

## CHAPTER V

### FOLLOW-UP OF RECOMMENDATIONS ISSUED BY THE IACHR IN ITS COUNTRY OR THEMATIC REPORTS

#### FOLLOW-UP REPORT TRUTH, JUSTICE AND REPARATION: FOURTH REPORT ON HUMAN RIGHTS SITUATION IN COLOMBIA

##### I. INTRODUCTION

1. The objective of this chapter 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 “Report on Truth, Justice, and Reparation” or “the report of the IACHR”) approved by the Inter-American Commission on Human Rights (hereinafter “IACHR” or “Inter-American Commission”) on December 31, 2013. In December 2012, the IACHR made an on-site visit to Colombia and subsequently prepared the country report that is the subject of this follow-up report. On August 28, 2014, the IACHR published the report<sup>1</sup> and on the same date it transmitted a copy to the State, in keeping with Article 60 of its Rules of Procedure, and granted it four months to submit information about compliance with the recommendations contained in it. On Monday December 29, 2014, the State of Colombia presented the information requested.

2. The Commission considers that the general recognition by the State that the recommendations of the report are aimed at offering “tools for overcoming the challenges for ensuring and protecting human rights,” and that their “implementation will represent a positive change for the holders of rights,” is a result of the commitment taken on by the State to effectively address the problems and challenges identified, as this is a necessary element for making decisive progress implementing the protections and guarantees required for victims of human rights violations in Colombia. In that sense, the IACHR recognizes what was noted by the State when it indicates that “there are innumerable obstacles and challenges to overcome,” but that “the Government of Colombia, as part of an unbending policy of the State will continue to redouble efforts to guarantee the human rights of all inhabitants of the national territory...,” as well as its openness to the commitment of the IACHR to continue working with the State to seek solutions.<sup>2</sup> The State also noted the importance of the report of the Commission in seeking to achieve a “positive transformation” on the situation of human rights in Colombia, in particular the recognition of fundamental issues such as the “peace talks.”<sup>3</sup>

3. In the report *Truth, Justice, and Reparation*, the Commission recognized that Colombia is at a historic moment in which the Government and the FACR-EP may reach a peace agreement. The Commission is pleased to note that at present the parties engaged in negotiations in Havana since 2012 have reached agreement on three of the six points of the agenda<sup>4</sup> defined in the “General Agreement to end the conflict and

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<sup>1</sup> IACHR, *IACHR Publishes Fourth Report on the Situation of Human Rights in Colombia*, August 28, 2014.

<sup>2</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, pp. 4-5.

<sup>3</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 5.

<sup>4</sup> The Discussion Commission has reached agreements on the following topics of the agenda: Policy of comprehensive agricultural development, Political participation and Solution to the problem of illicit drugs. See: <https://www.mesadeconversaciones.com.co/documentos-y-comunicados>

build a stable and lasting peace”<sup>5</sup> and that the parties continue advancing in the process of dialogue on the remaining issues pending.

4. In particular, the Commission notes that since July 2014, the parties in the dialogue process initiated a cycle of conversations on the agenda point regarding victims of the armed conflict. In that regard, “mechanisms for the direct participation” were agreed upon for various groups of victims to go the negotiating sessions in Havana to address the negotiating parties. The delegations of both the National Government and the Revolutionary Armed Forces of Colombia-People’s Army (hereinafter “FARC-EP”) acknowledged that giving the victims a voice in the process “will provide fundamental input for discussions on this point.”<sup>6</sup> By agreement of the negotiating parties, the groups of victims were chosen through a selection process conducted by the United Nations in Colombia and the Centro de Pensamiento y Seguimiento al Proceso de Paz (Center for Thought and Monitoring of the Peace Process) of the Universidad Nacional with the accompaniment of the Conference of Catholic Bishops of Colombia. As of December 2014, five delegations of victims had participated in the process<sup>7</sup> and the cycle of conversations on this point of the agenda was continuing.<sup>8</sup> Moreover, according to available information, as of December 2014, the FARC-EP announced a “unilateral ceasefire and cessation of hostilities.”<sup>9</sup>

5. In view of this circumstance, the Commission reiterates that the consolidation of a process of dialogue, and the expectations of achieving a stable and lasting peace in Colombia, are crosscutting themes in the country’s human rights situation. In that context, while the dynamics for attaining peace are complex, full observation of the State’s human rights obligations should be central in the peace process, not only to contribute to the possibility of an accord, but in its consolidation and implementation when it comes to ending the violations stemming from the conflict, and prevent their repetition in the future; and how the possible establishment of peace in Colombia would guarantee its inhabitants respect for their fundamental rights.

6. Moreover, the Commission considers it positive that the State conducted a process of disseminating the content of the follow-up report to various governmental and state authorities, and observes as a good practice the inter-institutional exercise deployed to present meticulous and detailed information on the State’s efforts in respect of human rights during the 2013-2014 period, as well as the analysis of the 134 recommendations included in the report *Truth, Justice and Reparation*.<sup>10</sup>

7. The State undertook a “classification of the recommendations considering progress made” and presented the information on follow-up in groups as follows: (i) 12 “recommendations not shared,” referred to recommendations “in which the Colombian State finds that their content does not take into account the processes developed in the country or are at odds with rights and guarantees in the Colombian legal framework, and in each chapter the considerations taken into account for each one of them are

<sup>5</sup> See: IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, December 31, 2013, paras. 80 and 83.

<sup>6</sup> Mesa de Conversaciones. [Joint communiqué of July 17, 2014](#). Havana, Cuba.

<sup>7</sup> See: Telesur, [Diálogos de Paz recibe a quinto grupo de víctimas](#), December 16, 2014; El Heraldo, [Último grupo de víctimas ya está en La Habana](#), December 15, 2014.

<sup>8</sup> Mesa de Conversaciones. [Joint communiqué of November 2, 2014](#). Havana, Cuba.

<sup>9</sup> See: Telesur, [FARC-EP declara cese unilateral al fuego por tiempo indefinido](#), December 17, 2014.

<sup>10</sup> The State informed the IACHR that “under the leadership of the Ministry of Foreign Affairs the following activities were undertaken to analyze the report of the IACHR: “two (2) inter-institutional meetings, which included workshops, and twelve (12) bilateral meetings with the agencies with the most competence on the issue, such as: Ministry of Interior, Ministry of National Defense, Ministry of Justice and Law, Unit of Attention and Integral Reparation for Victims, National Protection Unit, National Prison Institute, Office of the Presidential Adviser for Human Rights, Office of the Presidential Adviser for Women’s Equity, National Institute of Legal Medicine and Forensic Sciences, Office of the Attorney General of the Nation, and Superior Judicial Council, and finally with the National Commission to Search for Disappeared Persons.” Republic of Colombia. *Situación de Derechos Humanos 2013-2014 y seguimiento a las recomendaciones contenidas en el IV Informe de País de la CIDH*. Note S-GAIIID-14-094783, received December 29, 2014, p. 3.

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presented.”<sup>11</sup>; (ii) 15 “recommendations implemented satisfactorily,” (iii) 104 “recommendations in the process of implementation, and (iv) one recommendation of which “the State takes note” referred to a recommendation “that necessarily entails further governmental analysis of the its content and scope.”<sup>12</sup>

8. In the report *Truth, Justice, and Reparation*, the Commission analyzed the human rights situation in the Republic of Colombia particularly mindful of the context of the continuation of the internal armed conflict and the impact it has had on the protection, enjoyment, and exercise of these rights. Through its monitoring of the general human rights situation in Colombia, the IACHR has found that due to the internal armed conflict, the Colombian situation entails additional complexities stemming from the systematic and generalized violence, which is part of the daily lives of the inhabitants of Colombia, and which takes a particularly high toll on the most vulnerable sectors of the population. At the same time, the IACHR recognized and valued the important public policies undertaken by the State to address this complex reality and the impetus that the Government has given to attending to the victims of human rights violations and protecting persons at risk, as well as the significant investment in human and financial resources in these areas.

9. The Commission’s analysis also took into account that the Colombian armed conflict has gone through major changes in terms of the dynamics and the actors involved over the more than 50 years it has lasted. The Commission has noted that a crucial point has been the Law on Victims and Restitution of Lands (Law 1448 of 2011), that the existence of an armed conflict, (which had been denied for a period of time) and its legacy, has been acknowledged, and that this allows for the reparation of victims and the return of lands that had been forcibly taken by paramilitary group, on occasion with the collusion of the security forces.

10. In addition, the IACHR has noted that the violence stemming from the failure to effectively and completely dismantle the armed structures of paramilitary groups continues to have a severe impact on the rights of the inhabitants of Colombia. Therefore, the State also maintains specific duties to dismantle those *Autodefensas* who did not participate in the collective demobilizations carried out from 2003 to 2006, and who continue operating in Colombian territory. In this regard, the IACHR observed with concern the elements of continuity that one finds between the former *Autodefensas* and the so-called “emerging criminal bands” (BACRIM, for “*bandas criminales emergentes*”), which the State characterizes as “organized crime” structures “different in nature and scope” from the paramilitary groups.

11. In this respect, the Commission reiterated in its report that the grave situation of impunity in cases involving grave human rights violations and breaches of international humanitarian law (hereinafter “IHL”) by all actors in the conflict in Colombia, as well as the failure to clarify the dynamics, scope, composition, and structure of the former *Autodefensas* and the illegal armed groups that came about after the demobilization of paramilitary organizations, are systematic obstacles not only for ensuring victims’ rights, for also for having detailed and precise information that makes it possible to characterize these groups, dismantle the ties that feed them, and adopt the appropriate political and legal measures to confront them.

12. In addition, the report of the Commission took into account the legal mechanisms such as the “Legal Framework for Peace” (*Marco Jurídico para la Paz*), the implementation of the Justice and Peace Law, , and the mechanisms that have been adopted by the Office of the Attorney General for setting priorities in investigating, by which the State is developing the design of a model of transitional justice applied to a non-international armed conflict that has not ended. In its report, the IACHR examined the general standards on judicial guarantees and judicial protection, pertinent considerations regarding their application from the standpoint of international human rights law and international humanitarian law, given their complementary

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<sup>11</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pp. 3-4.

<sup>12</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 4.

nature and the framework governing transitional justice processes. Furthermore, and taking account of the observations presented by the State regarding its understanding of the obligations incumbent upon it in the context of transitional justice, the Commission made a number of considerations on how the State's international obligation in this area must be accommodated in the design of a strategy of transitional justice that comports with *jurisprudence constante* of the inter-American system's organs for the protection of human rights and the applicable rules of IHL.

13. In this framework, the Commission first reiterated that overcoming impunity is essential for achieving justice and preventing the repetition of human rights violations. Secondly, that in order for any transitional justice system to establish a lasting peace, it must function as an incentives system useful in getting at the truth, identifying and punishing those responsible, and redressing the victims, and when crafting legal mechanisms, those international obligations must be fully observed, both in their scope and application. Third, the Commission reiterated to the State that it is imperative that the peace agreements and the provisions of transitional justice that will pave the way for Colombian society's transition to a stable and lasting peace are implemented in harmony with the State's international obligations and offer real prospects for fulfillment.

14. In light of the above, the Commission emphasized that while it is true that the concept of prioritization would be in principle consistent with the importance and necessity of judicially establishing the responsibility of the most important leaders, it is no less true that the concept of selectivity and the possibility of waiving the investigation and prosecution of serious human rights violations would in principle be incompatible with the State obligations.

15. On January 30, 2015, the Commission forwarded to the State a copy of the preliminary draft of this section of its 2014 Annual Report, in keeping with Article 59(10) of its Rules of Procedure, and asked that it submit its observations within one month. On February 27, 2015, the Commission received the State's observations and comments which, as relevant, were incorporated into this final version approved by the Commission on March 9, 2015.

16. This follow-up chapter is divided into nine sections focused on the measures adopted by the State to carry out the Commission's recommendations. The chapter follows the structure used in the report of the IACHR to which this is the follow-up report. In each section the recommendations made by the Commission in the respective chapters are recalled and referred to, and the main areas of progress and main challenges identified by the IACHR are analyzed in light of the information submitted by the State and civil society, as well as the information that the Commission has collected in its monitoring of the general human rights situation in the country. To that end the Commission has drawn on the information received during public hearings, investigations pursued at its own initiative, input from the mechanism of cases and petitions, precautionary measures, and the requests for information under the power established in Article 41 of the American Convention on Human Rights (hereinafter "the American Convention"); as well as the information available from other public sources, and the decisions and recommendations of specialized international agencies, among others. Finally, the Commission presents its conclusions and reiterates the importance of the Colombian State fully carrying out the recommendations made in the report of the IACHR.

## **II. FOLLOW-UP ON THE RECOMMENDATIONS**

### **A. LIFE, HUMANE TREATMENT, AND PERSONAL LIBERTY**

- That it adopt, as soon as possible, the measures necessary to prevent State agents from committing violations of human rights and international humanitarian law. Those measures should include: (a) a serious, impartial, and effective investigation into all cases that involve alleged violations of human rights and IHL, as well as of all those persons who have planned, ordered, and/or perpetrated such acts; and (b) intensive training in human rights law and IHL.

- That it adopt the appropriate measures for the members of the security forces who are allegedly involved in cases of violations of human rights or IHL to be suspended from active duty until a final decision is issued in the disciplinary or criminal proceedings in such cases.
- That it adopt, as soon as possible, the measures necessary to dismantle the *Autodefensas* who did not participate in the collective demobilizations from 2003 to 2006, and to dismantle the armed groups that emerged after the demobilization of the paramilitary organizations or that continue to pursue the same objectives.
- That it adopt the appropriate measures to adequately prevent forced disappearances.
- That it adopt the measures necessary for having a registry with public access that is updated, unified, and vetted concerning persons who have been forcibly disappeared in Colombia, with information broken down by age, gender, ethnicity, and people, among others.
- That it adequately investigate, clarify, and punish the cases of forced disappearance that are still in impunity.
- That it adopt the relevant measures to guarantee the effectiveness of the Urgent Search Mechanism or any other mechanism that makes it possible to immediately recover disappeared persons.
- That it continue making progress in recovering the bodies of the disappeared, identifying them correctly, and appropriately delivering them to their next of kin.
- That it ensure that those cases under the rubric of “false positives” go forward in terms of prosecuting and punishing the direct perpetrators and the masterminds and that it continue following up on the 15 measures stipulated by the Ministry of Defense in 2008, with a view to preventing extrajudicial executions.
- That it adopt the measures necessary for ensuring the protection of civilians and that contribute to a precise delimitation of proportionality in the use of force in the context and outside of the situation of armed confrontation.
- That it adopt the corresponding measures to ensure that extrajudicial executions are investigated in the competent jurisdiction, i.e. the regular jurisdiction. In addition, the Commission urges the State to give impetus to proceedings under way in cases of extrajudicial executions, and culminate them within a reasonable time, in keeping with the standards of due diligence in investigations

17. The Commission has repeatedly stated that despite the demobilization of the the *Autodefensas Unidas de Colombia* (hereinafter “the AUC”), violence stemming from the armed conflict persisted, and reports continued of crimes, human rights violations, and violations of IHL against the civilian population being committed by illegal armed groups and members of the armed forces and National Police. In this framework, in the report *Truth, Justice and Reparation*, the Commission presented an analysis on the complex situation resulted after the demobilization process, considering that the official position of the Colombian State is that after the collective demobilization of the *Autodefensas*, the phenomenon of paramilitarism has ended in Colombia, and therefore the groups that operate at present are part of the country’s organized crime problem, which is why they are characterized as “emerging criminal bands.”

18. In this regard, the Commission reiterated that, according to information documented by the institutions and national organizations, as well as the pronouncements of international organisms and the inter-American system’s organs, and despite the efforts aimed at dismantling the armed structure of the AUC, illegal armed groups continued to be involved in committing acts of harassment and violence against vulnerable populations, social leaders, and human rights defenders, among others. In this regard, and in keeping with the information available during the visit, the Commission again observed that these illegal armed groups that came about after the demobilization ceremonies, have been identified with serious human rights violations; and also identified the elements of continuity between the former *Autodefensas* and its actions.<sup>13</sup> As explained by the Commission, this different perception of the Government has a substantial impact both on the State’s response to those groups, the status of victim of the conflict of those persons affected by the actions of those groups, and the application of the domestic legal framework. In view of this, the IACHR recommended that the State take the necessary measures to effectively dismantle the

<sup>13</sup> See: IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, December 31, 2013, para. 74.

Autodefensas and the armed groups that emerged after the demobilization of the paramilitary organizations or that continue to pursue the same objectives.

19. The Commission notes that the State indicated in its report that does not share the first part of this recommendation and that measures were being implemented to dismantle post-demobilization armed groups. In this regard, the State pointed out that:

Criminal bands are armed structures depending on drug trafficking, devoid of political, ideological and counterinsurgency will profile, that emerged after the demobilization of the *Autodefensas*, as a criminal expression of different actors, to leverage finance infrastructure based on drug trafficking, which was used by paramilitary groups and drug cartels.<sup>14</sup>

20. Without prejudice to the above, the Commission acknowledges and appreciates the State's indication that "victims of the so-called criminal gangs are currently included in the Single Registry of Victims, for purposes of humanitarian assistance and in the case of victims of displacement," which, the State emphasized, demonstrates its commitment to ensuring that victims are served "regardless of who their assailants are."<sup>15</sup> Additionally, the State asserted in general that it was taking "several measures to end criminal activity" of these groups, among them named it that the National Police has "strengthened the strategy to combat the BRACRIM," the implementation of "comprehensive strategy for prosecution," the work of municipal courts and the creation of "Mobile Units against Bands and Criminal Networks" (*Unidades Móviles contra las Bandas y Redes Criminales*). The State indicated that 1,241 members of criminal bands have been arrested, including "86 ringleaders," and in 2014 "552 convictions against members of criminal bands were issued."<sup>16</sup>

21. Moreover, the State indicated that it did not share the recommendation on 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, since "...respecting the autonomy of the competent authorities, Colombia has a legal framework that enables the provisional suspension under strict terms, always guaranteeing due process and the presumption of innocence of the officials under investigation."<sup>17</sup>

22. Also, the State considered "successfully" fulfilled the recommendation to prevent State agents from committing violations of human rights and IHL, and provided information on the measures taken in this regard. Specifically, the State reported the training programs for officials of the military criminal justice and, in general, members of the security forces, and others measures taken by the Ministry of Defense "to cooperate with the administration of justice." In addition, the State indicated that the "competence between the ordinary and military courts are clearly demarcated."<sup>18</sup> On this issue, the Commission will present its considerations in the respective section on setbacks in military criminal justice in Colombia.

<sup>14</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 50. In its observations on this chapter of the 2014 Annual Report, the State reiterated its position on the criminal gangs, asserting that it has designed and is "implementing a policy to combat them," taking account of their nature and the aims they pursue. Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 3.

<sup>15</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 4.

<sup>16</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 51.

<sup>17</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 40.

<sup>18</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pp. 41, 13.

23. The Commission takes note of the information provided by the State, and in view of its observations regarding the actions of the illegal armed groups that emerged after the demobilization of paramilitary organizations, reiterates its considerations on the need for the Colombian government to continue implementing effective mechanisms aimed to ensuring the dismantling of the criminal bands and paramilitary structure or that continue to pursue the same objectives. The IACHR reiterates its concern on the elements of continuity between the former *Autodefensas* and the so-called “emerging criminal bands”, so again observes that the State maintains specific duties to dismantle the groups known as “*Autodefensas*” who did not participate in the collective demobilizations. As described below, the IACHR has continued to received information on the actions of illegal armed groups who are identified as a phenomenon of continuity of paramilitaries in Colombia.

24. The Commission also deems it relevant that the State takes into account the considerations regarding that the characterization of the illegal armed groups that emerged after the demobilization of paramilitary organizations should be done on a case-by-case basis with a specialized analysis that takes into account the origin of paramilitarism and the elements of international responsibility of the State. They State should intensify its efforts to clarify the dynamics, scope, composition, and structure of the former autodefensas and the illegal armed groups that emerged after the demobilization of the paramilitary organizations.

25. Furthermore, in the report *Truth, Justice and Reparation*, the Commission noted with concern that the forced disappearance of persons continues to be widespread in Colombia, and despite the efforts made by the State, the gains thus are incipient in relation to the number of disappeared persons, therefore effective plans or policies for effectively addressing the situation remained pending. The IACHR also referred to the information received on continued extrajudicial executions by members of state security forces, phenomenon intensified in the past decade, and became known as the cases of “false positives”. In this regard, the Commission reiterated the utmost importance that the State adopts the measures needed to ensure the protection of civilians and to precisely determine proportionality in the use of force in the context, as well as outside of the context of armed confrontation. One aspect of particular concern to the Commission was the information related to the limited number of persons responsible who have been sanctioned for extrajudicial executions, in addition to the difficulties associated with some cases of extrajudicial executions going before the military criminal jurisdiction.

26. In light of the foregoing, the Commission recognizes the information provided by the State on the results obtained in the processing of cases of forced disappearances and extrajudicial executions in Colombia.<sup>19</sup> As regards forced disappearance, the Commission takes note that the State indicated that the recommendations related to this topic, are “being implemented.” In particular, the IACHR highlights that the State reported that these cases have already been included in the strategy of prioritization adopted by the Office of the Attorney General, and that the cases are currently known both by the ordinary courts and transitional justice, under the Justice and Peace Law.<sup>20</sup> According to the State, under this strategy “...in late 2013, over 1800 cases of disappearances were charged...involving nearly two thousand nine hundred

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<sup>19</sup> As the IACHR pointed out in its report, extrajudicial execution is not defined as a criminal offense in the Colombian domestic law. Nonetheless, the Colombian Criminal Code does include a title on crimes against persons and properties protected by international humanitarian law, such that the cases of extrajudicial executions are investigated by the domestic courts based on the criminal statute on “homicide of a persona protected” by international humanitarian law, established at Article 135 of that Code. See: 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. 137. The State also noted that the definition of forced disappearance “[...] extends the possible perpetrator of the offense to any individual may be responsible for it”. Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 6.

<sup>20</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 6.

victims” and in November 28, 2014, the first judgment against Salvatore Mancuso and 11 others was issued, with 609 counts of forced disappearance, among other crimes.<sup>21</sup>

27. In relation to the component referring to truth, the State reported that applicants in the process of availing themselves of Law 975 (*postulados*) “have contributed to identifying and locating” of 5,693 persons who were disappeared and that have been located in 4,400 excavations of individual graves, according to figures updated to October 31, 2014. It also noted that the bony remains of 2,691 persons have been delivered to their family members in ceremonies held for this purpose.<sup>22</sup> The State also indicated that between 2010 and 2014, the ordinary courts issued 133 convictions and to August 31, 2014, 464 cases were assigned to the ordinary jurisdiction, 430 of which were “active”.<sup>23</sup> It noted that there have been significant efforts to advance in the collection and documentation of the cases, and also under the strategy of prioritization, in June 14, were lodged before the Justice and Peace Chambers of the Superior Courts in Bogotá, Medellín, Barranquilla and Bucaramanga, requests for indictments that include “686 acts of forced disappearance involving 1,002 alleged victims.”<sup>24</sup>

28. Regarding the existence of a registry with public access that is updated, unified and vetted concerning who have been forcibly disappeared in Colombia, the State pointed out that the National Registry of Disappeared Persons (RND) is a “registry with public access and unified” that is being “constantly updated” and is currently “being refined” since January 2014,<sup>25</sup> and reiterated that the “Network Information System of Corpses and Disappeared Persons” (SIRDEC) is its main platform. The IACHR notes that the information provided by the State shows that there are still being defined the measures to include in the RND, disaggregated information with differentiated variables as ethnic groups, indigenous populations and age.<sup>26</sup>

29. As to the effectiveness of the Urgent Search Mechanism, the information provided by the State is mainly related to training programs for officials involved in its operation, and other follow-up activities to promote the implementation of the National Plan to Search for Disappeared Persons.<sup>27</sup> In addition, the State reported on the adoption in August 2014, of a protocol for the “proper delivery of bodies and remains to their relatives”, in accordance with the provisions of Law 1408 of 2010.<sup>28</sup>

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<sup>21</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 6.

<sup>22</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 29.

<sup>23</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 6.

<sup>24</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 26.

<sup>25</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pp. 52,54

<sup>26</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pp. 52-53.

<sup>27</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 56.

<sup>28</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 57.



30. The Commission notes the State's efforts and initiatives aimed at ensuring the rights of the relatives of the victims of forced disappearance, and the will of the State to continue advancing in the delivery of bodies to the respective relatives, as well as the efforts deployed in the prevention, investigation and punishment of this crime. As part of the updated information submitted by the State, it underscored Decree 303 of February 20, 2015, which regulates several aspects of this area, namely: the creation of the "Databank of genetic profiles of disappeared persons" and the "Inter-Institutional Committee of Forensic Genetics," as well as the earmarking of "financial and psychosocial support for the relatives of victims at the time they receive the bodies that have been located and identified," among others.<sup>29</sup>

31. Nonetheless, the Commission notes again that those efforts should be stepped up considering that the forced disappearance of persons continues to be widespread in Colombia, and that the gains made are still incipient compared to the number of persons disappeared. As reported, the State is moving forward in establishing a concrete universe of persons disappeared enabling their search and identification, but the results of measures taken so far reveal precisely those aspects of concern that the Commission stated in its report as for the under-registration of forced disappearances and the persistence of this phenomenon, among other aspects. For example, the updated figures provided by the State indicate that as to June 2014, the RND had a record of 92,872 people, 68,353 of which would continue disappeared or no information on their location was available<sup>30</sup>, representing an increase of more than 50 thousand new records compared to the information provided by the State in 2013.<sup>31</sup>

32. Further, the Commission reiterates that even when the SIRDEC implementation started in 2007, the State has not completed loading the information, according to the framework of the norms in effect. The Commission neither received updated information from the State on the results of the National Plan to Search for Disappeared Persons considering the obstacles identified by the IACHR in its report *Truth, Justice and Reparation*. Similarly, the IACHR reiterates that as to the recovery of bodies, the State should also address without delay, seriously and with due diligences the cases in which the victims were cast into rivers or the sea, or incinerated in crematoria to not to leave trace, as well as considering the negative impact of the construction of dams in the middle of the conflict and in areas where bodies or persons disappeared and assassinated, and common graves, may be found.

33. In this framework, the Commission has continued receiving information on the persistence and seriousness of this phenomenon in the country. In particular, during its 153<sup>rd</sup> session, the IACHR received information on the occurrence of serious crimes such as forced disappearances and homicides, in a context in which the armed conflict is taking a major toll in the Colombian Pacific region. While at the the hearing on the Human Rights Situation in the Pacific Region of Colombia, the State presented detailed information on the measures taken to protect the population, recognizing the serious situation of violence that takes place in this region due to the presence of illegal armed actors, civil society said that between January and October 2014, at least 50 cases of forced disappearances were reported. In turn, the Office of the Human Rights Ombudsman has indicated that "according to data from the Information System of the Registry of Disappeared and Corpses (SIRDEC) for what happened in 2014, a total of 53 cases of disappearance were reported in the department of Chocó, the municipalities of Quibdó and Riosucio accounting for 59% of the cases on record in the department."<sup>32</sup> Also, Human Rights Watch reported that in that year were committed "more than 45 disappearances in just three neighborhoods in the city during two months", and that the cases of

<sup>29</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIIID-15-017750, of February 26, 2015, p. 4.

<sup>30</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, pp. 54-55.

<sup>31</sup> See: IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, December 31, 2013, para. 104.

<sup>32</sup> Office of the Human Rights Ombudsman, *Crisis humanitaria en Chocó: Diagnóstico, valoración y acciones de la Defensoría del Pueblo 2014*, p. 29.

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dismemberment could point to a “routine practice” of armed groups “paramilitary successors”, consisting in “dismembering the people they disappear.”<sup>33</sup>

34. In this regard, the MAPP/OAS recently shared its concern over the persistence of the phenomenon of forced disappearances, with special reference to the situation in the Department of Nariño and the Pacific Coast. In its nineteenth report, the Mission to Support the Peace Process of the OAS noted that this phenomenon “continues to be rendered invisible given the difficulty in measuring and quantifying this problematic,” and that “the perception is that the dynamics is increasing and that the post-demobilization groups are directly responsible for these actions”<sup>34</sup>.

35. For its part, the Working Group on Enforced or Involuntary Disappearances of the United Nations noted in its 2014 report that remain the alarming figures on enforced disappearances in Colombia, in particular the worrying number of human rights defenders victim to that practice. The Working Group noted the “shortcomings regarding the search of the disappeared, the protection of the relatives and accountability for that crime,” and encouraged the State to “speed up the process for the identification of remains and strengthen its efforts to combat impunity.”<sup>35</sup>

36. In light of the foregoing, the Commission considers that the State should continue making efforts to achieve full compliance with its international obligations in this area. In particular, about overcoming the situation of impunity, the Commission reiterates that progress in the judicial proceedings is fundamental for determining the whereabouts of the disappeared, accordingly the information given by the perpetrators should be supplemented by effective and comprehensive investigative measures that take on the phenomenon and the possible victims in a thoroughgoing manner, guaranteeing the broad participation of family members in the process.

37. On the other hand, for several years the Commission has received information on continued extrajudicial executions by members of state security forces. In the report *Truth, Justice and Reparation*, the Commission observed with satisfaction that according to the information that is publicly known, the phenomenon known as “false positives,” began to diminish; however, it indicated that major challenges persisted in relation to follow-up on the internal measures taken with a view to preventing extrajudicial executions.

38. On this topic, the State reiterated that “...the behavior of its agents outside the legal, constitutional and political framework is unacceptable,” and highlighted that “...the National Government has taken strong measures emphasized in the prosecution of those who committed acts of this kind and to prevent future events of this nature.” For example, the State referred to the implementation of the “Comprehensive policy on human rights and international humanitarian law” of the Ministry of National Defense, “reducing complaints of occurrence of these behaviors,” and the “sentences issued” in these cases.<sup>36</sup>

39. Specifically on the implementation of the recommendations, the State informed that the measures stipulated by the Ministry of Defense in 2008 are still in force, and “are constantly implemented,” and there have been “notable improvements in preventing homicides of protected persons”, among other things, due to the “extensive training” program in human rights and IHL for members of the armed forces and

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<sup>33</sup> Human Rights Watch, *The crisis in Buenaventura*, 2014, p. 16.

<sup>34</sup> Permanent Council. Nineteenth semiannual report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA). December 3, 2014, p. 11.

<sup>35</sup> Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/27/49, August 4, 2014, p. 18.

<sup>36</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 31.

National Police.<sup>37</sup> Furthermore, the State considered “successfully” fulfilled the recommendations on the protection of civilians and precise delimitation of proportionality in the use of force,<sup>38</sup> as well as prosecuting the cases of extrajudicial executions. On this last point, the State reiterated that is excluded from the scope of military jurisdiction “[human rights] violation cases because such behaviors are not related to the service.”<sup>39</sup>

40. As for the investigation of these cases, the State reported that as of August, 2014, the Office of the Attorney General had registered “2,380 cases under investigation...2,212 of which are active,” 266 convictions (“that affect 934 persons”), and 2,244 persons were deprived of liberty for these acts. Similarly, the State emphasized that from January 1 to October 31, 2014, in all 106 persons have been convicted, and between July 2013 and May 2014, 135 members of the National Army had been retired from active service by firm judgments on “aggravated homicide and homicide of a protected person.”<sup>40</sup> Additionally, the State reported that in 2014, the Superior Council of the Judiciary decided 258 conflicts of jurisdiction between the ordinary and military courts, six of which were assigned to the latter, but none of the cases referred acts “that could be characterized as homicides of a protected person.”<sup>41</sup>

41. The Commission takes note of the information provided by the State and welcomes the increase in the proceedings initiated and in the number of convictions, compared to the information available at the time of the preparing the country report that is the subject of this follow-up chapter. Nonetheless, the IACHR reiterates that according to the available figures, the number of investigations a advanced stages of the process as well as the number of persons responsible who have been sanctioned is still limited in relation to the total number of cases. This is in addition to the difficulties associated with some extrajudicial executions going before the military criminal jurisdiction, according to the information available to the Commission at the time the report *Truth, Justice and Reparation* was drafted. In this regard, the IACHR acknowledges the State’s assertion that the military court system would not be hearing and deciding those types of cases at the present time and that “the Superior Council of the Judiciary has been especially careful in the examination of the conflicts of jurisdiction brought before it, sending to the regular court system any case in which there is doubt about the occurrence of an event of this nature.”<sup>42</sup> Nevertheless, and as discussed below, the Commission has identified several challenges concerning new legislative proposals that seek to expand the scope of said jurisdiction to manage cases of human rights and international humanitarian law violations. As discussed later in this report, the State’s position with regard to the matter is that, “the proposed reforms establish clear parameters for distinguishing between the jurisdiction of the regular justice system and the military justice system [...]” and that acts such as extrajudicial executions are excluded because they “break the link to the service *ipso jure*.”<sup>43</sup>

<sup>37</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pp. 57-58.

<sup>38</sup> The State pointed out that, among other guidelines, the Operational Legal Manual (*Manual de Derecho Operacional*) in general, “helps guarantee the protection of civilians and proportionality in the use of force.” Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 58.

<sup>39</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pág. 58.

<sup>40</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 32.

<sup>41</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 34.

<sup>42</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, págs. 4-5.

<sup>43</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 5.

42. In addition, the Commission takes into account the information received during the 153 Period of Sessions, at the hearing on “Policy and legislation on reparations for human rights violations in Colombia,” in which civil society reported on the difficulties in access to justice in the context of the accusatory system, reflected in the “sluggishness and poor results” in investigating and punishing those responsible for the extrajudicial executions of humble peasants or persons of low socioeconomic status by the military forces, and then presenting them as guerrilla fighters killed in combat, in exchange for economic benefits or job-related benefits, in the phenomenon known as the “false positives.”

43. The organizations noted that in overall figures, the situation of impunity in these cases in the accusatory system is “alarming.” They reported that, according to the management report of the Office of the Attorney General, in 2014, 2,403 cases of extrajudicial executions were assigned to the Human Rights Unit, with a total of 4,773 members of the armed forces and National Police identified as persons under investigation, of these, only 472 have been convicted. They also noted that the sluggishness in the investigation of the cases has undermined victims’ rights. For example, they mentioned the so-called “false positives” of Soacha, in which after seven years, the mothers and relatives of the 16 youths assassinated and presented as guerrillas killed in combat, they continue to face many obstacles in their struggle against impunity.<sup>44</sup>

44. In light of the above, the Commission reiterates that the State should initiate, develop, and culminate the relevant investigations in the regular criminal jurisdiction, according to the standards of due diligence and in a reasonable period, to clarify the cases of extrajudicial executions and punish the persons responsible. In that regard, the investigation should be geared to identifying not only those directly responsible, but also the structure that favored or encouraged those acts. Also, it is of the utmost importance that the State continues to adopt the measures necessary to ensure the protection of civilians and to precisely delimit the proportionality of the use of force in the context as well as outside of the context of armed confrontation.

## **B. Protection mechanisms**

- That it require the competent authorities to take into account international standards on protection, especially the considerations spelled out in the “Second Report on the Situation of Human Rights Defenders.”
- It urges the State to implement the measures necessary to guarantee, in the processes of risk assessment, assignment of protection schemes, and review of their suitability, the adequate participation, communication and coordination with the persons protected by the protection program as well as the beneficiaries of precautionary measures requested by the IACHR and provisional measures ordered by the Inter-American Court.
- It urges the State to secure access to information regarding the reasons for their decisions and procedures on risk assessment in light of the existing legislation and international standards.
- 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 National Protection Unit to adopt the measures necessary for reinforcing the protection provided in the interior of Colombia, especially in rural areas. In particular, it urges the UNP to adopt urgent measures to protect those persons who are engaged in processes for land restitution and the protection of human rights as a consequence of the armed conflict.
- 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.

<sup>44</sup> Information received during the hearing on Policy and Legislation on reparations for human rights violations in Colombia, held during the 153th Period of Sessions. See also: El Colombiano, [Madres de Soacha denuncian impunidad](#), December 20, 2014.

45. In the chapter on protection mechanisms the IACHR highlighted the importance of the protection programs that Colombia has been implementing for the purpose of ensuring the rights of persons at risk, especially in the context of the armed conflict. In particular, the Commission was pleased to receive information regarding the large number of persons protected, the willingness of the State to provide material means of protection, the creation of specific legal or regulatory frameworks, and recognition by the Colombian Constitutional Court of the binding nature of the precautionary measures issued by the IACHR. In this regard, and in view of the information provided by civil society on several challenges in implementing those programs and to contributing to the development of an integral protection policy for persons at risk, from a human rights perspective, the IACHR made a series of recommendations to the State specifically on this specific topic.

46. In response to those recommendations the State noted that “in the first half of 2014 the State earmarked more than 260 billion Colombian pesos, equivalent to more than US\$100 million, for implementing several measures of protection which cover, among other population groups, 1,693 women, 354 indigenous persons, 8 persons who have declared that they are members of the LGTBI community, 104 journalists, 559 human rights defenders, and 562 leaders and persons making claims in land restitution proceedings.”<sup>45</sup> In that regard, Colombia noted that as from the creation of the National Protection Unit in 2011 up to July 18, 2014, protection had been given to more than 7,500 persons.

47. The Inter-American Commission values these efforts and the seriousness of the commitment assumed by the State to protect a broad and growing number of persons who are beneficiaries of the protection program, who include beneficiaries of precautionary measures requested by the IACHR and provisional measures issued by the Inter-American Court. In this scenario, given the large number of beneficiaries and the importance of the program, the Commission has followed up on the information received on a supposed deficit in financing for the UNP in recent months.<sup>46</sup> In this respect, as the IACHR has reiterated in the two reports on the Situation of Human Rights Defenders in the Americas, the states have the duty to provide the budgetary and logistical resources necessary to guarantee the effectiveness of the protection programs.<sup>47</sup>

48. As for the recommendation to take into consideration international standards on protection, the State reported that the UNP has considerably reduced the time it takes to implement protection measures. For example, it noted that whereas in 2013 the UNP would take from 15 to 30 days to implement a regular measure, during the first half of 2014 it took an average of 10 days for regular measures and three days for emergency measures. Similarly, among the gains reported, the State notes that: (i) a letter of understanding was renewed between the UNP and the Office of the UN High Commissioner on Refugees (UNHCR) that provides for accompaniment and technical assistance in the design of the collective protection procedure; (ii) in the first half of 2014, the proposal to adjust Decree 4912 of 2011, precisely to incorporate a protocol on Collective Protection, was circulated; (iii) the competent authorities have continued making extraordinary efforts to allocate financial and human resources to the programs, and in applying the legal framework in force and implementing protection measures.

49. Without prejudice to the progress reported, the IACHR has continued receiving information concerning delays in the risk assessment procedures and in implementing material means of protection, circumstances that are aggravated in the interior.<sup>48</sup> It also received information describing the unsuitability

<sup>45</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 7.

<sup>46</sup> On September 17, 2014, the IACHR sent a letter to the State of Colombia in the context of its powers under Article 41 of the American Convention, on the situation of the UNP in terms of the financing the protection schemes and measures that it provides. On October 3, 2014, a response was received addressing the point from the State of Colombia.

<sup>47</sup> IACHR, [Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II.124 Doc. 5 rev.1, 7 March 2006, para. 136.

<sup>48</sup> IACHR, Resolutions of precautionary measures with respect to Colombia in 2014, in relation to the matters of Yomaira Mendoza et al. (MC 140-14); Afro-Colombian families that reside in the self-proclaimed humanitarian space of “La Playita” (MC 152-14);

or ineffectiveness of certain measures of protection implemented by the competent authorities, said to have put certain beneficiaries of the program in a situation of vulnerability and to have forced some persons to displace to other cities, in some situations abandoning their work as human rights defenders.<sup>49</sup> The Commission values the efforts made by the State on this point, and calls on the State to redouble its efforts to strengthen the protection program, in light of the respective international standards. In this regard, through its various monitoring mechanisms, the Commission has continued receiving information from the civil society regarding the serious risks that human rights defenders face in the areas still in conflict.

50. With respect to the adequate participation of and coordination with the persons covered by the protection program in the risk assessments, assignment of protection schemes, and review of their suitability, the State affirms that “no measure of protection is assigned or dismantled without having gone through the due process corresponding to study of risk level.”<sup>50</sup> In that sense, the State argues that the beneficiary’s position is taken into account in all the procedures and that the measures of protection to be implemented are assigned based on a consideration of the risk level.<sup>51</sup> In this respect, the Commission considers it of vital importance that this recommendation be implemented with greater vigor. In particular, in view of information provided by civil society regarding challenges that remain in terms of adequate communication and active participation of the persons covered by the participation program, as well as beneficiaries of precautionary and provisional measures of the inter-American system.<sup>52</sup>

51. As regards access to information on the reasoning behind the decision and procedures related to risk assessments, the State notes that it does not agree with that recommendation. It argues that all the information in the risk evaluations makes reference initially to an interview with the person requesting the measures of protection, with the information put into a form that the UNP has developed for this purpose. According to the State, “in addition to that information, the evaluation of risk contains information that is under seal,” as it makes reference to actions of illegal armed groups, among others, thus the State “is forced a handle it in a particular way.”<sup>53</sup> On this issue, the Commission observes that while it is true that allowing access to certain types of information might entail particular challenges, depending on the case, one of the focal points raised by civil society was related to the lack of knowledge of the grounds and the lack of any reasoning behind the decision that assessed a person’s risk. This is especially so in light of a possible obstacle to challenging that decision, which could limit due process guarantees. The Commission notes the need for the State to implement more developed measures in response to this recommendation.

52. As for the application of differential approaches in all the procedures currently being implemented by the protection program, the State notes that within the procedure currently defined by the

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Y.C.G.M. and her immediate family (MC 218-14); Gener Jonathan Echeverry Ceballos and family (MC 336-14); and Fundación Nydia Erika Bautista *et al.* (MC 42-14). Available at: <http://www.oas.org/es/cidh/decisiones/cautelares.asp>.

<sup>49</sup> IACHR. Resolutions of precautionary measures with respect to Colombia in 2014, in relation to the matters of Yomaira Mendoza *et al.* (MC 140-14); Afro-Colombian families that reside in the self-proclaimed humanitarian space of “La Playita” (MC 152-14); Y.C.G.M. and her immediate family (MC 218-14); Gener Jonathan Echeverry Ceballos and family (MC 336-14); and Fundación Nydia Erika Bautista *et al.* (MC 42-14). Available at: <http://www.oas.org/es/cidh/decisiones/cautelares.asp>. In its observations on the draft of this chapter of the Annual Report, the Colombian State indicated with regard to these matters that the UNP had already implemented the protection measures it deemed appropriate when the Commission received the request for precautionary measures. In view of this, the State indicated that it did not agree with the statements made in this paragraph based on the aforementioned matters. Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIIID-15-017750, of February 26, 2015, p. 5.

<sup>50</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 46.

<sup>51</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 46.

<sup>52</sup> Information provided by the requesters and beneficiaries of precautionary measures in the context of working meetings on precautionary measures related to Colombia, in the context of the 150<sup>th</sup> and 153<sup>rd</sup> periods of session of the IACHR.

<sup>53</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 41.

UNP in its various stages, a determination is made as to whether a person requires differentiated attention in light of his or her characteristics. In this context, in the field work done by the analysts of the program, it is considered that women, LGTBI persons, and indigenous communities are “subjects of special protection who have historically been discriminated against on occasion of the practices employed by some armed actors in the context of the conflict in Colombia.”<sup>54</sup> Therefore, the relevant information and procedures are implemented taking into account the dynamics of the conflict, the condition of the person, his or her profile, the personal antecedents of the risk, the contextual analysis, and the possible impact on the rights to life, integrity, liberty, and personal security.

53. The Commission welcomes these initiatives as they constitute a tool for addressing the particular situation of risk that certain sectors of the population may face in situations of vulnerability and that require special attention depending on their specific needs for protection. Despite the progress made, the IACHR has continued documenting information on various obstacles in the implementation of differential approaches.<sup>55</sup> In particular, the IACHR observes that the State has not contributed detailed information on the implementing the various differential approaches, that would make it possible to evaluate the series of steps that the state authorities are taking to fully address this aspect.

54. With respect to the measures necessary for bolstering the protection provided in the interior of Colombia and in rural areas, the State reported that since January 1, 2012, the UNP has protected 982 victims, 562 of whom persons are land claimants or persons involved in proceedings in the context of the application of the Law on Victims and Land Restitution. The State noted that “among the policies taken into account for implementing the protective measures is the adoption of specific protocols for providing the preferential treatment that should be provided taking into account the context in which they find themselves and the customs where they live. Accordingly, it indicated that material measures have been provided with a differential approach such as rafts, skiffs, and elements for strengthening the indigenous guard. In addition, information was provided on a coordinated effort between the UNP and the Land Restitution Unit and the material protective measures implemented. According to the State, 150 bodyguards are assigned to protect this population, and 49 protection schemes, made up of armed and conventional vehicles, with more than 100 men providing protection. In these circumstances the State said that it has been possible to obtain a considerable reduction in the number of violent deaths. They report that as of yearend 2013 there was a 75% reduction in homicides of victims in the context of the land conflict, compared to the figure for 2007.

55. The IACHR recognizes that the State is taking into consideration the need to strengthen protection in several zones of the interior, especially those rural areas that have been hardest hit by the armed conflict. Nonetheless, according to information provided by civil society<sup>56</sup> and by international agencies<sup>57</sup>, serious difficulties persist to ensuring the rights of the leaders in rural areas, as well as those persons involved in land restitution proceedings. Those challenges would still translate into a lack of

<sup>54</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 47.

<sup>55</sup> See: IACHR. Public hearings held during the 150<sup>th</sup> and 153<sup>rd</sup> periods of sessions of the IACHR, with respect to: “Human rights situation in the Colombian Pacific region”; “Reports of violence against LGBTI persons in the Colombian Caribbean region”; “Reports of forced displacement and development projects in Colombia”; and “General human rights situation in Colombia.” Similarly, see resolutions on precautionary measures with respect to Colombia for 2014, in relation to the matters: Yomaira Mendoza et al. (MC 140-14); Afro-Colombian families who reside in the self-proclaimed humanitarian space of “La Playita” (MC 152-14); and Y.C.G.M. and her immediate family (MC 218-14). Available at: <http://www.oas.org/es/cidh/decisiones/cautelares.asp>.

<sup>56</sup> See: Programa Somos Defensores. “[Agresiones contra Defensores y Defensoras de Derechos Humanos en Colombia \(Julio-Septiembre 2014\)](#)”, October 9, 2014; Amnesty International. “[Colombia’s land restitution process failing those forced off their land](#)”, November 27, 2014; and, IACHR. Public hearings held during the 150<sup>th</sup> and 153<sup>rd</sup> periods of session of the IACHR, with respect to: “Human rights situation in the Colombian Pacific region”; “Reports of forced displacement and development projects in Colombia”; and “General human rights situation in Colombia”. See also, resolution on precautionary measures with respect to Colombia of 2014 in relation to the matter of Yomaira Mendoza et al. (MC 140-14). Available at: <http://www.oas.org/es/cidh/decisiones/cautelares.asp>.

