

CHAPTER V

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

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

I. INTRODUCTION

1. This chapter has the objective to follow up on the recommendations made in the Report *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia* (hereinafter “*Report Truth, Justice and Reparation*” or “the report of the IACHR”) approved by the Inter-American Commission on Human Rights (hereinafter “the IACHR” or “the Commission”) on December 31, 2013. In December 2012, the IACHR conducted an *in loco* visit to Colombia and thereafter prepared the country report, the object of this follow up. On August 28, 2014, the IACHR published the report¹ and, on the same date, sent a copy of the report to the State, in accordance to Article 60 of its Rules of Procedure, and granted a four-month period for the State to submit information about compliance with the recommendations contained in said report. On December 29, 2014, the State of Colombia submitted the requested information.

2. In Chapter V of its Annual Report of 2014, published on May 7, 2015, the Commission followed up on the recommendations made by the IACHR on the *Report Truth, Justice and Reparation*. In this Chapter, the Commission considered 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 in implementing the protections and guarantees required for victims of human rights violations in Colombia.²

3. In this regard, the IACHR recognizes what was noted by the State when it indicates that “there are innumerable obstacles and challenges to overcome,” but “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.³ The State also noted the importance of the report of the Commission in seeking to achieve a “positive transformation” in the situation of human rights in Colombia, in particular the recognition of fundamental issues such as the “peace talks.”⁴

¹ IACHR, [IACHR Publishes Fourth Report on the Situation of Human Rights in Colombia](#), August 28, 2014.

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

³ 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. 4-5.

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

4. 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. It also recognized this in its Follow up Report of 2014.⁵ With regard to victims' participation in the dialogue process, the Commission notes that "mechanisms for direct participation" were agreed on for various groups of victims to go to the negotiating sessions in Havana. Nevertheless, during its working visit to Colombia, in August 2015,⁶ the Commission was informed by organizations of civil society about the need for participation to be carried out more broadly. In this regard, the Commission values the steps taken and recalls the importance of the voice of the victims in this process and urges the State to facilitate mechanisms to include their voice more broadly in this process, particularly the voice of those victims that belong to groups specially affected by the armed conflict.

5. In this report, the Commission commends the continuing process of dialogue. On September 23, 2015, the State subscribed an agreement for the creation of the Special Jurisdiction for Peace ("*Jurisdicción Especial para la Paz*" [JEP]) with the FARC-EP EP⁷ and that the *Agreement on the Victims of the Conflict: Comprehensive System for Truth, Justice, Redress, and Nonrepetition, including the Special Jurisdiction for Peace, Commitment on Human Rights*, was published on December 15,⁸ progressing towards the signing of a final agreement.⁹ The Commission notes that this system (SIVJNR) comprises judicial mechanisms such as the JEP and a unit tasked with investigating and dismantling criminal organizations (including those organizations that have been deemed successors of the paramilitaries and their support networks), in addition to complementary extrajudicial mechanisms such as a commission for establishing the truth, coexistence, and nonrepetition, the Unit for Searching for People Taken as Disappeared during and by reason of the conflict (UBPD), and that it provides comprehensive redress measures for building peace and guarantees of nonrepetition.¹⁰ In addition, this system provides for a differentiated and gender-aware approach that responds to the particular features of victimization in each territory and community and, in particular, to the needs of women and children.¹¹

6. The Commission also notes that the UBPD of the SIVJNR is planned as a special high-level, humanitarian unit with specific functions for searching for, locating, registering, and identifying disappeared people and their remains, and for handing those remains over to their families, together with other related duties, none of which hinders the JEP in its investigations intended to clear up incidents.¹²

7. According to information, through said agreement the JEP initiated its creation process, and it follows that its essential duty will be to end impunity, obtain the truth, contribute to the reparation of the victims, and prosecute and convict those responsible for the grave crimes committed during the armed conflict, ensuring non-repetition.¹³ This jurisdiction will have competency with respect to all those who have directly or indirectly participated in the internal armed conflict, in a differentiated manner, equitable,

⁵ IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), of May 7, 2015, para. 3.

⁶ IACHR. Press Release No. 95/15: [IACHR Visits Colombia to Receive Information on the Situation of Persons of African Descent](#), August 27, 2015.

⁷ [Joint Communiqué # 60 regarding the Agreement for the creation of a Special Jurisdiction for Peace](#), Havana, Cuba, September 23, 2015.

⁸ Equipo Paz Gobierno. [Agreement on the Victims of the Conflict](#), December 15, 2015.

⁹ Equipo Paz Gobierno. [Agreement on the Victims of the Conflict](#), December 15, 2015.

¹⁰ Equipo Paz Gobierno. [Agreement on the Victims of the Conflict](#), December 15, 2015.

¹¹ Equipo Paz Gobierno. [Agreement on the Victims of the Conflict](#), December 15, 2015.

¹² Equipo Paz Gobierno. [Agreement on the Victims of the Conflict](#), December 15, 2015, pp. 18 and 19.

¹³ [Joint Communiqué # 60 regarding the Agreement for the creation of a Special Jurisdiction for Peace](#), Havana, Cuba, September 23, 2015.

balanced, simultaneous and symmetric, including the FARC – EP, State agents and third parties that had financed or collaborated with armed groups, among others.¹⁴

8. Likewise, the agreement establishes that the pardons or amnesties foreseen in the agreement will apply only to political crimes, whereas crimes against humanity, genocide, and grave war crimes, among other serious crimes such as the taking of hostages or other serious deprivation of liberty, torture, forced displacement, forced disappearance, extra-judicial executions and sexual violence will be subject to investigation by the JEP.¹⁵ Furthermore, it is worth highlighting that the Office of the High Commissioner for Peace explained that these amnesties or pardons will not affect the rights to truth and reparation of the victims in relation to the responsible people who receive amnesty or pardons.¹⁶

9. The Commission will examine the agreement in more detail, along with the legislative and policy measures, through its different mechanisms, taking into account the perspectives of the State and various civil society sources.

10. The State, in turn, reported — prior to the publication of the agreement on the victims of the conflict — that since the dialogue panel has not released the final transitional justice agreement between the FARC-EP and the government, it reserved the right to speak further on the topic.¹⁷ It also stated that:

the agreements reached during this process are intended to promote, protect, and guarantee the rights of all Colombians, in particular those of the victims. The ending of the armed conflict is the best way to ensure that there are no new victims. And the satisfaction of the victims' rights, along with the implementation of the agreements and the consolidation of the social rule of law throughout the nation's territory, is the best guarantee of nonrepetition.¹⁸

11. It said that the JEP meets five conditions: (i) the most serious crimes will not remain unpunished; (ii) the system is based on the recognition of responsibility; (iii) a special court will be established, with mostly Colombian judges, and its judgments are to focus on the most serious and emblematic crimes; (iv) there will be a sanctions regime that will depend on the level of acknowledgment of responsibility and will take into account the contribution made to nonrepetition and to providing the victims with redress; and (v) the participants in that jurisdiction will have to meet the requirements of the comprehensive truth, justice, and redress system.¹⁹

12. Civil society organizations have expressed their satisfaction with the evolution of the process and have recognized as positive a series of issues, such as the adoption of a restorative justice approach, and the inclusion of the victims and human rights defenders as important stakeholders, that are providing the framework for the JEP.²⁰ Likewise, they have recognized the enshrinement of truth as guiding principle for deciding sanctions and the wide recognition of political and related crimes.²¹ They consider that besides the

¹⁴ Oficina del Alto Comisionado para la Paz. [ABC: Jurisdicción Especial para la Paz](#). Cf. Equipo Paz Gobierno. [Agreement on the Victims of the Conflict](#), December 15, 2015, p. 26.

¹⁵ Oficina del Alto Comisionado para la Paz. [P&R: Jurisdicción Especial para la Paz](#); Equipo Paz Gobierno. [Agreement on the Victims of the Conflict](#), December 15, 2015.

¹⁶ Oficina del Alto Comisionado para la Paz. [P&R: Jurisdicción Especial para la Paz](#).

¹⁷ Permanent Mission of Colombia to the OAS, Note MPC-OEA No. 1558/2015, December 15, 2015.

¹⁸ Permanent Mission of Colombia to the OAS, Note MPC-OEA No. 1558/2015, December 15, 2015.

¹⁹ Permanent Mission of Colombia to the OAS, Note MPC-OEA No. 1558/2015, December 15, 2015.

²⁰ Coordinación Colombia-Europa-Estados Unidos. CCEEU. [Con el acuerdo sobre justicia: el fin del conflicto armado con las FARC al alcance de la mano](#), September 25, 2015. The CCEEU is a coalition of 260 human rights defenders' organizations.

²¹ CCEEU. [Con el acuerdo sobre justicia: el fin del conflicto armado con las FARC al alcance de la mano](#), September 25, 2015.

clarification of grave crimes against humanity, war crimes and grave human rights violations, it is also the basis to guarantee their non-repetition.²²

13. Also, the Commission reiterates that the consolidation of this process, 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 a final accord, but to its consolidation and implementation when it comes to ending the violations stemming from the conflict, and preventing their repetition in the future. The establishment of peace in Colombia is a fundamental condition to guarantee its inhabitants respect for their fundamental rights. The Commission commends the steps toward a final agreement. The Commission also makes itself available to the State to assist with this process, which, in accordance with its functions, it will continue to monitor.

14. In the *Report Truth, Justice, and Reparation*, the Commission analyzed the human rights situation in the Republic of Colombia and was 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 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.²³ 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.

15. The Commission's analysis also took into account that the Colombian armed conflict has experimented major changes in terms of the dynamics and the actors involved in it, and that the existence of an armed conflict, (which had been denied) and its legacy has been acknowledged, a fundamental condition that allows for the reparation of victims and the return of lands that had been forcibly taken by paramilitary groups, in many cases with the collusion of the security forces.

16. 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 indicated specific duties to dismantle those *Autodefensas* which did not participate in the collective demobilizations carried out from 2003 to 2006, and which continue operating in Colombian territory. In this regard, the IACHR has 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 that are "different in nature and scope" from the paramilitary groups. In this respect, in its observations to the draft report, the State indicated that ""it has taken the irrevocable decision to confront and dismantle all illegal organizations, especially the structures of criminal bands."²⁴

17. 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 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, but also for having detailed and precise information

²² CCEEU. [Con el acuerdo sobre justicia: el fin del conflicto armado con las FARC al alcance de la mano](#), September 25, 2015.

²³ See: IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 2.

²⁴ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation. Note S-GA/ID-15-120799*, received December 9, 2015, p. 3, parr. 10.

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.

18. 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 (hereinafter “FGN”) 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. On this occasion, the Commission also notes the recently created JEP.

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

20. In this framework, the Commission, first, reiterated that overcoming impunity is essential for achieving justice and preventing the repetition of human rights violations. Second, in order for any transitional justice system to establish a lasting peace, it must function as an incentive system that is 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.

21. In light of the above, the Commission emphasized that the concept of prioritization would in principle be consistent with the importance and necessity of judicially establishing the responsibility of the most important leaders. Likewise, the IACHR has emphasized that under the American Convention the State is obligated to investigate human rights violations. A law that contains an a priori limitation by providing for the selection of some grave human rights violations for investigation and the eventual renunciation of others is incompatible with the conventional obligations of the State.

22. On August 25, 2015, the Commission communicated to the State that it planned to publish a second follow-up report of the recommendations contained in the *Report Truth, Justice and Reparation*, and decided to emphasize the recommendations that are the main subject of this report. In this regard, it requested information about the compliance with said recommendations.

23. Likewise, on August 26 and 27, 2015, the Commission communicated with national civil society organizations about follow up to the recommendations of its *Report Truth, Justice and Reparation* and requested information they considered relevant about compliance with the recommendations in their area of expertise.²⁵

²⁵ The organizations to whom said communication was sent to were the following: AFRODES, MOVICE, GIDH, Colombia Diversa, Caribe Afirmativo, Fecolper, CCAJAR, CIJP, Corporación Sisma Mujer, Women’s Link Worldwide, Red Nacional de Mujeres, Ruta Pacífica, Casa de la Mujer, Mesa de Trabajo Mujer y Conflicto Armado, Humanas Colombia, ONIC, CODHES, ACIN, Humanidad Vigente, MINGA, FCSP, PCN, Reiniciar, CJL, CCJ, ASFADDES, Asociación Colectivo de Mujeres al Derecho, FLIP, Dejusticia, Mesa de Coordinación Colombia Europa Estados Unidos, CRIC y el Programa de Acción por la Igualdad y la Inclusión Social de la Universidad de los Andes.

24. The State submitted its response on September 14, 2015, in which it referred to the measures implemented during the first semester of 2015.²⁶ In response to the request of information by the IACHR to the Colombian organizations of civil society, the organizations Women's Link Worldwide, *Dejusticia*, *Corporación Humanas*, *La Mesa por la Vida y la Salud de las Mujeres* and *Casa de la Mujer* jointly submitted information.²⁷ Likewise, the *Corporación Jurídica Yira Castro* (CJYC) submitted their report on the state of unconstitutional matters concerning the victims of displacement in Colombia.²⁸ Additionally, other civil society organizations presented pertinent information during the hearings maintained before the IACHR this year.

25. On November 17, 2015, the Commission sent the State a copy of the preliminary draft of this chapter of its 2015 Annual Report, in accordance with Article 59.10 of its Rules of Procedure, requesting that the State return its comments. On December 9, 2015, the Commission received the State's comments and observations which, as relevant, were incorporated into this chapter.²⁹

26. This 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 hearings³⁰, investigations pursued at its own initiative, input from the mechanism of cases and petitions, precautionary measures, and 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 complying with the recommendations made in the report of the IACHR.

²⁶ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015.

²⁷ Communication received on September 15, 2015 from: Women's Link Worldwide, *Dejusticia*, *Corporación Humanas*, *La Mesa por la Vida y la Salud de las Mujeres* y *Casa de la Mujer*. The information provided relates to the measures to guarantee the right to health of the victims of sexual violence in Colombia, especially in the context of the armed conflict, and the access of Afro-descendant women to attention of maternal health, sexual and reproductive health and with regard to the disproportionate impact of sexual violence to that population in the context of the armed conflict.

²⁸ Communication received on September 21, 2015 from the CJYC.

²⁹ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 3. and Communication of the State Note MPC-OEA No. 1558/2015, December 15, 2015. AGREGAR LAS RESPUESTAS DEL ESTADO EN HYPERLINK

³⁰ Hearings on: [Reports of Extrajudicial Execution and Impunity in Colombia](#), [Reports on Setbacks of Legislation on Military Criminal Justice in Colombia](#), [Follow-up to implementation of the Justice and Peace Law \(Law 975 of 2005 in Colombia\)](#), [Human Rights and Resettlement processes in Colombia](#), [Situation of Human Rights Defenders who Advocate for Land Restitution in Colombia](#), [Right to Health and Justice for Victims of Sexual Violence in Colombia](#), [Human Rights and Legal Reforms with regard to Security Forces in Colombia](#), and [Reports of Discrimination against People of African Descent in Colombia](#).

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 human rights violations and IHL. Those measures should include: (a) a serious, impartial, and effective investigation into all cases that involve alleged human rights violations 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 human rights violations 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* which did not participate in the collective demobilizations from 2003 to 2006, and to dismantle the armed groups that emerged after the demobilization of the paramilitary organizations or that continue to pursue the same objectives.
- That it adopt the measures necessary for having a registry with public access that is updated, unified, and vetted concerning persons who have been forcibly disappeared in Colombia, with information broken down by age, gender, ethnicity, and people, among others.
- That it adopts the relevant measures to guarantee the effectiveness of the Urgent Search Mechanism or any other mechanism that makes it possible to immediately recover disappeared persons.
- That it continue making progress in recovering the bodies of the disappeared, identifying them correctly, and appropriately delivering them to their next of kin.
- That it adopt the corresponding measures to ensure that extrajudicial executions are investigated in the competent jurisdiction, i.e. the regular jurisdiction. In addition, the Commission urges the State to give impetus to proceedings under way in cases of extrajudicial executions, and culminate them within a reasonable time, in keeping with the standards of due diligence in investigations.

27. The Commission has repeatedly stated that after the demobilization of the *Autodefensas Unidas de Colombia* (hereinafter “AUC”), violence stemming from the armed conflict persisted, as did reports 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 of the complex situation that 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 by the State as “emerging criminal bands.”

28. In this regard, the Commission reiterated in its follow-up report that, despite the efforts aimed at dismantling the armed structure of the AUC, illegal armed groups continued to be involved in committing acts of harassment and violence against vulnerable populations, social leaders, and human rights defenders, among others. In this regard the Commission observed that these illegal armed groups have been linked with serious human rights violations; and also identified the elements of continuity between the former *Autodefensas* and its actions.³¹ 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 victims of the conflict and 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 *Autodefensas* and the armed groups that emerged after the demobilization of the paramilitary organizations or that continue to pursue the same objectives.

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

29. In its initial observations the State did not concur with the first part of this recommendation and informed that the measures to dismantle post-demobilization armed groups were being implemented. In its response corresponding to 2015, the State did not comment on this regard.

30. 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 (SRV), for purposes of humanitarian assistance and in the case of victims of displacement.

31. In its comments on the draft of this chapter, the State reported that in 2015 it captured 1453 members of criminal structures (1150 from Clan Úsuga, 170 from ERPAC, and 133 from Rastrojos), including one first-level leader, 30 second-level leaders, and 108 third-level leaders.³² In spite of those efforts, as analyzed below, during 2015 the IACHR has continued receiving information about actions of the illegal armed groups that emerged after the demobilization and which are identified as being related or have among their members, persons that belonged to paramilitary groups who, in many cases, allegedly continue acting under the protection of State agents (see *infra* II.C). Therefore, the IACHR reiterates its concern about the elements of continuity between the former *Autodefensas* and the so-called "emerging criminal bands", and so again observes that the State maintains specific duties to dismantle the groups known as "*Autodefensas*" which did not participate in the collective demobilizations.

32. Likewise, the Commission reiterates that the State must consider that the characterization of the illegal armed groups that emerged after the demobilization of paramilitary organizations should be done on a case-by-case basis with a specialized analysis that takes into account the origin of paramilitarism and the elements of international responsibility of the State. The 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.

33. In its initial observations the State indicated that it did not share the recommendation on measures for the members of the security forces allegedly involved in cases of human rights violations 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."³³ With regard to the judicial processes initiated against agents of the State, the IACHR will present its considerations in the respective section on the gains and setbacks in criminal military justice in Colombia.

34. With regard to the homicide rate, InSight Crime Foundation reported that last year Colombia reduced its rate to 26.1 per 100,000 inhabitants, which makes 2015 the least violent year in the country since the height of Pablo Escobar's power in the mid-eighties. Nevertheless, it considered that it is unclear whether the drop in homicides has more to do with recent truces among criminal groups — such as the 2013 deal between the *Urabeños* and the *Oficina de Envigado* — or the success of the government's security policies. It stated that most likely it is a combination of both factors.³⁴ On this point, Colombia stated that "the authorities have been working diligently for years to bring their procedures into line with the international standards for the protection of human rights and to ensure efficiency and effectiveness in operational terms, against all the illegal structures that affect the rights of the civilian population and the stability of the State,"³⁵ and so it believed it was inappropriate to attribute the country's falling homicide rate and the security

³² Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 3.

³³ 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 on December 29, 2014, p. 40.

