recommendation to **adapt the Legal Framework for Peace and statutory laws** to international standards, the State reported that Legislative Act 01 of 2017, establishing the SIVJRM, passed the Constitutional Court's constitutional review.<sup>141</sup>

117. The Commission takes note that, with this, the Court has reviewed six constitutional amendments, four statutes, and 35 decrees related to the peace agreement.<sup>142</sup> In particular, the United Nations Verification Mission in Colombia stated that the decision of the Constitutional Court establishing which punishments are compatible with former members of the FARC participating in politics contributes to greater legal certainty.<sup>143</sup> Also worth noting is the review of the Amnesty Act through judgment C-007 of 2018, which found that the majority of the articles were constitutional and that those receiving amnesties must comply with the other conditions of the SIVJRM. Likewise, the Court found that the recruiting of children and adolescents was not eligible for amnesty, pardon, or a decision not to bring criminal prosecution.<sup>144</sup> Lastly, with judgment C-025 of 2018, the Constitutional Court found Decree Law 277 of 2017—which establishes the procedure for applying the Amnesty Law—constitutional.

118. For their part, Colombian victims and human rights organizations stated that Legislative Act 01 includes a process for prosecuting senior officials that departs from or distorts the standards of international criminal law.<sup>145</sup> They added that the validation of this process by the Constitutional Court through judgment C-040 could violate the Colombian State's international obligations.<sup>146</sup> In this regard, the organizations pointed to Article 79 of the Statutory Law on Administration of Justice of the JEP, which took over constitutional oversight through judgment C-080, but could extend unjustified delays, and as it prevents judicial authorities from issuing judgments, imposing assurance measures, or issuing or executing arrest warrants for individuals whose conduct falls under JEP jurisdiction.<sup>147</sup>

<sup>141</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 35.

<sup>142</sup> United Nations, Security Council, United Nations Verification Mission in Colombia, S/2018/874\*, September 28, 2018, para. 3.

<sup>143</sup> United Nations, Security Council, United Nations Verification Mission in Colombia, S/2018/874\*, September 28, 2018, para. 3.

<sup>144</sup> Constitutional Court, judgment C-007 de 2018, March 1, 2018.

<sup>145</sup> Asociación Nacional de Ayuda Solidaria et al.; letter from the Prosecutor of the International Criminal Court, Fatou Bensouda, para. 100.

<sup>146</sup> Asociación Nacional de Ayuda Solidaria et al.; letter from the Prosecutor of the International Criminal Court, Fatou Bensouda, para. 100.

<sup>147</sup> Asociación Nacional de Ayuda Solidaria et al.; letter from the Prosecutor of the International Criminal Court, Fatou Bensouda, para. 78.

119. Likewise, on July 18, 2018, the State issued Law N° 1,922, adopting rules of procedure for the JEP. The law sparked criticism from civil society organizations,<sup>148</sup> and on September 16, 2018, the IACHR asked the Colombian State for information on it, as its wording differed from that of the bill sent to the Executive Branch by the JEP Magistrates as regards gender equality.<sup>149</sup> This point will be addressed further later on in this report.

120. Civil society organizations also criticize the fact that Article 75 of Law N° 1922 included a flagrant violation of the obligation to investigate, prosecute, and punish violations of human rights and international humanitarian law by providing that the JEP will suspend actions involving members of the Security Forces until a special procedure is in place to prosecute them.<sup>150</sup>

121. The Commission appreciates the progress made by the State and finds that it has partially complied with the recommendation. It therefore urges the State to continue making progress on adapting the Legal Framework for Peace and statutory laws to international standards on the subject.

122. Regarding the recommendation to adopt the measures so the **Prioritization Committee attends to grave human rights violations**, the State responded that the statutory law establishes a process with standards for prioritization and selection that incorporates transparency, due diligence of the investigations, effective remedies for appealing decisions, and respect for the rights of victims.<sup>151</sup> In this regard, the Commission takes note of the issuing of a document entitled "Criteria and Methodology for Prioritizing Cases and Situations" by the Chamber on Recognition of Truth, Responsibility, and Determination of Facts and Conduct of the SPJ.<sup>152</sup> The Commission also observes that this Chamber began its work with five cases on the "illegal detention of individuals by the FARC-EP (Case 001),"<sup>153</sup> "territorial cases on victimizing facts that took place in the southwest of Nariño (Case 002),"<sup>154</sup> "deaths improperly categorized by State agents as combat deaths (Case 003),"<sup>155</sup> and territorial cases in Urabá (Antioquia and Chocó) (Case 004)<sup>156</sup> and in the north of Cauca (Case 005).<sup>157</sup>

123. For their part, organizations of the victim and human rights organizations in Colombia said that due to the way in which the JEP operated during 2018, the State had violated its international obligations stipulated in the Rome Statute. They underscored that the "false positive" cases prioritized did not seem to have been focused on the individuals who could have had the most responsibility.<sup>158</sup> Likewise, the civil society organizations indicated that there were methodological problems in the formal launch of macro cases identifying broad, abstract situations that could result in impunity for the senior commanders responsible; that

<sup>148</sup> [Law 1,922](#); Asociación Nacional de Ayuda Solidaria et al.; letter from the Prosecutor of the International Criminal Court, Fatou Bensouda, para. 6; CIDH/SE/Art.41/09-2018/62; Ref. Law 1,922 of 2018 "Through which Rules of Procedure are adopted for the Special Jurisdiction for Peace."

<sup>149</sup> CIDH/SE/Art.41/09-2018/62; Ref. Law 1,922 of 2018 "Through which Rules of Procedure are adopted for the Special Jurisdiction for Peace."

<sup>150</sup> Asociación Nacional de Ayuda Solidaria et al.; letter from the Prosecutor of the International Criminal Court, Fatou Bensouda, para. 109.

<sup>151</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 39-40.

<sup>152</sup> Special Jurisdiction for Peace, Chamber on Recognition of Truth, Responsibility, and Determination of Facts and Conduct of the Special Jurisdiction for Peace, "Standards and Methodology for Prioritizing Cases and Situations" June 28, 2018.

<sup>153</sup> Special Jurisdiction for Peace, Chamber on Recognition of Truth, Responsibility, and Determination of Facts and Conduct of the Special Jurisdiction for Peace, Order 002 of 2018, July 4, 2018.

<sup>154</sup> Special Jurisdiction for Peace, Chamber on Recognition of Truth, Responsibility, and Determination of Facts and Conduct of the Special Jurisdiction for Peace, Order 004 of 2018, July 10, 2018.

<sup>155</sup> Special Jurisdiction for Peace, Chamber on Recognition of Truth, Responsibility, and Determination of Facts and Conduct of the Special Jurisdiction for Peace, Order 005 of 2018, July 17, 2018.

<sup>156</sup> Special Jurisdiction for Peace, Chamber on Recognition of Truth, Responsibility, and Determination of Facts and Conduct of the Special Jurisdiction for Peace, Order 040 of 2018, September 11, 2018.

<sup>157</sup> Special Jurisdiction for Peace, Chamber on Recognition of Truth, Responsibility, and Determination of Facts and Conduct of the Special Jurisdiction for Peace, Order 078 of 2018, November 8, 2018.

<sup>158</sup> Asociación Nacional de Ayuda Solidaria et al.; letter from the Prosecutor of the International Criminal Court, Fatou Bensouda, para. 11.

parole had been granted to members of the Security Forces without verifying compliance with the necessary conditions; and that superfluous hearings were held to show progress, which is not compatible with the standard requiring genuine trials, among other issues.<sup>159</sup>

124. In consideration of the information available, the Commission finds that the State has partially complied with the recommendation and urges it to redouble its efforts to guarantee the effective participation of the victims.

125. Regarding the recommendation to **take into account the considerations regarding Legislative Act 02** of 2012 regarding its incompatibility with the obligation to investigate and punish human rights violations, the State clarified that it was declared unconstitutional in its entirety by the Constitutional Court through Judgments C-740, C-754, C-756, and C-855 of 2013, and that therefore, the legislative act had no legal effects, nor did it enter into force in Colombian law.<sup>160</sup> Based on this, the IACHR finds that the State has fully complied with the recommendation. Without prejudice to this, and because the declaration of unconstitutionality was based on errors of form, the Commission reiterates the importance of taking into account the considerations of the merits set forth in the 2013 report on these types of legal acts.

### E. Mechanisms of reparation

- Continue moving forward in the implementation of Law 1,448 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 1,448, and take into account their expectations, in determining appropriate measures of reparation.

126. Regarding the **progress made in implementing Law 1,448 on Victims and Land Restitution**, the IACHR notes that the Unified Victims Registry (*Registro Único de Víctimas*, RUV) had, as of December 1, 2018, 8,794,542 victims registered, of which 8,427,910 are victims from the conflict and the remainder are victims included in compliance with Judgment C-280/2013 and Order 119 of 2013, ordering the registration of the population forcibly displaced by situations of generalized violence not sufficiently connected to the armed conflict.<sup>161</sup> Of the total number of people included as victims pursuant to the terms of Article 3 of the Victims Act, 7,012,940 are eligible for assistance and reparations.<sup>162</sup> For its part, the Commission took note of the bills to amend the Victims Acts, which would be rejected by civil society.<sup>163</sup>

127. The State reported on the implementation of the National System for Comprehensive Victim Assistance and Reparation (*Sistema Nacional de Atención y Reparación Integral*, SNARIV) for victims of the armed conflict, which includes 39 national entities (with authority to guarantee the rights of victims) and 1,133 territorial entities (32 departments and 1,101 municipalities). The Unit for Comprehensive Victim Response and Reparation (*Unidad para la Atención y Reparación Integral a las Víctimas*, UARIV), or "Victims Unit," coordinates the SNARIV.<sup>164</sup> Likewise, the State underscored that the Victims Unit has design tools, instruments, information systems, and other things that support the work of national and subnational entities and help

<sup>159</sup> Asociación Nacional de Ayuda Solidaria et al.; letter from the Prosecutor of the International Criminal Court, Fatou Bensouda, para. 63.

<sup>160</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 36.

<sup>161</sup> [Unit for Comprehensive Victim Response and Reparation, Unified Victim Registry, Colombia, January 1, 2019.](#)

<sup>162</sup> [Unit for Comprehensive Victim Response and Reparation, Unified Victim Registry, Colombia, January 1, 2019.](#)

<sup>163</sup> *El Espectador*, "Solicitan archivo de proyecto que modifica la Ley de Víctimas", October 18, 2018. Congress of the Republic of Colombia, [Draft 2018 bill to amend Law 1448 of 2011 and issue other decisions](#), Colombia, 2018. *Verdad abierta*, "Proyecto de modificación de Ley de Tierras ataca la "médula" de la restitución", September 18, 2018.

<sup>164</sup> Unit for Comprehensive Victim Response and Reparations, [National System of Comprehensive Care and Reparation for Victims](#), Colombia, 2017.

coordinate their actions. It mentioned the design of instruments that enable documentation of the management of national and subnational entities (ESIGNA and RUSCIST), as well as define the needs of victims and determine the commitments made at each level of government to address them (Tablero PAT). It also defines the programs and projects with which each entity manages and conducts the follow-up on its support for victims (Supply Management System).<sup>165</sup>

128. Regarding individual reparations, the State reported that the UARIV is providing compensation to 791,801 victims for a variety of crimes, with coverage in 32 departments and 819 municipalities. Of those victims, 7,775 are women who are victims of sexual violence. Regarding collective reparations, the State reported they cover 644 subjects (391 ethnic subjects, 214 non-ethnic subjects, and 39 organizations and groups).

129. The Office of the Ombudsperson indicated that the budget allocated to it by the State is higher than the amount established in documents prepared by the National Council on Economic and Social Policy, but projections indicate that in order to have the resources needed to execute the public policy on victims, approximately 129.9 billion pesos would be needed from 2018 to 2021, higher than the national government's estimate of 28.4 million pesos.<sup>166</sup> The Ombudsperson also pointed to difficulties regarding the effective incidence of victim participation in planning instruments such as the PAT (Territorial Action Program).

130. In the observations to the present report, the State considered that this information ignores the advancements made in matter of effective victims participation and emphasized the impacts to achieve the inclusion of victims to the participation in the design as in the implementation of public policy, seeking to an appropriation of the process, condition that has permitted them to claim their rights and accordingly as an assertive actor.<sup>167</sup>

131. Civil society indicated a need to postpone the launch of the Unified Victims Registry, saying that it had not been sufficiently publicized and new victims needed to be added who did not register themselves. Also, victims living abroad needed to be recognized. Information was also received from civil society on the lack of indicators and metrics regarding the extent of coverage of the victim population needing psychosocial care from PAPSIVI in rural areas<sup>168</sup> and the importance of constructing a public policy for providing comprehensive healthcare to victims with a psychosocial approach by expanding the program to include differentiated approaches and cover the specific needs of the victims.<sup>169</sup>

132. Regarding the land restoration process, it also said that Decree 896 of 2017 created the Comprehensive National Illegal Crop Substitution Program (PNIS) through which to offer sustainable alternatives to farming communities through illicit crop substitution, not simply reduction programs.<sup>170</sup> The State reported that in February 2018; Decree 362 of 2018 was issued, establishing the regulations for the PNIS.<sup>171</sup> As indicated in the section on implementing the Peace Agreement, although progress has been verified on the Program, especially regarding the number of families registered and the amount of hectares voluntarily

<sup>165</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>166</sup> [Office of the Ombudsperson of Colombia, contribution to follow-up on compliance with the recommendations included in the truth, justice, and reparation report, letter dated October 29, 2018, pg. 16.](#)

<sup>167</sup> Republic of Colombia, Note MPC/OEA No.:238/2019,f March 14th, 2019, p. 12.

<sup>168</sup> [The Consultoría para los Derechos Humanos y el Desplazamiento \(hereinafter CODHES\), the Colectivo Orlando Fals Borda \(COFBO\), the Comisión Intereclesial de Justicia y Paz, Humanidad Vigente, the Grupo Interdisciplinario por los Derechos Humanos, the Fundación Comité de Solidaridad con los presos políticos, and la Corporación Jurídica Yira Castro, request for hearing in the framework of the 170th Period of Sessions of the Inter-American Commission on Human Rights \(IACHR\) on the issue of the rights of the victims of Colombia's internal armed conflict, particularly reparations.](#)

<sup>169</sup> [Presentation made by a coalition of civil society platforms and organizations for EPU COLOMBIA on the occasion of the UN Human Rights Council evaluation of Colombia in the framework of the Universal Periodic Review, May 10, 2018.](#)

<sup>170</sup> Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

<sup>171</sup> [Decree 362 of 2018.](#)

eradicated in outlying areas, difficulties persist regarding the effective implementation of technical assistance and security guarantees for territorial leaders.<sup>172</sup>

133. The United Nations Office on Drugs and Crime (UNODC) and the government highlighted that the underground economies—which includes mining and drugs—continue causing violence in the country and represent a threat to the peace process. They reported that 77,659 families had signed voluntary crop substitution agreements in the framework of the PNIS. As of August 20, approximately 20,845 ha of coca crops had been eradicated under the framework of these agreements. The Armed Forces have assisted in the voluntary eradication of 5,374 additional hectares.<sup>173</sup> However, in May 2018, the Director of the Agency on the Substitution of Illegal Crops warned that it was impossible to meet the goal of eradicating 50,000 ha of illegal crops due to the violence that persists in the area.<sup>174</sup>

134. In its observations to the draft of the present report, the State informed that the Defense Ministry notifies that during 2018, 60.183 hectares of illicit harvests were eradicated; goal that was achieved satisfactorily by the Public Force.<sup>175</sup> The IACHR takes note on the observations made by the State.

135. For its part, the MAPP/OAS underscores progress in this program compared to the others in the form of a presence in 85 rural municipalities that were severely affected by the violence and that were densely planted with illegal crops. As of August 2018, 77,659 families are recognized to have been registered by the Office on the Substitution of Illegal Crops. However, they noted the significant gap between this figure and the number of families that, during the same short period of time, received technical assistance (29,552) and food security (6,623), which is connected to issues with implementing the program that, in addition to holding it back, foster the emergence of new social conflicts.<sup>176</sup>

136. Based on the above considerations, it is the Commission's understanding that the State has partially complied with the recommendations in this section and urges it to continue moving forward in the implementation of Law 1,448, guaranteeing implementation of a differentiated approach for women, children and adolescents, people with disabilities, indigenous peoples, people of African descent, LGBTI persons, human rights defenders, and others, as well as effective participation of victims when deciding on the pertinent measures of reparations.

## F. Internal Forced 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.

137. In 2018, 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 dynamics of violence that persist even after the peace agreement.

<sup>172</sup> OAS, Twenty-fifth Report of the Secretary-General to the Permanent Council on the Mission to Support the Peace Process in Colombia of the Organization of American States (MAPP/OAS), pg. 3.

<sup>173</sup> [UN Security Council. Report of the Secretary-General on the United Nations Verification Mission in Colombia, December 28, 2018. UNODC. Press Release. "Coca Crops in Colombia at all-time high, UNODC Report finds," September 19, 2018.](#)

<sup>174</sup> [CNN Colombia. "¿Por qué Colombia no alcanzará a cumplir la meta de erradicar 50.000 hectáreas de cultivos de coca?" May 16, 2018.](#)

<sup>175</sup> Republic of Colombia, Note MPC/OEA No.:238/201, March 14th, 2019, p. 13.

<sup>176</sup> OAS, Twenty-fifth Report of the Secretary-General to the Permanent Council on the Mission to Support the Peace Process in Colombia of the Organization of American States (MAPP/OAS), pg. 7.

138. Regarding its recommendation to **adopt the measures necessary to prevent forced displacement**, the IACHR observes that the measures reported by the State are aimed at providing support to the displaced population. For its part, the Office of the Ombudsperson reported the existence of a variety of institutional spaces that have been defined through legal measures related to the implementation of the Peace Agreement and security guarantees for at-risk communities (Decree Law N° 895 of 2017, Decree N° 1,581 of 2017, Decree N° 2,124 of 2017, Decree N° 2,078 of 2017, Decree N° 660 of 2018). However, the Office of the Ombudsperson pointed to a need to provide the necessary resources to fund it properly.<sup>177</sup> For their part, civil society organizations reported to the IACHR that prevention measures have failed to stop displacement, as demonstrated by the fact that thousands of people continue to be the victims of internal forced displacement in Colombia as a consequence of human rights violations and violations of international humanitarian law.

139. According to the United Nations High Commissioner for Refugees (UNHCR), as of the end of 2017, Colombia had the second largest displaced population in the world, with 7.9 million victims of the conflict, outranked only by Syria.<sup>178</sup> For its part, the Single Registry of Victims (*Registro Único de Víctimas*, RUV) had 8,794,542 registered victims as of the end of 2018, of which 8,427,910 are victims of the armed conflict.<sup>179</sup> Regarding this, the Internal Displacement Monitoring Centre (IDMC) counted 6,509,000 displaced persons in 2017, of which 139,000 were newly displaced as a result of violence and conflict.<sup>180</sup> Regarding its figures, the IDMC has indicated that the figure is lower because the RUV maintains a record of every person who has fled violence and does not reflect when some individuals are no longer displaced.<sup>181</sup>

140. The Commission observed that in 2018, new cases of internal displacement were registered, the majority in areas the FARC had left, creating contexts of violence against the population from the actions of common and organized criminals and in response to the work of human rights defenders. Regarding this, the organization Consultoría para los Derechos Humanos y el Desplazamiento (CODHES) reported that between January 1 and October 31, 2018, there were 158 events of multiple and mass displacement that affected 45,471 people, of which 10,506 were people of African descent and 8,526 were indigenous.<sup>182</sup> CODHES reported that 72% of the displacement events took place in the departments of Norte de Santander, Antioquia, and Nariño,<sup>183</sup> and it recorded other departments with a high number of displacements, including Córdoba, Putumayo, Valle del Cauca, and Cauca.

141. Regarding this, and as an example of the situation, for the beginning of the year, the Colombia Office of the United Nations High Commissioner of Human Rights and the UNHCR expressed concern at the persistence of mass displacements and human rights violations in Bajo Cauca, where at least 822 people had been affected (461 adults and 361 children and adolescents), the majority belonging to indigenous peoples and rural communities. They also expressed concern at the increase in homicides in the area, which had surpassed the figure from the previous year by 225%.<sup>184</sup>

142. In its comments on the draft of this report, the State presented information from the Unit for Comprehensive Care and Reparation for Victims on overcoming the vulnerable situation of victims of displacement and also on the humanitarian care provided to them in the components of temporary housing and basic food for minimum subsistence, highlighting the results achieved. He stressed that the budget execution for the delivery of care in the established period is \$564.179.352.797. On the same regard, presented information related to returns and relocations, as well as advances in administrative compensation which has

<sup>177</sup> Office of the Ombudsperson of Colombia, Follow-up on compliance with the recommendations of the Truth, Justice, and Reparation report, pg. 21.

<sup>178</sup> UNHCR, [Global Trends: Forced Displacement in 2017](#), pg. 6.