<sup>57</sup> See: United Nations. “[Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia](#),” January 24, 2014, p. 9; and, MAPP/OEA. “[Décimo Noveno Informe Semestral del Secretario General al Consejo Permanente sobre MAPP/OEA](#),” December 3, 2014, p. 13.

coordination among the competent authorities, reduced capacity to work in areas still affected by the armed conflict, and the persistence of assassinations and threats, among other situations of risk, targeting social leaders and persons related to the land restitution proceedings. Given the importance of the issue of access to the land, in the context of various processes that the State has undertaken, the Inter-American Commission considers it essential for the State to intensify and adopt better structural measures to be able to provide adequate and effective protection to the beneficiaries of the program who reside in the interior.

56. As regards the investigation into the events that lead those persons covered by the protection programs to enter and remain in them, the State said that its commitment to investigate and prosecute the persons responsible for threats to the life and integrity of persons in the national territory is unrestricted and that it will therefore continue strengthening such efforts. In this respect, the IACHR observes with concern that the State did not provide consistent information on this point, especially on the short-, medium-, and long-term measures that the competent authorities are adopting for the purpose of establishing as a matter of state policy that investigation is to be used as a measure of prevention. The Commission considers that the failure to investigate the facts leading to situations of risk could bring about a cumulative effect with a constant increase in the number of beneficiaries in the protection program, while limiting the powers to review the decisions regarding protection.

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

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

57. In the report *Truth, Justice and Reparation*, the Commission reiterated that one of the key and urgent challenges facing Colombia is to overcome the situation of impunity that attends serious human rights violations and breaches of IHL. As the State has acknowledged, this situation is the result of the system's failure to provide an effective response to prosecute the many cases that either occurred within or were enabled by the internal armed conflict, among other factors.

58. Among the measures taken by the State to address this situation, the Commission examined the strategy of prioritizing cases, adopted by the Attorney General in 2012 (Directive 001), and the creation of the Unit of Analysis and Context ("UNAC"), under the Office of the Attorney General, to specialize in the analysis of criminal matters. Here the Commission observed that, in principle, the prioritization of cases aimed at making the response of the State's justice system more efficient is not incompatible with the obligations that emanate from the American Convention, and in certain circumstances may constitute a suitable means for clarifying the truth concerning grave violations that have occurred in the conflict through a diligent investigation. The Commission noted with concern, however, that certain precepts of Directive 001 were based on an interpretation of the State's obligations that is not in conformity with inter-American human rights standards. Accordingly, the Commission reiterated that states have the duty to investigate all cases of grave human rights violations that occurred in a conflict, and to prosecute and punish the persons responsible.



59. In this regard, the Commission notes that in its follow-up report on the recommendations, the State pointed out that it continues to deploy significant efforts to overcome the impunity situation. It reported that mindful of the “investigative dynamics and the requirements set by international fora,” the Attorney General’s Unit on Human Rights and IHL classified the investigations according to criteria that “enable it to look beyond the individual case.” According to what was reported, the established classifications are as follows: murders attributed to agents of the State (2,403 cases), violence against unionists (1,543 cases), the Patriotic Union [*Unión Patriótica*] (813 cases), victims, civil servants (309 cases), teachers (298 cases), cases with the inter-American human rights system (298 cases), underage recruitment (254 cases), forced displacement (238 cases), transnational trafficking in persons (217 cases), violence against indigenous persons (213 cases), sexual violence in the armed conflict (94 cases), torture (58 cases), cases that occurred in San José de Apartadó (Antioquia) (52 cases), cases that occurred in Barrancabermeja (37 cases), violence against leaders laying claim to lands (35 cases), violence against journalists (16 cases), Office of the High Commissioner (10 cases), and human rights defenders (6 cases).<sup>58</sup>

60. The State also reported on the development of “four strategies using models of inter-institutional modernization to afford access to justice in cases of violations of [human rights] and breaches of IHL.” According to what was reported, the models focus on the following areas: i) gender-based violence within the context of the armed conflict,<sup>59</sup> which led to a “review of nearly 2000 cases” and other measures like relevant training for public servants, assistance to victims of sexual violence, and dialogue processes with women leaders and victims of the conflict to “identify the obstacles to access to justice and comprehensive assistance”; ii) violations of human rights and breaches of IHL with respect to the LGBTI population, through the “Board for urgent cases” [*Mesa de casos urgentes*]<sup>60</sup>; iii) indigenous communities and authorities, with the emphasis on cases of sexual violence committed against girls, boys, adolescents and women on indigenous reserves,<sup>61</sup> among other matters, to “determine the obstacles impairing access to comprehensive assistance, access to justice and implementation of measures of non-repetition”; and iv) specialized training for justice operators in the investigation, prosecution and punishment of cases involving violations of human rights and breaches of IHL.<sup>62</sup> The State also made reference to the introduction of policies intended to solve the situation of impunity in the administration of justice, including enforcement of Law 1448, strengthening the institutional underpinnings of the Law on Justice and Peace, and providing training to judicial officials through the human rights and IHL training program.

61. On the subject of the budget, the State pointed out that in 2014 an additional “\$260 million” was appropriated for the Judicial Branch and the Office of the Attorney General of the Nation. According to what the State reported, the total appropriation was “\$2.5 billion pesos, of which \$2.3 billion was for operations, while \$0.14 billion was for investment.”<sup>63</sup> The Commission also notes the information supplied

<sup>58</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 105.

<sup>59</sup> Applied in the municipalities of Tumaco (Nariño), Buenaventura (Valle del Cauca), Quibdó (Chocó) and Barrancabermeja (Santander). Republic of Colombia. *Situation of Human Rights 2013-2014 and follow-up on the recommendations contained in the Fourth Country Report of the IACHR*. Note S-GAIIID-14-094783, received December 29, 2014, pp. 101-102.

<sup>60</sup> A more detailed analysis of this strategy appears in the chapter on the situation of groups especially affected in the armed conflict, discrimination against LGBTI persons.

<sup>61</sup> Implemented in 2013 and up to May 2014, in the municipalities of Caloto (Cauca) on the Huellas Reservation, Mitú (Vaupés), Sibundoy and Santiago in Putumayo (Alto), and Puerto Inírida (Guainía). Applied in the municipalities of Tumaco (Nariño), Buenaventura (Valle del Cauca), Quibdó (Chocó) and Barrancabermeja (Santander). Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 102.

<sup>62</sup> Applied in the municipalities of Tumaco (Nariño), Buenaventura (Valle del Cauca), Quibdó (Chocó) and Barrancabermeja (Santander). Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 102.

<sup>63</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 106.

by the State concerning the measures intended to strengthen the judicial system and to implement “new systems for oral proceedings” (with the introduction of a bill in Congress to seek additional sources of funding for the judicial branch); strengthening the procedures for investigating organized crime, the managerial and administrative performance of the Judicial Branch, consolidation of an integrated quality control system for administration of the judicial branch, and development of a training program aimed at “introducing information and communication technologies into the judicial branch,” as well as the work of the Administrative Division of the Superior Council of the Judiciary in “building confidence in the justice system” by “hiring public servants and government employees through merit-based competitions for posts,” among other things.<sup>64</sup>

62. The State also considers that it has satisfactorily complied with the Commission’s recommendation that it ensure effective access to justice for the Colombian people. Here, it highlighted the process underway to adapt the judicial system to “the new challenges in the area of investigation,” which materialized mainly in the form of Law 1654 of 2013,<sup>65</sup> and the Chief Executive’s issuance of 8 decrees-law that restructured the Office of the Attorney General of the Nation. According to what the State reported, one of the main elements of that reorganization has been the “institutionalization of a new model of criminal investigation based on an analysis and construction of contexts, for more effective efforts to combat macro-criminality.”<sup>66</sup> One of the measures the State mentioned was the establishment of the Comprehensive Care Center for Victims of Crime in the city of Bogotá, in which various authorities like the Public Prosecutor’s Office, the Public Defender’s Office, the ICBF and others provide counseling and assistance to victims.<sup>67</sup>

63. Another recommendation with which the State believes it has satisfactorily complied is the one recommending that it foster articulation, coordination and reciprocal feedback among the various judicial mechanisms entrusted with investigating cases of serious human rights violations and breaches of IHL. Here it pointed that the restructuring of the Office of the Attorney General of the Nation has strengthened the “functions of strategizing, made for better service to clients/victims, and reinforced inter-institutional articulation.”<sup>68</sup> Specifically, the State explained the results in the performance of the “Office of the Director in charge of Articulation of National Special Prosecutors Offices,” created when the Office of the Attorney General of the Nation was restructured. The State indicated that the results were achieved by implementing a variety of techniques for investigating areas like threats against human rights defenders and the “problem of crime perpetrated by emerging gangs in various parts of the country.” The Commission appreciates the State’s recognition that with the “articulated” investigative approach, investigations will cease to focus on “isolated cases, without taking into account that these complex criminal phenomena involve various sectors and the commission of a variety of crimes.”<sup>69</sup>

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<sup>64</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, pp. 110-112; and Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIIID-15-017750, of February 26, 2015, p. 6.

<sup>65</sup> “Endowing the President of the Republic with extraordinary temporary powers to modify the structure and staffing plan of the Office of the Attorney General of the Nation and to issue its Career System and the civil service classification system for attendance and leave.” [Diario Oficial No. 48.852](#). July 15, 2013.

<sup>66</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 8.

<sup>67</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 95.

<sup>68</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 98.

<sup>69</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 99.

64. On the other hand, the Commission is concerned by the State's comment regarding the Commission's recommendation with respect to the investigation of human rights violations perpetrated by State agents and demobilized elements of the *Autodefensas*. The State provided no information on the measures taken to follow-up on the implementation of this recommendation; instead, it asserted that the meaning of the recommendation was unclear and repeated its contention that events that transpired subsequent to the demobilization of the paramilitary groups should not be confused with events involving the actors in Colombia's internal armed conflict.<sup>70</sup> The State reiterated that position in its observations on the draft version of this chapter.<sup>71</sup>

65. This argument is particularly disturbing given the Commission's observation to the effect that the violence derived from a lack of an effective and complete dismantling of armed paramilitary structures, continues to severely impact the rights of the citizens of Colombia. In the report on *Truth, Justice and Reparation*, the Commission observed with concern elements of continuity between the former *Autodefensas* and the so-called "emerging criminal bands" ("*bandas criminales emergentes*" or "BACRIM") and that these groups have been associated with serious human rights violations.<sup>72</sup>

66. The Commission must, therefore, reiterate that the serious impunity that attends the commission of grave human right violations and breaches of IHL by all actors in the Colombian conflict, and the failure to shed light on the dynamics, scope, composition and structure of the former *Autodefensas* and the illegal armed groups that emerged subsequent to the demobilization of the paramilitary organizations, are systemic obstacles obstructing not only the protection of victims' rights but also the availability of detailed and precise information with which to describe these groups, dismantle their sources of support and adopt the political and legal measures necessary to confront them.

67. As the Commission has observed, the characterization of the illegal armed groups that emerged after the demobilization of paramilitary organizations should be done on a case-by-case basis with a specialized analysis that takes into account the origin of paramilitarism and the elements of State's international responsibility; the Commission is also of the view that any policy or measure adopted by the State should have at its core and as its main goal the protection and guarantee of the rights of victims. Within that framework, the Commission takes note of the information provided by the State with regard to the work being done by the Unit for Attention and Reparation for Victims to "formulate criteria that develop an effective basis for the assessment of each case," which has resulted in the formation of investigation groups specialized in various phenomena, including the so-called criminal gangs.<sup>73</sup>

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

- That it implement the measures necessary for the proceedings in the context of Law 975 to go forward and conclude in a reasonable time, fostering the full and comprehensive clarification of the acts committed by the persons who demobilized and the various actors involved, and ensuring the participation and rights of the victims and their next of kin. In particular, the Commission urges the State to step up the measures aimed at recovering the assets illegally obtained by the persons demobilized and to ensure the application of Law 975 to the persons demobilized who have been extradited.

<sup>70</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 81.

<sup>71</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIIID-15-017750, of February 26, 2015, p. 6.

<sup>72</sup> See: 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, paragraphs 71-74.

<sup>73</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIIID-15-017750, of February 26, 2015, p. 6.

- That it establish appropriate measures to ensure that the processes of excluding applicants from Law 975 are accompanied by the corresponding strengthening of the regular courts that have jurisdiction to investigate those cases.
- That it adapt the Legal Framework for Peace and the enabling laws (*leyes estatutarias*) that derive from them to the international human rights standards noted in this report.
- That it adopt the corresponding measures so that serious human rights violations and breaches of international humanitarian law, such as forced disappearances, torture, sexual violence, and recruitment of children and adolescents are prioritized by the Committee on Prioritization or other measures aimed at ensuring the application of due diligence to investigate, clarify, prosecute and punish them.

68. Concerning this set of recommendations, the Commission notes what the State wrote in its report to the effect that “its perspective would be at variance with some of the assertions the Commission makes”, specifically with respect to the need to adapt the Legal Framework for Peace and the enabling laws [*leyes estatutarias*] that derive from it, to international human rights standards. On this point, the Government of Colombia asserted that the purpose of the Legal Framework for Peace:

[...] is to establish a comprehensive strategy of transitional justice that will at once help put an end to the armed conflict and satisfy the victims’ rights to the fullest extent possible. The final objective is to strengthen the rule of law through full implementation of the various judicial and non-judicial measures. Prosecution and punishment of those most responsible for international crimes, creation of truth commissions, full administrative reparation of all the victims and the introduction of institutional reforms: these are among the many tools of transitional justice whose ultimate objective is not measured by the number of perpetrators convicted, truth reports published or victims redressed, but by the collective contribution that all these measures make toward acknowledging that egregious violations of [human rights] were committed during the armed conflict, recognizing that what happened to us as a society is reprehensible and reaffirming that it must never happen again.<sup>74</sup>

69. The Commission appreciates the State’s embrace of the importance of identifying, through a process of dialogue, the options that will pave the paths followed in the quest for peace. The Commission additionally underscores the State’s assertions that the congressional debate of the respective enabling laws that develop the Legal Framework for Peace “will consider the different perspectives, arguments, and recommendations for attaining the most appropriate legislation that is consistent with human rights standards.”<sup>75</sup> In this regard, the Commission is aware of the decision adopted by the Constitutional Court on August 28, 2013, by which it decided to declare “enforceable” the Legislative Act 01 of 2012, and the considerations raised by the same body in relation to the selection and prioritization mechanisms.<sup>76</sup>

70. As the Commission observed in its report, the IACHR is committed to working with the Colombian State in its search for solutions to the problems and challenges that have been identified and offers this report’s analyses and recommendations with the intent of supporting the State in the implementation of specific, constructive measures in favor of its inhabitants’ fundamental rights.

71. Here, the Commission believes it is important to point out that its report on *Truth, Justice and Reparation* made reference to the State’s position on the investigation, prosecution and punishment of human rights violations in the context of the transition from the armed conflict to peace. In this regard, based on an analysis of inter-American case law and the very sources cited by the State as the basis for its position,

<sup>74</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 77.

<sup>75</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIIID-15-017750, of February 26, 2015, p. 7.

<sup>76</sup> Constitutional Court. Judgment C-579-/13 of August 28, 2013.

the Commission established that the organs of the inter-American system have consistently held that the State has a non-derogable duty to investigate serious human rights violations and that amnesty laws and any other provision that obstructs observance of that obligation are incompatible with the American Convention. As the Commission observed, the non-derogable obligation to investigate serious human rights violations has been acknowledged in situations that arose amid a variety of social situations that various countries of the region have experienced, either in transitions from dictatorships to democracy or in processes seeking to establish and strengthen peace.

72. Furthermore, in its report the State asserted that it believed it had satisfactorily complied with the recommendation on strengthening the regular courts that have jurisdiction to hear cases involving applicants excluded from Law 975. The State described, in general terms, the grounds for exclusion as set forth in the Law and reported that in 2013, 167 applicants for the benefits of the law were excluded; another 10 were excluded in 2014. Nevertheless, the State did not provide information to illustrate how the process of excluding an applicant from the benefits of the Law was being articulated with the investigation of cases in the regular courts. Additionally, in relation to results obtained in the implementation of the “non-judicial mechanism for the establishment of the truth” within the framework of Law 1424 of 2010, the State underscored that 24,842 demobilized combatants signed the “form for the prior verification of requirements to initiate the application process for benefits under [the Law].” Of that number, aggravated criminal conspiracy charges have been brought against 8,042 “rank-and-file” combatants or patrol officers, 2,908 have been criminally convicted, and the National Center for Historical Memory has contacted 8,000 individuals and issued “1,400 positive and 144 negative certificates.”<sup>77</sup>

73. The State indicated that the other recommendations were in the process of being implemented and underscored the steps taken to “ensure a full and thorough investigation of the acts committed by the demobilized who had applied and qualified for the benefits of Law 975.” Specifically, the State first mentioned the identification of patterns of macro-criminality in the activities of illegal armed groups. In addition to prioritizing investigations in 2013 focusing on 16 persons deemed to be among the most responsible,<sup>78</sup> it established “13 new prioritized macro-structures” in 2014. The information received by the Commission indicates that the following structures were prioritized: i) Bloque La Mojana, ii) Bloque Centauros, iii) Autodefensas Campesinas de Meta y Vichada, iv) Frente Arlex Hurtado – Bloque Bananero, v) Bloque Suroeste Antioqueño, vi) Bloque Noroccidente Antioqueño, vii) Bloque Metro, viii) Frente Suroeste Antioqueño, ix) Bloque Héroes del Pacífico, x) Bloque Héctor Julio Peinado Becerra, xi) Bloque Tolima, xii) Autodefensas Campesinas de Ortega, xiii) Fuerzas Armadas Revolucionarias de Colombia [Revolutionary Armed Forces of Colombia] –FARC-EP, and xiv) Ejército de Liberación Nacional [National Liberation Army] – ELN.<sup>79</sup> The State reported that under this “Plan of Action” the proposal is to conduct investigations into the crimes of forced disappearance, forced displacement, abduction, unlawful recruitment, gender-based violence, and “those crimes that caused the most disturbance in the regions because of their severity or because of the social, political and institutional representation of the victims, in the case of community leaders, political leaders, journalists and human rights defenders [...]”<sup>80</sup>

74. The State also reported the results obtained with implementation of Law 975. On the matter of truth, for example, the State reported that applicants had confessed to 49,036 crimes, leading to the

<sup>77</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 39; & Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIIID-15-017750, of February 26, 2015, p. 7.

<sup>78</sup> See: IACHR, *Truth, Justice and Reparation: Fourth report on the human rights situation in Colombia*, OEA/Ser.L/V/II, Doc. 49/13, December 31, 2013, par. 364.

<sup>79</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, pp. 114-115.

<sup>80</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 115.

identification and location of 5,656 disappeared persons, whose remains were discovered in clandestine graves. As for justice, 22 convictions were handed down against 65 applicants; 17,415 charges have been brought, of which 7,101 are currently in the phase of the “arraignment hearing” [*audiencia concentrada de formulación de cargos*].<sup>81</sup> The State emphasized that the implementation of Law 1592 of 2012, by which changes were introduced to the Law on Justice and Peace, has also been “another important step in ensuring access to justice.”<sup>82</sup>

75. As for the right of reparation and the guarantee of non-repetition, the State reported that 192 asset forfeiture declarations had been issued; that 988 assets had been identified and disposed of under the concept of “judicial sequestration,” 154 of which have gone on to be forfeited, that a team of attorney investigators is in place focusing on “pursuing assets either not offered, not reported or not handed over by the applicants”. Judicial inquiries have been conducted with 77,875 victims participating; there have been 1,518 broadcasts of spontaneous declarations in various municipalities of the country and 131 broadcasts from abroad involving extradited applicants. It additionally stated that the Victims’ Unit is using the funds of former combatants subject to the Justice and Peace proceedings to provide comprehensive reparations to the victims of the armed conflict.<sup>83</sup> The State also reported, *inter alia*, the strategy devised in 2013 by the Office of the National Special Prosecutor for Transitional Justice, called the “Plan of Action for Prioritizing and Pursuing Assets” to ensure that the procedures for recovering assets were done in application of the Law on Justice and Peace.

76. As for how the Committee for Prioritization of Situations and Cases is proceeding with the ranking of cases of grave human rights violations, the State reported that this recommendation is “already one of the measures that the competent entities have implemented in an articulated and coordinated manner.”<sup>84</sup> It reported on the activities that the Committee has underway and on the implementation of a “Comprehensive Plan of Action to protect the basic rights of children, adolescents, women, the LGBTI population, ethnic groups, unionists, journalists and [human rights] defenders.” The State indicated that one of the specific objectives of the plan was to investigate applicants for crimes related to gender-based violence; in 2013 petitions were filed with the Chambers of Justice and Peace seeking indictment of the persons prioritized as being most responsible for these events. The total number accused was “433, whose victims numbered 488.” According to the information received, between 2011 and 2014, a total of 6 sentences were handed down in application of Law 975, for crimes involving gender-based violence.<sup>85</sup>

77. The Commission values the efforts made by the State on investigation and prosecution. As the Commission noted in its report *Truth, Justice and Reparation*, the serious situation of impunity that one finds in relation to serious human rights violations and breaches of IHL, constitute systematic obstacles for guaranteeing victims’ rights. Therefore, the Commission considers that the State should continue to decisively move forward in overcoming this situation and taking into account its international obligations in this area. In this context, and in light of the analysis made by the Commission in its report on the international law standards applicable in this field, the IACHR recalls the State that the strategy of prioritizing certain cases

<sup>81</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 116.

<sup>82</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 8.

<sup>83</sup> Specifically, the State reported that “Since 2012, 3.8 billion pesos from the Bloque Catatumbo have been used, both [sic] of which belong to the Autodefensas Unidas de Colombia, as well as 1 billion from drug trafficking.” Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIIID-15-017750, of February 26, 2015, p. 7.

<sup>84</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 127.

<sup>85</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 134.

over other when it comes to investigating grave violations in the conflicts cannot be cited to justify the failure of the State to act with respect to those cases not prioritized. The Commission also reiterates the importance of ensuring adequate participation spaces for victims, in the implementation and definition of the elements governing the prioritizing strategy.

#### **E. Setbacks with respect to military criminal justice**

- Take into account the considerations regarding Legislative Act 02 of 2012, and its incompatibility with international obligations in the area of investigation and punishment of human rights violations, especially with respect to future initiatives that may arise regarding this matter.

78. In the report *Truth, Justice and Reparation*, the Inter-American Commission analyzed the gains and setbacks in the legal framework governing the use of the military criminal justice system in Colombia. As the report indicates in detail, for more than 10 years the IACHR has monitored the different mechanisms the State has implemented in this area, and in this sense, the Constitutional Court and the Supreme Court of Justice have been consistent in noting that they must respect the principle that military criminal courts do not have jurisdiction to investigate human rights violations.<sup>86</sup> Specifically, the Commission identified two aspects of special concern in its Report: First, the setbacks in the decisions by the Superior Judicial Council (Consejo Superior de la Judicatura) on jurisdictional conflicts between the regular and military jurisdictions, and second, the change in case-law characterized the cases of “false positives” as service-related acts and which had some of the investigations undertaken by the military criminal justice system.

79. In this respect, the Commission already referred in the section on life and integrity to the information provided by the State on the jurisdictional conflicts that have been resolved by the Superior Judicial Council in the last year, and on this point of the analysis it considers it pertinent to reiterate that the State should ensure that these cases are heard by the regular jurisdiction. The IACHR takes into account what was noted by the UN High Commissioner for Human Rights in her 2014 report on Colombia, in that in 2013 “48 cases of homicides attributed to the army, characteristic of “false positives”, were transferred from ordinary to military jurisdiction, despite Government assurances that this would not occur,” and that “Numerous other cases were transferred directly by civilian prosecutors.”<sup>87</sup> The High Commissioner noted in her report that among the serious human rights problems that persist in Colombia is the “the attempt to expand military criminal jurisdiction.”<sup>88</sup>

80. Second, the IACHR performed a detailed analysis on the constitutional reform of the military criminal jurisdiction approved by Legislative Act 02 of 2012, and the introduction of the respective enabling legislation (*ley estatutaria*) to the Congress. Both the Commission and various international organizations for the protection of human rights expressed their concern around this initiative due to its incompatibility with international standards for the protection of human rights in this regard. As the IACHR explained in its report, even though the reform of the military criminal courts was subsequently declared unconstitutional by decision C-740 of 2013 of the Constitutional Court, the Commission considered it important to state for the record its special concerns concerning that reform. This, taking into account that after the decision of the Constitutional Court several state authorities announced that they would continue promoting initiatives that could take up anew the issues addressed in Legislative Act 02 of 2012, and reiterating the importance of the historical moment in which Colombia finds itself, moving forward in designing a transitional justice model for the possible culmination of the armed conflict.

<sup>86</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, December 31, 2013, paras. 386-395.

<sup>87</sup> United Nations, [Annual Report of the United Nations High Commissioner on Human Rights. Situation of human rights in Colombia](#). A/HRC/25/19/Add.3. January 24, 2014, p. 2.

<sup>88</sup> United Nations, [Annual Report of the United Nations High Commissioner on Human Rights. Situation of human rights in Colombia](#). A/HRC/25/19/Add.3. January 24, 2014, para. 52.

81. The Commission notes that in the observations that the State made on the draft country report<sup>89</sup>, and in the information provided in the follow-up to the recommendations, the position of the State to the IACHR is that it will abide by what was decided by the Constitutional Court in its judgment of 2013, and that any initiative that comes about in this sphere “would be consistent with the commitments assumed by the State in respect of human rights and IHL.”<sup>90</sup> Indeed, with respect to the recommendation under analysis, the State included it in the set of recommendations “not shared,” reiterating that Legislative Act 02 of 2012 was already declared unconstitutional by the Constitutional Court.<sup>91</sup> In this respect, the Commission considers it relevant to reiterate that the considerations put forth in the report *Truth, Justice and Reparation* and the recommendations made in this chapter refer substantively to a debate that remains alive in Colombia that has been closely monitored by the international organs for protection, and they have made specific recommendations to the State to channel its efforts in the area of justice in keeping with its international obligations to protect human rights.

82. Accordingly, and despite the declaration of unconstitutionality of Legislative Act 02 by the Constitutional Court, the Commission’s concern is that through future initiatives the military criminal courts might once again be used to try human rights violations, which would constitute a serious setback and would jeopardize the right of victims to justice. Moreover, the Commission laments that what the State has indicated in its report on follow-up to the recommendations does not correspond to the current situation in Colombia, for as explained next, there are, as of the date of this writing, at least three legislative initiatives that revive the concerns voiced by the Commission in its report.

83. The Commission observes that one of these initiatives was introduced in September 2013 by the Ministry of National Defense, which it put before the First Committee of the Senate. It is Proposed Law No. 085/2013 by which

The military and police criminal justice systems are restructured, requirements are established for holding those positions, the Office of Prosecutor General for Military and Police Criminal Matters is opened, their Technical Investigations Corps is organized, provisions are indicated on jurisdiction for moving to the accusatory criminal justice system and for guaranteeing it is fully operative in the specialized jurisdiction, and other provisions are issued.<sup>92</sup>

84. The legal basis of that bill is Legislative Act of 2012<sup>93</sup>, which proposes a model or “transition of the military criminal justice system to the accusatory criminal procedure system.” The initiative provides for the creation of “Military or Police Criminal Courts of Specialized Cognizance and Cognizance”<sup>94</sup> for hearing crimes such as homicide, breaches of international humanitarian law, crimes against the civilian population, personal injuries, and crimes against the public faith or against the public administration, among others.<sup>95</sup> In addition, according to the bill, the military jurisdiction would apply “to active-duty or retired members of the armed forces or National Police, as well as to civilian or non-uniformed personnel who hold positions in the

<sup>89</sup> See: IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, December 31, 2013, para. 437.

<sup>90</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 81.

<sup>91</sup> In this report the Commission is also mindful that the Constitutional Court refrained from ruling on the constitutionality of the law (*ley estatutaria*) that was developing Legislative Act 02 of 2012, bearing in mind that it had already been declared unconstitutional and therefore it did not make “sense for the Court to rule with respect to the formal or material constitutionality of the provision subject to review, as at present it would serve no purpose.” Constitutional Court. [Judgment C-388/14](#), June 25, 2014.

<sup>92</sup> Congress of the Republic, Senate. [Bill 085 of 2013](#). September 2013.

<sup>93</sup> Congress of the Republic, Senate. [Bill 085 of 2013](#). Statement of reasons. September 2013.

<sup>94</sup> Congress of the Republic, Senate. [Bill 085 of 2013](#). Article 6. September 2013.

<sup>95</sup> Congress of the Republic, Senate. [Bill 085 of 2013](#). Articles 8 and 9. September 2013.



military or police criminal courts.”<sup>96</sup> Among other aspects, the initiative also proposes the creation of an Office of Prosecutor General for the Military and Police Criminal Courts with authority to assume investigative tasks and to direct this stage of the process, for example “guaranteeing the chain of custody of the material elements of evidence and of the physical evidence,” and being in charge of “developing the criminalistic and criminological judicial investigation, and the handling of information, aimed at providing support to the administration of military or police criminal justice in cases under their jurisdiction....”<sup>97</sup> For its part, the Office of the Military Prosecutor would have the authority, *inter alia*, to “enter into preliminary agreements with the accused” and “to apply prosecutorial discretion.”

85. In this respect, the Commission observes with profound concern that this initiative picks up on one of the critical aspects of Legislative Act 02 of 2012, namely the possibility that the military justice system may prosecute crimes that are not service-related by their nature. The IACHR refers to the considerations set forth in the report *Truth, Justice and Reparation* as to the scope of this standard according to inter-American case-law<sup>98</sup> and reiterates that the international obligations of the State require that human rights violations be tried in the regular jurisdiction, independent of whether the violations to be tried were committed by members of the military. The aim pursued once again by the State of strengthening the independence and impartiality of the administration of justice, and in this case harmonizing the military criminal justice system with the evolution of the law on criminal procedure, while also affording juridical security to the members of the armed forces and National Police, is incompatible with the standards established in the inter-American human rights system and the very case-law of the Colombian high courts, because as stated in the proposed legislation, it would entail a broadening of the material application of the military criminal courts.

86. The Commission once again reiterates to the State what inter-American case-law says on this point:

[T]he obligation not to prosecute human rights violations under the military jurisdiction is a guarantee of due process derived from the obligations included in Article 8(1) of the American Convention. Furthermore, ... even though the standard in question has been developed mainly through cases on grave human rights violations, this is only because the facts submitted to [the] Court’s jurisdiction were of this nature, and not because the competence to hear the case must be assigned to the ordinary jurisdiction only and exclusively in such cases.... Therefore ... the criteria to investigate and prosecute human rights violations before the ordinary jurisdiction reside not on the gravity of the violations, but rather on their very nature and on that of the protected juridical right....<sup>99</sup>

87. As the State of Colombia has made major efforts to prevent situations such as that of the cases of false positives from recurring in the future, and as overcoming impunity is an essential element for attaining that objective, the possibility of the military criminal jurisdiction being able to sit in judgment of crimes such as homicide could lead to investigations of extrajudicial executions, which are not defined as such in Colombia’s domestic law, but rather are investigated under the crime “homicide of a protected person.” This would represent a serious setback, and as the Commission explained in its report, it would only compound impunity. Precisely one of the points of concern voiced by civil society that the IACHR reflected its report concerning Legislative Act 02 was that these cases and all breaches of IHL would be heard by the military jurisdiction, and now Bill 085 picks up on this concept once again. In addition, the creation of a Technical Investigations Corps that has jurisdiction to intervene in handling the crime scene was another

<sup>96</sup> Congress of the Republic. Senate. [Bill 085 of 2013](#). Article 2. September 2013.

<sup>97</sup> Congress of the Republic. Senate. [Bill 085 of 2013](#). Articles 30, 33 and 42. September 2013.

<sup>98</sup> See: IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, December 31, 2013, paras. 439-443.

<sup>99</sup> I/A Court HR, *Case of Vélez Restrepo and family members v. Colombia*. Preliminary objection, merits, reparations and costs. Judgment of September 3, 2012. Series C No. 248, paras. 243-244.

question raised regarding the reform that was found unconstitutional<sup>100</sup>, and that the Commission finds once again in Bill 085.

88. In effect, civil society organizations such as the Comisión Colombiana de Juristas (CCJ) have reiterated their concern that this initiative raises once again the possibility that impunity might be the result in “cases such as the false positives, espionage operations with criminal aims, and breaches of IHL.”<sup>101</sup> The CCJ has also noted that:

... it is very worrisome that the crimes against the protection of information and data are, in the proposed law, under the jurisdiction of the military and police criminal courts, as such crimes have been one of the main means by which the illegal and illegitimate persecution of major opposition leaders, journalists, and human rights defenders have been structured with the aim of discrediting them, gagging them, or censoring them....<sup>102</sup>

89. Similarly, Human Rights Watch, in a letter directed to the Minister of National Defense in July 2014, said that Bill 085 “actively promotes removal of cases from the regular courts to the military criminal courts,” mindful that Article 94 thereof establishes that “those proceedings in which upon the entry into force of the ... law had not decreed the beginning of the trial shall be governed by the new rules on jurisdiction” established in the draft report and once “the new courts [have been] implemented.”<sup>103</sup> The Commission takes into account that the considerations put forth by Human Rights Watch were rejected by the Ministry of National Defense, an authority which, in response, said that the effort was aimed at “discrediting and delegitimizing the enormous work of the armed forces and National Police, which are at the forefront of human rights protection in the country, with positions that lead to the conclusion that the military criminal jurisdiction is synonymous with impunity.”<sup>104</sup> As the Commission indicated its Report, it is the very history of the countries of the Americas that has shown that the exercise of the military jurisdiction for prosecuting cases of human rights violations has led such cases to remain in impunity.

90. Another point of special concern has to do with victims’ participation and the application of prosecutorial discretion, which is also a power that the Constitution of Colombia vests exclusively in the Office of the Attorney General (Fiscalía General de la Nación). Accordingly, the Office of the UN High Commissioner on Human Rights in Colombia (OHCHR) indicated that the bill includes ambiguous provisions on the application of such procedural rules, in particular, that:

... in the context of prosecutorial discretion and the suspension of the evidentiary procedure, that participation is limited to the Office of the Military Criminal Prosecutor taking into account its interests and to the dispute over evidence in the oversight hearing by the judge for oversight of guarantees (juez de control de garantías), which is not consistent with the duty to provide adequate mechanisms of participation to the victim. For this reason, approval of draft law 085 would imply serious backsliding in case-law recognition of victims’ rights in the context of judicial proceedings, in light of the domestic case-law and the commitments assumed by the Colombian State.<sup>105</sup>

<sup>100</sup> See: IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, December 31, 2013, para. 406.

<sup>101</sup> Comisión Colombiana de Juristas, [Reestructuración de la justicia penal militar y policial: sobre su inconstitucionalidad e inconveniencia](#), August 28, 2014, p. 2.

<sup>102</sup> Comisión Colombiana de Juristas, [Reestructuración de la justicia penal militar y policial: sobre su inconstitucionalidad e inconveniencia](#), August 28, 2014, pp. 4-5.

<sup>103</sup> Congress of the Republic. Senate. [Bill 085 of 2013](#). Article 9. September 2013.

<sup>104</sup> Letter to Human Rights Watch from the Vice-Minister for International Policies and Affairs, Ministry of National Defense, Jorge Enrique Bedoya Vizcaya. July 2014. Available at: <http://www.radiosantafe.com/2014/07/10/mindefensa-rechaza-cuestionamientos-de-human-rights-watch-y-niega-paso-de-falsos-positivos-a-justicia-militar/>

<sup>105</sup> Office of the United Nations High Commissioner for Human Rights in Colombia, [Observaciones frente al proyecto de Ley 85 de 2013](#), September 3, 2014, p. 18.

91. In general, the OHCHR indicated that considering the content of Bill 085, it places

... at risk the independence and impartiality of the judicial branch; they extend the military jurisdiction to offenses that do not correspond to the nature of the service; they go beyond the protection of legal values related to military interests; and they make possible the applications of devices for waiving the criminal action, such as prosecutorial discretion, in the ambit of military criminal justice.

... The Office considers that Bill 085 violates standards of international human rights law and international humanitarian law standards insofar as many of its provisions are openly contrary to the international provisions that regulate, among other things, the use of force and the administration of justice in any democratic state.<sup>106</sup>

92. In addition, in September 2014 the mandate holders of 12 special procedures of the United Nations Human Rights Council expressed their concern over the proposed restructuring of the military criminal courts provided for in Bill 085, reiterating that it raises concerns similar to those that revolved around Legislative Act 02 of 2012.<sup>107</sup> In a letter directed to the Government and the representatives of Congress, they also emphasized their concern that under the proposed legislative reform the military courts could exercise jurisdiction over “civilians accused of having committed a criminal offence.” Accordingly, they made an appeal for “serious” reconsideration of the bill.<sup>108</sup>

93. The Commission takes into account that also before the Congress are Bills 022 (Proyecto de Acto 022) of 2014 and 129 of 2014, which also include the aspects of concern raised by Legislative Act 02 of 2012. As regards the first, the bill presented by the Ministry of National Defense would amend Article 221 of the Constitution of Colombia as follows:

... In no case shall the Military or Police Criminal Justice take cognizance of crimes against humanity or of the crimes of genocide, forced disappearance, extrajudicial execution, sexual violence, torture, or forced displacement. Breaches of international humanitarian law committed by members of the armed forces or National Police, except the aforementioned crimes, shall be heard exclusively by courts martial or military or police tribunals.

...  
PARAGRAPH. Transitory. Criminal proceedings brought against the members of the armed forces or National Police for offenses that are not service-related or for the offenses expressly excluded from the cognizance of the Military Criminal Justice system as per sections 1 and 2 of this article, and which are in the regular courts, shall continue their course. The Office of the Attorney General, in coordination with the Military Criminal Justice system, shall have up to one (1) year to identify all the proceedings under way against members of the armed forces or National Police, and to remove to the Military Criminal Justice system those where the conditions for jurisdiction of the regular courts to not obtain. In the context of such coordination, one may verify whether any specific proceeding in the Military Criminal Justice system might be under the jurisdiction of the Regular Justice system.<sup>109</sup>

<sup>106</sup> Office of the United Nations High Commissioner for Human Rights, Office in Colombia, *Observaciones frente al proyecto de Ley 85 de 2013*, September 3, 2014, p. 3.

<sup>107</sup> Open letter to the mandate holders of the special procedures of the United Nations Human Rights Council to the Government and to the representatives of the Government of the Republic of Colombia. Available at: <http://www.colectivodeabogados.org/noticias/noticias-nacionales/article/expertos-del-consejo-de-derechos>

<sup>108</sup> Open letter to the mandate holders of the special procedures of the United Nations Human Rights Council to the Government and to the representatives of the Government of the Republic of Colombia. Available at: <http://www.colectivodeabogados.org/noticias/noticias-nacionales/article/expertos-del-consejo-de-derechos>

<sup>109</sup> Congress of the Republic. Senate. *Proyecto de Acto 022 de 2014*, “reforming Article 221 of the Constitution of Colombia.”

94. Bill 129 of 2014 establishes that IHL will be the law applied in “the investigation, accusation, and prosecution of the conduct of members of the armed Forces and National Police when it occurs in a situation of hostilities.”<sup>110</sup> In addition, it establishes that prosecutions of “aggravated homicide” and “homicide of a protected person” are going forward in the regular jurisdiction, and shall remain under its jurisdiction as per the following rules: (i) as from the entry into force of the Law, the Office of the Attorney General shall have six months “to decide what conduct committed prior to that date meets [these] characteristics...”; (ii) “the cases corresponding to homicides that do not meet those characteristics and have been committed by a member of the armed forces or National Police on active duty and in relation thereto shall be removed ... to the competent authority of the military or police criminal justice system...”; (iii) “the proceedings in the trial phase, upon the entry into force of this law, with respect to crimes of aggravated homicide or homicide of a protected person, should be concluded by the jurisdiction that has been hearing them; and (iv) it will be prohibited to raise jurisdictional conflicts during the six months following the entry into force of the law with respect to cases of homicide of a protected person and aggravated homicide attributed to a member of the armed forces or National Police that is being heard in the regular jurisdiction.”<sup>111</sup>

95. In relation to these three bills taken together, various international and Colombian organizations have made pronouncements reiterating their concern about “renewed legislative efforts by the Colombian government that could deny justice for serious human rights abuses—including extrajudicial executions—committed by members of the military and police.”<sup>112</sup>; and they made an appeal to the Government “not to promote ... the legislative initiatives that expand and give privileges to the military criminal jurisdiction in prosecuting violations of human rights and breaches of international humanitarian law.”<sup>113</sup> In addition, it has been noted that the situation brought about with the simultaneous introduction of these bills “has generated profound confusion in public opinion, especially in the organizations that monitor legislative reforms in this area, for it is not possible to clearly show what the purpose of each of the bills is and how they are different from one another.”<sup>114</sup>

96. The Commission notes with profound concern that despite the repeated and emphatic appeals made in due course to the State of Colombia regarding the content of Legislative Act 02 of 2012, and that even though it was already found unconstitutional by the Constitutional Court, new legislative initiatives are going forward that give rise to the same concerns in terms of the protection of the rights of victims of human rights violations. As of the writing of this report, Bill 085 had already been approved in the third debate – of the four legislative debates required – by the Congress of the Republic.<sup>115</sup> Bill 022 was pending “presidential approval,” and Bill 129 was introduced on October 1, 2014, in the First Committee of the House of Representatives, and was pending the first debate.

<sup>110</sup> Congress of the Republic. House of Representatives. [Proyecto de Ley No. 129/2014](#) “which establishes rules for the investigation, accusation, and prosecution of members of the armed forces and National Police in the context of international humanitarian law applicable in situation of hostilities, criminalizing certain conduct, and issuing other provisions.” Article 14. October 2014.

<sup>111</sup> Congress of the Republic. House of Representatives. [Proyecto de Ley No. 129/2014](#) “which establishes rules for the investigation, accusation, and prosecution of members of the armed forces and National Police in the context of international humanitarian law applicable in situation of hostilities, criminalizing certain conduct, and issuing other provisions.” Article 57. Transitory. October 2014.

<sup>112</sup> Pronouncement by Amnesty International, Latin America Working Group (LAWG), Washington Office On Latin America, World Organisation Against Torture, Robert F. Kennedy Center For Justice & Human Rights, International Office For Human Rights Action For Colombia (Oidhaco), Kolko – Menschenrechte Für Kolumbien, Abcolombia, Mennonite Central Committee Us, Washington Office Fellowship of Reconciliation Peace Presence, United Church of Christ, Justice and Witness Ministries, Jesuit Conference of the United States, Presbyterian Church (USA), Center for International Policy, Colombian Caravana UK Lawyers Group, Colombia Solidarity Committee, and Acat France. See: [Grave retroceso para la justicia en Colombia si se aprueban proyectos de ley para ampliar el fuero penal militar](#). November 24, 2014.

<sup>113</sup> Pronouncement by the FIDH and its affiliated organizations in Colombia, CCAJAR, ILSA, and CPDH. [Ampliación del fuero penal militar en Colombia abre camino a la impunidad](#). November 7, 2014.

<sup>114</sup> Comisión Colombiana de Juristas, [Tres proyectos distintos para una impunidad verdadera: la ampliación del fuero penal militar](#), October 22, 2014.

<sup>115</sup> See: Congress of the Republic. House of Representatives. [Comisión aprueba el fuero penal militar](#). December 2, 2014.

97. In its observations on the draft version of this chapter, the State of Colombia referred in general terms to the content of the legislative bills examined in this section, indicating that they “are part of the legislative packet for the reform of the military justice system, which represents a historic effort on the part of the National Government toward the consolidation of a specialized, independent, impartial, agile, and efficient court system.” In addition, the position advanced by the State is that “the reforms [...] establish clear parameters for distinguishing between the jurisdiction of the regular justice system and the military justice system” and “expressly [exclude] [...] crimes against humanity and the offenses of genocide, forced disappearance, torture, extrajudicial execution, forced displacement, and rape.”<sup>116</sup>

98. Nevertheless, and taking account of the analysis of the content of these initiatives, the Commission is alarmed that these bills are going through the legislative process even though, for example, Bill 085 finds legal support in a reform that the Constitutional Court excluded from the Colombian legal system; as well as the broad consensus expressed by international human rights organizations – based on the relevant international standards – to the effect that if a design for the military criminal jurisdiction were to go forward in that sense the Colombian State would opt for a clear setback in terms of justice for the victims of human rights violations. The serious setback in human rights that the approval of these bills could represent would significantly diminish the efforts made by the State itself in recent years to protect and address the situation of victims.

99. In light of the foregoing, the IACHR urges the Congress not to approve these laws in their current formulation and to make changes to make the bill compatible with the constitutional obligation of upholding the standards of the inter-American human rights system.

#### **F. Mechanism of reparation**

- Continue to move forward with implementation of Law 1448 and adopt the measures necessary to adequately address the challenges encountered.
- Take a broad approach to including victims in the Single Registry of Victims.
- Guarantee, in practice, the implementation of a differential approach for women, children and adolescents, persons with disabilities, indigenous peoples, Afro-descendant persons, lesbian, gay, trans, bisexual and intersex persons, defenders of human rights, among others.
- Guarantee victims’ effective participation in the proceedings provided for in Law 1448 and take their expectations into account when deciding the appropriate measures of reparation.
- Adopt the necessary mechanisms to ensure that victims who participate in Justice and Peace proceedings have access to a judicial recourse through which the harm caused and the reparations due are determined

100. The State informed the IACHR that it considered the recommendations on inclusion of victims in the Single Registry of Victims and the effective participation of the victims in the proceedings under Law 1448 to be “carried out satisfactorily.” With regard to the other recommendations, the State indicated that it continued to make progress implementing them, and it submitted information on the measures and results obtained in the period under analysis.