³⁴ InSight Crime Foundation, [InSight Crime 2014 Homicide Round-up](#), January 13, 2015.

³⁵ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 4.

conditions in the country to the “truces.”³⁶ The Colombian Ministry of National Defense registered 13,343 homicides in 2013, which translates into 28 homicides per 100,000 inhabitants.³⁷ As of August 2015, 8,349 homicides were recorded;³⁸ that result was 5% lower than during the same period the previous year, with which the rate fell to 17 per 100,000 inhabitants, representing the lowest level in the past 35 years.³⁹

35. Based on the data of disappeared persons during 2015, the Commission notes with concern the alarm generated by the persistence of the widespread phenomena of disappearance 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.

36. In its observations for 2015, the State indicated that the National Registry of Disappeared Persons (RND) had a record of 3,400 disappeared persons between January 1 and July 31, 2015, including 59 cases of alleged forced disappearances.⁴⁰ Furthermore, it indicated that during the first semester of 2015 the Urgent Search Mechanism (*Mecanismo de Búsqueda Urgente* - MBU) was activated 59 times, out of which 36 correspond to men and 23 to women allegedly disappeared.⁴¹

37. In this regard, the State specified that forced disappearance is defined in their domestic law as crime not only attributable to agents of State or individuals that act with its acquiescence, rather this definition is extended to any individual that may be responsible of said crime. It stated that, therefore, the investigation of this crime is cognizable both in the ordinary jurisdiction as well as in the competence of the transitional justice (Justice and Peace Law). It stated that between June 1, 2014 and June 10, 2015, 31 condemnatory judgments were adopted in the ordinary jurisdiction for the crime of forced disappearance; and since the year 2011, 138 convictions were obtained. Likewise, it reiterated that in transitional justice, the cases of forced disappearance have been identified and addressed in virtue of the strategy of prioritization adopted by the Office of the Attorney General.

38. With respect to the recovery of the bodies of disappeared persons, the State indicated that the National Institute of Legal Medicine and Forensic Sciences (*Instituto Nacional de Medicina Legal y Ciencias Forenses* INMLCF) has been working since December 2014 on updating the data dictionary of the Network Information System of Corpses and Disappeared Persons (*Sistema de Información Red de Desaparecidos y Cadáveres* SIRDEC), in which the variables of ethnic affiliation were included since August 2015.⁴²

39. The State informed about progress in the optimization of the quality of the information registered in SIRDEC through training, as well as massive crossing-referencing of data on disappeared persons with the Office of the High Commissioner for Human Rights (OHCHR) and different government entities.⁴³ It also informed about the progress of the Project “*Búsqueda de personas no identificadas en cementerios*” (Search for non-identified persons in cemeteries), through which, during the first trimester of

³⁶ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 4.

³⁷ Ministry of National Defense, *Logros de la Política Integral de Seguridad y Defensa para la Prosperidad – PISDP*, April 2015.

³⁸ Ministry of National Defense, *Logros de la Política Integral de Seguridad y Defensa para la Prosperidad – PISDP*, April 2015.

³⁹ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 4.

⁴⁰ The State clarifies that in many cases where the persons appear in their usual locales, this act is not reported before the authorities that knew the case, which leads to a high record of cases of disappearance in the country. Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 1 and 2.

⁴¹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 1.

⁴² Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 2.

⁴³ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 2.

2015, 35 corpses were recovered, and these were documented and recorded. Likewise, it indicated that the INMLCF and the Office of the Mayor of Bogota opened the “*Laboratorio de genética para la paz*” (Genetic laboratory for peace) where a bank of genetic profiles will function to manage and process the genetic information obtained from the bodies of victims of disappearance and the biological reference samples taken from their next of kin.⁴⁴ On this occasion, the State did not provide an updated figure of the total number of disappeared persons in Colombia.

40. Likewise, the Foundation Nydia Erika Bautista in its report on forced disappearances of women in Colombia, a study of the cases of the armed conflict between 1985 and 2005, published in May, 2015, recorded that during the last 30 years 5,230 women were victims of forced disappearance in Colombia.⁴⁵ It should be noted that Ms. Andrea Torres, coordinator of the legal department of the Nydia Erika Bautista Foundation, would appear to have been a victim of information theft, harassment, and death threats via telephone message, between April 16 and May 22, 2015 in which the other members of the foundation were also threatened.⁴⁶

41. For its part, the *Corporación Colectivo Sociojurídico Orlando Fals Borda (Colectivo OFB)* reported cumulative data of more than 45,000 alleged forced disappearances, without specification of stating year of analysis, until 2015, based on data from the Office of the Attorney General.⁴⁷ They point out that of the cases investigated and closed between 2003 and 2014 only 12% had any sanction, with 60% of those sanctions against lower-ranking officers within the military and police hierarchy. Twenty four percent were sub-officers, 3.1% were of higher rank and 13% were officers.⁴⁸ In addition, they state that 20,453 persons are buried as un-identified in the municipal cemeteries of the country, and of those, 2,292 remains are in five cemeteries in the Eastern plains (Villavicencio, Vista Hermosa, La Macarena, Granada and San José de Guaviare).⁴⁹ They indicate that 1,492 of them were buried as killed in combat, 830 were identified, 260 families of those identified have been located, and in five years 77 remains were given to their relatives.⁵⁰ They state that only three prosecutors work on those cases.⁵¹

42. In addition, information was received indicating that the regular courts are hearing 61,918 cases of forced disappearance under Law 600 of 2000 (the previous inquisitorial criminal justice system) and 14,244 under Law 906 of 2004 (the current adversarial system), of which the majority were in the departments of Meta, Nariño, Valle del Cauca, Caquetá, and Santander.⁵² The information further indicates that eight cases are at the trial stage (Law 600 of 2000) and two are at the public judgment hearing stage

⁴⁴ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 2.

⁴⁵ *Centro de Memoria, Paz y Reconciliación* (Centre for the Memory, Peace and Reconciliation), [Presentación del Informe Desapariciones Forzadas de mujeres en Colombia](#) (Launching of the Report on Disappearance of Women in Colombia), See UNDP. [Desapariciones Forzadas de mujeres en Colombia](#), May 20, 2015.

⁴⁶ Urgent action from the Observatory for the Protection of Human Rights Defenders, joint programme World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH), June 3, 2015.

⁴⁷ Cumulative data without specifying since when. *Colectivo OFB*. Let’s tell the truth because all unidentified persons have a story. Data from the Office of the Prosecutor and *Coordinación Colombia Europa EEUU*.

⁴⁸ *Colectivo OFB*. Let’s tell the truth because all unidentified persons have a story.

⁴⁹ *Colectivo OFB*. Let’s tell the truth because all unidentified persons have a story.

⁵⁰ *Colectivo OFB*. Let’s tell the truth because all unidentified persons have a story.

⁵¹ *Colectivo OFB*. Let’s tell the truth because all unidentified persons have a story.

⁵² Communication from the Office of the Attorney General to Benjamín Niño Florez, General Secretary of the Second Committee on Foreign Affairs, Foreign Trade, Defense, and National Security of the Chamber of Representatives, Congress of the Republic of Colombia, November 3, 2015. Information provided by *Colectivo OFB*, one of the organizations on the working panel against forced disappearances that promoted the debate by the members of congress Iván Cepeda, Ángela Robledo, and Alirio Uribe. See also: [What is Forced Disappearance?](#) by Alirio Uribe, November 4, 2015.

(Law 906 of 2004), with a total of 18 people on trial.⁵³ A total of 226 final convictions for forced disappearance, 108 for forced displacement, and 48 others have been issued by the prosecutors attached to the forced disappearance and displacement thematic axis.⁵⁴ In addition, there are two convictions and an acquittal at the Fourth Prosecutor Assigned to the CSJ and 26 convictions at the National Directorate of Sectionals and Citizen Security (DNSSC).⁵⁵

43. The departments reporting most allegations of forced disappearance under Law 600 of 2000 were the following: Antioquia (3178), Magdalena (910), Meta (821), and Norte de Santander (775); and, under Law 906 of 2004: Meta (1086), Antioquia (1018), and Guaviare (480).⁵⁶

44. As regards the members of the armed forces and police who are being prosecuted, there are three with the Prosecutor Assigned to the CSJ, 386 with the Directorate of the National Prosecutor's Office Specializing in Human Rights and International Humanitarian Law, 36 facing prosecution for forced disappearance under Law 600 of 2000, and 22 before the DNSSC.⁵⁷

45. Furthermore, from confessions made by paramilitary members to criminal prosecutors, excavations were initiated in July at La Escombrera, the urban mass grave that is considered the largest in Colombia, which is located in the sector of La Arenera in Comuna 13, Medellín⁵⁸. Media has indicated that up to 300 corpses of the armed conflict victims could be found there. In October, the Justice and Peace Chamber of the High Court of Medellín reiterated its call to the Prosecutors Office for the search of disappeared persons in different sectors of Comuna 13 and to the Major's Office in Medellín, to suspend the deposit of solid residues in La Arenera and La Escombrera⁵⁹. In that regard, media reported that the Government informed that up to 90 persons were buried in this mass grave. It is believed that many of them had been allegedly executed in military operations against the guerilla in 2002⁶⁰.

46. The Commission noted that on October 20, 2015, the remains of three of the 11 disappeared during the taking of the Palace of Justice in November 1985 were identified.⁶¹ The Attorney General said that the remains of Cristina del Pilar Guarín, who worked in the Palace's cafeteria, were exhumed this year from a mass grave in the cemetery *Jardines de Paz*, as well as the remains of Luz Mary Portela León, an occasional visitor to the Palace. He also reported that the remains of Lucy Amparo Oviedo de Arias, who also worked in the cafeteria, were found in two boxes of remains that were exhumed in 1998, which the Office of the

⁵³ Communication from the Office of the Attorney General to Benjamín Niño Florez, General Secretary of the Second Committee on Foreign Affairs, Foreign Trade, Defense, and National Security of the Chamber of Representatives, Congress of the Republic of Colombia, November 3, 2015. Information provided by Colectivo OFB.

⁵⁴ Communication from the Office of the Attorney General to Benjamín Niño Florez, General Secretary of the Second Committee on Foreign Affairs, Foreign Trade, Defense, and National Security of the Chamber of Representatives, Congress of the Republic of Colombia, November 3, 2015. Information provided by Colectivo OFB.

⁵⁵ Communication from the Office of the Attorney General to Benjamín Niño Florez, General Secretary of the Second Committee on Foreign Affairs, Foreign Trade, Defense, and National Security of the Chamber of Representatives, Congress of the Republic of Colombia, November 3, 2015. Information provided by Colectivo OFB.

⁵⁶ Communication from the Office of the Attorney General to Benjamín Niño Florez, General Secretary of the Second Committee on Foreign Affairs, Foreign Trade, Defense, and National Security of the Chamber of Representatives, Congress of the Republic of Colombia, November 3, 2015. Information provided by Colectivo OFB.

⁵⁷ Communication from the Office of the Attorney General to Benjamín Niño Florez, General Secretary of the Second Committee on Foreign Affairs, Foreign Trade, Defense, and National Security of the Chamber of Representatives, Congress of the Republic of Colombia, November 3, 2015. Information provided by Colectivo OFB.

⁵⁸ Naiz. [Comienza en Medellín la exhumación de la mayor fosa común urbana de Colombia](#), July 27, 2015.

⁵⁹ RCNradio.com. [Tribunal de Medellín ratifica solicitud de investigar a Uribe por presunto apoyo a grupos paramilitares](#), October 15, 2015; Caracol radio. [Justicia y Paz impulsa copias contra Uribe por operación Orión en la comuna 13](#), October 16, 2015.

⁶⁰ Naiz. [Comienza en Medellín la exhumación de la mayor fosa común urbana de Colombia](#), July 27, 2015.

⁶¹ RCN Radio.com. [Tres décadas después, identifican a primeros desaparecidos víctimas del Palacio de Justicia](#), October 20, 2015; Semana. [Hallan restos de tres desaparecidos del Palacio de Justicia](#), October 20, 2015, El Universal. [Identifican tres cuerpos de desaparecidos en el Palacio de Justicia](#), October 20, 2015.

Attorney General kept embargoed.⁶² Cristina Guarín and Luz Mary Portela were buried as María Isabel Ferrer de Velázquez and Libia Rincón Mora, respectively, who are now registered as disappeared.⁶³ In this regard, the IACHR values the progress made by the State in the search for missing persons, according to its following recommendation issued in the *Rodríguez Vera et. al.* case in 2012 and the judgment issued by the Inter-American Court of Human Rights:

Start an immediate search to locate Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo, Luz Mary Portela León, Norma Constanza Esguerra, Lucy Amparo Oviedo de Arias, Gloria Anzola de Lanao and Irma Franco Pineda or their remains and, if found, deliver them to their relatives, subsequent to a scientific identification of them.⁶⁴

47. It should be noted, however, that despite these three findings, ten people remain missing, including two women who were believed to be buried at the cemetery *Jardines de Paz*. The Commission, as a party to the process of following up on compliance with the Court's judgment, urges the State to continue fulfilling its obligation of locating all of the disappeared. The Commission notes that, in this context, on December 16, 2015, the Supreme Court absolved the Colonel who led the deployment of army troops in the Palace, from criminal responsibility for the crime of forced disappearance of two persons. As stated, the search for justice continuous as well as the process of compliance before the Court.

48. In this regard, 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 identification and delivery of bodies to the respective relatives, as well as the efforts deployed in the prevention, investigation and punishment of this crime. Nevertheless, the Commission reiterates that these efforts must be stepped up considering that the recorded gains do not match with the high number of persons disappeared and that the under-registration of forced disappearance persists.

49. Therefore 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 thorough going manner, guaranteeing the broad participation of family members in the process.

50. 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. In this regard, the Commission reiterated the utmost importance that the State adopts the necessary measures to ensure the protection of civilians and to precisely determine proportionality in the use of force in this context, as well as outside of the context of armed confrontation. One aspect of particular concern for the Commission was the information related to the low number of persons responsible who have been sanctioned for extrajudicial executions, in addition to the

⁶² RCN Radio.com. [Tres décadas después, identifican a primeros desaparecidos víctimas del Palacio de Justicia](#), October 20, 2015; Semana. [Hallan restos de tres desaparecidos del Palacio de Justicia](#), October 20, 2015, El Universal. [Identifican tres cuerpos de desaparecidos en el Palacio de Justicia](#), October 20, 2015.

⁶³ RCN Radio.com. [Tres décadas después, identifican a primeros desaparecidos víctimas del Palacio de Justicia](#), October 20, 2015; Semana. [Hallan restos de tres desaparecidos del Palacio de Justicia](#), October 20, 2015, El Universal. [Identifican tres cuerpos de desaparecidos en el Palacio de Justicia](#), October 20, 2015.

⁶⁴ IACHR. Report No. 137/11. Case 10.738 Carlos Augusto Rodríguez Vera et al. ("Justice Palace") Colombia, October 31, 2011. Recommendation 2, p. 131. Cf. I/A Court H.R., Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia. Judgment of November 14, 2014. Series C No. 287, p. 211, para. 21.

difficulties associated with some cases of extrajudicial executions going before the military criminal jurisdiction.⁶⁵

51. In this regard, the State reiterated that the actions known as extrajudicial executions have been registered in domestic law through the crimes of aggravated homicide (in the context of human rights) and homicide of a protected person (contravention to IHL).⁶⁶ It informed that as of July 2015, in the ordinary jurisdiction, there is progress in 2,653 investigations and judicial processes, corresponding to the occurrences of previous years.⁶⁷

52. The State highlighted that between May 2014 and June 2015, 62 members of the National Army had been retired from active service by firm judgments for aggravated homicide and 107, out of which 28 correspond to official levels, had been retired from active service for the homicide of a protected person.⁶⁸ It also stated that 42 members of the National Police had been retired from service for convictions of aggravated homicide.⁶⁹

53. With regard to the jurisdictional conflicts, the State informed that the Disciplinary Chamber of the Superior Council of the Judiciary resolved 247 cases between June 1, 2014 and March 17, 2015. It stated that 96 per cent of these cases (238) were assigned to the Ordinary Criminal Justice jurisdiction, whereas 1 per cent (2) was assigned to the Military Criminal Justice jurisdiction. It indicated that in 3 per cent of the cases (7), no decision had been adopted yet.⁷⁰

54. 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 for extrajudicial executions. The IACHR reiterates that, according to the available figures, the number of investigations at advanced stages of the process as well as the number of persons responsible who have been sanctioned is still limited in relation to the total number of cases. This is in addition to the difficulties associated with some extrajudicial executions going before the military criminal jurisdiction, as stated in the *Report Truth, Justice and Reparation*. The challenges concerning new legislative proposals that seek to expand the scope of said jurisdiction, under certain circumstances, to manage cases of human rights and IHL violations shall be addressed in the section of gains and setbacks in military criminal justice.

55. During the hearing held in March 2015 on extrajudicial executions and impunity in Colombia, the organizations of civil society presented information following-up on the recommendations of the *Report Truth, Justice and Reparation* and informed the IACHR they had documented 230 extrajudicial executions committed during the current government, in addition to the 5,763 executions committed between the years 2000 and 2010.⁷¹ They held that even though those 230 cases indicate a decrease in comparison to the previous period, violations to the right to life, attributed to agents of State, continue.⁷²

⁶⁵ See in general IACHR. Report No. 34/15, Petition 191-07 et al (Álvaro Enrique Rodríguez Buitrago et al) Colombia, July 22, 2015.

⁶⁶ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 2.

⁶⁷ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 3.

⁶⁸ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 3.

⁶⁹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 3.

⁷⁰ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 3.

⁷¹ Information presented by the organizations of civil society during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁷² Information presented by the organizations of civil society during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

56. In connection with this, the State said that the information was being verified and that some of the incidents occurred in the course of military operations, in legitimate defense, and that in other cases, the people were alive or were not covered by the period under investigation. It said that several cases were not related to the actions of the security forces and that others were covered by ongoing judicial proceedings or convictions handed down against members of the security forces.⁷³

57. Likewise, they carried out a comparison between both periods of government and found that in the previous period, 90 per cent of the perpetrators belonged to the National Army, whereas in the current period, 46.7 per cent of the cases are attributable to the National Police, and 51.7 per cent to the National Army.⁷⁴ They also indicated that 10 per cent of the 230 victims are women, 89 per cent are men and 37 per cent are under 17 years of age.⁷⁵

58. They stated that there is a high incidence of these crimes in the Pacific area of Colombia because they have documented extrajudicial executions in 28 of 32 departments, and where 64 per cent of all executions were concentrated in 8 departments.⁷⁶ Likewise, in the current period they identified 6 modalities of execution: (i) illegal/improper use or excessive use of force; (ii) civilian homicides committed by the Army at military checkpoints; (iii) homicide of civilians in police stations; (iv) execution of civilians in the context of social protests; (v) false positives; and (vi) military mistakes.⁷⁷

59. In March 2015, Human Rights Watch (HRW) reported that the successors of paramilitarism are actually responsible for kidnappings, killings, dismembering and forced disappearances, mainly in Buenaventura.⁷⁸ United Nations' main humanitarian organizations as well as NGOs recorded 47,899 violent acts in Colombia from January 1, 2015 to date.⁷⁹ The humanitarian monitor from the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) establishes that the places with the most armed violence in these months of 2015 are: *inter alia* Antioquia, Caquetá, Cauca, and Valle del Cauca,⁸⁰

60. During the hearing they indicated they analyzed 4,716 investigations, out of which only 30 per cent are active. They considered that this evidences the lack of capacity of the State to advance investigations leading to the clarification of these facts.⁸¹ They stated that out of the active investigations, there is an insufficient number of attorneys appointed to a large number of cases, which favors the strategies of the military defense to suspend and delay due diligence with the aim of the prescription and closure/archiving of the cases, leading to an infringement of the principles of celerity and immediacy.⁸²

⁷³ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GA/ID-15-120799, received December 9, 2015, p. 6.