<sup>179</sup> Victims Unit, [RUV through October 7, 2017](#).

<sup>180</sup> Internal Displacement Monitoring Centre (IDMC), [Global Report on Internal Displacement 2018](#), p. 10.

<sup>181</sup> Internal Displacement Monitoring Centre (IDMC), [Global Report on Internal Displacement 2018](#), p. 49.

<sup>182</sup> Consultoría para los Derechos Humanos y el Desplazamiento (CODHES), [Desplazamiento forzado](#), September 20, 2018.

<sup>183</sup> Consultoría para los Derechos Humanos y el Desplazamiento (CODHES), [Desplazamiento forzado](#), September 20, 2018.

<sup>184</sup> UNHCR, [La Oficina en Colombia del Alto Comisionado de la ONU para los Derechos Humanos y la Agencia de la ONU para los Refugiados manifiestan su preocupación por la persistencia de desplazamientos masivos y violaciones de derechos humanos en el Bajo Cauca](#), February 18, 2018.

meant an increase of 90% of victims compensated, especially victims of forced displacement.<sup>185</sup> Additionally, the Military Forces and National Police informed that they permanently attend the alerts emitted within CIPRAT framework and that they increase military operations and police operatives in every area of the country where a situation has happened.<sup>186</sup>

143. In this regard, the Commission welcomes the measures adopted by the Colombian State to prevent displacement and urges it to enhance them by providing sufficient financial resources and staff to prevent and address displacement. The Commission finds that the State has partially complied with its recommendation.

144. Meanwhile, regarding **the measures to guarantee protection and safety for individuals who return**, the State informed the IACHR on the implementation of the Families on their Land program, which affords processes for return and relocation in the country's rural areas by offering benefits to participating households. It stated that the program's third intervention is currently being developed for 2017-2018, with a goal of supporting a total of 10,000 households, with a budget of 54 billion pesos. Regarding the measures of protection adopted during the last 12 month period, broken down by rural and urban origin, 2017-2018 reported a total of 1,570 measures, 745 in rural areas and 825 in urban areas.<sup>187</sup>

145. In this regard, the Office of the Ombudsperson indicated that in communities with local processes for return and reintegration, violations of economic, social, cultural, environmental, and political rights have been identified, such as a lack of institutional support for social and economic stabilization; a failure to provide educational and health infrastructure; and a lack of basic sanitation and food security, putting at risk the sustainability of the processes. Likewise, returnees are observed to have difficulties reentering local economies and labor markets, and have faced barriers to accessing land to cultivate and a lack of access roads to rural areas, among other issues.<sup>188</sup>

146. Regarding this, 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, natural disasters, and the indiscriminate effects of landmines. Therefore, the Commission finds that the State has partially complied with the recommendation and urges it 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.

147. Lastly, regarding the recommendation on the differentiated impacts of the armed conflict on indigenous communities, the Colombian State informed the IACHR on the implementation of the IRACA plan, a comprehensive intervention with a differentiated approach based on ethnicity that includes the strengthening of human and social capital, improving food security, and establishing or enhancing productive community projects, while respecting the customs unique to the different communities to foster the guarantee of their rights. According to the State, the program arises in response to the orders of the Constitutional Court found in Judgment T-025 of 2004 and Orders 004 and 005 of 2009, to become the main program for providing differentiated support to ethnic populations in the country's rural areas.<sup>189</sup>

148. The Commission recognizes the measures that the Colombian State has been adopting to address the issue of internal displacement. In consideration of the foregoing and of the broad scope of internal displacement in Colombia, the Commission finds that the State has partially complied with its recommendation and urges the Colombian State to enhance its measures to prevent and address internal displacement, as well

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<sup>185</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th, 2019, p. 13-16.

<sup>186</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th 2019, p. 16.

<sup>187</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>188</sup> Office of the Ombudsperson of Colombia, Follow-up on compliance with the recommendations of the Truth, Justice, and Reparation report, pg. 26.

<sup>189</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

as protect and offer durable solutions to displaced persons who return to their territories, as well as move forward with prosecuting these cases.

149. Regarding the **prosecution of cases of forced disappearance**, the State indicated that the Office of the Attorney General has 1,068 cases before regular courts with formal requests for charges and 1,089 cases with indictments for the crime of forced displacement. Regarding transitional justice, it stated that identifying the pattern of forced displacement has made it possible to identify the politics of various groups when committing the acts, the main one being "the struggle against subversives" and the secondary factor being "social, territorial, and resource control." Practices mainly include armed incursion, combat with the enemy, generalized threats and specific or individual threats, through public meetings, pamphlets, or "blacklists." It reported that in the majority of cases, the codification of the criminal offense has been adjusted to the international standard and described as "Deportation, expulsion, transfer, or forced displacement of a civilian population" (Article 159 C.P.), and the pattern of the displacement has been built and presented, generally associated with cases of forced removal or displacement of individuals or communities.<sup>190</sup>

150. Regarding the JEP, the State reported on the opening of the investigation of such conduct in Case 002, on the situation of the municipalities of Ricaurte, Tumaco, and Barbaçoas of the Department of Nariño, which includes acts allegedly committed by members of the FARC-EP and the Security Forces. It also reported that in September 2018, the Chamber asserted jurisdiction in Case 004 on the territorial situation of the region of Urabá in the municipalities of Turbo, Apartadó, Carepa, Chigorodó, Mutatá, and Dabeiba in the Department of Antioquia and El Carmen del Darién, Riosucio, Unguía and Acandí, in the Department of Chocó, allegedly directly or indirectly committed in connection with the armed conflict by members of the FARC-EP and the Security Forces between January 1, 1986, to December 1, 2016.

151. Regarding this, the Office of the Ombudsperson informed the Commission that the Office on Transitional Justice has registered a total of 164,185 cases of forced displacement attributed to the AUC (76.6%), FARC (20.3%), and ELN (3.1%), of which charges have been filed in 22,144, or only 13.5% of the cases.<sup>191</sup>

152. The Commission takes note of the progress reported by the State, while at the same time recalling that the lack of an effective investigation into the facts from which the internal displacement resulted contributes to perpetuating the victim's situation of vulnerability and the repetition of these types of facts, and constitutes a barrier to access to justice. The IACHR observes that the State has partially complied with its recommendation and urges the State to deploy enhanced measures to investigate, process, and punish the crime of forced displacement.

## H. Economic, Social, Cultural, and Environmental Rights (ESCER)

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

153. The Commission notes that in Colombia, the social situation of poverty and inequality remains crucial for resolving the social conflict facing the country. In this regard, the State has implemented a series of social programs aimed at addressing the sharp differences in Colombian society. The State reported on the implementation of two programs as measures to reduce poverty in the country. The policy framework of the first, "Social Prosperity," includes two strategic thrusts: Social inclusion and poverty reduction. It applies a differentiated methodology based on a multidimensional approach to poverty to bring together all the information on all the members of a household but with their respective differences, making it possible to differentiate their needs and target efforts.

<sup>190</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>191</sup> Office of the Ombudsperson of Colombia, Follow-up on compliance with the recommendations of the Truth, Justice, and Reparation report, pg. 27.



154. The second program, "More Families in Action," established under Law 1,532 of 2012, which regulates the program, benefits indigenous families experiencing poverty in accordance with the targeting and prior consultation procedures it establishes. The program seeks to contribute to overcoming and preventing poverty and training up human capital by supplementing income on the condition of compliance with health and education co-responsibilities, as well as the coordination of complementary actions.<sup>192</sup> Likewise, through the inclusion of the program "Young People in Action," young, vulnerable people experiencing poverty are trained and offered skills development. These individuals are provided with academic training and soft skills development to facilitate their integration into society and the workforce.<sup>193</sup>

155. According to the State, 2,425,022 families benefit from the "More Families" program. It highlighted that 124,874 indigenous families were supported.<sup>194</sup> In 2018, the number of beneficiary families increased to 2,511,457, with 765,857 children receiving healthcare and 3,196,489 children receiving education.<sup>195</sup> Consequently, the Food Security Network program was established with a proposed investment of 40 million pesos. The program has four components, focused on food education, food for consumption, capacity building, and food delivery.<sup>196</sup>

156. However, certain mechanisms involving access to housing loans have been affected by recent measures that did not help close the country's inequality gap. Resolution 4,929 of December 13, 2018,<sup>197</sup> ended subsidies for purchasing homes that were not social interest homes, which were mostly targeted to the middle income sector. According to the resolution, the change was made as a result of budgetary restrictions put in place in 2019 establishing the coverage available for that subsidy.<sup>198</sup> Added to this is the fact that in Colombia, 1% of the population accounts for 20% of all income in the country. This goes hand-in-hand with the also-concerning statistic that 40% of people in the lower income group live on approximately 13,250 pesos a day.<sup>199</sup>

157. The Office of the Ombudsperson of Colombia stated that although significant progress has been made toward implementing programs, plans, and projects aimed at combating poverty and extreme poverty, they did not fully cover all the country's departments, especially the programs focused on combating multidimensional poverty.<sup>200</sup> Added to this is the fact that according to some studies by the Organization for Economic Cooperation and Development (OECD), Colombia is the most unequal country in Latin America as a result of the high income concentration, evident in a significant gap in the income distribution, as well as low rates of access to good-quality jobs.<sup>201</sup>

158. The Commission notes that the social policies in the region reflect an increasing trend toward understanding the multidimensional nature of poverty and seeking progressively to incorporate the comprehensive satisfaction of ESCER.<sup>202</sup> At the same time, the Commission takes note that these conditional programs infringe upon the basis of the human rights themselves by requiring people living in situations of poverty to demonstrate that they deserve to exercise their right to social security.<sup>203</sup> The Commission therefore

<sup>192</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 68.

<sup>193</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 70.

<sup>194</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 68.

<sup>195</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 69.

<sup>196</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 71-72.

<sup>197</sup> Ministry of the Treasury of Colombia, [Resolution 4929](#), December 13, 2018

<sup>198</sup> La FM, [Subsidios para la clase medio no van más en 2019](#), December 17, 2018

<sup>199</sup> El Tiempo, [2,2 millones de colombianos viven con menos de dos dólares al día](#), October 19, 2018. Equivalent to approximately US\$4.24.

<sup>200</sup> Office of the Ombudsperson of Colombia, contribution to follow-up on compliance with the recommendations included in the Truth, Justice, and Reparation report, letter sent on October 29, 2018, pg. 33.

<sup>201</sup> BBC Mundo, ["Por qué en Colombia se necesitan 11 generaciones para salir de la pobreza y en Chile 6"](#), August 2, 2018

<sup>202</sup> IACHR, Reports on Poverty and Human Rights in the Americas, OEA/Ser.L/V/II.164 Doc. 147. (September 7, 2017) para. 481.

<sup>203</sup> IACHR, Reports on Poverty and Human Rights in the Americas, OEA/Ser.L/V/II.164 Doc. 147. (September 7, 2017) para. 482.

notes that the public policies implemented to reduce poverty must include a human rights approach at all stages of design, planning, implementation, and evaluation.<sup>204</sup>

159. Although the State provided information on the scope of the service provided by its social programs, the Commission notes that they do not offer the level of coverage desired, nor do they incorporate a human rights approach. Based on this, the Commission concludes that the State has partially complied with this recommendation.

## I. Groups acutely affected in contexts of armed conflict.

### 1. The invisibility of people of African descent, *raizales*, and *palenqueras*

- Adopt urgent measures to overcome the structural discrimination that the Afro-Colombian population endures, as well as positive measures to eliminate racial discrimination and guarantee that people of African descent 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.
- Urgently adopt positive measures with a gender approach to address the multiple forms of discrimination facing women of African descent and their specific needs.
- Implement adequate mechanisms for prior consultation on all measures affecting people of African descent and guarantee that communities can enjoy and make use of their territories, free from interference.
- Move forward in the effective implementation of multiple policies and programs created to guarantee the rights of the Afro-descendant population by guaranteeing adequate mechanisms for participation and representation.

160. The Commission observes that Afro Colombian people face serious obstacles to accessing health and education services, as well as to obtaining a home and accessing jobs, especially at management and more senior levels. Likewise, the underrepresentation and thin participation of the Afro descendent population in politics demonstrates additional impediments to accessing the structures of political power and taking an active role in designing public policies aimed at improving their situation of structural discrimination. Additionally, through its different mechanisms and as it has indicated in the above referenced report, Internal Forced Displacement, the IACHR has corroborated the disproportionate impact that violence and forced displacement has on Afro-descendent people.

161. In its observations made to the project of the present report, the State rejected the observations made by the IACHR and registered that while the State recognizes that this is a population affected by armed conflict and poverty, in no way does the State promote discrimination against this population, and instead adopts measures aimed at its effective inclusion, which have been widely communicated to the Commission. It also remarked that within the Military Forces and the National Police, there are sectoral policies for the protection, recognition, prevention and protection of communities of indigenous peoples and black, Afro-Colombian, Raizales and Palenqueras communities, which are accompanied by permanent training programs at all levels of command.<sup>205</sup>

162. The IACHR takes note on the observations provided by the State. However, the IACHR restates that the pattern of indirect discrimination occurs, in the public or private sphere, when an apparently neutral provision, criterion or practice is likely to entail a particular disadvantage for persons belonging to a specific

<sup>204</sup> IACHR, Reports on Poverty and Human Rights in the Americas, OEA/Ser.L/V/II.164 Doc. 147. (September 7, 2017) para. 485.

<sup>205</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th, 2019, p. 17.

group, or disadvantages them.<sup>206</sup> In regard of the registered information in the present report, the IACHR calls upon the State to adopt special measures and affirmative actions in the areas of education, employment, housing, politics, among others, in order to reverse the impacts of the historical discrimination to which the Afro-descendant population was subjected.

163. Thus, with regard to the recommendation to **adopt urgent measures to overcome the structural discrimination that the Afro-Colombian population endures, as well as positive measures to eliminate racial discrimination and guarantee that people of African descent are able to exercise their rights on an equal footing with the rest of the population**, the Commission welcomes that with regard to the investigation, prosecution, and punishment of grave human rights violations, the JEP's Recognition Chamber has adopted a document of guidelines for the presentation of reports prepared by victim, indigenous, black, Afro-Colombian, *raizal*, *palenquera*, *rom*, and Colombian human rights groups to guide and stimulate participation.<sup>207</sup>

164. According to the information submitted by the State, the Chamber's analysis has made it possible to identify that the conflict's impact on communities of people of African descent has centered on violation of their rights to territory and to exercise their practices and customs. Specifically, it was established that the forced displacement associated with the illegal appropriation of lands was the most common act of victimization among the region's Afro-Colombian communities.<sup>208</sup>

165. In its observations to the project of the present report, the State remitted additional information regarding the specific affirmative action measures for the inclusion of an ethnic scope in the Special Jurisdiction for Peace in institutional designs for the formulation of guidelines with a differentiated ethnic scope, aged groups, gender, and disabled, and for the promotion of present reports of afro-Colombian women. In addition, it informed about the consultancy processes in the National Space of Previous Inquiry. There were consulted 4.484 persons in the framework of socialization of informative relevant spaces and dialogue, 32 departments of the national territory were covered.<sup>209</sup>

166. Likewise, the Commission welcomes that the National Police is conducting prevention activities among which stand out the 100 activities conducted for Afro-descendant, *raizal*, and *palanquero* communities. Likewise, the IACHR appreciates that by providing support for the preparation of the Comprehensive Plans on the Prevention of Human Rights Violations the Human Rights, the Office of the Ministry of the interior has been able to set the standards for interagency coordination, establishing a framework of action and guidelines on early and urgent prevention and non-repetition guarantees. Equally important was the adoption of a specific approach to risk analysis that aims to protect Afro-descendant communities, including their leaders and representatives in outlying areas.<sup>210</sup> However, the IACHR is concerned at the increase in violence in regions with a large population of people of African descent, which continues to displace hundreds of families<sup>211</sup> and have differentiated impacts on the economic and social rights of these communities,<sup>212</sup> as well as increase the homicide rate.<sup>213</sup>

167. The IACHR observes with concern that the State's failure to maintain a presence in certain regions following the Peace Agreement has led to a proliferation of organized criminal groups, with a particular impact in the Department of Nariño, where the presence of the Gente del Orden, Guerrillas Unidas del Pacífico,

<sup>206</sup> OAS, Inter-American Convention Against Racism, Racial Discrimination and Conex Forms of Intolerance, Adopted in Antigua, Guatemala. June 5<sup>th</sup>, 2013.

<sup>207</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>208</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>209</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14<sup>th</sup>, 2019, p.17-18.

<sup>210</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>211</sup> *Europapress*, [La violencia en Colombia provocó el desplazamiento de casi 100 personas al día en el primer semestre del año](#), July 25, 2018.

<sup>212</sup> *La Vanguardia*, [Embera: tras el conflicto y la catástrofe, toca superar la crisis de salud](#), December 10, 2018. El Pilón, [La deserción escolar por la violencia, tarea urgente sin resolver](#), December 26, 2018.

<sup>213</sup> Human Rights Watch, [Colombia: New Armed Groups Plague Afro-Colombian Zone](#), December 13, 2018.

and Frente Oliver Sinisterra<sup>214</sup> criminal organizations has been reported; and in the department of Chocó, where guerrilla actions by the Ejército de Liberación Nacional (ELN), the Ejército Popular de Liberación (EPL), and the Clan del Golfo have been reported.<sup>215</sup>

168. In the same sense, the IACHR expresses alarm at the increase in the murder rate in 2018 in 146 of the 242 municipalities where the FARC operated. With special emphasis on three subregions of the post-conflict: Bajo Cauca, the Antioquia North, and the Antioquia Northwest.<sup>216</sup> The IACHR underscores that the analysis and design of public policies focused on reducing these deaths must necessarily take an ethno-racial and poverty and gender approach. Consequently, the IACHR finds that this measure remains pending compliance.

169. Regarding the recommendation to adopt programs to **compile disaggregated statistics on the Afro-descendant population, distinguishing men from women, girls from boys**, the IACHR celebrates that the National Administrative Department on Statistics is including a question on the National Population and Housing Census questionnaire on ethnic-racial self-identification that follows statistical methods and standards and is the result of a consultation process with Afro-descendant civil society.

170. The IACHR welcomes the Colombian State's efforts to develop a participatory process that will enable the organizations representing the various racial-ethnic groups (indigenous, *raizales*, *palanqueros*, people of African descent, and rom) to provide support and technical proposals that enable the inclusion of an ethnic-racial approach in the content of the questionnaire based on elements including culture, community of origin, and phenotype. The Commission also recognizes the Colombian State's efforts to collect disaggregated data, particularly through the inclusion of questions on gender and on the identification of children and adolescents.<sup>217</sup> Although the State declined to include this recommendation in its response, based on available information, the IACHR concludes that it has substantially complied with this recommendation.

171. Likewise, regarding the recommendation to **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**, particularly the recommendation that the question on self-identification should be among the first questions asked on the basic questionnaires, the Commission expresses concern at the regional results from Valle del Cauca, Chocó, and Nariño.<sup>218</sup> According to the information received, the results did not reflect the local reality because proper measures for collecting the data that take into account the reality of particularly vulnerable communities were not employed, especially regarding communities affected by forced displacement or voluntary migration. Likewise, the Commission expresses its concern at the limitations that arose during the virtual phase with regard to access to information, insufficient coverage of campaigns to raise awareness among Afro-descendant communities, logistical challenges to collecting information, obstacles as far as access to certain areas, and the unavailability of up-to-date land maps in certain areas of the country for conducting the census.<sup>219</sup>

172. In its observations on the draft of this report, the State reported that the National Administrative Department of Statistics (DANE), in 2016 developed a process of consultation and coordination of the National Population and Housing Census (CNPV 2018) with ethnic populations, specifically with the Black, Afro-Colombian, Raizal and Palenquera (NARP) populations, where inputs were received for the design

<sup>214</sup> Human Rights Watch, [Recycled Violence](#), December 13, 2018.

<sup>215</sup> *Proceso*, [En un año, 77 mil víctimas por conflicto armado en Colombia pese a acuerdo de paz: ICRC](#), March 1, 2018.

<sup>216</sup> Fundación Ideas para la Paz, [Sin política pública contra los homicidios no es posible proteger la vida en Colombia](#), December 15, 2018.

<sup>217</sup> CNOA. Visibilidad estadística del pueblo afrocolombiano, <https://convergenciagnoa.org/visibilidad-estadistica-del-pueblo-afrocolombiano/>.

<sup>218</sup> Dinero. Descache' del Dane: somos 45,5 millones de habitantes. <https://www.dinero.com/pais/articulo/numero-de-habitantes-en-colombia-segun-censo-2018/263907>, November 6, 2018.