101. In the report *Truth, Justice and Reparation* the Commission acknowledged the efforts and initiatives implemented by the State to establish an integral reparations policy and to promulgate the Law on Victims and Land Restitution (hereinafter “Law 1448” or the “Law on Victims”) as an administrative reparations system that encompasses the different cases, situations, and particularities of the victims of violations of human rights and breaches of IHL derived from the internal armed conflict. The Commission analyzed the gains and challenges that been occurring with the implementation of the Law, and in that regard it reiterated the standards developed by the inter-American case law on reparation, and specifically the

<sup>116</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIIID-15-017750, of February 26, 2015, p. 8.

obligation of the State to offer integral reparation to the victims of human rights violations. As the Commission explained:

... that the determination of reparation whether determined judicially or administratively (with the two jurisdictions being mutually exclusive), does not exempt the State of its obligations related to the component of justice for the violations caused, which obligates the State to guarantee the victims that there will be an investigation into and punishment of the persons responsible for those violations, as per the requirements of international law.<sup>117</sup>

102. The Commission also took into account that the implementation of the reparations policies designed by the State faces major challenges stemming from the massive violation of human rights committed during the conflict, the articulation of the multiplicity of institutions involved, and the context of continuation of the internal armed conflict and the situation of violence. In that context the State itself has recognized the need to address the issue of reparations from an integral perspective, understanding that it cannot be satisfied only judicially, but that there must be a relationship of “coherence among the measures of compensation, restitution, satisfaction, rehabilitation, and guarantees of non-repetition.” Along those lines, the Commission explained that the scope of the obligation of reparation is determined by the need to take account of all its components, in keeping with the international obligations of the State.

103. As regards the implementation of Law 1448, the State informed the IACHR that “in the context of integral reparation for victims ... it has consistently carried out and progressively overcome the challenges and difficulties at the moment of guaranteeing the effectiveness of the policy of attention to and reparation for victims.”<sup>118</sup> It noted first that the program for attention and reparation has an allocation from the General Budget of the Nation which for 2014 had totaled 24.9 billion pesos since 2000, and that 58% of that budget has been allocated in the last four-year period, with a significant increase after the adoption and implementation of the Law on Victims.

104. The Commission values the information provided by the State in terms of the adoption of the National Plan for Attention and Integral Reparation for Victims (PNARIV: Plan Nacional de Atención y Reparación Integral a las Víctimas) as:

... the principal tool for planning for the public policy for victims, as it presents a general characterization of the victims of the conflict as the universe for attention and reparation; similarly, it proposes a series of considerations on institutional supply and on the normative and case-law points of reference, in which persons are analyzed with a differential perspective based on considerations of children and adolescents, gender, disability, life-cycle, and ethnicity.<sup>119</sup>

105. In this respect, the IACHR takes into account what was noted by the State when it says that “major challenges” have arisen in implementing the goals enunciated in the PNARIV with regard to “psychosocial care; measures of physical and/or mental rehabilitation, collective reparation and returns and relocations with accompaniment; testimony by demobilized persons that contributes to historical memory; and children, adolescents, and women with accompaniment.” The State indicated that the competent authorities have been addressing these challenges and that during the three years in which Law 1448 has been in force progress has been made in the following areas, among others: (i) “mechanism for exchange of

<sup>117</sup> IACHR, *Informe Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, December 31, 2013, para. 467.

<sup>118</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 135.

<sup>119</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 137.

information at the service of victims' rights," including "the migration of sources of information" to the Single Registry of Victims; (ii) the use of tools such as "the battery of principal and complementary indicators by administrative registries for forced displacement and other victimizing acts"; (iii) gains in the "coordination of the efforts of the national and territorial entities that made up the SNARIV," and that this coordination work including "an exercise for control and follow-up" on the implementation of Law 1448, with the participation of the Commission on Follow-up and Monitoring of the Law, the Constitutional Court, and the Commission on follow-up to the public policy on forced displacement, among others; (iv) also in terms of the institutional response, it indicated that there is a legal framework that governs the action of the agencies for attending to the situation of victims, and a budget "expressly earmarked for beginning reparation based on a planning exercise...."<sup>120</sup>

106. The Commission emphasized in its report that one of the aspects that had given rise to most debate in relation to the implementation of the Law on Victims had to do with the scope and determination of the victims who could have access to the mechanisms of reparation provided for in it. In its analysis the Commission took into account the determinations made by the Constitutional Court in its Judgment C-253A of 2012 on the scope of the expression "on occasion of the armed conflict" ("*con ocasión del conflicto armado*") used in the Law, as well as other determinations made by the same body in relation to the delimitation of the facts included in the context of the armed conflict. In addition, the IACHR took into account that in 2012 the Executive Committee for Attention to and Integral Reparation of Victims approved the criteria for weighing requests for inclusion in the Single Registry of Victims. Specifically, the IACHR noted that according to the information received by the Victims Unit, while in practice the criteria for inclusion had been applied flexibly, for example in those cases in which the victims had said that the alleged perpetrator was part of an illegal armed group that arose after the demobilization of the paramilitary organizations, they had not been included in the Single Registry of Victims, but only in those in which there was a judicial order.

107. In light of the foregoing, the Commission received information from the State to the effect that whereas in 2013, the Victims Unit took actions to include victims of forced displacement due to "actions presumably attributable to criminal bands" in the Single Registry of Victims – on occasion of which the Unit that year weighed 10,987 requests for registration with these characteristics, 91% of which ended in a decision of inclusion.<sup>121</sup> More recently, the State noted that the Victims Unit continued adopting, from a "perspective of progressivity," the formulation of solid criteria for the "effective assessment" of each case, which led to the adoption of the "Manual for Analysis" ("*Manual de Valoración*"), pursuant to what the Constitutional Court mandated in its Order No. 119 of 2013, following up on Judgment T-025.<sup>122</sup> It indicated that as of June 2014, the Victims Unit had recorded and analyzed a total of 862,414 requests for inclusion, 81.5% of which had been included.<sup>123</sup> The State noted that this system of analysis for including victims of forced displacement in the reparations program has been noted as a unique case worldwide, and that this policy decision makes it such that there is no "comparison for the Colombian case in terms of the number of persons recognized as victims."<sup>124</sup> Another aspect that the State considered as an example of the "inclusive character" of the Single Registry of Victims is the "diversity of victimizing events" recognized.

<sup>120</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pp. 137-139.

<sup>121</sup> Republic of Colombia. Note S-GAIID-14-070592, received October 2, 2014. Follow-up Report on the hearings of the 150 Period of Sessions of the IACHR, of the Unit for Attention and Reparation for Victims.

<sup>122</sup> Specifically, the Constitutional Court ordered that the Victims Unit, which adopted that manual so that "all the staff [would have] the same criteria when deciding on inclusion or non-inclusion in the registry of the population displaced by violence...." Constitutional Court. [Auto 119](#). June 24, 2013.

<sup>123</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 86.

<sup>124</sup> Making reference to the study done by the Carr Center for Human Rights Policy of the Harvard Kennedy School. Republic of Colombia. *Situación de Derechos Humanos 2013-2014 y seguimiento a las recomendaciones contenidas en el IV Informe de País de la CIDH*. Note S-GAIID-14-094783, received December 29, 2014, p. 85.

108. As regards the adoption of a differential approach, the Commission noted in its report that it did not have information to verify how that report was being applied in practice, especially bearing in mind the specific difficulties that certain groups face such as indigenous populations, Afro-descendant communities, and women, among others, when it comes to accessing the mechanisms of reparation. In this regard, the Commission takes note of the information provided by the State to the effect that the Victims Unit continues carrying out actions to unify the Registry, and in particular to get differentiated attention for the victims of forced displacement. In that context, the State reported that the Registry also breaks down the total universe of 6,941,505 victims by the number of women (50.9%), men (48.3%), and LGTBI persons (0.1%), and it distinguishes the victims by “demographic characteristics of ethnicity, age, gender, sexual orientation, and situation of disability.”<sup>125</sup> Later, in its observations on the draft version of this chapter, the State indicated that as of November 30, 2014, the Single Registry of Victims contained 7,028,776 victims of human rights violations and IHL infractions, and that these were “differentiated according to the victimizing act, age, gender, sexual orientation, disability status, and membership in an ethnic group.”<sup>126</sup>

109. In addition, the Commission takes note of the information provided by the State on the formulation of a “Guide for incorporation of the ethnic variable and the differential approach in the design and implementation of plans and policies at the national and territorial levels,” and the impetus the National Government is giving to a proposed law (*ley estatutaria*) on “General framework for guaranteeing the full exercise of the right to equality.” Additionally, the State indicated that the “School for Reparations” of the UARIV, has developed training programs for officials responsible for implementing the Law.

110. Notwithstanding the foregoing, the Commission notes that it has continue to receive information about certain challenges that victims face from the policy of reparations for human rights violations in Colombia. At the hearing held during the 153 period of sessions on this subject, civil society organizations indicated that there are still obstacles in the implementation of the Law, mainly regarding: (i) the operation of institutions created by the Law; (ii) insufficient training of officials responsible for its implementation; and (iii) the lack of coordination at national and local level between the different entities involved.<sup>127</sup> The Commission takes note of the information provided by the State regarding the measures it is implementing to address those concerns, particularly the coordination of a national system for comprehensive reparations and assistance to victims [SNARIV] and the strengthening of the entities that form part of the SNARIV. For example, the State underscored that in 2013 the Victims’ Unit coordinated a strategy of action “in the territory” that included components such as “income generation, education, health and psychosocial services, housing, and comprehensive reparation.” Nevertheless, the State indicated that in 2014 that strategy changed “its intervention focus and name” and that its objective is “to develop the joint creation of planning instruments based on the public policy guidelines of prevention, protection, service, assistance, and comprehensive reparation [...]” under the responsibility of the Territorial Transitional Justice Committees at the departmental level and the territorial subcommittees.<sup>128</sup>

111. As for the measure to ensure the effective participation of victims, the IACHR emphasizes what was reported by the State regarding the development of the “Protocol for Effective Participation” and the installation and consolidation of the “Effective Roundtables for Participation” (“Mesas Efectivas de

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<sup>125</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAII-14-094783, received December 29, 2014, pp. 87-89.

<sup>126</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAII-15-017750, of February 26, 2015, p. 9.

<sup>127</sup> Information received during the hearing on Policy and Legislation on reparations for Human Rights Violations in Colombia, held at the 153th Period of Sessions.

<sup>128</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAII-15-017750, of February 26, 2015, p.11.



Participación”) as “the legitimate public space for the participation of the victims in the public policy for assistance, attention, and integral reparation.”<sup>129</sup>

112. As for the Access to a judicial remedy for victims participating in the Justice and Peace processes, the State reiterated that have made significant progress “in recognition and participation of victims,” and that the changes introduced by the Law 1592 of 2012 are designed to “enforce the victim’s rights to truth, justice reparation and no-repetition.”<sup>130</sup> Specifically, the State pointed out that:

One of the mechanisms that ensured victims to participate in the processes under the Justice and Peace Law, has been through the motion victims in proceedings for reparation for which there is Coordination in the development of the motions to identify the impacts caused victims, within the framework of the Justice and Peace Law, for the effective coordination and implementation of the motions to identify the impacts caused, and to manage the resources for the effective participation of victims at this stage...131

113. Among the results obtained, the State highlighted: i) “the creation of a strategy for inter-institutional coordination for the motion to identify the impacts caused to victims,” applied in those cases against the persons deemed to be among the most responsible *postulados* to Justice and Peace (for example the case of Salvatore Mancuso), in which this procedural stage has been reached and under the strategy to prioritize them from the Prosecutor’s office; and ii) “effective coordination to carry out the 11 motions to identify the impacts caused to victims in the cases against the persons deemed to be among the most responsible” which would encompass a universe of approximately 5,458 victims<sup>132</sup>.

114. At this point, the IACHR considers it relevant to retake some of the issues of concern raised in the *Truth, Justice and Reparation* Report in connection with the elimination of the reparation motion established by Law 1592. Specifically, the Commission pointed out that this had been one of the most controversial elements of the reform to the Justice and Peace Law, and that certain provisions entailed significant restrictions to the remedies ordered in the framework of the judicial processes of Justice and Peace. The IACHR warned that there were no incentives in terms of reparation for the victims’ participation in such processes established in Law 1592, as they may directly go to the mechanisms provided for in the law for victims and obtain the reparations established therein. The Commission also took into account that the 1592 Law prevented the Justice and Peace Courts to enact reparation measures different than to include in the content of the judgment the victims’ perspective on the damage suffered.

115. In view of the above, the Commission noted that while the State may adopt a multiplicity of remedies involving judicial and non-judicial mechanisms, the reform to the Justice and Peace law resulted in the elimination in practice of any reparation mechanism in the context of transitional justice, which would result in a restriction to the rights and expectations created to the victims during the nine years in which Law 975 of 2005 has been in effect. As the Commission had previously analyzed, the administrative channels offered in a comprehensive reparation program should not become exclusive, but instead complementary to the judicial motion for reparations offered with the Justice and Peace Law.

<sup>129</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 91.

<sup>130</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 147.

<sup>131</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 148.

<sup>132</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pp. 150-151.

116. In this regard, the IACHR takes into account that on March 27, 2014, the Constitutional Court declared unconstitutional certain provisions of Law 1592 related to the full reparation to victims, and specifically with the prohibition to judicially assess the damages in the Justice and Peace processes. According to the judgment, the analysis of the Court was grounded in both the domestic and international obligations of the State in matters of truth, justice and reparation for the victims, and noted, *inter alia*, that “one of the guidelines set from international law with regards to the rules of transitional justice refers to the right of victims to obtain judicial protection of their rights by judges and Courts by means of an effective remedy.” Thus, the Constitutional Court considered that Law 1592 “disregards” said obligation because the identification motion of damages caused

[...] it’s only a qualitative factual statement about damages caused but is not a decision condemning to the payment of the moral and material damages caused as its forbidden that the judge can decide on it and he/she can decide on other remedies such as rehabilitation, restitution, satisfaction, and guarantees of non-repetition, all which are subject to a mere discretionary criteria of the administrative authorities who receive the file. Also, under the prohibition to decide on the motion victims in proceedings for reparation contained in Law 1592 of 2012, the duty to determine and quantify the damages that is inherent to the right of reparation can’t be met, so that the compensation is not defined by the judiciary as it’s for the administrative authorities to decide it 133.

117. The Court found that the competence of the criminal judge in the Justice and Peace process to decide about the full reparation shall be maintained, “without prejudice to the competences that correspond” to the administrative authorities in the framework of programs of reparation and restitution of land provided for in the Act 1448 2011. So, according to the Court’s decision, “the decision of unconstitutionality adopted concerned the hypothesis that the victim decided to request the reparation in the criminal proceeding,” and that “the other forms of reparation arising not from criminal proceedings” would still be in charge of authorities conferred in the Act 1448 2011. Later, in the judgment C-286 of 2014, the Constitutional Court determined “the elimination of the reparation motion for the victims by the criminal courts of the Justice and Peace transitional regime violates the fundamental right to access to the administration of Justice and an effective judicial remedy to obtain such reparation.”<sup>134</sup> The Court considered that the “replacement” created by the motion to identify the damages “that merges with the mechanisms of the administrative reparation enshrined in the Act 1448 2011”, involve a disproportionate restriction to the ‘right of the victims’ to have an effective judicial remedy to obtain full reparation by the courts in the special process of Justice and peace because the remission that made the Act 1592 to the administrative or civil service, “nulled the judicial reparation in full.”

118. While the State did not specifically referred to the concerns raised by the Commission about these aspects of Law 1592, the Commission takes note of the information provided on efforts to ensure the effective participation of victims in the justice and peace process. In this framework, the Commission considers that the decisions of the Constitutional Court retake certain essential aspects to guarantee victims the right to integral reparation processes governed by the law of Justice and peace. The IACHR considers that the content of these declarations contain also a valuable roadmap for the treatment of the rights of the victims in the context of the dialogues of peace being carried out in Havana, and consolidate the efforts made by the State to advance the transition from Colombian society towards a stable and lasting peace, in harmony with its international obligations.

119. The IACHR acknowledges the State’s indication that Law 1448 establishes several reparation measures from a comprehensive perspective in their distinct components of “satisfaction, restitution, rehabilitation, compensation, and guarantees of non-repetition” and that compensation “is one of the measures to which victims have access and [...]is not meant to redress the harm suffered by the victims in its

<sup>133</sup> Constitucional Court. [Judgment C-180/14](#). March 27, 2014.

<sup>134</sup> As to the date of approval of this chapter, the full text of the decision was not available. The information is taken from the [Press Release No 19](#) of the Constitutional Court, of May 20 and 21, 2014.

entirety.”<sup>135</sup> Within that framework, the Commission notes again that while the reparation plans designed by the State are aimed at addressing to the particular situation of victims of the conflict and its implementation is an important step in the development of a comprehensive concept of reparations; such reparations are part of an administrative plan whose characteristics are different from the judicial remedies. In addition, the Commission has received information on particular challenges of the program, among these, regarding valuation standards and proportionality damage, especially with respect to victims of forced displacement.<sup>136</sup> In this regard, the Commission's detailed analysis offered in the *Truth, Justice and Reparation* report on the standards of the Inter-American system in relation to the obligations of States to offer a comprehensive reparation for human rights violations caused refers, and judicial response to ensure access to justice within a reasonable time under the terms established in international law.

120. The Commission reiterates that shares the vision of the State as to the need to address the issue of reparations from a comprehensive perspective, keeping in mind also the important challenges involved in achieving this goal, given the magnitude of human rights violations caused by conflict. Thus, considers it important that the State continue deploying efforts in harmony with its obligations in this area. In that context, the IACHR underscores what the State indicated in its observations on the draft version of this chapter insofar as it understands that “the judicial and administrative reparations proceedings in Colombia are complementary rather than exclusive.”<sup>137</sup>

### G. Internal forced displacement

- Adopt the measures necessary to prevent forced displacement, including those cases attributed to illegal armed groups that emerged after the demobilization of paramilitary organizations.
- Take the necessary measures to guarantee the protection and safety of persons who return to the territories from which they were displaced, including de-mining of the territories. Also, apply a differential approach in the policies on prevention and protection of displaced persons.
- Ensure prompt and immediate delivery of emergency humanitarian relief and take measures to ensure that the population has access to basic services as well as positive measures to ensure that the rights of displaced persons are fully restored.
- Make further progress in the prosecution of cases of forced displacement, to heighten their visibility.
- Promote prompt articulation of the mechanisms provided under Law 387 of 1997 and those under Law 1448 of 2011, so that the displaced population may be fully redressed, and in that way not have to abandon an approach that takes their particular situation and needs into account

121. With the purpose of helping to alleviate the grave humanitarian crisis of forced displacement in Colombia, the Commission recommended that the Colombian State implement the foregoing measures, set forth in the report *Verdad, Justicia y Reparación* [Truth, Justice, and Reparation].

122. The IACHR has maintained that the scale and long-term nature of internal displacement in Colombia, as well as the negative impact thereof on the effective enjoyment of human rights for millions of people, represent one of the principal humanitarian tragedies, not just in the region, but in the world.<sup>138</sup> The IACHR<sup>139</sup> and the State<sup>140</sup> have agreed that the forced migration of millions of people that has occurred over

<sup>135</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 13.

<sup>136</sup> Information received during the hearing on Policies and legislation on reparations for human rights violations in Colombia held during the 153<sup>rd</sup> Regular Session.

<sup>137</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 12.

<sup>138</sup> IACHR, Truth, Justice, and Reparation: Fourth report on the human rights situation in Colombia, December 31, 2013, paragraph 534.

<sup>139</sup> IACHR, Truth, Justice, and Reparation: Fourth report on the human rights situation in Colombia, December 31, 2013, paragraph 533.

the course of more than fifty years of internal armed conflict in Colombia has been one of the main consequences of and strategies in the armed struggle between the parties to the conflict.

123. Along these lines, the Grupo de Memoria Histórica [Historical Memory Group] has maintained that “in Colombia, forced displacement—a crime against humanity—is a massive, systematic, long-term phenomenon, to a large extent linked to the control of strategic territories. This latter characteristic makes it clear that, beyond the confrontation between armed groups, there are economic and political interests that press for evicting the civilian population from their lands and territories. This occurs with drug trafficking and its financing structures, which have played a definitive role in sustaining and aggravating sociopolitical violence in various regions of the country. Of course, the interests of business sectors that have also promoted the clearance and appropriation of important territories cannot be disregarded.”<sup>141</sup>

124. According to information supplied by the State, as of November 1, 2014, 6,527,908 individuals had been registered as victims of forced displacement in the Sole Register of Victims (RUV).<sup>142</sup> This means that Colombia is currently in second place worldwide in terms of countries with the highest number of internally displaced persons, surpassed only by Syria.<sup>143</sup> Furthermore, according to the UNHCR, the total number of Colombian refugees in June 2014, including people in refugee-like situations, was 397,000,<sup>144</sup> a figure similar to the one registered in 2013.<sup>145</sup> Likewise, there were 16,118 asylum-seekers with pending cases registered in 2014.<sup>146</sup>

125. According to Internal Displacement Monitoring Centre (IDMC) statistics, the year 2013 saw 157,000 newly internally displaced persons in Colombia.<sup>147</sup> Despite the optimism surrounding the peace process that seeks to put an end to more than five decades of internal armed conflict, Colombia is still in the midst of one of the most harrowing humanitarian crises worldwide. The Commission thus reiterates that, pursuant to international human rights law, and in order to put an end to the existence of an unconstitutional state of affairs that affects internally displaced persons,<sup>148</sup> the Colombian State is obligated to prevent future violations; consequently, ending the armed conflict, in addition to adopting measures aimed at preventing new internal displacements, would represent a key contribution towards preventing forced displacements.

126. In addition to the acts of violence committed by the parties to the armed conflict, other sources of violence in Colombia have also been identified as causative factors behind forced migrations, particularly internal displacements, and other human rights violations associated with this problem. Drug-trafficking-related violence, disputes over lands and economic interests, the spraying of illegal crops, actions against manual crop eradication, socioeconomic violence rooted in social injustice, the mining and agricultural industries, non-traditional extractive economies, and megaprojects are among the sources of

<sup>140</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, page 10.

<sup>141</sup> Grupo de Memoria Histórica [Historical Memory Group] (GMH). *¡BASTA YA! Colombia: Memorias de guerra y dignidad* [ENOUGH ALREADY! Colombia: Memories of war and dignity]. Bogotá: Imprenta Nacional, 2013, page 71.

<sup>142</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, page 149.

<sup>143</sup> Office of the United Nations High Commissioner for Refugees. [Mid-Year Trends 2014](#). Page 10.

<sup>144</sup> Office of the United Nations High Commissioner for Refugees. [Mid-Year Trends 2014](#). Page 18.

<sup>145</sup> Office of the United Nations High Commissioner for Refugees. [Global Trends 2013](#). Page 45.

<sup>146</sup> Office of the United Nations High Commissioner for Refugees. [Mid-Year Trends 2014](#). Page 18.

<sup>147</sup> Internal Displacement Monitoring Centre (IDMC). [Global Overview 2014: people internally displaced by conflict and violence](#). May 2014.

<sup>148</sup> Constitutional Court, Judgment T-025 of 2004, January 22, 2004.

violence that have also led to the country's grave humanitarian crisis of internal displacement and forced migration.<sup>149</sup>

127. In view of the foregoing, the Commission has collected information on the measures established by the Colombian State in order to comply with said recommendations, by monitoring the course of the humanitarian crisis derived from forced displacement in Colombia.

128. The IACHR appreciates the decision made by the Constitutional Court of Colombia through Ruling 119 of June 2013, which orders the Government to register persons who fled their homes due to violence and abuse by paramilitary successor groups as internally displaced persons, regardless of whether or not their displacement was caused by the armed conflict.<sup>150</sup> With this Ruling, the Constitutional Court was able to correct the trend whereby the Unidad de Víctimas [Victims' Unit] "excluded victims of forced displacement caused by widespread violence or grave human rights violations perpetrated by groups like the BACRIM from the victim protection and assistance system, leaving thousands of extremely vulnerable Colombians unprotected."<sup>151</sup> This decision represents a significant step forward towards recognizing and guaranteeing the rights of persons forced to leave their usual place of residence due to causes other than the armed conflict. Likewise, the Commission takes a positive view of the information submitted by the State as to the Victims' Unit taking a number of steps to include in the Sole Register of Victims (RUV) persons who were subjected to forced displacement stemming from actions allegedly attributable to the BACRIM. Based on the statistics provided by the State, as of February 2015, the total number of testimonies linked to this type of factual pattern, as of February 2015, was 55,205 and 81.2% of these statements have been entered into the register.<sup>152</sup>

129. However, the presence of internally displaced persons in the country implies that it is the State itself that must take on the primary obligation of respecting and guaranteeing their human rights without distinction of any kind.<sup>153</sup> In terms of its national and international obligations to protect internally displaced persons, the Colombian State's first and foremost obligation is to prevent displacements, especially mass displacements, that is to say, those involving 50 people or more, or at least 10 families.

130. According to the UNHCR, a total of ninety mass displacements were registered in 2013, affecting nearly 6,881 families, most of which lived on the Pacific coast.<sup>154</sup> Likewise, between September 9 and 21, 2014, around 367 persons (83 families) from the El Partidero, Buenavista, and Calle Honda communities in the rural area of Guapi, on the Pacific coast of Cauca, moved to the urban center of the municipality due to clashes between members of the FARC-EP and law enforcement personnel.<sup>155</sup> Subsequently, on October 12, 202 Afro-Colombians (65 families) from three communities in the Bocas de Napi area moved towards the municipal government seat of Guapi, department of Cauca.<sup>156</sup> Furthermore,

<sup>149</sup> IACHR, Truth, Justice, and Reparation: Fourth report on the human rights situation in Colombia, December 31, 2013, paragraph 544. See also, IACHR, *Third report on the human rights situation in Colombia*. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, chapter I, paragraph 1.

<sup>150</sup> Human Rights Watch. [The Crisis in Buenaventura: Disappearances, Dismemberment, and Displacement in Colombia's Main Pacific Port](#). March 2014, page 14.

<sup>151</sup> Constitutional Court of Colombia: Special Chamber for Follow-Up on Decision T-025 of 2004 and its enforcement orders. Ruling 119 of 2013, page 7.

<sup>152</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIIID-15-017750, of February 26, 2015, p. 14.

<sup>153</sup> IACHR, Truth, Justice, and Reparation: Fourth report on the human rights situation in Colombia, December 31, 2013, paragraph 539.

<sup>154</sup> Office of the United Nations High Commissioner for Refugees. [Situación Colombia](#) [Colombia Situation]. December 1, 2013.

<sup>155</sup> ReliefWeb. [Colombia - Desplazamientos masivos en Guapi \(Cauca\) Informe de Situación No. 1](#) [Colombia - Mass displacements in Guapi (Cauca) Situation Report No. 1]. September 30, 2014.

<sup>156</sup> ReliefWeb. [Colombia - Desplazamiento masivo en Guapi \(Cauca\) Flash Update No. 1](#) [Colombia - Mass displacement in Guapi (Cauca) Flash Update No. 1]. October 23, 2014.

between November 27 and 29, 414 Wounnan Nonam indigenous persons were forced to move towards the urban center of Buenaventura in the department of Valle del Cauca, due to fighting between the Marines and unidentified armed groups.<sup>157</sup> Reports indicate that the displaced communities are staying in overcrowded friends' and family members' houses, or in municipal shelters that are unsafe and not set up for such purposes. In this regard, the Commission takes note of the State's report on the "special assistance track," which it put into place to address the Pacific coast situation, as well as other institutional actions to deal with the situation of the communities of Cabeceras and Puerto Pizarro, and the assistance efforts for San Juan (Chocó), which have been coordinated by the Victims' Units in 2014.<sup>158</sup>

131. The Commission takes into account what the State has reported on the implementation of a roadmap of especially high risk populations with the goal of offering priority humanitarian assistance to the displaced households that need it due to their socio-demographic characteristics, life cycles, ethnicities, disabilities, and/or chronic, terminal, or high-cost illnesses; the indigenous and Afro-descendent communities that have been victims of mass displacements are included among these households.<sup>159</sup> However, the Commission notes that efforts to prevent mass displacements and to protect victim communities must be intensified.

132. The Commission once again observes with concern that the problem of intra-urban forced displacement continues to worsen in Colombia. Intra-urban forced displacement occurs when the inhabitants of one neighborhood in a city are forced to migrate to another due to pressure from illegal armed groups seeking to exercise social and territorial control.<sup>160</sup> The principal problem derived from intra-urban displacement is that it is greatly underreported, as the victims do not recognize themselves to be displaced persons insofar as they do not perceive the move to be a type of forced displacement.<sup>161</sup>

133. With regard to this issue, the State noted that free housing had been constructed and assigned in an effort to solve the housing problems associated with internal and intra-urban forced displacement;<sup>162</sup> however, the data supplied by the State does not make it clear to the Commission that such housing is exclusively allocated for households that have been victims of intra-urban forced displacement. Likewise, the State did not supply information on the public policies adopted specifically to counter the causative factors behind and grave consequences of intra-urban forced displacement. Along these lines, the Consultoría para los Derechos Humanos y el Desplazamiento [Consultancy for Human Rights and

<sup>157</sup> ReliefWeb. [Colombia - Desplazamientos masivos en Buenaventura \(Valle del Cauca\) - Flash Update No.1](#) [Colombia – Mass displacements in Buenaventura (Valle del Cauca) – Flash Update No. 1]. December 3, 2014.

<sup>158</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, pp. 16-18.

<sup>159</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, page 251. In its remarks on the draft version of the instant chapter of the Annual Report, the State noted that the Victims' Unit is also implementing prevention and assistance measures "in response to the threat or risk of massive displacement," consisting mainly of prevention measures such as: i) producing information (which makes it possible to track and document situations "of public order" in order to identify potential sources of risk); ii) participating in interinstitutional coordinating scenarios (with the participation of the "Intersectoral Early Warning Commission, CERREM, and other entities and bodies that are part of the National System of Comprehensive Victim Support and Reparation SNARIV, in order to provide an immediate response to humanitarian emergencies and iii) taking mitigation measures or making the population less vulnerable to risks (including, but not limited to, delivering in-kind humanitarian aid for prevention and providing technical and financial resources). Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, pp. 14-16.

<sup>160</sup> Consultoría para los Derechos Humanos y el Desplazamiento [Consultancy for Human Rights and Displacement] (CODHES). *Desplazamiento forzado intraurbano y soluciones duradera. Una aproximación desde los casos de Buenaventura, Tumaco y Soacha* [Intra-urban forced displacement and lasting solutions. An approach from the cases of Buenaventura, Tumaco, and Soacha]. Page 22.

<sup>161</sup> Consultoría para los Derechos Humanos y el Desplazamiento [Consultancy for Human Rights and Displacement] (CODHES). *Desplazamiento forzado intraurbano y soluciones duradera. Una aproximación desde los casos de Buenaventura, Tumaco y Soacha* [Intra-urban forced displacement and lasting solutions. An approach from the cases of Buenaventura, Tumaco, and Soacha]. Page 25.

<sup>162</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, page 200.

Displacement] (CODHES) has stressed that “ignorance of the characteristics of displacement within urban contexts, as well as the lack of specific strategies for an institutional response by territorial bodies, means that persons affected by intra-urban forced displacement do not demand the fulfillment of their fundamental rights with a view towards overcoming the conditions that led to the displacement, but rather based on the perspective of immediately meeting their vital needs and of finding a temporary shelter, a perspective that does not place trust or find guarantees in institutional services.”<sup>163</sup>

134. The IACHR observes that, as established by the Constitutional Court in Judgment C-781 of 2012, victims of intra-urban forced displacement should be considered persons affected by armed conflict, and in all cases, those responsible should be considered parties that must be investigated. Therefore, the State must craft lasting solutions aimed at restoring victims’ rights and helping them rebuild their lives. The Commission considers that victims of intra-urban forced displacement must be taken into account in the peace process, with the goal of reaching consistent agreements with regard to comprehensive redress for all victims of the internal armed conflict.

135. Moreover, the available information also reveals that, in addition to being one of the most serious problems caused by the internal armed conflict, the issue of forced displacement is also associated with the development of mining and infrastructure megaprojects, due to relocation processes, mass sales of territories resulting from a lack of opportunities, and the State handing over territories for which the requirements established by law have not been fulfilled.<sup>164</sup>

136. In this regard, the Commission considers it important to highlight that in 2009, the Constitutional Court identified the performance of economic activities on ethnic community territories as one of the causative factors behind the forced displacement of those communities.<sup>165</sup> The Court thus recognized that communities and others could become victims of forced displacement, no longer just as a result of the actions of parties to the armed conflict, but also due to the actions of economic players. However, despite the opening-up that such an interpretation might suggest, it did not lead to the adoption of State measures that would counter further forced displacements resulting from development and economic activities. The Commission is therefore concerned about the high-risk situation facing persons who have been forced to move inside the country due to the actions of economic players, due to the lack of legal recognition.

137. Along these lines, in the course of the 153<sup>rd</sup> Period of Sessions, the Commission received information that indicates that 79,429 persons were forced to move from the Antioquia river canyon as a consequence of the development of mining-energy megaprojects. Likewise, 3,200 persons were identified as having been displaced in the department of Córdoba due to the construction of a dam and in order to clear the way for the megaprojects. These constructions also led to the forced flight of 44% of the population of the municipalities affected by the hydroelectric power plant HidroItuango, including 400 families. According to data provided by civil society organizations, around 200,000 individuals have been displaced due to dam constructions.<sup>166</sup>

138. The Commission takes note of the information supplied by the State regarding the prior consultation mechanisms for the development and implementation of mining projects in indigenous peoples’

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<sup>163</sup> Consultoría para los Derechos Humanos y el Desplazamiento [Consultancy for Human Rights and Displacement] (CODHES). *Desplazamiento forzado intraurbano y soluciones duradera. Una aproximación desde los casos de Buenaventura, Tumaco y Soacha* [Intra-urban forced displacement and lasting solutions. An approach from the cases of Buenaventura, Tumaco, and Soacha]. Page 33.

<sup>164</sup> IACHR, Truth, Justice, and Reparation: Fourth report on the human rights situation in Colombia, December 31, 2013, paragraph 551.

<sup>165</sup> Constitutional Court of Colombia: Special Chamber for Follow-Up on Decision T-025 of 2004 and its enforcement orders. Rulings 004 and 005 of 2009.

<sup>166</sup> Información proporcionada en la Audiencia Temática: *Denuncias sobre desplazamiento forzado y proyectos de desarrollo en Colombia*. Celebrada en la sede el 27 de Octubre de 2014, en el 153<sup>o</sup> Período Ordinario de Sesiones de la CIDH.

territories in the Colombian Amazon.<sup>167</sup> That said, the Commission has established that the States and the populations that make them up have the right to development, and that such right “implies that each State has the freedom to exploit its natural resources, including [the granting] of concessions and acceptance of international investment,’ but development must necessarily be compatible with human rights, and specifically with the rights of indigenous and tribal peoples and their members. There is no development as such without full respect for human rights. This imposes mandatory limitations and duties on State authorities. In particular, development must be managed in a sustainable manner, which requires that States ensure protection of the environment, and specifically of the environment of indigenous and tribal ancestral territories.”<sup>168</sup>

139. In this respect, the IACHR considers it necessary to reiterate that according to the Guiding Principles on Internal Displacement, the prohibition of arbitrary displacement includes displacement in cases of large-scale development projects that are not justified by compelling and overriding public interests.<sup>169</sup> The goal of the foregoing is to ensure that development is not used as an argument to back human rights violations, by establishing that displacement due to large-scale development projects is permissible only when a compelling and overriding public interest exists, that is to say, that the requirements of necessity and proportionality must be met for the execution thereof, and the limits drawn by freedom of movement and residence must be respected.<sup>170</sup> The IACHR thus urges the State of Colombia to include and recognize those persons who have been forced to move as a result of development and economic activities as victims of forced displacement, with the resulting State obligations that such recognition entails.

140. With regard to the process of restitution of lands and properties that have been forcefully cleared and abandoned because of the armed conflict, non-traditional extractive economies, and megaprojects, or due to any other reason that would force someone to escape or flee his or her home or usual place of residence, the Commission observes that multiple challenges exist, including the return and continuing presence of the communities whose lands have been restored in such areas.<sup>171</sup> The Commission welcomes the information supplied by the State that indicates that several initiatives have been launched through the Unidad para la Atención y Reparación Integral a las Víctimas [Comprehensive Reparation and Assistance for Victims Unit] (UARIV), such as the Programa Familias en su Tierra [Families on their Land Program], which over the course of 2014 accompanied 82 return cases involving 16,674 households, and during 2013 accompanied 28,074 households in more than 80 municipalities.<sup>172</sup>

141. Under the Victims Law, restitution claims are registered in an administrative process and resolved by civil courts that do not establish criminal liability for those responsible for the forced displacement and land takeovers in individual cases. Claims are thus advanced and land is returned without a parallel process whereby the individuals, groups, and criminal networks responsible for the forced displacement and land theft would be prosecuted and penalized for their acts. This implies that the implementation of the law poses a serious threat to the safe return of the displaced persons.<sup>173</sup>

<sup>167</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, page 255.

<sup>168</sup> IACHR, *Report on the Situation of Human Rights in Ecuador*. Doc. OEA/Ser.L/V/II.96, Doc. 10 rev.1, April 24, 1997; IACHR, *Indigenous and Tribal People’s Rights Over Their Ancestral Lands and Natural Resources*. Doc. OEA/Ser. L/V/II. Doc 56/09, December 30, 2009, paragraph 204.

<sup>169</sup> Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, February 11, 1998, Principle 6.

<sup>170</sup> Kalin, Walter. *Guiding Principles on Internal Displacement*. The American Society of International Law. 2000. Pág. 17.

<sup>171</sup> Consultoría para los Derechos Humanos y el Desplazamiento [Consultancy for Human Rights and Displacement] (CODHES). *Boletín de la Consultoría para los Derechos Humanos y el Desplazamiento Número 83* [Bulletin of the Consultancy for Human Rights and Displacement Number 83]. Bogotá, July 2014. Page 11.

<sup>172</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, page 10.

<sup>173</sup> Human Rights Watch. [The Risk of Returning Home. Violence and Threats Against Displaced People Reclaiming Land in Colombia](#). September 15, 2013. Page15.



142. Although the problem of impunity still exists for the victims of forced displacements, the IACHR acknowledges the efforts made by the UARIV through its Grupo de Retorno y Reubicaciones [Return and Relocations Group], which has created the methodological tool called the “Protocolo para el Acompañamiento a Retornos y Reubicaciones en el Marco de la Reparación Integral a Víctimas del Desplazamiento Forzado” [Protocol for Accompanying Returns and Relocations in the Context of Comprehensive Reparation for Victims of Forced Displacement], which establishes the procedures aimed at ensuring access to and the execution and sustainability of return and relocations processes, through the process of accompanying the returned or relocated households, in the framework of the Ruta Integral de Atención, Asistencia y Reparación a las Víctimas de Desplazamiento Forzado [Comprehensive Roadmap for Attention, Assistance, and Reparation for Victims of Forced Displacement].<sup>174</sup> According to the information provided, the State is currently accompanying 44,379 households that were victims of forced displacement in their return or relocation processes, in compliance with the principles of willingness, safety, and dignity.<sup>175</sup>

143. Considering that the de-mining of the territories still poses significant challenges for the return of the displaced persons to the dispossessed areas, the IACHR welcomes the creation of the Observatorio de Restitución de Tierras y Desminado Humanitario [Observatory on Land Restitution and Humanitarian De-mining] through Ministerial Resolution No. 2029 of 2014.<sup>176</sup> The number of persons affected by anti-personnel mines between 1990 and 2014 is stated to be 10,751, for which reason the State should increase the current number of employees dedicated to de-mining in order to reach the goal of complete mine clearance in less than the 64 years that it is estimated to take with the currently qualified personnel.<sup>177</sup> On this score, the State noted in the information it submitted to the IACHR that the Transitional Justice Committee’s concept of security is based on three components of “legal security” (in order to ensure due process and due recognition of victim status), “physical security” (under which protection mechanisms are provided for) and “material security” (which is linked to institutional coordination).<sup>178</sup>

144. The Commission also recognizes the existing challenges with regard to the restitution of lands for the Unidad de Restitución de Tierras [Land Restitution Unit] and the specialized judges, and observes the difficulties in guaranteeing the rights of those who claim restitution of their lands. According to information submitted by the State, the UARIV has formed a land team at the national and territorial levels, dedicated to participation, coordination, and monitoring compliance with judgments; it likewise issued Internal Circular 007 on June 18, 2013, which established guidelines for compliance with judicial orders.<sup>179</sup> The Commission observes that there are still reports of a lack of security guarantees for those involved in the land restitution process, from the returning displaced persons and judges who have received death threats to topographers who have been assassinated while working on land restitution cases.<sup>180</sup>

<sup>174</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, page 257.

<sup>175</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, page 170.

<sup>176</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, page 170.

<sup>177</sup> Teleantioquia Noticias. [El desminado total de Colombia demoraría 64 años](#) [Complete de-mining of Colombia would take 64 years]. June 25, 2014.

<sup>178</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIIID-15-017750, of February 26, 2015, pp. 21.

<sup>179</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, page 172.

<sup>180</sup> Amnesty International, *A Land Title is Not Enough: Ensuring sustainable land restitution in Colombia*, 23/031/2014, November 2014. Page 66.

145. On the subject of restitution, the Commission observes that problems remain with regard to the investigation and penalization of those responsible for forced displacements. The State has reported progress in terms of guaranteeing the investigation, judgment, and penalization of the crime of forced displacement, pointing out that as of August 31, 2014, 247 cases had been assigned, of which 188 are active. Furthermore, the State indicated that convictions had been handed down in 60 cases, holding 178 individuals responsible.<sup>181</sup> The Commission urges the State to continue to bring forced displacement cases to court, with the aim of addressing the situation of re-victimization to which victims of forced displacement are exposed in the return processes when the responsible parties have not been prosecuted.

#### H. Economic, social and cultural rights

- Step up efforts so as to gradually give full effect to economic, social and cultural rights, in conditions of equality and non-discrimination, while ensuring that this does not come at the cost of the people's other basic rights.
- Continue to adopt measures for the reduction of poverty and extreme poverty.
- Urgently address the weaknesses in the area of housing mentioned in this report and, in particular, adopt a comprehensive approach in solving the housing problems connected with internal and intra-urban forced displacement.
- Continue strengthening health systems service so as to ensure adequate provision of healthcare throughout the country and the inclusion of differential approaches

146. In its 2013 Report the Commission indicated that while Colombia has experienced solid economic development in recent years, there has not been a notable improvement in the lives of all Colombians, particularly in the case of certain especially vulnerable groups who continue to face obstacles to the full enjoyment of their civil, political, economic, social, and cultural rights (hereinafter "ESC rights").<sup>182</sup> In the Report the Commission indicated its concern over the impairment of the right to food in certain areas of the country, especially in the department of Chocó, where a malnutrition crisis was noted. Moreover, during its onsite visit that led to the 2013 Report the Commission received information from civil society regarding shortcomings in housing. On that occasion the IACHR observed that there are still areas of the country with major unmet needs in terms of infrastructure and the presence of state institutions, where basic services do not yet reach, and where the enjoyment of ESC rights continues to be limited.

147. In its 2013 Report the Commission also examined the state response to the issues of ESC rights. In this respect, the IACHR recognized several areas of progress, among other things the development by the State of various social programs and strategies for addressing poverty and extreme poverty as well as the shortcomings in the education system. Nonetheless, it concluded that despite the many programs and actions under way, the country has high indices of poverty and extreme poverty, as well as shortcomings in terms of access to and enjoyment of rights, such as food, health, housing, and work, caused in part – but not exclusively – by the armed conflict.

148. Therefore, the Commission made the following general recommendations to the State: (i) step up efforts to progressively and without discrimination achieve the full observance of economic, social and cultural rights in conditions of equality and non-discrimination, and guarantee that such efforts not entail any detriment to other fundamental rights of the population; (ii) continue adopting measures to reduce poverty and extreme poverty; (iii) urgently address the failings in housing noted in the report, and in particular adopt an integral approach to solve the housing problems related to the phenomenon of internal

<sup>181</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, page 178.

<sup>182</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II, Doc. 49/13, December 31, 2013, para. 596.

and intra-urban forced displacement; (iv) continue strengthening the health systems so as to guarantee adequate delivery of services throughout the national territory, and including differential approaches.

149. In this report following up on those recommendations, which covers the period from December 2013 to date, the Commission recognizes the efforts of the State to adopt legislative measures and public policies to protect the economic, social, and cultural rights of the population. Nonetheless, during this period the Commission also received information from a variety of sources that leads it to conclude that more efforts are needed to ensure respect for economic, social, and cultural rights for the inhabitants of Colombia.

150. First, the Commission notes the efforts of the State to address the problem of poverty and extreme poverty. In that sense, the information received indicates that the National Government created the “Social Inclusion and Reconciliation” sector in order to strengthen social policy and provide services to the population living in poverty, vulnerable, and victimized by violence, and to consolidate territories as part of a strategy that guarantees the presence of the State. It was reported that to that end the Administrative Department for Social Prosperity (DPS: Departamento Administrativo para la Prosperidad Social) was established.<sup>183</sup> In addition, the Commission was informed of the launch, by the State, of the “Todos somos Pacífico” (“We are all the Pacific”) strategy, which aims to carry out actions in relation to public services, urban development, environment, and sustainable production, among others, in the Colombian Pacific region. The action plan is aimed at providing an integral response to the needs of the population and is focused on the region’s potential to ensure sustainable progress. In the context of this project the Colombian State also guaranteed 24 billion pesos to accelerate the process of providing water to Buenaventura 24 hours a day, so that it can be completed within two years.<sup>184</sup> At the hearing “Human rights situation in the Colombian Pacific region,” held October 27, 2014, the State mentioned the implementation of various projects identified in the regional development strategy for the Pacific coast region, and indicated that the Plan was being constructed with community participation.

151. The Commission also observed that some of the programs created for the purpose of overcoming extreme poverty, and which were mentioned in the 2013 Report, continue to operate. “Más familias en acción” (“More families in action”), a program that provides conditional cash transfers to the neediest families with children under 18 years of age, is providing assistance to nearly 2,681,000 households as of 2014.<sup>185</sup> The State reported in this respect that the program currently has more than 2,681,000 families signed up.<sup>186</sup>

152. As part of the “Jóvenes en acción” (“Youth in Action”) program – a new program of the DPS focused on improving job skills for young people in vulnerable circumstances and overcoming the barriers of access to the labor market and income-generation – according to the information provided by the State, 80,000 youths joined the training programs in technical and technological areas.<sup>187</sup> In addition, in the hearing on human rights in the Colombian Pacific the State said that as part of its action plan for Buenaventura the Government would put in place credits for higher education, and that 893 of these would be earmarked for inhabitants of Buenaventura.<sup>188</sup> Available information indicates that the “Mujeres ahorradoras en acción”

<sup>183</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pp. 12 and 13.

<sup>184</sup> See, among others, Presidency of the Republic, [El Presidente crea gerencia para el desarrollo del Litoral Pacífico](#), July 30, 2014; El Heraldo, [Santos lanzó estrategia para el desarrollo de Buenaventura y del Pacífico colombiano](#), October 25, 2014.