⁷⁴ Information presented by the organizations of civil society during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁷⁵ Information presented by the organizations of civil society during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁷⁶ Information presented by the organizations of civil society during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁷⁷ Information presented by the organizations of civil society during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁷⁸ HRW. *Colombia: nuevos asesinatos y desapariciones en Buenaventura*, March, 4 2015.

⁷⁹ See: <http://violenciaarmada.salahumanitaria.co/reports>.

⁸⁰ See: <http://violenciaarmada.salahumanitaria.co/reports>.

⁸¹ Information presented by the organizations of civil society during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁸² Information presented by the organizations of civil society during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

61. The organizations reiterated what the Prosecutor of the International Criminal Court (ICC) had stated, when he expressed that the large-scale nature of the attacks, the number of victims, similarities amongst allegations of crimes reported across the country, the planning and organization that the conduct required to commit murders and their subsequent reporting as deaths in combat indicate that ‘false positives’ amount to a widespread and systematic attack against the civilian population.⁸³ In this regard, they stated that “the judicial activity, far from contributing to the truth, has perpetuated impunity”.⁸⁴

62. With regard to the recommendation of investigating highest-ranking persons they informed that 95 per cent of the cases have been linked to lower and middle-ranking military officers.⁸⁵ They stated that there has only been judgments of 3 colonels, no investigation of generals, brigade or division commanders or of national leaders.⁸⁶ They considered that there is an absence of investigation of the patterns and these are treated only as isolated cases.⁸⁷

63. They indicated, in further detail, that the IV Brigade acting under the command of the VII Division; the II Brigade acting under the command of the I Division; and, the XXIX Brigade acting under the command of the III Division, concentrated 40 per cent of the executions committed between 2002 and 2008. They held that the Commanders of those divisions have not been tried nor investigated, and many have been decorated with awards.⁸⁸ They stated that three of these five commanders of the brigades with the largest number of executions have been promoted to Commanders of the National Army and have not been investigated by the FGN.⁸⁹ Likewise, they indicated that during this government Brigades XXIX and XXIII are responsible for 22 per cent of the executions committed.⁹⁰

64. They informed the IACHR that the Prosecutor General of the Nation (hereinafter “PGN”) continues the same trend with regards to the disciplinary processes. They indicated that it knows 5,629 cases of occurrences between 2013 and 2014, out of which there are only 292 sanctioned military personnel, and only up to the rank of colonel lieutenant.⁹¹

65. In this hearing, the State informed that during the last year the number of homicides have been reduced by 14 per cent. Between 2013 and 2014 the figure was reduced from 14,967 to 12,846 homicides. It also described multiple measures of political, preventive and administrative character that were taken to counteract the phenomenon of false positives.⁹² The FGN informed that to March there were a total of 2,513 open investigations involving 5,334 agents of the State, and of these 5,114 involve the National Army. It stated that 4,475 direct victims were recorded. Likewise, it stated that these investigations have

⁸³ Information presented by the organizations of civil society during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁸⁴ Information presented by the organizations of civil society during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁸⁵ Information presented by the organizations of civil society during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁸⁶ Information presented by the organizations of civil society during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁸⁷ Information presented by the organizations of civil society during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁸⁸ Information presented by the organizations of civil society during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁸⁹ Information presented by the organizations of civil society during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁹⁰ Information presented by the organizations of civil society during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁹¹ Information presented by the organizations of civil society during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁹² Information presented by the State during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

significantly increased since 2003, but were reduced notoriously from 2009 until today.⁹³ Likewise, it stated that these cases generated 1,140 judgments out of which 923 resulted in conviction and 217 acquittal.⁹⁴ It stated that 847 State agents have been convicted, the majority from the National Army and of various rank, four are convictions of colonels and lieutenant colonels, 128 of sub-officials, and 89 of officials.⁹⁵

66. HRW, in its report about “Evidence of Senior Army Officers’ Responsibility for False Positive Killings,” carried out an analysis based on information from the Office of the Attorney General of cases committed between the years 2000 and 2008 that evidenced the existence of command responsibility and the brigades and specific battalion units involved in these cases.⁹⁶ Also, it identified a series of impediments to accountability, including the following: the deficiencies of the FGN; military authorities’ lack of cooperation with investigations; threats and attacks on key witnesses; the absence of investigation or cover-ups by military ranks; alterations of the crime scene; expectations of impunity in cases under military criminal jurisdiction; and delay tactics by defense lawyers.⁹⁷ Among the deficiencies of the FGN, HRW identified the reduction of prosecutors responsible for “false positives” in 2012, ineffective distribution of cases, lack of effective coordination or information sharing between the Human Rights Unit (UNDH) and other prosecutors who are investigating generals.⁹⁸ Also, HRW recognizes that in 2015 the FGN adopted measures to address some of these problems, such as the increase in the number of prosecutors and investigators pursuing cases against generals, and designated an official to serve as a point person between them and the UNDH.⁹⁹

67. Likewise, it informed that during this period more than 3,700 extrajudicial executions by state agents are being investigated by the FGN, the vast majority committed by army troops.¹⁰⁰ Furthermore, HRW highlighted that the military criminal jurisdiction still handles many “false positive” cases, which is a major impediment to carry out independent investigations as well as recording the total number of “false positive” investigations.¹⁰¹

68. In its Interim Report, the International Criminal Court (ICC) observed with regard to concluded criminal proceedings with respect to the military units that were allegedly involved in the cases of “false positives”¹⁰² that priority was given to the investigation of the most grave cases.¹⁰³ In April, 2015 the Colombian Attorney General said he was investigating 22 Generals of the Armed Forces for their alleged roles in the cases of “false positives.” The Attorney General stated that more than 5,000 members of the Public

⁹³ Information presented by the State during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁹⁴ Information presented by the State during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁹⁵ Information presented by the State during the hearing held on reports of extrajudicial executions and impunity in Colombia, March 19, 2015.

⁹⁶ HRW. [On Their Watch. Evidence of Senior Army Officers’ Responsibility for False Positive Killings in Colombia](#), June 23, 2015.

⁹⁷ HRW. [On Their Watch. Evidence of Senior Army Officers’ Responsibility for False Positive Killings in Colombia](#), June 23, 2015.

⁹⁸ HRW. [On Their Watch. Evidence of Senior Army Officers’ Responsibility for False Positive Killings in Colombia](#), June 23, 2015.

⁹⁹ HRW. [On Their Watch. Evidence of Senior Army Officers’ Responsibility for False Positive Killings in Colombia](#), June 23, 2015.

¹⁰⁰ HRW. [On Their Watch. Evidence of Senior Army Officers’ Responsibility for False Positive Killings in Colombia](#), June 23, 2015.

¹⁰¹ HRW. [On Their Watch. Evidence of Senior Army Officers’ Responsibility for False Positive Killings in Colombia](#), June 23, 2015.

¹⁰² HRW. [On Their Watch. Evidence of Senior Army Officers’ Responsibility for False Positive Killings in Colombia](#), June 23, 2015.

¹⁰³ HRW. [On Their Watch. Evidence of Senior Army Officers’ Responsibility for False Positive Killings in Colombia](#), June 23, 2015.

Force would be involved in these cases. It was reported that to that date there were 800 members of the Police Force in prison.¹⁰⁴

69. Finally, the Commission notes the press reports informing that Colonel Robinson González del Río, imputed for his participation in 32 extrajudicial executions in the departments of Antioquia and Caldas between 2006 and 2009, accepted his responsibility in the crimes of homicide of a protected person, falsification of documents, procedural fraud, conspiracy to commit crimes, and trafficking and possession of weapons.¹⁰⁵ It was informed that during the attribution of charges, the prosecutor sustained that Colonel González del Río was responsible for issuing decisions that lead to the execution of 32 victims, “he issued the orders of the operations, making them seem legal, so that his men would go to determined locations, previously chosen by his subordinates, for the victims to be taken to said location, and as soon as they exited the vehicle they would be shot being completely defenseless, knowing they were civilians.”¹⁰⁶ Likewise, the Commission notes that the defense of Colonel González del Río stated the possibility that his case be seen by the recently created JEP.¹⁰⁷

70. In light of the above, the Commission reiterates that the State should initiate, develop, and conclude the relevant investigations in the regular criminal jurisdiction, according to the standards of due diligence and in a reasonable period, to clarify cases of extrajudicial executions and to 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. The Commission will refer to the gains and setbacks of the Military Criminal Justice in its corresponding section (see *infra* II. E).

71. 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 this context as well as outside of the context of armed confrontation.

B. Protection mechanisms

- 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 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.

¹⁰⁴ BBC News, Colombian generals investigated for “false positives”, April 13, 2015. Available at: <http://www.bbc.com/news/world-latin-america-32280039>

¹⁰⁵ *El Colombiano*. [Coronel Gonzáles del Río aceptó cargos en 32 falsos positivos](#), September 29, 2015; NTN24. [Coronel retirado del Ejército colombiano acepta su responsabilidad en 32 casos de “falsos positivos”](#), September 29, 2015.

¹⁰⁶ *El Colombiano*. [Coronel Gonzáles del Río aceptó cargos en 32 falsos positivos](#), September 29, 2015; NTN24. [Coronel retirado del Ejército colombiano acepta su responsabilidad en 32 casos de “falsos positivos”](#), September 29, 2015.

¹⁰⁷ Entorno Inteligente. [Colombia: Del Río, acusado de 32 falsos positivos, querría ir a Tribunal de Paz](#), September 30, 2015.

72. The Commission has been recognizing the efforts of Colombia to continue with the development and consolidation of its protection programs for the purpose of ensuring the rights of persons at risk, especially in the context of the armed conflict and its consequences. In the follow-up of the Report Justice, Truth and Reparation corresponding to 2014, the IACHR identified a series of important gains and new challenges that the competent authorities have faced, which have influenced compliance with the recommendations made by the IACHR. During this year, the Commission has given special follow-up to the protection program, mainly implemented through the National Protection Unit (*Unidad Nacional de Protección*, UNP), in light of the information related to the continuity of the challenges in the current implementation and functioning of the program.

73. The Commission has regularly recognized the work carried out by the UNP, highlighting *inter alia* the institutional and financial support that said program has received, the creation of legal or regulatory frameworks and specific protocols, the large number of persons protected, that have deserved international recognition. In 2014, the Commission acknowledged again the progress made in protection, with regard to the large number of persons protected, progress in the implementation of collective protection measures, among others.¹⁰⁸ Nevertheless, the Commission noted with concern the information of an alleged deficit in financing for the institution during the first months of 2014¹⁰⁹ and its possible impact on the implementation of the program.

74. Following up the actions carried out during 2015, with the objective to comply with the recommendations of the IACHR on the implementation of substantive protection measures, the State has indicated that “during the year’s first semester protection schemes were provided to 733 human rights defenders, with an investment of over 6 billion pesos.”¹¹⁰ With regard to leaders or unionists, protection schemes were provided to 598 beneficiaries, with an investment of more than 9 billion pesos.¹¹¹ With regard to the specific situation of journalists and media workers,¹¹² the State indicated that the UNP “invested more than six billion pesos in protection schemes;” more than 60 vehicles (including armored and conventional vehicles) for the safe movement of the beneficiaries of the protection measures; more than 150 bodyguards (men of protection, suitable personnel with knowledge on security and protection); the implementation of security schemes to 137 journalists and/or media workers in the country; in addition to security vests, means of communication and transportation support.”¹¹³

75. The Commission recognizes the implemented actions by the State to protect a growing number of persons at risk and to endow the protection mechanism with sufficient financial resources to carry out its functions. Despite the progress reported and the seriousness of the commitment taken on by the State on protection, the IACHR has continued receiving worrying information on the continuity of bureaucratic, financial and structural problems within the UNP, which have also been issues of concern for the United Nations System.¹¹⁴ Specifically, the Commission received information that an audit made by the Office of the

¹⁰⁸ IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, paras. 46, 47 and 48.

¹⁰⁹ IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, paras. 46, 47 and 48.

¹¹⁰ In addition, the State indicated that, taking into consideration the risk situation that Human Rights Defenders must face in areas of the country where the armed conflict threatens their work, at the end of 2014 25 CERREM were carried out in the Departments of Antioquia, Chocó, Putumayo and Cauca. Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 61.

¹¹¹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 61.

¹¹² The State also informed that, along with other State institutions, measures have been taken with the objective of unifying and improving the attention to journalists, and media workers victims of threats.

¹¹³ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 49.

¹¹⁴ UN, Human Rights Council, [Annual report of the United Nations High Commissioner for Human Rights. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia](#), January 23, 2015.

Comptroller of the Republic found a series of alleged internal administrative problems, an alleged millionaire financial loss and alleged irregularities in contracting.¹¹⁵ In this regard, the State reported that a prosecutorial investigation was currently being opened.¹¹⁶ The IACHR has noted that the corresponding investigations are being carried out and a series of actions are being implemented to provide more transparency in the actions of the UNP.¹¹⁷

76. Given the importance of the program for the protection of persons at risk, which includes beneficiaries of the precautionary measures of the IACHR and provisional measures of the I/A Court, the Commission deems important that the competent authorities redouble the implemented actions with the aim of providing more transparency to all its procedures and to generate suitable accountability mechanisms on their acts, especially in light of the previous recommendations made by the IACHR in its *Report Truth, Justice and Reparation* with regard of the need to take into consideration international parameters on protection mechanisms, as elaborated on in the “Second Report on the Situation of Human Rights Defenders in the Americas.”¹¹⁸

77. In its reply, the State informed that during the first two months of 2015, the UNP gave protection schemes to 733 human rights defenders and 598 leaders or union activists.¹¹⁹ However, the Commission continues to receive information about the malfunctioning of the preventive measures mechanism. In particular, it has received information stating that the users continue to experience significant delays between the submission of a request for protection, the notification of the result (approved or declined) and of implementation of the measure(s) granted, which each could take several months. Information has been received about the existence of serious challenges to ensure that the measures would be implemented properly (e.g., the lack of gasoline for vehicles, the absence of authorization to escorts for travel expenses, to be able carry out trips outside the danger zone, and lack of reimbursement of expenses to bodyguards to cover costs associated with protection, among others.) Also, there have been reports of lack of accountability for: (a) contracts allegedly lost after payment, (b) the collection of resources and the fulfillment of the contractual terms, and (c) the privatization of protection to people at risk by engaging private companies of high cost and with no clear legal link to the State.¹²⁰ In this regard, the State reported that due accounts would be given on an annual basis and in the first quarter of 2016.¹²¹ It further contended that the UNP had replied to all the information requests of the *Somos Defensores* program.¹²²

78. In relation to the implementation of a differential approach and collective measures, the State pointed out that measures have been implemented, these are aimed at the protection of the life and

¹¹⁵ Press releases: *El Tiempo*, [Las cuentas pendientes de la Unidad Nacional de Protección](#), July 31, 2015; *El Tiempo*, [Hay un grave desorden en la Unidad de Protección: Contraloría](#), July 30, 2015; *Revista Semana*, [El escandaloso hallazgo de la Contraloría en la UNP](#), July 30, 2015; *El Espectador*, [Fiscalía imputará cargos a exsecretario general de la UNP](#), August 20, 2015; *Noticias RCN*, [Contraloría advirtió sobre ‘graves anomalías’ en la Unidad de Protección](#), July 30, 2015; among others.

¹¹⁶ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR’s Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 6.

¹¹⁷ UNP. [Informes Mesa de Transparencia, Información Financiera, Rendición de Cuentas, entre otros](#), corresponding to the years 2014 and 2015.

¹¹⁸ IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), December 31, 2011.

¹¹⁹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 61.

¹²⁰ See e.g., Programa Somos Defensores, [Informe Anual 2014: La divina comedia](#), February, 2015. Also, according to information published in media, the Commission notes that allegedly there are more than 90 former state agents who are beneficiaries of preventive measures and that there is a disparity between the associated cost of a protection scheme provided for a public worker (approximately 142.591.966 pesos) than that of a human rights defender or land restitution leader (36.929.904). See: [Qué difícil quitarle los escoltas a los exfuncionarios!](#), *Semana*, May 27, 2015 (citing Juan Fernando Cristo, Ministry of Interior).

¹²¹ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR’s Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 7.

¹²² Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR’s Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 7.

personal integrity of the members of the Nasa, Nukak, Totoró, Jiw, Awá (organizations Unipa, Camawari y Acipap) and for the Indigenous Security Watch (*Guardia Indígena*) of *inter alia*, Putumayo, Media and Baja Bota Caucana and the Community Council of *Jardines de Sucumbios de Ipiales*.¹²³ Following this, it was indicated that the Afro-Colombian communities of *El Guamo* (Curvaradó), *Nueva Esperanza* (Jiguamiandó), *Zona Humanitaria Camelias* (Jiguamiandó), *Comunidad desplazada de Curvaradó en Turbo* (Antioquia), *Zona Humanitaria El Limón* (Jiguamiandó), *Comunidades del Rio Cacarica en Riosucio* (Antioquia) and the *Consejo Comunitario La Toma en Suárez* (Cauca) have also been beneficiaries of the allocation/designation of collective protective measures.¹²⁴

79. The Commission values the reported progress on this matter that, according to the State, the principle of consensus and the context analysis constitute elements that are being taken into consideration in the implementation of the differential approach of collective measures.¹²⁵ Notwithstanding the accomplishments, the IACHR observes that the State has not provided detailed information about the specific actions and steps adopted to deepen the implementation of the differential approach of collective measures from a comprehensive perspective. Taking into consideration *inter alia* the conditions of the people to be protected, the necessity of culturally adequate protection measures, the possible incidence of the conflict dynamics in the specific risk situation and factors related to the location of different communities in the interior of the country or in rural areas. In this regard, the Commission wishes to highlight the need to reinforce the differential approach with the objective to protect indigenous¹²⁶ and Afro-descendant communities,¹²⁷ accounting for the particular needs of each group, which continues to be a request of various sectors of civil society.¹²⁸

80. In a general manner and through the different responses of the State received in the context of precautionary measures in force, the Commission has received information on the disposition of the State to continue carrying out risk assessments, the implementation of the substantive protection measures, the continuous training of its staff, among other actions that have been acknowledged by the IACHR. Particularly, the State has highlighted that it is currently carrying out all "human, technical, economic and logistical efforts that will allow for the implementation of more effective protection strategies, according to the context and the needs and vulnerabilities of each target population."¹²⁹

81. Without prejudice to the considerable progress, the Commission wishes to draw attention to the persons that, even though they are under the protection mechanism, have continued being object of threats, intimidation and acts of violence. For example, during 2015, the Commission has continued receiving information about grave risk situations that the beneficiaries of protection programs and of the IACHR's precautionary measures have faced, including *inter alia* journalists,¹³⁰ human rights defenders¹³¹ and

¹²³ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 3 and 4.

¹²⁴ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 3 and 4.

¹²⁵ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 62.