<sup>219</sup> El Tiempo. Censo de población 2018: ¿vivimos en otro país?, <https://www.eltiempo.com/economia/sectores/resultados-del-censo-de-poblacion-2018-vivimos-en-otro-pais-294914>.

of routes for the collection of census information, communications strategy and other aspects of the design that from the realities of the territory and from the populations themselves.<sup>220</sup> Regarding the statement about the insufficient coverage of the awareness campaigns, DANE reported that "as a result of the agreements reached in the consultation and consultation process, an association agreement was generated with the company AICOLD (Asociación Intercultural Colombia Diversa) proposed by the population NARP, so that they themselves, according to the knowledge of their cultural, organizational and territorial particularities, develop the communication strategy with a differential ethnic approach for the National Population and Housing Census 2018 of the NARP communities, through Association Agreement No. 2180696 signed with FONADE, for a value of one thousand one hundred million pesos (\$1'100.000.000), for the activities reported".<sup>221</sup> Regarding the unavailability of property cartographies in some areas for the development of the Census, DANE complemented that it designed a census framework with national coverage that allows the georeferenced of each and every one of the census observation units. That for areas of difficult access or those without property coverage, the method of collection by routes were implemented. In addition, within the framework of the Consultation and Consultation processes for Census 2018 carried out with the Indigenous and Afro-Colombian population, and as part of the preparatory activities for this Census, operational areas were designed for the purpose of census collection in territories that are difficult to access, with large areas and a majority ethnic population (Amazonia, Pacific Platform, Sierra Nevada de Santa Marta, Alta Guajira, among others), taking into account the characteristics of these regions, based on various sources of information. As a result, approximately 16,000 mostly indigenous and black communities were georeferenced, which were reflected in the cartographic products sent to the field. The general objective of the NARP population consultation process for the 2018 Census was to guarantee the fundamental right of ethnic groups to citizen participation in a census operation in order to recognize dissent and establish consensus, which would guarantee that statistical information on the Afro-Colombian population in Colombia would retain the relevance, quality and coverage necessary for decision-making with an ethnic differential focus.<sup>222</sup>

173. The IACHR recognizes and welcomes the State's efforts to design and implement, in a participatory and collective manner, the inclusion of the Afro-descendant variable and other vulnerable groups in census surveys. In particular, the IACHR recognizes the State's efforts to reach out to civil society organizations as well as remote and rural areas. However, the Commission considers that full compliance with this recommendation requires a cultural change based on the training of pollsters and the sensitization of civil society so that the census results reflect the ethnic-demographic reality of the country. In view of the foregoing, the IACHR understands that this recommendation has been partially fulfilled.

174. In the framework of policies aimed at **advancing the rights of women of African descent**, and in the framework of the recommendation to urgently adopt positive measures with a gender approach to address the multiple forms of discrimination facing women of African descent and their specific needs, the IACHR welcomes the measures aimed at enhancing the advocacy capacity of Afro Colombian and indigenous women who are victims of the armed conflict, as well as the measures aimed at enhancing gender violence prevention institutions, participation, and leadership, carried out by the Presidential Council on Women's Equity (CPEM).<sup>223</sup> However, the IACHR is concerned at the high poverty rates affecting women of African descent, as well as their low incomes compared to other population groups.<sup>224</sup> Based on this situation, the IACHR concludes that the State has partially complied with this recommendation.

175. Likewise, with regard to the right to prior consultation and the recommendation to **implement adequate mechanisms for prior consultation on all measures affecting people of African descent** and guarantee that communities can enjoy and make use of their territories, free from interference, the Commission observed with concern the draft law before the Congress of the Republic of Colombia, which regulates prior consultation.

<sup>220</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th, 2019, p. 17-18.

<sup>221</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th, 2019, p. 17-18.

<sup>222</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th, 2019, p. 18-21.

<sup>223</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>224</sup> CEPAL, [Mujeres afrodescendientes en América Latina y el Caribe Deudas de igualdad](#), 2018.

176. Based on the information received on the bill, the IACHR has three central concerns.<sup>225</sup> The first concern is with the requirement that communities be certified in order to receive recognition in order to enjoy this right. Second is with regard to the scope of the consultation, which, according to the bill, would be applicable only to lands that are titled, inhabited, and exploited. Based on this interpretation, the ancestral spiritual lands of these groups would not be subject to protection through a collective decision of traditional communities and peoples. The third concern involves the nonbinding character of the decision resulting from a consultation of communities affected by a certain project, work, or activity. In this regard, the State would be able to move forward with the legislative or administrative measure harmful to the communities affected.<sup>226</sup>

177. The IACHR highlights that, according to Inter-American standards, the execution of works, projects, and activities that affect traditional peoples must include their effective participation from early on in the design, execution, and evaluation of development projects carried out on their ancestral lands and territories.<sup>227</sup> Based on this situation, the IACHR concludes that this recommendation remains pending compliance.

178. In its observations on the project of the present report, the State remitted information regarding adopted measures by the Interior Ministry to guarantee the participation of communities in the execution of projects.<sup>228</sup> Nonetheless, the information does not refer to the bill analyzed in this topic of the report by the IACHR.

179. Lastly, regarding the recommendation to move forward in the **effective implementation of multiple policies and programs created to guarantee the rights of the Afro descendant population by guaranteeing adequate mechanisms for participation and representation**, the IACHR welcomes the policy to provide land compensation to territorial collectives, which has resulted in compensation to the beneficiaries of the Afro Land Tax. The Commission also celebrates the increase in the number of beneficiaries of the special educational loan fund for black communities, including new beneficiaries and renewals for the 2018 period.<sup>229</sup>

180. The IACHR expresses concern regarding the management of natural resources and its acute impact on traditional communities of African descent. In this regard, the IACHR receives with dismay information that 80% of the metals mined in the country are mined illegally, removed without permission or basic environmental precautions.<sup>230</sup> According to the information received by the Commission, the illegal operations are concentrated in the departments of Antioquia, Chocó, and Nariño, which have large Afro-descendant and indigenous populations.<sup>231</sup>

181. In its comments on the draft of this report, the State provided information on the actions taken by the National Police, through the Directorate of Carabineros and Rural Security, which has led operations against the illegal exploitation of mining deposits in the national territory, as well as on various challenges faced. Moreover, the State reported that it had drawn up an intervention protocol in addition to the administrative act - Permanent Operational Directive No. 001 DIPON -DICAR "Actions of the National Police in the Control of Mining Exploitation in Directive Country 001".<sup>232</sup>

<sup>225</sup> El Espectador, [La Consulta Previa](#), October 18, 2018.

<sup>226</sup> Congress of the Republic of Colombia [Bill regulating the fundamental right to prior consultation along with other provisions](#), 2018.

<sup>227</sup> *El Espectador*. CIDH felicita a la Corte Constitucional por sentencia de consulta previa. <https://www.elespectador.com/noticias/judicial/cidh-felicita-la-corte-constitucional-por-sentencia-de-consulta-previa-articulo-824767>, November 21, 2018.

<sup>228</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th 2019, p. 21.

<sup>229</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 130.

<sup>230</sup> *El Nuevo Herald*, [El oro sucio es la nueva cocaína en Colombia, y también deja un rastro de sangre](#), January 17, 2018.

<sup>231</sup> *El Espectador*, [Minería ilegal del oro le compite al narcotráfico](#), May 4, 2018.

<sup>232</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th, 2019, p. 21-22.

182. Along the same lines, the IACHR observes with dismay the increasing involvement of organized criminal groups in the exploitation of illegal mining and logging activities in these regions.<sup>233</sup> The IACHR therefore highlights that, in the framework of building post-conflict public policies, long-term strategies must be designed and implemented that focus on developing economically sustainable activities alongside the citizen security policies for areas dominated by these criminal groups. Based on this situation, the IACHR concludes that the State has partially complied with this recommendation.

183. Lastly, the IACHR underscores that one of the fundamental requirements for recognizing the rights of Afro-descendant populations is statistical visibility. Precise, trustworthy, and disaggregated information is needed to properly design, implement, and evaluate public policies on people of African descent. The statistics must be taken into account in all reports, laws, and policies developed. In this regard, the IACHR underscores that in order to precisely evaluate the progress made by the Colombian State, specific information must be presented on the Afro-descendant population and on other ethnic-racial groups that historically have face discrimination.

## 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.

184. Regarding the recommendation **to investigate the recruitment of children and adolescents by armed illegal groups**, the State submitted information on judicial processes the aim of which was to hold responsible the people who had recruited children and adolescents for illegal armed groups.

185. The State reported that, regarding application of Law 975 of 2005, 19 convictions had been handed down against leaders of armed groups whose crimes had a total of 1,667 victims of the recruitment of children and adolescents during the internal conflict.<sup>234</sup> However, the information does not indicate how many of the judgments were issued in 2018. Also, 863 illegal recruitment events are currently undergoing the fast-track trial procedure (*audiencia concentrada*).<sup>235</sup>

186. In the framework of the regular justice system, in the application of Law N° 600 of 2000 and 906 of 2004, the State highlighted that between 2013 and 2018; more than 6,900 investigations have been conducted into the crime of illegal recruitment: 2,800 under Law N° 600 of 2000 and 4,000 under Law N° 906 of 2004.<sup>236</sup> Regarding the number of preliminary inquiries opened and the number of convictions, the State reported that 100 preliminary enquiries were conducted and 95 convictions were secured under Law N° 600 of 2000; and 37 preliminary inquiries were conducted and 6 convictions were secured under Laws N° 906 of 2004.<sup>237</sup> In its report, the State does not indicate the number of investigations, preliminary inquiries, and convictions during the reporting period that dealt specifically with the recruitment of children and adolescents. Regarding the use of children and adolescents to commit crimes, the State reported that between 2013 and 2018, 635 convictions have been secured, but did not specify the number corresponding to 2018.

187. According to the information collected by the MAPP/OAS, the practice of recruiting children and adolescents continues in rural areas, perpetrated by armed groups seeking to strengthen their structures

<sup>233</sup> *El Tiempo*, [Minería ilegal: los cráteres que devoran a Colombia](#), 2018.

<sup>234</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 49., para. 5.

<sup>235</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 49., para. 6.

<sup>236</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 49., para. 7.

<sup>237</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 49., para. 7 and p. 50 para. 1.

and dominate territories previously occupied by the FARC-EP.<sup>238</sup> According to the MAPP/OAS, the ELN offered food to children and adolescents in the Afro-descendant communities of Nóvita, Chocó, in order to add them to their ranks. In that same municipality, the ELN recruited a number of indigenous children and adolescents using the same strategy of offering food. Some news items also describe the allegedly voluntary recruitment of young people by the ELN through offers of guns and money.

188. The actions of dissident FARC-EP groups were also monitored by the Observatory on Children and Armed Conflict of the Coalición contra la Vinculación de NNA y Jóvenes al Conflicto Armado en Colombia (COALICO). Between January 2017 and June 2018, the Observatory recorded 280 conflict events that in some way affected children and adolescents, mainly in the departments of Antioquia, Norte de Santander, Chocó, Valle del Cauca, Nariño, and Guaviare.<sup>239</sup> Specifically, the Observatory noted that in 86 of the events monitored during that period, the use and/or recruitment of children and adolescents was verified.<sup>240</sup>

189. The Commission continues to monitor the subjects of the recruitment of children and adolescents by illegal armed groups and observes that the qualitative information provided by the State has not been enough to assess the progress in previous years. It also expresses concern that in 2018, the disaggregated information for the year has not been submitted. The IACHR views it as crucial for the State to adopt all the measures established in Article 4 of the Optional Protocol of the Convention on the Rights of the Child on the participation of children in armed conflict to prevent the recruitment and use of children and adolescents by illegal armed groups.<sup>241</sup>

190. In this regard, the IACHR appreciates the issuance of Decree 1,434 of August 3, 2018,<sup>242</sup> on the "public policy approach to preventing recruitment, use, and sexual violence against children and adolescents committed by armed groups," and urges the State to continue to pursue effective actions to prevent recruitment.<sup>243</sup> On the other hand, the IACHR recalls that beyond investigating and publishing the perpetrators of crimes to recruit children and adolescents for the armed conflict, the recommendation also includes complying with the State's obligation to adopt the measures necessary to identify the children and adolescents informally demobilized in order to include them in reintegration programs. Taking this into account, the IACHR concludes that the State has partially complied with this recommendation.

191. In its comments on the draft of this report, the State reported that the Colombian Family Welfare Institute (ICBF) has prioritized 170 post-conflict municipalities and 16 macro-regions with Development Plans with a Territorial Approach (PDET) to implement actions for the comprehensive protection of the rights of children and adolescents. The State reported that these actions are aimed at preventing the illegal recruitment and use of children and adolescents by organized armed groups, but also at providing care and comprehensive reparation to the victims of the armed conflict, specifically children and adolescents. Among the actions mentioned are those carried out in coordination between ICBF and the Office of the Ombudsman, the Intersectoral Commission for the Prevention of Recruitment, Use and Sexual Violence against Children and Adolescents (CIPRUNNA) and the Presidential Advisory Office on Human Rights.<sup>244</sup> The IACHR takes note on the observations made by the State, and alongside reiterates that the data sent does not present disaggregation by year, which impedes the progress analysis in regard of the recommendation compliance.

<sup>238</sup> OAS, [Twenty-fourth Report of the Secretary-General to the Permanent Counsel on the Mission to Support the Peace Process in Colombia of the Organization of American States \(MAPP/OAS\)](#), pg. 22, para. 3.

<sup>239</sup> Coalición contra la Vinculación de NNA y Jóvenes al Conflicto Armado en Colombia (COALICO), Press release: "Que no muera la esperanza de paz para los niños y las niñas en Colombia," November 26, 2018, para. 3.

<sup>240</sup> Coalición contra la Vinculación de NNA y Jóvenes al Conflicto Armado en Colombia (COALICO), Press release: "Que no muera la esperanza de paz para los niños y las niñas en Colombia," November 26, 2018, para. 4.

<sup>241</sup> See Article 4 of the [Optional Protocol of the Convention on the Rights of the Child on the participation of children in armed conflict](#), May 25, 2000.

<sup>242</sup> Republic of Colombia, Presidency of the Republic, [Decree 1,434](#), August 3, 2018.

<sup>243</sup> Coalición contra la Vinculación de NNA y Jóvenes al Conflicto Armado en Colombia (COALICO), Press release: "Que no muera la esperanza de paz para los niños y las niñas en Colombia," November 26, 2018, para. 3. Also see Republic of Colombia, Presidency of the Republic, Law 1,434, August 3, 2018.

<sup>244</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th, 2019, p. 22-23.



192. The IACHR underscores the actions taken by the State with regard to the recommendation on the **equal treatment of demobilized children and adolescents, their reintegration into civilian life, and the adoption of specific measures for demobilized girls**. Specifically, the Commission continues to monitor the development of a program to provide specialized care for establishing the rights of children and adolescents who are the victims of illegal recruitment, coordinated by the Instituto Colombiano de Bienestar Familiar (ICBF), as well as the program "Camino Diferencial de Vida," coordinated by the Consejo Nacional de Reincorporación (CNR). In this regard, the IACHR appreciates the adoption in 2018 of the guidelines of the Special Comprehensive Program for the Restoration of the Rights of Children and Adolescents leaving the FARC-EP, "A Different Path in Life,"<sup>245</sup> and of the National Public Policy on Childhood and Adolescence 2018-2030.<sup>246</sup>

193. According to official numbers through October 2018, 250 adolescents are being supported through the Specialized Support Program, including 98 girls.<sup>247</sup> In addition, figures from the United Nations Verification Mission in Colombia indicate that of the 124 children and adolescents included in the program "Camino Diferencial de Vida," 74 received reparations as victims of the conflict.<sup>248</sup> As far as disengagement, government information indicates that 88 children and adolescents were disengaged from illegal armed groups between January and June 2018, 21 of them female.

194. In its comments on the draft of this report, the State highlighted the efforts to include a perspective of sexual orientation and diverse gender identities of demobilized children and adolescents, taking specific measures to address their needs in the reintegration into civilian life and the prevention of new recruitments.<sup>249</sup> The Commission values the efforts mentioned and takes note on the hearing process completed on 2018 in regards of the LGBTI population rights within the implementation of the Peace Agreement.<sup>250</sup>

195. Regarding sexual violence, the IACHR takes note of the State's initiatives to prioritize the investigation of violence against children and adolescents.<sup>251</sup> The state reported that the Office on Transitional Justice of the Office of the Attorney General of the Nation has filed criminal charges against former members of armed groups in connection with 545 acts of sexual violence committed during and in the context of the conflict, of which 161 cases are in the indictment hearing stage and 598 have a judgment issued by the Justice and Peace Tribunals.<sup>252</sup> However, the State did not give a date range for the convictions.

196. The IACHR highlights the ongoing efforts made to disengage children and adolescents from armed groups and urges the State to continue to include these children in programs to restore their rights and reintegrate them into civilian life, as urged by the United Nations Verification Mission in Colombia in its quarterly report.<sup>253</sup> The IACHR reiterates that the reintegration of demobilized children and adolescents and the prevention of new recruitment must be a priority for the State, which must also provide the programs with adequate financial and technical resources to reach their objectives.

197. Although the IACHR notes important progress toward complying with this recommendation on the reintegration of demobilized children and adolescents to civilian life, the Commission also reiterates that

<sup>245</sup> Republic of Colombia, National Reintegration Council, [Guidelines of the Special Comprehensive Program for the Restoration of the Rights of Children and Adolescents leaving the FARC-EP](#), February 5, 2018.

<sup>246</sup> Republic of Colombia, Colombian Institute on Family Well-Being, [National public policy on childhood and adolescence 2018-2030](#), 2018.

<sup>247</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, 90.

<sup>248</sup> United Nations, [Quarterly Report of the Secretary General on the Verification Mission in Colombia](#), S/2018/1159, December 26, 2018, para. 70.

<sup>249</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th, 2019, p. 23.

<sup>250</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th, 2019, p. 23.

<sup>251</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 48, para. 6.

<sup>252</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 49, para. 2.

<sup>253</sup> United Nations, [Quarterly Report of the Secretary General on the Verification Mission in Colombia](#), S/2018/1159, December 26, 2018, para. 72.

the reintegration policies must be expanded to include all the mobilized children and adolescents, independent of whether the demobilization process was formal or informal, and independent of the armed group in which they participated. Therefore, the IACHR finds that the State has partially complied with this recommendation.

### 3. Differentiated impact of the armed conflict and disappearance process of the indigenous peoples in 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 the central role played by their ancestral lands when their rights are violated by dispossession thereof through armed violence and by economic interests.
- Prevent assaults and harassment against traditional indigenous authorities and leaders when the State has knowledge of a real and imminent risk; conduct a serious investigation of the facts brought to its attention; if appropriate punish the responsible parties and provide adequate reparation to the victims, regardless of whether the acts were the work of State agents or private parties.
- Take determined measures to return displaced indigenous peoples, communities and individuals through a process that ensures respect for traditional forms of participation and organization, security and, especially, protection of traditional indigenous authorities and leaders, and legal and material possession of the land so that the traditional use and exploitation of the territory and its management by the traditional authorities can be restored.
- Bring the process of forming, expanding, and sanitizing the indigenous reserves to a swift conclusion, bearing in mind the inter-American standards on indigenous peoples' right to collective property.

198. Regarding the recommendation to **intensify efforts to protect the effective enjoyment of the territorial rights of the indigenous peoples and their members**, the State reported that since 2018, the Office on Ethnic Matters of the National Lands Agency has a Protection of Ancestral Lands team in charge of interpreting and implementing Decree N° 2,333 of 2014. According to information received, as of November 16, 2018, this office has received 123 requests for protection of ancestral lands. Regarding the action plan for 2018, 17 requests have been addressed and progress is being made on them. Along with this, the State reported on eight actions taken to guarantee implementation of Decree 2333 on the protection of ancestral lands, and that the Department for Social Prosperity has begun implementing the Ethnic Model. The 2017-2018 period closed with 190 indigenous reservations agreed upon and 91 community councils located.<sup>254</sup>

199. The IACHR takes note of the progress reported by the State, while at the same time observing that civil society continues to warn of problems identified with a large number of investments and extraction projects being carried out on indigenous lands without due consultation or through consultative processes that do not measure up to international standards.<sup>255</sup> In response to the situation, a number of indigenous organizations have begun establishing self-consultation indigenous protocols that are sensitive to and respectful of their own cultural epistemes. The IACHR welcomes this type of initiative, which is a manifestation of the autonomous processes of the representative entities of indigenous peoples and coincide with what the Inter-American Court has established on finding that indigenous consultations must be conducted through culturally appropriate procedures—that is, in keeping with their own traditions.<sup>256</sup>

200. The IACHR continues to emphasize the finding of the Inter-American Court of Human Rights that “with regard to consultation prior to the adoption of a legislative measure, indigenous peoples must be consulted before hand at all phases of the lawmaking process, and the consultations shall not be limited simply to proposals.”<sup>257</sup> In this regard, the IACHR calls on the State to observe the necessary prior consultation process and take into consideration the protocol being developed by a series of indigenous organizations that is respectful of their own cultural epistemes. Likewise, it urges the State to continue adopting measures to

<sup>254</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, pgs. 90 to 95.