<sup>185</sup> See, Department for Social Prosperity, *Noticias: DPS inicia quinto pago de 2014 del programa Más Familias en Acción*, October 28, 2014; Government of Colombia, [67 municipios inician inscripciones a Más Familias en Acción](#), October 7, 2013.

<sup>186</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 13.

<sup>187</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 13.

<sup>188</sup> Thematic hearing on “[Human rights situation in the Colombian Pacific region](#),” October 27, 2014.

(“Women who save in action”) program also continued operating. It has now been up and running for six years, and has extended to 50% of the municipalities in Colombia.<sup>189</sup>

153. As regards gains in poverty reduction, according to a report by the National Administrative Department of Statistics (DANE: Departamento Administrativo Nacional de Estadísticas), in 2013, 820,000 persons had emerged from poverty.<sup>190</sup> In addition, according to the information provided by the State, multidimensional poverty was reduced 2.2 percent in 2013. Monetary poverty had been reduced 2.1 percentage points, from 32.7% in 2012 to 30.6% in 2013. Extreme poverty fell 1.3 percentage points, from 10.4% in 2012 to 9.1% in 2013.<sup>191</sup> In that context, the State noted that “a commitment had been made that in the 2010-2014 period it would reduce poverty and extreme poverty to 32% and 9.5% respectively.” And it notes that with those figures the goals were met.<sup>192</sup>

154. As regards food security, the Commission observes that according to information provided by the State, from 2010 to 2013 the Office of the Deputy Director for Food Security and Nutrition of the DPS, through the Food Security Network (ReSA: Red de Seguridad Alimentaria), succeeded in linking 191,759 families to food security programs in 425 municipalities of Colombia.<sup>193</sup>

155. The Commission recognizes the efforts of the State to address the problem of malnutrition, and urges the Colombian State to step up its efforts to resolve the structural problems that stand in the way of full enjoyment of the right to food for populations of certain regions. Nonetheless, for the reasons indicated, the Commission also considers that the plans and strategies proposed by the State in the context of the struggle against poverty are not yet sufficient given that they have not had the expected results, particularly in relation to the department of Chocó and the district of Buenaventura. The Commission will monitor the projects announced by the State, in particular those related to the development of the Pacific region, and it reiterates its recommendation to progressively and without discrimination attain the full observance of ESC rights, i.e. that those programs should be directed to all strata of society to achieve the full enjoyment of economic, social, and cultural rights.

156. In housing, based on the information received it appears that the program “Cien Mil Viviendas Gratis” (“One hundred thousand free dwellings”) was implemented, giving priority to displaced families, and in which the National Housing Fund (FONVIVIENDA: Fondo Nacional de Vivienda) distributed 97,871 family housing subsidies. It is noted that a total of 62,448 subsidized units were built and assigned (up to December 10, 2014), counting all the departments and the Capital District.<sup>194</sup> In late October 2014 the State declared it would invest 600 billion pesos to build secondary schools, centers for early childhood education, and parks in places where housing units will be built to improve the quality of life of the beneficiaries of the housing program.<sup>195</sup>

<sup>189</sup> Government of Colombia, [Conoce sobre el programa de Mujeres Ahorradoras en Acción](#), July 10, 2014.

<sup>190</sup> El Universal, “La pobreza sí está reduciéndose en el país”: director del Dane”, April 6, 2014. Available at: <http://www.eluniversal.com.co/economica/la-pobreza-si-esta-reduciendose-en-el-pais-director-del-dane-156357>.

<sup>191</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 13.

<sup>192</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 13.

<sup>193</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 13.

<sup>194</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 13.

<sup>195</sup> Ministry of Housing, [“Presidente Santos anuncia “mi Casa Ya”, el nuevo programa de vivienda para clase media, y más viviendas gratuitas para municipios vulnerables”](#), October 28, 2014.

157. With respect to health, the Commission notes that in May 2014 the Constitutional Court found constitutional the law (*ley estatutaria*) that the Congress adopted the previous year in which it elevated Colombians' right to health to the category of a fundamental right, and in February 2015 it was signed into law by the President of the Republic.<sup>196</sup> In addition, in the context of its National Development Plan the Government mentioned having the objective of improving access to and quality of health care, consolidating universal coverage based on regulatory innovations in insurance geared to facilitating coverage, improving competition among insurers, and assuring greater mobility among regimes. The State also mentioned planning the strengthening of the installed capacity of the country's public hospitals, improving the physical infrastructure, and acquiring biomedical, industrial, and technological equipment.<sup>197</sup>

158. As for health coverage, based on the information available it appears that the General System of Social Security in Health (SGSSS) has 45.3 million affiliates as of May 2014, 22.7 million of whom belong to the subsidized regime and 20.2 million to the contributive regime. In this regard the State indicated that with an estimated population of 47.1 million persons, the coverage had held steady at 96%, up from 92.2% in 2010.<sup>198</sup>

159. While the Commission recognizes these and other efforts by the State to reduce poverty and address the problems of malnutrition, health, education, and housing, it observes that poverty and extreme poverty at this time continue to stand in the way of full enjoyment of ESC rights for certain sectors of the population. On this point, the annual report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia published in January 2014 indicates: "Despite efforts to reduce poverty and inequality, there is an insufficient acknowledgement of the need for radical structural change and innovation to address the very different realities of Colombians. In some municipalities, poverty rates continue to be up to four times as high as in certain cities, reflecting the lack of enjoyment of the full spectrum of human rights."<sup>199</sup> In particular, certain regions still have few services and show signs of structural problems that impede the full enjoyment of the right to food, as well as notable challenges for guaranteeing access to education, health, and housing.<sup>200</sup>

160. At the hearing held October 27, 2014, for example, the IACHR received information on the situation of ESC rights in the department of Chocó and the District of Buenaventura. The organizations present highlighted the index of unmet basic needs in the department of Chocó, which is 82.8%, while for the country it is 45.6%.<sup>201</sup> In addition to having the lowest levels of coverage of public services in the country, the vast majority of the population of Chocó does not have access to water in quality conditions for meeting their basic needs.<sup>202</sup> According to the 2012-2015 Departmental Development Plan, Chocó has chronic malnutrition

<sup>196</sup> See Republic of Colombia. Constitutional Court. Case PE-040-[Judgment C-313/14 of 2014](#). Press release No. 21 of May 29, 2014; El Tiempo, "[Reviva debate en EL TIEMPO: ¿Hacia dónde va la salud en Colombia?](#)", August 21, 2014; and Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 22.

<sup>197</sup> Ministry of Health and Social Protection, "[MinSalud presenta bases de la propuesta sectorial del Plan Nacional de Desarrollo](#)", October 24, 2014.

<sup>198</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 14.

<sup>199</sup> United Nations High Commissioner for Human Rights, *Annual Report of the United Nations High Commissioner for Human Rights. Situation of human rights in Colombia*, January 24, 2014, para. 99

<sup>200</sup> United Nations High Commissioner for Human Rights, *Annual Report of the United Nations High Commissioner for Human Rights. Situation of human rights in Colombia*, January 24, 2014, para. 101.

<sup>201</sup> Information received October 21, 2014 by the Commission from the petitioners in the context of the thematic hearing on the "Situation of human rights in the Colombian Pacific region" held October 27, 2014.

<sup>202</sup> Information received October 21, 2014 by the Commission from the petitioners in the context of the thematic hearing on the "Situation of human rights in the Colombian Pacific region" held October 27, 2014.

of 18.5%, 2.6 percentage points higher than the national figure of 15.9%. Acute malnutrition is 8.4% in Chocó and 5.8% for the country as a whole.<sup>203</sup>

161. In addition, the Chocó region is also of special concern with respect to education. Illiteracy in the department is two-and-a-half times the national rate, at 20.9%. While primary education coverage is nearly universal, the levels of secondary and middle schooling are lower, revealing a tendency of children dropping out of school.<sup>204</sup> Indeed, the rate of school attendance is only 58%. In addition, only 7.3% have access to higher education and graduate studies.<sup>205</sup> The IACHR emphasizes that notable challenges persist when it comes to guaranteeing access to education in all areas of the country. In effect, the illiteracy rate is three times higher in the rural areas compared to the urban areas, and school absenteeism was 2.3 times lower<sup>206</sup>.

162. The Commission has received information indicating that the most vulnerable populations have not received the attention they need nor access to health services in the department. For example, 63% of the communities of Chocó have no health center or health post, and the remaining 37% have health centers but in poor conditions and underequipped.<sup>207</sup> Xx[y no tendrían dotación] According to non-governmental sources, of the total population of the department of Chocó, 12% are in the contributive regime, 58% in the subsidized regime, and the remaining 30% would be considered poor uninsured population.<sup>208</sup> In all, 51% of the communities have no promoters or nurses, and none of the rural communities has a full-time physician. There is no health campaign scheduled during the year, and when they happen often the community is not given prior notice and there is no plan for training the community to give the leaders the most basic knowledge.<sup>209</sup>

163. In addition, the IACHR received worrisome information about the situation in Buenaventura. As found by the United Nations Development Program (UNDP) and as the organizations present at the hearing before the IACHR on October 27, 2014 emphasized, “Buenaventura is one of the saddest examples of poverty and social backwardness in Colombia. Its indicators for health, education, employment, and income are discouraging for any observer.”<sup>210</sup>

164. The IACHR also noted with concern the situation in northeast Antioquia, which, despite being one of the most important regions in the country for gold mining, has high indices of unmet basic needs.<sup>211</sup> In addition, the Commission has received information with respect to the aerial spraying of glyphosate in the subregions of the San Juan and Baudó river basins, which would violate the right to food of the Afro-Colombian and indigenous communities.<sup>212</sup>

<sup>203</sup> Office of the Governor of Chocó, *Bases del plan de desarrollo 2012-2015*, May 2012, p. 63.

<sup>204</sup> Office of the Human Rights Ombudsman, *Crisis humanitaria en Chocó: Diagnóstico, valoración y acciones de la Defensoría del Pueblo 2014*, p. 121.

<sup>205</sup> Office of the Human Rights Ombudsman, *Crisis humanitaria en Chocó: Diagnóstico, valoración y acciones de la Defensoría del Pueblo 2014*, p. 112.

<sup>206</sup> Comisión Colombiana de Juristas, *II Report on the land restitution process in Colombia*, December 27, 2014, p. 14.

<sup>207</sup> Information received October 21, 2014 by the Commission from the petitioners in the context of the thematic hearing on the “Situation of human rights in the Colombian Pacific region” held October 27, 2014.

<sup>208</sup> Information received October 21, 2014 by the Commission from the petitioners in the context of the thematic hearing on the “Situation of human rights in the Colombian Pacific region” held October 27, 2014.

<sup>209</sup> Information received October 21, 2014 by the Commission from the petitioners in the context of the thematic hearing on the “Situation of human rights in the Colombian Pacific region” held October 27, 2014.

<sup>210</sup> United Nations Development Program, [¿Cómo romper las trampas de pobreza en Buenaventura?](#), and Thematic hearing on “[Situation of human rights in the Colombian Pacific region](#),” October 27, 2014.

<sup>211</sup> Coordinación Colombia Europa Estados Unidos – CCEEU Nodo Antioquia, *Estado de los derechos humanos en Antioquia: Entre el sueño de la paz y la continuidad de la guerra*, 2014, p. 166.

<sup>212</sup> Office of the Human Rights Ombudsman, *Crisis humanitaria en Chocó: Diagnóstico, valoración y acciones de la Defensoría del Pueblo 2014*, p. 118.

165. As regards displacements and housing, the Commission observes that there is still a lack of services for persons in vulnerable circumstances in Chocó and in Buenaventura, many of whom are displaced. In effect, the IACHR observes that the plans to develop housing are in part for middle-class families in intermediate cities who earn up to 2.5 million pesos monthly, as in the case of the “Mi casa ya” (“My home now”) program, and it is important to work with the housing situation in rural regions, where there is a great need.

166. The Commission has also received information regarding the displacements that continue occurring due to the armed conflict and takes note that from the information available it appears that the populations who return do not benefit systematically from State accompaniment. In the department of Chocó, for example, almost all the returns have occurred without the accompaniment of the State, in some cases as the result of a decision by the communities themselves and in large measure as a result of the inadequate or insufficient attention in places that have received persons who have been forcibly displaced.<sup>213</sup> It has been considered that the State does not have clear strategies for reestablishing rights by building or repairing housing units.<sup>214</sup>

167. The Commission also expresses its concern in view of the displacements caused by the implementation of development projects.<sup>215</sup> While the Commission recognizes the land restitution efforts the State in recent years, it observes that many development projects have negative impacts on the rights of indigenous peoples to their lands and territories, as well as the rights of Afro-descendant communities and rural and peasant populations.<sup>216</sup> At the hearing “Forced displacement and development projects in Colombia,” held during the 153<sup>rd</sup> period of sessions, the Commission received information on a series of human rights violations that are said to be taking place as a consequence of productive megaprojects. Among them mention was made of the lack of State response to the displacements caused specifically by development projects. Parts of the population are expelled from their lands by the development of projects, without guarantees of restitution or compensation, without the guarantee of respect for the precautionary principle, and without the companies having the respective environmental licenses.<sup>217</sup> For example, nearly 79,429 persons were displaced in the region known as the Cañón de Río Cauca, in Antioquia, due to the Hidroituango hydroelectric megaproject, and that another 3,200 persons were expelled from the zone of Córdoba supposedly to open the way for megaprojects.<sup>218</sup>

168. In effect, failures were observed in the granting of the environmental licenses for the construction of large hydroelectric power plants, as well as weaknesses in monitoring.<sup>219</sup> Also worrisome is that oftentimes there is no prior consultation with the population affected. In addition, the National Authority for Environmental Licenses (ANLA: Autoridad Nacional de Licencias Ambientales) would not handle the alleged breaches of the obligations set forth in the environmental licenses.<sup>220</sup> And the diversion of rivers, as in the case of the channel of the Cauca river, where several projects are being developed, affects the population, which sees its right to territory, to freedom of circulation, to water, to food, to housing, to work, and to

<sup>213</sup> Office of the Human Rights Ombudsman, *Crisis humanitaria en Chocó: Diagnóstico, valoración y acciones de la Defensoría del Pueblo 2014*, p. 49

<sup>214</sup> Office of the Human Rights Ombudsman, *Crisis humanitaria en Chocó: Diagnóstico, valoración y acciones de la Defensoría del Pueblo 2014*, p. 49.

<sup>215</sup> Thematic hearing on “[Forced displacement and development projects in Colombia](#),” October 27, 2014.

<sup>216</sup> IACHR, Press Release 131/14, [IACHR wraps up its 153<sup>rd</sup> Session](#), November 7, 2014.

<sup>217</sup> Thematic hearing on “[Forced displacement and development projects in Colombia](#),” October 27, 2014.

<sup>218</sup> Coordinación Colombia Europa Estados Unidos – CCEEU Antioquia Section, *State of Human Rights in Antioquia: Between a dream of peace and the continuation of war*, 2014, p. 137.

<sup>221</sup> Coordinación Colombia Europa Estados Unidos – CCEEU Nodo Antioquia, *Estado de los derechos humanos en Antioquia: Entre el sueño de la paz y la continuidad de la guerra*, 2014, p. 137.

<sup>221</sup> Coordinación Colombia Europa Estados Unidos – CCEEU Nodo Antioquia, *Estado de los derechos humanos en Antioquia: Entre el sueño de la paz y la continuidad de la guerra*, 2014, p. 137.

physical health, among others, violated.<sup>221</sup> Information has also been received noting that in the rivers where there is mining, it poses a risk to human health and the environment.<sup>222</sup>

169. In this context, also in the hearing the organizations referred to the climate of harassment, death threats, criminalization, and judicial persecution, and the arbitrary deprivation of liberty said to be affecting the leaders and defenders of indigenous causes. The petitioners indicated that the measures that the State has adopted to address the situation have been ineffective.

170. The IACHR has also received information from which it appears that a series of large-scale development projects are present in areas in which it is anticipated that lands will be given in restitution to ethnic groups, which may give rise to social conflicts and human rights violations.<sup>223</sup>

171. The Commission, therefore, urges the Colombian State to continue adopting measures and devoting efforts to ensuring the effective enjoyment in conditions of equality and non-discrimination of their human rights, in particular ESC rights, for the inhabitants subject to the jurisdiction of the State.

## **I. Groups especially affected in the armed conflict**

### **1. The invisibility of Afro-descendant persons, raizales and palenqueros**

- Adopt urgent measures to conquer the structural discrimination that the Afro-Colombian population endures, as well as positive measures to eliminate racial discrimination and guarantee that Afro-descendant persons are able to exercise their rights on an equal footing with the rest of the population.
- 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 examine the multilayered discrimination that Afro-descendant women suffer and their particular needs.
- Implement suitable mechanisms for prior consultation on all measures affecting Afro-descendant persons and ensure that the communities are able to enjoy their lands free of any form of interference.
- Make progress on the effective implementation of the many policies and programs created to ensure the rights of the Afro-descendant population, while guaranteeing suitable mechanisms of participation and representation

172. In the section on Afro-descendant, Raizal, and Palenquero persons in its country report, the IACHR established that even though they constitute one of the largest minorities in Colombia and even though they enjoy special protection by the State, Afro-descendant persons are still rendered invisible. In this regard, the IACHR referred to racial discrimination, the absence of disaggregated data, the disproportionate impact of violence and forced displacement, the situation of Afro-descendant women, effective access to and enjoyment of their territories, and the effective implementation of the public policies adopted. It also highlighted situations of special concern, such as poverty, exclusion, and the failure to clarify human rights violations committed against them, among others.

<sup>221</sup> Coordinación Colombia Europa Estados Unidos – CCEEU Nodo Antioquia, *Estado de los derechos humanos en Antioquia: Entre el sueño de la paz y la continuidad de la guerra*, 2014, p. 137.

<sup>222</sup> See, Office of the Human Rights Ombudsman, *Crisis humanitaria en Chocó: Diagnóstico, valoración y acciones de la Defensoría del Pueblo 2014*, p. 145; Office of the Comptroller General of the Republic, *Contraloría reveló hallazgos sobre represas*, October 8, 2014.

<sup>223</sup> United Nations High Commissioner for Human Rights, *Annual Report of the United Nations High Commissioner for Human Rights. Situation of human rights in Colombia*, March 24, 2014, para. 34.



173. In response to the recommendations in the country report, the State indicated that it has adopted measures aimed at incorporating the differential approach in the public policy actions to guarantee the survival of the culture of ethnic groups. This made it possible “to identify, within the universe of victims, indigenous communities, Afro communities, and cultural minorities, making it possible to implement special economic and social measures aimed at overcoming their vulnerability.”<sup>224</sup> In addition, as regards measures for overcoming the situation of structural discrimination, the State said that with the 2010-2014 National Development Plan, progress was made in a process of prior consultation and consensus-building for the differential approach; and that the objectives established included reducing poverty and improving and consolidating security. It also indicated that the National Inter-institutional Roundtable against Racism and Racial Discrimination was established;<sup>225</sup> which designed a strategy called “Afro Unidos” that reports having taken actions aimed at endowing Black, Afro-descendant, Palenquero and Raizal communities with resources for implementing productive projects that ensure their food security, and created an educational credit for the purpose of ensuring the right to equal opportunity in education.

174. In the country report, the Commission wrote that one situation of special concern reported for the Afro-Colombian population was the poverty and exclusion to which this group was subjected. On this subject, the Commission has also taken into consideration the information provided by the State that the Department for Social Prosperity (DPS) “has given high priority to support for the most vulnerable populations and territories,” and that the National Government has focused significant efforts on designing targeted strategies on assistance to rural and outlying areas where, as the State itself has recognized, “because of the dynamic of the conflict, the presence of illicit crops and weaknesses in the provision of basic services, there is a high proportion of the population [living] in poverty and extreme poverty.” This is an major commitment undertaken by the State through comprehensive intervention and a focus on “advancing in overcoming extreme poverty.”<sup>226</sup>

175. Additionally, the State indicated that it is going forward with plans to include a question on ethnic self-recognition for the Black, Afro-descendant, Raizal, and Palenquero communities and the indigenous peoples as groups that enjoy special protection, in the upcoming census. It indicated that since 2011, in the context of the national agricultural census, a “process of consensus-building” was established for the purpose of establishing dialogues to establish the participation of the population in the census operations.”<sup>227</sup> Also, reported that the National Government formulated the “Program for the Human Rights of Black, Afro-Colombian, Raizal and Palenquera Women” victims of the armed conflict in conditions of forced displacement, and argued that it was working on implementing adequate mechanisms for carrying out the prior consultation on all measures that affect Afro-descendant persons so that they can enjoy and use their territories free of any intervention. The State indicated that it presented to the communities the “Proposed Protocol on prior, free, informed, and binding consultation for the Black, Afro-Colombian, and Palenquero communities in rural and urban areas,” and referred to the prioritization of administrative and judicial processes developed by the Land Restitution Unit as recognition of the importance of the territory for the ethnic groups.

176. While the Commission recognizes the policies and legislative measures taken by the Colombian State to overcome the racial discrimination that affects Afro-descendant, Raizal, and Palenquero

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<sup>224</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 14.

<sup>225</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 219.

<sup>226</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 22.

<sup>227</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 222.

persons, it also notes that the problem is structural and that it continues impeding the full enjoyment of the fundamental rights of the Afro-descendant population in Colombia. In its country report, the IACHR noted that such structural discrimination continues to manifest itself in various ways: major disparities between the social and economic conditions of the Afro-descendants and the rest of the population, discriminatory cultural patterns and grave violations of fundamental rights, and barriers in accessibility to justice, among others.

177. In addition, during the period from the issuance of the country report and the writing of this chapter, the Commission also received information that allows it to conclude that the measures taken by the State are not yet sufficient and that the situation of Afro-descendants continues to be worrisome. Accordingly, reports on human rights violations against Afro-descendant, Raizal, and Palenquero persons have been constant. In that regard, the IACHR received alarming information concerning disappearances, dismemberments, and displacement in Buenaventura, a port on Colombia's Pacific coast with a high percentage of Afro-descendant population.<sup>228</sup>

178. The Commission acknowledges the measures being taken by the State to address the situation in Buenaventura. As identified by the State, the main problems found in this region are linked to drug trafficking, operations of the so-called criminal rings (BACRIM), extortion and microextortion and unlawful mining. Accordingly, the State has told the IACHR that it has developed comprehensive strategies to address these phenomena and that it has been implementing a "Social Shock Plan," which provides for improving security and "development support days."<sup>229</sup>

179. The Commission also received information from the petitioners on the hearing on "Human rights situation in the Colombian Pacific region," held October 27, 2014, indicating that as of that date, according to the Information System of the Registry of Disappeared and Corpses (SIRDEC), 53 cases of disappearance had been presented in the department of Chocó, the municipalities of Quibdó and Riosucio being the hardest hit, as together they accounted for 59% of the cases on record in Chocó.<sup>230</sup> As for the figure for homicides, in 2013 there were 44 victims of homicides who were Afro-descendants, and as of October 2014 this figure came to 40 persons. According to the Institute of Legal Medicine, from January to June 2014 there were 58 homicides, 42 of them perpetrated in urban areas.<sup>231</sup>

180. The IACHR also observes that, for example, since 2009 more than 1,300 homicides were committed in Tumaco; nonetheless, the Office of the Attorney General indicated that in just seven of the investigations into these killings had convictions been obtained, and only 11 cases have gone to trial.<sup>232</sup> In addition, from 2008 to 2013 a total of 1,961 death threats were reported, with an increase as from 2011; the Office of the Human Rights Ombudsman fears "*that it is related to events of widespread extortion of the civilian population by armed groups after the demobilization of the AUC.*"<sup>233</sup> The diocese of Quibdó also reported threats against 10 leaders of the COMOCOPOCA organizational process in the upper Atrato river basin during 2013.<sup>234</sup> In its remarks on the draft version of the instant chapter, the State provided a detailed explanation of

<sup>228</sup> See, for example: Human Rights Watch, *The Crisis in Buenaventura Disappearances, Dismemberment, and Displacement in Colombia's Main Pacific Port*, 2014.

<sup>229</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 23.

<sup>230</sup> See: IACHR. Public hearing during the 150<sup>th</sup> period of sessions of the IACHR, with respect to: "Situation of human rights in the Colombian Pacific region."

<sup>231</sup> See: IACHR. Public hearing during the 150<sup>th</sup> period of sessions of the IACHR, with respect to: "Situation of human rights in the Colombian Pacific region."

<sup>232</sup> Human Rights Watch, *Colombia: FARC Battering Afro-Colombian Areas*, July 30, 2014. Available at [Colombia: FARC Battering Afro-Colombian Areas](#)

<sup>233</sup> Office of the Human Rights Ombudsman, *Crisis humanitaria en Chocó: Diagnóstico, valoración y acciones de la Defensoría del Pueblo 2014*, p. 32.

<sup>234</sup> See: IACHR. Public hearing during the 150<sup>th</sup> period of session of the IACHR with respect to: "Situation of human rights in the Colombian Pacific region." In this connection, it is important to reiterate that on September 15, 2014, the Commission made a request for

the activities in which the Office of the Attorney General of the Nation has been engaged in order to further and strengthen investigations mostly into cases of forced disappearance, dismemberment and forced displacement in Buenaventura, and homicides, as well as investigations into the gross human rights violations occurring in the Department of Chocó. In this regard, the Commission takes note of information on the appointment of special prosecutors to handle 336 investigations into forced disappearances, 604 cases of forced displacement, and measures implemented by the “Special Task Force for Jiguamiandó y Curvaradó,” and for the communities of the Cacarica River, among other ones.<sup>235</sup>

181. Additionally, the Commission reiterates its concern over the precarious situation of Afro-Colombian women in the Pacific region.<sup>236</sup> Although the State presented information regarding differential programs in relation to the situation of risk facing Afro-descendant women who are victims of the conflict, the Commission observes that their situation continues to be worrisome and that they continue suffering disproportionately from the armed conflict. In that sense, the IACHR received information on rapes of Afro-descendant girls and women in their communities. Thus, for example, the Victims Unit recorded 55 cases of violence and sexual abuse related to the conflict that have occurred in Tumaco since 2011, the second highest level reported in Colombia during that period.

182. The State also reported to the Commission that it has been conducting monitoring over the period, “aimed at ensuring the fundamental right of [the] ethnic groups to be taken into account in situations affecting them, as well as legal protection in the event of a ruling of unconstitutionality.” In this regard, the State noted that “the obligation of prior consultation in Colombia, [...] is a mechanism enshrined in and protected by the law,” and that it has also been fully fleshed out by the Constitutional Court in its legal precedents.”<sup>237</sup> Without prejudice to the aforementioned assertions of the State, the Commission notes that it has continued to receive worrisome information about the failure to consult the Afro-Colombian population on policy matters in general and more specifically in projects that directly affect them. In the hearing on “forced displacement and development projects in Colombia,” held October 27, 2014, it was indicated that the population is expelled from their lands by development projects without guarantees of restitution or compensation, without the guarantee of respect for the precautionary principle, and systematically without the companies having the respective environmental licenses.<sup>238</sup>

183. The IACHR salutes the recent decision by the Constitutional Court of Colombia in which it examined the right of Afro-descendant persons to prior consultation and established that the communities that meet certain conditions of specificity that distinguish them from the majority in society, and that have a consciousness as to their ethnic identity, hold collective rights, such as the right to prior consultation, even if they do not have property title or a special relationship with the land.<sup>239</sup> “It also found that all these communities have the right to participate in the decisions that affect them through the organization which, in the exercise of their autonomy, they consider to represent their interests, whether it is an organization

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precautionary measures in favor of 302 Afro-Colombian families who reside in the humanitarian space of the neighborhood of La Playita, as the beneficiaries are said to be subject to threats, harassment, and acts of violence, due to their decision to constitute a “Humanitarian Space.” IACHR, Resolution 25/2014, Precautionary Measure No. 152-14

<sup>235</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIIID-15-017750, of February 26, 2015, p. 24-25.

<sup>236</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II, Doc. 49/13, December 31, 2013, para. 644.

<sup>237</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIIID-15-017750, of February 26, 2015, p. 25.

<sup>238</sup> Thematic hearing on “Forced displacement and development projects in Colombia,” October 27, 2014. The audio version is available at: <http://www.oas.org/es/cidh/multimedia/sesiones/153/default.asp#item1>.

<sup>239</sup> Judgment T-576 14, August 4, 2014, Reference: Case T-3482903, *Tutela* action brought by Moisés Pérez Casseres against the Ministry of Interior. Judge writing for the Court: LUIS ERNESTO VARGAS SILVA.

designed by government institutions, or a community council or grassroots organization, or any of their structures of representation or traditional authorities.”<sup>240</sup>

184. The IACHR reiterates its recommendation to implement adequate mechanisms of prior consultation in all the measures that affect Afro-descendant persons – and not only the communities – and to guarantee that the communities can enjoy and use their territories, free from any intervention.

185. The IACHR also warns that it does not observe substantive progress in terms of the effective implementation of the public policies adopted, nor does it have information on efforts that have a specific impact on structural elements of discrimination. In that regard, the last report by the Office of the Human Rights Ombudsman<sup>241</sup> reveals that from the entry into force of ethnic decrees 4633 and 4635, there have been very few gains in term of the effective enjoyment of rights by the ethnic groups. It also notes that there is a “lack of specific actions with a differential approach by the agencies that make up the National System of Attention and Integral Reparation for Victims (SNARIV), especially the local authorities who fail to recognize the priority that the policies aimed at transforming the situation of marginality of these communities should have in the context of their plans of action.”<sup>242</sup> Notwithstanding, in its remarks on the draft version of the instant chapter, the State wrote that it believes it has made significant progress in implementing the ethnic decree-laws, such as the decree requiring the profiling of victims in the Sole Register of Victims, including the ethnic group to which they belong, and implementation of the register for “entitled ethnic collectives,” implementation of a “path for ethnicity-based collective reparation” and the “differential component for humanitarian aid in keeping with the eco-cultural model,” and “activation of spaces for consensus-building on public policies with the bodies created in each Decree-Law.”<sup>243</sup>

186. Additionally, in the context of its 150<sup>th</sup> period of sessions, the IACHR received information in relation to the election of non-Afro-descendants to the House of Representatives for the special seats for Afro-descendants. The IACHR understands that Colombian law (Article 176 of the Constitution and Article 66 of Law 70 of 1993) prescribes having special seats in the lower house of the Congress exclusively for Afro-Colombians, including “Raizales” and “Palenqueros,” and that the system for reserving such legislative seats is part of the measures taken by the State to overcome the historical patterns of political exclusion and structural discrimination that have affected Afro-Colombians and the Afro-Colombian communities.<sup>244</sup>

187. In the context of the 153<sup>rd</sup> period of sessions in October 2014, the IACHR received information according to which: (a) a *tutela* action was brought before the Local Judicial Council of Bogotá to annul the election; (b) in July 2014, the Local Judicial Council denied the *tutela* action; (c) on appeal, the National Judicial Council ordered a provisional suspension of both politicians until the Council of State rules on the merits of the nullity action filed to oppose their election. A decision on the merits is still pending.

188. The Commission also received information according to which the community of Raizal persons on the island of San Andrés asked to have a representative in the National Congress; the request was analyzed by the National Government.<sup>245</sup> In addition, the First Committee of the House of Representatives

<sup>240</sup> Judgment T-576 14, August 4, 2014, Reference: Case T-3482903, *Tutela* action brought by Moisés Pérez Casseres against the Ministry of Interior. Judge writing for the Court: LUIS ERNESTO VARGAS SILVA, p. 140.

<sup>241</sup> Office of the Human Rights Ombudsman, *Crisis humanitaria en Chocó: Diagnóstico, valoración y acciones de la Defensoría del Pueblo 2014*.

<sup>242</sup> Office of the Human Rights Ombudsman, *Crisis humanitaria en Chocó: Diagnóstico, valoración y acciones de la Defensoría del Pueblo 2014*, p. 73.

<sup>243</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 27.

<sup>244</sup> According to information received by the IACHR, the State of Colombia held parliamentary elections on March 9, 2014. Representatives of the political party Fundación Ébano De Colombia (FUNECO) won the seats reserved for Afro-Colombians. Nonetheless the candidates, María Del Socorro Bustamante and Moisés Orozco Vicuña, are not Afro-descendants, nor have they even worked with or for Afro-descendants or Afro-Colombian communities.

<sup>245</sup> El Universal, *Crearán circunscripción especial en el Congreso para raizales de San Andrés*, November 18, 2014. Available at: <http://www.eluniversal.com.co/politica/crearan-circunscripcion-especial-en-el-congreso-para-raizales-de-san-andres-177188>.

included, in the reform of balance of powers, an article that allows for a special district for the Raizal community of San Andrés, Providencia, and Santa Catalina. “Through these districts, five representatives will be elected, two from Afro-Colombian communities, one for indigenous communities, one for the special department of the Raizal community of San Andrés, Providencia, and Santa Catalina, and one for Colombians living abroad.”<sup>246</sup>

189. The Commission has also learned that the process of restitution of lands of the indigenous and Afro-descendant communities, and thus the implementation of Law 1448, has encountered serious delays, which continues to have a negative impact on those communities, who are also suffering the adverse effects of mining and other large-scale economic projects.<sup>247</sup>

190. In the judgment of the Constitutional Court on the participation and consultation of the Afro-Colombian population, the Chamber also reiterated that censuses are essential for the design of public policies that make it possible to ensure access for the Afro-Colombian population to dignified living conditions, and to the same opportunities available for the rest of the Colombian population. Although the next census will be in 2016, the Commission welcomes the announcement by the National Administrative Department of Statistics (DANE) that it plans to have unprecedented coverage, which would include covering 182 collective territories of Black communities.<sup>248</sup>

191. The IACHR was also informed that the Anti-discrimination Law had been found unconstitutional. That law was to allow for greater coordination among agencies of the State to adopt measures to fight racism, at the same time as it would improve efforts to address cases of racial discrimination.<sup>249</sup>

192. In view of all the foregoing, the Commission reiterates its recommendations and calls on the Colombian State to effectively implement the public policies adopted, and to adopt urgent measures aimed at overcoming the situation of structural discrimination that affects the Afro-descendant population.

## 2. Violence against children and adolescents

- Adopt mechanisms to guarantee the rights of children and adolescents, especially given the specific risks derived from the armed conflict context.
- Include within the framework of the peace negotiations measures for the protection of children and adolescents.
- Continue adopting effective measures to prevent the forced recruitment of children and adolescents by all illegal armed groups and punish these cases to the full extent of the law.
- Ensure that state agents do not engage children and adolescents in intelligence work or civil-military activities.
- 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 demobilized girls.
- Take all necessary measures to locate the disappeared children including an expedite claim system and a mechanism for the identification of the bodies that are found.

<sup>246</sup> El Universal, *Incluyen en reforma al Estado circunscripción especial para sanandresanos*, November 19, 2014. Available at: <http://www.eluniversal.com.co/politica/incluyen-en-reforma-al-estado-circunscripcion-especial-para-sanandresanos-177254>.

<sup>247</sup> Amnesty International, *A Land Title is not Enough: Ensuring Sustainable Land Restitution in Colombia*, November 2014, p. 49.

<sup>248</sup> El Tiempo, *El nuevo censo de población se realizará en 2016*, April 10, 2014. Available at: <http://www.eltiempo.com/archivo/documento/CMS-13809907>.

<sup>249</sup> Ministry of Interior, *Ministerio del Interior celebra que Ley Antidiscriminación haya sido declarada constitucional*, September 10, 2014. Available at: <http://www.mininterior.gov.co/sala-de-prensa/noticias/ministerio-del-interior-celebra-que-ley-antidiscriminacion-haya-sido-declarada-constitucional>.

- Take the necessary measures to prevent and punish sexual violence perpetrated against children and adolescents and in particular to provide the claim mechanisms and adequate treatment of the victims as well as the prosecution and punishment of those responsible for this crime and others such as forced recruitment, disappearance, homicide, and extrajudicial executions, including the cases of “false positives,” among others.

193. The Commission positively values the efforts of the State in relation to the rights of the child victims of recruitment and of the armed conflict. In this regard, it observes that of the 1,102 municipalities of Colombia, 620 have included making assessments in this regard in their development plans; 750 have planned to carry out special programs; and 691 municipalities have devoted specific line items to that end in their budgets.<sup>250</sup> In addition, as a mechanism for follow-up on implementation of the measures of prevention, protection, attention, assistance, and integral reparation for victims of the armed conflict, the IACHR observes that the State incorporated, as one of the four indicators, one on children and adolescents, and in this connection it reports having compensated, through funds put into a trusteeship, a large number of children and adolescents who are orphans and victims; all of the persons covered, when they come of age, remain in the accompaniment program.<sup>251</sup>

194. Nonetheless, the Commission continues to be concerned by the large number of children and adolescents who continue to be affected by the context of violence, and by the lack of full guarantees for their rights in the face of existing risks. In that regard, it agrees with the United Nations High Commissioner, who indicates that the different modalities of the violence committed by the criminal groups, such as recruiting and using children and adolescents, sexual violence, forced displacements, and the use of explosives entail grave violations of the rights of children and adolescents; and also affirms that the situation of the population affected by poverty, the lack of opportunities, and social exclusion all increase the risk to children and adolescents in the face of these violations.<sup>252</sup>

195. In this regard, the Commission has granted precautionary measures in 2014 with respect to serious and urgent situations in the context of the armed conflict that have a negative impact on children and adolescents, especially with respect to sexual violence and illegal recruitment.<sup>253</sup>

196. According to the Unit for Attention and Integral Reparation of Victims, as of November 2014 a total of 2,182,707 children are on record as victims of the armed conflict.<sup>254</sup> Information received by the IACHR indicates that almost 40% of the situations and actions in the armed conflict from January to June 2014 entailed direct violations of the rights of children and adolescents, with a greater impact in the departments of Antioquia, Cauca, and Valle del Cauca.<sup>255</sup> Among these occurrences, one observes that the most common are attacks against and occupation of public service institutions such as schools and health

<sup>250</sup> Hechos y Derechos, with Unicef and the Colombian Family Welfare Institute-UNDP. Análisis del Grado de Inclusión de los Derechos de la Primera Infancia, la Infancia, la Adolescencia y la Juventud en Los Planes de Desarrollo Territorial Período de Gobierno 2012 – 2015 Resumen Ejecutivo Análisis de los Planes de Desarrollo de las Gobernaciones, Produced in February 2014.

<sup>251</sup> National System for Evaluation of Management and Results (SINERGIA: Sistema Nacional de Evaluación de Gestión y Resultados), work directed by the National Planning Department pursuant to Article 343 of the Constitution and Article 175 of Law 1448 of 2011; see also Report of the National Government to the First Committees of the Congress of the Republic.

<sup>252</sup> Annual Report of the United Nations High Commissioner for Human Rights. Situation of human rights in Colombia, A/HRC/25/19/Add.3, January 24, 2014.

<sup>253</sup> IACHR, MC 152/14, “Afro-Colombian families living in the so-called humanitarian space of “La Playita” neighborhood, Colombia: The Commission has requested that the Government of Colombia adopt the measures necessary to preserve the lives and integrity of the members of the 302 Afro-Colombian families.

<sup>254</sup> Source: National Network of Information for Attention and Reparation to Victims, Unit for Reparation and Attention to Victims; see also publication of El Heraldó, “*La paz no solo se construye en La Habana*,” November 24, 2014.

<sup>255</sup> Of the total of 947 combat situations or attacks recorded, 376 directly affected children, as per the categories designed as of Resolution 1612 of the United Nations Security Council. See Boletín de Monitoreo No. 12, January-June 2014, Coalición contra la vinculación de niños, niñas y jóvenes al conflicto armado en Colombia (COALICO).

facilities in 36% of the actions on record, as well as the use and recruitment of children and adolescents in 25%, and forced displacement in 16%.<sup>256</sup>

197. As regards the negative impact on access to their rights, in particular the rights to education and health, the Commission has been informed of the occupation of schools and hospitals as well as attacks on those institutions by different armed groups.<sup>257</sup> In addition, the IACHR notes that the United Nations and the Red Cross have reported that thousands of children and adolescents have their right to education impaired due to insecurity in the context of the armed conflict, the accidents and risks caused by explosive devices remaining from military activity, and to the difficult access and insalubrious conditions, making it impossible, among other things, to place enough teachers in the communities to guarantee the full enjoyment of the right to education, and safe spaces for recreation.<sup>258</sup>

198. In this framework of conflict, the Commission continues to be concerned about the problem of forced displacement as a result of the recruitment of and/or threats aimed at children and adolescents, as well as other violations and infringements of their rights.<sup>259</sup> In the framework of the hearings held at its 153rd period of sessions, the IACHR received information about the situation of vulnerability of children affected by the armed conflict, highlighting, among other elements, that more than 50% of the forcibly displaced population is comprised of children and adolescents.<sup>260</sup> According to the statistics of the Internal Displacement Monitoring Center, Colombia has the world's highest figures regarding this problem as a result of its armed conflict situation; in this regard, in the first semester of 2014 alone, 45 massive displacement incidents involving 5,560 children and adolescents have been identified and the departments most hard hit are Chocó, Cauca, Valle del Cauca and Nariño.<sup>261</sup> About 14,000 children, accounting for almost half the displaced population assisted by the Red Cross in 2013, were affected by unhealthy conditions and lack of access to enjoyment of their basic rights, among other problems.<sup>262</sup>

### **Recruitment and illicit use of children and adolescents**

199. The IACHR commends the State's action specifically addressing the violation of the rights of children and adolescents who are recruited or used illicitly in the context of the armed conflict, which has required relevant state institutions, via the State's Office of the Human Rights Ombudsman, to give priority to measures aimed at demobilizing children and adolescents in armed groups and effectively reinserting them into society.<sup>263</sup> Likewise, it observes that the Follow-up and Monitoring Committee aimed at enforcing Law

<sup>256</sup> Boletín de Monitoreo No. 12, January-June 2014, Coalición contra la vinculación de niños, niñas y jóvenes al conflicto armado en Colombia (COALICO)

<sup>257</sup> Boletín de Monitoreo No. 12, January-June 2014, Coalición contra la vinculación de niños, niñas y jóvenes al conflicto armado en Colombia (COALICO)

<sup>258</sup> See Annual Report of the United Nations High Commissioner for Human Rights, Situation of human rights in Colombia, A/HRC/25/19/Add.3, January 24, 2014. See also, International Committee of the Red Cross Acción 2013 y Perspectivas 2014, Report "Colombia: Situación Humanitaria," March 2014; publication of CEDAL, educational communication, Revista Interacción No. 43 - Sección Educación y Sociedad, "La educación en el área rural de Tierralta."

<sup>259</sup> Report of SJR Colombia. Colombia "La situación de las víctimas: entre expectativas y realidades" [The situation of victims: between expectations and reality], 2013.

<sup>260</sup> IACHR, 153rd Regular Period of Sessions, Hearing No. 12, "Reports of Forced Displacement and Development Projects in Colombia," October 27, 2014; see also Hearing No. 7, "Human Rights Situation in the Pacific Region of Colombia;" Hearing No. 8, "Policy and Legislation on Reparations for Human Rights Violations in Colombia," October 27, 2014.

<sup>261</sup> Internal Displacement Monitoring Centre, Global Statistics; see also Monitoring Bulletin No. 12, January-June 2014, Coalition against involving children and young people in the armed conflict in Colombia (COALICO); International Committee of the Red Cross, Activities 2013 and Outlook 2014, Report "Colombia: Humanitarian Situation," March 2014.

<sup>262</sup> International Committee of the Red Cross, Activities 2013 and Outlook 2014, Report "Colombia: Humanitarian Situation," March 2014.

<sup>263</sup> Annual Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia, A/HRC/25/19/Add.3, January 24, 2014.

1448 of 2011,<sup>264</sup> in its Report to Congress in August 2014, has recommended improving institutional and State coordination to draw up effective plans to prevent the recruitment and illicit use of children and adolescents in the armed conflict. In this regard, it has stressed the need to strengthen prevention and protection implementation routes, to conduct assessments in various territories of the State and to undertake actions that consolidate the protection being provided to the rights of children in their families and schools.<sup>265</sup> It has also been observed that the State, through the Colombian Family Welfare Institute (Instituto Colombiano de Bienestar Familiar—ICBF), among others, has been conducting actions coordinated with UNICEF in Colombia to prevent violence, specifically the recruitment of children and adolescents by illegal armed groups, on the basis of local action plans in municipalities, the designing of a national institutional preventive model based on building protective environments, training staff in military institutions on rights of the child protection issues, and building up the skills of children, adolescents and their families to prevent all forms of recruiting children and adolescents.<sup>266</sup>

200. Despite these valuable efforts, the Commission observes that, according to the Consolidated Victims Registry, the same state follow-up and monitoring institution aimed at enforcing Law 1448 had registered, by June 2014, 7,361 children and adolescents victims of illicit recruitment or linkage to armed groups.<sup>267</sup> The IACHR highlights that the United Nations has highlighted both the illegal interrogation of children linked to illegal armed groups and the continued recruitment and use of children by these armed groups and recommends immediate termination of these practices and the State's collaboration to effectively demobilize all children participating in these groups.<sup>268</sup>

201. The Commission reiterates that the State must include and give priority to the protection of children and adolescents in the framework of the peace talks that are being held in Colombia with respect to the armed conflict.

### **Reinsertion of demobilized children and adolescents**

202. According to information recorded by the Colombian Family Welfare Institute (ICBF), it has been concluded that, from 1999 to October 2014, the specialized state program has provided services to 5,645 children and adolescents demobilized from illegal armed groups; it has also reported that 83% of these children were demobilized and handed over voluntarily, whereas 17% were demobilized as a result of rescue operations.<sup>269</sup> Furthermore, the Colombian Reinsertion Agency (Agencia Colombiana para la Reintegración—ACR) has reported that 40% of those persons involved in this reinsertion had been recruited when they were children, amounting to a total number of 12,000 persons.<sup>270</sup> The Commission continues to

<sup>264</sup> Legal instrument that has ordered measures for services, assistance and integral reparation for the victims of the internal armed conflict and other provisions.

<sup>265</sup> First Report to Congress of the Republic 2013-2014, Executive Summary, Follow-up and Monitoring Committee aimed at enforcing Law 1448 of 2011, August 2014; see also International Center for Transitional Justice (ICTJ), Report "Integral reparation for children and young people victims of illicit recruitment in Colombia," October 2014.

<sup>266</sup> Human Rights Advisory Council, Office of the President of the Republic, press release, "ICBF, Presidential Program for Human Rights and IHL, Foreign Ministry and UNICEF present the first national model to prevent the recruitment of children and adolescents by illegal armed groups and criminal gangs," June 28, 2013; see UNICEF-Colombia's 2013 Annual Report.

<sup>267</sup> First Report to Congress of the Republic 2013-2014, Executive Summary, Follow-up and Monitoring Committee to enforce Law 1448 of 2011, August 2014, page 276; see also International Center for Transitional Justice (ICTJ), Report "Integral reparation for children and young people victims of illicit recruitment in Colombia," October 2014.