¹²⁶ During the working meeting of the precautionary measures MC 265-02, in favor of leaders of the Embera Chamí People, held on March 21, 2015, the petitioners reiterated the need of implementing a differential approach to when implementing the protection measures.

¹²⁷ During the working meeting of the precautionary measures MC 9-02, in favor of the Afro-descendant communities of the Naya People, held on October 21, 2015, the petitioners reiterated the need of implementing a differential approach to when implementing the protection measures.

¹²⁸ IACHR. Press Release No. 95/15: [IACHR Visits Colombia to Receive Information on the Situation of Persons of African Descent](#), August 27, 2015.

¹²⁹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 3 and 4.

¹³⁰ UN, Press Release: [Oficina de la ONU para los Derechos Humanos preocupada por caso de periodista y defensora Claudia Julieta Duque](#), July 23, 2015; IACHR, Press Release: [Office of the Special Rapporteur Condemns Murder of Journalist In Colombia](#), February 17, 2015; among others.

members of Afro-descendent communities.¹³² With regard to beneficiaries of the State protection program, in general the IACHR condemned the assassination of the afro-descendant leader Gilmer Genaro García Ramírez, in August 3, 2015¹³³ and of the journalist Luis Peralta Cuéllar, on February 17, 2015.¹³⁴

82. The Commission has also received information about cases where protection measures were modified or lifted without prior notice or consultation, which must be prevented. Regarding this, the State reported that as of the second quarter of 2015 no protective measures had been lifted without the people being notified and without them being given the opportunity to file a review appeal for the administration to examine the decision.¹³⁵

83. Such facts have motivated protected persons and various sectors of society to state that “the level of responsibility of the involved actors and the decision-making mechanisms have weakened, the complexity has allowed the program delays more time to respond.”¹³⁶ In this regard, the organizations that support the work of the human rights defenders have reiterated their concern about a series of “inconsistencies, and administrative and operational problems”, which would evidence a “weakness to ... identify the type of institutional issues and the adequate protection model from a human rights perspective in the face of the armed conflict.”¹³⁷ In the words of the *Fundación para la Libertad de Prensa* (FLIP), “the protection ... must start from the prevention and mitigation of risk. To escort a person does not free them. A protected person will not be safe while their persecutors are free.”¹³⁸

84. The Commission considers it to be of the utmost importance that the State redoubles its efforts to guarantee the effective protection of the beneficiaries of the protection mechanism. In this regard, the IACHR wishes to highlight that the assessment of the effectiveness of the protection mechanism of the State and the implemented programs in this regard also depend on its effectiveness to reduce the risk situations that the beneficiaries of the current program are facing. This integral approach of protection and prevention must be constituted by measures aimed at strengthening the investigations of facts that have motivated the entry and permanence of the persons covered by the protection program.

85. Despite the commitments of the State on investigation and as pointed out by the IACHR in its follow-up report of 2014, it is observed with utmost concern the continuity of obstacles on this matter, which were highlighted by members of civil society, human rights defenders and journalists, in the context of work meetings carried out in 2015, with regard to the precautionary measures granted by the IACHR.¹³⁹ Therefore, the Commission wishes to reiterate the urgent need that the State establishes, as State policy in the short-, mid- and long-term, investigation as a measure of prevention. The IACHR recalls that the lack of investigation of the facts that motivate the risk situation could generate a cumulative effect with regard to the constant increase of beneficiaries in the protection program and the powers of revision of the decisions adopted on protection.

¹³¹ IACHR, Press Release No. 70/15: [IACHR Condemns Murder of Human Rights Defenders in Colombia](#), June 12, 2015.

¹³² In the framework of the Precautionary Measures MC 9-02, in favor of the Afro-descendant communities of the Naya People, since May 19, 2015, the whereabouts or location of Mr. Edison Torres, beneficiary of the precautionary measures, are ignored.

¹³³ IACHR, Press Release No. 94/15: [IACHR Condemns Killing of Afro-descendent Leader in Colombia](#), August 25, 2015.

¹³⁴ IACHR, Press Release: [Office of The Special Rapporteur Condemns Murder of Journalist in Colombia](#), February 17, 2015.

¹³⁵ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, pp. 7 and 8.

¹³⁶ FLIP, [15 años de protección a periodistas en Colombia: Esquivando la violencia sin justicia](#), August 27, 2015.

¹³⁷ *Programa Somos Defensores*, [Los Nadies - Informe Enero-Julio 2015](#), August 18, 2015.

¹³⁸ FLIP, [15 años de protección a periodistas en Colombia: Esquivando la violencia sin justicia](#), August 27, 2015.

¹³⁹ In 2015, the IACHR held approximately 14 working meetings on precautionary measures granted at the headquarters of the Commission in Washington D.C. and in Colombia during a working visit by the Country Rapporteur. These meetings included, *inter alia*, the situation MC 128-00 in favor of the Members of the CCAJAR, MC 187-01 in favor of Members of SEMBRAR, MC 42-15 Fundación Nidia Erika Bautista, MC 242-09 members of CODHES, MC 9-02 Afro-descendant communities of Bajo de Naya, MC 132-00 Jineth Bedoya Lima, MC 152-14 Afro-Colombians of Barrio “La Playita” de Buenaventura, MC 265-02 Leaders of the Embera Chami people.

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 IHL.
- 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 fosters the articulation, coordination, and reciprocal feedback of the various judicial mechanisms entrusted with investigating cases of serious human rights violations and breaches of IHL.
- 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

86. 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.

87. Among the measures taken by the State to address this situation, the Commission learned about 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. Without prejudice to the consideration that the prioritization of the cases in certain circumstances may constitute a suitable means for clarifying the truth of grave violations that have occurred in the conflict through a diligent investigation, prioritizing the most grave cases and the authors with more responsibility, the Commission reiterates that it noted with concern that certain precepts of Directive 001 were not in conformity with inter-American human rights standards, and it also 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 responsible persons.¹⁴⁰

88. With regard to the recommendation to endow the justice system with the necessary means for it to adequately perform its functions, this year Colombia informed that the present National Review and Context Directorate (DINAC) of the FGN is introducing methodological tools to advance in the strategy of context investigation, with the aim of revealing the most grave and massive human rights violations and infringements of IHL. It stated that the FGN increased the personnel of DINAC locating offices in Medellín, Baranquilla, Bucaramanga, Cali and Villavicencio. It indicated that with these objectives, it is furthering the investigations and judicialization of situations and cases related to the phenomena of macro-criminality of illicit recruitment, forced disappearance, forced displacement, gender-based violence, kidnaps, as well as the methods and means of illicit war used, as well as the structuring of sources of financing and networks of support used, and the responsibility incurred by those identified as command responsibility and that are represented among the members of the so-called "maximum organs of political and military direction," such as "the major central state and secretariat of the FARC-EP, and central command and national direction of the ELN".¹⁴¹ In this regard, it informed that this diagnostic of the universe of cases registers a total of 56,100 cases.¹⁴²

¹⁴⁰ Cf. IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 58.

¹⁴¹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 5 and 6.

¹⁴² The State disaggregated the total in 17,345 (forced displacement), 9,501 (kidnap), 959 (gender-based violence), 11,421 (illicit recruitment), 5,895 (forced displacement), 11,895 (means and methods of warfare). Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 6.

89. It should be noted that Colombia stated that the third recommendation in this section — on fostering the articulation, coordination, and reciprocal feedback of the various judicial investigating mechanisms — “has been satisfactorily implemented.”¹⁴³ On this point, the Commission has continued to receive information indicating that there is still a need for better and closer coordination among the judicial agencies.¹⁴⁴

90. The Commission also notes the persistence of complaints related to paramilitary activity and the effects on the enjoyment of the human rights of the population.¹⁴⁵ In this regard, the Commission noted the complaint of the *Polo Democrático Alternativo* (PDA), which considers that in López de Micay, department of Cauca “a plan of annihilation is being perpetrated” against its militants. This party, which has four seats in the Pacific coast Municipal Council, stated that to-date two persons have been murdered, one forcibly disappeared and there are various families in situations of forced displacement.¹⁴⁶ It publicly denounced that “by action and by omission the National Police, the UNP, the paramilitary group of the Urabeños, and the right-wing sectors that are in power locally were involved.” It stated that since December 2014, a plan was evidenced to kill a group of PDA Councilors, Edison Torres Angulo, Merigildo Garcés, Elver Riascos, y el candidato a la Alcaldía, Manuel Antonio Garcés Granja, with the objective of impeding the exercise of their positions and their participation in the upcoming elections. It stated that councilors Merigildo Garcés and Elver Riascos had been threatened. They considered that the threats became effective in February 2015 with the murder of Oscar Viveros, a relative of Merigildo Garcés and Manuel Garcés Granja after the Councilors publicly complained about the presence of the paramilitary group “the Urabeños” in the municipality. On that occasion, they also denounced a suspicious attitude on the part of the National Police in refusing to providing protection to the Councilors in their activities outside of the town, based on the argument that the protection was instead the competence of the National Army.

91. It stated that the PDA councilors received a series of death threats in March, leading to the forced displacement of Merigildo Garcés and his family, and specifically about the plans of murdering Merigildo Garcés and Edison Torres Angulo. It stated that in April, José Alomia, an Afro leader of López de Micay and the campaign team of Manuel Garcés Granja, was murdered in the town of the municipality by armed men who waited for him close to his house. They maintained that the authorities did not present themselves to lift the corpse nor to register his death. Likewise, they stated that on May 16, 2015, they had knowledge of a plan against the candidate of the municipality, Manuel Garcés Granja, by the paramilitary of *Buenaventura*, who were offering 50 million pesos for his murder, through a threat to Edison Torres Angulo, to whom they expressed the existence of a plan to murder the entire PDA campaign team of Manuel Garcés Granja. They indicated that on May 19, 2015, Edison Torres Angulo, disappeared in the Naya River on which he was travelling. They denounced that the National Protection Unit failed to provide help in the search for the Councilor, and it has not issued a statement nor provided an effective response in the face of the grave situation of the community leaders who are at risk.

92. Likewise, the Commission notes that on the occasion of the signing of the justice agreement between the State and the FARC-EP, on September 23, the *Coordinación Colombia-Europa-Estados Unidos* (CCEEU), a coalition of 260 human rights defenders’ organizations, considered calling attention to “the need

¹⁴³ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, pp. 7 and 8; Cf. 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.

¹⁴⁴ [Hearing on Reports of Extrajudicial Executions and Impunity in Colombia](#), March 19, 2015.

¹⁴⁵ Noticias RCN. [“Clan Úsaga” niega acercamientos con la Fiscalía para someterse a la justicia](#), June 3, 2015; CCAJAR. [Paramilitares amenazan e imponen toque de queda contra comunidad desplazada asentada en la Cristalina, Puerto Gaitán](#), October 2, 2015; CIJP. [Líder reclamante de tierras en Mapiripán es blanco de amenazas por grupos paramilitares](#); September 10, 2015;

¹⁴⁶ PDA. [La desaparición forzada de Edison Torres Angulo es parte de un plan de exterminio contra el PDA en López de Micay – Cauca](#), June 2, 2015.

to advance promptly and decisively with the dismantling of the paramilitary structures that represent a threat for citizen participation, the democratic political dynamics and the success of the peace agreements.”¹⁴⁷

93. In addition, information was received from precautionary measures and other sources on a series of presumed paramilitary incursions, conducted with harassment, abductions, camps, and death threats, against the members of the San José de Apartadó Peace Community, in different settlements belonging to that community, between October 14 and 20, 2015, which increases the risk of forced displacement faced by the community’s members.¹⁴⁸

94. In light of the above, it corresponds to the Commission to reiterate, again, 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 Truth, Justice and Reparation*, the Commission observed with concern elements of continuity between the former *Autodefensas* and the so-called BACRIM and that these groups have been associated with serious human rights violations.¹⁴⁹

95. The Commission must, therefore, reiterate that the serious impunity that can be verified in relation to the commission of grave human rights 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.¹⁵⁰

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.
- 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.

¹⁴⁷ CCEEU. [Con el acuerdo sobre justicia: El fin del conflicto armado con las FARC al alcance de la mano](#), September 25, 2015, point 4.

¹⁴⁸ Information received in the context of precautionary measure PM 356-10 CO. Also see, San José de Apartadó el Mar Peace Community. [All-out Paramilitary Operations](#), October 20, 2015 available at <http://www.cdpsanjose.org/node/33>.

¹⁴⁹ 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. IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 65.

¹⁵⁰ IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 66.

96. Concerning this set of recommendations, in its previous follow-up report the Commission noted what the State wrote in its initial 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.¹⁵¹ As stated, the Commission appreciates the State’s embrace, at the time, of the importance of identifying the options that will pave the paths followed in the quest for peace; and that the congressional debate “will consider the different perspectives, arguments, and recommendations for attaining the most appropriate legislation that is consistent with human rights standards.”¹⁵² In this regard, the Commission recalls it is aware of the constitutionality decision of the Legislative Act 01 of 2012, adopted by the Constitutional Court in August 2013, in relation to application of the selection and prioritization mechanisms.¹⁵³ Currently, it also takes into consideration that the recently created JEP establishes similar criteria of prioritization and selection.¹⁵⁴

97. The IACHR reiterates it is committed to working with the Colombian State in its quest for solutions to the problems and challenges that have been identified and offers this report’s analysis and recommendations with the intent of supporting the State in the implementation of specific, constructive measures in favor of its inhabitants’ fundamental rights.¹⁵⁵ This commitment includes the follow-up that the Commission will continue carrying out to the different transitional justice frameworks in Colombia, including the recently created JEP.

98. In this regard, the Commission recalls that its *Report 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.¹⁵⁶ In this regard, 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.¹⁵⁷

99. Furthermore, in its response to the *Report Truth, Justice and Reparation* 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 briefly referred in its observations about the implementation of Law 975 of 2005, and also it would have participated in the hearing held in March 2015, on the follow-up of the implementation of the Justice and Peace Law in Colombia and its considerations have been included in this section.

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. IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para 68.

¹⁵² Observations of Colombia on the Draft Chapter V of the 2014 Annual Report of the IACHR. Note S-GAIIID-15-017750, of February 26, 2015, p. 7. IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para 69.

¹⁵³ Constitutional Court. Judgment C-579-/13 of August 28, 2013.

¹⁵⁴ Oficina del Alto Comisionado para la Paz. [ABC: Jurisdicción Especial para la Paz](#).

¹⁵⁵ IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 70.

¹⁵⁶ IACHR, *Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*. December 31, 2013. Chap. 3 D.

¹⁵⁷ IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 71.

100. The organizations of civil society that participated in said hearing expressed that with regards to truth, justice and reparation very little has been achieved and a large deficit exists with regard to the participation of the victims as well as a delay in the procedures provided in Law 975 of 2005. Likewise, they considered that the State lacks a plan to solve this situation.¹⁵⁸

101. In the area of justice, they indicated that only 23 judgments have been issued, 10 have been executed and 13 are in the appeals process, out of which only three address sexual violence. In relation to the rights of women they held that there would be a grave risk that sexual violence remains unpunished, given that sexual violence against women would be perpetrated mainly by paramilitary, but also by agents of the government, and that an effective mechanism to prosecute these crimes does not seem to exist.¹⁵⁹ They argued that the simple prioritization system impedes addressing wider perspectives and that the prioritized cases are neither investigated nor sanctioned.¹⁶⁰

102. The organizations recalled that this year will be the 10th anniversary of the adoption of the Justice and Peace Law; thus, the persons first convicted would be finishing their sentences. In this regard, they are concerned how the State will guarantee the non-repetition of these crimes, and that those who gain back their freedom do not rejoin the armed groups – given that various persons have expressed their intention of returning to arms - as well as that the victims that should not be victimized again, particularly the victims of sexual violence.¹⁶¹

103. In this regard, they consider that the State should generate public policies in five areas (Medellín, Córdoba y Bajo Cauca, Urabá, Magdalena Medio y Cesar) identified as those to which most of the freed persons would return. Likewise, they are concerned about guarantees of non-repetition considering that the Office of the Attorney General would not have dismantled the economic structures that sustain paramilitarism.¹⁶²

104. During this hearing, the State emphasized that Law 975 of 2005 establishes the procedures, the sanctions and the integral reparation of the victims, and that following this the Government has sought to reintegrate the members of paramilitary groups into civilian life.¹⁶³ It highlighted that this law has allowed convictions and the emergence of truth that the victims have had access to and that have become relevant information in other investigation processes.¹⁶⁴ It argued that this law is the first Colombian experience in the area of transitional justice, therefore they are learning from it and apply the analysis to developing improved actions in the future, such as in prioritization and selection.¹⁶⁵

105. With regard to the gains and results of the application of Law 975 of 2005, the State informed that until 2011 only 10 judgments had been issued, and that given the prioritization they have since

¹⁵⁸ Information presented by the organizations of civil society during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

¹⁵⁹ Information presented by the organizations of civil society during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

¹⁶⁰ Information presented by the organizations of civil society during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

¹⁶¹ Information presented by the requesting organizations during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

¹⁶² Information presented by the requesting organizations during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

¹⁶³ Information presented by the State during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

¹⁶⁴ Information presented by the State during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

¹⁶⁵ Information presented by the State during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

reached 28 judgments.¹⁶⁶ It highlighted that these judgments entail the conviction of 117 applicants, the documentation of 3,623 acts against 20,614 victims, the finding of 4,519 graves and the exhumation of 5,817 bodies.¹⁶⁷ It indicated that 700 acts of gender violence were sanctioned, which also implies the conviction of 33 applicants in this area.¹⁶⁸ Likewise, it indicated that as of April 2015 they would have archived 490 exclusion requests.¹⁶⁹ In its comments it said that 29 convictions had been handed down, and that the Justice and Peace investigations have allowed the identification of 18,990 incidents, including forced displacements (7,754), illegal recruitment (1,373), sexual violence, forced disappearance, and other offenses.¹⁷⁰

106. The State highlighted that among other judgments the one issued against Salvatore Mancuso, where patterns of human rights violations were proven, concerns 1,000 acts that involve 8,000 victims.¹⁷¹ Without prejudice, the State recognized that the FGN is aware of the difficulties of this law's implementation and that Colombia is far from resolving the problem, given that paramilitarism has overwhelmed institutional capacity, and insisted that it is learning.¹⁷²

107. With regards to the guarantees of non-repetition, the State indicated that the process of release of the demobilized has very clear requirements that must be verified by the Judges with a vision of the protection of the victims.¹⁷³ Likewise, it highlighted the existence of the re-socialization program in prisons with the objective of generating guarantees of non-repetition within a human rights and IHL approach.¹⁷⁴ It highlighted that the process of re-socialization is mandatory and individualized, and it includes psychological help, permanent monitoring and follow-up, and also it has a 'committee of satisfaction' for the victims. It stated that, in this context, more than 2,000 victims have been supported and more than 57,000 members of armed groups have been demobilized.¹⁷⁵ Additionally, it stated that Law 975 of 2005 created the protection program for the victims and witnesses and the government has implemented a series of measures under this program.¹⁷⁶

108. In this year's response, the State also highlighted that the Office of the Ombudsperson, in accordance with Laws 975 of 2005 and 1592 of 2012, and also Decree 3011 of 2013, provides guidance and advice to the victims in demanding their rights to truth, justice and integral reparation; and applies the Psycho-Juridical Route of Victims Assistance, from the hearing to receive voluntary depositions to the

¹⁶⁶ Information presented by the State during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

¹⁶⁷ Information presented by the State during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

¹⁶⁸ Information presented by the State during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

¹⁶⁹ Information presented by the State during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

¹⁷⁰ The State said that it "rejects efficiency-focused readings that measure justice in terms of the judgments issued, without really considering the impact that this law has had for truth, justice, and redress in Colombia." Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 4.