<sup>255</sup> IACHR, Press Release No. 008/19 IACHR Completes Working Visit to Colombia to Assess Alarming Issue of Murders of Social Leaders and Human Rights Defenders, January 15, 2019.

<sup>256</sup> Inter-American Court, Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Series C, No. 245, para. 201.

<sup>257</sup> Inter-American Court, Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Series C, No. 245, para. 181.

address the territorial threat faced by indigenous peoples in Colombia. The exercise of their territorial rights is put at risk by the entry of extractive industry without prior consultation, the expansion of illegal crops, and the presence of new armed groups fighting for territorial control.<sup>258</sup>

201. Regarding the recommendation to **investigate, punish, and provide reparations for attacks and harassment committed against traditional authorities and indigenous leaders**, the State reported that in 2018, the National Protection Unit conducted 408 risk assessments, concluding in 322 that the risk was "extraordinary" and in 3 that it was "extreme," with the corresponding implementation of special protection measures. Through November 26, 2018, the National Protection Unit had assigned special protection measures to 433 indigenous men and 88 indigenous women. Additionally, the State reported on the establishment of cooperation agreements for three indigenous communities with precautionary measures of the Inter-American Commission on Human Rights. Regarding the murders of indigenous leaders, the State said 13 cases had been solved, equivalent to 48.14%.<sup>259</sup>

202. Regarding this, the IACHR has continued to receive information on harassment, threats, and murders of indigenous human rights defenders and leaders.<sup>260</sup> According to information provided by the Office of the Ombudsperson, subsequent to the demobilization of the FARC, risk has increased in outlying areas due to the presence of dissident groups and criminal gangs fighting for territorial control.<sup>261</sup> Effectively, after the signing of the Peace Agreement, 31 murders have been recorded of leaders of indigenous peoples, including directors of indigenous reservations, indigenous guard members, spiritual leaders, educators, and others.<sup>262</sup>

203. In the framework of the 168th Period of Sessions of the IACHR, representatives of the Embera people of Choco, the Siona people of Putumayo, and the Arhuaco people of Sierra Nevada de Santa Marta reported on an increase of violence in indigenous territories following the agreement; threats and murders of indigenous leaders; the presence of landmines; recruitment of young people; forced displacement; and the resulting loss of territories.<sup>263</sup> Likewise, during the 169th Period of Sessions of the IACHR, reports were received of murders, threats, and forced displacement of defenders of indigenous territorial rights in Colombia.<sup>264</sup>

204. In this context, the IACHR reiterates that the death of indigenous defenders affects not only the victims individually but also the collective rights of the organizations they represent, enhancing their situation of defenselessness and vulnerability.<sup>265</sup> Regarding this recommendation, the State's compliance has

<sup>258</sup> Communication from the Office of the Ombudsperson of Colombia, "Contributions from the Office of the Ombudsperson in Colombia regarding follow-up to the recommendations of the truth, justice, and reparation report: Fifth Report on the Human Rights Situation in Colombia. Emphasis on 2018." October 29, 2018, pg. 44.

<sup>259</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 95-97.

<sup>260</sup> Human Rights Commission for Indigenous Groups, [Request for urgent action due to surveillance of and threats against the following leaders and authorities of the Nasa People: José Aldemar Inseca Pachó \(Governor of the Toez Caloto Indigenous Reservation\); Eduin Mauricio Capaz Lectamo \(Coordinator of Tejido Defensa de la Vida y los DDHH de la ACIN\), and Jesús Enrique Lectamo \(local coordinator of the indigenous guardians of the Toez Caloto Reservation\)](#), November 7, 2018; Comisión de Derechos Humanos de los Pueblos Indígenas, [Request for urgent action regarding the murder of indigenous woman Celmira Chilhueto Hilamo of the Nasa People](#), October 24, 2018; Comisión de Derechos Humanos de los Pueblos Indígenas, [Assistance at the request for urgent action regarding threats against the authorities of the Piová Indigenous Reservation, Governor Ovidio Hurtado Pito and former Governor Fredy Alexander Campo Bomba](#), September 14, 2018.

<sup>261</sup> Communication from the Office of the Ombudsperson of Colombia, "Contributions from the Office of the Ombudsperson in Colombia regarding follow-up to the recommendations of the truth, justice, and reparation report: Fifth Report on the Human Rights Situation in Colombia. Emphasis on 2018." October 29, 2018, pg. 45.

<sup>262</sup> Comisión Colombiana de Juristas (CCJ), Confederación Acción Comuna, Coordinación Colombia Estados Unidos, Instituto de Estudios Políticos y Relaciones Internacionales (IEPRI), Movimiento Ríos vivos, Somos defensores, Universidad Nacional de Colombia (2018) [¿Cuáles son los patrones? Asesinatos de Líderes Sociales en el Post Acuerdo](#), pg. 22.

<sup>263</sup> IACHR Press Release No.104A/18, [Annex: Hearings held during the 168th Period of Sessions](#), Washington, D.C., May 11, 2018.

<sup>264</sup> IACHR, Press Release, [Annex to Press Release 220/18: Summaries of Hearings 169th Period of Sessions in Boulder, Colorado](#), Washington, D.C., October 19, 2018.

<sup>265</sup> IACHR, Press release 065/18 - [IACHR Urges Colombia to Adopt Urgent Measures to Protect Human Rights Defenders and Social Leaders](#), Washington DC, March 27, 2018.

been partial. The Commission observes that although the State has adopted specific measures to grant protection to 521 members of the indigenous communities, the attacks on indigenous leaders continue.

205. Regarding the recommendation to **take determined measures to return displaced indigenous peoples, communities and individuals**, the State reported that, through the Families on their Land program, in 2018, 16,029 households were benefited, the UARIV reported 300 special support arrangements in August for a total of 1000 households in 2018, and the possibility was evaluated of offering a fast-track selection process to provide special family support in 2018. Added to this, the program reported that 34 additional households were added to the fifth intervention for a total of 15,029 households in 2018.<sup>266</sup>

206. The IACHR underscores the progress reported by the State, as well as the efforts made to end forced displacement in Colombia. However, taking into account the new facts of mass displacement that took place throughout 2018, the IACHR urges the State to expand its efforts.

207. The Commission observed that on November 22, 2018, a number of indigenous authorities of the Indigenous Council of the Awá People (*Unidad Indígena del Pueblo Awá*, UNIPA) went to the city of Bogotá to report to the public and society in general on the grave crisis affecting their rights in the Department of Nariño—along the Colombian-Ecuadorian border—with regard to education, noncompliance with agreements and precautionary measures, and other matters. During a press conference, they stated that more than 32 reservations and 3,500 indigenous people, especially in the municipalities of Ricaurte, Tumaco, Barbaocoas, Samaniego, and Roberto Payan, are at risk of displacement and currently in confinement.<sup>267</sup>

208. The IACHR notes the risks to the survival of the different indigenous peoples in Colombia as a result of forced displacement and reiterates the finding of the Inter-American Court of Human Rights that connection with the territory and its natural resources is necessary for the physical and cultural survival of indigenous peoples, as well as the development and continuity of their worldview.<sup>268</sup> Regarding this recommendation, the State's compliance has been partial. The Commission notes that important progress has been made in the coverage of programs aimed at preventing displacement, but at the same time observes that it does not have sufficient information on the number of families at risk of displacement that could benefit from the programs.

209. Regarding the recommendation to **bring the process of forming, expanding and clearing the indigenous reserves to a swift conclusion**, according to information provided by the State, in 2018, the Inventory Group of the Office on Ethnic Affairs observed that the backlog of requests for reservations for indigenous communities had increased by 162, to a total of 875. Regarding demand, it reports that 51 requests were received, for a total of 926, noting that as of October 31, the National Lands Agency had resolved 35 requests from the total backlog and three new ones. It also reports that in 2016, 2017, and 2018, 936,479 ha and 194,974 square meters were titled.<sup>269</sup>

210. The IACHR welcomes the significant efforts made by the State and underscores the urgency of accelerating this type of process. In this regard, the Commission reiterates the provisions of Article XXV of the American Declaration on the Rights of Indigenous Peoples, establishing that indigenous peoples and their members have the right to have their territory demarcated by the State, as this is the main mechanism for protecting the right to indigenous territory. The IACHR also reiterates the finding of the Inter-American Court that the right to collective property of an indigenous people over its territory must be guaranteed immediately and effectively so that it does not suffer from any intrusion, interference, or violation perpetrated by third

<sup>266</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, pgs. 97 to 99.

<sup>267</sup> Telesur videos, Colombia: [pueblo Awá denuncia crisis que vive en Nariño](#), November 22, 2018; ONIC, [Pueblo Awá organizado en la UNIPA llega a Bogotá para denunciar la grave crisis que vive en su territorio](#), November 21, 2018.

<sup>268</sup> Inter-American Court, Case of the Yakye Axa Indigenous Community v. Paraguay. Series C, No. 125, para. 124, 135, 136 and 137; Inter-American Court, Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Series C, No. 245, para. 146 and 147.

<sup>269</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, pgs. 99 to 102.

parties or State agents.<sup>270</sup> Regarding this recommendation, the Commission finds that the State has complied partially, as it has formalized 936,479 hectares.

211. On the differentiated impact of the armed conflict and the disappearance process of indigenous peoples in Colombia, the State in its observations on this report submitted additional information from the Special Jurisdiction for Peace on measures to ensure recognition of the rights of indigenous peoples in the performance of their functions.<sup>271</sup>

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

- 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.
- 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.
- 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.

212. Regarding the recommendation to **implement and strengthen measures to comply with the duty to act with due diligence to prevent, punish, and eradicate violence and discrimination against women in terms of prevention, investigation, punishment, and reparation for violations of their human rights**, the Commission notes positively the efforts made by the State to comply, while at the same time observing that multiple challenges persist on this issue.

213. The IACHR views positively that Colombia has national public policies in place on gender equity for women with regard to risk prevention and protecting the rights of women who are victims of the armed conflict, and that a comprehensive plan is in place to ensure that women can live a life free of violence.<sup>272</sup> In this regard, the Commission views it as positive that in its Strategic Plan 2016-2020, the Office of the Attorney General of the Nation made it a priority to investigate and prosecute violence against women—in particular, intentional homicide, sexual violence, and domestic violence, with differentiated actions designed with a gender approach, in recognition of the impact of violence on women and girls, indigenous and Afro-descendant communities, and at the LGBTI population.<sup>273</sup>

214. Regarding the murders of women based on their gender, the information communicated to the IACHR by the State shows the efforts being made to comply with its obligation to investigate and punish

<sup>270</sup> Inter-American Court, Case of the Xucuru Indigenous People and its members v. Brazil, judgment of February 05, 2018. Series C, No. 346, paras. 117, 124, 132 and 193, among others.

<sup>271</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th, 2019, p. 24.

<sup>272</sup> UN, Human Rights Committee, [Compilation on Colombia: Report of the Office of the United Nations High Commissioner for Human Rights](#), General Assembly of the United Nations, Working Group on the Universal Periodic Review, in the framework of its thirtieth session, A/HRC/WG.6/30/COL/2, March 12, 2018, para. 78.

<sup>273</sup> Office of the Attorney General of the Nation, [Strategic Plan 2016-2020](#), “Strategic objective #3: Make combating violence against women a priority,” 2016.

with due diligence.<sup>274</sup> Specifically, the IACHR views positively that the Office of the Attorney General would, *ex officio*, place the possibility of femicide at the center of investigations into the murder of women. It also welcomes the work done to adopt a specialized investigation protocol in these types of crimes.<sup>275</sup> With regard to dealing with sexual violence against women, the Commission was informed that the Office of the Attorney General of the Nation is aiming to double the number of charges and convictions for crimes of sexual violence by implementing a protocol for investigating sexual violence; strengthening the sections that investigate sexual violence; prioritizing the investigation of sexual violence against children and adolescents; effectively introducing differentiated criteria and approaches to the Office of the Attorney General of the Nation's protection program; and prioritizing and analyzing the sexual violence that took place as a result of the armed conflict.<sup>276</sup> In both cases, the Commission views positively the information received by the State that shows an increase in complaints, charges, and convictions in dealing with the murders of women based on their gender,<sup>277</sup> as well as in the treatment of crimes related to sexual violence.<sup>278</sup> The Attorney General's Office informed that has as a priority the analysis and investigation of cases of sexual violence perpetrated during and on the occasion of the internal armed conflict, for which it has revealed the pattern of macro-crime of gender-based violence within each of the illegal armed groups. As a result, between 2018 and the end of this year alone, 154 new cases of gender-based violence have been charged, and 5 more are in the arraignment hearing.<sup>279</sup>

215. The IACHR also observes favorably the efforts made by the State to prevent gender-based violence against women. As far as specific training activities, the State informed the Commission that it had established a Training Plan to contribute to the effective investigation of crimes related to gender-based violence by forming a group of 30 expert instructors to conduct training nationally.<sup>280</sup> Regarding protection, the Commission was informed by the Office of the Ombudsperson on Women of the creation of "care teams," made up of a person representing the Ombudsperson's Office and a person appointed from the region to improve presence in outlying areas and attend to women who are victims of the conflict. This has been identified as a good practice based on the positive results secured as far as interagency and regional coordination and improved care pathways and protection for the victims in outlying areas.<sup>281</sup>

216. Likewise, the Commission learned of national procedures being pursued against the ELN—specifically, that on June 29, 2018, the Office of the Attorney General of the Nation ordered the pretrial detention of five members of ELN high command for multiple crimes, including sex crimes and crimes based on gender committed against women in Antioquia between 1995 and 2003. Likewise, on August 24, 2018, the Office of the Attorney General of the Nation also submitted two reports to the JEP regarding the 1,080 cases of sexual and gender-based crimes committed by members of the Armed Forces and former members of the FARC-EP, involving approximately 1,246 victims, including civilians and individuals from within their own ranks. The Commission views with concern the details provided in the reports on gender-based sex crimes committed with particular cruelty against women, minors, indigenous women, members of LGBTI groups, and social leaders.<sup>282</sup>

217. Regarding reparations, the Commission welcomes that the Colombian State has recognized its responsibility for not investigating a crime of sexual violence and forced displacement, as well as held a public event to adopt the necessary measures of reparations and apologize to the victim and her relatives.<sup>283</sup> This

<sup>274</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>275</sup> UN WOMEN, Information obtained during the work meeting with the IACHR, Bogotá, Colombia, May 18, 2018.

<sup>276</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>277</sup> Government of Colombia, follow-up report on the recommendations from country report "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," Correspondence with the IACHR, Letter MPC/OEA No.1349/2018, December 3, 2018.

<sup>279</sup> Republic of Colombia, Additional Information to the Note MPC/OEA No.:238/2019, March 15<sup>th</sup> 2019, p. 33.

<sup>280</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>281</sup> Office of the Ombudsperson, Information obtained during the work meeting between representatives of the Office of the Ombudsperson for Women and the IACHR, Bogotá, Colombia, May 18, 2018.

<sup>282</sup> International Criminal Court, [Report on Preliminary Examination Activities \(2018\): Colombia](#), December 5, 2018.

<sup>283</sup> Caracol Radio, [Estado pide perdón a familia víctima de la violencia en los Montes de María](#), August 6, 2018. CEJIL, [Estado Colombiano reconoce responsabilidad por no investigar y reparar desplazamiento forzado](#), August 6, 2018.

ceremony to recognize State responsibility was performed in compliance with the Friendly Settlement Agreement signed by the victims and the Colombian State in the framework of the case of Nicolasa and her family and represents a measure of reparation and satisfaction.<sup>284</sup>

218. The Commission also learned of judgment T-718/17,<sup>285</sup> whereby the Constitutional Court ordered collective reparations, with a gender approach, for victims of sexual violence in the region of El Salado, the scene of the massacre of at least 100 people between February 16 and February 22, 2000.<sup>286</sup> According to the judgment of the Court, the victims of the sexual violence perpetrated during the massacre were not informed of or called to participate in the collective reparations process, which also did not have a differentiated approach, nor a gender approach.<sup>287</sup> The Commission views this decision positively.

219. On several occasions, the Commission has signaled its grave concern at the suffering experienced by women in Colombia due to the violence and discrimination, exacerbated by the armed conflict.<sup>288</sup> In this regard, and despite the efforts made by the State on prevention, protection, punishment, and investigation, the Commission has continued to receive information indicating underreporting of gender-based violence against women; an existing gap between regulations on the subject and their effective implementation; and the multiple obstacles that women who are victims of violence continue to face when seeking justice in Colombia.<sup>289</sup>

220. According to preliminary information from the National Institute of Forensic Medicine and Sciences on traumatic injuries and disappearances in Colombia for 2018, the murders of women, acts of sexual violence, domestic violence, and disappearances of women have continued.<sup>290</sup> Particularly as concerns the victims of the armed conflict, the Commission notes with concern that even after the peace agreement was signed, reports continued to arrive on incidents of violence in the country that specifically affect women, including homicide; crimes against freedom and sexual integrity; acts of harassment and attacks; threats; and displacements.<sup>291</sup>

221. Regarding sexual violence against women, girls, and adolescents, the Commission views with concern the prevalence of this type of violence, including sexual violence, committed by all the parties involved in the armed conflict, and in particular by armed groups that have emerged since the demobilization.<sup>292</sup> The Commission was informed that sexual violence and threats of sexual violence continue to be used as a means of territorial control by armed groups, and they have a particular impact on women, girls, and adolescents of indigenous origin and African descent. Regarding this, the IACHR takes note of the information indicating a failure to report, investigate, prosecute, and punish the perpetrators in these cases, resulting in a climate of impunity and therefore perpetuating gender violence against women in the country.

<sup>284</sup> IACHR Report No. 92/18, [Friendly Settlement Report on Nicolasa and Relatives](#). Colombia. Case 12,941, OEA/Ser.L/V/II Doc.105, August 23, 2018.

<sup>285</sup> Constitutional Court, [T-718/17 Victim Response and Reparation Unit must provide reparations to the women victims of the El Salado massacre with a gender approach](#), December 11, 2017.

<sup>286</sup> WRadio, [Víctimas de violencia sexual de El Salado no han sido reparadas, dice Corte Constitucional](#), March 5, 2018.

<sup>287</sup> *El Tiempo*, [Ordenan reparación colectiva por violencia sexual en El Salado](#), March 5, 2018.

<sup>288</sup> IACHR, [Annual Report 2017](#), Chapter V, 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, 2017, para. 255.

<sup>289</sup> UN, Human Rights Committee, [Compilation on Colombia: Report of the Office of the United Nations High Commissioner for Human Rights](#). General Assembly of the United Nations, Working Group on the Universal Periodic Review, in the framework of its thirtieth session, A/HRC/WG.6/30/COL/2, March 12, 2018, para. 78.

<sup>290</sup> 2018 saw 871 murders of women (8.51% of total murders); 21,013 women victims of alleged sexual assaults (85% of total sex crimes); 54,782 women victims of nonfatal injuries related to domestic violence (76% of total domestic violence); and 2,544 disappeared women (42% of disappeared persons). National Institute of Forensic Medicine and Sciences, [Preliminary information on traumatic injuries and disappearances in Colombia, January to November 2018](#), December 2018.

<sup>291</sup> According to the 2018 figures from the Victim's Unit, women continue to be the victims of acts of violence, including murders (275); crimes against freedom and sexual integrity (221); acts of harassment and attacks (445); threats (6,534); and displacement (40,957). Victims Unit, [Registry of Victims of the Armed Conflict: differentiated approach](#), 2018 by gender and victimizing incident, data through January 1, 2019.

<sup>292</sup> UN, Human Rights Committee, [Compilation on Colombia: Report of the Office of the United Nations High Commissioner for Human Rights](#). General Assembly of the United Nations, Working Group on the Universal Periodic Review, in the framework of its thirtieth session, A/HRC/WG.6/30/COL/2, March 12, 2018, para. 74.



222. Likewise, the Commission notes with concern that women who are victims of violence continue to face a variety of obstacles to accessing justice that is effective and nondiscriminatory: a lack of judicial remedies, the collapse of certain services such as the family police precincts, the slowness of investigations, and gender-based discriminatory stereotypes applied by justice officials are the main obstacles observed and are particularly significant in rural areas and/or areas remote from urban centers.<sup>293</sup>

223. Regarding this, the Commission takes note of the efforts reported by the State to promote programs aimed at strengthening the justice system, enhancing citizen access to it, and using alternative measures to solve problems, such as the implementation of the *RedConstruyendo* strategy to facilitate women's access to justice.<sup>294</sup> However, it notes that in light of the magnitude of gender-based violence against women in Colombia, supplemental efforts are needed to fully comply with its due diligence obligation on the investigation and punishment of the crimes and reparation of the victims.<sup>295</sup>

224. The Commission reiterates its concern over the high levels of impunity in cases of violence against women and warns that judicial inefficiency creates an environment of impunity that facilitates violence and discrimination against women. In this regard, the Commission reminds the Colombian State that both the inter-American system and the international human rights system have emphasized the close relationship between gender-based discrimination, violence against women, and compliance with the duty of due diligence.