<sup>268</sup> Annual Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia, A/HRC/25/19/Add.3, January 24, 2014.

<sup>269</sup> Source: Information System, Specialized Program of the Colombian Family Welfare Institute (ICBF). Information in the testimonies of children and adolescents demobilized from law-breaking armed groups and being helped by ICBF. See also: <http://www.agenciapandi.org/basta-de-cambiar-juguetes-por-armas-no-mas-ninos-reclutados-por-grupos-ilegales/>

<sup>270</sup> Publication of the Colombia Agency for Reintegration (ACR), "La ACR trabajará en la prevención del reclutamiento de la niñez y juventud en el conflicto" [ACR shall work to prevent the recruitment of children and young people in the conflict], March 18, 2013.



be concerned about the need to grant adequate and sufficient measures to the demobilized adolescents; on the one hand, it values highly the fact that the State, through its Colombian Reinsertion Agency (ACR) is undertaking actions to provide schooling, scholarships and loans to young people who were recruited when they were minors, that is, less than 18 years old;<sup>271</sup> nevertheless, the IACHR is aware that these actions are still limited compared to the demand and need for schooling among the demobilized adolescents; in addition, it has been observed that they are hard hit by their marginalization from society and the mistrust with which they are perceived by society in general, which is an issue that has not been effectively addressed by the State to ensure the reinsertion of demobilized children and adolescents.<sup>272</sup>

203. According to the International Center for Transitional Justice (ICTJ), the State's response to the illicit recruitment of children and adolescents is handled mainly by three state institutions; nevertheless, the Commission is especially concerned about the distinction made between those victims who were demobilized before they were 18 years old and those demobilized after reaching 18 years of age; in addition, it is concerned that each institution focuses on a special activity aimed at a special group, providing unequal treatment, thus leading to contradictions and lack of coordination in the measures aimed at reinserting adolescents victims of illegal recruitment, despite efforts made to ensure state coordination. In this regard, it observes that, although the Colombian Family Welfare Institute (ICBF) provides services to under-aged persons, the Colombian Reinsertion Agency (ACR) provides services for persons 18 years of age and over to achieve their reinsertion, and the Victims Unit tackles reparation measures for all victims.<sup>273</sup>

204. The IACHR was warned about the need to give priority to measures for children victims and to grant egalitarian treatment as well to those demobilized young people who were recruited when they were children, in order to ensure their full reinsertion using a comprehensive state policy specifically aimed at victims of illicit recruitment, providing them with sufficient educational and employment opportunities and supporting them with their family situations, with an approach based on human rights and equality, with special observance of situations of exclusion and discrimination.<sup>274</sup> In addition, the Commission has been informed that the Colombian State, through its Colombian Reinsertion Agency (ACR), promotes programs to achieve the effective reinsertion of young demobilized women; nevertheless, it reminds that there is a need to also guarantee the rights of girl and adolescent victims demobilized from armed groups, as well as the importance of duly providing them with the opportunity to participate in designing and implementing national plans and programs to achieve the victims' social reinsertion.<sup>275</sup>

### **Sexual violence against children and adolescents**

205. It has been pointed out that the Colombian State, with its Army, Office of the Attorney General of the Nation (Fiscalía General de la Nación—FGN), Ministry of Foreign Affairs, and Colombian Family Welfare Institute (ICBF), supported in addition by international organizations, is implementing coordinated actions to put an end to human trafficking and sexual violence networks linked to illegal trade; in particular, between January and August 2014, the ICBF has provided special protection to 92 child and adolescent victims of the above. It has also reported that last year it provided similar services to 233 child victims, identifying the following departments as those most hard hit: Bogotá, Córdoba, Valle del Cauca and

<sup>271</sup> International Center for Transitional Justice (ICTJ), Report "Integral reparation for children and young people victims of illicit recruitment in Colombia," October 2014.

<sup>272</sup> Office of the Human Rights Ombudsman and UNICEF, Characterization of children and adolescents demobilized from illegal armed groups, 2006. See also: International Center for Transitional Justice (ICTJ), Report "Integral reparation for children and young people victims of illicit recruitment in Colombia," October 2014.

<sup>273</sup> International Center for Transitional Justice (ICTJ), Report "Integral reparation for children and young people victims of illicit recruitment in Colombia," October 2014.

<sup>274</sup> International Center for Transitional Justice (ICTJ), Report "Integral reparation for children and young people victims of illicit recruitment in Colombia," October 2014.

<sup>275</sup> ACR, Gender perspective in the reintegration process. See also: International Center for Transitional Justice (ICTJ), Report "Integral reparation for children and young people victims of illicit recruitment in Colombia," October 2014.

Atlántico.<sup>276</sup> Likewise, the Intersector Commission for Preventing Recruitment, Illicit Use and Sexual Violence against Children and Adolescents (Comisión Intersectorial de Prevención de Reclutamiento, Utilización Ilícita y Violencia Sexual Contra Niños, Niñas y Adolescentes—CIPRUNNA) has identified the municipalities with the highest risk for children and adolescents in terms of this violation, in order to promote specific prevention and protection actions for children by drawing up 40 municipal and departmental plans jointly with the IOM.<sup>277</sup> It observes that, with respect to the inclusion of protection for children against sexual violence, in the 2012-2015 governors' development plans, more than 800 municipalities (accounting for 74.9% of the total) scheduled conducting an assessment, 67.4% of the municipalities included the development of programs, and 63% included it specifically in their budgets.<sup>278</sup> Other data provided by the State regarding addressing these situations of violence indicate that, between January and November 2013, the ICBF had handled 5,351 proceedings to reinstate rights for children and adolescents who were victims of violence, sexual abuse, and breach of rights filed with it.<sup>279</sup>

### 3. The armed conflict's differentiated impact and the danger of extinction looming over the indigenous peoples of Colombia

#### General recommendations

- Take urgent, determined and comprehensive measures to ensure the physical and cultural survival of the Colombian indigenous peoples brought to the brink of extinction by violence, poverty and their fragile demographics.
- Intensify efforts to protect the effective enjoyment of the territorial rights of the indigenous peoples and their members as the first step toward safeguarding their fundamental rights in the context of the internal armed conflict, bearing in mind the singular importance that inter-American human rights law has attached to the territorial rights of indigenous peoples and because so many of the violations committed against them can be traced to the fact that much of the armed conflict is being fought on their ancestral territories and to the fact that economic interests are after the natural resources that those territories hold. Both factors have often left indigenous peoples dispossessed of their land.
- Adopt effective measures to protect indigenous peoples or their members on whose behalf precautionary measures have been granted and provisional measures ordered through the inter-American human rights system, implemented in concert with the respective beneficiaries and which must be culturally appropriate

#### With respect to the homicides, disappearances, threats and accusations that continue to be targeted at indigenous peoples and that have a special impact on their traditional authorities and leaders

- Protect the lives and integrity of Colombian indigenous persons, in furtherance of the State's obligations under the American Convention on Human Rights; take special and differentiated protective measures to safeguard the life and personal integrity of traditional indigenous leaders and authorities who, in the context of the internal armed conflict, are threatened by the various parties involved.

<sup>276</sup> Human Rights Advisory Council, Office of the President of the Republic, Press Release, October 21, 2014, "Es nuestro compromiso seguir trabajando para evitar que se vulneren los derechos de los niños, niñas y adolescentes" [We are committed to continue working to prevent violation of the rights of children and adolescents]: Council member Guillermo Rivera.

<sup>277</sup> First Report to Congress of the Republic 2013-2014, Executive Summary, Commission to Follow up and Monitor Enforcement of Law 1448 of 2011, August 2014; see also International Center for Transitional Justice (ICTJ), Report "Integral reparation for children and young people victims of illicit recruitment in Colombia," October 2014.

<sup>278</sup> Facts and Rights, with UNICEF and the Colombian Family Welfare Institute-UNDP. Review of the Degree of Inclusion of the Rights of Early Childhood, Children, Adolescents and Young People in the Territorial Development Plans, Government Term of Office 2012-2015, Executive Summary of the Review of the Development Plans for Governorships. Prepared February 2014.

<sup>279</sup> Pandi Agency, Report: La Huella de la Niñez en los Medios de Comunicación Colombianos [The Trace of Children in Colombian Media], 2013.

- In order to draw attention to the violence that members of indigenous communities suffer, ensure that the ethnic affiliation of the victims is included in the various statistics and indicators that State authorities prepare in connection with human rights violations and breaches of international humanitarian law, and highlight the number of victims, in absolute and relative terms, in order to show the ratio between the number of victims and the total indigenous population of Colombia.
- Investigate human rights violations committed against indigenous peoples and their members, punish the material and intellectual authors and make individual and collective reparation to victims.
- 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.
- Refrain from making statements or assertions that would stigmatize traditional indigenous authorities and leaders or indigenous persons in general; or statements or assertions suggesting that they have acted improperly or illegally, simply because they have engaged in the work of promoting and defending the human rights of their peoples and communities

**With respect to the military buildup on the indigenous peoples' ancestral territories and the armed combat fought there.**

- Given the suffering that the indigenous people have endured within their territories as a consequence of the armed combat between the actors in the internal armed conflict and the episodes of violence that have claimed many victims, respect and enforce the basic principles of international humanitarian law that serve as the standards by which the human rights of the civilian population are protected in a case of armed conflict so that the rights to life and to humane treatment protected under the inter-American human rights instruments are secure.
- Refrain from involving indigenous persons in the armed conflict, especially children and other vulnerable persons, so that they are not used for intelligence gathering or to assist in the transport of military troops and supplies

**With respect to the harm that anti-personnel mines and unexploded ordnance do to the indigenous peoples and their ancestral territories**

- Take measures aimed at crafting special accident-prevention plans, with special emphasis on those communities where anti-personnel mines and unexploded ordnance are most prevalent and where they claim the highest number of victims. These plans are to be developed in concert with the indigenous peoples. Increase the resources allocated to educate indigenous peoples about the dangers that anti-personnel mines and unexploded ordnance pose; step up the mine clearing on indigenous territories, in full concert with their traditional authorities; treat the victims, their families and their communities using a culturally appropriate approach; in data systems, introduce ethnic and territorial variables so that the information is publicly accessible to the specific people of which the victim is a member, and the number of indigenous reserves or territories where anti-personnel mines and unexploded ordnance are a problem.

**With respect to aerial and other sprayings that affect indigenous territories**

- Take the measures necessary to prevent the indiscriminate effects of spraying operations that use chemicals to destroy illicit crops, and consider replacing spraying with alternative methods of eradication.
- Given how the aerial spraying in their territories has affected indigenous peoples' rights and interests, fully comply with the obligations associated with the right to prior, free and informed consultation, in keeping with the standards of the inter-American system.
- Take the measures necessary to have a reliable record of the indigenous territories affected by the aerial spraying and the damage caused, and any measures necessary to have initiatives or procedures by which to redress the harm caused

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**With respect to forced displacement and the ongoing unconstitutional state of affairs that the Constitutional Court declared in Order 004 of 2009**

- Make greater efforts to ascertain how many indigenous persons have been displaced in Colombia, through an approach that understands the specific types of forced displacement and the extent to which the indigenous peoples in the various regions of the country are affected.
- Effectively implement the guidelines for a differential approach that are built into the policy on prevention and protection of the displaced population.
- Take swift and energetic measures to prevent the risk detected through the Early Warning System of the Office of the Ombudsperson.
- Take determined measures to return displaced indigenous peoples, communities and individuals through a process that ensures respect for traditional forms of participation and organization, security and, especially, protection of traditional indigenous authorities and leaders, and legal and material possession of the land so that the traditional use and exploitation of the territory and its management by the traditional authorities can be restored

**With respect to the multiple forms of discrimination and violence that Colombia's indigenous women have suffered because of the armed conflict**

- Bolster efforts to effectively comply with the recommendations the IACHR made concerning indigenous women in its 2007 report on *Violence and Discrimination against Women in the Armed Conflict in Colombia*

**With respect to armed conflict, territories, megaprojects and prior consultation**

- Bring the process of forming, expanding and clearing the indigenous reserves to a swift conclusion, bearing in mind the inter-American standards on indigenous peoples' right to collective property.
- Make determined efforts to ensure that indigenous peoples effectively enjoy the right to collective property and their related rights in all their various components, as the IACHR summarized in its 2010 report on Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources.
- With the full participation of the indigenous peoples, establish the legislative or other measures necessary to give effect to the right to prior, free and informed consultation and consent, done in good faith and in accordance with international human rights standards

**With respect to the impact of the armed conflict on the health and diet of indigenous peoples**

- Take measures to ensure full health coverage for the indigenous population, overcome the obstacles that prevent real access to services and tailor those services to ensure that they are culturally appropriate.
- Ensure that displaced or confined communities or families are supplied with food, as a necessary short-term response carried out in full concert with the indigenous peoples and communities involved, so that they are culturally appropriate.
- Undertake comprehensive solutions that enable indigenous communities to guarantee their self-sufficiency and food security, in keeping with their cultural patterns, while also protecting the ancestral territory and natural resources.
- Take specific measures to bring down the mortality and morbidity rate among indigenous children, devoting particular attention to those who are displaced

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**With respect to the problem of impunity and the problem that indigenous peoples and their members do not have access to justice**

- Fulfill the obligation to investigate, prosecute and punish those responsible for violations of the rights to life, to humane treatment and the other human rights of the members of indigenous communities and the communities themselves, as collective subjects, bearing in mind the specifics of the situation of the indigenous victims of the violence and the crimes committed during the armed conflict.

**With respect to the process of reparations and restitution of the rights of the victims of the armed conflict who are members of indigenous peoples and communities**

- In concert with the indigenous peoples, effectively implement Decree Law 4633, a legal instrument whose principles and postulates must be embodied institutions and suitable human and economic resources.
- Make the greatest possible effort to comply with the commitments undertaken through Decree Law 4633 with regard to the restitution of the indigenous peoples' ancestral territories, with proper institutional coordination to ensure that the various state institutions are performing the functions involved in identifying lands and territories and those associated with the humanitarian demining and the return of the displaced population.

206. In follow-up to recommendations from the Report on *Truth Justice and Reparation*, the Colombian State, in its response, mentions the efforts it is making to address the situation of indigenous peoples and their inhabitants.<sup>280</sup> In that context and subsequent to the review of the "Report of the State," the IACHR refers to the progress issues that were identified.

207. The State points out progress in designing the Program to Guarantee the Rights of the Indigenous Peoples Affected by Displacement and in drafting ethnic safeguard plans in view of the armed conflict and forced displacement, in the framework of judgment T-025/2004 and Writ 004/2009.<sup>281</sup> It points out that, at the date its "report" was sent, there were 26 safeguard plans<sup>282</sup> that had been drafted, aimed at identifying inter-institutional needs and strategies.

208. It indicates that, in compliance with the Decree of the Law on Victims, since 2013 it has been working on drawing up a national strategy to train interpreters and translators in native languages and Spanish. It points out that, with the OPIAC [sic] organization, it has worked on "*Designing the education strategy on differential services for highly vulnerable peoples*," which was able to bring benefits to 56 indigenous peoples of Colombia's Amazon Region.<sup>283</sup>

209. The report "points out that priority has been given to implementing the ethnic collective reparation route for those subjects involved in land restitution proceedings, focusing attention on an effective response to precautionary and provisional measures decreed in the framework of the Inter-American

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<sup>280</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 230-268.

<sup>281</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 230.

<sup>282</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 231.

<sup>283</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 234.

System.<sup>284</sup> It indicates that the institutional framework has been adjusted by installing the Ethnic Forum with INCODER [*sic*], for the purpose of coordinating the actions required to establish criteria for the option of exceptional relocations and carrying out a plan to implement the orders issued in the follow-up writs and the precautionary measures and judgments issued by the Restitution Judges.<sup>285</sup>

210. The State reports on progress made in the regulatory framework such as the issuance of Decree-Law 4633/2011, on the restitution of the territories of indigenous peoples. It indicates that the institutional structure has been organized for enforcement of the above-mentioned decree, through the Land Restitution Unit, Land Restitution Judges and Magistrates, and the Deputy Attorney General's Office for Land Restitution. In that framework, in the course of 2014, there were eight complaints filed for the restitution of collective territories of indigenous peoples by the Land Restitution Unit with the Judges and Magistrates Specializing in Land Restitution. In this regard, on September 23, 2014, the first judgment was issued in the framework of Decree 4633 of 2011, for the benefit of the Emberá Katío people of Alta Andagueda, whereby 50,000 hectares were restituted, benefiting 31 communities, 1,454 families and 7,270 individuals.<sup>286</sup>

211. It indicates that, through the UNP [*sic*], allocations have been made for the Indigenous Security Watch (Guardia Indígena) for various indigenous communities that are beneficiaries of precautionary measures. It was reported that, in 2013, resources were allocated in the amount of nine hundred fifty million pesos (\$950,000,000), for the implementation of agreements entered into with two indigenous organizations beneficiaries of precautionary measures. In 2014, about two billion seven hundred million pesos (\$2,700,000,000) were earmarked for agreements entered into with three indigenous organizations, which are in the process of being implemented.<sup>287</sup> It indicates that, nationwide, UNP [*sic*] is individually protecting 354 leaders and members of indigenous communities. In 2014, about twelve billion pesos were spent on protection measures aimed at guaranteeing the life and integrity of indigenous communities and organizations.<sup>288</sup>

212. According to the State, in the framework of SNARIV [*sic*], progress has been made in designing, implementing and monitoring public policymaking with respect to providing assistance and comprehensive reparations to victims, where criteria were established to evaluate the registration of individual and collective victims in the Consolidated Victims Registry.<sup>289</sup> Regarding humanitarian aid for the displaced population, the implementation of differential approach measures is noteworthy as it is aimed at identifying and individualizing the subject in order to meet the specific needs of each victim.<sup>290</sup> It has indicated that, on the basis of Resolution No. 0-0574 of April 2, 2014, the Attorney General of the Nation

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<sup>284</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, pp. 234-235.

<sup>285</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 235.

<sup>286</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 235.

<sup>287</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 236.

<sup>288</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 237.

<sup>289</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 238.

<sup>290</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 238.

decided to organize the Directorate for the National Specialized Prosecution Service of Transitional Justice and, in turn, established the Internal Group of Orientation, Registration and Allocation of Cases of Victims in the framework of Transitional Justice, a group which has been working hand in hand with the Differential Approach Subgroup of the Legal Support Group attached to this Directorate [*sic*].<sup>291</sup> In that context, in 2014, it included the strategy of investigating severe and massive violations of the human rights of indigenous and Afro-descendant communities and gender-based violence, as groups who are vulnerable because of the actions carried out by armed players in the framework of the armed conflict, using the differential approach in a cross-cutting fashion.<sup>292</sup>

213. The State indicates that the Directorate for the National Specialized Prosecution Service of Transitional Justice adopted the *Guide for providing differential services to Afro-Colombian victims in the framework of the Law on Justice and Peace (Guía de atención diferenciada a víctimas afrocolombianas en el marco de la Ley de Justicia y Paz)*, which was included in the Directorate's Comprehensive Quality Management System as a document for the Justice and Peace subprocess.<sup>293</sup>

214. The State reports that the Land Restitution Unit included the following question on the form for requesting entry into the Dispossessed Lands Registry: *Have you received threats, harassment or intimidations because you filed a land claim?* This question makes it possible to recognize if the petitioner has been the target of any intimidation and, if the reply is yes, the protection route established in Decree 4912/2011 with the UNP [*sic*] is immediately activated.<sup>294</sup> Regarding this, it was reported that the Land Restitution Unit, at April 2014, had taken steps with the National Protection Unit to process 932 petitions for protection; of these petitions, after the risk study was carried out, protection measures were granted to 382 of them, whereas 307 were deemed to entail an ordinary risk, 62 were withdrawn or dismissed, and 172 are being processed by the National Protection Unit.<sup>295</sup> Furthermore, it was reported that the UNP [*sic*] over the past period has released statements on its website, protesting incidents that threaten the life and integrity of the beneficiaries of the protection program. Likewise, training sessions are being conducted for civil servants who will be taking statements and complaints in the "Do No Harm" proceedings in order to prevent revictimization in the process of making statements and filing complaints.<sup>296</sup>

215. The report points out that the Permanent Forum of Indigenous Peoples with the participation of the National Indigenous Organization of Colombia (Organización Nacional Indígena de Colombia—ONIC), the Organization of the Indigenous Peoples of Colombia's Amazon Region (Organización de los Pueblos Indígenas de Amazonia Colombiana—OPIAC), and the Indigenous Confederation Program to Guarantee the Rights of the Indigenous Peoples of Colombia affected by Forced Displacement (Confederación Indígena Programa de Garantías de Derechos de los Pueblos Indígenas de Colombia afectados por el Desplazamiento Forzado), agreed in a coordinated fashion to accept the following proposal from these

<sup>291</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 240.

<sup>292</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 240.

<sup>293</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 240.

<sup>294</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 241.

<sup>295</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 241.

<sup>296</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 242.

authorities: a) “Designing and implementing campaigns to prevent accidents from unexploded ordnance (UXO), explosive remnants of war (ERW), improvised explosive devices (IED) and anti-personnel mines (APM)” and b) “Conducting periodic assessments of areas affected by APMs, UXOs, ERWs, and IEDs in indigenous territories to coordinate humanitarian demining actions in line with the provisions of Decree 3750/2011.”<sup>297</sup>

216. With respect to humanitarian demining, the report indicates that it is being carried out in line with National Mine Action Standards, which were drawn up on the basis of national legislation. National standards were established after issuance of Decree 3750 on October 10, 2011, whereby their design was ordered, and they were finally adopted by means of Resolution 6696 of October 2, 2012 issued by the Ministry of National Defense.<sup>298</sup> It was reported that, on the basis of the regulations issued for Law 1421/2010, by means of Decree 3570/2011, it was established that any nongovernmental organization, whether domestic or international, whose organizational purpose was to carry out humanitarian demining tasks or activities would be able to undertake humanitarian demining activities assigned to it by the National Government.<sup>299</sup> As for accidents arising from anti-personnel mines and unexploded ordnance in indigenous territories, in all there have been 775 incidents, out of which 165 are accidents that have left 337 victims since 1990 up to September 30, 2014. Of the 775 incidents recorded in indigenous territories, 589 (76%) pertain to demining actions in operations conducted by the Armed Forces.<sup>300</sup>

217. According to the report, the National Policy for Territorial Consolidation and Reconstruction (Política Nacional de Consolidación y Reconstrucción Territorial—PNCRT) is aimed at providing comprehensive services focusing on illegal crops, incorporating alternative development actions into a broader framework for rural development and integral services, emphasizing not only the substitution of illicit crops but also giving priority to the sustainability of eradication by means of socioeconomic and environmental promotion, aimed at building up grassroots and community organizations, protecting resources, preventing and mitigating the impact of climate change, and incorporating risk management into the problems associated with this type of crop.<sup>301</sup> In that framework, in compliance with Judgment 383/2003, the National Government filed the Proceedings for Prior Consultation<sup>302</sup> to Eliminate Illegal Coca Leaf Crops inside Indigenous Territories.<sup>303</sup>

218. The report indicates that the National Government established regulations to process complaints about aerial spraying, by means of Resolution 01/2012 of the National Drug Council (Consejo Nacional de Estupefacientes—CNE). Furthermore, in line with the powers granted to it, the National Police

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<sup>297</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, pp. 245-246.

<sup>298</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 246.

<sup>299</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 247.

<sup>300</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 247.

<sup>301</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 248.

<sup>302</sup> Ministry of the Interior (2014). Protocol for the Development of Prior Consultation Process to Eliminate Illegal Coca Leaf Crops in Indigenous Territories. Quoted in: Report, Republic of Colombia. *Human Rights Situation 2013-2014 and follow-up on the recommendations contained in the Fourth Country Report of the IACHR*. Note S-GAIIID-14-094783, received December 29, 2014, p. 251.

<sup>303</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 251.



Force intervenes in proceedings to process complaints; nevertheless, the final ruling on financial compensation is in the hands of an inter-institutional committee comprised of the Colombian Agricultural and Livestock Institute (Instituto Colombiano Agropecuario), the Ministry of the Environment, the Ministry of Justice, among others. As a result, between 2013 and 2014, there were 19,495 families from 41 municipalities that have been assisted by the Territorial Consolidation Unit.<sup>304</sup>

219. The report indicates that the National Government, through the UARIV, had spearheaded inclusion of the differential approach to humanitarian services for forced displacement.<sup>305</sup> Likewise, progress was evident in the information system for the Consolidated Victims Registry (Registro Único de Víctimas—RUV), and in 2013, the National Information Network entered into 951 agreements with territorial entities for the exchange of information (83% of municipalities and 100% of departments), after which 2,936 users were registered who have online information about the victims with respect to registration, health, education, housing and production projects.<sup>306</sup>

220. The report indicates that State has built up the Early Warning System (Sistema de Alertas Tempranas) in the framework of the process to restructure the Office of the Human Rights Ombudsman by means of Resolution 075/2012 and Decree 025/2014, aimed at building up the activities of the Office of the Deputy Ombudsman to Prevent the Risk of Human Rights Violations and the Breach of International Humanitarian Law (Defensoría Delegada para la Prevención del Riesgo de violaciones de derechos humanos e infracciones al derecho internacional humanitario) and the Early Warning System.<sup>307</sup> Likewise, the Office of the Human Rights Ombudsman has been closely monitoring the situation of the violation of the rights of indigenous children in the Valle del Cauca and Huila, as a result of which it has filed various petitions with the authorities with specific responsibilities in this area and proposed a monitoring strategy to ensure the integral protection of the rights of this population to the National Government in the framework of the Intersector Commission to Prevent the Recruitment and Use of and Sexual Violence against Children in the framework of the internal armed conflict in 2013.<sup>308</sup>

221. The report points out that the Constitutional Court in Judgment T-129/2011 ruled that mining, transportation, and infrastructure projects or laws that affect the territories of the communities or peoples must take into account the populations dwelling there and involve them in discussions and decisions. It was reported that, on December 8 and 9, 2014, the prior consultation mechanism for the development and implementation of mining projects in the region was worked upon with the organizations of the indigenous peoples of the Amazon region.<sup>309</sup>

222. Regarding the country's ethnic groups, technical and financial support has been given to the projects designing health models with 17 indigenous peoples from 7 departments, making progress in

<sup>304</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 253.

<sup>305</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 254.

<sup>306</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 255.

<sup>307</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 256.

<sup>308</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 257.

<sup>309</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 261.

characterizing health in indigenous communities, in capacity building for traditional medicine, in identifying and in prioritizing health actions in order to adjust existing health programs. To this end, resources amounting to 400 million pesos (US\$184,744.70) were allocated and benefits are being brought to close to 265,000 indigenous persons.<sup>310</sup> In this context, Decree 1973 of 2013 was issued whereby the Health Subcommission of the Permanent Forum for consensus building with indigenous peoples and organizations was established as a forum for the technical drafting of public policies in health for indigenous peoples, in the framework of the Indigenous System for Self and Intercultural Health (Sistema Indígena de Salud Propia e Intercultural—SISPI).<sup>311</sup>

223. The report points out that, in coordination with indigenous authorities and territorial entities, a complementary training program was designed, called “*family and community management to promote health and nutrition and prevent disease among indigenous peoples*.” This program was designed in a general manner to be adjusted and adapted to the sociocultural and health characteristics of each indigenous people.<sup>312</sup>

224. The report indicates that the State, through the ANSPE [*sic*], spearheaded the Prolonged Relief and Recovery Operation Project (Proyecto Operación Prolongada de Socorro y Recuperación—OPSR 200148), on the basis of an International Cooperation Agreement between the World Food Programme (WFP), ICBF, the Colombia Presidential Agency for International Cooperation (Agencia Presidencial para la Cooperación Internacional—APC) and the Administrative Department for Social Prosperity (Departamento Administrativo para la Prosperidad Social—DPS), which provides humanitarian aid, food and nonfood assistance to persons with high rates of food insecurity affected by violence and living in conditions of vulnerability.<sup>313</sup>

225. The report indicates that, from 2012 to 2014, the State has helped 170,000 displaced families with high levels of food insecurity, and of these families 60,000 have been displaced families with moderate food insecurity and 55,000 have been displaced indigenous families with extreme food insecurity.<sup>314</sup>

226. The State, on the basis of CONPES document 113 of 2008, promotes the National Food and Nutritional Security Policy. Law 1355 of 2009 establishes the Intersector Commission on Food and Nutritional Security (Comisión Intersectorial de Seguridad Alimentaria y Nutricional—CISAN).<sup>315</sup> Likewise, the Food Security Network Program is included in the social management model that contributes to reducing extreme poverty, preventing displacement and providing for the socioeconomic stabilization of families living in conditions of displacement, as set forth in CONPES 102 Social Protection Network against Extreme

<sup>310</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 262.

<sup>311</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 262.

<sup>312</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 263.

<sup>313</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 263.

<sup>314</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 264.

<sup>315</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 264.

Poverty.<sup>316</sup> In this regard, the Food Security Network Program has provided services to a total of 192,276 persons in 428 municipalities. Especially between 2013 and 2014, food security programs have brought benefits to a total of 62,160 families.<sup>317</sup>

227. The report indicates that, for the drafting of Law 1592 of 2012, the concept of macrocriminality of “VIOLENCE AGAINST INDIGENOUS PEOPLES” was drawn up and submitted to the Justice and Peace Hearing Chamber of the Superior Court of the Judicial District of Barranquilla. The reparation incident presented to the magistrates hearing the case was filed on July 1-3, 2014 and the respective judgment on the case is pending.<sup>318</sup>

228. In the framework of Law 1448/2011, steps have been taken with respect to various cases involving the relocation of ethnic communities for the purpose of reparation and protection from future damage.<sup>319</sup> On the basis of the Law on Victims and Decree-Law 4633, in the case of the indigenous peoples, their world vision and special collective ties with Mother Earth are recognized. Without detriment to the above, it is understood that the indigenous peoples and communities are the bearers of rights in the framework of Decree 4633/2011.<sup>320</sup> According to the State, there have been eight claims filed for the restitution of collective territories of indigenous peoples by the Land Restitution Unit with the Judges and Magistrates Specializing in Land Restitution and finally, the ruling of September 23, 2014 for the benefit of the Emberá Katío people of Alto Andaguada is a milestone for the Colombian State’s adoption of measures aimed at protecting its indigenous peoples’ effective enjoyment of the right to territory and is a first step to safeguarding their basic rights.<sup>321</sup>

229. Despite the State’s efforts to address the recommendations stemming from the country report, the IACHR has voiced some of the concerns that would be affecting the indigenous peoples in Colombia. In that framework, the Inter-American Commission has held various thematic hearings and received up-to-date information from various sources, including the State, civil society organizations and international human rights agencies, among others. For example, in the framework of the 150<sup>th</sup> period of sessions, on March 24, 2014, there was a hearing on *General Human Rights in Colombia*.<sup>322</sup> Likewise, on October 27, 2014, at the 153<sup>rd</sup> period of sessions, there was a *Hearing on the Situation of Colombia’s Pacific Region*. On the same day, there was a *Hearing on Forced Displacement and Development Projects in Colombia*.

<sup>316</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 265.

<sup>317</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 265.

<sup>318</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 267.

<sup>319</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 267.

<sup>320</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 268.

<sup>321</sup> See: Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, pp. 268-269.

<sup>322</sup> On behalf of civil society representatives of the following bodies attended: Comisión Colombiana de Juristas; Corporación Jurídica Libertad; Comisión Intereclesial de Justicia y Paz; Colectivo de Abogados; and Comité de Solidaridad con Presos Políticos. As for the State, representatives from the following attended: Colombian Mission to the OAS, Ministry of Foreign Affairs, National Agency for Legal Defense of the State; Ministry of the Interior, and Office of the Attorney General of the Nation.

230. The IACHR takes note of the attack on October 22 against the former indigenous councilperson, Fabio José Dagua Conde, and his partner, Martha Lucía Revera, as well as the death threats against coordinators of the indigenous security watch (Guardia Indígena), indigenous mayors, indigenous councilpersons, senior representatives of town councils, and leaders, made in a leaflet that was distributed on October 21 after the Special Congress of the Regional Indigenous Council of Cauca (Congreso Extraordinario del Consejo Regional Indígena del Cauca—CRIC).<sup>323</sup> In addition, the IACHR highlights the death threats made against the leaders and authorities of indigenous community and town councils of Norte del Cauca, who work on the issue of illegal mining.<sup>324</sup>

231. The IACHR is concerned about the killing of indigenous security watch guards of the Nasa People, Daniel Coicué and Manuel Antonio Tumiña, members of the precincts of San Francisco and Toribio, and the attempt on the life of Edgar Tumiña, in incidents that took place on November 5, 2014, in the locality of Sesteadero of the Municipality of Toribio, Cauca.<sup>325</sup>

232. The IACHR takes note of the death threats against male and female community leaders of the Community Council of La Toma, after the community and its representatives reported the arrival of heavy machinery for mining activities in the locality of Yolombó, in the corregimiento of La Toma, the municipality of Suárez, Cauca. Information indicates that death threats against the indigenous people of the area have multiplied as a result of their legitimate call to halt mining activities without prior consultation.<sup>326</sup>

233. According to information that is public knowledge, mining production in Río Quito is allegedly undermining the indigenous peoples' effective access to and enjoyment of their land and territory. In that context, it is promoting violence, sexual exploitation, and the loss of some of the ancestral practices and values of the area's inhabitants.<sup>327</sup>

234. The IACHR is concerned about the situation affecting indigenous and Afro-Colombian communities of Alto Baudó and the risks for nearby communities and municipalities in the department of Chocó, owing to new clashes between the so-called Self-Defense Groups of Colombia and the National Liberation Army (Ejército de Liberación Nacional—ELN).<sup>328</sup> Likewise, the IACHR takes note of the situation of forced displacement of at least 2,700 persons belonging to the indigenous Emberá group of the Catrú Dubaza River, located in the rural area of Alto Baudó, Chocó, indicating that the displacement was the result of clashes between ELN guerrilla and the post-demobilization Gaitinista self-defense group.<sup>329</sup>

<sup>323</sup> Cf. UN-Colombia. [ONU Derechos Humanos condena atentado en contra de ex concejal indígena y amenazas a líderes indígenas en el Cauca](#). Colombia Office of the UN High Commissioner for Human Rights. Press Release, Bogotá, D.C., October 23, 2014.

<sup>324</sup> Cf. UN-Colombia. [ONU Derechos Humanos condena atentado en contra de ex concejal indígena y amenazas a líderes indígenas en el Cauca](#). Colombia Office of the UN High Commissioner for Human Rights. Press Release, Bogotá, D.C., October 23, 2014.

<sup>325</sup> According to the Colombia Office of the UN High Commissioner for Human Rights, the deaths occurred as a result of the bullets from firearms shot by members of the FARC-EP when a delegation, following up on the attempt on Edgar's life a few hours earlier, was conducting territorial monitoring and withdrawing billboards referring to the armed conflict to protect life and reassert the autonomy of the Nasa People in the area. Cf. UN-Colombia. [Naciones Unidas urge a las FARC-EP a respetar pueblos indígenas en Colombia](#). Colombia Office of the UN High Commissioner for Human Rights. Press Release, Bogotá, D.C., November 6, 2014.

<sup>326</sup> According to the Colombia Office of the UN High Commissioner for Human Rights, in the context, severe impacts were being exerted: undermining the life plans of the communities; environmental pollution; tearing apart the social fabric; risk for miners engaged in panning in this context; and cases of sexual violence and child exploitation. Cf. UN-Colombia & Office of the Human Rights Ombudsman, Colombia. [Oficina de la ONU para los Derechos Humanos y Defensoría del Pueblo condenan amenazas de muerte en contra de líderes y líderes en el Cauca](#). Press Release, Colombia Office of the UN High Commissioner for Human Rights, Bogotá, D.C., October 3, 2014.

<sup>327</sup> Cf. UN-Colombia. [Oficina de la ONU para los derechos humanos llama a que se garanticen derechos en el Chocó](#). Colombia Office of the UN High Commissioner for Human Rights, Press Release, Bogotá, D.C., September 5, 2014.

<sup>328</sup> According to the source, the UN agencies had publicly voiced their concern about these same incidents past May 15 [2014], when at least 2,000 persons were displaced. A little after one month, despite the intervention of local and national authorities since the first emergency in May, the situation would get worse with the high impact that it would exert on the population. Cf. UNHCR-OCHA-UN, Colombia. [UNHCR, ONU Derechos Humanos y OCHA reiteran su preocupación por la situación de desplazamiento y violaciones a los derechos humanos en Alto Baudó, Chocó](#). United Nations High Commissioner for Refugees (UNHCR), Colombia Office of the United Nations High Commissioner for Human Rights (UN Human Rights), and the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Press Release, Bogotá and Quibdó. July 3, 2014.

<sup>329</sup> According to the source, this last incident of human rights violence against the Emberá people in their territory is part of a series of impacts arising from forced displacements taking place since 2007 in this area, deeply affected by the presence of various armed stakeholders: guerrilla members of FARC and ELN, the post-demobilization groups of Los Rastrojos, and now the Gaitinista Self-Defense

235. In the framework of the 150th period of sessions, at the *Hearing on the Human Rights Situation in Colombia*, civil society representatives were emphatic about pointing out that the human rights situation in Colombia continues to be very severe and of the utmost concern. It was indicated that the discourse and institutional framework are in sharp contrast with the human rights reality in the country. It was reported that the national government would be adopting a scornful attitude with respect to international monitoring mechanisms, as a result of the failure to comply with international decisions. In that context, civil society indicated that the State would be claiming issues of sovereignty to ignore recommendations made by the United Nations and the Inter-American Commission on Human Rights.<sup>330</sup>

236. In the framework of the 153rd period of sessions, the IACHR was informed about the situation in Colombia's Pacific region. In that context, the Inter-American Commission is concerned about the situation of violence that black and indigenous communities of the area are experiencing because they are defending their territories from the implementation of development projects promoted by state policies, involving domestic and international capital. The Commission was also informed that these projects are incompatible with ethnic development projects and the livelihood plans of the black and indigenous communities.<sup>331</sup>

237. At the 153rd period of session, the IACHR was also informed about forced displacement and development projects in Colombia. As indicated, the State had failed to comply with two agreements with the IACHR in the previous period of sessions, namely: a) the establishment of a forum to examine the adoption of measures to protect the life and integrity of those defending the territory and environment; and b) the establishment of a permanent forum to discuss State, private-sector and civil society perspectives in order to draw up a public policy for development with the protection of integral guarantees of territorial and environmental rights [*sic*].<sup>332</sup> It was reported that there were 9 killings and 27 death threats, as well as dozens of displaced persons, as a result of the development models that are being implemented against community rights, and above all it was mentioned that 128 families would be at risk because of the *Hidrosogomoso Project*. It was also informed that the State was involved in omissions because of its failure to provide effective measures to adequately prevent, protect, and provide reparation for victims of forced displacement as a result of the implementation of energy and mining projects.<sup>333</sup>

238. Information available to the public indicates that "Colombia has one of the highest levels of forced displacement in the world and it is more than evident that authorities are not doing enough to guarantee the effective restitution of land stolen from their legitimate occupants."<sup>334</sup> It was reported that, at the end of August 2014, the Attorney General's Office would be investigating at least 35 homicides of persons involved in land restitution proceedings.<sup>335</sup> Furthermore, the IACHR, in its 2013 report, believes that the

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Groups, as highlighted by the Office of the Human Rights Ombudsman on various occasions in its Risk Reports. Cf. UN Human Rights, Colombia, OCHA, UNHCR. UN Human Rights. [ACNUR y OCHA, preocupadas por desplazamiento forzado de por lo menos 2700 emberas en el Alto Baudó](#). Colombia Office of the United Nations High Commissioner for Human Rights (UN Human Rights), United Nations High Commissioner for Refugees (UNHCR), and United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Press Release, Bogotá, D.C. May 15, 2014.

<sup>330</sup> See IACHR, 150th Regular Period of Sessions. [General Human Rights Situation in Colombia](#), March 24, 2014.

<sup>331</sup> As indicated, the Pacific Region is comprised of the departments of El Cauca, Nariño, Chocó and Valle del Cauca. The Pacific Region is one of the regions with the planet's highest biodiversity. It has mineral deposits such as manganese, cobalt, chrome, nickel, as well as oil. See IACHR, 153rd Regular Period of Sessions. [Hearing on the Human Rights Situation of the Pacific Region in Colombia](#), Monday October 27, 2014.

<sup>332</sup> See IACHR, 153rd Regular Period of Sessions. [Hearing on Forced Displacement and Development Projects in Colombia](#), Monday, October 27, 2014.

<sup>333</sup> See IACHR, 153rd Regular Period of Sessions. [Hearing on Forced Displacement and Development Projects in Colombia](#), Monday, October 27, 2014.

<sup>334</sup> See Amnesty International (AI). [Colombia's land restitution process failing those forced off their lands](#). Press Release, November 27, 2014.

<sup>335</sup> See Amnesty International (AI). [Colombia's land restitution process failing those forced off their lands](#). Press Release, November 27, 2014.

proven situation of risk of physical and cultural extinction of various indigenous peoples of Colombia, because of the armed conflict, is a matter of the utmost concern.<sup>336</sup>

239. The IACHR also recognizes and is aware of the efforts that the Colombian State has been making for a negotiated settlement of the internal armed conflict and of the initiatives that are being taken to meet its international human rights obligations.<sup>337</sup> Nevertheless, it observes that there continue to be major challenges to ensure full compliance with the recommendations made in Report of *Truth, Justice and Reparation*.

240. Finally, by virtue of the powers granted to it by the IACHR Statute and Rules of Procedure, the OAS Charter, and the American Convention on Human Rights, the Inter-American Commission wishes to continue collaborating with the State to ensure the effective enforcement and full enjoyment of the human rights of the indigenous peoples and their inhabitants in Colombia.

#### 4. Women and the armed conflict

- To adopt an integral State policy to address the specific impact of the armed conflict on women in the areas of justice, health and education, among others. These policies should be guided by the logic of protecting the rights of women and should tend to guarantee their autonomy.
- To implement and strengthen measures to comply with the duty to act with due diligence to prevent, sanction and eradicate violence and discrimination against women, exacerbated by the armed conflict, including concrete efforts to fulfill its four obligations: prevention, investigation, sanction and reparation of the human rights violations of women.
- To implement measures to eradicate discriminatory socio-cultural patterns based on sex, race, and ethnic background, and to take these differences and conditions of vulnerability into account in the development of public policies to mitigate the pernicious effect of the armed conflict on Colombian women.
- To publicly recognize that the different manifestations of gender-based violence and discrimination are closely related to the human rights and humanitarian crisis that Colombia is facing, that they are serious violations of international and national law, and that it is necessary to assign adequate State resources to achieve their prevention, eradication and sanction.
- To adequately enforce the national legislation and the existing public policies designed to protect women from acts of violence and discrimination and their consequences in civil, political, economic, social and health matters, and to allocate sufficient resources to make this enforcement effective at the national and local level.
- To incorporate the voices and specific needs of women affected by the armed conflict and the organizations representing them in the design of legislation and public policies geared toward ameliorating the impact of the consequences of the armed conflict on them.
- To implement dissemination measures and campaigns for the general public regarding the duty to respect the civil, political, economic, social, cultural, sexual and reproductive rights of women; the available services and resources for women who have experienced violations of their rights; and the judicial consequences for perpetrators.
- To design public policies in the area of citizen protection which incorporate the specific needs of women.
- To create and improve statistical and qualitative information systems and records on incidents of violence and discrimination against women.
- To promote that the information collected by State entities about incidents of violence and discrimination is processed with a gender perspective.

<sup>336</sup> Cf. IACHR, Report *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*. OEA/Ser.L/V/II. Doc. 49/13. December 31, 2013. p. 299.

<sup>337</sup> Cf. UN-Human Rights Council. [Informe Anual de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos. Adición. Situación de los derechos humanos en Colombia](#). [Annual Report of the United Nations High Commissioner for Human Rights. Addendum: Human Rights Situation in Colombia], A/HRC/25/19/Add.3. Distr. General. January 24, 2014. Summary, paragraph 1.

- To design and implement a policy including positive actions to recognize and make effective the rights of women in terms of an integral and multidisciplinary attention and support in the areas of health, justice, education and economy of the displaced women, that adequately address their needs in the short and long-term.
- To design and adopt policies taking into account the specific needs of indigenous and Afro-Colombian women within the armed conflict in regard to health, education, justice and livelihoods. National policies designed to promote the rights of all women must consider the specific needs of indigenous and Afro-Colombian women and have an integral vision of how to address important issues such as health, education, and justice. National policies geared toward improving the situation of indigenous and Afro-Colombian groups must also include the specific needs of women.
- To design and adopt policies, with the participation of indigenous and Afro-Colombian women, considering respect for their culture, with the purpose of ameliorating the effects of the armed conflict. In particular, to carry out actions to reduce the negative effects in terms of health, education, and justice caused by the armed conflict.
- To adopt the necessary measures to prevent, sanction and eradicate acts of rape, sexual abuse and other forms of violence, torture and inhumane treatment by all combatants in the armed conflict.
- 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.
- To guarantee that women directly affected by the conflict and its consequences are incorporated in the decision-making bodies working towards the resolution of the causes and consequences of the conflict

241. In the report *Truth, Justice and Reparation*, the Inter-American Commission reiterated its concern at the precarious human rights situation of women and afro-descendent women in the context of the internal armed conflict.<sup>338</sup> The Commission emphasized that armed conflict exacerbates and heightens the vulnerability of women and afro-descendant women to human rights violations, including forced displacement, violence, discrimination and increased barriers in relation to access to justice, health and education. In light of the human rights situation of women in Colombia, the Commission issued a series of recommendations in its report intended to improve the situation of women and girls in the context of armed conflict.

242. The Commission visited Colombia between September 29 and October 3<sup>rd</sup>, 2014 and met with representatives of the State and civil society with the aim of collecting information on the challenges that women face in their access to complete information from the State in the areas of violence and discrimination and of assessing the situation of afro-descendent women in particular.<sup>339</sup> Emphasizing that access to information is necessary for the exercise of their human rights, the Commission expresses its concern regarding the reports from civil society that women, particularly afro-descendent women, encounter obstacles to access information regarding the processing of their cases and the content of their rights. Moreover, the Commission noted the information on the existence of gaps in the State's collection of statistics on violence against women and the need for those statistics to be disaggregated on the basis of race, ethnicity, age, disabilities, and other factors.

243. The Commission was informed that women encounter barrier to their full access to justice as a result of their lack of knowledge of their rights or how the justice system works. It received information that women are mistreated and re-victimized when they try to seek basic information related to their cases, which often end in impunity. In relation to access to health and women's sexual and reproductive rights, the Commission notes reports by civil society that the State has provided limited access to contraceptives and that women have limited knowledge of their sexual and reproductive rights and no mechanism by which to gain that knowledge. Coinciding with these problems, the Commission was presented with statistics

<sup>338</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II., Doc. 49/13, December 31, 2013.