¹⁷¹ Information presented by the State during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

¹⁷² Information presented by the State during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

¹⁷³ Information presented by the State during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

¹⁷⁴ Information presented by the State during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

¹⁷⁵ Information presented by the State during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

¹⁷⁶ Information presented by the State during the follow-up hearing on the implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia, March 19, 2015.

Incident of Full Reparation, with the objective of mitigating the damage suffered by the victims during their participation in the hearings.¹⁷⁷

109. Likewise, it stated that the judicial representation is in charge of 4 regional *Defensorias* (Antioquia, Atlantic, Bogota and Santander), and that the *Defensoria* also provides expert support, such as judicial representation, in order to identify pecuniary and non-pecuniary damages incurred by the victims.¹⁷⁸ It explained that the work of the public defender, representative of the victims, is integral during the entire proceedings.¹⁷⁹

110. In its last semester report, the Mission of Support to the Peace Process in Colombia (MAPP-OAS) also recognized the significant increase in the number of issued judgments in the context of Law 975 of 2005; it also recognized the actions aimed at the re-socialization of the demobilized to the interior of the prisons; the increased coordination and dialogue among competent judiciary institutions for justice and peace; and the continuity of the work of the *reintegradores* (agents) of the Colombian Agency for Reintegration (ACR), who accompany the demobilized once freed.¹⁸⁰ Likewise, it considered that despite these significant advances, the persistence and influence in diverse areas of the country of illegal armed groups linked to various forms of criminality, coercion and social control is identified as one of the biggest concerns of the communities and local social actors.¹⁸¹ In this regard the MAPP-OAS warned that:

these recycled groups that organize in networks, are malleable to the work of the public force and continue being a real threat to the right to peace of the populations, the tranquility and free exercise of their citizen rights. Their presence spins around the location and development of illegal economies that nurture it; or in border areas, seeking profit from illicit activities. One of the characteristics of some of these groups, a product of their adaptation and reconfiguration in the territories, is the emergence of new leadership, in many cases youths, that act more violently than their predecessors, both within the group (seeking to intimidate their members), and outwardly, gravely affecting the community.¹⁸²

111. The MAPP-OAS also expressed that the release from prisons of the demobilized that have gained back their freedom is a growing concern of the communities.¹⁸³ It considered that the return of those who have gained back their freedom, to the areas where they exercised influence, “may be a distorting factor in the relations and the social fabric and it is capable of enhancing new dynamics and violent cycles.”¹⁸⁴ In this regard, it considered the duty of the ACR and other public entities of the utmost importance to avoid major affectations to the population and local institutions.¹⁸⁵

112. The Commission values the efforts made by the State on investigation and prosecution, guarantees of non-repetition and assistance to the victims. In light of the information received, the Commission reiterates that the serious situation of impunity found in relation to serious human rights violations and breaches of IHL constitute an obstacle for guaranteeing victims’ rights. Therefore, the

¹⁷⁷ Republic of Colombia. *Progress in the promotion and guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 5.

¹⁷⁸ Republic of Colombia. *Progress in the promotion and guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 5.

¹⁷⁹ Republic of Colombia. *Progress in the promotion and guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 5.

¹⁸⁰ OAS. Twentieth Biennial Report of the Secretary General to the Permanent Council on MAPP/OAS, p. 1 and 2.

¹⁸¹ OAS. Twentieth Biennial Report of the Secretary General to the Permanent Council on MAPP/OAS, p. 2.

¹⁸² OAS. Twentieth Biennial Report of the Secretary General to the Permanent Council on MAPP/OAS, p. 2.

¹⁸³ OAS. Twentieth Biennial Report of the Secretary General to the Permanent Council on MAPP/OAS, p. 2.

¹⁸⁴ OAS. Twentieth Biennial Report of the Secretary General to the Permanent Council on MAPP/OAS, p. 2.

¹⁸⁵ OAS. Twentieth Biennial Report of the Secretary General to the Permanent Council on MAPP/OAS, p. 2.

Commission maintains its consideration that the State should continue to decisively move forward in overcoming this situation, taking into account its international obligations in this area.¹⁸⁶ Likewise, in light of the concerns expressed by civil society, the Commission considers that the State should redouble its efforts and adopt concrete measures to guarantee that those who gain back their freedom do not reincorporate in the armed groups and that to the furthest extent possible re-victimization is avoided.

113. 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 reminds the State that the strategy of prioritizing certain cases over others 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.¹⁸⁷ 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.¹⁸⁸

E. Gains and 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.

114. 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 over 10 years the IACHR has monitored the different mechanisms that 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.¹⁸⁹ 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 caused some of the investigations to be undertaken by the military criminal justice system.

115. 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 (see *supra* II.A), and on this point it considers it pertinent to reiterate that the State should ensure that these cases are heard by the regular jurisdiction. Second, the IACHR performed a detailed analysis of the constitutional reform of the military criminal jurisdiction approved in Legislative Act 02 of 2012, and declared unconstitutional by decision C-740 of 2013 of the Constitutional Court. The Commission considered it important to state for the record its special concern regarding that reform¹⁹⁰ given the three legislative initiatives that revived the concerns expressed by the Commission in its report.

116. In this context, in March a hearing was held on the setbacks on Legislation on Military Criminal Justice in Colombia.¹⁹¹ In this hearing, the Commission continued receiving information on the

¹⁸⁶ Cf. IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 77.

¹⁸⁷ Cf. IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 77.

¹⁸⁸ Cf. IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 77.

¹⁸⁹ IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, December 31, 2013, paras. 386-395.

¹⁹⁰ Cf. IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 80.

¹⁹¹ Hearing on the Report of setbacks in Legislation on Military Criminal Justice in Colombia, March 19, 2015.

expansion of the scope of military and police criminal justice through legislative initiatives, despite the declaration of unconstitutionality of the reform implemented through Legislative Act (*Acto Legislativo* hereinafter “AL”) 02 of 2012.¹⁹² Likewise, they sustained their concern about bill 085 of 2013, which intends to structure military and police criminal justice.

117. In light of the above, on July 1, 2015, the Commission requested information under Article 41 of the American Convention in relation to the status of both bills and the changes made to their text.¹⁹³ The State’s responses to the request for information as a follow up to the *Report Truth, Justice and Reparation*, informed that the AL 01 of 2015 that amends Article 221 of the Constitution had been sanctioned on June 25, 2015 and that legislative bill 085 of 2013 had been approved on June 10 and was pending presidential sanction.¹⁹⁴ Likewise, it informed that Legislative Bill No. 129 of 2014, “which establishes the rules for investigation, prosecution and conviction of members of the Public Force in the context of the applicable IHL in situation of hostilities,¹⁹⁵” was archived on June 19, 2015.¹⁹⁶

118. The State indicated that AL 01 of 2015 added subsections¹⁹⁷ to Article 221 of the Constitution, which establish: (i) that “in the investigation and conviction of the punishable conducts of members of the Public Force, in relation to an armed conflict or a confrontation that fulfills the objective conditions of International Humanitarian Law, its norms and principles will be applied” and (ii) elevates to constitutional status the independence of the Military Criminal Justice from the command of the Public Force.¹⁹⁸

119. The State indicated that the most important change – to the bill proposed initially- was the elimination of the “exclusion criterion” that would specify crimes that under no circumstance could be investigated by Military Criminal Justice.¹⁹⁹ Likewise, it stated that the Military Criminal Code excludes from its scope grave human rights violations and infringements of IHL.²⁰⁰

120. It detailed that all the criminal conduct committed by members of the Public Force will be considered under said jurisdiction whenever they have a relation with an action, operation or procedure in the context of the armed conflict; those that due to their unusual gravity break the nexus with regular service, such as grave human rights violations and infringements to IHL, will be heard by the regular justice system.²⁰¹

¹⁹² Hearing on the Report of setbacks in Legislation on Military Criminal Justice in Colombia, March 19, 2015.

¹⁹³ Communication of the IACHR to the State on July 1, 2015.

¹⁹⁴ Republic of Colombia. Note S-GAIIID-15-066246, July 9, 2015. Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 8.

¹⁹⁵ See IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 94.

¹⁹⁶ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 9.

¹⁹⁷ The State quoted “In the investigation and judging of the punishable conducts of the Members of the Public Force, in relation to an armed conflict or a confrontation that meets the objective conditions of International Humanitarian Law, its norms and principles will be applied. The judges and prosecutors of the ordinary justice and of the Military or Police Criminal Justice that seized of the conduct of the members of the Public Force shall have adequate training and knowledge of International Humanitarian Law.”

The Military or Police Criminal Law shall be independent of the command of the Public Force. Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 7.

¹⁹⁸ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 12 p. 9.

¹⁹⁹ The State refers to the crimes against humanity and the crimes of forced disappearance, forced displacement, sexual violence, torture, genocide and extrajudicial executions. Republic of Colombia. Note S-GAIIID-15-066246, July 9, 2015. Republic of Colombia. See IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 93.

²⁰⁰ Republic of Colombia. Note S-GAIIID-15-066246, July 9, 2015.

²⁰¹ Republic of Colombia. Note S-GAIIID-15-066246, July 9, 2015.

121. It stated that the Bill 085 of 2013, pending presidential sanction, implements the Office of the Military and Police Attorney General (*Fiscalía General Militar y Policial*) and organizes the Technical Investigative Body (*Cuerpo Técnico de Investigación*); it delves into the independence and autonomy of said jurisdiction, as it transforms the Executive Direction — ascribed to the Office of the Ministry of Defense— into an Special Decentralized Administrative Unit of the Executive Branch of the National Order (Administrative Unit of the Executive Branch) – ascribed to the Ministry of Defense — with legal personality and its own budget.²⁰² It stated that the judges of competence and those of specialized competence were created in said jurisdiction, as well as in the School of Military Criminal Justice, and the “exclusion criterion” mentioned above was eliminated.²⁰³

122. Without prejudice, the State indicated that in accordance with Article 241 of the Colombian Constitution, it corresponds to the Constitutional Court to decide on complaints of unconstitutionality that are brought by citizens against amendments to the Constitution, only for procedural flaws.²⁰⁴

123. Various organizations and human rights defenders asserted the unconstitutionality of AL 01 of 2015 before the Constitutional Court.²⁰⁵ In this regard, one of the organizations explained that they constitutionally challenged said act, considering that this included a new element in the Constitution and substituted its three pillars: (i) the duty to respect and guarantee human rights, ignoring the existing complementarity between human rights and IHL, that is required during the investigation, prosecution and sanction of grave human rights violations, such as the cases of “false positives;” (ii) the principles of judiciary independence and autonomy, excluding the application of human rights in the investigation and conviction of crimes committed by members of the Public Force in the context of the armed conflict; and (iii) the principle of equality, because unlike other citizens, it grants unjustified privileges to the military and police when they commit crimes during an armed conflict.²⁰⁶

124. The Commission appreciates one of the critical aspects of the legislative amendment process, admonished since AL 02 of 2012, specifically: the elimination from AL 01 of 2015 of the possibility to judge under military criminal justice crimes that have no relation to military duties and the current normative guarantees in this regard, such as the duty not to judge human rights violations through the military jurisdiction to ensure due process as derived from the obligations contained in Article 8(1) of the American Convention. It also values the modification of the legislative bills that eliminated the exclusion criteria.

125. The Commission notes that legislative bill 085 of 2013 endows the Administrative Unit of the Executive Branch with separate legal personality and budget. Nevertheless, the Commission is still concerned about the incompatibility of this project with obligations under international human rights law. 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 2014 refer substantively to a debate that remains alive in Colombia and that has been closely monitored by the national and international human

²⁰² Republic of Colombia. Note S-GAIIID-15-066246, July 9, 2015.

²⁰³ Republic of Colombia. Note S-GAIIID-15-066246, July 9, 2015.

²⁰⁴ Republic of Colombia. Note S-GAIIID-15-066246, July 9, 2015. Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 7.

²⁰⁵ Gustavo Gallón Giraldo, director of the CCJ, Jomary Ortégón Osorio, vicepresident of CCAJAR; Luz Marina Bernal, María Sanabria, María del Pilar Navarrete Urrea an Juan Francisco Lanao Anzola, victims of sociopolitical violence; Iván Cepeda Castro, senator; Alirio Uribe Muñoz and Ángela María Robledo, Chamber representatives for Bogotá; Mateo Gómez Vásquez and Valeria Silva Fonseca, members of the CCJ; Daniel Ricardo Vargas Díaz, Director of *Centro de Estudios Juan Gelman*, Fabián Wilches and Mauricio Ortíz, members of CCAJAR; Claudia Liliana Erazo Maldonado and Harold Alfonso Vargas Hortua, members of the *Corporación Jurídica Yira Castro*; Lourdes Castro García, technical secretary of CCEEU; Doria Yanette Bautista Montañez, director of *Fundación Nidia Erika Bautista*; Aura María Díaz Hernández, director of ASFADDES, Shaira Rivera, member of MOVICE, and Jael Quiroga Carrillo; Paola Ximena Fonseca Caro, Carolina Hoyos Villamil and Agustín Alberto Jiménez Cuello. Claim of Unconstitutionality against legislative act 01 of 2015 (partial), “which amends article 221 of the Political Constitution of Colombia.”

²⁰⁶ CCEEU. [¿Por qué demandamos el fuero penal militar?](#), July 21, 2015.

rights organizations, and they have made specific recommendations to the State to channel its efforts in the area of justice, in accordance with its international obligations to protect human rights.

126. In its follow up report of 2014, the Commission noted that Bill 085 of 2013 had juridical foundation in the AL of 2012.²⁰⁷ The Commission observes that the concerns expressed, since the discussion when the act was declared unconstitutional, remain in this bill. Even a joint and harmonized reading with the now-modified Article 221 of the Constitution (AL 01 of 2015), in relation to the military criminal justice having cognizance of punishable conduct committed during service and in relation to an armed conflict, leads to alarming results, for example, with regards to the investigation of “false positive” cases or of military operations involving human rights violations.

127. In this regard, the State clarified that:

[u]nder the meaning of the constitutional amendment it is feasible that conduct carried out in a military operation be of cognizance of the military criminal justice, provided that these are not committed as an infringement of International Humanitarian Law, as a grave human rights violation or with the characteristics of crime against humanity or genocide.²⁰⁸

128. In addition, in its reply to the draft of this chapter, the State pointed out that the fact that the military and police criminal justice system deals with murders does not *per se* mean that it will deal with “those referred to as extrajudicial killings”²⁰⁹ and that, on the contrary:

The preservation of the concurrent opinions and their enshrining in Law 1407 of 2010, the Military Criminal Code, together with the jurisprudence of the Constitutional Court, have been sufficiently clear in establishing that crimes that constitute serious human rights violations, such as extrajudicial killings, are to be heard by the regular courts, under the office of the Attorney General and the regular judges. That situation has not altered with the constitutional amendment, but instead remains unchanged.²¹⁰

129. It also said that under the aforesaid amendment, should doubts arise regarding which jurisdiction has competence, the Constitutional Court is the body responsible for resolving conflicts of jurisdiction.²¹¹

130. On July 23, 2015 law 1765 of 2015 (Bill 085 of 2013) was published, it continues establishing a model of “transition of the military criminal justice system to the accusatory criminal procedure system” and provides for the creation of “Military or Police Criminal Courts of Specialized Competence” for hearing crimes such as homicide, breaches of IHL, crimes against the civilian population, personal injuries, and crimes against the public faith or against the public administration, among others.²¹² In addition, it establishes that 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 military or police criminal courts.”²¹³ Among other aspects, it also proposes the creation of an Office of

²⁰⁷Congress of the Republic, Senate. [Bill 085 of 2013](#). Presentation of motives. September 2013.

²⁰⁸ Republic of Colombia. Note S-GAIIID-15-066246, July 9, 2015

²⁰⁹ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 10.

²¹⁰ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 10.

²¹¹ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 10.

²¹² Law 1765 of 2015. Official Journal No. 49.582 of July 23, 2015, Arts. 8 and 9.

²¹³ Law 1765 of 2015. Official Journal No. 49.582 of July 23, 2015, Art. 2.

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,”²¹⁴ and being in charge of “developing the criminal 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....”²¹⁵ For its part, the Office of the Military Prosecutor would have the authority, *inter alia*,²¹⁶ to “enter into preliminary agreements with the accused” and “to apply prosecutorial discretion.”²¹⁷

131. In the hearing held on October 2015 about Human Rights and Legal Reforms to the Security Forces in Colombia, the petitioners expressed concern about Legislative Act and Bill 1765 of 2015.²¹⁸ They stated that the former, AL 01 of 2015, excludes the international law of human rights from being a normative framework for the judgment of crimes committed in the armed conflict; imposes rules that disregard the autonomy and judicial independence; and violates the right to equality before the law by granting differential and unwarranted treatment to members of the Security Forces.²¹⁹

132. They also mentioned that Bill 1765 of 2015 does not guarantee the independence of the military criminal justice system, which functionally depends on the Ministry of Defense and is attached to the Executive power; assigns civil judicial police functions to the security forces; and they highlighted the concerns already identified by the Commission with regard to Bill 085 from 2013, in relation to, *inter alia*, the creation of the judicial police, the catalogue of offences noted above, and the possibility of applying the principle of opportunity.²²⁰ The State for its part said that the AL was a result of an open and democratic deliberation and that the text is drafted within the framework of human rights, and said legislation is being reviewed by the Constitutional Court.²²¹

133. First, in relation to the responses of the State, the Commission notes that Bill 085 of 2013 creates the Administrative Unit of the Executive Branch, which depends on the Executive Branch and not on the Judiciary Branch, and said unit remains ascribed to the Ministry of Defense, taking away independence and autonomy.

134. Second, the Commission reiterates that since 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. Nonetheless, the fact that in military criminal jurisdiction would judge crimes such as homicide could lead for example, to investigations of extrajudicial executions –as the crime “homicide of a protected person” under IHL. This would represent a serious setback, and as the Commission explained in its report and in its follow-up report of 2014, it would only compound impunity. In addition, the creation of a Technical Investigations Corps that has jurisdiction to intervene in handling the crime scene was another question raised regarding the reform that was found unconstitutional,²²² and that the Commission still finds it in this act.

²¹⁴Law 1765 of 2015. Official Journal No. 49.582 of July 23, 2015, Art. 33.

²¹⁵Law 1765 of 2015. Official Journal No. 49.582 of July 23, 2015, Art. 42.

²¹⁶ Law 1765 of 2015. Official Journal No. 49.582 of July 23, 2015, Art 113.

²¹⁷ Law 1765 of 2015. Official Journal No. 49.582 of July 23, 2015, Art. 109

²¹⁸ Considerations presented by the requesting organizations in the hearing on human rights and legal reforms about security forces in Colombia, October 22, 2015.

²¹⁹ Considerations presented by the requesting organizations in the hearing on human rights and legal reforms about security forces in Colombia, October 22, 2015.

²²⁰ Considerations presented by the requesting organizations in the hearing on human rights and legal reforms about security forces in Colombia, October 22, 2015.