225. According to the information received by the Commission, murders, torture, sexual violence, and threats against women journalists, community leaders, and human rights defenders have increased in recent years, with murders of human rights defenders rising by 22.4% between 2016 and 2017, and 53.5% between 2017 and 2018.<sup>296</sup> The IACHR has also become aware of a number of cases of violence against women human rights defenders, such as the cases of Magda Deyanira Ballestas, a teacher at the Colegio Técnico Agropecuario y Comercial in San Pablo, Bolívar, who received death threats;<sup>297</sup> journalist Laura Montoya, who received a death threat during an event to show solidarity with human rights defenders in Mocoa, Putumayo;<sup>298</sup> Esther Ojeda López, a member of the Victims Group of Riohacha, Guajira, and the victim of two murder attempts;<sup>299</sup> and María Choles, a member of the Victims Participation Group of Santa Marta, Magdalena, who received a telephoned death threat.<sup>300</sup> In its observation of this report, the State indicated that the collection and analysis of data on threats and attacks against human rights defenders is done with United Nations field offices and Legal Medicine. It also presented data from the Office of the United Nations High Commissioner for Human Rights on homicides perpetrated against women leaders or human rights defenders, highlighting that between 2017 and 2018 there was a significant reduction in such homicides, from 15 to 9 homicides.<sup>301</sup> The IACHR takes note of the present information.

226. The IACHR requested information from the Colombian State regarding measures of protection with a gender perspective and a differentiated approach that have been adopted in order to guarantee that

<sup>293</sup> UN, Human Rights Council, [Summary of communications from interested parties on Colombia](#), Report of the United Nations Office of the High Commissioner of Human Rights, Working Group on the Universal Periodic Review, in the framework of its thirtieth session, A/HRC/WG.6/30/COL/3, March 12, 2018, para. 83. Office of the Ombudsperson, Information obtained during the work meeting between representatives of the Office of the Ombudsperson for Women and the IACHR, Bogotá, Colombia, May 18, 2018.

<sup>294</sup> UN, Human Rights Council, [National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. Colombia](#), General Assembly of the United Nations, Working Group on the Universal Periodic Review, in the framework of its thirtieth session, A/HRC/WG.6/30/COL/1, February 26, 2018. Para. 80.

<sup>295</sup> UNHCR, [Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 3rd Cycle](#), Colombia, 30th Session, 2018.

<sup>296</sup> Corporación Sisma Mujer, Corporación Humanas, Balance y perspectiva de la Situación de las mujeres lideresas y defensoras, document provided to the IACHR during its 170th Period of Sessions in Washington DC, December 4, 2018.

<sup>297</sup> BBC Mundo. ["Usted sabe que acá asesinamos al que nos dé la gana": lo que dice de Colombia el audio con amenazas a la maestra Devanira Ballestas](#). July 5, 2018.

<sup>298</sup> *El Espectador*. [Amenazan a líderes sociales en plena 'Velatón'](#). July 7, 2018.

<sup>299</sup> *El Heraldito*. [Con corona de flores, amenazan a líder de restitución de tierras en La Guajira](#). July 10, 2018.

<sup>300</sup> RCN Radio. [Confirman amenazas contra dos líderes sociales en Santa Marta](#). July 16, 2018.

<sup>301</sup> Republic of Colombia, Additional Information to the Note MPC/OEA No.:238/2019, March 15<sup>th</sup> 2019, p. 33-34.

women human rights defenders are able to perform their work free of any kind of violence or discrimination<sup>302</sup> and learned of the launch of the comprehensive guaranties program for women leaders and human rights defenders.<sup>303</sup> The Commission reminds the State that, with regard to due diligence, investigation of cases of violence perpetrated against women human rights defenders must be carried out quickly; the context and circumstances where the violence took place must be taken into account; the specific risks faced by women who work in the defense of human rights must be taken into account, and it must incorporate a differentiated approach to investigating, prosecuting, punishing, and providing reparations for these crimes, including gender and ethnic-racial perspectives.<sup>304</sup> In view of this context, the Commission finds that this recommendation remains pending compliance.

227. In its observations on this report, the State submitted additional information from the Special Jurisdiction for Peace on the measures taken to include the gender perspective in the mechanisms of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition, such as the creation of the Gender Commission (through its Rules of Procedure, Art. 104 and 105), the technical and operational coordination with the gender groups and participation of the Commission for the Clarification of the Truth and the Unit for the Search for Persons Responsible for Disappearances and the socialization and pedagogy processes with different organizations at the national level.<sup>305</sup>

228. Also, regarding the recommendation to **implement dissemination measures and campaigns targeting the general public on the duty to respect the rights of women; the services and resources available to women who have experienced a violation of their rights; and the legal consequences for the perpetrators**, the State reported that, in order to publicize existing law protecting the human rights of women among service providers, women, and the public at large, the Presidential Council on Women's Equity (*Consejería Presidencial para la Equidad de la Mujer*, CPEM) develops pedagogical and communications strategies which are broadly distributed both nationally and locally.<sup>306</sup>

229. In addition to these instruments, the Commission notes positively the campaigns launched to eradicate discriminatory gender stereotypes and promote equality between men and women, such as CPEM campaign "*Igual a Igual*" and the "Rights briefcase," which contains pedagogical tools to facilitate identification of the human rights of women and the legal framework that protects them, prepared in cooperation with the IOM.<sup>307</sup> The Commission also views positively the launch of the SUIN-JURISCOL35 portal, which provides legal information free of charge, as well as the free search tool LegalApp36, whose aim is to provide information on services and support roadmaps for victims of violence, including violence against women.<sup>308</sup>

230. Taking this into consideration, along with the magnitude of the phenomenon of gender violence against women, girls, and adolescents in Colombia, both within the framework of the armed conflict and beyond it,<sup>309</sup> the Commission recognizes the progress made by the Colombian State toward compliance with this recommendation. However, the Commission reiterates the need to promote the rights of women from a perspective of diversity, race, ethnicity, and language, and to do so throughout the country's territory. Promoting the rights of women and publicizing the services available for victims of gender violence must be done with an aim to closing existing gaps between urban centers and rural areas and reaching all women—in the case of indigenous women, in a culturally appropriate way. In this regard, the Commission calls on the State

<sup>302</sup> IACHR, Letter to request information, Violence against women human rights defenders. Colombia. CIDH/SE/Art.41/08-2018/58. September 6, 2018.

<sup>303</sup> UN Women, [Lanzamiento del Programa integral de garantías para las mujeres lideresas y defensoras de derechos humanos](#), June 14, 2018.

<sup>304</sup> IACHR. Press Release No. 155/2018. [IACHR Condemns Murders of Human Rights Defenders and Social Leaders in Colombia](#). July 19, 2018. IACHR. IACHR. 86/13. Merits. Ana Teresa Yarce *et al.* (Comuna 13), November 4, 2013, para. 335.

<sup>305</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th, 2019, p. 24-25.

<sup>306</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>307</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>308</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>309</sup> UN, Human Rights Committee, [Compilation on Colombia: Report of the Office of the United Nations High Commissioner for Human Rights](#). General Assembly of the United Nations, Working Group on the Universal Periodic Review, in the framework of its thirtieth session, A/HRC/WG.6/30/COL/2, March 12, 2018, para. 74.

to further its efforts and extend their reach by taking into consideration groups of women that are especially vulnerable, such as migrant women, LGBTI women, women of African descent, indigenous women, and women with disabilities, as well as women in geographically isolated areas. Taking into account the information obtained, the Commission finds that compliance with this recommendation is partial.

231. In addition, the Commission recommended that the State **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**. Regarding this, the State informed the Commission of the various national policies designed to promote the rights of all women, particularly the rights of women of African descent and indigenous women.<sup>310</sup> Since 2017, the CPEM has been employing a process to enhance the advocacy capacity of Afro Colombian and indigenous women who are victims of the armed conflict, as well as that of institutions for preventing violence and for enhancing participation and leadership.<sup>311</sup>

232. Regarding health issues, the Commission was informed of the design of a comprehensive roadmap for providing care to populations that are at risk or subject to attacks, accidents, and trauma that comprehensively addresses the violence related to the conflict, gender violence, and social conflict-based violence. Through the Comprehensive Psychosocial and Health Care Program for Victims (PAPSIVI) care has been provided by interdisciplinary teams with psychosocial training to more than 314,921 victims, 197,496 of whom are women. Also, 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 Commission also takes note of the ongoing process to design the technical and operational guidelines for the comprehensive healthcare roadmap for the population at risk of and victim to gender-based violence, interpersonal violence, and violence during the armed conflict, which must include approaches to a variety of types of violence and comprehensive care for victims.<sup>312</sup>

233. Regarding higher education for victims of the armed conflict from a perspective of ethnic groups, the State has reported it is developing strategic actions on financing, including the Reparation Fund on Accessing, Remaining in, and Graduating from, Higher Education for the Victim Population of the Armed Conflict, whose regulations require allocation parity, and, in the qualification criteria, grant extra points to women who are heads of households, victims of sexual violence, people with disabilities, and people belonging to ethnic groups. Since its establishment in 2013, of the 3,866 loans awarded, 3,012 went to women. Likewise, the State has established the Álvaro Ulcué Chocué Fund and the Black Communities Fund,<sup>313</sup> through which around 14,169 loans were awarded, benefiting 8,885 women, particularly in the departments of Chocó, Valle del Cauca, and Bolívar. Likewise, starting in 2014, the State has implemented a strategy called *Ser Pilo Paga*<sup>314</sup>, which, as of March 2017 had awarded 31,902 loans, benefiting 18,197 women.<sup>315</sup> Based on this, the Commission finds that compliance with this recommendation is partial and substantial.

234. Regarding the recommendation to ensure that the legal framework and programs for demobilization are compatible with international principles and norms on victims rights to truth, justice, and reparation, the IACHR has obtained information on the progress demonstrated by the State toward compliance, along with the multiple obstacles that persist on the matter.

235. The Commission recognizes the efforts made by the State to promote the participation of women in the peace process. The table of conversations included the participation of three women as plenipotentiaries of the government delegation; the Subcommittee on Gender was established; and contributions were received from 16 leaders of women's organizations, 10 Colombian experts on sexual violence, 36 women victims (part of a group of 60), the LGBTI community, international experts, and former women guerrillas from various parts of the world. As a result, a gender approach was incorporated into the

<sup>310</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>311</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>312</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>313</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>314</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>315</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

Framework Plan on Implementation of the Peace Agreement, and the Special High-Level Instance for Ethnic Peoples was established, along with the special instance in charge of ensuring the gender approach, both to follow up on implementation of the Peace Agreement.<sup>316</sup> The IACHR also views positively the State efforts to integrate and ensure gender parity for the Comprehensive Truth, Justice, Reparation, and Non-Repetition System: The Special Jurisdiction for Peace (JEP) is presided over by woman and comprised of 53% women magistrates,<sup>317</sup> and the Truth Commission is comprised of 11 people, five of them women.<sup>318</sup>

236. Likewise, the Commission observes positively that, in the framework of the Families on their Land Program, the Office on Productive Inclusion for Social Prosperity has drafted a final document containing guidelines for providing care to women victims that establishes guidelines to enable implementing partners in charge of executing the Families on their Land Program to orient the work with women victims who have returned and relocated, taking into account their differentiated particularities and gender.<sup>319</sup> The Commission was also informed of the adoption of Order 737 by the Constitutional Court, which assesses the progress, delays, and setbacks on the protection of the fundamental rights of women who are victims of forced displacement due to the armed conflict and generalized violence, in the framework of following up on Judgment T-025 of 2004 and its complementary orders, particularly Order 092 of 2008, 098 of 2013, and 009 of 2015.<sup>320</sup>

237. Regarding demobilization, the Colombian State has recognized the difficulties and challenges in the process to reintegrate former combatants involves and has communicated to the Commission the efforts taken to move more than 12,000 former combatants into civilian life, indicating that, with the tender of the Agency for Reincorporation and Normalization, the Reintegration Roadmap was adopted. It consists of a model for providing multidimensional care aimed at people's full reintegration into social, economic, and political life. The roadmap, structured with a gender approach, establishes lines of actions connected to, among other things, the identification of the needs of women throughout the process.<sup>321</sup>

238. Particularly as concerns the situation of demobilized women, the Commission learned of the adoption of CONPES 3931, the "National Policy on Social and Economic Reintegration of Former FARC-EP Members." The Commission takes note that, of the 10,015 former FARC-EP members surveyed, 2,267 are women, and it welcomes the adoption of this CONPES as a contribution to the effort to ensure comprehensive reintegration of former FARC-EP members and their families, combining as it does diagnosis, analysis, and recommendations from a gender perspective.<sup>322</sup>

239. The IACHR notes with concern the numerous challenges that persist regarding the political, economic, and social reintegration of women former combatants. Regarding the political reintegration of women former combatants, the Commission notes that the National Police, the National Protection Unit (including former FARC-EP members), and the Verification Mission establishes a tripartite mechanism of protection and security to coordinate and monitor the prevention and protection measures established for members of the FARC political party, including a roadmap for addressing the specific risks faced by women who participate in political activities.<sup>323</sup>

240. The Commission views with concern information indicating a lack of compliance with the conditions that women and children be able to live a life of dignity in outlying and rural areas. In addition to scant access to gynecological medical services, in none of the Territorial Spaces for Training and Reintegration

<sup>316</sup> UN, Human Rights Council, [National report submitted in accordance with paragraph 5 of the annex to resolution 16/21 of the Human Rights Council. Colombia](#), General Assembly of the United Nations, Working Group on the Universal Periodic Review, in the framework of its thirtieth session, A/HRC/WG.6/30/COL/1, February 26, 2018. Para. 30.

<sup>317</sup> Dejusticia, [Más mujeres en la JEP](#), September 29, 2017.

<sup>318</sup> El Colombiano, [Estos son los 11 comisionados que conforman la comisión de la Verdad](#), November 29, 2018.

<sup>319</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>320</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>321</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>322</sup> National Council on Economic and Social Policy, [National Policy For The Social And Economic Reintegration Of Former FARC-EP Members](#), Document CONPES 3931, June 22, 2018.

<sup>323</sup> UN, Security Council, Report of the Secretary General on the United Nations Verification Mission in Colombia, S/2018/279, April 2, 2018. Para. 13.

is daycare provided for children, which limits the inclusion of women in training and reintegration activities.<sup>324</sup> Likewise, although the Commission recognizes the efforts of the Ministry of Defense, which has drafted its first policy on reintegration with a gender approach for demobilized military personnel,<sup>325</sup> in spaces in outlying areas established for training and reintegration, the Commission notes with concern the risks of violence facing women, especially sexual violence, as well as the absence of mechanisms for reporting and investigating it in these areas<sup>326</sup>.

241. Likewise, the Commission has been informed that despite the progress made toward implementing the Final Agreement, women still face a gap between the formal guarantees made and the effective exercise of their rights. For example, the IACHR has obtained information indicating a lack of a gender approach in the policy on the voluntary substitution of crops;<sup>327</sup> and the lack of a gender approach in current reintegration initiatives, with the result that women former FARC-EP combatants create their own initiatives for productive projects for economic and social reintegration.<sup>328</sup>

242. Lastly, **on the rights of women victims to truth, justice, and reparation**, the Commission notes positively the provision in Decree 588 of 2017 establishing, within the Truth Commission, a gender working group in response to the objective of contributing to investigating and solving acts of violence against women,<sup>329</sup> particularly acts of sexual violence that have been broadly silenced. Regarding this, the Commission notes with concern that despite the adoption of a number of measures toward compliance with the provisions of Orders 092 and 009 of the Constitutional Court on sexual violence in the framework of the armed conflict, the information received indicates that victims' right to justice, truth, and reparation has still not been guaranteed, with 92% of the cases covered by Order 092 and 97% of all the cases reported by the Constitutional Court remaining in impunity.<sup>330</sup>

243. Regarding this, the Commission recalls that one of the commitments under the Peace Agreement is to identify all the perpetrators of acts of sexual violence and bring them to justice, including both former members of the FARC-EP and members of security forces, and reiterates to the State the importance of making this type of violence visible, as well as establishing specific private and safe spaces for holding hearings in cases of sexual violence and establishing measures of protection for victims.<sup>331</sup> Taking these observations into consideration, the Commission finds that this recommendation remains pending compliance.

## 5. Journalists and social communicators<sup>332</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.

<sup>324</sup> Kroc Institute for International Studies of Peace, [Special Report of the Kroc Institute and the International Accompaniment Component, UN Women, Women's International Democratic Federation, and Sweden, on the Monitoring of the Gender Perspective in the Implementation of the Colombian Final Peace Accord](#), 2018. Pg. 40.

<sup>325</sup> UN, Security Council, Report of the Secretary General on the United Nations Verification Mission in Colombia, S/2018/279, April 2, 2018. Para. 13.

<sup>326</sup> Office of the Ombudsperson of Colombia, [Informe Especial Espacios Territoriales de Capacitación y Reincorporación](#), 2017.

<sup>327</sup> Corporación Jurídica Yira Castro, Corporación Jurídica Humanidad Vigente, Corporación Jurídica Libertad, Comité de Solidaridad con los Prisioneros Políticos, Colectivo Socio Jurídico Orlando Fals Borda, Corporación Reiniciar, Corporación Acción Humanitaria por la Convivencia y la Paz del Nordeste Antioqueño, Asociación Minga, human rights violations in the implementation of points 1 (Comprehensive Rural Reform) and 4 of the Final Peace Agreement (Solving the Problems of Illegal Drugs), request for thematic hearing in the framework of the 171st Period of Sessions of the IACHR, communication of December 2018.

<sup>328</sup> UN, Security Council, Report of the Secretary General on the United Nations Verification Mission in Colombia, S/2018/279, April 2, 2018.

<sup>329</sup> *El Espectador*, [La Comisión de la Verdad y las mujeres](#), December 13, 2018.

<sup>330</sup> UN, Office of the Resident Coordinator, [Contribución conjunta del Equipo País EPU Colombia-Tercer Ciclo](#), 2018. Par. 37.

<sup>331</sup> Instituto de Derechos Humanos de Cataluña, [La violencia sexual en Colombia, mujeres víctimas y constructoras de paz](#), January 2018.

<sup>332</sup> This section of the report was prepared for the IACHR by the Office of the Special Rapporteur for Freedom of Expression.

- 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, 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.

#### a. Protection of journalists

244. Regarding the recommendation to **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**, the IACHR highlights that on August 3, in a joint press release, the heads of the Office of the Attorney General of the Nation, the Office of the State's Attorney of the Nation, the Office of the Ombudsperson, the Ministry of the Interior, the Office of the Protection Unit, and a government commission, as well as representatives of the Asociación Colombiana de Medios de Información and the Fundación para la Libertad de Prensa, rejected "the growing wave of attacks on the physical and moral integrity of journalists and call on [...] the public authorities in charge of preventing these attacks from being successful at limiting the exercise of freedom of the press and the country's right to information."<sup>333</sup>

245. The State informed the IACHR that "[t]he Ministry of the Interior," "in the framework of the Public Policy on Preventing Violations of the Rights to Life, Integrity, Liberty, and Security of Individuals, Groups, and Communities," "has, in the coming weeks, provided for establishing a working table with the media, advertising agencies, and schools of communication and journalism, and with Colombia's national radio and television broadcasters, referenced in the law cited," to "disseminate the scope and content of the rights to life, integrity, freedom and safety of people, groups, and communities, and international humanitarian law, as well as to jointly analyze the impact of the information conveyed by the media on respect for and protection of these rights." It also reported that "the establishment of this table represents a contribution to journalism and communicators in the consolidation of democracy and the social rule of law. It is, in itself, a space for recognition and guarantee of the exercise of freedom of expression."<sup>334</sup>

246. As in previous years, the Commission concludes that the recommendation remains pending compliance and reminds the Colombian State of the importance of adopting prevention mechanism and "the urgent need that the State (...) establish, as State policy in the short-, medium- and long-term, investigation as a measure of prevention."<sup>335</sup>

247. Regarding the recommendation to **compile detailed, disaggregated criminal statistics on violence against journalists and the criminal prosecution of these crimes**, the Commission observes that the State did not submit substantial information in this regard. Therefore, the IACHR concludes that this recommendation remains pending compliance.

248. The IACHR is concerned at an upsurge in violence against journalists for reasons that could be related to the exercise of freedom of expression. It is crucially important for policies on prevention, protection, and administration of justice to be this new administration's central focus in the struggle against impunity and the commission of new crimes.

<sup>333</sup> Republic of Colombia. Ministry for Internal Affairs. [Press release from authorities on the increase in threats against journalists](#). August 3, 2018; FLIP. August 3, 2018. [Autoridades nacionales expresan su rechazo ante el aumento de violencia contra la prensa](#); DW. July 18, 2018. [Amenazas a periodistas en Colombia: ¿vuelve la guerra?](#); Infobae. August 11, 2018. [Crecen las amenazas de muerte a periodistas en Colombia tras la firma de la paz](#); *El País*. July 16, 2018. [Colombia sufre una oleada de amenazas de muerte a periodistas](#).