<sup>339</sup> IACHR, Press Release No. 118/14, [IACHR Chair Concludes Visit to Colombia](#), October 10, 2014.

indicating that Colombia has a high rate of adolescent pregnancy and there are reports in some cases of forced sterilizations of women.

244. With respect to access to information, the State has reported its progress to the Commission regarding its efforts to produce statistics disaggregated on gender and increase awareness among women of their rights. According to the State, the implementation of CONPES 3487 has promoted the inclusion of gender variables and differentiation in information, monitoring and evaluation of plans and policies.<sup>340</sup> Additionally, the State has organized collective methods to empower victims to know the process of re-establishing their rights and specific days on which women victims of gender-based violence can learn their rights.<sup>341</sup> Aimed at addressing the challenges related to sexual and reproductive rights, the State also indicates that it has developed the National Policy on Sexuality, Sexual and Reproductive Rights 2014-2021 through which it proposed sectoral and intersectoral action to guarantee the sexual and reproductive rights of women.<sup>342</sup>

245. In relation to the situation of afro-descendent women, the Commission received information during its visit that the armed conflict and militarization of their lands have resulted in violence against and forced displacement of afro-descendent women. Afro-descendent women informed the Commission that they suffer from threats and acts of physical, psychological, and sexual violence by different armed actors and “in particular the use of rape to silence the work of human rights leaders and defenders.”<sup>343</sup> Further, the Commission noted with concern information that afro-descendent women constitute a high percentage of the displaced population in Colombia because of the economic interests of development mega-projects on their land, which have disrupted the special role of land for the cultural and spiritual survival of afro-descendent women. The forced displacement and persistent discrimination, racism and poverty faced by afro-descendent women have created barriers to exercise their rights to education, health and employment and have led to the loss of their languages and, in some cases, drug addiction and forced prostitution after their relocation.

246. Amnesty International’s report *A Land Title is Not Enough: Ensuring Sustainable Land Restitution in Colombia* highlights the deficiencies in the implementation of Law 1448 of 2011 with respect to land restitution for women victims of forced displacement.<sup>344</sup> Amnesty stated that women were often never recognized as owners or occupants of land in legal and other documentation and, therefore, were forced to show ownership through their relationship to a male land claimant in order to be awarded restitution for their land or risk not being able to receive restitution.<sup>345</sup> The Commission takes note of the claim of the State of Colombia in this regard, that the Land Restitution Unit “has actions” to secure recognition of women’s direct right to land, for example “flexibility in [admission of] proof recognizing rural informality and the little involvement that women have had in public spaces,” among other things.<sup>346</sup>

<sup>340</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pg. 286.

<sup>341</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pg. 19 and 298.

<sup>342</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pg. 283.

<sup>343</sup> IACHR, Press Release No. 118/14, [IACHR Chair Concludes Visit to Colombia](#), October 10, 2014.

<sup>344</sup> Amnesty International, *A Land title is Not Enough: Ensuring Sustainable Land Restitution in Colombia*, AMR 23/031/2014, November 2014.

<sup>345</sup> Amnesty International, *A Land title is Not Enough: Ensuring Sustainable Land Restitution in Colombia*, AMR 23/031/2014, November 2014, p.48.

<sup>346</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 28.



247. The State reported to the Commission that Decree 1480 of 2014 recognized and re-affirmed the State's obligations under Law 1448 to take special measures to protect women victims of sexual violence and other groups exposed to major risk.<sup>347</sup> Additionally, the State indicates that the National Development Plan 2010-2014 provides for the formation of specific plans to guarantee the rights of women in situations of displacement.<sup>348</sup>

248. Furthermore, the Commission emphasizes the multiple, intersection forms of discrimination faced by lesbian afro-descendent women. In addition to the triple discrimination faced by afro-descendent women—based on sex, race, and condition of poverty—lesbians also encounter discrimination and violence based on sexual orientation, specifically in cases of corrective rape.<sup>349</sup> These cases often end in impunity.

249. In relation to the persistent impunity of cases of violence and discrimination against women during the armed conflict, the Special Procedures mandate-holders of the UN Human Rights Council wrote an open letter on September 29, 2014 to express their concern at the proposed Senate Bill No. 85 of 2013 that would restructure and expand the scope of the military's jurisdiction to manage cases of human rights violations that occurred in the context of the armed conflict.<sup>350</sup> In the letter, the mandate-holders emphasize the risk that military jurisdiction would limit the independence and impartiality of the judiciary. However, the Commission received information from the State that, through Directive 01 of 2014, it has worked in conjunction with the technical support offered by the United Nations in order to introduce and emphasize a gender perspective in the military and police forces with respect to sexual violence in the context of armed conflict.<sup>351</sup>

250. In its report to the Commission, the State outlined the steps it took in order to increase access to justice and address the persistent impunity in cases of women victims of sexual violence. The State explains that Law 1719 provides for measures to guarantee access to justice for victims of sexual violence, especially in the context of armed conflict.<sup>352</sup> Moreover, the State informed the Commission that it developed the *Integral plan to guarantee a life free from violence for women*, which coordinates between all institutions

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<sup>347</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pg. 18.

<sup>348</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pg. 288.

<sup>349</sup> During the Colombia visit, the Commission learned of the particular case of an afro-descendent lesbian girl who, after coming out to her father as a lesbian at age 11, was subjected to corrective rape for 14 years by her father's friends. After escaping her father, she was then raped by several illegal armed actors, often in front of her partners, as punishment for her sexual orientation. IACHR, Press Release No. 118/14, [IACHR Chair Concludes Visit to Colombia](#), October 10, 2014. More recently, the State reported that "important actions have been taken to address the particular case," which involves a "woman representative of the LGBTI sectors [who sits] on the departmental [committee] roundtable of Valle del Cauca," who has been provided psychosocial support through the Office of the Ombudsman, she has a 'Plan of Support, Assistance and Full Reparation' (PAARI), and she received compensation in 2012." While the State has asserted that this case "has not led to impunity," it noted that in April 2014, the Office of the Ombudsman received [information on] "new incidents of sexual violence in late 2013 and the representative "received the notification of inclusion [in the register] for displacement and sexual violence." It further noted that "because of her leadership position," protection measures (bullet-proof vest and a cell phone) have been made available to this person." Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 28.

<sup>350</sup> OHCHR, [Open letter by Special Procedures mandate-holders of the United Nations Human Rights Council to the Government and the Congress of the Republic of Colombia](#), September 29, 2014.

<sup>351</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pg. 306.

<sup>352</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pg. 319.

relevant to the prevention and handling of gender based violence.<sup>353</sup> The Commission recognizes the regional dialogues conducted by the State with the judicial branch with the aim of changing the judicial culture to include a gender perspective, and received information from the State that around 1,000 judicial officials are to be trained with a gender perspective.<sup>354</sup> Along similar lines, the State informed the IACHR of its participation in international seminars on how to approach sexual violence in the context of armed conflict, accepting technical assistance from Germany and the United States.<sup>355</sup>

## 5. Journalists and media workers

- 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.
- Continue to adopt the measures necessary to guarantee the security of those who are at special risk by virtue of exercising their right to freedom of expression, whether the threats come from state agents or private individuals. Especially, the State should continue to strengthen the “Program for Prevention and Protection of the Rights to Life, Liberty, Integrity, and Security of Persons, Groups, and Communities”. In order to achieve this, the State should accelerate processes for measuring risk and ensure that the protection and prevention measures implemented to benefit journalists and media workers take into account the specific needs of this group.
- Carry out diligent, impartial, and effective investigations of the murders, attacks, threats, and acts of intimidation committed against journalists and media workers. This entails the creation of specialized units and special investigative protocols, as well as the identification and exhaustion of all possible case theories related to the professional work of the victim.
- Prosecute, under impartial and independent courts, within the standards established by international law, the persons responsible for the crimes committed in retaliation for the exercise of the right to freedom of expression, and make adequate reparation for their victims and family members.
- Adopt the necessary measures so that media workers in situations of risk who have been displaced or exiled can return to their homes in conditions of safety. If these persons cannot return, the State must adopt measures so that they can stay in their chosen place in conditions of dignity, with security measures, and with the necessary economic support to maintain their work and their family lives.

251. In its report *Truth, Justice and Reparation*, the IACHR voiced its concern about the severe acts of violence perpetrated against journalists and media workers in the performance of their activities in the framework of the internal armed conflict.<sup>356</sup> On that occasion, the Commission reminded the State that acts of violence perpetrated against journalists or persons who work in the media involving their professional activities violate the right of these persons to voice and transmit ideas, opinions and information and also violate the rights of citizens and societies in general to look for and receive information and ideas of all kinds.

<sup>353</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pg. 282.

<sup>354</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pg. 291 and 306.

<sup>355</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pg. 298.

<sup>356</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, paragraph 939.

In that respect, the Commission drew special attention to the effects of impunity for such crimes, which fosters repetition of similar violent acts and can exert a powerful deterring impact on the exercise of the freedom of expression, forcing journalists and communicators to censor themselves as the only way to protect themselves.<sup>357</sup>

252. In its report, the Inter-American Commission recognized the decline, over the past few years, in the number of cases involving the killing of journalists and media workers for reasons allegedly involving their profession, as well as the efforts made by the Colombian State to establish and uphold a mechanism to protect communicators at risk and to recognize that journalists and media workers are a target population that should benefit from collective reparation in the framework of the Law on Victims and Land Restitution.<sup>358</sup> On that basis, the IACHR urged the Colombian State to consolidate its actions to achieve a sustained policy of prevention, protection and administration of justice in this matter.

253. The Commission appreciates the Colombian State's response to the report and observes that, in 2014, substantial progress was recorded in terms of investigating and punishing those responsible for crimes against exercising freedom of expression. In particular, this Commission takes note of the decision of the Office of the Attorney General of the Nation to categorize cases involving killings and attacks against journalists as crimes against humanity or severe breaches of human rights in the context of the conflict.

254. Likewise, the IACHR recognizes the State's efforts to establish, in consultation with civil society, strategies to prevent violence against this group and thus "enable them to carry out their work and contribute to building a better-informed citizenry."<sup>359</sup> Regarding this, the Commission observed that the Government would be drafting the public policy to guarantee the right to freedom of expression in the exercise of journalistic and communication activities in Colombia. As reported, in 2014, the assessment stage was developed, on the basis of which "it is envisaged to start up the phase of drawing up the policy's goals, as well as its strategies and lines of action."<sup>360</sup> The IACHR is encouraging the State to continue its efforts in this matter.

255. Without detriment to the above and as specified below, the IACHR observes that there are still challenges to exercising freedom of expression without violence in Colombia, such as continued aggression, assaults and threats against journalists and persons working in media, which led to the tragic killing of two journalists in 2014, and obstacles to the effectiveness and sustainability of the prevention and protection program.

### **1. Assaults on life and personal integrity, threats and harassment against journalists and communicators**

256. On February 19, the cameraman Yonni [or Jhony] Steven Caicedo was killed in Commune 12 of the city of Buenaventura, the department of Valle del Cauca. According to information received, Caicedo was paying a personal visit when two individuals allegedly shot him. Caicedo had been working as a cameraman for the local television stations *TV Noticias* and *Más Noticias* until he had to leave the city because of death threats against him. The threats had appeared seven months before while he was covering a homicide in Commune 12 of this city. At the recommendation of police officers, the cameraman had left the

<sup>357</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, paragraph 939.

<sup>358</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, paragraph 925.

<sup>359</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014.

<sup>360</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014.

city. On February 21, the National Protection Unit had released a statement strongly condemning the killing of the cameraman and calling upon the Attorney General's Office to investigate the incident.<sup>361</sup>

257. The IACHR was apprised of the killing of the journalist Luis Carlos Cervantes on August 12 in the municipality of Tarazá, in the subregion of Bajo Cauca, in the department of Antioquia. According to information received, Cervantes was travelling as a passenger on a motorcycle when he was approached by unknown individuals who shot him several times. Cervantes, a journalist for the community radio *Morena FM* and correspondent, until 2013, for the station *Teleantioquia Noticias*, had been receiving death threats since 2010. At that time, it was pointed out that those threats may have been made because of the publication of reports on alleged cases of corruption in the local government and that they were being made by criminal gangs. Because of his situation, the Committee for Evaluating Risks and Recommending Measures (Comité de Evaluación de Riesgo y Recomendación de Medidas—CERREM) had approved protection measures, which consisted of two men for protection and a conventional motor vehicle, which had been implemented by the National Protection Unit (Unidad Nacional de Protección—UNP) since June 2012 until July 24, 2014, on which day the security arrangement was dismantled.<sup>362</sup> Regarding this matter, on August 12, the UNP issued a statement indicating its decision to lift the security arrangement, a decision taken on June 5, 2014 by virtue of the ordinary risk that had been assessed by the Preliminary Assessment Group and that had been ratified by CERREM. The UNP added that the risk study had pointed out that there was no causal connection between the threats and journalistic activities, among other reasons because Cervantes was no longer doing any journalism for a year and that his work as a broadcaster was to program music.<sup>363</sup>

258. The IACHR has been apprised of arbitrary detentions, aggression and threats against various journalists in 2014, which were allegedly connected to their activities as journalists. Among the journalists threatened and/or assaulted, there were Claudia Julieta Duque,<sup>364</sup> Johanna Conteras and the camerawoman Laura Vargas, from the news broadcasting program *CM*;<sup>365</sup> Manuel Sánchez from the local television station *C*;<sup>366</sup> Francisco Alvarado, photographer for the newspaper *La Calle*;<sup>367</sup> Diana Giraldo, deputy director of the regional newspaper *Vanguardia Liberal*;<sup>368</sup> Gustavo Álvarez Gardeazabal, from the program 'La Luciérnaga' of

<sup>361</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. February 26, 2014. [Comunicado de Prensa R 21/14. Relatoría Especial condena asesinato de periodista en Colombia](#); National Protection Unit (UNP). February 21, 2014. [Comunicado - UNP](#); Foundation for Freedom of the Press (FLIP). February 20, 2014. [Asesinan a Yonni Steven Caicedo, camarógrafo de Buenaventura](#); *Semana*. February 21, 2014. [Sicarios asesinan a camarógrafo en Buenaventura](#); *Contagio Radio*. February 20, 2014. [Asesinan a Yonni Steven Caicedo joven periodista en Buenaventura](#) (AUDIO).

<sup>362</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. August 14, 2014. [Comunicado de Prensa R 85/14. Relatoría Especial condena asesinato de periodista en Colombia](#); Foundation for Freedom of the Press (FLIP). August 12, 2014. [La FLIP condena asesinato del periodista Luis Carlos Cervantes, en Tarazá, Antioquia](#); *El Colombiano*. August 12, 2014. [El periodista Luis Carlos Cervantes fue asesinado en Tarazá](#); Colombian Journalists Federation (FECOLPER). August 13, 2014. [Asesinado el periodista Luis Carlos Cervantes, en Tarazá, Antioquia](#); *Semana*. August 12, 2014. [A periodista asesinado le habían retirado escolta](#); Committee to Protect Journalists (CPJ). August 13, 2014. [Asesinan a director de radioemisora colombiana que había sido amenazado](#); *Noticias Caracol*. August 12, 2014. [Asesinado el periodista Luis Carlos Cervantes en Tarazá, Antioquia](#); *El Nuevo Día*. August 13, 2014. [Asesinado el periodista Luis Carlos Cervantes, en Tarazá, Antioquia](#).

<sup>363</sup> National Protection Unit (UNP). Ministry of the Interior. [Comunicado Luis Carlos Cervantes](#). August 12, 2014; *El Tiempo*. August 12, 2014. [Amenazas a periodista asesinado no eran por su profesión: UNP](#); RCN *La Radio*. August 13, 2014. [Fiscalía no tramitó oportunamente denuncias sobre amenazas contra periodista Luis Carlos Cervantes: FLIP](#).

<sup>364</sup> Reporters Without Borders (RWB). April 11, 2014. [Continúan las amenazas contra la periodista Claudia Julieta Duque](#); Twitter account of Claudia Julieta Duque (@JulieDuque1). [November 27, 2014 - 16:18](#).

<sup>365</sup> *CM&*. February 20, 2014. [Periodistas de CM& fueron agredidos en clínica de IPS SaludCoop](#); *Semana*. February 21, 2014. [La golpiza a periodista y camarógrafa de CM& en SaludCoop](#); *El Tiempo*. February 20, 2014. [Periodistas de CM& denuncian agresión en clínica de Saludcoop](#).

<sup>366</sup> Foundation for Freedom of the Press (FLIP). March 28, 2014. [En el 2014 la Policía sigue siendo el principal agresor contra la prensa](#); *Canal C 16/YouTube*. March 19, 2014. [Agresión a periodista del Canal C](#).

<sup>367</sup> Foundation for Freedom of the Press (FLIP). March 28, 2014. [En el 2014 la Policía sigue siendo el principal agresor contra la prensa](#);

<sup>368</sup> *Vanguardia Liberal*. April 3, 2014. [Amenazan a Subdirectora de Vanguardia Liberal](#); *El Tiempo*. April 3, 2014. [Subdirectora del periódico Vanguardia Liberal denuncia amenazas](#); Foundation for Freedom of the Press (FLIP). April 3, 2014. [La FLIP rechaza la persecución orquestada desde personas vinculadas a la alcaldía de Bucaramanga contra publicaciones del diario Vanguardia Liberal](#);

*Caracol Radio*;<sup>369</sup> Esteban Venegas, photographer of *Q'Hubo* and *El Colombiano*;<sup>370</sup> Gonzalo Guillén, free-lance journalist;<sup>371</sup> Francisco De la Hoz Sarmiento, journalist and director of *Al Día*;<sup>372</sup> Sixto Alonso Rojas Acero, director of the radio broadcasting station *La Voz Minera de Colombia*;<sup>373</sup> Jorge López Córdoba, coordinator of the newspaper *Al Día*;<sup>374</sup> Luis Fernando Montoya, director of the newspaper *El Puente*;<sup>375</sup> Javier Osuna, director of the foundation *Fahrenheit 451*;<sup>376</sup> Amalfi Rosales of the radio *Noticias Uno* and *El Heraldo de Barranquilla*;<sup>377</sup> Leiderman Ortiz Berrio, from *La Verdad del Pueblo*; Edgar Astudillo, from *Noticiero Bajo Cauca*;<sup>378</sup> Calixto Pérez, from *Caucasia Estéreo*;<sup>379</sup> and Oscar Castaño Valencia, from the station *Cosmovisión*.<sup>380</sup> Furthermore, eight journalists had received death threats made in a leaflet issued by the group "Los Urabeños."<sup>381</sup> In September, the former President and Senator of the Republic, Álvaro Uribe Vélez,

<sup>369</sup> *El Espectador*. April 5, 2014. [Periodista Gustavo Álvarez Gardeazabal denuncia amenazas contra su vida](#); *ADN*. April 7, 2014. [No estoy amenazado / Ariete](#); *Semana*. April 5, 2014. [Periodista Gustavo Álvarez Gardeazabal denuncia amenazas contra su vida](#).

<sup>370</sup> *El Colombiano*. May 2, 2014. [Video de la detención de Esteban Venegas, grabado por él mismo](#); *Semana*. May 1, 2014. [Denuncian detención ilegal de un fotógrafo en las marchas](#); Colombian Journalists Federation (FECOLPER). May 2, 2014. [APA rechaza detención ilegal a fotógrafo de Q'Hubo y El Colombiano](#).

<sup>371</sup> Foundation for Freedom of the Press (FLIP). [Plan para asesinar al periodista Gonzalo Guillén sigue vigente y nuevos hechos aumentan su riesgo](#); Reporters Without Borders (RWB). May 30, 2014. [Revelan nuevo plan para asesinar al periodista de investigación Gonzalo Guillén](#); Office of the Human Rights Ombudsman. October 4, 2014. [Defensoría rechazó amenazas contra el periodista Gonzalo Guillén](#). In 2013, the IACHR Office of the Special Rapporteur for Freedom of Expression was informed of a plan to kill the journalist Gonzalo Guillén and the journalists and commentators Claudia López, León Valencia and Ariel Ávila. Because of the death threats, the journalists and commentators had left the country temporarily. Annual Report 2013. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Paragraph 190.

<sup>372</sup> *Caracol Radio*. June 20, 2014. [Los miembros de un periódico en el departamento no han podido establecer de donde vienen las intimidaciones](#); *Diario del Norte*. June 20, 2014. [Periodista Francisco De la Hoz denuncia persecución en su contra](#).

<sup>373</sup> Colombian Journalists Federation (FECOLPER). July 23, 2014. [Amenazan a integrante del programa radial Democracia al Día](#); *RCN Radio*. July 15, 2014. [Amenazado de muerte comunicador en Paz de Río, Boyacá](#).

<sup>374</sup> Foundation for Freedom of the Press (FLIP). July 16, 2014. [Agentes del ESMAD agreden a periodista del periódico Al Día de Santa Marta](#); *El Tiempo*. July 15, 2014. [Esmad agrede a periodista de 'Al Día' en Santa Marta](#); *El Heraldo*. July 16, 2014. [Policías golpean a periodista de AL DÍA en Santa Marta](#); *El Informador*. July 16, 2014. [Coordinador de noticias de Al Día del Magdalena fue agredido y esposado por miembros del Esmad](#).

<sup>375</sup> Journalists Circle of Bogotá. August 28, 2014. [CPB rechaza fuertes amenazas de muerte contra periodista en el Tolima](#); *Ecos del Combeima*. August 14, 2014. [Luis Fernando Montoya, periodista del Norte del Tolima, fue amenazado de muerte. El comunicador habló con Econoticias](#).

<sup>376</sup> Reporters Without Borders (RWB). September 3, 2014. ["No dejaré de hacer mi trabajo", periodista Javier Osuna Sarmiento](#); Foundation for Freedom of the Press (FLIP). ["No dejaré de hacer mi trabajo", Javier Osuna](#); District Art Institute (IDARTES). September 3, 2014. [El Idartes rechaza el ataque contra el periodista Javier Osuna](#). Twitter account of Javier Osuna @javierosu451. [September 4, 2014 - 21:21](#).

<sup>377</sup> Committee to Protect Journalists (CPJ). September 8, 2014. [Periodista colombiana Amalfi Rosales huye tras amenazas de muerte](#); *El Heraldo*. September 4, 2014. [Autoridades inician plan de protección para periodista amenazada en La Guajira](#); Reporters Without Borders (RWB). September 5, 2014. [La periodista Amalfi Rodríguez se vio obligada a dejar el departamento de la Guajira](#); Inter American Press Association (IAPA). September 9, 2014. [SIP reclama por agresiones en México, Colombia y Bolivia](#).

<sup>378</sup> Reporters Without Borders (RWB). September 26, 2014. [Dos periodistas en la lista negra del grupo paramilitar 'Los Rastrojos'](#); Colombian Journalists Federation (FECOLPER). September 25, 2014. [Dos periodistas amenazados en panfleto de la banda criminal "Los Rastrojos"](#).

<sup>379</sup> *Caracol Radio*. October 9, 2014. [Por amenazas periodista abandona el bajo Cauca en Antioquia](#); *El Tiempo*. October 10, 2014. [Sale de Caucasia otro periodista amenazado](#); José Alvear Restrepo Collective of Attorneys / IPC Press Agency. October 10, 2014. [Amenazas a periodistas en el Bajo Cauca antioqueño](#).

<sup>380</sup> Foundation for Freedom of the Press (FLIP). November 12, 2014. [Periodista denuncia secuestro y extorsión en ejercicio de su labor](#); José Alvear Restrepo Collective of Attorneys. November 12, 2014. [Amenaza a director de Oriéntese Televisión](#); Reporters Without Borders (RWB). November 14, 2014. [COLOMBIA | RSF pide protección para el periodista Oscar Castaño Valencia](#).

<sup>381</sup> *Caracol*. September 30, 2014. [Celeridad en investigaciones por amenazas a periodistas pide Andianos](#); Foundation for Freedom of the Press (FLIP). September 29, 2014. [Doce periodistas amenazados en los últimos siete días](#); *El Heraldo*. September 29, 2014. [Clan Úsuga amenaza de muerte a 8 periodistas del Valle del Cauca](#); Reporters Without Borders (RWB). September 30, 2014. [Nueva lista negra: amenazan de muerte a ocho periodistas colombianos](#); *Semana*. September 29, 2014. [Amenazada la libertad de prensa en el Valle](#); *Semana*. September 29, 2014. [Urabeños amenazan a ocho periodistas](#); *El País*. September 29, 2014. [Piden extremar protección a periodistas del Valle amenazados por 'Los Urabeños'](#); Office of the Human Rights Ombudsman. October 4, 2014. [Defensor del Pueblo rechaza amenazas contra periodistas del Valle](#). According to available information, the Governor's Office of Valle del "strongly" rejected the threats and

had accused *Canal Capital*, headed by the journalist Hollman Morris, of being a media “subservient to terrorism.”<sup>382</sup>

259. Furthermore, on October 28, the magazine *Semana* revealed that the Military Intelligence Station (Central de Inteligencia Militar—CIME) had in its power a list of hundreds of personal and official e-mails of domestic and foreign journalists, civil servants of the Office of the High Commissioner for Peace, ambassadors and members of the International Committee of the Red Cross, among others. According to what was reported, the journalists on the list had, in one way or another, provided coverage for the peace talks being conducted by the national government in Havana, Cuba.<sup>383</sup> In view of the magazine’s disclosures, the Commander of the National Army issued a statement indicating that the Armed Forces and the National Army “do not tolerate this type of action and, if they did occur, they would be ready to get to the bottom of the matter regardless of the consequences.”<sup>384</sup> Likewise, he guaranteed that “remedial and preventive actions have been taken to improve monitoring the process of handling and using information, which includes documentary, hardware, software and human talent management, to prevent incidents in breach of institutional policies from eventually occurring.”

## 2. Investigation of crimes against journalists and media workers for exercising their right to the freedom of expressions

260. The IACHR takes note of the information provided by Colombia, according to which “among the specific goals set forth in the 2013 Action Plan of the Department of the National Specialized Attorney General’s Office for Transitional Justice, it was proposed that investigations be carried out, among others, in those incidents involving severe breaches against journalists and media workers. Likewise, the Office of the Attorney General of the Nation is conducting investigations of crimes committed against journalists, using the National Human Rights and International Humanitarian Law Units, the National Unit against Displacement and Forced Disappearance, and the National Unit against Emerging Gangs, which must give priority to taking up cases involving a differential impact for specific population groups such as journalists.”<sup>385</sup>

261. Regarding this, in August, the IACHR was apprised that two former civil servants of the Administrative Security Department (Departamento Administrativo de Seguridad—DAS) admitted to charges filed against them for the crime of psychological torture, of which the journalist Claudia Julieta Duque was the target.<sup>386</sup> This incident was disclosed in the midst of legal proceedings against seven former civil servants of the DAS for their alleged responsibilities for the crime of “aggravated psychic torture” and persecution of

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called upon authorities to “join efforts to identify the origin of the threats” and “provide all the guarantees needed so that journalism can continue its noble task of informing the inhabitants of the Valle del Cauca.”

<sup>382</sup> Democratic Center. September 17, 2014. “*Me retiro para dirigirme a la Corte Suprema de Justicia: Álvaro Uribe*; *Noticias Canal Capital*/ YouTube. September 17, 2014. “*Canal Capital, medio de comunicación servil al terrorismo*” *Alvaro Uribe Velez Senador*; *El Espectador*. September 17, 2014. “*¿Álvaro Uribe estigmatiza a los medios de comunicación?*” *El Colombiano*. September 24, 2014. *Hollman Morris radica denuncia contra Álvaro Uribe*; *RCN La Radio*. September 24, 2014. “*Director de Canal Capital radica denuncia en contra del senador Álvaro Uribe*; *Semana*. September 24, 2014. “*¿Puede Hollman Morris llevar a Uribe a la cárcel?*” The IACHR takes note of the statements made by the Ministry of the Interior, Juan Fernando Cristo, who underscored that “the government obviously rejects this kind of stigmatization and this kind of sabotage [...] It is very important when those accusations are made, when an attempt is made to discredit someone, one thinks of the subsequent impacts that this kind of action can exert which can end up by putting the lives of persons in jeopardy.” *Noticias Canal Capital*/YouTube. September 30, 2014. “*Gobierno nacional rechaza estigmatización contra Canal Capital*”; *El Espectador*. September 30, 2014. “*Mininterior pidió no estigmatizar al Canal Capital*”; *Caracol Radio*. September 30, 2014. “*Gobierno rechazó estigmatización de Uribe a Canal Capital*”; *La FM*. September 30, 2014. “*Mininterior pide no hacer daño a Canal Capital*.”

<sup>383</sup> *Semana*. October 28, 2014. “*La polémica lista de Inteligencia Militar*”; *Semana*. October 28, 2014. “*Los de la lista*”; *Foundaton for Freedom of the Press*. October 29, 2014.

<sup>384</sup> National Army of Colombia. October 28, 2014. “*Comunicado de Prensa*.”

<sup>385</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014,.

<sup>386</sup> *El Espectador*. August 1, 2014. “*Exfuncionarios del DAS aceptaron cargos por tortura psicológica a Claudia Julieta Duque*”; *El Tiempo*. August 1, 2014. “*Dos exagentes del DAS aceptan tortura psicológica a periodista*”; *Terra*. August 1, 2014. “*El DAS sí torturó psicológicamente a periodista Julieta Duque*.”

Duque, and they were remanded to pretrial detention in 2013.<sup>387</sup> On October 3, the Office of the Attorney General of the Nation (Fiscalía General de la Nación—FGN) released a statement indicating that it had charged four former directors of the DAS with the crime of aggravated torture against the journalist. The statement specified that, in the same case file, the Attorney General's Office “ruled that copies of the proceedings be sent to the Commission of Accusations of the House of Representatives, as it was obviously the entity responsible for judging [Álvaro] Uribe Vélez for his actions as President of the Republic, so that an investigation would be conducted for the former President's responsibility for the torture that Duque was subjected to.”<sup>388</sup> On November 24, the Attorney General's Office issued another press release indicating that the National Review and Context Directorate (DINAC), through the special police group comprised of the CTI and DIJIN, had captured a former civil servant of the Special Intelligence Group of the then DAS to effectively enforce an order ensuring his preventive detention as the alleged co-perpetrator of the crime of aggravated torture.<sup>389</sup>

262. On July 31, members of the Judicial Police for Organized Crime of the Attorney General's Office and the National Police Force recaptured Colonel (ret.) Jorge Eliécer Plazas Acevedo, who will have to face trial for the alleged co-perpetration of the crime of aggravated homicide of the journalist and humorist Jaime Garzón, perpetrated in 1999.<sup>390</sup>

263. In its report, the IACHR underscored that one of the most worrying impacts of the long delay in investigating many cases in Colombia is the expiry of the time-limits because of the statute of limitations for criminal proceedings.<sup>391</sup> According to information received, in 2014 the time-limits for filing criminal proceedings for the killing of the journalist Martín Eduardo Múnera in Medellín on September 3, 1994 had expired.<sup>392</sup>

264. In that respect, the IACHR takes into account that, on September 26, the Human Rights Unit of the Attorney General's Office confirmed that the kidnapping, torture and sexual violence against the journalist Jideth Bedoyan constitute a Crime against Humanity. The prosecutor in charge of the case had already taken this decision on September 20, 2012.<sup>393</sup> In 2014, the Attorney General ratified the decision and

<sup>387</sup> IACHR. Annual Report 2013. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Paragraph 160.

<sup>388</sup> Office of the Attorney General of the Nation (FGN). October 3, 2014. [Fiscalía acusa a cuatro exdirectivos del DAS por tortura agravada contra Claudia Julieta Duque](#).

<sup>389</sup> Office of the Attorney General of the Nation (FGN). November 24, 2014. [Capturado exfuncionario del DAS por tortura agravada en contra de Claudia Julieta Duque](#).

<sup>390</sup> Office of the Attorney General of the Nation (FGN). July 31, 2014. [Recapturado coronel \(r\) Jorge Eliécer Plazas Acevedo, acusado por homicidio del periodista Jaime Garzón](#); *El Diario*. August 13, 2014. [Los hermanos de un periodista colombiano asesinado hace 15 años ven un avance judicial](#).

<sup>391</sup> In 2011, the statute of limitations came into force for criminal proceedings regarding at least seven killings of journalists: Arsenio Hoyos, killed September 13, 1991 in Granada, Meta; Carlos Julio Rodríguez and José Libardo Méndez, killed May 20, 1991 in Florencia, Caquetá; Julio Daniel Chaparro and Jorge Enrique Torres, killed April 24, 1991 in Segovia, Antioquia; Rafael Solano Rochero, who died October 30, 1991 in Fundación; Magdalena and Néstor Henry Rojas Monje, who died December 28, 1991 in Arauca. IACHR. Annual Report 2011. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser. L/V/II. Doc. 69. December 30, 2011. Paragraph 101.

In 2012, the statute of limitations came into force for criminal proceedings regarding at least two killings of journalists: John Félix Tirado Castañeda, killed August 5, 1992 in the municipality of Cartago, department of Valle del Cauca; José Domingo Cortés Soto, killed November 15, 1992 in the city of Valencia. In 2013, the statute of limitations came into force for criminal proceedings regarding at least five killings of journalists: Gerardo Didier Gómez, killed February 11, 1993 near the city of Cali; Carlos Lajud Catalán, killed March 19, 1993 in the city of Barranquilla; Nelson de la Rosa Toscazo, killed August 3, 1993 in Cartagena; Manuel José Martínez Espinosa, killed September 28, 1993 and Danilo Alfonso Baquero Sarmiento, killed December 26, 1993 in the city of Tame, Arauca. IACHR. Annual Report 2013. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013.

<sup>392</sup> Committee to Protect Journalists (CPJ). [Martín Eduardo Munera](#); Foundation for Freedom of the Press (FLIP). September 16, 2014. [Balance judicial para la prensa. Prescribió el caso del periodista Martín Eduardo Múnera](#).

<sup>393</sup> Office of the Attorney General of the Nation (FGN). September 20, 2012. [Declaración del Fiscal General de la Nación, Eduardo Montealegre Lynett, sobre el caso de la periodista Jineth Bedoya, Neiva \(Huila\)](#); IFEX/Foundation for Freedom of the Press (FLIP).

specified that “the most sublime and core principles of humanity were attacked until they were degraded, deeply affecting human decency, her condition as a woman and the projections stemming from these entities, for example, the exercise of her profession as a journalist.”<sup>394</sup> On September 30, the Office of the Attorney General of the Nation released a statement indicating that a prosecutor of the National Specialized Directorate for Human Rights and International Humanitarian Law “filed criminal charges against Mario Jaimes Mejía, aka ‘El Panadero,’ for being the unworthy co-perpetrator of the crimes of simple aggravated kidnapping and torture, combined with the concomitant count of aggravated violent sexual intercourse, of which the journalist Jineth Bedoya Lima was the victim.”<sup>395</sup>

265. On November 24, 2014, the Office of the Attorney General of the Nation released a statement indicating that the National Review and Context Department (Dirección Nacional de Análisis y Contextos—DINAC) had promoted the investigation of the killing of Álvaro Gómez Hurtado “which shall not be subject to the statute of limitations next year,” because “it is understood that the assassination of Álvaro Gómez Hurtado belongs to the category of severe violations of human rights.”<sup>396</sup> Gómez Hurtado, director of the newspaper *El Nuevo Siglo*, was killed on November 2, 1995.<sup>397</sup>

266. The IACHR takes note of the information provided by the State, according to which, through the Director of the National Specialized Attorney General’s Office of Transitional Justice, “complete information about proceedings involving victims identified as journalists is being consolidated in order to determine the status of the investigation. Likewise, all the departments of the Attorney General’s Office have opened up a joint forum for participation with the Foundation for Freedom of the Press (Fundación para la Libertad de Prensa—FLIP) where much thought is being given to working together to improve the handling of investigations and the administration of justice in cases where the victims are journalists.”<sup>398</sup>

### 3. Mechanism to protect journalists and media workers and prevention strategies

267. According to the National Protection Unit (Unidad Nacional de Protección—UNP), from January to June, 82 cases involving journalists and media workers were assessed. Of these cases, 55 were classified as extremely risky.<sup>399</sup> In its response to the IACHR, Colombia reported that “[i]n 2013, in 28 cases journalists were granted emergency measures and so far this year 2014, emergency measures have been granted to 40 journalists. In 2013, about fifteen billion pesos were invested in material measures to protect all journalists in various parts of the country. In 2014, close to nine billion pesos were invested for this population.”<sup>400</sup> It also explained that currently “UNP protects 104 journalists, assigning more than 150 bodyguards to them, along with 56 comprehensive protection arrangements. Furthermore, it works hand in hand with organizations and associations of journalists who report and refer cases to start up a protection roadmap when a journalist’s life and integrity are at risk.” The State also reported that the UNP, working with

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September 13, 2012. [Caso de periodista colombiana secuestrada declarado crimen de lesa humanidad](#); *El Espectador*. September 13, 2012. [Justicia en caso Jineth Bedoya](#).

<sup>394</sup> Foundation for Freedom of the Press (FLIP). September 30, 2014. [Fiscalía confirma que el caso de Jineth Bedoya es un Crimen de Lesa Humanidad](#).

<sup>395</sup> Office of the Attorney General of the Nation (FGN). September 30, 2014. [A juicio alias El Panadero por el caso de la periodista Jineth Bedoya](#).

<sup>396</sup> Office of the Attorney General of the Nation (FGN). November 24, 2014. [Comunicado de prensa 069](#).

<sup>397</sup> Historical Memory Center. *Asesinato Álvaro Gómez Hurtado (Universidad Sergio Arboleda)*. Available for consultation at: <http://centromemoria.gov.co/multimedia/cartografia/>

<sup>398</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014.

<sup>399</sup> <http://www.unp.gov.co/la-unp/Documents/Sub%20evaluaci%C3%B3n%20de%20riesgo.pdf>

<sup>400</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014.



the Colombian Journalists Federation (Federación Colombiana de Periodistas—FECOLPER], through the Tactical and Technical Operations Group, organized talks and courses on self-protection with journalists from the departments of Huila and Tolima.<sup>401</sup>

268. In September, a shortfall in the national protection system amounting to close to 70 billion pesos (about US\$30.6 million) was disclosed to the public.<sup>402</sup> The Minister of the Interior, Juan Fernando Cristo, and the Director of UNP, Andrés Villamizar, announced a plan to bring down costs “without affecting the safety of those who, according to risk studies, require protection on the basis of security arrangements.” In that respect, they also indicated that “these measures would not affect population groups, such as human rights defenders, land claimants, journalists, ethnic minorities.”<sup>403</sup> On November 6, the UNP’s Director indicated that if they did not receive “in the next few hours the resources needed from the Finance Ministry, in the next eight days they would be suspending all arrangements.”<sup>404</sup> Afterwards, it was learned that the Finance Ministry had deposited an amount close to 30 billion, to which the UNP’s Director responded that this money partially solved the budget issue.<sup>405</sup>

269. The Foundation for Freedom of the Press (Fundación para la Libertad de Prensa—FLIP), an organization participating as a permanent guest on the Committee to Assess Risks and Recommend Measures (Comité de Evaluación de Riesgo y Recomendación de Medidas—CERREM),<sup>406</sup> indicated that, since “mid-September, austerity measures that were implemented by UNP have severely obstructed the reporting activities of journalists at risk. They must choose between doing journalism without the protection they are entitled to and not doing their work. In some cases, journalists must pay the expenses required for the protection arrangements assigned by the State to function; in other cases requests for authorization to travel from one place to another are turned down.” Likewise, FLIP indicated that “[t]he arrangements have not been suspended and that is the premise on which protection authorities base their argument that they are guaranteeing the safety of journalists. Nevertheless, protection arrangements are not working and that is why UNP is not fully guaranteeing the activities of journalists.” Regarding exchanges with the Finance Ministry and UNP, FLIP indicated that “[b]eyond the stances taken by the Finance Ministry, the Ministry of the Interior and UNP, there is the duty to provide protection to persons whom the State itself has identified as being at risk. The Government placed those protected into the heart of its internal tension, triggered unnecessary turmoil among those protected and revealed the fragility of the protection program’s sustainability.”<sup>407</sup>

270. Furthermore, the State reported that, in implementing Law 1448 of 2011, the State “has drawn up the strategy called ‘Victims Abroad,’ which includes journalists being persecuted for being journalists and who are living outside Colombia.” Regarding the right to integral redress, the State asserted that it has carried out the following actions to guarantee its effectiveness: (i) Guide ‘General orientations for

<sup>401</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014.

<sup>402</sup> La F.M. September 2, 2014. [MinInterior: hacen falta recursos para garantizar seguridad de amenazados en el país](#). Foundation for Freedom of the Press (FLIP). November 7, 2014. [Crisis del sistema de protección en Colombia: falta de una postura coherente del gobierno y desprotección judicial para garantizar libertad de prensa](#).

<sup>403</sup> Ministry of the Interior. September 18, 2014. [MinInterior presentó plan de reducción de gastos en esquemas de protección](#); National Protection Unit (UNP). September 22, 2014. [Medidas de austeridad tomadas por el Gobierno Nacional permitirán un ahorro anual de 65 mil millones de pesos](#).

<sup>404</sup> Twitter account of Andrés Villamizar (@villamizar). [November 6, 2014 - 13:38](#).

<sup>405</sup> Twitter account of Andrés Villamizar (@villamizar). [November 6, 2014 - 17:12](#); *Noticias Caracol/EFE*. November 6, 2014. [UNP se reúne con Minhacienda tras anunciar retirada de esquemas de protección](#)

<sup>406</sup> CERREM, which is comprised of 13 entities, 5 standing members and 8 guest entities, is aimed at providing comprehensive risk assessments, as well as recommending protection measures and complementary actions. National Protection Unit (UNP). [¿Cómo lo hacemos?](#); Ministry of the Interior. [Decreto No. 4912](#). December 26, 2011. Article 38.

<sup>407</sup> Foundation for Freedom of the Press (FLIP). November 7, 2014. [Crisis del sistema de protección en Colombia: falta de una postura coherente del gobierno y desprotección judicial para garantizar libertad de prensa](#).

providing services, assistance and reparation to victims abroad,' which has specific guidelines with regard to Services, Assistance and Reparation for Victims Abroad, in the framework of Law 1448 of 2011; (ii) Strengthening the process of taking statements and international registration, using the online registry; (iii) Route for Supporting Victims of Forced Displacement Abroad and a Procedure for Return or Relocation of these victims. The State also highlights that it has made major adjustments to the public policy aimed at improving guarantees for the rights of the victims of displacement who wish to return or be relocated, incorporated into the protocol for supporting returns and relocations, adopted by means of Resolution 329 of 2014.<sup>408</sup>

#### 4. Collective reparations program for journalists

271. In its response to the report of the IACHR, the State said that "in order to restore the necessary conditions and guarantees for the exercise of freedom of expression and freedom of the press, journalists have been included as one of the priority population groups in the Collective Reparations Program as they belong to the social and political groups and organizations that have been highly victimized in the internal armed conflict."<sup>409</sup> On this topic, the State noted that the process "aims to redress the damages caused to journalism in Colombia" and it is based on the "recognition of the violation of the human rights of the journalists of the country and assaults on freedom of the press and of expression and the right of access to information, in the context of the armed conflict."<sup>410</sup> The State is currently working to determine expectations with regard to collective reparations and seeks to move forward, *inter alia*, to the stages of compiling and diagnostically assessing the collective harm as well as expanding individual access to reparations by identifying cases, thus enabling the process of determining the identities all journalist victims to continue.<sup>411</sup>

272. The State said that within that same context and to mark Journalist's Day, in February 2014 the Victims Unit (UARIV), the Office of the Attorney General, and the UNP "reviewed the security conditions and ancillary judicial actions in the reparations process."<sup>412</sup> In addition, a research document was prepared, titled *Periodistas y medios colombianos en medio del conflicto armado. Una perspectiva de memoria histórica 1975 – 2010* [Colombian Journalists and Media in the Midst of the Armed Conflict: A Historical Perspective, 1975 – 2010], which provides an account of the social persecution that a number of journalists suffered while practicing their profession in the context of the internal armed conflict.

#### Conclusión

273. Based on the above information, the IACHR reiterates its recommendation that the State of Colombia 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,

<sup>408</sup> Among these adjustments, the State reported that, for example (i) there is a clear roadmap available for victims abroad, coordinated with the solidarity return of Law 1565 of 2012, (ii) return and relocation processes are carried out jointly with strategies for psychosocial support and rebuilding of the social fabric, and (iii) the victims benefiting from judgments for land restitution have a concrete roadmap to prioritize and materialize their return or relocation.

<sup>409</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014.

<sup>410</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIIID-15-017750, of February 26, 2015, p. 29.

<sup>411</sup> The State points out that "the group entitled to reparation is made up of journalists, family members and media," in other words, "it includes editors-in-chief, editors, cameramen, graphic reporters, newspaper vendors, among others, from different print, television, radio and digital media," and also includes "nationwide and regional organizations and professional associations defending the right to freedom of expression and to the exercise of journalism, and those who engage in monitoring and tracking cases of violations of these rights." Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIIID-15-017750, of February 26, 2015, p. 29.

<sup>412</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014.

particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines regarding respect for the right to freedom of expression, and that it compile detailed, disaggregated criminal statistics on violence against journalists and the criminal prosecution of these crimes.

274. The IACHR also urges the state of Colombia to continue to adopt effective protection measures to guarantee the security of those who are at special risk by virtue of exercising their right to freedom of expression, whether the threats come from state agents or private individuals. Especially, the State should continue to strengthen the “Program for Prevention and Protection of the Rights to Life, Liberty, Integrity, and Security of Persons, Groups, and Communities”. In order to achieve this, the State should ensure its financial sustainability and accelerate processes for measuring risk and ensure that the protection and prevention measures implemented to benefit journalists and media workers take into account the specific needs of this group.

275. The Commission also recommends that the state continued to carry out diligent, impartial, and effective investigations of the murders, attacks, threats, and acts of intimidation committed against journalists and media workers, and that it prosecute, under impartial and independent courts, within the standards established by international law, the persons responsible for the crimes committed in retaliation for the exercise of the right to freedom of expression, and make adequate reparation for their victims and family members. Finally, the IACHR urges Colombia to continue to adopt the necessary measures so that media workers in situations of risk who have been displaced or exiled can return to their homes in conditions of safety, and that it move forward with the implementation of the Collective Reparations Program for journalists and media workers.