²²¹ Considerations presented by the requesting organizations in the hearing on human rights and legal reforms about security forces in Colombia, October 22, 2015.

²²² IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, December 31, 2013, para. 406.

135. Last year the Commission noted the concerns expressed by national and international civil society organizations about this legislation.²²³ Likewise, it reiterates the special concern related to 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*), as expressed by the OHCHR,²²⁴ and which compromises the independence and impartiality of the judicial branch;²²⁵ and it considers that these concerns still remain.

136. The Commission observes that AL 01 of 2015 foresees the automatic and exclusive enforcement of IHL for punishable conduct committed during the armed conflict. In this regard, it recalls that many of the situations to be regulated by this AL, for example, military operations that involve civilian populations. Even though these happen in the context of the conflict, they may require the simultaneous application of international human rights law in addition to IHL.

137. In light of the above, the Commission recalls that the American Convention and the Geneva Conventions share a common core of non-derogable rights and a common aim to protect the physical integrity and the dignity of human beings.²²⁶ It is precisely in situations of internal armed conflict when these two branches of international law converge and are mutually reinforcing.²²⁷ In this regard, the Commission has established that it must necessarily refer to and apply standards and rules relevant to IHL, as sources of authoritative interpretation when resolving complaints alleging violations of the American Convention in combat situations;²²⁸ and that where there are differences between the legal rules that govern identical or similar rights in the Convention or the Geneva Conventions, the Commission applies the highest treaty standard.²²⁹ Both bodies are of concurrent application and complement each other.²³⁰ In addition, the Commission has stated that in situations of armed conflict, IHL can serve as *lex specialis* to interpret and apply international human rights instruments.²³¹

138. The Commission also brings to the current analysis the recent decision of the European Court of Human Rights (ECtHR), in a case against the United Kingdom, as an example of the interaction between IHL and international human rights law in the context of armed conflict, similar to the complex situations that must be investigated and prosecuted by the military criminal justice in Colombia. In said decision, the ECtHR interpreted the norms of the European Convention on Human Rights in light of IHL with respect to the allegation of a violation to the rights and freedoms concerning the detention, by British troops in Iraq, of an Iraqi in the context of an international armed conflict.²³² This interpretation expanded the conditions of detention of individuals and State obligations under human rights law. In this case, the ECtHR used both international human rights law and IHL in a two-step test and stated that:

²²³ CCJ, [Reestructuración de la justicia penal militar y policial: sobre su inconstitucionalidad e inconveniencia](#), August 28, 2014, p. 2; [Carta dirigida a Human Rights Watch por parte del Viceministro para las Políticas y Asuntos Internacionales, Ministerio de Defensa Nacional, Jorge Enrique Bedoya Vizcaya](#), July 2014.

²²⁴ 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.

²²⁵ 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.

²²⁶ IACHR. Case 11.137, Report N° 5/97, Abella (Argentina), paras 158 y 161 and Case Coard et al. (United States), Case 10.951, Report N° 109/99, para. 39.

²²⁷ CIDH. Case 11.137, Report N° 5/97, Abella (Argentina), para. 160.

²²⁸ CIDH. Case 11.137, Report N° 5/97, Abella (Argentina), para. 160.

²²⁹ CIDH. Case 11.137, Report N° 5/97, Abella (Argentina), para. 165.

²³⁰ CIDH. Case 11.137, Report N° 5/97, Abella (Argentina), para. 166.

²³¹ IACHR. [Report on Terrorism and Human Rights](#) (2002), para. 61.

²³² ECtHR. *Case of Hasan v. The United Kingdom*. Application no.29750/09, Judgment September 16, 2014, para. 95. See also Comments of Kai Ambos. Konrad Adenauer Stiftung and Ministry of Defense of Colombia. [Debate sobre investigación y juzgamiento de operaciones militares: ¿DDHH o DIH?](#), June 2015.

Any given situation was likely to require elements of both bodies of law working together, but the balance and interplay would vary [...]. From the perspective of the human rights body, it would be advantageous to use human rights law as the first step to identify the issues that needed to be addressed, [...]. The second step would be to undertake a contextual analysis using both international humanitarian law and human rights law, in the light of the circumstances of the case at hand.²³³

139. The above highlights the need for a joint contextual analysis in light of both bodies of law - international human rights law and IHL - for situations such as those regulated by AL 01 of 2015, and said analysis must be carried out on a case-by-case basis.

140. The Committee takes note that the State comments to the draft report concerning the coexistence of a common core between IHL and human rights. Thus, in relation to the reform under analysis, the State indicates that "it has driven under the knowledge and respect of the coexistence of the legal frameworks applicable under international human rights law and the IHL and the Government shares the international stance that these frameworks have a common core of rights which cannot be suspended at any time, since they have the same purpose of protecting the physical integrity and human dignity, with the only difference that IHL applies only in situations of armed conflict, since it is a special law".²³⁴

141. In relation to the agreement between the State and FARC-EP on the creation of the Special Jurisdiction for Peace (JEP), the Commission appreciates that it will be binding on all parties to the conflict, nonetheless, various initial concerns arise with respect to the future interactions of the military criminal jurisdiction and the duty of the State agents involved in the conflict, that should resort to the JEP.²³⁵

142. In light of the foregoing, the Commission finds that AL 01 of 2015 still has ambiguities and lacks the clarity required in the norms that define State obligations in relation to the investigation and conviction of human rights violations, and takes it into consideration that the Constitutional Court is reviewing its constitutionality. On the other hand, in relation to Bill 1765 of 2015, the Commission regrets that it has become effective, without the recommendation hereby included having been taken into account by the State and calls for the State to harmonize its normative framework with the international standards that have been reiterated by the IACHR.

143. In addition, the Commission considers it important to refer to the considerations raised by the applicant at the hearing on Human Rights and Legal Reforms on Security Forces in relation to the draft national code of police (Law 99 of 2014). In this regard, they highlighted that this draft proposes that notice to or permission from the local authorities is required to carry out a public mobilization, which may not be performed if permission is not obtained.²³⁶ They also indicated that the possibility of searches without a warrant and the ability of police to define the state of the provoked alteration to make transfers for the protection of persons is expected.²³⁷ The State, for its part, said that the draft Code is written in accordance with the jurisprudence established by the Constitutional Court on the lack of a requirement for written search orders and that the issue of transfers comports with the criteria of proportionality and necessity.²³⁸ In

²³³ ECtHR. *Case of Hasan v. The United Kingdom*. Application No.29750/09, Judgment September 16, 2014, para. 95. See also Comments of Kai Ambos. Konrad Adenauer Stiftung and Ministry of Defense of Colombia. [Debate sobre investigación y juzgamiento de operaciones militares: ¿DDHH o DIH?](#), June 2015.

²³⁴ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 11, par. 50.

²³⁵ See also CCEEU. [Con el acuerdo sobre justicia: el fin del conflicto armado con las FARC al alcance de la mano](#), September 25, 2015.

²³⁶ Considerations submitted by the State in the hearing about Human Rights and Legal Reforms to Security Forces in Colombia, October 22, 2015.

²³⁷ Considerations submitted by the State in the hearing about Human Rights and Legal Reforms to Security Forces in Colombia, October 22, 2015.

²³⁸ Considerations submitted by the State in the hearing about Human Rights and Legal Reforms to Security Forces in Colombia, October 22, 2015.

addition, in its reply to the draft of this chapter, the State indicated that the Constitutional Court has admitted certain forms of restriction on freedom by the authorities that are valid when used to ensure the protection of an individual who is defenseless and in order to ensure legal rights and assets that are socially necessary.²³⁹ It also indicated that notice is a coordination mechanism which guarantees the right to protest²⁴⁰ and which does not authorize or limit the exercise of that right.²⁴¹

144. In this regard, the Commission recalls that States must ensure and do not impede the right of protesters to gather freely and that the States can establish appropriate regulations that do not impose excessive requirements that make the exercise of this right ineffectual.²⁴² In this regard, in its Second Report on the Situation of Human Rights Defenders in the Americas, the Commission stated that requirements that could allow for a meeting or demonstration to be prohibited or limited - for example, the requirement to obtain prior permission - are not compatible with that right.²⁴³ The Commission calls on the State to modify said draft Code so that it comports with the standards described above, as well as to take into account the concerns raised by civil society in the legislative deliberations.

F. Mechanism of reparation

- Continue to move forward with implementation of Law 1448 and adopt the measures necessary to adequately address the challenges encountered.
- 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.

145. 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 human rights violations and breaches of IHL derived from the internal armed conflict. The Commission analyzed the gains and challenges that have been documented with the implementation of the Law. In that regard, it reiterated the standards developed in inter-American case law on reparations, specifically the obligation of the State to provide 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.²⁴⁴

²³⁹ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 12.

²⁴⁰ Considerations submitted by the State in the hearing about Human Rights and Legal Reforms to Security Forces in Colombia, October 22, 2015.

²⁴¹ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 12.

²⁴² IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/SER.L/V/II/Doc.66, December 31, 2011, para. 136.

²⁴³ IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/SER.L/V/II/Doc.66, December 31, 2011, para. 137.

²⁴⁴ IACHR, *Report Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, December 31, 2013, para. 467.

146. The Commission also took into account that the implementation of the reparations policies designed by the State face 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.²⁴⁵

147. The State explained that the different components of comprehensive redress for the victims of the armed conflict are implemented through the execution of the comprehensive redress roadmap, as part of a process of attention and accompaniment.²⁴⁶ As regards the implementation of Law 1448, the State informed the IACHR that as of June 2015 7,438,023 victims had been identified, out of which 3,573,276 are women, 3,588,383 men, 1,229 are members of the LGBTI community, and 5,633 were unspecified at the time of the deposition. Also, 147,684 are indigenous, 655,397 are black or Afro-Colombian, 28,977 are gypsies, 9,420 are *raizal* from the San Andres archipelago and Providencia, 694 are *palenqueros* and 6,374,349 did not identify as belonging to any ethnic group.²⁴⁷

148. Likewise, it informed that between January 2012 and June 2015, approximately 2,000 billion pesos were invested in compensation through administrative procedures, divided as follows:²⁴⁸

Compensation through administrative procedure to adults, cut-off-date January 2012 -June 30, 2015			
Normative Framework	Gender	Number of transactions	Amount transferred
418	Female	2839	\$31,041,911,220.35
	Male	1329	\$12,093,873,240.23
1290	Female	152104	\$944,621,501,673.04
	Male	93962	\$437,701,256,979.88
1448	Female	49189	\$284,115,307,631.74
	Male	39413	\$240,643,311,316.30
Justice and Peace	Female	5	\$46,200,000.00
	Male	1	\$3,080,000.00
Total		338,842	1,950,266,442,061.35

149. In addition, the State indicated that in relation to rural housing, the Ministry of Agriculture has a program, that as of May 4, 2015, has assigned 48,714 houses to victims of forced displacement and it was assigning 150 thousand million pesos exclusively for 2015 for the victims.²⁴⁹

²⁴⁵ IACHR, [Chapter V Follow-up of recommendations issued by the IACHR in the Report Truth, Justice and Reparation](#), May 7, 2015, para. 102.

²⁴⁶ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 13.

²⁴⁷ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 9.

²⁴⁸ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 9.

150. With regard to the protocol of Return and Relocation, in effect since May 2015, the State reiterated that it incorporates for the first time, and in an explicit manner, the ethnic approach. It indicated that this protocol represents a significant advance in the formalization and standardization of these processes of collective reparation. Likewise, it informed about various actions advanced for the returns.²⁵⁰

151. Likewise, the State informed it has supported 40 collective processes of construction of historical memory, complying with the objective for the quadrennial. In this regard, it stated that between 2002 and June 2015, the National Center of Historical Memory (CNMH) has published 31 investigations of historical clarification and tools of reconstruction of historical memory²⁵¹ and in 2015 eight documents were published.²⁵² Likewise, it informed that the CNMH has participated in the implementation of the symbolic reparation measures contained in the judgments of Justice and Peace, Land Restitution, and of the Contentious-Administrative tribunal, as well as the processes of collective reparation coordinated by the Unit of Attention and Full Reparation of Victims (UARIV). It stated that in 2015 the State worked in full compliance with the measures that have been ordered in relation to a series of internal judgments,²⁵³ it stated that the

²⁴⁹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 9.

²⁵⁰ The State detailed: (i) return of the Embera Katio del Alto Andagueda community (implementation of three projects and delivery of 83 mules to improve the mobility processes); (ii) return of the Embera community of the indigenous reserves of Gito Dokabu and Chami (implementation of a construction project and equipment of temporary classrooms with an investment and construction and equipment of a transit home and the improvement and equipment of a student shelter); (iii) relocation of the Embera en Florencia community, Caqueta (provision of construction materials for temporary houses for 44 households); (iv) construction and equipment of a community kiosk in the indigenous community of Los Almendros, Bagre en Antioquia; (v) support in the return to the indigenous reserve La Puria (with improved housing, food security, and organizational strengthening with a full and joint investment with the Municipality of Medellín); (vi) return of the Wayuu community of Bahía Portete (delivery of 10 humanitarian aids during the displacement and investment in the process of collective reparation). Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 10.

²⁵¹ The State indicated that in many cases the CNMH has had the support of international cooperation for the realization of historic clarification. Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 10 and 11.

²⁵² The State detailed: (i) Conceptual Keys: Toolbox for operators of human rights archives, IHL and historic memory – Methodological tools to reconstruct the historic memory; (ii) Texts on cruelty. Historical Memory and forensic anthropology; (iii) Narratives of life and memory. Four biographical approximations to the social reality of the country; (iv) Memory, territory and peasant struggles. Methodological inputs for the characterization of the subject and the collective damage in the Caribbean region, from the perspective of the historic memory– Methodological tools for reconstruction of historic memory; (v) Lucho Arango. The artisanal fishing defender; (vi) *Buenaventura*: a port without community; (vii) That day, the violence arrived in canoe. Memories of a return: case of the stilt walker populations of the lagoon complex *Ciénaga Grande de Santa Marta*; (viii) Historic memory from the territorial perspective. Guidance for territorial authorities – Methodological tools to reconstruct historic memory; (ix) Communicate amid the armed conflict: the murder of Eduardo Estrada and the silencing of communitarian communication and regional journalism in Colombia. Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 11.

²⁵³ The State detailed: (i) judgment against Gian Carlo Gutiérrez (AUC) confirmed in second instance by the CSJ; (ii) Judgment against Edgar Ignacio Fierro Flores and Andres Mauricio Torres Leon (AUC), confirmed in second instance by the CSJ; (iii) Judgment against José Rubén Peña Tobón, Wilmer Morelo Castro y José Manuel Hernández Calderas (AUC); (iv) Judgment against Fredy Rendón Herrera (*Autodefensas Campesinas*), confirmed in second instance by the CSJ; (v) Judgment against José Baldomero Linares Moreno, José Delfín Villalobos Jiménez, Rafael Salgado Merchán y Miguel Ángel Achury (ACMV), confirmed by the CSJ; and (vi) Judgment against Darío Enrique Vélez Trujillo, Bernardo Jesús Díaz Alegre, Carlos Arturo Furnieles Álvarez, Juan Pablo López Quintero, Pablo José Montalvo Cuitiva, Dairon Mendoza Caraballo, Efraín Homero Hernández Padilla and Elkin Jorge Castañeda Naranjo (from the Elmer Cárdenas Block). Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 11 and 12.

CNMH has been transmitted 312 land-restitution judgments,²⁵⁴ and that it accompanies 15 subjects of collective reparation²⁵⁵ in the process of collective reparation coordinated by UARIV.

152. In regard to the Colombian Family Welfare Institute (*Instituto Colombiano de Bienestar Familiar* – ICBF), the State informed that between January and May 2015 the Food Program in the transition for displaced households processed 363,972 requests nationwide with a strong budget allocation.²⁵⁶

153. In the hearing regarding the legal and institutional difficulties encountered in the implementation of Law 1448 to provide an effective restitution of land the requesting organizations informed that according to official estimates, the abandoned land *comprises* more than 6,638,195 hectares, and, according to the results of an investigation by one of the requesting organizations, at the end of April 2015 only 97.478 hectares have been restituted.²⁵⁷ The organizations further maintained that the micro-focus process (“*proceso de microfocalización*”) has become an obstacle to restitution as 84% of the 360,000 cases subject to a micro-focus resolution have been held up.²⁵⁸ They also noted that: with the exception of one case, collective lands have not been restituted; in many cases, government officials are unaware of agreements between the government and some NGOs to implement the law; according to their analysis of 1,000 cases, they highlight the non-compliance of other measures ordered to ensure integral reparation, such as access to health and education systems.²⁵⁹

154. For its part, the State indicated that the estimates for abandoned or seized land include hectares that cannot be returned, such as the following: land in special regime areas, such as forestry reserves, protected areas, etc.; lands recovered by members of the displaced population who have returned and whose rights are not in dispute; and the kinds of relationships with land not covered by Law 1448 for restitution processes, tenants, land-holders, etc.²⁶⁰ It further stated that any failure to abide by the focusing would undermine the mandate of Law 1448 of 2011.²⁶¹

²⁵⁴ The State detailed: (i) 59 judgments on properties located in the Cauca Valley, ordered the realization of a symbolic act in recognition of the victims. It stated that said act was agreed upon and realized on November 7, 2014 in Cali; (ii) In a judgment of the First Civil Court of the Circuit of Land Restitution of Pasto (Nariño), about a property located in Santa Barbara, District of said city, a historical memory reconstruction process ordered, which is advanced and its publication is foreseen for the second semester of 2015; and (iii) the remaining orders consist in the document recollection of the judgments and, in some cases, the case files, carried out through the Human Rights Archive Direction of the CNMH. Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 12.

²⁵⁵ The State detailed: El Salado Community (Carmen de Bolívar, Bolívar), *Organización Femenina Popular, Comunidad campesina de La Pola* (Chibolo, Magdalena), peasant community of La Palizúa (Plato y Sabanas de San Ángel, Magdalena), peasant community of Santa Cecilia (Cesar), *Movimiento Sindical*, University of Cordoba, *Asociación de Trabajadores Campesinos del Carare*, San Carlos Community (Antioquia), San Francisco Community (Antioquia), Granada Community (Antioquia), Cocorná Community (Antioquia), San Luis Community (Antioquia), El Tigre Community (Putumayo) y El Placer Community (Putumayo). Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 12.

²⁵⁶ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 12 and 13.

²⁵⁷ IACHR. Information presented by the requesting organizations in the hearing about the situation of human rights defenders who advocate for land restitution in Colombia, October 22, 2015. The State in turn reported that the figure of 6,638.195 hectares does not cover the total area seized and/or abandoned, given that it is clear that such a volume contains discrepancies due to such factors as the difference between perception and geographical referencing, the failure to differentiate between seized and abandoned lands, and the failure to consider certain elements such as nonreturnable areas. Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 13

²⁵⁸ IACHR. Information presented by the requesting organizations in the hearing about the situation of human rights defenders who advocate for land restitution in Colombia, October 22, 2015.

²⁵⁹ IACHR. Information presented by the requesting organizations in the hearing about the situation of human rights defenders who advocate for land restitution in Colombia, October 22, 2015.

²⁶⁰ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 14.

²⁶¹ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 14.