<sup>334</sup> Republic of Colombia, Letter S-GAID-17-101743 of December 30, 2018.

<sup>335</sup> IACHR, 2017 Annual Report, [Chapter V. Colombia](#), par. 302.

249. In this context, in April 2018, three members of a journalism team from Ecuador's *El Comercio* were murdered on Colombian territory: reporter Javier Ortega, photographer Paúl Rivas, and driver Efraín Segarra. They were kidnapped along the Ecuador-Colombian border on April 12. Additionally, on August 1, Valentín Tezada Rúa, the host of a community radio station called *Salvajina Estéreo*, was murdered in the municipality of Suárez, Cauca<sup>336</sup>; that same day, Jairo Alberto Calderón Plaza, the director of news website *Contacto*, was murdered in Tuluá, Valle del Cauca.<sup>337</sup> The IACHR observes with concern that community journalist Víctor Diago Cardozo was shot to death in his home, located in the Los Nogales de Riohacha neighborhood, Guajira department, on December 17.<sup>338</sup>

250. The IACHR has stated repeatedly that the murder of journalists is the most extreme form of censorship, and States have a positive obligation to identify and punish the perpetrators of such crimes. For the IACHR, it is crucial for the State to investigate the murders of these journalists fully, effectively, and impartially to discover the motives and legally establish any connection there may be to journalism activity and freedom of expression. The authorities must not dismiss journalism as a motive for the murders and/or attacks until the investigation is complete. The omission of logical lines of investigation or lack of diligence in collecting evidence along these lines may have serious repercussions during the charging or trial processes.<sup>339</sup> In particular, a failure to fully pursue all logical lines of investigation would mean that the masterminds behind the crimes could not be identified.<sup>340</sup>

251. Additionally, according to reports from civil society, violence against journalists and the media increased during 2018 and intensified during the election.<sup>341</sup> For example, on December 20, the Fundación para la Libertad de Prensa (FLIP) reported 452 violations of freedom of the press and a total of 578 victims. Based on these records, the regions with the most attacks are Bogotá, Tolima, Antioquia, and Norte de Santander.<sup>342</sup> According to surveys conducted by civil society, threats against the media have increased in recent years.<sup>343</sup> At the same time, during this period, threats remained the most prevalent form of violence: The FLIP documented 194 cases between January and November, a pattern that was also underscored by the Federación Colombiana de Periodistas (Fecolper) in its last annual report presented in February 2018.<sup>344</sup>

252. In its observations on the report, the Illustrious State of Colombia provided information to the IACHR regarding the monitoring carried out by the Foundation for Freedom of the Press (FLIP) on violations of freedom of expression. In this regard, it reported that FLIP "carries out, on its own initiative, a count of complaints or cases that could constitute a violation of the freedom of the press. The violations recorded by

<sup>336</sup> *Proclama del Cauca*. August 2, 2018. [Asesinan a locutor en Suárez](#); Radio Super Popayán. August 2, 2018. [Valentin Tezada Rúa locutor de Salvajina Estéreo fue asesinado a Balazos](#).

<sup>337</sup> Inter-American Press Association. August 3, 2018. [La SIP condena asesinatos de periodistas en México y Colombia](#); Knight Center for Journalism in the Americas. August 8, 2018. [Autoridades investigan los motivos de los asesinatos de dos periodistas en el suroeste de Colombia](#).

<sup>338</sup> FLIP. December 18, 2018. [Llamado a las autoridades para que determinen si el homicidio de Víctor Diago está relacionado con su ejercicio informativo](#); *El Heraldo*. December 17, 2018. [Asesinan a bala a periodista y locutor de Riohacha](#).

<sup>339</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists for Reasons that could be Related to their Journalism Work \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35, March 8, 2008. Par. 116.

<sup>340</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists for Reasons that could be Related to their Journalism Work \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35, March 8, 2008. Para. 116; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-censorship, and Armed Internal Conflict: An Analysis of the State of Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Paras. 65-66.

<sup>341</sup> FLIP. May 3, 2018. [2018: recrudescen la violencia contra la prensa](#); FLIP. [Informe especial sobre la libertad de expresión en Ibagué](#). April 18, 2018; FLIP [Informe anual 2017: Un Estado depredador de la libertad de prensa](#). February 8, 2018; *El espectador*. February 9, 2018. [La libertad de prensa está en riesgo](#); *El Espectador*. February 15, 2018. [De Presidencia sobre un editorial](#).

<sup>342</sup> FLIP. Map of press freedom violations. Available at: <https://flip.org.co/index.php/es/atencion-a-periodistas/mapa-de-agresiones>

<sup>343</sup> FLIP. Map of press freedom violations. Available at: <https://flip.org.co/index.php/es/atencion-a-periodistas/mapa-de-agresiones>; Fecolper. Annual reports available at: <http://fecolper.com.co/documentos/>

<sup>344</sup> Fecolper. *Las fórmulas del silencio*. Informe anual 2017. February 8, 2018. Available at: <http://InformeFecolper2017>; Human Rights Watch. *World Report 2018. Colombia*. Events of 2017. Available at: <https://www.hrw.org/es/world-report/2018/country-chapters/313305>; Inter-American Press Association. [Report on the 2018 Mid-year Meeting](#). Medellín, Colombia, April 13-15, 2018.

FLIP are classified into four groups, namely: i) access to information; ii) judicial harassment; iii) attacks on the press; iv) censorship on the Internet. In addition, it stated that "within the category of attacks on the press, FLIP counts cases related to aggression, threat, murder, damage to infrastructure, displacement, illegal detention, espionage or invasion, stigmatization, exclusion, exile, harassment, obstruction of journalistic work, others, theft or elimination of journalistic material, kidnapping, sexual violence," and on the category of censorship on the Internet, "it records cases of cyberattack on web pages, and requests for removal or blocking of contents on the Internet."<sup>345</sup>

253. Some of the attacks reported against the press were allegedly perpetrated by public officials and members of security forces.<sup>346</sup> For example, according to the information available, on December 17, 2017, the mayor of Rionegro, Santander—Wilson González Reyes— verbally and physically attacked journalist Luis Carlos Ortiz—with community broadcaster *La Voz de la Inmaculada*—and used a firearm to threaten him, allegedly over reporting on illegal activities in the Office of the Mayor. On January 31, 2018, the Office of the Attorney General of the Nation reported that it had opened an inquiry into the municipal mayor.<sup>347</sup> Also, in a tweet on March 18, Senator Álvaro Uribe insinuated that there would be retaliation against journalist Daniel Coronell and *Noticias Uno* should his party's presidential candidate win the national elections.<sup>348</sup>

254. In its observations to the report, the Illustrious State of Colombia, observed, regarding the IACHR's note on a twitter publication by Senator Álvaro Uribe, in which the IACHR reported that it "insinuated reprisals against journalist Daniel Coronel and *Noticias Uno* in case his party's presidential candidate won the national elections," that the "Inter-American Commission should not speculate on the basis of publications on the Social Network Twitter that could be taken out of context. The IACHR qualifies *a priori* the pronouncements as an adoption of reprisals, without that having necessarily been the purpose of the message. The IACHR takes note of this observation made by the Illustrious State of Colombia."<sup>349</sup>

255. Likewise, as reported in 2018, members of the ELN, the EPL, and dissenters from within the FARC continued to issue threats and take actions to intimidate journalists and the media. In this regard, the IACHR and its Office of the Special Rapporteur revealed that in the first half of the year, a series of alerts was issued over threats attributed to these various actors in the subregion of Catatumbo, Arauca, Valledupar.<sup>350</sup> In its latest country report, Reporters without Borders stated that armed groups such as the Ejército de Liberación Nacional (ELN) are trying to silence alternative and community media outlets that investigate their activities, creating information black holes, especially in rural regions.<sup>351</sup>

256. The IACHR and its Office of the Special Rapporteur also identified at least one case of confiscation of the equipment of a journalist who was threatened and under protection, as well as threats and intimidation against media outlets with the aim of silencing them and limiting their coverage in a variety of

<sup>345</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th, 2019, p. 25.

<sup>346</sup> Felcoper. February 16, 2018. [Periodistas araucanos denuncian abusos de la Policía Nacional](#); Felcoper. April 5, 2018. [Diputado de Arauca cuestiona a periodista por entrevista en emisora comunitaria](#).

<sup>347</sup> Republic of Colombia. [Office of the State's Attorney of the Nation. Office of the State's Attorney launches inquiry into mayor of Rionegro, Santander](#). January 31, 2018; FLIP. December 17, 2017. [Periodista denuncia que el alcalde de Rionegro, Santander, lo atacó con un arma de fuego](#); Inter-American Press Association. [Report on the 2018 Mid-year Meeting](#). Medellín, Colombia, April 13-15, 2018.

<sup>348</sup> Senator Álvaro Uribe Vélez. Twitter account [@AlvaroUribeVel](#): "Daniel Coronel, a politician and contractor for Santos, is panicking, and he should; an Iván Duque administration would manage television licensing transparently." [March 18, 2018](#); Daniel Coronell Twitter account [@DCoronell](#) "[@AlvaroUribeVel](#) is already announcing how he'll take revenge on media outlets that have outed his acts of corruption and his administration's abuse of power (*ChuzasDAS, AIS, zona franca, notariás, parapolítica*, etc.)". [March 18, 2018](#); *Semana*. March 19, 2018. [Trino de Álvaro Uribe contra Daniel Coronell desata dura controversia](#); *El Espectador*. March 19, 2018. [La pelea en Twitter entre Uribe y Daniel Coronell por las concesiones de televisión](#).

<sup>349</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14th, 2019, p. 26.

<sup>350</sup> FLIP. February 23, 2018. [Disidencias de las Farc amenazan a la prensa en Arauca](#); *El Espectador*. March 18, 2018. [Una periodista en el Catatumbo ahora es objetivo militar del Eln y del Epl](#); Blu Radio. March 18, 2018. [Terror en el Catatumbo: Periodista fue declarada objetivo militar por EPL y ELN](#); Felcoper. April 18, 2018. [Amenazan a periodista y a emisora en Valledupar](#); *El Heraldo*. April 18, 2018. [Con supuesto mensaje de 'Guacho', amenazan a periodista en Valledupar](#); Felcoper. April 17, 2018. [En dos días, amenazan a seis periodistas colombianos, en tres departamentos del país](#); FLIP. April 18, 2018. [Catatumbo: Censurado](#)

<sup>351</sup> RSF. Undated. Available at: <https://rsf.org/es/colombia>



contexts.<sup>352</sup> For example, the offices of radio station *RCN* in Bogotá were attacked at least three times during the year.<sup>353</sup>

257. The IACHR underscores that Principle 9 of the Declaration of Principles of the IACHR states that, “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the State to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

#### b. Administration of justice

258. Regarding the **recommendation to conduct diligent, impartial, and effective investigations into the murders, attacks, threats, and other acts of intimidation committed against journalists and media workers, and the existence 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**, the State informed the IACHR that “the Office of the Attorney General has designed and implemented a targeted strategy allowing for the use of tools to more efficiently and effectively investigate and prosecute attacks against journalists.” In this regard, it reported that “the strategy being implemented has two main components: coordination, and strengthening investigations.”<sup>354</sup>

259. Likewise, the State informed the IACHR that, “in 2014-2017, the Office of the Attorney General of the Nation registered eight cases of murders of journalists, with 75% of them solved,” and that “following significant dialogue with civil society organizations FLIP and ANDIARIOS, in 2016, the Office of the Attorney General of the Nation approved the prioritization of situations and cases of murders of journalists from different time periods (from 1986 through 2015) that reflect the violence against journalists during historical cycles of criminality in the country.” In this context, it reported that “by common agreement, nine murder cases were selected from among all the murders of journalists, involving the following situations: (i) paramilitary violence against journalists and media outlets; (ii) drug trafficking violence against journalists and media outlets; (iii) guerrilla violence against journalists and media outlets; and lastly (iv) reports of corruption as a trigger to violence against journalists and media outlets.”<sup>355</sup>

260. On February 28, the Office of the States Attorney of the Nation reported that “it will designate special agents to intervene in criminal processes where incidents are being investigated that may affect freedom of the press and the rights of journalists This provision is issued to comply with Directive 002 of 2017 of the FGN, providing guidelines for protecting human rights defenders and social leaders in the country. The entity shall intervene in processes to protect journalists.” The initiative also seeks to “put a stop to judicial harassment.”<sup>356</sup>

261. The IACHR received information indicating that in 2018, murders of journalists remain subject to prescription. For example, the FLIP reported that on February 22, prescription was triggered in the case of Oscar García Calderón, who was murdered in Bogotá on February 22, 1998, and the case remains in impunity. According to figures from the organization, 126 cases of murders of journalists remain in impunity in Colombia. The case of Orlando Sierra (columnist and deputy director for newspaper *La Patria*, murdered in February 2002) was the only one out of 158 murders in which the entire criminal conspiracy was taken down.

<sup>352</sup> FLIP. January 13, 2018. [Roban equipos y material de reportería de periodista de El Espectador y Colombia 2020](#); *El Tiempo*. January 17, 2018. [Roban computador y material confidencial a periodista, en el Tolima](#); Inter-American Press Association. [Report on the 2018 Mid-year Meeting](#). Medellín, Colombia, April 13-15, 2018; FLIP. April 19, 2018. [Emisora recibió cinco amenazas en las últimas 24 horas](#); W Radio. April 19. [Investigan presunta amenaza a emisora en Valledupar](#).

<sup>353</sup> RCN. November 8, 2018. [Nuevo ataque contra las instalaciones de RCN Radio en medio de marchas estudiantiles](#); Inter-American Press Association. November 9, 2018. [Repudia la SIP ataque contra la emisora RCN en Bogotá](#).

<sup>354</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>355</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>356</sup> Republic of Colombia. Office of the State’s Attorney of the Nation. [Office of the States Attorney to appoint special agents in processes affecting freedom of the press](#). February 28, 2018.

Only in 28 cases had the perpetrators been convicted, and in only three cases had the masterminds been convicted. The problem of impunity also applies to other types of violence, according to the FLIP. Threats and incidents leading to self-exile and self-censorship remain in impunity in close to 99% of cases.<sup>357</sup>

262. In its observations on the report, the Illustrious State of Colombia questioned that the IACHR in its recommendation "assume that by their decisions, Colombian judges and courts are not impartial or independent in the judgments handed down so far" related to aggressions against journalists and social communicators. It also stated that it "does not understand from what evaluation criteria the Commission assumes that the recommendation is pending compliance" and considers that it should be of progressive compliance.<sup>358</sup>

263. With respect to the observations made by the Illustrious State of Colombia, the IACHR takes note of them and observes that the recommendation expressed is not an affirmation that the courts and judges of the State act in breach of the duties of impartiality and independence in cases of aggression against journalists, but rather that the recommendation stated is based on the international obligation of States to investigate fully, effectively and impartially crimes against journalists, to clarify their motives, and to determine judicially the relationship they may have with journalistic activity and freedom of expression. Regarding the observation concerning the state of compliance with the recommendation, the IACHR points out that the available information indicates that there are a large number of cases of murders and serious attacks on journalists that remain unpunished and in other emblematic cases the intellectual authors have not been identified and punished.

264. Based on the information submitted, the IACHR concludes that this recommendation remains pending compliance. In this regard, it urges the State to redouble its efforts to launch 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 also once more 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.

265. Regarding the recommendation to prosecute, under impartial and independent courts, within the standards established by international law, the persons responsible for the crimes committed in retaliation for the exercise of the right to freedom of expression, and provide adequate reparations to the victims and their family members, the IACHR welcomes a series of steps taken by the Colombian State regarding the obligations to administer justice in crimes perpetrated against journalists. However, it observes with concern that the violent actions mentioned continue to be committed in a context of impunity, as a very low percentage of homicides, attacks, and other human rights violations suffered by journalists and communicators are solved by the justice system, with those responsible punished.

266. Regarding the murder of *El Comercio* staff members, the IACHR received information on the July 7 arrest of Jesús Vargas Cuajiboy, a member of a FARC dissident group. According to the information provided, he is one of the people responsible for kidnapping the journalism team and was charged by the Office of the Attorney General of the Nation as a perpetrator of the crimes of aggravated extortive kidnapping and aggravated criminal conspiracy, to which he pled innocent.<sup>359</sup>

<sup>357</sup> FLIP. February 22, 2018. [Prescribe en la impunidad el asesinato contra Oscar García Calderón](#); FLIP. November 2, 2018. [No más impunidad en crímenes contra la prensa](#); Inter-American Press Association. Report to the 74th General Assembly, October 19-22, 2018, Salta, Argentina. [Colombia](#). October 17, 2018.

<sup>358</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14<sup>th</sup>, 2019, p. 26.

<sup>359</sup> Caracol. July 7, 2018. [Capturan a cabecilla que custodiaba a periodistas ecuatorianos asesinados por 'Guacho'](#); *El Universo*. July 7, 2018. [Capturan a 'Reinel', quién vigilaba el equipo periodístico de El Comercio asesinado en Colombia](#); FLIP. July 8, 2018. [La captura de alias 'Reinel' es un primer paso para la búsqueda de justicia en el caso de los periodistas ecuatorianos asesinados en la frontera](#).

267. During a hearing of the Special Follow-up Team of the IACHR that was supporting the investigation into the murder of the *El Comercio* team, held on December 6 during the 170th Period of Sessions of the IACHR, the Colombian government reported that the investigations concluded that the murder of the workers was not the result of their status as journalists. Instead, during interrogations, the members of the criminal organization “clearly expressed that the killing was the result of the Ecuadorian government’s” refusal to swap the reporters for three individuals it held in its custody. “That is why their execution was ordered,” said the Office of the Attorney General of Colombia’s national director on organized crime, Claudia Carrasquilla.<sup>360</sup>

268. On December 21, the president of Colombia, Iván Duque, reported on social media on the death of Walter Patricio Arizala, alias “Guacho,” who was a dissident member of the FARC and identified as the individual responsible for the deaths of the journalists in the *El Comercio* news team. In his post, President Duque said, “we can confirm that ‘Guacho,’ one of the most horrendous criminals in the history of our country, has fallen. He was taken down by the heroes of Colombia,” “I told the Ecuadorian people that the crime against the three journalists will not remain in impunity. It is an accomplishment for the entire country.”<sup>361</sup> Arizala was killed during an operation carried out by Colombian authorities in a jungle area of the border department of Nariño.<sup>362</sup>

269. On May 26, the Office of the Attorney General of the Nation reported that it had brought charges against members of the central command of the ELN for the kidnapping of Salud Hernández and several journalists in Catatumbo between 2016 and 2017.<sup>363</sup>

270. On June 6, the National Legal Defense Office of the State reported that it was committed to complying with the judgments of the Inter-American Court convicting Colombia in 2018 for violating the right to a fair trial due to extraordinary delays and an inadequate investigation into the murder of journalist Nelson Carvajal Carvajal.<sup>364</sup> On March 21, the Inter-American Press Association, Robert F. Kennedy Human Rights, and the Fundación para la Libertad de Prensa (FLIP) filed a request before the Attorney General of the Nation to declare the murder of Carvajal a crime against humanity. However, according to the information available, on April 12, the Office of the Attorney General of the Nation denied the request.<sup>365</sup> Although the term for prescription had been increased to 10 years<sup>366</sup> and the possibility of declaring it a crime against humanity is under appeal, it is concerning to the IACHR that prescription may end up applying in the case, leaving it in impunity.<sup>367</sup>

271. In another case, in July, the 17th Administrative Court of Medellín declared the State responsible for its failure to comply with the obligation to provide security and to protect the right to life of opposition journalist and leader Edison Alberto Molina Carmona, murdered on September 11, 2013, in Puerto Berrio, Antioquia.<sup>368</sup> The ruling states that Molina did journalism work and that, as a consequence of his work and his role as an opposition leader, was subject to threats that were not addressed in a timely fashion by the State, for which reason it found the Office of the Attorney General of the Nation and the National Police

<sup>360</sup> IACHR. [MC 309/18 - ESE \(Colombia\)](#) and [MC 309/18 - ESE \(Ecuador\)](#). December 6, 2018. December 6, 2018. [Colombia dice que equipo de prensa de EL COMERCIO fue asesinado porque Ecuador se negó a canje](#).

<sup>361</sup> Twitter account of Iván Duque @IvanDuque. December 21, 2018.

<sup>362</sup> BBC. December 22, 2018. [Muere alias "Guacho": Colombia confirma el abatimiento del líder guerrillero acusado del asesinato de tres periodistas de Ecuador](#); *El Tiempo*. December 22, 2018. [Estos son los detalles del operativo en el que cayó alias 'Guacho'](#).

<sup>363</sup> Republic of Colombia. Office of the Attorney General of the Nation. [Imputados integrantes del Comando Central del ELN por secuestros de periodistas en la región de Catatumbo](#). May 26, 2018.