## **6. Discrimination against lesbian, gay, bisexual, trans and intersex persons**

- Adopt the measures necessary to ensure that the rights of LGBTI persons to equality and non-discrimination are respected by the various state authorities and offices.
- Design and adopt the measures necessary to prevent acts of violence and discrimination against lesbian, gay, trans, bisexual, 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.
- Adopt the state measures necessary to ensure that effective investigations are undertaken in cases of assassinations and acts of violence against LGBTI persons, including the lines of investigation that make it possible to consider whether they were committed based on the real or perceived sexual orientation, gender identity, or gender expression of the victims. To strengthen the capacity of authorities in charge of investigating and responding to cases of discrimination and violence against LGBTI persons.
- Adopt the state measures necessary to effectively implement Directive 006 of 2010 with a view to preventing cases of police abuse. Consider adopting additional measures not only to train and raise the awareness of staff in the area of the human rights of LGBTI persons, but also to more globally address LGBTI persons and the protection of their rights by the police and judicial officers.
- Adopt the necessary and effective state measures so that disciplinary investigations and proceedings can go forward against public servants who perform acts of verbal or physical violence against LGBTI persons.
- Adopt measures for properly applying the existing legal provisions, as applicable, by judicial officers in the cases of violence against LGBTI persons.
- Design and implement effective measures for providing adequate attention to LGBTI persons who have been displaced; adopt a different approach to the impact of the armed conflict specifically on LGBTI persons. Based on these measures, perform trainings and conduct awareness-raising campaigns for public servants who work with the forcibly displaced population as to the needs and rights of LGBTI persons.
- Design and promote information and registration systems with official data gathered nationwide, which make it possible to make visible and effectively address the human rights violations committed against LGBTI persons.

- Adopt state measures needed to establish greater clarity as to the selection criteria for cases for the “Roundtable for Urgent Cases” (Mesa de Casos Urgentes).
- Design, adopt, and implement a comprehensive national public policy for protecting the rights of LGBTI persons.

276. The Government of Colombia informed the IACHR that “significant progress has been made” with the 10 recommendations concerning the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in the report *Truth, Justice, and Reparation*.<sup>413</sup> However, the IACHR notes that violence and discrimination against LGBTI persons persist in Colombia in the framework of the armed conflict. Civil society organizations in general say that while there has been some progress, for instance, with respect to the identification of LGBTI victims in the armed conflict, the State's response to the problems of violence and discrimination has been wanting and that serious obstacles arise in terms of access to justice and reparations. In the section below the IACHR highlights the most salient findings from its follow-up on the recommendations on LGBTI persons in its report *Truth, Justice, and Reparation*.

**a. Roundtable for Urgent Cases [*Mesa de Casos Urgentes*]**

277. To begin with, the IACHR would like to acknowledge the efforts of State to address violence and discrimination against LGBTI persons. Among other measures, the IACHR noted the implementation in 2012 of the Roundtable for Urgent Cases (hereinafter “the Roundtable”), composed of various government entities, with the purpose of handling human rights violations against LGBTI persons.<sup>414</sup> The IACHR also welcomes the steps taken to extend the Roundtable’s scope of action to other parts of the country, which has enabled direct dialogue and concrete measures for the benefit of LGBTI persons in the departments of Atlántico, Bolívar, Valle del Cauca, and Sucre, as well as in the city of Medellín.<sup>415</sup> The State also reported that the Ministry of the Interior took part in a working group meeting to refine the selection criteria for cases referred to the Roundtable.<sup>416</sup> For its part, the organization *Colombia Diversa* recognized as a step forward the existence of a draft decree intended to institutionalize the Roundtable. However, it noted structural problems with the decree since it is not known what shape access to assistance will take or what protection measures will be granted in that regard.<sup>417</sup>

**b. The Role of the Judicial and Legislative Branches of Government**

278. The IACHR acknowledges the important progress made in 2014 in terms of recognition of the rights of LGBTI persons, particularly through judgments adopted by the Constitutional Court with respect to labor matters, healthcare, and recognition of the rights of same-sex couples. Thus, the IACHR took note of

<sup>413</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 334.

<sup>414</sup> According to the State, the agencies that make up the Roundtable are the Office of the Vice President of the Republic, Ministry of the Interior, Office of the Procurator General, Office of the Attorney General, National Police, Office of the High Presidential Advisor on Human Rights, National Protection Unit, and Ombudsman’s Office. Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014.

<sup>415</sup> The IACHR takes note of the tangible results reported by the State in these areas of the country, including television and radio awareness campaigns and projects at the community level as well as other educational material; the inclusion of LGBTI persons as social sectors in development plans; development of access to care for LGBTI victims of prejudice-based assault or violence, including guidance for victims on enforcing their rights. Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pp. 341-342.

<sup>416</sup> No information was provided as to the date of the working group’s meeting or the concrete results thereof. Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 355.

<sup>417</sup> Colombia Diversa, *Información sobre situación de derechos humanos de personas LGBTI en Colombia* [Information on the human rights situation of LGBTI persons in Colombia], received on December 11, 2014.

the judgment in the case of Grace Kelly Bermúdez, which ordered the Sub-Directorate for LGBTI Affairs of the Secretariat for Social Integration of the Office of the Mayor of Bogotá to exempt transgender persons who participate in that entity's recruitment and hiring processes from the requirement to present a military identity card.<sup>418</sup>

279. Having said that, the IACHR recommends that the State of Colombia adopt a law on gender identity that is consistent with international human rights standards and fully recognizes the right to an identity of transgender persons under a non-pathologizing perspective that respects their dignity. In that connection, the IACHR takes note of the request made by the Constitutional Court in June 2014 to the Congress of the Republic, urging it "to pass a comprehensive law systematically governing the rights of transgender persons."<sup>419</sup> Failing that, the IACHR recommends that the State at least adopt the necessary measures to recognize the right to an identity of transgender persons and that this be reflected in the citizen's identity card [*cédula de ciudadanía*], without the need to pursue formalities considered excessive by transgender rights defenders, involving judicial proceedings in the voluntary jurisdiction.<sup>420</sup>

280. Likewise, the IACHR notes the decision of the Constitutional Court that urged the Ministry of Health to draw up, in conjunction with the medical community, official clinical practice protocols for the treatment of intersex persons. Thus, the Ministry of Health was asked to prepare mandatory guidelines "so that they might receive prompts and adequate attention at healthcare facilities should they wish sexual re-adaptation."<sup>421</sup>

281. The IACHR also noted in its report *Truth, Justice and Reparation* that it had received information about a delay of more than three years by the Constitutional Court in issuing its judgment in the custody suit brought in the name of Ana Leiderman and Verónica Botero, a lesbian couple who had filed an application whereby Verónica sought to adopt Ana's biological daughter.<sup>422</sup> The IACHR acknowledges the jurisprudential stride made by the Constitutional Court in its decision of August 2014 by which it granted the custody sought by the couple.<sup>423</sup> In this regard, the IACHR recalls that the American Convention does not define a limited concept of family, nor does it only protect a "traditional" model of the family.<sup>424</sup>

### c. Lack of a National Public Policy on LGBTI Persons

282. In its report *Truth, Justice, and Reparation*, the IACHR noted with concern that there was no consistent public policy with regard to the rights of LGBTI persons at the national level and it recommended that State adopt one. In that connection, the State informed the IACHR that the Ministry of the Interior was in the process of drafting such a policy, to which end it issued in June 2014 a call for proposals. The contract was

<sup>418</sup> In that regard, the Constitutional Court ruled, "[I]n short, human dignity and the right to free development of one's personality give substance and scope to the right of self-determination of gender identity as an essential and inalienable part of the personality; therefore, an individual may not be persecuted, singled out, or discriminated against for their gender identity." Constitutional Court, [Judgment T-476/14](#), July 9, 2014.

<sup>419</sup> Constitutional Court, [Judgment T-476/14](#), July 9, 2014, operative item 4., available at

<sup>420</sup> In that respect, the IACHR notes that the Constitutional Court has pending on its docket a suit for protection that seeks to eliminate the voluntary jurisdiction requirement for transgender persons who want to change the sex shown on their identity cards.

<sup>421</sup> El Espectador, "[Ordenan protocolo para cambio de sexo](#)," October 14, 2014. Similarly, the IACHR has urged OAS member states to "[r]evise medically accepted protocols calling for cosmetic and non-medically necessary surgeries for intersex infants, children and adults; and to address underlying causes of violence against intersex persons linked to a general lack of respect and acceptance of body diversity in society." IACHR, Annex to Press Release No. 153A, "[An Overview of Violence against LGBTI Persons: A Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014](#)," December 17, 2014.

<sup>422</sup> IACHR, *Truth, Justice, and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, December 31, 2013, par. 987.

<sup>423</sup> Semana, "[La primera pareja del mismo sexo que podrá adoptar](#)," August 28, 2014. See also, Constitutional Court, [Communique No. 35](#), August 28, 2014.

<sup>424</sup> Inter-American Court of Human Rights, *Atala Riffo and Daughters v. Chile*, February 24, 2012, par. 142, citing Advisory Opinion OC-17/02, *supra*, note 122, pars. 69 and 70.

awarded the following month to the ATENEA group, in which “it was stipulated that drafts of an administrative decree, public policy, and plan of action on LGBTI persons would be delivered in December 2014.”<sup>425</sup> As of the date of this report (January 2015), however, the IACHR noted that in spite of the various steps taken by the State towards the formulation of a national public policy on LGBTI persons in Colombia, such a national public policy has still not been adopted. For their part, civil society organizations report that no such national public policy was included in the National Development Plan (2014-2018) or the Annual Budget law (2015).<sup>426</sup>

283. The IACHR commends the State on its efforts to ensure a participatory public-policy shaping process. With regard to that, the State reports that this process has created important permanent coordination and dialogue mechanisms with different social sectors. In addition, the IACHR notes the importance that the State attaches to the adoption of a national public policy, saying that “it is urgent to continue disseminating throughout the country the differential approach adopted by the various institutions concerned, in order effectively to decentralize inclusive assistance to LGBTI persons.”<sup>427</sup>

284. The IACHR reiterates that a national public policy also needs to be adopted given the differences between the capital and the rest of the country in terms of recognition of rights and availability of services. Following her visit to Colombia in October 2014, the President of the IACHR noted “the vast differences in terms of the exercise and enjoyment of human rights by ... LGBTI persons in the capital city of Bogotá, in comparison to the rest of the country where the situation is far more precarious.”<sup>428</sup> One such difference is visible in the important accomplishment made by the Office of the Mayor of Bogotá with the creation of an LGBTI shelter (*Casa Refugio*), which offers protection to LGBTI victims of prejudice-based violence, under a comprehensive assistance approach.<sup>429</sup> However, the IACHR received no information about other such measures elsewhere in the country. In Colombia “there is no state response to the situation of remote communities in rural areas, which is compounded by the discrimination and violence against LGBTI persons by armed groups,”<sup>430</sup> said one defender.

#### **d. Obligation to produce official data on the situation of LGBTI persons’ rights**

285. In its report *Truth, Justice, and Reparation*, the IACHR recommended that the State design and promote information and registration systems on human rights violations committed against LGBTI persons. In that connection, the State informed that the aim is to include the design and implementation of information and registration systems with a differential approach in the public policy’s guidelines and plan of action.<sup>431</sup> In this regard, *Colombia Diversa* says that although the both the Office of the Attorney General and the Ombudsman’s Office have the possibility of recording data on sexual orientation and gender identity in

<sup>425</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 338.

<sup>426</sup> Colombia Diversa, *Información sobre situación de derechos humanos de personas LGBTI en Colombia*, received on December 11, 2014.

<sup>427</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. T33.

<sup>428</sup> IACHR, Press Release No. 118/14, “[IACHR Chair Concludes Visit to Colombia](#),” October 10, 2014.

<sup>429</sup> Alcaldía Mayor de Bogotá, D.C., “[Bogotá tiene Casa Refugio LGBT](#),” February 19, 2014.

<sup>430</sup> Testimony of a gay man to the President of the IACHR during her visit to Colombia. Meeting with LGBTI persons, National Roundtable for Victims of the Armed Conflict. Cartagena, Colombia, October 3, 2014.

<sup>431</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 355.

case files or forms, officials in those entities have not been properly trained on the subject, and it is underreported as a result.<sup>432</sup>

286. The IACHR recognizes the State's efforts since 2012 to include variables that provide disaggregated data on the sexual orientation and gender identity of victims in two of the main data capture tools that the SNARIV has at its disposal: the FUD and the PAARI.<sup>433</sup>

**e. Violence against LGBTI Persons and Its Investigation**

287. The IACHR, through the office of its Rapporteur on the Rights of LGBTI Persons, closely monitored over a 15-month period (January 1, 2013 to March 1, 2014) various sources on violence, particularly murders and other serious physical assaults, against LGBTI persons in the Americas in cases that apparently had to do with their sexual orientation or gender identity, whether real or perceived. According to this registry of violence prepared by the IACHR, during that 15-month period, 45 LGBTI individuals or persons perceived as such were murdered in Colombia, presumably because of their sexual orientation or gender identity.<sup>434</sup>

288. For its part, *Colombia Diversa* recorded 630 murders of LGBTI persons between January 2006 and December 2012, of which at least 161 were victims of prejudice-based violence. The killings mainly occurred in the departments of Antioquia, Cundinamarca and Valle del Cauca.<sup>435</sup> The figures for 2013 and 2014 supplied by that organization are preliminary data, recording 66 and 34 homicides, respectively, including the murders of two transgender women in the Department of Risaralda on December 3 and 4, 2012.<sup>436</sup> Furthermore, the murder was reported of a transgender woman called Marcela in Medellín, prompting several civil society organizations in Colombia to call called for the media to respect the identity of the victim when covering crimes against transgender individuals.<sup>437</sup> In this respect, the IACHR has also noted that LGBTI victims of violence tend to be insensitively portrayed in the media.<sup>438</sup>

289. The IACHR was informed of the murder of Guillermo Garzón Andrade, who founded the collective known as *Somos Opción LGBT*. He was murdered on November 15, 2014, his body found gagged and showing signs of violence and cruelty caused by a pointed instrument.<sup>439</sup> According to the police investigation, the activist was killed by a criminal organization that contacts LGBTI persons on social media, pretending to be members of the LGBTI community. After winning their trust they enter their homes to rob and kill them.<sup>440</sup> Regarding the investigation of murders of LGBTI defenders, *Colombia Diversa* told the IACHR that there had been "no progress in the investigations" into the murders of defenders Fredys Darío Pineda in February 2008, Álvaro Miguel Rivera in March 2009, and Wanda Fox in October 2009.<sup>441</sup>

<sup>432</sup> Colombia Diversa, *Información sobre situación de derechos humanos de personas LGBTI en Colombia*, received on December 11, 2014.

<sup>433</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 350.

<sup>434</sup> IACHR, [Registry of Violence, Murders and other serious acts of violence against LGBTI persons \(January 2013 to March 2014\)](#).

<sup>435</sup> Colombia Diversa, *Acumulado de homicidios 2006-2014* [Accumulated Homicides 2006-2014], report dated December 9, 2014, received on January 8, 2015.

<sup>436</sup> FGN, "[Fiscalía inicia investigaciones por homicidios de mujeres trans en Risaralda](#)," December 10, 2014.

<sup>437</sup> Coalición Aquelarre Trans y otras, "[Ni siquiera en la muerte somos iguales](#)," September 17, 2014.

<sup>438</sup> IACHR, Annex/Press Release No. 153A, "[An Overview of Violence against LGBTI Persons: A Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014](#)," December 17, 2014.

<sup>439</sup> Colombia Diversa, "[Activista LGBT fue brutalmente asesinado en Bogotá](#)," November 18, 2014.

<sup>440</sup> El Tiempo, "[Policía captura a supuestos asesinos de líder LGBTI](#)," December 6, 2014.

<sup>441</sup> Colombia Diversa, *Información sobre situación de derechos humanos de personas LGBTI en Colombia*, received on December 11, 2014.

290. As regards investigations of murders and acts of violence against LGBTI persons, the State informed the IACHR that the Office of the Attorney General has reaffirmed its constitutional commitment to pursue investigations with due diligence and ensure access to justice in such cases. In that connection, the State said that the National Directorate of Public Prosecutors (*Dirección Nacional de Fiscalías*) has implemented a comprehensive plan of action for the protection of rights (*Plan integral de acción para la defensa de los derechos de la población*) that includes specific actions relating to LGBTI persons, as well as other groups. This plan includes the following measures: Identification of investigations pursued by the Office of the Attorney General concerning LGBTI persons, including all information connected with the acts of violence committed; prioritization of criminal investigations involving LGBTI persons, which has already yielded results—for instance, priority has been given to homicide cases involving transgender women in Sincelejo and Maicao; and awareness-raising and training for personnel of the Attorney General's Office. The State also informed that pursuant to memorandum 052, the program "Justice with a Differential Approach" has been implemented, under which victims must be accorded differential treatment.<sup>442</sup> The IACHR also recognizes that the Attorney General's Office is advancing measures for protection of rights and access to justice for LGBTI persons. For example, a meeting with *Fundación Grupo de Acción y Apoyo de Personas Trans* (GAAT) was scheduled for January 2015.<sup>443</sup>

291. On September 9, 2014, the National Directorate of Sectional Prosecution Units and Citizen Security issued memorandum 0023, establishing that each sectional prosecution unit would have a sectional prosecutor to investigate homicides of LGBTI persons, in order to specialize in that area. The State also informed that the Office of the Procurator General had been requested, in accordance with Article 109 of the Code of Criminal Procedure (*Estatuto Procedimental Penal*), to establish a special agency "as part of investigations into criminal offenses of which they were victims."<sup>444</sup>

292. Finally, in its report *Truth, Justice, and Reparation*, the IACHR noted that despite Article 58 of the Colombian Criminal Code recognizing it as an aggravating factor when crimes are committed based on the sexual orientation of the victim, civil society reported that owing to prevailing prejudices in the judiciary this criminal provision is not enforced. In December 2014, *Colombia Diversa* informed that of the 730 murders documented between 2006 and 2014, "so far, not a single conviction has recognized sexual orientation or gender identity as a motive or aggravating circumstance."<sup>445</sup> In that respect, it complained that the Criminal Analysis and Context Unit of the Attorney General's Office has not given priority to cases of murders or violence against LGBTI persons, and that homicides of LGBTI rights defenders have also been overlooked by the Unit, continuing to be left to local public prosecutors instead.<sup>446</sup>

<sup>442</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pp. 348-349.

<sup>443</sup> FGN, "[Fiscalía inicia investigaciones por homicidios de mujeres trans en Risaralda](#)," December 10, 2014.

<sup>444</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 339.

<sup>445</sup> Colombia Diversa, *Información sobre situación de derechos humanos de personas LGBTI en Colombia*, received on December 11, 2014.

<sup>446</sup> Colombia Diversa, *Información sobre situación de derechos humanos de personas LGBTI en Colombia*, received on December 11, 2014.



**f. Differentiated Impact of the Armed Conflict on LGBTI Persons,**

**i. Differentiated Impact particularly on Transgender Women and Lesbians**

293. During her visit to Colombia in October 2014, the President of the IACHR received alarming information regarding the differentiated impact that the armed conflict has on LGBTI persons.<sup>447</sup> The IACHR was also alarmed at information it received at a hearing held in October 2014 on the situation of violence against Afro-descendent LGBTI persons living in in Colombia's Caribbean region. According to *Corporación Caribe Afirmativo*, since 2007 there have been 114 reported violent deaths of LGBTI persons in the Caribbean region, 58 of which occurred in areas still troubled by the armed conflict (Serranía del Perijá, Montes de María, Golfo de Morrosquillo, the Mojana areas of Sucre and Bolívar Departments, south César Department, and the Momposina Depression), chiefly targeting transgender women and homosexual men and individuals who were mainly known or lived in areas where the population is mostly Afro-descendent, *palenquera* or *raizal*.<sup>448</sup>

294. The IACHR also received troubling information about violence against LGBTI persons in the south Pacific region of Colombia. It was reported that seven LGBT persons (a lesbian, a transgender woman, and five homosexual men) were murdered in that part of the country between 2010 and 2012. In Cauca, it was reported that a “gay man bled to death after his member was removed.”<sup>449</sup> These attacks were blamed on armed groups, such as the FARC, ELN, and criminal groups (referred to collectively by the acronym BACRIM), which have a strong presence in this part of the country, particularly in Tumaco. As regards access to justice, the Commission was told that victims' relatives are too afraid to file complaints, saying “what we want is to live. We have reported the case and are being threatened.”<sup>450</sup>

295. In its report *Truth, Justice, and Reparation*, the IACHR expressed concern at the circulation dating back at least as far as 2007 of pamphlets containing death threats against LGBTI persons in such places as Barrancabermeja, Baraona, Cartagena, Sincelejo, Sabanagrande, Santo Tomás, and Soledad, aimed at eliminating or driving out LGBTI persons from places where illegal armed groups that have emerged since the demobilization of paramilitary groups exert or seek to exert territorial control.<sup>451</sup> According to reports, 21 such pamphlets have been circulated since 2012, variously signed by *Los Rastrojos*, *Los Urabeños*, *Las Autodefensas de la Sierra Nevada de Magdalena*, *Las Águilas Negras*, and *La Mano Negra*. A high level of impunity surrounds these cases and very few have been investigated or brought to trial.<sup>452</sup>

296. Likewise, during her visit to Colombia, the President of the IACHR received disturbing testimony about threats to lesbian women who are LGBTI representatives on participation committees in the

<sup>447</sup> Regarding its president's visit to Colombia, the IACHR announced that “the delegation received troubling information on the situation of forced displacement of LGBT persons, in particular in areas of the country most affected by the presence of armed groups –including accounts of acts by paramilitaries and armed illegal groups- who specifically target LGBT persons, due to their sexual orientation, gender identity and expressions. Of particular concern to the Rapporteur is information received concerning threats against LGBT persons, defenders and activists by these armed groups, including through text messages and pamphlets. ... Furthermore, the delegation received troubling information on the acts of violence by armed groups, including killings, kidnappings, beatings, shootings, and other attacks, particularly against trans women and gay men, and instances of “corrective” rape of lesbian women, with the purpose of punishing their orientation, often purposely carried out in front of their partners. IACHR, Press Release No. 118/14, “[IACHR Chair Concludes Visit to Colombia](#),” October 10, 2014.

<sup>448</sup> Corporación Caribe Afirmativo and Global Rights, written information submitted at the hearing “Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia,” held by the IACHR on October 27, 2014.

<sup>449</sup> Information supplied by the LGBTI rights defender for the south Pacific region. Meeting of the President of the IACHR with LGBTI organizations of the Caribbean region of Colombia (as well as Cali and Tumaco). Cartagena, Colombia, October 3, 2014.

<sup>450</sup> Information supplied by the LGBTI rights defender for the south Pacific region. Meeting of the President of the IACHR with LGBTI organizations of the Caribbean region of Colombia (as well as Cali and Tumaco). Cartagena, Colombia, October 3, 2014.

<sup>451</sup> IACHR, *Truth, Justice, and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, December 31, 2013, pars. 993-994.

<sup>452</sup> Corporación Caribe Afirmativo and Global Rights, written information submitted at the hearing “Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia,” held by the IACHR on October 27, 2014.

framework of the process to implement the Victims Law. Such threats are leveled directly at them, their partners, and their families, via text messages or calls to their mobile phones, giving them three months to leave the communities where they live. Several of these lesbian women have been subjected to "corrective" rape, as it is commonly termed, by armed groups in the areas where they live or from which they have been displaced, with the aim of punishing them and "changing" their sexual orientation.<sup>453</sup>

297. The IACHR also takes note of information received concerning the peculiarities of acts of violence against LGBTI persons. For example, it was reported that criminal groups in the Gulf of Morrosquillo region some years ago would organize "fights" between LGBTI persons for entertainment purposes and force the village's inhabitants to watch. Finally, it was alleged that many transgender women and "highly effeminate" homosexual men are kept as domestic slaves and used for sex by members of armed groups and other individuals and as small-scale drug dealers, as well as being subjected to practices designed to "erase" their gender expression or sexual orientation.<sup>454</sup> The President of the IACHR was also told about a transgender woman who committed suicide after she was raped by four men, who inserted ants in her anus. This incident was reported to the Immediate Action Command, so far without a response.<sup>455</sup> Finally, the IACHR heard how gay and lesbian people are victims of extortion by armed groups that threaten to expose the sexual orientation of those "who, because of the homophobia, prefer to stay in the closet, but these bands threaten them with exposure."<sup>456</sup>

298. The acts of violence, including murder, physical assault, and threatening pamphlets, have prompted many lesbian, gay, bisexual, and transgender persons to move to other parts of the country. There have been instances of large-scale forced displacement, in which it was found that several LGBTI persons moved away *en masse* for fear of being murdered or attacked.<sup>457</sup> It was mentioned that such individuals moved to the most populous part or urban center of the region, where they also face discrimination and exclusion because of their sexual orientation and gender identity, taking up residence in places of extreme poverty.

299. With regard to transgender women forcibly displaced by the internal conflict, it was claimed that Colombia offers no effective reparation measures or a differential approach in providing them with shelter. The case was cited, for example, of three transgender women who were part of a relocation program under the victims law and displaced to the Municipality of Chalán, Sucre, in May 2014. However, after receiving no assistance from the State they were forced to return to their places of origin where they live in a state of constant fear.<sup>458</sup> It was also mentioned that, in turn, because of discrimination, victims do not seek recourse to justice or do not regard their victimization as harm caused by the conflict.<sup>459</sup> A transgender woman told the President of the IACHR, "We really stick out. A lesbian or gay man can blend in, but we get hit, insulted, discriminated against because we are visible."<sup>460</sup> In that connection, the State has said that trans

<sup>453</sup> Meeting of the President of the IACHR with LGBTI persons on the National Committee of Victims of the Armed Conflict Cartagena, Colombia, October 3, 2014.

<sup>454</sup> Corporación Caribe Afirmativo and Global Rights, written information submitted at the hearing "Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia," held by the IACHR on October 27, 2014.

<sup>455</sup> Information supplied by the LGBTI rights defender for Barranquilla. Meeting of the President of the IACHR with LGBTI organizations of the Caribbean region of Colombia (as well as Cali and Tumaco). Cartagena, Colombia, October 3, 2014.

<sup>456</sup> Information supplied by the LGBTI rights defender for Cartagena. Meeting of the President of the IACHR with LGBTI organizations of the Caribbean region of Colombia (as well as Cali and Tumaco). Cartagena, Colombia, October 3, 2014.

<sup>457</sup> Corporación Caribe Afirmativo and Global Rights, written information submitted at the hearing "Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia," held by the IACHR on October 27, 2014.

<sup>458</sup> Corporación Caribe Afirmativo and Global Rights, written information submitted at the hearing "Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia," held by the IACHR on October 27, 2014.

<sup>459</sup> Corporación Caribe Afirmativo and Global Rights, written information submitted at the hearing "Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia," held by the IACHR on October 27, 2014.

<sup>460</sup> Testimony of a transgender woman. Meeting of the President of the IACHR with LGBTI persons on the National Committee of Victims of the Armed Conflict Cartagena, Colombia, October 3, 2014.

persons are “the most vulnerable group at a national level,’ because gender expression gives them more visibility and increases their vulnerability and the violation of their human right.”<sup>461</sup>

## ii. Situation of Transgender Women Leaders in the Caribbean Region of Colombia

300. The IACHR was also troubled by information regarding the impact of violence perpetrated by armed actors against LGBTI rights defenders and leaders, in particular transgender women leaders. For example, the IACHR received information that between 2011 and 2014, six transgender women were murdered in La Guajira and Sucre. It is thought that the killers were members of criminal groups that exercise territorial control in the area. Four of them were leaders of the Global Fund for HIV/AIDS Prevention project.<sup>462</sup> *Corporación Caribe Afirmativo* reported that nine transgender men and women leaders were violently killed in 2014. On January 9, 2015, it reported the murder of 35-year-old transgender activist Camila Flores, who had been a leader of the organization Mecanismo Coordinador de País as well as of the Global Fund for HIV/AIDS Prevention project and had already been attacked with a firearm on March 9, 2014.<sup>463</sup> “The higher visibility, the greater the risk,” say LGBTI organizations in region. They say that LGBTI persons are showing increasing leadership in the Caribbean region and that this visibility in defense of LGBTI rights has prompted a backlash of even more violence on the part of actors in the armed conflict.<sup>464</sup>

301. During its visit to Colombia and in the framework of its hearings, the IACHR has received disturbing information about the lack of protection for LGBTI leaders who are not formally recognized as rights defenders and, therefore, not eligible for protection from the National Protection Unit.<sup>465</sup> As a result, the applications of many LGBTI persons are not considered, despite being subjected to situations of violence in the Caribbean region of Colombia simply for being visible. For example, the IACHR was informed that of 15 applications for protection to the UNP, only three have been approved, and then negligently, ignoring the identity of transgender women. For example, the IACHR notes with concern the case of a transgender woman who was doing leadership work in the Municipality of San Onofre, in the Gulf of Morrosquillo. Her house was set on fire in January 2013 while she was inside it, prompting her to turn to the UNP for help, reportedly without receiving a response. Months later, in July, she was stabbed, whereupon she again to the UNP and again apparently received no response. She was eventually murdered in November 2013. According to *Corporación Caribe Afirmativo*, this was “a death that we are certain the State could have prevented.”<sup>466</sup>

## iii. Care, assistance, and reparations for LGBTI victims in the framework of the armed conflict

302. The IACHR acknowledges the progress made by the State in this area, such as making LGBTI persons eligible for consideration as priority cases for comprehensive reparation as victims, under Resolution 0223 of 2013. As a result, as of September 1, 2014, 1,152 LGBTI persons had been registered in the Single Registry of Victims (RUV) of the armed conflict, the main cause of their status as such being forced

<sup>461</sup> Observations of Colombia on the Draft Report of the IACHR, Note S-GAIID-13-048140, December 2, 2013, par. 600, cited in IACHR, *Truth, Justice, and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, December 31, 2013, par. 1011.

<sup>462</sup> *Corporación Caribe Afirmativo* and Global Rights, written information submitted at the hearing “Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia,” held by the IACHR on October 27, 2014.

<sup>463</sup> *Corporación Caribe Afirmativo*, “[Asesinan a golpes a mujer trans en San Marcos, Sucre](#),” January 9, 2015.

<sup>464</sup> *Corporación Caribe Afirmativo* says that acts of violence against LGBTI persons in the Caribbean region of Colombia are mainly committed by criminal groups such as *Las Águilas Negras*, *Los Países*, *Los Urabeños*, *Los Nevados*, *Los Tayronas*, and *Los Rastrojos*, which chose not to apply for the benefits of the Justice and Peace Law; as well as by Fronts 19, 37 and 59 of the FARC; a number of holdouts of the National Liberation Army (ELN), and many demobilized members of the AUC. *Corporación Caribe Afirmativo* and Global Rights, written information submitted at the hearing “Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia,” held by the IACHR on October 27, 2014.

<sup>465</sup> Information submitted to the President of the IACHR in Colombia. Meeting with LGBTI civil society organizations in Bogotá, October 1, 2014. See also *Corporación Caribe Afirmativo* and Global Rights, written information submitted at the hearing Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia, held by the IACHR on October 27, 2014.

<sup>466</sup> *Corporación Caribe Afirmativo* and Global Rights, written information submitted at the hearing “Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia,” held by the IACHR on October 27, 2014.

displacement (62.8 percent), followed by threats (16 percent) and homicides (10.8 percent). Most of the victims identified reside in the Departments of Antioquia (285), Nariño (95), Norte de Santander (66), and Valle del Cauca (49). The largest portion (39.9 percent) of the victims were between the ages of 27 and 60; 29.4 percent were under 18, and 19.7 percent were aged 18 to 26. As regards their ethnicity, 10.5 percent of the victims identified themselves as black or Afro-descendent, 0.1 percent as *raizal* or *palenquera*, and 0.7 percent as indigenous.<sup>467</sup> However, civil society organizations say that the number of LGBTI victims of the armed conflict is significantly underreported, partly because it is not easy for LGBTI persons to identify themselves as such, as "claiming their rights as victims entails exposing themselves to the mockery, humiliation, and discrimination with which [diverse] sexualities and gender identities are still treated" in Colombia.<sup>468</sup> They add that there is distrust of institutions and suspicions about how the information will be used.

303. As regards care, assistance, and comprehensive reparations for victims, there are 1,063 victims registered under the PAARI plan, 553 of whom identify themselves as transgender, 323 as gay, 119 as lesbian, and 68 as bisexual; most are located in Antioquia, Bogotá and Bolívar departments. The State said that the majority of LGBTI force-displacement victims do not return to their places of origin. As far as care is concerned, according to the State, the majority of LGBTI persons decline psychological assistance or psychosocial mentoring. Among those that do say they need assistance of this type, gay men tend to opt for individual care, while lesbian, bisexual, and transgender persons seek a family intervention model. Transgender persons mostly tend to identify a need for community intervention.<sup>469</sup> The State also reports that 880 LGBTI persons, mostly from the departments of Antioquia, Nariño, Norte de Santander, and Valle del Cauca, have received compensation.

304. The State also says that LGBTI persons participate as representatives on municipal and departmental committees, as well as on the National Committee, through the Effective Victim Participation Protocol, and that 15 of the country's 32 departments have LGBTI representatives. Among the measures also reported to the IACHR are the efforts with the Center for Historical Memory to expand that institution's project to include reconstruction of the historical memories of LGBTI persons.<sup>470</sup>

305. The IACHR also values the fact that, for the first time, the National Council for Peace had a representative of LGBTI persons at the peace process underway in Havana, Cuba.<sup>471</sup> It was brought to the attention of the IACHR that the fourth delegation of victims at the peace talks between the Colombian Government and the FARC demanded, *inter alia*, recognition that the LGBTI community "has been violated and disavowed by the State and the armed groups, as well as by society [and, therefore,] legal recognition of their rights is a necessity."<sup>472</sup>

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<sup>467</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 351.

<sup>468</sup> Corporación Caribe Afirmativo and Global Rights, written information submitted at the hearing "Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia," held by the IACHR on October 27, 2014.

<sup>469</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 352.

<sup>470</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pp. 353-354.

<sup>471</sup> Unidad para la Atención y Reparación Integral a las víctimas del Estado Colombiano, "[Viajó cuarta delegación de víctimas a La Habana](#)," undated.

<sup>472</sup> Oficina del Alto Comisionado para la Paz del Estado Colombiano, "[Comunicado de la Cuarta Delegación de Víctimas al finalizar su visita a la mesa de conversaciones](#)," Punto 5, November 2, 2014.

### g. Police Mistreatment of LGBTI persons

306. In the report *Truth, Justice and Reparation*, the IACHR underscored the adoption in 2010 of the Directive on “guarantees and respect for the rights of the LGBTI community” (known as Directive 006/2010) by the Ministry of National Defense as an important step in preventing police mistreatment of LGBTI persons. However, since 2011, the IACHR has been documenting a number of challenges in relation to the design and implementation of the directive.<sup>473</sup> In that regard, the IACHR recommended that the State ensure the directive's implementation and consider adopting additional measures to guarantee protection for the rights of LGBTI persons by the police and justice operators. With respect to that recommendation, the State provided information on activities involving prevention measures as well as professional advancement and training. However, for the most part, the information submitted by the State concerns measures about which the IACHR was already aware or for which specific dates are not provided.<sup>474</sup>

307. Having said that, the IACHR acknowledges the value of a number of the measures reported by the State, such as, for example, the formalization on September 18, 2014, of police guidelines on assistance to “vulnerable populations,” which contain a chapter devoted specifically to LGBTI persons; as well as the progress reported by the State in the area of protection, such as implementing Permanent Operational Directive No. 003 DIPON-INSGE (“Parameters of police action for deployment of the Vulnerable Population Protection Strategy”), the appointment of liaison police officers, 105 human rights offices operating nationwide to engage LGBTI population representatives and run training programs in compliance with Directive 006, and “extracurricular training” of Officers, Non-Commissioned Officers and Marines in the Naval Units of the Caribbean.<sup>475</sup>

308. In this regard, overall, the IACHR does not have sufficient elements to determine if the measures adopted by the State to implement the recommendations contained in its report *Truth, Justice and Reparation* have been effective in preventing police mistreatment. On the contrary, the IACHR continues to receive information about the alleged instances of police mistreatment of LGBTI persons, particularly transgender persons. *Corporación Caribe Afirmativo*, for example, documented 18 cases of mistreatment by members of the security forces—which includes police and soldiers—in 2014, in the departments of Atlántico (5), Bolívar (5), César (2), Córdoba (1), Guajira (2), Magdalena (2), and Sucre (3).<sup>476</sup> There were also reports that many transgender women, above all those who are sex workers, are beaten by members of the security forces “in places where they inject themselves with silicone, as if wishing to destroy something of theirs that they value as part of their physical makeup.”<sup>477</sup>

309. On September 24, 2014, the IACHR sent a letter to the Government of Colombia in which, by virtue of its authority under Article 41 of the American Convention, it requested information concerning alleged incidents of police mistreatment of transgender women in the cities of Cali, Cartagena and Barranquilla.<sup>478</sup> In this regard, the State informed that according to figures provided by the National Police,

<sup>473</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, par. 336. See also, *Truth, Justice, and Reparation*, pars. 1003-1005.

<sup>474</sup> For example, the State reports on a series of on-line and in-person training courses offered at the national level through the Schools Directorate, targeting police trainees as well as professionals. However, it does not provide specific information as to when the courses were held or the number of police personnel who received the training. Republic of Colombia, *Situación de Derechos Humanos 2013-2014 y seguimiento a las recomendaciones contenidas en el IV Informe de País de la CIDH*. Note S-GAIID-14-094783, received on December 29, 2014, pp. 343-345.

<sup>475</sup> Specifically, the State reported that 339 members of said institution had been trained; however, it did not provide concrete information on when said training was implemented. Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 30.

<sup>476</sup> *Corporación Caribe Afirmativo*. Information received on January 1, 2015. On file in the Executive Secretariat of the IACHR.

<sup>477</sup> *Corporación Caribe Afirmativo* and Global Rights, written information submitted at the hearing “Reports of Violence against LGBTI Persons in the Caribbean Region of Colombia,” held by the IACHR on October 27, 2014.

<sup>478</sup> IACHR, Letter requesting information under Article 41 of the American Convention, Ref. *Alleged incidents of police mistreatment of transgender women in the cities of Cali, Cartagena and Barranquilla*, September 24, 2014 On file in the Executive Secretariat of the IACHR. In its letter, the IACHR requested the State to provide information on: (i) The number of registered complaints

there were 22 cases of police brutality (catalogued as physical assault and abuse of authority) against transgender women in Cali, Cartagena and Barranquilla, although no timeframe is provided. Of the assaults, 17 took place in Cali and of those, one is at the preliminary investigation stage, seven were closed, eight words desisted from, and only in one was a written reprimand issued. There were four assaults in Cartagena and one in Barranquilla; most of those cases were closed.<sup>479</sup>

310. Colombian civil society organizations have complained of weaknesses in the way that the State deals with situations of police mistreatment and have indicated to the IACHR that directive 006 is not effective and that there are shortcomings in its implementation. In that regard, they say that no progress has been recorded with respect to new measures adopted by the police to improve access to assistance.<sup>480</sup> They also note that the policemen appointed as "liaisons" for dealing with LGBTI issues are "of a very low rank," which limits their effectiveness.<sup>481</sup> They also say that the Directive does not have specific or effective mechanisms to provide assistance or protect the rights of LGBTI persons and that although training activities have been implemented, they have targeted police officers who work "behind a desk" but not those patrolling the streets.<sup>482</sup> An activist from Sincelejo, Sucre Department, told the President of the IACHR, "I've never seen directive 006. It does not exist. Colombia is just a paper country. The real Colombia is in the streets where our transgender friends live."<sup>483</sup> With respect to police mistreatment in Cali, a transgender defender told the President of the IACHR that only in one very serious case of assault of a transgender woman, followed by threats to get her to drop the complaint, was a policeman suspended for three days without pay. In that respect, it was observed that "only some police are abusive, but the lack of response and impunity concerns the whole police force."<sup>484</sup>

311. In addition, the State indicated that the reform is in process of the National Police Code in Congress, "including the parts corresponding to the LGBTI population."<sup>485</sup> For their part, however, civil society organizations told the President and Rapporteur that the proposed reform of the Police Code does not include concrete measures in favor of the LGBTI population.<sup>486</sup>

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of police mistreatment or assault of transgender women in the departments of Valle del Cauca, Bolívar and Atlántico, along with the status of the investigation in those cases; (ii) measures taken to effectively implement Directive 006 of 2010; and (iii) measures taken to prevent and punish such acts in terms of criminal and disciplinary proceedings.

<sup>479</sup> Republic of Colombia, *Request for information: Allegations of police mistreatment of transgender women in the cities of Cali, Cartagena and Barranquilla*, Note MPC/OEA No. 1509/2014, October 20, 2014, p. 5.

<sup>480</sup> Colombia Diversa, *Información sobre situación de derechos humanos de personas LGBTI en Colombia*, received on December 11, 2014.

<sup>481</sup> Meeting of the President of the IACHR with LGBTI organizations of the Caribbean region of Colombia (as well as Cali and Tumaco). Cartagena, Colombia, October 3, 2014.

<sup>482</sup> Information submitted by Colombia Diversa to the President of the IACHR in Bogotá. Meeting held on October 1, 2014. An LGBTI activist in Barranquilla told the President that "training is given to office police, not patrolmen or operational police." Meeting of the President of the IACHR with LGBTI organizations of the Caribbean region of Colombia (as well as Cali and Tumaco). Cartagena, Colombia, October 3, 2014.

<sup>483</sup> Testimony of an LGBTI activist from Sincelejo, Sucre Department. Meeting of the President of the IACHR with LGBTI organizations of the Caribbean region of Colombia (as well as Cali and Tumaco). Cartagena, Colombia, October 3, 2014.

<sup>484</sup> Testimony of a transgender woman human rights defender from Cali. Meeting of LGBTI persons with the President of the IACHR in Cali. September 30, 2014.

<sup>485</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 343.

<sup>486</sup> Information submitted to the President of the IACHR in Colombia. Meeting with LGBTI civil society organizations in Bogotá, October 1, 2014.

## **h. Discrimination against Transgender Persons in the Areas of Education, Health, and the Workplace**

312. During her visit to Colombia in October 2014, the President heard several testimonies from transgender women about violations of their rights to health, education, and work. To begin with, the President was told that there were no healthcare protocols and that owing to the absence of a law on gender identity, it was a violation of their human rights “that we should have to pathologize ourselves in order to access hormone therapy.”<sup>487</sup> Faced with the absence of public health policies to address the physical changes that transgender persons regard as essential for constructing their identities, several transgender women have died after going for treatment to facilities that perform surgical operations and procedures in a clandestine and irregular manner.<sup>488</sup> Furthermore, it was mentioned that while HIV prevalence in the general population is at 0.75%, an estimated one in four transgender women are living with HIV, although the State does not have national figures in that respect. In general, it was mentioned that there is a high level of underreporting nationwide and that “for every case diagnosed, three or four go undiagnosed.” The situation is even more serious in areas far away from the capital, such as Tumaco. The IACHR was told that the government does not have sustained general prevention campaigns, much less for key populations. “There are no prevention policies, no diagnosis, no rapid tests,” said one activist for the rights of persons living with HIV.<sup>489</sup> Finally, transgender women complained to the President that they had to contend with huge obstacles in seeking access to health services when they needed to have checkups or became ill, owing to the enormous discrimination that they face, and that sometimes they did not receive attention because it was as if they had “HIV stamped on their foreheads.”<sup>490</sup>

313. All the transgender women said that building their identities often undermined their access to employment or education opportunities. One person, who identified themselves as a “gay drag queen” from Magdalena, told the President, “I am a frustrated transgender woman. For work reasons I cannot be a complete transgender woman.”<sup>491</sup> Other transgender women told the President how they had had to put off their identity construction process in order to pursue their educations, to the detriment of their personal well-being. At least two transgender women, one who studied economics in Cali and the other, nursing in Cartagena, said that they studied “as men” because it was the only way to avoid discrimination.<sup>492</sup> A transgender woman university student said that despite a Constitutional Court decision exempting a transgender woman from the requirement of presenting a military identity card in the workplace, she was required to present one every semester.<sup>493</sup> “Our identities are violated when we enter an academic environment. Transgender people are enormously disappointed in the education system,” another transgender woman told the President.<sup>494</sup>

<sup>487</sup> Testimony of a transgender woman. Meeting of transgender women defenders with the President of the IACHR. Cartagena, Colombia, October 2, 2014.

<sup>488</sup> *Corporación Caribe Afirmativo* reported that there have been eight cases of transgender women who have died in such circumstances since 2013. The last reported death was that of Luisa Tozcano on November 3, 2014, Cartagena. *Corporación Caribe Afirmativo*, [Muere mujer trans en Cartagena luego de practicarse una cirugía artesanal](#), November 10, 2014.

<sup>489</sup> Meeting of the President of the IACHR with LGBTI organizations of the Caribbean region of Colombia (as well as Cali and Tumaco). Cartagena, Colombia, October 3, 2014.

<sup>490</sup> Testimony of a transgender woman. Meeting of transgender women defenders with the President of the IACHR. Cartagena, Colombia, October 2, 2014.

<sup>491</sup> Testimony of a transgender woman. Meeting of transgender women defenders with the President of the IACHR. Cartagena, Colombia, October 2, 2014.

<sup>492</sup> Testimony of a transgender woman. Meeting of transgender women defenders with the President of the IACHR. Cartagena, Colombia, October 2, 2014. Testimony of a transgender woman. Meeting of LGBTI persons with the President of the IACHR in Cali, Colombia. September 30, 2014.

<sup>493</sup> Testimony of a transgender woman. Meeting of transgender women defenders with the President of the IACHR. Cartagena, Colombia, October 2, 2014. Testimony of a transgender woman. Meeting of LGBTI persons with the President of the IACHR in Cali, Colombia. September 30, 2014.

<sup>494</sup> Testimony of a transgender woman. Meeting of transgender women defenders with the President of the IACHR. Cartagena, Colombia, October 2, 2014. Testimony of a transgender woman. With LGBTI persons in Cali, Colombia. September 30, 2014.