155. Restitutions of collective lands, the State said, have been processed when the circumstances allow. One good practice, it said, were the requests for collective restitution presented to the justice system by the Córdoba Territorial Directorate of the Restitution Unit in emblematic restitution case judgments, such as the plots in Santa Paula and Las Tangas.²⁶² It further reported that 22 collective territories have been placed before the justice system in 18 restitution suits, covering a total of 210,000 hectares from which more than 8,000 families could stand to benefit.²⁶³

156. The State also explained that it is making great efforts to provide reparations to the *victims*: of the 83,000 restitution claims, it has already resolved 14,000.²⁶⁴ Additionally, the State ensured that 84% of families with a restitution order are back on their lands and that not a single person whose land was restored has again become a victim of dispossession²⁶⁵; likewise, it explained that there are 354 persons whose lands were restored and who are beneficiaries of protection measures, and that the National Defense Ministry has carried out 700,000 accompaniments to various actors involved in the restitution process, including affected persons.²⁶⁶ On this matter, the State later added that the restitution measures are being implemented gradually and progressively in the country and that, as of November 20, 2015, its judges had issued 1,453 judgments restoring a total of 176,464 hectares.²⁶⁷ It holds that the land that could be returned to victims of seizures or forced abandonment during the armed conflict are all those hectares so determined in the judgments handed down by the competent courts.²⁶⁸

157. The IACHR values the State's efforts in the implementation of the above-mentioned reparation measures with respect to the payment of administrative compensation and the return of persons that were victims of displacement or land dispossession. Likewise, it takes into consideration the publications and various symbolic reparation measures adopted by the CNMH in the area of memory during this year, as well as the progress in the inclusion of the ethnic differential approach with respect to the Protocol for Accompanying Returns and Relocations.

158. In general, the Commission values that Colombia is progressing in the compliance with its duty to provide redress to the victims of the armed conflict while facing the challenges described above. Notwithstanding the foregoing, and despite the measures that the State has been implementing during the last years, the Commission highlights that the challenges that the victims face with regard to the policy of reparations for human rights violations still remain. They have reported *inter alia* the following needs: (i) a prompt and effective response to the demands of the victims; (ii) adequate housing for the beneficiaries of judgments of land restitution required for their return; and (iii) improved coordination between the Victims Unit, the Land Restitution Unit and local governments.²⁶⁹ Another outstanding concern is the lack of an effective prevention policy aimed at sanctioning the persons responsible for land dispossessions and to

²⁶² Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 15.

²⁶³ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 15.

²⁶⁴ IACHR. Information presented by the State in the hearing about the situation of human rights defenders who advocate for land restitution in Colombia, October 22, 2015.

²⁶⁵ IACHR. Information presented by the State in the hearing about the situation of human rights defenders who advocate for land restitution in Colombia, October 22, 2015.

²⁶⁶ IACHR. Information presented by the State in the hearing about the situation of human rights defenders who advocate for land restitution in Colombia, October 22, 2015.

²⁶⁷ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 13.

²⁶⁸ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 13.

²⁶⁹ Razonpublica.com. [Ley de víctimas desafíos para la reparación integral](#), April 5, 2015.

dismantle their organizations, which influences the number of land restitution requests presented as of January 2015 (72,000) in relation to the projected figures the Government had for this decade (360,000).²⁷⁰

159. In this regard, it has been reported that the reparations granted by the Victim's Unit and the issuance of over 900 judgments of restitution have faced serious obstacles to realize a transformative reparation, and even though the judges and magistrates have attempted to accompany the measures of restitution and formalization with orders aimed to ensure the access of the victims to social rights, compliance with these orders has been slow and complex.²⁷¹

160. The Commission notes that in its reply to the draft of this chapter, the State reported on several undertakings to strengthen coordinated actions between the Land Restitution Unit, the Victims' Unit, and the local governments, such as establishing connections with the Special Administrative Unit for the Restitution of Seized Land and with the Superior Council of the Judicature through interadministrative cooperation agreements, the creation of procedures for enforcing land restitution judgments, etc.²⁷²

161. The IACHR considers it relevant to reiterate some of the issues of concern raised in the *Report Truth, Justice and Reparation* in connection with the elimination of the reparation motion established by Law 1592, to which, on this occasion, the State made no reference in its response. In its follow-up report of 2014 the Commission analyzed the unconstitutionality declarations by the Constitutional Court in March and May of last year²⁷³ with regard to certain provisions of Law 1592, and highlighted that the Court determined that "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 to an effective judicial remedy to obtain such reparation."²⁷⁴ 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 of 2011", represents 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 Act 1592 to the administrative or civil service "nullified the judicial reparation in full."²⁷⁵

162. On the occasion of the progress in the dialogue for the peace agreement and bearing in mind that the definition of the reparations mechanisms in this context is still pending, the Commission reiterates that the quoted decisions of the Constitutional Court retake certain essential aspects to guarantee victims the right to integral reparation processes governed by the Justice and Peace Law. These declarations also contain a valuable roadmap for the treatment of the rights of the victims in the context of the dialogues of peace with aims to consolidate the efforts made by the State directed at the transition towards a stable and lasting peace, in harmony with its international obligations.

163. In light of the above, the Commission deems important that the State continues its efforts in compliance with the recommendations of the *Report Truth, Justice and Reparation* and in harmony with its obligations in this regard.

²⁷⁰ Razonpublica.com. [Ley de víctimas desafíos para la reparación integral](#), April 5, 2015.

²⁷¹ Razonpublica.com. [Ley de víctimas desafíos para la reparación integral](#), April 5, 2015

²⁷² Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received On December 9, 2015, pp. 16-18.

²⁷³ Constitutional Court of Colombia. Judgment [C-180/14](#), March 27, 2014 and Judgment [C-286/14](#), May 20, 2014.

²⁷⁴ Constitutional Court of Colombia. Judgment [C-286/14](#), May 20, 2014.

²⁷⁵ Constitutional Court of Colombia. Judgment [C-286/14](#), May 20, 2014.

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.

164. In its *Report Truth, Justice and Reparation*, the IACHR issued a number of recommendations to the Colombian government, which it followed up on in 2014. In this 2015 report, the IACHR will focus solely on fulfillment of the recommendations listed above. Below, we will acknowledge the areas in which the State has made progress and identify protection challenges and gaps that still require action by the Colombian government.

165. According to information provided by the government, at July 1, 2015, the SRV had reported a total of 6,300,422 victims of forced internal displacement, 61,772 of which were included in that register during the first semester of 2015.²⁷⁶ Moreover, it should be noted that according to statistics of the Internal Displacement Monitoring Centre (IDMC), Colombia recorded 137,200 new internally displaced persons in 2014.²⁷⁷ These figures make Colombia the second country with the highest number of internally displaced persons in the world.²⁷⁸ On this issue, a 2015 report published by the National Center for Historical Memory claimed, “it is not unreasonable to characterize Colombia as a displaced nation.”²⁷⁹

166. The Commission notes, as in its 2014 follow-up report,²⁸⁰ that violence perpetrated by the actors in the armed conflict is not the only cause of forced internal displacement in Colombia. Drug trafficking, regional conflicts, the spraying of illicit crops, actions taken against the manual eradication of crops, socio-economic violence, mega-projects, and agribusiness are some of the other sources of violence that cause the high rates of forced displacement currently recorded in the country.²⁸¹

167. In light of the foregoing, the Commission collected information on measures taken by the Colombian government to implement the recommendations issued in its 2013 report by monitoring the continuance of the humanitarian crisis and the state of unconstitutionality derived from forced internal displacement in Colombia.

168. In its report to the IACHR, the Colombian government stated through the entities comprising the National System of Comprehensive Care and Reparation for Victims (SNARIV from the Spanish) it proposed and promoted various efforts in benefit of the displaced population in terms of (i) return and resettlement, (ii) humanitarian assistance and (iii) production capabilities.

²⁷⁶ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 13.

²⁷⁷ Internal Displacement Monitoring Centre, Norwegian Refugee Council, [Global Overview 2015. People internally displaced by conflict and violence](#), May 2015, p. 16.

²⁷⁸ Internal Displacement Monitoring Centre, Norwegian Refugee Council, [Global Overview 2015. People internally displaced by conflict and violence](#), May 2015, p. 16.

²⁷⁹ NCHM, [Una nación desplazada: Informe nacional del desplazamiento forzado en Colombia](#), Bogota, CNMH-UARIV, 2015, p. 16.

²⁸⁰ IACHR, [2014 Annual Report, Chapter V. Follow-up of Recommendations Issued by the IACHR in its Country or Thematic Reports. Colombia](#), para. 126.

²⁸¹ IACHR, [2014 Annual Report, Chapter V. Follow-up of Recommendations Issued by the IACHR in its Country or Thematic Reports. Colombia](#), para. 126; Norwegian Refugee Council, [Annual Report 2014](#), p. 60; NCHM, [Una nación desplazada: Informe nacional del desplazamiento forzado en Colombia](#), Bogota, CNMH-UARIV, 2015.

169. With regard to return and relocation, the government reported that by 2014, 78.6% of households made the decision whether to resume their life plans in their current places of residence and location or return to the place from which they were expelled.²⁸² According to the government, “[a] significant proportion of the population believes the process of return or relocation has already begun.”²⁸³ Regarding ethnic groups, the Colombian government said that for the first time it would be explicitly including the ethnic approach in the Return and Resettlement Protocol, which represents a significant step forward from collective reparations in the formalization and standardization of these processes.²⁸⁴ The IACHR acknowledges the government’s efforts but, as noted in the recent report of the NCHM, it is still necessary to “design and implement a comprehensive policy for return and resettlement in rural and urban areas to ensure effective enjoyment of rights by victims of forced displacement, with a differential approach based on ethnicity, gender and age.”²⁸⁵

170. As for humanitarian assistance,²⁸⁶ the government stated that 55.4% of the victim population was in the immediate humanitarian assistance phase, and that the most requested component was food (47.2%), followed by the habitability kit (33.4%).²⁸⁷ During the emergency humanitarian assistance phase, 43.4% of households were registered for the food, accommodation and/or the habitability kit components to ensure effective enjoyment of minimum subsistence.²⁸⁸ Finally, during the transitional humanitarian assistance phase, a reported 25.4% of households are in the food and hygiene component, 19.7% in housing and 30.5% in others.²⁸⁹ As for the differential approach, the government highlighted the existence of an eco-cultural zoning model of humanitarian assistance for indigenous peoples and communities, based on the collective dimension and distinctive features of indigenous peoples.²⁹⁰ It also reported that it had made progress with paying immediate attention to those agencies that lack the technical, administrative, and financial capacity for responding to the victim population.²⁹¹

171. In relation to governmental efforts regarding production capabilities, the government reported that the Department of Social Prosperity has a number of programs aimed at emphasizing and

²⁸² Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 13.

²⁸³ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 13.

²⁸⁴ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 13.

²⁸⁵ NCHM, *Una nación desplazada: Informe nacional del desplazamiento forzado en Colombia*, Bogotá, CNMH-UARIV, 2015, p. 517.

²⁸⁶ The government reported that Law 1448 provides for the existence of three phases of humanitarian assistance for victims of forced displacement: “Immediate Humanitarian assistance: Care given to those who claim to have been displaced, are in a situation of acute vulnerability and require priority attention from state agencies to ensure the right to minimum subsistence (food, temporary housing, clothing, and a habitability kit). This measure is the responsibility of the local host authority and is provided from the time the displacement claim is received up to inclusion in the register. Emergency Humanitarian assistance: A welfare measure to which displaced persons or families are entitled once the administrative memo including them in the SRV has been issued. It is delivered depending on the degree of need and urgency for minimum subsistence. Humanitarian Transitional Care: Care given to victims of forced displacement included in the SRV who still do not have the basic necessities for minimum subsistence, but whose situation is not serious and urgent enough to make them eligible for emergency humanitarian assistance.”

²⁸⁷ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 13.

²⁸⁸ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 13.

²⁸⁹ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 13.

²⁹⁰ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, pp. 13-14.

²⁹¹ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR’s Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIID-15-120799, received On December 9, 2015, pp. 16-18.

utilizing the production capabilities of displaced populations, including the “Enrútate TU”, “Incentivo a la Capacitación para el Empleo” (ICE), “Ruta de Ingresos y Empresarismo” (RIE), and “Capitalización Microempresarial” (CM) programs.²⁹² The IACHR notes that the government provided no further information that would make it possible to assess the efficacy of these programs.

172. The Commission takes note of the shortcomings of immediate humanitarian assistance, both emergency and transitional, as identified by the Ombudsman’s Office in its report “*Atención al desplazamiento a 3 años de implementación de la Ley 1448 de 2011*,” published in April 2015. The Ombudsman’s Office noted that expedited procedures and budgets for the delivery of immediate or emergency humanitarian assistance were either lacking or very precarious in the municipalities.²⁹³ The Ombudsman’s Office also identified administrative weaknesses such as the lack of coordination between the national and sub-national levels for delivery of humanitarian assistance, excessive centralization in processing applications for registration and delivery of initial assistance, insufficient points of service which hampers access to state services, and high turnover of officials responsible for caring for the displaced population.²⁹⁴

173. The Ombudsman’s Office also found a lack of comprehensiveness in humanitarian assistance, because authorities allocating resources do not consider regional variations in the cost of living and the unique needs of women, indigenous communities or African descendants.²⁹⁵ Civil society organizations have also remarked that assistance lacks relevance to specific needs and differentiated responses.²⁹⁶ The Ombudsman’s Office noted with concern that emergency humanitarian assistance and even transitional humanitarian assistance still show untimely delivery, and that in the best of cases the displaced population receives only two rounds of humanitarian assistance per year.²⁹⁷ The information received by the IACHR shows that the phases of immediate and emergency humanitarian assistance face barriers of access to information for both victims and responsible officials, and that this hampers access to such measures.²⁹⁸

174. The IACHR received information on the issuance of Decree 2569 of 2014, which established “the criteria and procedures for delivery of emergency and transitional humanitarian assistance to victims of forced displacement based on the assessment of the components of minimum subsistence.”²⁹⁹ Decree 2569 states that once included in the SRV, victims of forced displacement will have access to humanitarian assistance as long as they show minimum subsistence deficiencies.³⁰⁰ Subsequently, once these deficiencies

²⁹² Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 14.

²⁹³ Ombudsman’s Office, *Atención al desplazamiento a 3 años de implementación de la Ley 1448 de 2011*. Report to the Constitutional Court, April 2015, p. 20.

²⁹⁴ Ombudsman’s Office, *Atención al desplazamiento a 3 años de implementación de la Ley 1448 de 2011*. Report to the Constitutional Court, April 2015, pp. 21-23.

²⁹⁵ Ombudsman’s Office, *Atención al desplazamiento a 3 años de implementación de la Ley 1448 de 2011*. Report to the Constitutional Court, April 2015, p. 26.

²⁹⁶ Jesuit Refugee Service (JRS) and Consultancy for Human Rights and Displacement (CODHES), *Concepto sobre la situación del estado de implementación de la política de atención y asistencia humanitaria a la población en situación de desplazamiento forzado en Colombia*. 2015.

²⁹⁷ Ombudsman’s Office, *Atención al desplazamiento a 3 años de implementación de la Ley 1448 de 2011*. Report to the Constitutional Court, April 2015, p. 27.

²⁹⁸ JRS and CODHES, *Concepto sobre la situación del estado de implementación de la política de atención y asistencia humanitaria a la población en situación de desplazamiento forzado en Colombia*. 2015.

²⁹⁹ Administrative Department for Social Prosperity, Decree No. 2569 of 2014, regulating Articles 182 of Law 1450 of 2011 and Articles 62, 64, 65, 66, 67, and 68 of Law 1448 of 2011, reforming Articles 81 and 83 of Decree 4800 of 2011, and repealing paragraph 2, Article 112 of Decree 4800 of 2011, December 12, 2014, Article 1.

³⁰⁰ Administrative Department for Social Prosperity, Decree No. 2569 of 2014, regulating Articles 182 of Law 1450 of 2011 and 62, 64, 65, 66, 67 and 68 of Law 1448 of 2011, reforming Articles 81 and 83 of Decree 4800 of 2011, and repealing paragraph 2, Article 112 of Decree 4800 of 2011, December 12, 2014, Article 1.

are solved, they will be prioritized for access to reparations, compensation and applicable state services to move forward in overcoming their situation of vulnerability.³⁰¹

175. The Ombudsman's Office acknowledges the efforts of the government to overcome the shortcomings identified in the emergency and transitional stages of humanitarian assistance, but sees a discrepancy with the provisions of Decree 2569 of 2014. Although it serves a number of necessary purposes—characterizing the actual situation of families that have been victims of forced displacement and accompanying them in accessing emergency and transitional measures, overcoming their situations of vulnerability and achieving comprehensive reparation—, the guidelines it offers risk not making it possible to overcome the weaknesses and barriers to access to the right to humanitarian assistance.³⁰² It also believes that “certain provisions lack precision, which could result in revictimization of those who enjoy special constitutional protection having suffered the scourge of displacement.”³⁰³ Because this decree entered into force only recently, the IACHR urges the government to monitor its implementation to avoid negatively affecting the displaced population, and to continue its efforts in this regard to ensure delivery of timely, prompt humanitarian assistance, taking into account the real needs of displaced populations.

176. The government also presented information on the land restitution process, and stated that it has a strategy to assess the conditions, wishes and status of families benefiting from land restitution decisions to promote the comprehensiveness of remedial measures.³⁰⁴ The IACHR was informed that by May 31, 2015, the Land Restitution Unit had received 77,893 restitution requests, 43% (33,863) of which were in the 404 areas made available by the Ministry of National Defense for implementation of the restitution policy due to security conditions.³⁰⁵ Of the total applications submitted, 56% (19,052) have completed the administrative process, 60% (11,342) of which have been registered in the Registry of Dispossessed Land, and 8,000 claims have been filed with judges specializing in land restitution, who have issued decisions on 2,297 of them.³⁰⁶ Furthermore, the NCHM stated that by June 2014, 29,185 hectares had been restored in response to 1,277 requests, which amount to only 1% of the claimed area and 2% of all applications submitted by Land Restitution Unit.³⁰⁷

177. Moreover, the government informed the IACHR that the Attorney General's Office, through the DINAC, is introducing methodological tools to develop a contextual research strategy to be used in criminal suits against subversive groups within the framework of the domestic armed conflict.³⁰⁸ For this reason, the Attorney General issued resolutions 0-0341 and 0-0415 of 2015, which enlarged the DINAC staff to cover the entire national territory promptly.³⁰⁹

³⁰¹ Administrative Department for Social Prosperity, Decree No. 2569 of 2014, regulating Articles 182 of Law 1450 of 2011 and 62, 64, 65, 66, 67 and 68 of Law 1448 of 2011, reforming Articles 81 and 83 of Decree 4800 of 2011, and repealing paragraph 2, Article 112 of Decree 4800 of 2011, December 12, 2014, Article 1.

³⁰² Ombudsman's Office, *Atención al desplazamiento a 3 años de implementación de la Ley 1448 de 2011*. Report to the Constitutional Court, April 2015, p. 29.

³⁰³ Ombudsman's Office, *Atención al desplazamiento a 3 años de implementación de la Ley 1448 de 2011*. Report to the Constitutional Court, April 2015, p. 34.

³⁰⁴ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 14.

³⁰⁵ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 14.

³⁰⁶ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 14.

³⁰⁷ NCHM, *Una nación desplazada: Informe nacional del desplazamiento forzado en Colombia*, Bogotá, CNMH-UARIV, 2015, p. 29.

³⁰⁸ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 15.