<sup>364</sup> Republic of Colombia. [Inter-American Court recognizes the efforts of the Colombian State in the case of Nelson Carvajal](#). June 6, 2018.

<sup>365</sup> FLIP. March 23, 2018. [SIP, FLIP y RFK piden declarar de lesa humanidad crimen de Nelson Carvajal](#); *El Tiempo*. April 17, 2018. [A 20 años del crimen de Nelson Carvajal, Fiscalía niega solicitud](#); FLIP. April 16, 2018. [FLIP rechaza decisión de la Fiscalía que niega la declaratoria de lesa humanidad en el caso Carvajal](#).

<sup>366</sup> *El Tiempo*. July 19, 2018. [A 20 años del crimen de Nelson Carvajal, Fiscalía niega solicitud](#).

<sup>367</sup> *El Tiempo*. July 19, 2018. [A 20 años del crimen de Nelson Carvajal, Fiscalía niega solicitud](#); *La Nación*. June 7, 2018. [Ejemplar condena por crimen del periodista Nelson Carvajal](#).

<sup>368</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Press Release R69/13. Office Of The Special Rapporteur Condemns Killing Of Attorney and Communicator in Colombia](#). September 20, 2018.

responsible and ordered financial reparations to the family of the journalist and public apologies. The Freedom of the Press Foundation recognized the judgment as a precedent for protecting journalism in Colombia.<sup>369</sup>

272. On August 13, the Seventh Specialized Criminal Judge of Bogotá sentence the former deputy director of the defunct Administrative Department of Security (*Departamento Administrativo de Seguridad, DAS*), José Miguel Narváez, to 30 years in prison for his connection to the murder of journalist and comedian Jaime Garzón, committed on August 13, 1999 in Bogotá. The judge also ordered the payment of 500 monthly minimum wages to his relatives. Although they welcomed the ruling, the defenders of Garzón's relatives and the FLIP expressed regret that the Judge's decision did not find the crime to be a crime against humanity, as the Office of the Attorney General had in 2016.<sup>370</sup>

273. On November 1, Specialized Human Rights Violations Prosecutor 53 decided to launch a preliminary inquiry and subpoena Jhon Jairo Velásquez Vásquez and Gustavo Adolfo Gutiérrez Arrubla for their alleged responsibility in the murder of journalist Guillermo Cano, murdered on December 17, 1986, by hitmen belonging to the Priscos criminal group, which was working for the Medellín Cartel.<sup>371</sup>

274. Toward the end of December 2017 and the beginning of 2018, several judicial proceedings continued 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 into the murder of Jaime Garzón, another journalist, in 1999.<sup>372</sup> According to the information available, on December 27, 2017, former DAS official Néstor Javier Pachón was released. He was being investigated for his alleged responsibility for the wiretapping and psychological torture of the journalist. In February 2018, Duque asked for that decision to be annulled, arguing that her due process rights and right to defense had been violated.<sup>373</sup> Toward the end of September, the journalist filed a petition regarding her case with the IACHR.<sup>374</sup> Based on this evaluation, the IACHR finds that this recommendation remains pending compliance.

## 6. Discrimination against Lesbians, Gays, Bisexuals, and Trans, and Intersex 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.

275. The Commission observes that in Colombia, progress has been made toward recognizing the rights of LGBTI persons, but at the same time, a complex context persists that is characterized by the violence to which these individuals are subjected. In accordance to information obtained by an international organization that annually registers murders of trans peoples, Colombia was positioned among the countries

<sup>369</sup> FLIP. July 27, 2018. [El Estado colombiano es condenado por el homicidio del periodista Edison Alberto Molina](#); *El Espectador*. July 30, 2018. [La Fundación para la Libertad de Prensa reconoció esta sentencia como un precedente para la protección del periodismo en Colombia](#); *Noticias Caracol*. July 31, 2018. [Policía y Fiscalía deberán reparar económicamente a familia de periodista asesinado en Antioquia](#).

<sup>370</sup> *Semana*. August 14, 2018. [Condenan a José Miguel Narváez a 30 años de cárcel por el crimen de Jaime Garzón](#); *El Espectador*. August 14, 2018. [Abogado de familia de Jaime Garzón apelará condena contra exsubdirector del DAS](#); *El Espectador*. August 14, 2018. [Condenan a 30 años a José Miguel Narváez por el crimen de Jaime Garzón](#); FLIP. August 14, 2018. [Juez condena a José Miguel Narváez a 30 años pero desconoce labor periodística de Jaime Garzón](#).

<sup>371</sup> *El Espectador*. November 2, 2018. [Popeye rendirá indagatoria por crimen de Guillermo Cano](#); *El País*. November 2, 2018. [Alias Popeye rendirá indagatoria por muerte del periodista Guillermo Cano](#); FLIP. November 2, 2018. [Popeye y Alias Maxwell, vinculados por el homicidio de Guillermo Cano](#).

<sup>372</sup> Nizkor Team. March 19, 2018. [El testimonio del exdirector del DAS, clave en el caso de la periodista Claudia Julieta](#); Equipo Nizkor. March 29, 2018. [Del Grupo Especial de Inteligencia 3 al G-7: El revelador memorando del detective 1949 sobre la persecución a la oposición en Colombia](#).

<sup>373</sup> FLIP. February 21, 2018. [Exfuncionario del DAS investigado por crímenes contra Claudia Julieta Duque fue dejado en libertad](#).

<sup>374</sup> FLIP. October 1, 2018. [Periodista Claudia Julieta Duque demanda a Colombia ante la CIDH](#).

with more deaths of trans persons in Latin America and second in South America. As of the close of this report, in November 2018, civil society was reporting 22 deaths of trans people in Colombia.<sup>375</sup>

276. Regarding the recommendation to **design and adopt the measures necessary to prevent acts of violence and discrimination, to protect, and to respond with due diligence**, the Commission underscores as positive the State work to enable progress in the protection and recognition of the rights of LGBTI persons; however, significant challenges persist. In this regard, the Commission notes the publication of Decree 762 of the Ministry of the Interior, which creates the National Public Policy on Guaranteeing the Exercise of the Rights of LGBTI Persons, with the aim of "promoting and guaranteeing the effective exercise of the rights of LGBTI people and people with diverse sexual orientations and gender identities."<sup>376</sup> According to the information received, the plan calls for the strengthening of civil and political rights of LGBTI persons, as well as their economic, social, and cultural rights. It also includes the strengthening of institutional capacities and approaches to human rights, gender, and sexual and ethnic diversity.<sup>377</sup> The IACHR welcomes the State's efforts to build a policy designed specifically for LGBTI persons.

277. The Commission also received information on actions taken by the Office of the Attorney General of the Nation aimed at coordinating efforts to properly respond to violence against LGBTI persons. According to the information, the responses include prioritizing the investigation of cases of violence against LGBTI persons, especially violence committed against trans people, and continuing the work of the Technical Secretariat of the Urgent Cases Group on violence against trans people.<sup>378</sup> Also, the information submitted describes the ongoing training activities and efforts to enhance the service provided by the National Police in cases of violence against lesbian, gay, bisexual, trans, and intersex persons. The Commission recalls that a fundamental component of the struggle against violence and discrimination that is based on sexual orientation, identity, and/or gender expression and body diversity is access to justice that enables investigation and punishment, as well as adequate reparations for the victims.

278. Regarding recognition of gender identity and/or expression, the Inter-American Commission underscores ruling T-675 of 2017 of the Constitutional Court, which ordered the State's notaries, in cases involving trans adolescents older than the age of 17 who want to change the sex in their identity documents, to allow them to do so without any type of obstacles.<sup>379</sup> Likewise, the IACHR underscores the Superintendence of Notarization and Registry's compliance with the ruling of the Constitutional Court by establishing a protocol for notary procedures that must be complied with in cases of recognizing the gender identity of adolescents.<sup>380</sup> The IACHR emphasizes that "gender identity is a constitutive and constituent element of peoples' identities. Therefore, its recognition by the State is vitally important to ensure the full enjoyment of human rights."<sup>381</sup> Likewise, recognizing the identity of children and adolescents is a positive form of preventing the suffering and violence to which they are subjected.

279. Lastly, the IACHR takes note of the decision by the Judicial Branch of Colombia issued by the Huila Criminal Court on December 17, 2018, finding the defendant guilty of femicide in the case of the murder of a trans woman in 2017. This establishes an important precedent for Colombia, as it is the first case in the country in which the criminal offense of femicide was applied with regard to a trans woman, and the second in Latin America after Argentina recognized the murder of activist Diana Sacayán toward the beginning of the year as "transfemicide."<sup>382</sup> The Inter-American Commission has called attention to the widespread violence

<sup>375</sup> Transgender Europe (TGEU) and Transrespecto versus Transfobia, [Transrespect versus transphobia worldwide tvt tmm update, trans day of remembrance 2018](#). About the 22 identified deaths see: TvT, [Name List](#), 2018. In regards of methodology used in the Project concerning trans persons deaths see: TvT, [TMM Methodology](#), 2018.

<sup>376</sup> Republic of Colombia. Ministry for Internal Affairs. Decree 762 of 2018, Article 2.4.4.2.1.1.

<sup>377</sup> Republic of Colombia. Ministry for Internal Affairs. Decree 762 of 2018.

<sup>378</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018.

<sup>379</sup> *El Espectador*, [Menores de edad podrán cambiar de sexo en sus documentos de identidad](#), March 13, 2018.

<sup>380</sup> Constitutional Court of Colombia, Judgment T-498/17, August 3, 2017, para. 5.5; *Tendencias*, [Reglamentan procedimiento para que menores de edad registren cambio de sexo](#), February 5, 2018.

<sup>381</sup> Inter-American Court, [Gender identity and equal protection, and nondiscrimination for same-sex couples](#), Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 98.

<sup>382</sup> *El Tiempo*, [La primera condena por feminicidio de una mujer trans](#), December 17, 2018.

against LGBTI persons on the continent. Trans persons are more vulnerable, as they are subjected to a variety of forms of violence because of their real or perceived gender identities. The IACHR welcomes this decision, as it represents a step forward toward adopting the measures necessary to apply standards of due diligence to the prevention, investigation, and punishment of violence based on sexual orientation, gender identity and expression, and body diversity.

280. The Commission views positively that the Peace Agreement has included a gender approach and provides special protection for the LGBTI population. However, according to information received from civil society, almost two years since the signing of the Peace Agreement, the gender approach as regards LGBTI rights has only been partially implemented.<sup>383</sup> In its observations on this report, the State provided additional information that the Gender Commission of the Special Jurisdiction for Peace, since 2018, has been making efforts to articulate with LGBTI civil society organizations. In this sense, he highlighted the listening meeting of July 30, 2018 with more than 50 members of this population and the territorial actions prioritized for 2019 that seek to motivate the presentation of information by social organizations in this sector. Likewise, the Gender Commission has adopted a gender approach, through which the LGBTI population is recognized as a population with particular needs in terms of access to justice and reparation.<sup>384</sup>

281. In addition, regarding Law 1,922 passed by the Congress of the Republic, as analyzed in the foregoing section on the Constitutional and Legal Framework, it did not include articles originally found in the bill drafted by the JEP that explicitly dealt with issues related to cases of gender-based violence, sexual orientation, gender identity, and children and adolescents. The State said the national legal framework closes any gaps that may exist regarding a lack of explicit references to issues such as violence based on gender, sexual orientation, and gender identity<sup>385</sup>.

282. Regarding this, the Commission recalls that the investigation of acts of violence against women and LGBTI persons must be conducted with a gender approach that properly incorporates the conceptualization and broad application of this perspective and includes the identification and analysis of inequalities, discrimination, stigmatization, and prejudice based on sex, gender-diverse identity and expressions, sexual orientation, or bodies that may depart from the standard feminine and masculine conception.

283. Based on these considerations, the Commission recognizes the efforts made by the State of Colombia to comply with the recommendations on the recognition and protection of the rights of LGBTI persons in the country, mainly through changes to and progress on public policies and judicial processes, and concludes that the State is in partial compliance. However, the Commission notes that the situation of violence and discrimination faced by the LGBTI population in the country continues to be a significant challenge, and therefore, the IACHR urges the Colombian State to continue in its efforts to prevent prejudice-based violence and discrimination by taking affirmative actions to end the cultural stigmas and prejudices against LGBTI persons. The Commission also urges the State to investigate human rights violations—recent or historical—using standards of due diligence and with the aim of eliminating impunity, punishing violators, and providing reparations for human rights violations committed against LGBTI persons.

## 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 final 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

<sup>383</sup> GPAZ, [Informe Gpaz: Observaciones sobre la incorporación del enfoque de género en los Acuerdos de Paz](#), 2018

<sup>384</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14<sup>th</sup>, 2019, p. 24-25.

<sup>385</sup> Republic of Colombia, Note S-GAIID-18-062955 October 1<sup>st</sup>, 2018.

persons who have suffered harm stemming from the deficient provision of health services in the prisons, as well as the family members of those who have died as a result of this cause.

- Adopt, on an urgent basis, effective measures to guarantee the supply of drinking water and water to satisfy other needs of persons deprived of liberty in the prisons, in keeping with the international minimum standards set forth in this report.
- Ratify the Optional Protocol of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

284. The Commission observes that the situation of people deprived of liberty in Colombia is characterized by, among other issues, overcrowding, excessive use of pretrial detention, negligent medical and psychiatric care, and inadequate access to potable water.

285. Regarding statistics on the number of people deprived of liberty, the State reported that between 2016 and September 2017, the penitentiary population declined by 4.3% to 115,708<sup>386</sup>. Regarding this, the National Penitentiaries and Prisons Institute (INPEC) reports that as of July 2018, the national penitentiary system—with a capacity to house 80,660 inmates<sup>387</sup>—was holding a total of 118,253 people.<sup>388</sup> This would be an increase of 3.1% compared to the figures for 2017<sup>389</sup> and 46% overcrowded.

286. Regarding the recommendation to adopt measures to **use pretrial detention as a measure of last resort and for the shortest period of time possible**, the State did not provide information on the measures taken in 2018. However, it reported that in order to decongest the accusatory penal system, Law 1,826 of 2017 was issued, establishing a special fast-track procedure and creating the figure of private prosecutor<sup>390</sup>.

287. Regarding the fast-track processes, the IACHR recognizes that although these efforts are being made to address the issue of excessive use of pretrial detention, these types of procedures can affect due process in a variety of ways, and in order to reduce excessive use of pretrial detention, processed individuals end up convicted in summary and "arbitrary" processes "without sufficient guarantees," or the opportunity to mount a proper defense<sup>391</sup>.

288. In addition, information available to this Commission indicates that results regarding pretrial detention continue to be discouraging, as the processes of the accusatory penal system are inefficient and slow, and consequently, a large number of people are kept in pretrial detention<sup>392</sup>. Similarly, the Follow-up Committee on Judgment T-388 of 2013—the judgment finding that the state of affairs within the criminal justice system was unconstitutional—indicates that the limit on the use of pretrial detention had multiple problems as far as its implementation, resulting from, among other issues, fear of a mass release of people being processed. For its part, the IACHR warns that according to the INPEC, through July 2018, 33.2% of the prison population was under pretrial detention<sup>393</sup>.

<sup>386</sup> Republic of Colombia, Note S-GAII-18-076808 November 30<sup>th</sup>, 2018, p. 118.

<sup>387</sup> INPEC, *Informe Estadístico Julio de 2018*, August 14<sup>th</sup> 2018, p. 23.

<sup>388</sup> INPEC, *Informe Estadístico Julio de 2018*, August 14<sup>th</sup> 2018, p. 13. For its part, during the public hearing "Follow-up to the State of Unconstitutional Elements in Penitentiary and Prison Matters" before the Constitutional Court, the Ombudsman's Office stated that, as of October 2018, the penitentiary system had a capacity for 80,203 places, and a total of 119,842 people were imprisoned (overpopulation of 39.6%). El Heraldo, "Hacinamiento en cárceles del país supera el 49%: Defensoría", October 25<sup>th</sup> 2018; El Colombiano, "Hacinamiento carcelario en Colombia es del 49%: Defensoría", October 25, 2018.

<sup>389</sup> INPEC, *Informe Estadístico Julio de 2018*, August 14<sup>th</sup> 2018, p. 14.

<sup>390</sup> Republic of Colombia, Note S-GAII-18-076808 November 30<sup>th</sup> 2018, p. 118.

<sup>391</sup> 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, para. 57.

<sup>392</sup> Grupo de Prisiones Universidad de los Andes, *Intervención ante la Corte Constitucional por parte de representantes de la comunidad académica*, July 8<sup>th</sup>, 2018.

<sup>393</sup> Commission on Follow-up of Sentence T-388 from 2013 (CSS), *Respuesta al informe semestral del gobierno nacional al estado de cosas inconstitucional del sistema penitenciario y carcelario*, July 2018, p. 12.

289. Based on this situation, the IACHR concludes that this recommendation remains pending compliance. In this regard, it urges the State to redouble its efforts to reduce pretrial detention and use it exceptionally, in keeping with its nature and in accordance with the principles of legality, proportionality, necessity, and reasonability.

290. Regarding the **recommendation to adopt effective measures to ensure the provision of medical and psychiatric care, ensure external monitoring of healthcare services, and provide adequate reparations to individuals who have suffered harm from deficient healthcare services**, the State provided partial information. Regarding the provision of medical and psychiatric care, it indicated that the funds intended for healthcare are administered by a State fiduciary entity, and measures are currently being taken to enhance the supervision process of the trust agreement. The State also highlighted that the Ministry of Justice and Law, the Office of the Ombudsperson, the Ministry of Health, the Unit on Penitentiary and Prison Services, the Consortium, and the INPEC jointly agreed on six healthcare indicators for measuring the current model's impact on this issue<sup>394</sup>.

291. According to the Office of the Ombudsperson, Colombia's prisons remain characterized by negligent medical care as a result of the lack of medical staff, medications, and treatment appropriate for the specific conditions of the prison population. The entity reported that as of August 2018, 91 of 137 prisons reported that medical staff was not available, and 71 lacked medications<sup>395</sup>. Likewise, the Follow-up Committee on Judgment T-388 of 2013 reports that as of May 2018, only 1,010 people were dedicated to providing healthcare services for all the prisons in the country<sup>396</sup>. The Follow-up Committee emphasizes that the deplorable detention conditions promote the spread of illnesses<sup>397</sup>, and that there is no approach to healthcare tailored to indigenous populations that respects their culture and ancestral knowledge<sup>398</sup>.

292. In its observations on this report, the State reported that all health areas of the country's 133 prisons now have human resources to ensure the provision of low-complexity health services within the centers and those more than 230 health-care institutions provide the most complex health services outside these centers. They also reported that INPEC has two Mental Health Units located in the Bogotá Metropolitan Prison and Penitentiary Complex, which houses 39 persons, and in the Cali Medium Security Prison, which houses 45 persons. They stated that 100 per cent of persons deprived of their liberty under the responsibility of INPEC have health coverage.<sup>399</sup>

293. In this regard, the IACHR considers that this recommendation is partially complied.

294. Regarding the recommendation to **adopt effective measures to ensure the provision of potable water in penal facilities**, the State reports that on January 10, 2018, the Unit on Penitentiary and Prison Services signed Inter-administrative Project Management Contract 216144, with an execution period through December 31, 2019. For its part, the Follow-up Committee on Judgment T-388 of 2013 states that the washing of dishes with dirty water has had negative consequences on the health of detained persons<sup>400</sup>. Based on this, the IACHR concludes that the recommendation remains pending compliance and reminds the

<sup>394</sup> Republic of Colombia, Note S-GAIIID-18-076808 November 30th 2018, p. 119.

<sup>395</sup> Defensoría del Pueblo, Press Release "[Análisis sobre el actual hacinamiento carcelario y penitenciario en Colombia](#)", August 2018.

<sup>396</sup> Commission on Follow-up of Sentence T-388 de 2013 (CSS), [Respuesta al informe semestral del gobierno nacional al estado de cosas inconstitucional del sistema penitenciario y carcelario](#), July 2018, p. 37.

<sup>397</sup> In particular, the Commission for the Follow-up of the Judgment refers to inadequate infrastructure; recurrent failures of toilets and sinks; lack of water for their use; leaks and damage to roofs, floors and walls of sampling sites; and abundant humidity and fungi in health areas. Sentence Follow-Up Commission T-388 of 2013 (CSS), Response to the national government's semi-annual report on the unconstitutional state of affairs of the penitentiary and prison system, July 2018, p. 37.

<sup>398</sup> Commission on Follow-up of Sentence T-388 de 2013 (CSS), [Respuesta al informe semestral del gobierno nacional al estado de cosas inconstitucional del sistema penitenciario y carcelario](#), July 2018, p. 22.

<sup>399</sup> Republic of Colombia, Note MPC/OEA No.:238/2019m March 14<sup>th</sup>, 2019, p. 27-28.