314. With respect to access to employment, the IACHR took a positive view of the efforts of some entities at the local level in Colombia to hire transgender women. However, the IACHR was told that the majority of transgender women face a lack of employment opportunities beyond being hairstylists, domestic cleaners, or sex workers. As regards the link between access to education and employment, most transgender women "do not have access to secondary education, and being on the streets is not the life they choose."<sup>495</sup> The IACHR was told about the case of a 17-year-old transgender woman who "had a great desire to study," but "they began to make problems because she was transgender." The school's faculty refused to call her by her name and forced her to cut her hair and dress "like a man." As a result she now works as a prostitute.<sup>496</sup>

#### **i. Discrimination against LGBTI Boys, Girls, and Adolescents**

315. The IACHR heard about the tragic case of a secondary school student who committed suicide on August 4, 2014, by jumping from the upper floor of a shopping mall in northwest Bogotá. Sergio Urrego, aged 16, left several notes in which he said that he was being discriminated against by the faculty at his school based on his sexual orientation, after a teacher discovered a photograph of Sergio kissing another male student. His mother brought a suit for protection, which was granted at first instance by an administrative court in Cundinamarca. However, she appealed against the decision because although it recognized the discrimination, it did not order reparation measures or impose penalties on the school.<sup>497</sup> The decision was later abrogated by the Council of State in response to a petition filed by the Office of the Procurator General.<sup>498</sup> The IACHR was also made aware of a request made by the Minister of the Interior to the Constitutional Court to review the decision of the Council of State in that protection suit.<sup>499</sup> As of this writing, the IACHR had received information that the Office of the Attorney General was investigating the case and that charges would be brought against two members of the school's faculty for discrimination against Sergio Urrego.<sup>500</sup> In that regard, the IACHR recognizes the progress made in the investigation and its urges the State to continue its efforts to uncover the facts and establish responsibilities on the part of the school.

316. In connection with the foregoing, it was brought to the attention of the IACHR that the schools coexistence manuals contain clauses expressly prohibiting "homosexuality" or "transgenderism" as well as ambiguous clauses that forbid "obscenity" or acts "contrary to morality or moral conventions," which in practice are adversely interpreted against children and adolescents with diverse sexual orientations and gender identities.<sup>501</sup> LGBTI rights defenders complained to the President of the IACHR in October 2014 that the State does not review or regulate these coexistence manuals. In that regard, they said that in Colombia, in general, "childhood issues are kept apart from LGBTI persons, and LGBTI issues are kept apart from children."<sup>502</sup> The IACHR holds that states should review the content of coexistence manuals in order to determine if they are in line with international standards on human rights and on protection of the higher interests of the child. As the Commission has noted in this regard, "[t]his obligation of supervision is of

<sup>495</sup> Testimony of a transgender woman. Meeting of transgender women defenders with the President of the IACHR. Cartagena, Colombia, October 2, 2014.

<sup>496</sup> Testimony of a transgender woman. Meeting of transgender women defenders with the President of the IACHR. Cartagena, Colombia, October 2, 2014. Testimony of a transgender woman. With LGBTI persons in Cali, Colombia. September 30, 2014.

<sup>497</sup> El Tiempo, "[Decisión del Tribunal se quedó corta: mamá de Sergio Urrego](#)," September 25, 2014.

<sup>498</sup> El Tiempo, "[Procuraduría logró tumbar las medidas en memoria de Sergio Urrego](#)," November 28, 2014.

<sup>499</sup> El Tiempo, "[Mininterior pide a Corte revisar tutela sobre Sergio Urrego](#)," December 9, 2014.

<sup>500</sup> El Tiempo, "[Imputarán cargos a directivos de colegio de Urrego por discriminación](#)," January 6, 2015.

<sup>501</sup> Colombia Diversa, *Información sobre situación de derechos humanos de personas LGBTI en Colombia*, received on December 11, 2014.

<sup>502</sup> Information submitted to the President of the IACHR in Colombia. Meeting with LGBTI civil society organizations in Bogotá, October 1, 2014.



fundamental importance when the services being supervised are those provided by public or private institutions charged with the protection, safekeeping, care and education of children."<sup>503</sup>

#### j. Discrimination against LGBTI Persons Deprived of Liberty

317. During the period covered by this follow-up report, the IACHR received troubling information concerning violation of human rights of LGBTI persons deprived of liberty in different prisons in Colombia. In that regard, the IACHR was informed that even at facilities where there are special cellblocks for LGBTI persons, such as Villahermosa prison in Cali, they continue to be subjected to human rights violations through different forms of humiliation because of their gender identity and expression, as well as denial of access to hormone therapy or general healthcare services.<sup>504</sup> "The first thing they do to transgender girls in prison is crop their hair and make them dress like a man," a transgender woman told the President of the IACHR in the course of her visit to Colombia in 2014.<sup>505</sup> In that regard, LGBTI rights defenders say that healthcare protocols should be introduced for LGBTI persons deprived of liberty that recognize their identity and rights.<sup>506</sup> The IACHR has also received information about alleged limits placed on conjugal visits for LGBTI persons, such as the case of a same-sex couple confined in Pedregal Prison in Medellín, who, in a July 2014 decision of the Constitutional Court, were refused space for conjugal visits, with the argument that they had enough room in the prison to carry on their relationship.<sup>507</sup>

### Conclusions

318. The IACHR recognizes the progress made by the State in terms of recognition of and guarantees for the rights of LGBTI persons, particularly in connection with judgments issued by the Constitutional Court and a number of measures adopted by the executive branch. However, the IACHR remains concerned at the large number of different violations of rights of LGBTI persons in the country, especially the violence to which they and those who defend their rights are subjected, notably in areas of the country with a high presence of armed groups. Accordingly, it urges the State to redouble its efforts to ensure full observance of the right of LGBTI persons to live free from discrimination and violence.

#### 1. Persons deprived of liberty

- Adopt the administrative, legal, and judicial measures aimed at stabilizing and reducing the growth of the prison population, within a period of five years. This endeavour should include at its core the design and effective implementation of a model of criminal justice policy that upholds human rights in which the considerations set forth in this report are taken into account.
- Effectively implement all those judicial decisions handed down by the Constitutional Court or other courts with jurisdiction that order the adoption of specific measures related to prison overcrowding. In addition, continue implementing all those measures that have an immediate short-term impact designed to relieve the problem of overcrowding.
- Conduct a national census, in a period not to exceed six months, of all those detention centers that are not directly administered by the INPEC. That census should show the number, location, and responsible authority at each of those establishments and include statistics on the capacity of each one and the average number of persons kept in them.
- Increase the number of judges in charge of the enforcement of sentences in those jurisdictions or districts with the highest levels of convicted prisoners.

<sup>503</sup> IACHR, [Report on Corporal Punishment and Human Rights of Children and Adolescents](#), OEA/Ser.L/V/II.135 Doc. 14, August 5, 2009, para. 69.

<sup>504</sup> El Tiempo, "[El drama de ser 'trans' en la cárcel de Villahermosa](#)," August 4, 2014.

<sup>505</sup> Information presented to the President of the IACHR by an LGBTI activist. Meeting of the President of the IACHR with LGBTI organizations of the Caribbean region of Colombia (as well as Cali and Tumaco). Cartagena, Colombia, October 3, 2014.

<sup>506</sup> El Espectador, "[Denuncian ataques contra la comunidad LGBTI en cárceles de Bucaramanga](#)," July 9, 2014.

<sup>507</sup> El Tiempo, "[Pareja de reclusas gay pierde pelea legal por visita conyugal](#)," July 7, 2014.

- Adopt the administrative, judicial and legislative measures needed to ensure that the pre-trial detention of persons who have not been convicted with a firm judgment is used as the measure of last resort and for the shortest possible time, in keeping with the international standards presented in this report, so as to bring about a reduction in the number of persons subjected to this precautionary measure.
- Implement effective measures to ensure the separation of convicted prisoners from detainees awaiting trial, so as to gradually do away with the practice of mixing the two categories of prisoners. In addition, ensure that persons awaiting trial have conditions of detention compatible with the principle of the presumption of innocence, in keeping with the Standard Minimum Rules for the Treatment of Prisoners.
- Adopt effective measures to ensure the delivery of adequate medical and psychiatric care at every prison and jail in the country. Implement mechanisms of external supervision and monitoring of the health services that are provided in prisons. And make adequate reparation, in keeping with domestic law, to all those persons who have suffered harm stemming from the deficient provision of health services in the prisons, as well as the family members of those who have died as a result of this cause.
- End the practice of massive detentions without a prior and individualized judicial arrest warrant or caught in flagrante delicto, particularly in the case of persons under the age of 18.
- Assure, through the National Prison Institute (INPEC), the effective implementation of what was provided for in its Judgment T-062 of 2011 on the fundamental rights of LGBTI persons deprived of liberty. In particular, as regard to the process of reforming the regulations of the INPEC along the lines expressed in that judgment. In addition, maintain a constructive dialogue with organizations and activists specialized in the human rights of LGBTI persons for the purpose of making progress in the processes of respecting and ensuring the fundamental rights of these groups in the prisons.
- Conduct a specialized study on the effects of Law 1453 of 2011 ("Law on Citizen Security") on the population of juveniles deprived of liberty, and based on the results and other technical considerations adopt the necessary measures to preserve the good management of the detention centers for juvenile offenders under the age of 18, and to preserve the nature of these centers in spite of the increase in the number of inmates of 18 years old or more.
- 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.

319. In its Report *Truth, Justice and Reparation*, the Inter-American Commission expressed concern about prison conditions in Colombia, particularly overcrowding and the rapid growth of the prison population; shortcomings in the provision of health services in prisons; the failure to separate pre-trial detainees from convicted prisoners; the lack of clean water in some prisons; arbitrary detentions; the situation of LGBTI persons and juvenile detention centers, and measures to improve monitoring of centers where persons are deprived of liberty.<sup>508</sup>

320. In that regard, the IACHR recognizes the work of Colombia's Constitutional Court, which in 2013 and 2014 adopted decisions guaranteeing the rights of persons deprived of liberty, including judgments T-5884/14 and T-077/13, which concerned the rights to health and food.<sup>509</sup>

321. The IACHR notes that Law 1709 of 2014 created the National Health Fund for Persons Deprived of Liberty as an entity charged with "contracting the provision of health services at all prisons."<sup>510</sup>

<sup>508</sup> IACHR, *Fourth Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.Doc. 49/13, December 31, 2013, par. 1031

<sup>509</sup> [Constitutional Court of Colombia, Judgment T-5884/14](#) and [Constitutional Court of Colombia, Judgment T-077/13](#).

<sup>510</sup> The Law amends a number of articles contained in Law 65 of 1993, Law 599 of 2000, and Law 50 of 1985, as well as introducing other provisions. Published in [Official Gazette No. 49.039](#), January 20, 2014.

The Fund will operate "as a special state body with independent finances, accounting, and statistics; without legal personhood; and funded from the National Budget.<sup>511</sup> The objectives of the Fund include "to keep the accounting records and statistics needed to determine the status of service provision and ensure control over the use of resources" and "see to it that all entities with debts to the Fund ... meet their payment obligations," among others.

322. The Law also created a commission to monitor prison conditions (*Comisión de Seguimiento a las condiciones de reclusión del sistema penitenciario y carcelario*). The functions of this commission, which is supposed to meet every two months, include visiting the country's prisons, drafting regular reports on the state of prison conditions, permanently monitoring overcrowding in the prison system (it is established that INPEC must submit daily reports on the number of persons detained in prison facilities, the level of overcrowding in each facility, and the amount of overcrowding in the system overall), and verifying that healthcare provision units have the necessary infrastructure and inputs.<sup>512</sup>

323. The IACHR also takes note of the information provided by the State regarding the statistics consolidated by the INPEC on prison and detention facilities, which are not directly administered by said authority.<sup>513</sup>

324. With respect to the serious overcrowding in prisons, the State has said that it has taken steps, such as reviewing inmates' records in order clearly to determine which of them are legally entitled to release. Thus, between January 20 and October 24, 2014, 23,543 prisoner releases were processed in accordance with Law 1709 of 2014, and 19,016 of them (80.8%) were granted. In addition, 4,067 releases were approved because the sentence had been served, making a total of 23,083 released prisoners. The State also provided information about the granting of legal benefits between January 21 and October 18, 2014.<sup>514</sup>

325. The State also informed that between 2013 and 2014 room for an additional 11,350 prisoners was created in the country's prisons; potable water and wastewater treatment plants were repaired; maintenance was done on boilers, wells, power plants, and sewerage systems; and general maintenance, studies, and consultancies were carried out at a cost of approximately 21,067,590,136 Colombian pesos,<sup>515</sup> in addition to the legalization, purchase, and expansion of buildings.<sup>516</sup>

326. In that connection, the States indicates that the implementation of Law 1709 of 2014 resulted in the release of 19,063 of the 20,144 people who were considered eligible as beneficiaries under that law as of December 31, 2013.<sup>517</sup> The prisons budget for 2014 was \$2.86 billion pesos, \$2.52 billion of

<sup>511</sup> Ministry of Justice and Law, [Abecé de la Ley 1709](#) del 20 de enero de 2014.

<sup>512</sup> Ministry of Justice and Law, [Abecé de la Ley 1709](#) del 20 de enero de 2014.

<sup>513</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pp. 367-368.

<sup>514</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 372.

<sup>515</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 374.

<sup>516</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 374.

<sup>517</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 377.

which was earmarked for operational expenditures, including funds for decongestion programs, with 342,000 million specifically for investment.<sup>518</sup>

327. The State also mentioned an increase in inmate membership of the General Social Security System Subsidiary Scheme, through the health services administrator EPS CAPRECOM, which currently has 112,385 registered members, amounting to 71.7% of the population for which INPEC is responsible; EPS Subsidiadas has 15,232 registered members, equivalent to 9.7%; 28,943 members belong to other contributory health service providers, accounting for 18.5%; finally the special regime has 172 registered members, equivalent to 0.1% of the population group enrolled in the General Social Security System.<sup>519</sup>

328. Similarly, Colombia said that, based on data in its possession, a clean water supply has been properly implemented at all the country's jails and prisons. Indeed, for 138 facilities have their own drinking water supply, in most cases from the mains water network of the respective city or municipality.<sup>520</sup>

329. As for compliance with the decisions of the Constitutional Court and other competent tribunals ordering the adoption of specific measures to do with prison overcrowding and steps taken in the short term to deal with this problem, the State said that between 2013 and 2014, space for an additional 11,350 prisoners was created in the country's corrections system; three medium-security prisons were under construction at Buga, Tuluá, and Espinal; and jail and prison infrastructure was being expanded.<sup>521</sup>

330. In spite of the State's efforts, la Comisión the Commission reiterates that, because the rate of prison overcrowding has significantly risen, persons deprived of liberty in Colombia are placed in a special situation of vulnerability. In particular, the Commission has learned of unfortunate incidents, which occurred during a fire at the Cárcel Modelo prison of Barranquilla, on January 27, 2014, in which 17 inmates lost their lives and 63 were wounded. In that regard, the Commission has received information that there were 716 inmates in the cellblock where the fire broke out when it was designed to hold 196.<sup>522</sup> Because of these incidents, the Commission also forwarded a request for information from the State, as provided for under Article 41 of the American Convention. In response, the State of Colombia submitted detailed information on the measures it took to address the emergency situation reported to the IACHR, and implementation of other measures aimed at providing reparation for the damages reported, on preventing similar situations in the future (including the investigation and elucidation of the events) and, in particular, remedying the conditions of overcrowding at said prison facility.<sup>523</sup>

331. In recent months sources at the Office of the Attorney General have said that the overcrowding became worse after the judicial strike began and INPEC began working to rule under its Plan Reglamentado.<sup>524</sup>

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<sup>518</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 379.

<sup>519</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 386.

<sup>520</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 388.

<sup>521</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014.

<sup>522</sup> See, IACHR, Press Release No. 16/14, [IACHR Expresses Sorrow over Deaths in Fires at Colombian Prison](#), February 21, 2009.

<sup>523</sup> Republic of Colombia. Note S-DIDHD-14-017603 March 10, 2014.

<sup>524</sup> See, in this regard, El Tiempo, [Por Paro en las URI no cabe un capturado más](#), November 7, 2014

332. INPEC recently announced a decline of 9.5% [in the prison population] thanks to the implementation of the Penal Code reforms, which has granted parole, house arrest, and suspended sentences to 18,732 inmates. However, the Ombudsman's Office noted that "there are contextual circumstances that have had a strong bearing on these results and have nothing whatever to do with the judicial measures attributed to INPEC, since the decision alone to work to rule has caused paralysis, preventing further intakes of prison inmates and creating an enormous logjam in remand centers known as URIs (*Unidad de Reacción Inmediata*) and police jails."<sup>525</sup> It said that "considering the number of people being held at temporary detention centers (URIs and police jails), the level of overcrowding is 53 percent, which is four points higher than the level reported by INPEC."<sup>526</sup>

333. On this issue, the Commission takes note of the information provided by the State for 2015, pertaining to the agreement signed between the Ministries of Justice, Labor, the Office of the President, the Treasury, the General Directorate of INPEC and representatives of penitentiary workers' union organizations, which would provide for "normalization in receiving persons deprived of liberty in national prison facilities under the INPEC;" and that following the judicial work stoppage, the provision of services by judicial operators also returned to normal.<sup>527</sup>

334. Notwithstanding the foregoing, the IACHR notes that the Ombudsman's Office has repeatedly expressed its concern at the overcrowding in URIs in Colombia. For example, the URI in Engativá has a holding capacity for 35 people but houses 84 in its cells, with a further 34 in corridors and mobile units;<sup>528</sup> Ciudad Bolívar has the capacity for 50 detainees but holds 152; Puente Aranda is supposed to hold up to 90 but has 298 detainees; Kennedy is designed to house 50 detainees but has 185; and the URI in Barranquilla, which has three cells, each with an eight-person capacity, is housing 58 detainees.<sup>529</sup>

335. The cramped conditions at the URIs have also sparked a number of incidents. On December 20, 2014, the detainees at Puente Aranda rioted, demanding that something be done about the alarming level of overcrowding in the unit. The following day, December 21, 2014, inmates staged an attempted breakout from the Kennedy URI.<sup>530</sup> There was another riot, on January 2, 2015, this time at the URI in Barranquilla.<sup>531</sup>

336. Reportedly, the Government will not expand the prisons in Boyacá as it reallocated the funds that had been earmarked for remodeling El Barme and Cóbbita prisons to other projects, despite the overcrowded conditions in which the inmates at those prisons live.<sup>532</sup> Notwithstanding, the Commission has noted the information provided by the State on the process of legalization and procurement of real property conducted by the INPEC in 2014, in order to improve the installed capacity at a number of prison facilities, including the Combita facility.<sup>533</sup>

<sup>525</sup> See, in this regard, Ombudsman's Office, Colombia, [Defensoría plantea dudas frente a disminución del hacinamiento carcelario reportado por el Inpec](#), October 29, 2014.

<sup>526</sup> See, in this regard, Ombudsman's Office, Colombia, [Defensoría plantea dudas frente a disminución del hacinamiento carcelario reportado por el Inpec](#), October 29, 2014.

<sup>527</sup> Colombia's remarks on draft Chapter V of the 2014 IACHR Annual Report. Note S-GAIID-15-017750, February 26, 2015, pg. 32.

<sup>528</sup> See, El Heraldo, [Persiste en Colombia alto riesgo en URI y estaciones de policía: Defensoría](#), January 5, 2015

<sup>529</sup> See, Ombudsman's Office, Colombia, [35 detenidos fueron trasladados con acompañamiento de la Defensoría tras motín en URI de Barranquilla](#), January 3, 2015.

<sup>530</sup> See, Ombudsman's Office, Colombia, [Persiste alto riesgo en UNRI y estaciones de policía, sin que haya medidas de choque para conjurar la crisis](#), January 5, 2015; and Caracol Radio, [Dos heridos por amotinamiento en URI de Puente Aranda en Bogotá](#), January 5, 2015.

<sup>531</sup> See, Ombudsman's Office, Colombia, [35 detenidos fueron trasladados con acompañamiento de la Defensoría tras motín en URI de Barranquilla](#), January 3, 2015.

<sup>532</sup> See, Caracol Radio, [Gobierno no ampliara cárceles en Boyaca](#), January 8, 2015.

<sup>533</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, pg. 376. In its remarks on the draft version of the instant Chapter of the 2014 Annual Report, the State asserted: "as

337. Additionally, a 2014 report by the Ombudsman's Office on the situation in Chocó mentioned that the two prisons in that department "suffer from problems similar to those found at most of the country's jails and prisons, namely, high levels of overcrowding, serious structural shortcomings, inadequate medical attention, [and] a lack of adequate and sufficient social rehabilitation programs," among others.<sup>534</sup> Specifically in reference to those two prisons, the Office of the Ombudsman said that in 2014 it had noticed a "worsening of the conditions faced by the inmates and warders." Regarding the medium-security facility (EPCMS) in the city of Quibdó, the overcrowding had increased by 7 percentage points to 159.8%, while the other EPCMS in the municipality of Istmina registered an "overcrowding increase of 20 percentage points" to 92.6%.<sup>535</sup>

338. In its report, the Ombudsman's Office warned about the dire conditions at these facilities "to the point where they pose a danger to the lives and safety of inmates," such as, for example, the dilapidated state of the electrical wiring and drains,<sup>536</sup> "which forces inmates to sleep on raw sewage" and "seriously affects" the health of the prison population. Regarding this point, the State of Colombia reported to the IACHR that, as part of the measures taken to confront this situation in October 2014, the General Directorate of the INPEC issued Transitory Directive No. 000025 for the implementation, follow-up and evaluation of the "Intervention Plan for the Quibdó Facility" and that the intervention plan for the facility in the Department of Chocó was extended to 2015.<sup>537</sup>

339. Regarding the right to health, the IACHR recognizes that the State has taken steps, including modification of the service, in line with Law 1709 of 2014, whereby the Ministry of Health and USPEC have a year in which to design a differentiated, gender-aware healthcare model; implementation of a monthly health monitoring matrix in prisons; a census to improve inmate records in order to have access to their assessments; increased membership of the General Social Security System Subsidiary Scheme; implementation of Decree 971 of 2011; and holding health awareness events.<sup>538</sup>

340. Various press reports suggest that inmates do not have access to medicines more basic conditions for the treatment of diseases. For example, it was reported that patients with HIV, high blood pressure, and diabetes at Anayancy prison in Choco Department, have neither medicines nor adequate facilities for treating their diseases.<sup>539</sup> Inmates with mental health problems at Jamundi Jail have been left without specialized services after the health service administrator Caprecom rescinded the contract of the healthcare services provider without finding a contractor to replace it.<sup>540</sup>

341. In its 2014 report on the situation in Choco Department, the Ombudsman's Office said that the EPCMS in Quibdó "is caught in a real health crisis to which the national and departmental authorities have turned a blind eye," given that the facility has been without medical personnel and food supply services since

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of 2015, 6,726 spots will be provided for, through the 'Refurbishing' and 'Facility Expansion' Programs. Colombia's remarks on draft Chapter V of the 2014 IACHR Annual Report. Note S-GAIID-15-017750, February 26, 2015, pg. 32.

<sup>534</sup> Ombudsman's Office, Colombia, [Crisis Humanitaria en Chocó](#). *Diagnóstico, valoración y acciones de la Defensoría del Pueblo*. Ch. VIII, p. 129.

<sup>535</sup> Ombudsman's Office, Colombia, [Crisis Humanitaria en Chocó](#). *Diagnóstico, valoración y acciones de la Defensoría del Pueblo*. Ch. VIII, p. 129.

<sup>536</sup> The Ombudsman's Office made the particularly troubling observation that "only luck prevented the recent tragedies at the prisons in the city of Barranquilla from being even greater." Ombudsman's Office, Colombia, [Crisis Humanitaria en Chocó](#). *Diagnóstico, valoración y acciones de la Defensoría del Pueblo*. Ch. VIII, p. 130.

<sup>537</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 32.

<sup>538</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014.

<sup>539</sup> See, El Tiempo, [Los llamados de atención de la Corte a dos cárceles](#), October 3, 2014.

<sup>540</sup> See, Ombudsman's Office, [En jeque sostenimiento de reclusos con problemas de salud mental](#), December 3, 2014.

May 2014.<sup>541</sup> The Commission takes note of the information provided by the State that under Transitory Directive No. 000025 itself, the Subdirectorate for Health Care of the INPEC is coordinating and managing several measures in this area, such as holding health care days, vaccination days, and providing psychological support and social work aimed at prison staff.<sup>542</sup>

342. Regarding Colombia, and as indicated by the IACHR in its report on the use of pretrial detention in the Americas, the available information indicates that pretrial detention is also used to “coerce people facing trial to cooperate by admitting charges or presenting evidence against other suspects” and that, for that reason, “prosecutors request pretrial detention, even when they do not have sufficient evidence.” In other words, incarceration is sometimes used as tool for the investigations. There is strong pressure from society, the media, and even public authorities regarding the effectiveness of criminal prosecutions in combating crime and impunity.<sup>543</sup>

343. In addition to the monetary costs that pretrial detention represents to the State and society as a whole, there is another indirect cost when the State is found legally liable for damages due to the harm caused to citizens by the imposition of pretrial detention. This is clearly a very important element to be taken into consideration in countries such as Colombia, where domestic law offers mechanisms for citizens to bring this kind of legal action against the State.<sup>544</sup>

344. This type of estimates about the monetary and human costs of pretrial detention should be used as the basis for a serious and objective discussion about the need and suitability of its use compared to other precautionary measures that could achieve the same procedural goals but with fewer restrictions of rights and at a lower cost, to both the State and the public. In addition, cost analyses are useful in identifying shortcomings, suboptimal practices, and even anomalies in justice and prison system public services.<sup>545</sup>

## 2. The aggravated risk to 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

<sup>541</sup> Ombudsman’s Office, Colombia, [Crisis Humanitaria en Chocó](#). *Diagnóstico, valoración y acciones de la Defensoría del Pueblo*. Ch. VIII, p. 132.

<sup>542</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 33.

<sup>543</sup> See: IACHR, *Report on the use of pretrial detention in the Americas*, December 30, 2013, para. 63.

<sup>544</sup> See: IACHR, *Report on the use of pretrial detention in the Americas*, December 30, 2013, para. 129.

<sup>545</sup> See: IACHR, *Report on the use of pretrial detention in the Americas*, December 30, 2013, para. 130.

who participate in the security schemes for human rights defenders are designated with the participation of and coordinating with the beneficiaries so as to build confidence.

- Develop a public policy aimed at fighting impunity in cases involving violations of the rights of human rights defenders through exhaustive and independent investigations that make it possible to punish both the direct perpetrators and those who planned and ordered the violations. The Commission recommends as part of this policy that the State establish specialized protocols for coordination among prosecutors and, as the case may be, unify the investigations into crimes committed against same civil society organizations and same human rights defenders to give impetus to the investigations and possibly determine of patterns of attacks, other acts of aggression, and harassment.
- Ensure access for human rights defenders and the general public to public information in the possession of the State. In addition, the State should ensure effective access to the right to habeas data for human rights defenders so that they can have access to their data in intelligence files so as to be able to request that it be corrected, updated, or, as the case may be, removed from those files.

345. In spite of the efforts of the Colombian State, the IACHR has continued to receive information about a persistence of murders, intimidation, and harassment of human rights defenders in Colombia, who continue to be the target of attacks ostensibly designed to silence their accusations, particularly regarding violations of human rights in the context of the armed conflict. It has also continued to receive information about unwarranted criminal investigations or judicial complaints against defenders in retaliation for their work. The persistence of these attacks, as well as the criminalization of their work through the misuse of the criminal law system, coupled with the lack of substantive progress in terms of the clarification, investigation, and punishment of those responsible for human rights violations perpetrated against defenders, remain an obstacle to the free exercise of the right to protect human rights, fueling impunity and preventing the rule of law and democracy from being fully realized.

346. In the first half of 2014, civil society organizations recorded 194 attacks against defenders, which marks a 20 percent rise compared with the number registered in the first half of 2013. Those 194 attacks included 105 threats, 30 murders,<sup>546</sup> 29 attempted murders, 18 arbitrary arrests, 4 information thefts, and 1 suspected disappearance.<sup>547</sup> The number of reported attacks continued to rise in July, August, and September. In those three months there were 157 reported threats, 15 murders,<sup>548</sup> 9 attempted murders, 1 arbitrary arrest, and 1 theft of information.<sup>549</sup>

347. With respect to the ongoing threats and acts of intimidation, the IACHR has noted that the great majority of them appear to be perpetrated by armed groups operating outside the law, such as the *Águilas Negras*, *Los Urabeños*, *Los Rastrojos* and other armed structures of a regional or local nature, that have

<sup>546</sup> The Commission received information about the situation of: Alcides Correa (peasant leader), Ever Luis Marín Rolong (labor leader), Juan Alberto Causado Priolo (land claimants leader), Patricio Fernando Mejía Urzola (community leader), Gerson Martínez (youth leader), Carlos Enrique Ruíz Escarraga (cultural leader), Miguel Ángel Parra (community leader), Jorge Eliecer Hernández Blanco (peasant leader), Heriberto Mora Muñetón (community leader), Faustino Acevedo Gaitán (community leader), Epifanio Latin Nuescue (indigenous leader), Evelio Obando Campo (community leader), Olmedo Jiménez Guamanga (peasant leader), Luis Javier Campo Méndez (indigenous leader), Giovany Leiton (peasant leader), Jesús Adán Quinto (land claimants leader), Édgar Bravo González (community leader), Alberto de Jesús Díaz Mercado (community leader), Tomás Rodríguez Cantillo (labor leader), Wilson Hernando Guanga Nastacuas (indigenous leader), Duvis Antonio Galvis (peasant leader), Douglas Zuluaga (peasant leader), Miguel Segundo Díaz Soto (community leader), Luis Alberto Guetio (indigenous leader), Luis Alberto Restrepo Vallejo (community leader), Ernesto Castañeda (community leader), Jhon Braulio Saigama (indigenous leader), Berlain Saigama Gutiérrez (indigenous leader), Pablo Emilio Aponte (labor leader), and José Arlez Avedaño Arango (peasant leader).

<sup>547</sup> Programa Somos Defensores, [Informe Enero-Junio 2014](#).

<sup>548</sup> The Commission received information about the situation of: Pablo de Jesús Cano (community leader), Pablo García Llano (community leader), Eduardo Alarcón Díaz (peasant leader), Carmelo Guitierrez Padilla (community leader), Diego García (community leader), Edith Santos (labor leader), Joaquín Gómez Muñoz (community leader), Flor Nibe Rodríguez (community leader), Emilio Pacheco Tunay (indigenous leader), Miguel Bechceche Zarco (indigenous leader), Miguel Ángel Rodríguez (community leader), Ancizar Ruíz Ceballos (displaced persons' leader), Wilber Chamarra Carpio (indigenous leader), Nair Edilia Tay Torres (indigenous leader), and Pedro Augusto Arisala (Afro-Colombian leader).

<sup>549</sup> Programa Somos Defensores, [Boletín Trimestral Junio-Septiembre 2014](#).



emerged since the demobilization of the so-called “self-defense forces” (*autodefensas*). The Commission has observed that these groups continue to single out defenders, claiming that they are involved in illegal activities or that they are combatants and legitimate targets for attack. For example, in September more than 90 human rights defenders received death threats via e-mails purportedly sent by the illegal armed group that calls itself the *Águilas Negras*.<sup>550</sup> In those e-mails, the illegal group declared that human rights defenders were military targets and threatened to kill them and their families if they did not leave the country within 15 days. The group also scoffed at the work of human rights defenders in the context of the peace process and accused them of being “communist guerrillas.” Several of the defenders threatened are beneficiaries of precautionary measures granted by the IACHR.

348. The Commission has said that only through strong government backing for the work of human rights defenders and effectively punishing public officials who may be responsible for violations of their rights can the State progressively eradicate the unlawful stigmatization that human rights defenders have suffered during years of conflict where they have been treated as “subversive” groups.

349. In that regard, in its report, the Commission made a number of recommendations to the State, calling on it to intensify its efforts to consolidate a culture of respect for those who defend human rights. Thus, it urged the State to adopt effective and comprehensive public policies and to continue to advance those already in place for the protection of human rights defenders at risk as a result of their work; to investigate the violations committed against them; and to punish those responsible.

350. In that connection, the State has said that in the framework of the National Guarantees Process it has defined the following three pillars for promoting human rights, which include: (i) the design of a public policy to guarantee the defense of human rights; (ii) the creation of a technical subgroup on protection and another on criminal and disciplinary investigations; and (iii) the holding of acts of recognition of human rights defenders by the state in order to underscore their role in consolidating democracy and building the government's social agenda.<sup>551</sup>

351. The Commission values the implementation of this and other initiatives as positive steps that could enable human rights defenders to carry out their activities in safer conditions. The Commission particularly values the fact that in 2014 the National Roundtable on Guarantees for Human Rights Defenders and Social and Community Leaders began holding meetings again after a year's hiatus.<sup>552</sup> The Commission highlights the importance of this high-level dialogue forum between the authorities and civil society organizations, which enables steps to be taken and specifically focuses on the needs of human rights defenders. The Commission urges that its meetings continue in order to design and implement strategies and measures to protect the work of human rights defenders.

352. Civil society organizations have recognized the importance of the creation of technical subgroups and said that those groups have enabled a specialized dialogue with the authorities and the stakeholders directly responsible for protection and investigation.<sup>553</sup> Having said that, they also noted that one of the main challenges for the National Guarantees Process was the absence of concrete steps for its coordination at the regional level.<sup>554</sup> In this regard, the State claimed that the since its creation in 2009, the National Guarantee Process has been implementing strategies aimed at ensuring National-Territorial coordination, for example, the appointment of spokespersons in the 14 priority regions, who are also

<sup>550</sup> CIDH, [IACHR Expresses Deep Concern over Threats against Defenders of Human Rights Organizations Working for Peace in Colombia](#), September 18, 2014.

<sup>551</sup> Republic of Colombia, *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIIID-14-094783, received December 29, 2014, p. 389.

<sup>552</sup> Office of the Advisor on Human Rights, [Gobierno reactivó la Mesa Nacional de Garantías para Defensores de Derechos Humanos](#), October 21, 2014.

<sup>553</sup> Programa Somos Defensores, [Informe Especial Protección "Al Tablero."](#) 2014.

<sup>554</sup> Programa Somos Defensores, [Informe Especial Protección "Al Tablero."](#) 2014.

standing members of the National Roundtable on Guarantees; holding “acts of public recognition for the work of defenders,” CERREM and working meetings with territorial and civil society entities, as well as the incorporation of departmental and municipal development plans “in order to guarantee the work performed by human rights defenders in the territories.”<sup>555</sup> Notwithstanding the foregoing, in view of the information available, the IACHR deems it important for the State to step up its efforts to move forward in interagency coordination and harmonizing the implementation of initiatives at the regional level, in order to give substance to the guarantees for the work of defenders in zones where they are at greater risk.

353. The Commission takes note of the significant efforts made by the Colombian State to ensure that society and public servants recognize the work of human rights defenders as a legitimate and necessary activity for democracy and peace-building. In particular, the IACHR appreciates the holding of nine acts of recognition of the work of human rights defenders, acknowledging the endeavors of at least 248 organizations.<sup>556</sup> Nonetheless, the persistence of such attacks and the failure to investigate them are a sign that the State needs to continue monitoring and overhauling public policies to ensure that they meet their objectives in full, as well as implementing new policies to help consolidate a culture of respect for those who defend human rights.

354. The Commission also urged Colombia not to use the punitive power of the State and its organs of justice to criminalize human rights defenders in retaliation for their activities in defense of human rights and to ensure that public servants refrain from statements that stigmatize human rights defenders. The State said that the Office of the Attorney General has the obligation to investigate any possibility that a crime has been committed and that, therefore, it would be mistaken to suggest *a priori* that there has been any kind of criminalization because investigations are carried out in response to citizens' complaints. In view of the foregoing, the State deemed this recommendation as “not accepted”<sup>557</sup> In its remarks on the draft version of the instant chapter, the State explained that its interpretation of this recommendation is that “at no time can the function of investigating be construed as the improper use of criminal law” and that under Colombian law, the Office of the Attorney General of the Nation has the obligation to investigate complaints that are filed for potential conduct that constitutes a criminal offense, “regardless of the capacity, position or activity of the complainant or the offender.”<sup>558</sup>

355. On this score, the Commission recalls that when a complaint is filed or a publicly actionable offense is committed, the State has the obligation to institute criminal proceedings and pursue them.<sup>559</sup> However, the State is also required to take the necessary steps to prevent the use of official inquiries to bring unjust or unfounded lawsuits against persons who legitimately demand observance and protection of human rights.<sup>560</sup>

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<sup>555</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 34.

<sup>556</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 393.

<sup>557</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 393.

<sup>558</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 34.

<sup>559</sup> IACHR, Report No. 52/97, Case 11.218, Admissibility, Arges Sequeira Mangas, Nicaragua, February 18, 1998, par. 99. IACHR, 1997 Annual Report, OEA/Ser.L/V/II.98, February 17, 1998, pars. 96 and 97. See also Report No. 55/97, Case 11.137, admissibility, Juan Carlos Abella, Argentina, November 18, 1997, par. 392.

<sup>560</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas OEA/Ser.L/V/II.124. Doc. 5 rev. 1, March 7, 2006, Chapter X. Recommendation No. 11.

356. In particular, the State should ensure that authorities in charge of investigating crimes collect the necessary evidence to show the existence of wrongdoing before pressing charges,<sup>561</sup> so that they can avoid—perhaps due to a lack of precision in the criminal codes or due to a lack of diligence in the investigation—presenting criminal indictments before assembling proof that unlawful conduct has occurred.<sup>562</sup>

357. The Commission also recommended that the State ensure that its officials refrain from making statements that stigmatize human rights defenders or that suggest that human rights organizations act improperly or illegally because of their work to promote and protect human rights. In this connection, the Commission values the adoption of guidelines such as the Office of the Procurator General’s Directive 012 of 2010 (Guidelines for public officials on ensuring the rights of human rights defenders in the performance of their work), which mentions that it is a serious infringement for the State to stigmatize the work of human rights defenders and sets out the possible disciplinary penalties that it would incur. The Commission also considers it a positive sign that between 2011 and September 1, 2014, 80 disciplinary proceedings have been instituted for stigmatization of human rights defenders.<sup>563</sup> However, it is worrisome that the State deems this recommendation as “not accepted” articularly when it has observed that, in spite of the acts of recognition, disparaging discourse continues to be heard from agents of the state that aggravates the risk to defenders.

358. The Commission recalls that stigmatizing statements increase the vulnerability of defenders, weaken their reputation in the eyes of third parties, and may endanger their lives and physical integrity, particularly when such statements are made in the context of armed conflicts armed groups operating outside the law could consider that the acts of violence aimed at silencing defenders enjoy the acquiescence of governments.<sup>564</sup> Therefore, given the State’s obligations to guarantee, respect and promote human rights, states have a duty to ensure that the public statements of public officials do not impair or inhibit the right to defend rights.<sup>565</sup>

359. In this context, the Commission also takes a positive view of the steps implemented by the State in this area, for example, the “acts of public recognition” conducted under the National Guarantee Process, and the “communications strategy” carried out at the National Roundtable on Guarantees of defenders and social leaders, in order to “support and spotlight the importance of the job of the human rights defense.” Based on information provided by the State, said strategy is designed to “sensitize citizens to the job of human rights defense and for them to recognize themselves as defenders, should they be unaware of such a role.”<sup>566</sup>

360. The State said that it has guaranteed 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.<sup>567</sup> Specifically, it said that beneficiaries are consulted about

<sup>561</sup> IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/SER.L/V/II/Doc.66, December 31, 2011, par. 94.

<sup>562</sup> IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/SER.L/V/II/Doc.66, December 31, 2011, par. 94.

<sup>563</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 392.

<sup>564</sup> IACHR, [Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II.124., Doc. 5 rev.1, 2006 par. 170.

<sup>565</sup> IACHR, [The Inter-American Legal Framework regarding the Right to Freedom of Expression](#), OEA/Ser.L/V/II/CIDH/RELE/INF.2/09/, December 30, 2009, par. 203.

<sup>566</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 35.

<sup>567</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 394.

what protection measures they believe should be appropriately assigned to them and that the National Protection Unit changes personnel in cases where security escorts fail to inspire confidence.

361. The State also informed that the National Protection Unit provides protection arrangements to 559 human rights defenders.<sup>568</sup> The Commission has received information that several beneficiaries of protection arrangements have complained that they function poorly due to the National Protection Unit's budget crisis. Even though the State reported that "for budgetary reasons, no protection contingent has been assigned to at-risk persons,"<sup>569</sup> the Commission notes that the Office of the Procurator General expressed its concern and said that this situation resulted in the removal of the protection arrangements for government officials and placed at risk the security of leaders of land restitution claimants and victims.<sup>570</sup> In particular, the Commission received information that several arrangements have been scaled back and that security personnel employed by the Unit have taken part in protests over nonpayment of their salaries.<sup>571</sup> The Unit's director later announced that all salaries had been paid and that the situation had returned to normal.<sup>572</sup>

362. The Commission has also continued to receive information that beneficiaries of precautionary measures granted by the IACHR had been subjected to "risk demonstration" processes to be eligible for the protection they need even though the risk had already been established by international bodies, or that the measures had been lifted because it was considered that the situation of risk no longer existed, despite the IACHR not having ordered their lifting. The IACHR has recognized that States must examine the situation and, in consultation with the beneficiaries, determine what protective measures will be adopted to protect his/her rights. It is this analysis that will enable the State to effectively and diligently comply with requests for protective measures. Nevertheless, the Commission reiterates that it would concern to find that the State might attempt to obstruct the protection by requiring a re-evaluation of the risk of danger, even though the IACHR has already determined that the risk or danger is present. This not only constitutes a failure to comply with the request from the organs of the inter-American system, but also places an added burden on the beneficiary before he/ she can qualify for the State's Protection Program. In practice, this conduct is simply a delaying tactic, a way to avoid having to offer the protective measures.<sup>573</sup>

363. Finally, the State said that in 2014, in the framework of the efforts to combat impunity, the Office of the Director of the Specialized National Prosecution Unit for Human Rights and International Humanitarian Law had conducted 60 investigations into crimes against the lives and physical integrity of human rights defenders, which succeeded in convicting 68 people.<sup>574</sup> The State also informed that the Office of the Attorney General included the cases concerning trade unionists and human rights defenders in its prioritization strategy.<sup>575</sup> The Commission notes the promulgation of Decree 016 of 2014 and regards as a favorable development the fact that a Human Rights and Citizen Security Group has been set up to give impetus to investigations of gross human rights violations.

<sup>568</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 392.

<sup>569</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIID-15-017750, of February 26, 2015, p. 35.

<sup>570</sup> El Tiempo, [Procuraduría preocupada por funcionamiento de la Unidad de Protección](#), September 25, 2014.

<sup>571</sup> Caracol Radio, [Huelga de escoltas en Colombia deja sin protección a casi 50 personas](#), November 10, 2014. See also, Señal Radio Colombia, [Escoltas levantan paro que redujo protección a 50 personajes del país](#), November 11, 2014.

<sup>572</sup> El Tiempo, [Unidad de Protección desmiente que escoltas hayan levantado esquemas](#), November 10, 2014.

<sup>573</sup> IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/SER.L/V/II/Doc.66, December 31, 2011, par. 460.

<sup>574</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 391.

<sup>575</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation*. Note S-GAIID-14-094783, received December 29, 2014, p. 396.

364. However, the Commission finds that most attacks against defenders in Colombia continue to languish in impunity. As regards the figures on impunity, a report drafted by *Programa Somos Defensores* mentioned that a review of the status of 219 murders of human rights defenders committed between 2009 and 2013 revealed that 95% of the cases remained unpunished. The report said that only 12 cases were being tried, 26 had been closed, and 119 were under investigation. In 59 cases the Attorney General's Office had provided no information on the investigation.<sup>576</sup> It also said that in only 5% of cases had the investigations progressed beyond the first stage of the new adversarial system. On this point, the Commission takes note once again of the information provided by the State on the strategy developed by the Office of the Attorney General of the Nation to conduct investigations taking context into consideration and targeting investigations "on particular situations or cases."<sup>577</sup> Notwithstanding, along with its general points regarding said measures, the IACHR finds that the persistence of attacks against human rights defenders and the failure to investigate them indicate that the State should continue monitoring and overhauling public policies to ensure that they meet their objectives in full, as well as implementing new policies for implementing the recommendations of the IACHR.

365. Lastly, the IACHR takes note of the creation of the Advisory Commission for Intelligence and Counterintelligence Database and Archive Purging under Law 1621 of 2013 with a two-year mandate.<sup>578</sup> Likewise, it views as a positive step that the National Roundtable for Guarantees has appointed a representative of civil society, who will become a member of said Commission.<sup>579</sup> Notwithstanding, it came to the attention of the Commission that a list of more than 500 email accounts was made public, which was in the hands of the Central Military Intelligence Office of the Army (CIME), and that said archive allegedly held the emails of national and foreign journalists, officials of the Office of the High Commissioner for Peace, ambassadors and members of the International Committee of the Red Cross, as well as of several NGOs.<sup>580</sup> Investigations have presumably been opened into this case.<sup>581</sup>

### III. CONCLUSIONS

366. Based on the observations and information set forth in this chapter, the Commission would remind the State of Colombia of the need to deploy efforts to comply with the recommendations made in the report *Truth, Justice and Reparation: Fourth Report on human rights situation in Colombia*, and to keep up the work thus far achieved.

367. The Commission recognizes that the State continues to launch important public policies on human rights to address the complex situation resulting from the internal armed conflict, as well as the strengthening that the Government is giving to the assistance for victims of human rights violations and the protection of people at risk, and the significant investment in both human and financial resources that the State is making in these areas. The State is also taking a number of measures to overcome situations that violate human rights and move towards peace in Colombian society. In this framework, the Commission again values the efforts undertaken by the State in the peace process and reiterates that the consolidation of a process of dialogue and expectations of achieving a stable and lasting peace in Colombia, are transverse elements in the situation of human rights in the country.

<sup>576</sup> Programa Somos Defensores, *Informe Especial Protección "Al Tablero."* 2014.

<sup>577</sup> Observations of Colombia on the Draft Chapter V of the 2014 Report of the IACHR. Note S-GAIIID-15-017750, of February 26, 2015, p. 36.

<sup>578</sup> Republic of Colombia. *Progress in Protecting and Guaranteeing Human Rights in Colombia (2013-2014) and follow-up on the recommendations contained in the Fourth Country Report of the IACHR: Truth, Justice and Reparation.* Note S-GAIIID-14-094783, received December 29, 2014, pg. 398.

<sup>579</sup> See: Ministry of the Interior, *Sociedad civil eligió su representante para la Comisión de depuración de datos y archivos de inteligencia*, June 24, 2014.

<sup>580</sup> See: Semana, *La polémica lista de inteligencia militar*, October 28, 2014; Also see: Semana, *Los de la lista*, October 28, 2014.

<sup>581</sup> See: El Tiempo, *Ejército dice que está investigando lista de correos en inteligencia*, October 28, 2014; El Universal, *Fiscalía, lista para acusar a militares por chuzadas de 'Andrómeda'*, January 30, 2015.

368. The Commission reaffirms its commitment to work with the Colombian State in finding solutions to problems and challenges identified, and continue providing support in terms of its mandate, in the process of implementing and monitoring the measures that the State has been taken as part of its purpose to effectively address the obstacles faced by victims of human rights violations in Colombia and fulfill its international obligations.