<sup>400</sup> Commission on Follow-up of Sentence T-388 de 2013 (CSS), [Respuesta al informe semestral del gobierno nacional al estado de cosas inconstitucional del sistema penitenciario y carcelario](#), July 2018, p. 33.



Colombian State that a failure to supply potable water constitutes a serious failure on the part of the State in its duties to guarantee the rights of people in its custody.

295. Lastly, regarding the recommendation to **ratify the Optional Protocol of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, the State reports that it is still evaluating the pertinence of incorporating those international instruments into its legal framework<sup>401</sup>. Therefore, the recommendation remains pending compliance.

## 8. Aggravated Risk Faced by Human Rights Defenders

- 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 arrangements for human rights defenders are designated with the participation of and coordinating with the beneficiaries so as to build trust.
- 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.

296. Regarding the general situation of vulnerability facing human rights defenders and the supposed perception of their participation in or support for some part of the conflict, the Commission recommended that the State **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.**<sup>402</sup>

297. In its response to the Commission, the State reported that several actions had been taken to recognize, prevent, and overcome stigmatization in various parts of the country, during which the national

<sup>401</sup> Republic of Colombia, Note S-GAIID-18-076808 November 30th 2018, p. 120.

<sup>402</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, para. 1200 (1).

government has had the opportunity to recognize the work of at least 248 human rights, community, church, and union organizations, as well as associations and groups of relatives of victims, among others. Among other recognitions, the State reported on the declarations of the President of the Nation, within the framework of the Building Country Workshop, reaffirming the commitment of the National Government to the protection of leaders and human rights defenders.<sup>403</sup>

298. Likewise, the State informed that several communications campaigns have been developed defending the defense of human rights.<sup>404</sup> Among other actions, the national government worked for more than a year with civil society organizations to design a communications strategy, called "You defend my rights, I defend your work." The State indicates that the objective of the campaign was for citizens to identify human rights defenders, what they do, and what they contribute to society, thereby raising awareness on the importance of their work to defend human rights. Additionally, a television commercial was produced to contribute to reversing stigmatization and supporting the work of human rights defenders and to raise awareness on their work defending human rights.<sup>405</sup> The Commission notes, however, that these initiatives are from prior to 2018.

299. During the work visit to the country, in a series of meetings with civil society organizations, they informed the Commission of the existence of spaces for dialogue created with the State in previous agreements, including the National Table on Guarantees and the National Commission on Security Guarantees.<sup>406</sup> The IACHR therefore finds that the State has substantially complied with this recommendation and will continue to follow up on this until it is fully implemented.<sup>407</sup>

300. Regarding the situation of criminalization and stigmatization facing human rights defenders, in its Country Report, the Commission recommended that the State of 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.** It also recommended that the State ensure 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.

301. Regarding this, in its report to the Commission, the State indicated that the national government has issued numerous administrative orders requiring territorial authorities to adopt or enhance actions to recognize, respect, and guarantee the work of human rights defenders and social, ethnic, and grassroots human rights leaders.<sup>408</sup> Correspondingly, the IACHR was informed about several support campaigns and pronouncements from the National Government in favor of human rights defenders.<sup>409</sup>

302. Without prejudice to the significant progress toward addressing stigmatization, during its recent work visit to the country, the Commission received a variety of information regarding the stigmatization of the work of human rights defenders by some senior State officials.<sup>410</sup> Civil society organizations pointed to, among other things, statements of the Minister of Defense in December 2017 in which he publicly stated that the 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." The minister said that there was no organization behind the killing of social leaders.<sup>411</sup>

<sup>403</sup> Republic of Colombia, Additional information to the Note MPC/OEA No.:238/2019, March 15<sup>th</sup>, 2019. p. 45.

<sup>404</sup> Republic of Colombia, Note S-GAIID-18-076808 November 30<sup>th</sup>, 2018, p. 121.

<sup>405</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 122. Also see [Tu defiendes mis derechos](#).

<sup>406</sup> Information received in the context of the visit made November 27-30, 2018.

<sup>407</sup> IACHR, [Hearing on reports of impunity for the murders of and attacks on human rights defenders in Colombia](#), 170<sup>th</sup> Ordinary Period of Sessions, December 6, 2018.

<sup>408</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 123.

<sup>409</sup> Republic of Colombia, Additional Information to the Note MPC/OEA No.:238/2019, March 15<sup>th</sup>, 2019, p. 45.

<sup>410</sup> IACHR Press Hearing. <http://www.oas.org/es/cidh/prensa/comunicados/2019/008.asp>

<sup>411</sup> Noticias RCN, [Declaraciones de mindefensa sobre muerte de líderes sociales generan polémica](#), December 18, 2017.

303. The Commission also received information on statements associating human rights defenders with criminal activities. For example, the governor of Antioquia recently made statements during mining protests telling several media outlets that "behind this (the strike) are criminal gangs that are close to or associated with the Gulf Clan (Autodefensas Gaitanistas de Colombia), and people arrived recently who have connections with the ELN and are associated with the ELN."<sup>412</sup> Also, civil society organizations pointed to the recent stigmatization in the media of the student protests in which the students were called "vandals," "guerrillas," and "terrorists."<sup>413</sup>

304. The Commission notes that State authorities must refrain from making stigmatizing statements and disseminating negative representations of the work of human rights defenders. Human rights defenders are essential for strengthening and consolidating democracy and the rule of law because the goal of the work they do is full respect for the fundamental rights of persons. This has repercussions for society as a whole, as it also benefits it. Based on the analysis herein, the IACHR finds that this recommendation remains pending compliance.

305. Regarding the recommendation that the State **strengthen its public policies protecting at-risk human rights defenders and adopt new measures to definitively consolidate and legitimize the role of human rights defenders in society**, the State indicated that on the issue of protecting human rights defenders, Decree 1,581 of 2017 was approved, establishing a public policy for preventing violations of the rights to life, integrity, liberty, and security of individuals, groups, and community; and Decree 2,078 of 2017 was approved, establishing a roadmap for the collective protection of the rights to life, liberty, integrity, and personal safety of groups and communities.<sup>414</sup>

306. Likewise, Decree 2,124 of December 18, 2017 was adopted, establishing the regulations for the prevention and early alert system for rapid response to the presence and activities of organizations that put at risk the rights of the population and the implementation of the Final Agreement. The Commission observes that this prevention and early alert system for rapid response has two components: an early alert to the Office of the Ombudsperson, pursuant to its constitutional and legal authority; and a rapid response and reaction by the national government, with the participation of local entities, coordinated by the Ministry of Internal Affairs.<sup>415</sup>

307. In its observations on this report, the State provided additional information from the Ministry of National Defense on the integration of an elite body of the National Police with a multidimensional approach, as an immediate response to dismantle the criminal organizations that have been attacking human rights defenders, social and political movements. The Elite Corps is made up of 1,123 of the best police officers, headed by 120 experts in criminal investigation, who lead a comprehensive investigative model aligned with the Office of the Attorney-General of the Nation and act in the area of prevention and investigation.<sup>416</sup> It also sent information from the Special Jurisdiction for Peace on protection measures for victims, witnesses and other subjects through security schemes, support for safe mobility, preventive and dissuasive investigations and preventive measures, as well as on the development of a process of permanent follow-up to the measures adopted.<sup>417</sup>

308. The Commission welcomes this legal and institutional progress made by the State of Colombia. Nevertheless, it notes with extreme concern that recent years have seen a continuance in the steady increase

<sup>412</sup> Caracol, [Paro minero está infiltrado por el Clan del Golfo y el ELN](#), August 20, 2018.

<sup>413</sup> Meetings with civil society in Bogotá and Medellín, November 28 and 29, 2018.

<sup>414</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 124.

<sup>415</sup> National Government of Colombia, Ministry for Internal Affairs, [Decree 2124](#), Whereby regulations are established for the prevention and early alert system for rapid response to the presence and activities of organizations that put at risk the rights of the population and the implementation of the Final Agreement, December 18, 2017.

<sup>416</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14<sup>th</sup>, 2019, p. 28-29.

<sup>417</sup> Republic of Colombia, Note MPC/OEA No.:238/2019, March 14<sup>th</sup>, 2019, p. 30.

in attacks on and murders of human rights defenders in the country. In 2016, the Commission warned of an increase in violence, pointing to the considerable increase in the number of murders compared to the previous year.<sup>418</sup> The IACHR regrets noting that since then, the situation has worsened, and the violence has continued to increase since implementation of the peace agreement.

309. Regarding this, the Commission observes that according to the Timely Action Plan (*Plan de Acción Oportuna*, PAO) for preventing and protecting human rights defenders, social leaders, community leaders, and journalists, recently launched by the national government, there is still no unified database with consolidated figures on the number of human rights defenders who have been murdered.<sup>419</sup> In this regard, the PAO indicates that according to estimates from the United Nations High Commissioner on Human Rights, between January 2016 and October 2018, 213 cases of murders of human rights defenders and social leaders were reported. The plan states that between January 1, 2016, and August 22, 2018, the Office of the Ombudsperson recorded 343 murders of social leaders and human rights defenders, with the departments most affected being Antioquia, Cauca, Norte de Santander, Nariño, Valle del Cauca, and Chocó. For their part, the civil society organizations said they have recorded at least 360 homicides during the same period indicated by the State.<sup>420</sup>

310. Regarding risk analysis of the measures of protection, the organizations pointed to the importance of ensuring that preliminary risk reviews be in-depth and based on a contextual analysis. Likewise, the organizations pointed the Commission toward, for example, the deficiencies in the implementation of measures of protection that make it difficult and even impossible to provide adequate protection for leaders and human rights defenders in the country. Of particular concern to the Commission, civil society indicated that some protection arrangements for individuals benefiting from precautionary measures granted by the IACHR have been unilaterally withdrawn.<sup>421</sup>

311. The Commission recalls that acts of violence and other attacks on human rights defenders not only impact their own rights as guaranteed to all humans, but also threaten the fundamental role these defenders play in society. Such actions also put at risk all the individuals on whose behalf they work, leaving them more vulnerable and deepening their defenselessness.

312. The Commission notes as one of the main issues requiring action the situation of violence facing human rights defenders and calls on the State to keep records on the different types of attacks committed against human rights defenders and social and community leaders. The Commission highlights that the Colombian State said it was working on an IT platform to unify the statistics.<sup>422</sup> The IACHR reiterates that it is important for civil society to be able to participate in the design of this tool and for it to enable cross-referencing and include the different forms of aggression, as this could be useful for identifying the extent of the violence and for preparing adequate prevention and protection plans. The Commission underscores the importance of designing a registry that is complete and includes details of the aggressions in order to be able to establish the motives, possible common patterns, and the extent of violence as a basis for adopting measures to prevent and investigate these actions and protect human rights defenders and leaders. Based on the foregoing, the Commission finds that the State has partially complied with this obligation, and will therefore continue to conduct follow-up.

313. Likewise, in its country report, the Commission recommended the Colombian State **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**

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<sup>418</sup> IACHR Release No. 160/16, [IACHR Condemns the Increase in Killings of Human Rights Defenders in Colombia](#), November 2, 2016.

<sup>419</sup> National Government of Colombia, Ministry of Internal Affairs, [Timely Action Plan for Prevention and Protection for Human Rights Defenders, Social Leaders, Community Leaders, and Journalists](#), November 18, 2018, p. 7.

<sup>420</sup> National Government of Colombia, Ministry of Internal Affairs, [Timely Action Plan for Prevention and Protection for Human Rights Defenders, Social Leaders, Community Leaders, and Journalists](#), November 18, 2018, p. 7.

<sup>421</sup> Meetings with civil society in Bogotá and Quibdó, November 28, 29, and 30, 2018.

<sup>422</sup> Meetings with State authorities in Bogotá, November 27, 2018.

**protection.** In particular, the Commission recommended that the State ensure that the personnel who participate in the security arrangements for human rights defenders are selected with the participation of and coordinating with the beneficiaries so as to build trust.

314. In its response to the Commission, the State reported that the beneficiaries of the protection program coordinated by the National Protection Unit fully participate—either directly or through their organizations—at all the different stages of the protection process. Regarding the selection of trustworthy personnel, the State indicates that the National Protection Unit has been addressing requests on this submitted by vulnerable populations requiring a differentiated approach.<sup>423</sup>

315. For its part, the Commission observes that Decree 660 of 2018 establishes that risk analysis and the adoption of measures under the Comprehensive Program on Security and Protection for Communities and Organizations in Outlying Areas shall include the active and effective participation of organizations and communities in outlying areas to define the risk in question and agree on tangible and intangible measures of prevention, protection, and security that take into account the specific conditions of communities and organizations in outlying areas, considering the real capacities of the entities involved, the principle of progressivity, and standards on targeting and prioritizing measures.<sup>424</sup>

316. During its country visit, the Commission met with authorities of the National Protection Unit, who explained the actions and procedures involved in risk assessment.<sup>425</sup> For their part, civil society organizations questioned the effectiveness of the National Protection Unit measures of protection, specifically regarding risk analysis, delays, and implementation of measures of protection, as well as the procedures for lifting the measures. The IACHR has closely monitored the specific situation of leaders and human rights defenders from indigenous and Afro-Colombian communities and recommends that the Colombian State move forward on and extend implementation of a differentiated approach for collective measures that includes an ethnic and racial perspective and takes into account, among other things, the conditions of the individuals to be protected and the need for culturally appropriate measures of protection.<sup>426</sup> Based on this, the IACHR finds that the State has partially complied with this recommendation.

317. Regarding the recommendation to **develop a public policy aimed at fighting impunity for the violations of the rights of human rights defenders**, the State indicated that the Office of the Attorney General of the Nation has designed and implemented a strategy to prioritize the investigation and prosecution of murders and threats committed against human rights defenders. This strategy was presented to the IACHR during the public hearing held on March 21, 2017.<sup>427</sup> The State also highlights the adoption of Directive 002 of 2017 adopted by the Office of the Attorney General of the Nation, described above in the section on Protection Mechanisms. The measure establishes general guidelines for investigating crimes committed against human rights defenders, and the IACHR provided support for its design.<sup>428</sup> For its part, the Commission observes that at the conclusion of a meeting of the National Committee on Security Guarantees, held on July 10, 2018, the President of the Republic announced the implementation of a plan to offer rewards for all information enabling the identification of those responsible for attacks on social leaders and human rights defenders in the country. The rewards will be greater for identification of the masterminds.<sup>429</sup>

<sup>423</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 125.

<sup>424</sup> Republic of Colombia, Ministry for Internal Affairs, [Decree 660, creating and establishing the regulations for the Comprehensive Security and Protection Program for Outlying Communities and Organizations: and other provisions](#), April 17, 2018, Art. 2.4.1.7.6.11

<sup>425</sup> Meetings with State authorities in Bogotá, November 27, 2018.

<sup>426</sup> Meetings with civil society in Bogotá and Quibdó, November 28, 29, and 30, 2018.

<sup>427</sup> IACHR, [Hearing on investigating attacks on human rights defenders in Colombia](#), 161st Period of Sessions, March 21, 2017.

<sup>428</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 124.

<sup>429</sup> Presidency of the Republic, press release, [President announces plan for intervention and rewards plan for protecting social leaders](#), July 10, 2018.

318. The State also notes that between January 1, 2016 and September 20, 2018, the Office of the Attorney General received 384 cases of homicides reported by four sources of information: the Office in Colombia of the United Nations High Commissioner for Human Rights, the Office of the Ombudsperson, the Cumbre Agraria, and the Marcha Patriótica. Of these homicides, 198 correspond to cases of human rights defenders verified by the OHCHR. Regarding the 198 murders, the State describes it as historic for the country that it was able to solve 55% of the cases, equivalent to 108 cases, leading to 19 judgments, 38 cases at trial, 23 in the investigation phase, and 28 in the preliminary inquiry phase with arrest warrants issued and yet to be executed.<sup>430</sup>

319. However, regarding the status of investigations into attacks on leaders and human rights defenders, the Commission observes that civil society organizations disagree with the figures provided by the Office of the Attorney General of the Nation as far as the percentage of murders of human rights defenders solved. The Commission notes that, as indicated during the recent launch of the Timely Action Plan for Prevention and Protection for Human Rights Defenders, the national government is aware of 213 cases of murders of leaders and human rights defenders that took place between January 2016 and October 2018, and the Office of the Attorney General of the Nation has made progress on solving 113 cases, equivalent to 53.05% of those reported. The plan also indicates that, with regard to the figure for the number of murders reported by the Office of the Ombudsperson, the Office of the Attorney General of the Nation has made progress in solving 34%, and some of these cases reported overlap with cases recorded by the OHCHR. In its report to the Commission, the State updated the figure from 1 January 2016 to 31 December 2018 to 409 cases of homicides against human rights defenders, using as a universe of cases those identified by the OHCHR, with a clarification rate of 43.03% of investigations.<sup>431</sup>

320. However, during the public hearing held in the framework of the 170th Period of Sessions, the organizations indicated that at least 360 murders took place during that period.<sup>432</sup> Thus, civil society organizations stated that the record is incomplete and the proportion of cases solved is not around 50%. They stated that according to their analysis, murder convictions have been secured in only 8.5% of the cases registered by these organizations, and without the motive for why these human rights defenders were killed being fully established in any of these cases.

321. The Commission recalls that the State must conduct *ex officio* investigations into all facts of this nature and punish both the perpetrators and the masterminds. This must include developing lines of investigation based on the hypothesis that the murders may have been committed in connection with the work of defending human rights. Also, all attacks suffered by human rights defenders must be investigated, not only their murders. These investigations must also be conducted with due diligence, exhaustively, seriously, and impartially. The Commission notes that these standards are contemplated in the Directive 002 of 2017 and will be attentive for its effective implementation. The Commission calls on the State to redouble its efforts to address the situation of impunity regarding crimes committed against human rights defenders in the country. It also reminds the State that its investigations must take into consideration a differentiated gender approach. Therefore, the IACHR finds that the State has partially complied with this recommendation and will continue monitoring compliance.

322. Lastly, in its Country Report, the Commission recommended that the State **ensure that human rights defenders and the general public have access to the public information held by the State**. Regarding this, the State indicated in its response that although the general principle of transparency does not apply to intelligence information, the National Intelligence Directorate has procedures allowing access to the information. The State indicated that since 2014, and by order of Decree 303 of July 11, 2014, the National Directorate on Intelligence has authority to authorize access and allow queries of the intelligence, counterintelligence, and confidential expenditure files of the defunct Administrative Department of Security (DAS) In this regard, the National Directorate on Intelligence has been authorizing access and queries of those

<sup>430</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 124.

<sup>431</sup> Republic of Colombia, Additional Information Note MPC/OEA No.:238/2019, March 15th, 2019, p. 50.

<sup>432</sup> IACHR, [Hearing on reports of impunity for the murders of and attacks on human rights defenders in Colombia](#), 170th Ordinary Period of Sessions, December 2018.

archives by a variety of judicial authorities and oversight bodies, as permitted under the law, until the issue of order 001 of March 12, 2018, by the JEP. This order requires the intelligence, counterintelligence, and confidential expenditure files of the defunct Administrative Department of Security (DAS) to be made available to the Special Jurisdiction for Peace and to be placed in the custody of the General Archive of the Nation. This means that procedures to identify, classify, access, and query documentation found in the intelligence, counterintelligence, and confidential expenditure files of the defunct Administrative Department of Security (DAS), authorization is required from the competent judicial authority of the Special Jurisdiction for Peace.<sup>433</sup> Therefore, the IACHR finds that the State has partially complied with this recommendation and will continue monitoring compliance.

#### IV. CONCLUSIONS

323. 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, and Reparation Report: Fourth Report on the Human Rights Situation in Colombia*, and to preserve and improve on results achieved so far.

324. 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 likewise underscores the notable effort by the State to implement the Comprehensive Truth, Justice, Reparation, and Non-Repetition 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. However, the Commission expresses concern at the continuation of the violence, especially in rural areas, and the impact of this situation on human rights defenders and social and territorial leaders, and the serious challenges facing the State to ensure their protection.

325. Likewise, the Commission reiterates the great effort made by the State for the implementation of the Integral System of Truth, Justice, Reparation and Non-Repetition, with the aim of achieving a stable and lasting peace in Colombia through the normative and institutional implementation of the different mechanisms that compose it. However, the Commission makes a special appeal to the State to guarantee that the Special Jurisdiction for Peace (JEP) has the Statutory Law necessary for its full functioning. At the same time, it encourages the State to construct an updated, unified and purified register of disappeared persons, and to guarantee the necessary resources for the implementation of the Unit for the Search for Disappeared Persons (UBPD); as well as the need to achieve full coordination and articulation of all the components of the SIVJRNR, as well as of these with the other State institutions, through the realization of institutional agreements, in order to achieve an Integral System whose central axis is the victims within the framework of respect for the human rights of all actors involved in the conflict.

326. 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 under the Peace Agreement 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.

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<sup>433</sup> Response from Colombia. Letter from the Permanent Mission to the OAS, No. MPC/OEA NO: 1349/2018, December 3, 2018, p. 130.