³⁰⁹ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 15.

178. The government reported on the priority situations assigned to the DINAC regarding forced displacement and dispossession of land in the Urabá region of Antioquia from 1994 to 2011, as a result of paramilitary incursions in the townships of Tulapas, Macondo and *San Jose Apartado*.³¹⁰ Investigation of these situations focused on describing the armed structures, collaborators, support networks, and funders of the paramilitary phenomenon to make significant progress that can result in substantive decisions.³¹¹ In this regard, the government stated that on February 4, 2015, seven defendants were accused on charges of conspiracy, misappropriation of protected property, forced displacement of civilians, and money laundering. The accused included the then-manager of the Córdoba Livestock Fund, some of the board members, notaries, and public officials of the *Instituto Colombiano de la Reforma Agraria* (INCORA).³¹² At March 18, 2015, two defendants who accepted the charges of conspiracy, misappropriation of protected property, forced displacement of civilians, and money laundering, had benefited from a plea bargain; and their sentence is still pending.³¹³ In April 2015, the then-manager of the Córdoba Livestock Fund was sentenced by the Second Criminal Court of the Specialized Circuit of Decongestion in Antioquia to 19 years, six months of prison on charges of destruction and appropriation of protected property; deportation, expulsion, transfer or forced displacement of civilians; and aggravated money laundering, use of front men and aggravated conspiracy.³¹⁴

179. The government also reported on actions taken in relation to the phenomenon of violence that has impacted the community of *San José de Apartadó*. Its decisions of February 6 and 12, 2015, established the criminal involvement of five members of the National Army and four members of the “peasant self-defense of Córdoba and Urabá.”³¹⁵ These individuals are currently being held as probable co-authors of the crimes of homicide against protected persons, forced disappearance, forced displacement, and conspiracy.³¹⁶

180. The government informed the IACHR that the contextual analysis reports presented were particularly useful for making these decisions, as they helped identify the existence of paramilitary patterns, practices and *modus operandi* in support of the hypotheses of the investigation.³¹⁷

181. The Colombian government also reported the existence of an investigation of forced displacement related to the Awá indigenous communities of *Resguardos de Nulpe Medio* and *Gran Sábalo*, located in the Department of Nariño, under the jurisdiction of the Tumaco, Barbacoas and Ricaurte municipalities.³¹⁸ So far, analysis of the information collected through this investigation shows that the FARC-EP structure was responsible for these crimes.³¹⁹ In addition, it reported on the investigation of other cases, such as the abduction of four Awá children, on the road to Pulgrande Tronquería Palicito in Nariño in 2011,

³¹⁰ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 15.

³¹¹ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 15.

³¹² Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 15.

³¹³ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 15.

³¹⁴ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 15.

³¹⁵ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 15.

³¹⁶ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 15.

³¹⁷ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, pp. 15-16.

³¹⁸ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 16.

³¹⁹ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 16.

and on the implementation of a prioritization strategy for comprehensive investigations of crimes in the municipality of Tumaco.³²⁰

182. The State also reported on judgments handed down for crimes of forced displacement committed in Berrecuy in 2010, in the Trojas de Aracataca case, and in the Funpazcor case, as well as on its progress with the investigation into the mass displacement of Afro-descendants from the settlements of Togoromá, Pichimá, Charambirá, and Venado in the department of Chocó.³²¹ In addition, the government stated that the FGN--through the National Office of Public Prosecutors on Disappearance and Forced Displacement--reported a total of 207 convictions since 2011, 55 as of June 1, 2014.³²² Of the 55 reported from June 2014 to May 2015, 15 have been cases of forced displacement.³²³

183. The Commission recognized that in October 2014, the Fifth Criminal Court of the Specialized Circuit in Medellín convicted fourteen people of the crime of forced displacement, among others, in relation to the case of Jiguamiandó and Curvarado.³²⁴ According to Lawyers without Borders Canada and the Inter-Church Justice and Peace Commission, this is an historic judgment, as it unveils a complex structure of various actors who committed forced displacement at different times and shows the damage done to these communities and their territories.³²⁵ The Commission once again urges the government to continue prosecuting cases of forced displacement to address the issue of revictimizing the victims of forced displacement during the return process when the perpetrators have not been processed.

184. The hearing on human rights and resettlement in Colombia was held at the 154th Regular Session of the IACHR on March 19, 2015.³²⁶ The requesting organizations stated that social conflicts arose in emerging communities due to the absence of government guarantees in the process of resettling the displaced population. According to the petitioning organizations, Law 1448 and Decree 4829 did not suffice to address how to approach the restitution process, the judges' land restitution decisions were poorly implemented, and relocation was abandoned as a way to solve the victims' problems. They also noted that 30% of the displaced farmers stated their interest in returning to the fields and asked that the government guarantee the minimum requirements to return with security and dignity.

185. During the hearing, the petitioning organizations noted that, although Decree 250 of February 7, 2005, created the National Plan for Comprehensive Care of the Population Displaced by Violence, which includes a basic housing component, they have observed that the homes still lack the minimum structural requirements and are insufficient to meet the needs of the persons using them. For example, the *La Colorada* farm in the Department of Cundinamarca, provided to families displaced by the INCODER, did not satisfy their minimum living conditions and was not suitable for planting, and the Constitutional Court issued judgment T-1115-1108 ordering the government to move those displaced families to habitable land. They also mentioned that the Constitutional Court issued judgment 344/15 to address issues of home habitability and land productivity in relation to the Villa Diana and Luna properties in the department of *La Guajira*.³²⁷

³²⁰ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIID-15-120799, received December 9, 2015, pp. 20 and 21.

³²¹ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIID-15-120799, received December 9, 2015, p. 21.

³²² Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 16.

³²³ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia*. First semester of 2015, Memo S-GAIID-15-088842 received on September 14, 2015, p. 16.

³²⁴ Lawyers Without Borders Canada, *Una mirada al desplazamiento forzado: Persecución penal, aparatos organizados de poder y restitución de tierras en el contexto colombiano*, 2015, p. 10.

³²⁵ Lawyers Without Borders Canada, *Una mirada al desplazamiento forzado: Persecución penal, aparatos organizados de poder y restitución de tierras en el contexto colombiano*, 2015, p. 10.

³²⁶ IACHR, Hearing on human rights and resettlement processes in Colombia, 154th Regular Session, March 19, 2015.

³²⁷ IACHR, [Hearing on Human Rights and Resettlement Processes in Colombia](#), 154th regular session, March 19, 2015.

186. In general, as regards its attention to the housing issue, the State reported that as of July 2015, the Ministry of Housing, Cities, and Territories reported the allocation of 75,986 in-kind subsidies, of which 69.4% were assigned to households where at least one of the members was a victim of the internal armed conflict.³²⁸

187. According to sources close to the IACHR, the current conditions of displaced families are alarming, as the measures taken in terms of income generation were not effectual.³²⁹ The Commission recognizes the progress made in recent years in improving the situation of the victims of forced displacement,³³⁰ but further efforts should be made to implement measures that will guarantee the rights of this population. According to data obtained from the “Effective Enjoyment of Rights Survey”, there is more poverty among families subjected to forced displacement (63.8%) than in the rest of the Colombian population (25.0%).³³¹ As for extreme poverty, 33% of the population subjected to forced displacement is living in extreme poverty, compared to 7.4% for the overall population of Colombia.³³²

188. The Commission acknowledges the efforts made by the government to fulfill its recommendations. Since internally displaced persons are still extremely vulnerable, the IACHR reiterates the recommendations it made and urges the Colombian government to continue its efforts for successful implementation of the measures needed to ensure the human rights of the victims of forced displacement.

H. Economic, social and cultural 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 system services so as to ensure adequate provision of healthcare throughout the country and the inclusion of differential approaches

189. In the *Report Truth, Justice and Reparation*, the Commission made various general recommendations to the State of Colombia on economic, social and cultural rights. Later, in its 2014 report, it followed up on the implementation of these recommendations and recognized the efforts of the State to adopt legislative measures and public policies to protect the economic, social and cultural rights of the population, without stating that it remained necessary to continue working to fully guarantee these rights. In this new follow-up report, the IACHR will focus its evaluation on the actions carried out by the State and the pending challenges to comply with the following recommendations: (i) to continue adopting measures to reduce poverty and extreme poverty; (ii) 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 and intra-urban forced displacement; and, (iii) continue strengthening the health system so as to guarantee adequate delivery of services throughout the national territory, and including differential approaches.

190. The Commission highlights the efforts of the State to address the problem of poverty and extreme poverty. According to the State of Colombia, for the 2014-2018 period, the goal of the National Agency to Overcome Extreme Poverty (*Agencia Nacional para la Superación de la Pobreza Extrema “ANSPE”*)

³²⁸ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR’s Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 22.

³²⁹ Letter received on 21 September 2015 from the CJYC.

³³⁰ Victims Unit, *Resultados de la Encuesta Goce Efectivo de Derechos de las víctimas de desplazamiento*, January 13, 2015.

³³¹ Letter received on 21 September 2015 from the CJYC; Victims Unit, *Resultados de la Encuesta Goce Efectivo de Derechos de las víctimas de desplazamiento*, January 13, 2015.

³³² Letter received on 21 September 2015 from the CJYC; Victims Unit, *Resultados de la Encuesta Goce Efectivo de Derechos de las víctimas de desplazamiento*, January 13, 2015.

is to provide family support to 550,000 poor households and in situations of vulnerability in rural areas, and increase to 100,000 the number of households that are beneficiaries of the in-kind Housing Family Subsidies.³³³ The IACHR notes that during the first six months of 2015, the ANSPE had already provided family support to 472,312 households, and that 31,998 households had already benefitted from the Housing Family Subsidy.³³⁴

191. Despite the efforts of the State, especially with regard to the development of social programs and strategies to tackle poverty and extreme poverty, the IACHR notes that the UNOHCHR-Colombia has pointed out that even though Colombia is an upper-middle-income country, it is “one of the most unequal in the region.”³³⁵ Colombia provided information to the IACHR stating that in 2014 the percentage of persons in extreme poverty in relation to the national population was 8.1 per cent; registering 5.1 per cent of the population in the administrative centers of the municipalities and 18 per cent of the population of populated centers and dispersed rural areas.³³⁶ The IACHR notes that according to the information submitted by the State, there was a reduction of extreme poverty by 1.0 per cent, from 9.1 per cent to 8.1 per cent, as registered in 2014 compared to 2013.³³⁷ In 2014 the percentage of persons in a situation of multidimensional poverty was 21.9 per cent: 15.4 per cent in the administrative centers of municipalities and 44.1 per cent in the populated centers and dispersed rural areas.³³⁸ In 2014, the reduction of the incidence of multidimensional poverty was -2.8 per cent in comparison to 2013.³³⁹

192. In the report of 2014, the Commission stated that it would “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. those programs should be directed to all strata of society to achieve the full enjoyment of economic, social, and cultural rights.”³⁴⁰ In this regard, the UNOHCHR expressed in its annual report of 2015, that “[the] [p]rogress made in fighting poverty will be limited until efforts also address discrimination and inequality.”³⁴¹ Rural dwellers, indigenous peoples, Afro-Colombians, women and children face the greatest obstacles to enjoying their economic, social and cultural rights.³⁴²

³³³ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 17-18.

³³⁴ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 18.

³³⁵ UN, Human Rights Council, [Annual report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia](#), January 23, 2015, A/HRC/28/3/Add.3, para. 20.

³³⁶ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 18.

³³⁷ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 18.

³³⁸ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 18.

³³⁹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 18.

³⁴⁰ IACHR, [Annual Report 2014. Chapter V. Follow-up of recommendations issued by the IACHR in its country or thematic reports](#), May 7, 2015, para. 155.

³⁴¹ UN, Human Rights Council, [Annual report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia](#), January 23, 2015, A/HRC/28/3/Add.3, para. 20.

³⁴² UN, Human Rights Council, [Annual report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia](#), January 23, 2015, A/HRC/28/3/Add.3, para. 20.

193. The information submitted to the IACHR states that those living in rural areas suffer most from the negation of rights that characterizes poverty.³⁴³ According to the National Department of Statistics (DANE), 24.8 per cent of the population lives in poverty: in urban areas, the poverty rate is 18.5 per cent, while in rural areas it is 45.9 per cent.³⁴⁴ On this point, the State reported that the change between 2012 and 2013 was -2.2 percentage points at the national level, -2.1 percentage points in main towns, and -2.4 percentage points elsewhere.³⁴⁵

194. The Commission is deeply concerned about the situation of the Chocó Department given that it is precisely in this department, which is populated mostly by Afro-Colombians (82.1 per cent) and indigenous peoples (12.7 per cent) where Colombia registers its highest percentage of the population in “monetary poverty”³⁴⁶: 63.1 per cent, in contrast with Bogota, which has the lowest percentage, at 10.2 per cent.³⁴⁷

195. The Commission highlighted in its reports of 2013 and 2014 the operation of “*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, conditioned on the school enrollment of the children and on their follow up through medical controls.³⁴⁸ Nevertheless, information was received that indicates that children with cognitive disability do not have access to the subsidies of the program because they do not enroll in the educational system.³⁴⁹ The IACHR urges the State to adopt measures to guarantee that children with cognitive disability have access to education and to the subsidies of said program with guarantees of the conditions of real equal access to the social protection.

196. In relation to the right to health, the IACHR acknowledges the issuance of Law 1751 of February 16, 2015 or Statutory Health Law (“*Ley Estatutaria de Salud*”), which aims to guarantee the right to health, regulate it and establish its protection mechanisms.³⁵⁰ According to the State, this law recognizes health as a fundamental, autonomous right; it ends the so-called “death carrousel” (“*carrusel de la muerte*”), because it makes the provision of emergency services mandatory without the requirement of any

³⁴³ UN, Human Rights Council, [Annual report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia](#), January 23, 2015, A/HRC/28/3/Add.3, para. 21.

³⁴⁴ UN, Human Rights Council, [Annual report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia](#), January 23, 2015, A/HRC/28/3/Add.3, para. 20.

³⁴⁵ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 23.

³⁴⁶ “Monetary poverty” refers to the methodology used to measure poverty in Colombia, which is based on income. Regarding to this methodology, a person is considered to be living in poverty if his or her income level falls below the minimum level necessary to meet basic needs. According to the DANE, in Colombia this measure was adopted by the Mission to Link Employment, Poverty and Inequality Surveys “Misión para el Empalme de las Series de Empleo, Pobreza y Desigualdad (MESEP)” and includes as elements for its measurement, poverty line values and the per-capita household income. DANE. [Pobreza monetaria y multidimensional 2013](#), September 4, 2013. According to the World Bank, the minimum levels or poverty lines vary across time and societies, and each country defines poverty lines which are appropriate to its level of development, societal norms and values. When estimating “poverty” and “extreme poverty” for Latin America and the Caribbean, the World Bank refers to “poverty” as people living on less than USD \$4.00 a day and “extreme poverty” as people living on less than USD \$2.50 a day. [Working to End Poverty in Latin America and the Caribbean Workers, Jobs, and Wages](#), June 2015 p. 7.

³⁴⁷ UN, Human Rights Council, [Annual report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia](#), January 23, 2015, A/HRC/28/3/Add.3, para. 21.

³⁴⁸ IACHR, [Annual Report 2014. Chapter V. Follow-up of recommendations issued by the IACHR in its country or thematic reports](#), May 7, 2015, para. 151.

³⁴⁹ UN, Human Rights Council, [Annual report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia](#), January 23, 2015, A/HRC/28/3/Add.3, para. 22.

³⁵⁰ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 20.

authorization; and it defines controls on medication prices, among others.³⁵¹ The Commission urges the State to continue its efforts on this matter according to the adequate regulation and implementation of this law.

197. According to the Office of the Ombudsperson, in Colombia the problems of access and coverage of the health system persist, precluding the full enjoyment of the right to health.³⁵² The Office of the Ombudsperson indicated that for 2014 the right to health comprised 30 per cent of the complaints it received and processed, and during the last few years this right has been among the most violated.³⁵³ The Commission received information indicating that, particularly in rural areas, health services do not achieve minimum standards of availability, access, acceptability and quality.³⁵⁴ The UNOHCHR-Colombia notes that Afro-Colombians and indigenous children in Chocó Department continue to die of preventable and treatable diseases, such as gastroenteritis and respiratory infections, owing to obstacles in access to adequate health services, clean water and basic sanitation.³⁵⁵ The maternal mortality rate in the department is 341.63 per 100,000 live births, while in Bogotá it is 42.05. Mortality of children under one year of age is 42.69 per 1,000 live births in Chocó, compared to 12.88 in Bogotá.³⁵⁶ This situation, in conjunction with the lack of access to adequate education and food, was already stated as a concern by the IACHR in its report of 2014.³⁵⁷

198. CERD expressed its concern because of the “lack of availability, accessibility and acceptability of the health services in the regions inhabited mainly by indigenous peoples and Afro-Colombians.”³⁵⁸ In this regard, the IACHR observes with concern the information of the Office of the Ombudsperson indicating the existence of a humanitarian crisis in La Guajira. According to this information, the closure of the border with Venezuela in February 2014 aggravated the hunger crisis of the Wayuu indigenous people of La Guajira.³⁵⁹ It was informed that a famine is affecting 13 districts (*corregimientos*) of La Alta Guajira because they are losing their access to food and basic necessities since these were supplied through the commerce with Venezuela.³⁶⁰ During 2014, the Office of the Ombudsperson called on the Government on several occasions as to the need to address the situation of the indigenous peoples in La Guajira because the lack of water, food and health services were severely affecting them.³⁶¹ It is important to highlight that the same year the Office of the Ombudsperson published a report entitled ‘Humanitarian crisis

³⁵¹ Ministry of Health, [Con sanción de Ley Estatutaria, la salud se consolida como derecho fundamental en Colombia](#), Press Release No. 038 of 2015, February 16, 2015.

³⁵² Office of the Ombudsperson (Colombia), [Vigésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#), January-December 2014, para. 62.

³⁵³ Office of the Ombudsperson (Colombia), [Vigésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#), January-December 2014, para. 62; Press release, El Universal, [Por día se interponen 360 tutelas relacionada con el derecho a la salud](#), August 20, 2015.

³⁵⁴ UN, Human Rights Council, [Annual report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia](#), January 23, 2015, A/HRC/28/3/Add.3, para. 23.

³⁵⁵ UN, Human Rights Council, [Annual report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia](#), January 23, 2015, A/HRC/28/3/Add.3, para. 23.

³⁵⁶ UN, Human Rights Council, [Annual report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia](#), January 23, 2015, A/HRC/28/3/Add.3, para. 23.

³⁵⁷ IACHR, [Annual Report 2014. Chapter V. Follow-up of recommendations issued by the IACHR in its country or thematic reports](#), May 7, 2015, paras. 160-163.

³⁵⁸ UN, CERD, unedited versión, [Observaciones finales sobre el decimoquinto y decimosexto informes periódicos de Colombia](#), CERD/C/COL/CO/15-16, August 28, 2015, para. 33. (Unofficial translation)

³⁵⁹ Office of the Ombudsperson (Colombia), [Vigésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#), January-December 2014, paras. 47-48.

³⁶⁰ Office of the Ombudsperson (Colombia), [Vigésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#), January-December 2014, paras. 47-48.

³⁶¹ Office of the Ombudsperson (Colombia), [Vigésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#), January-December 2014, paras. 47-48.

in La Guajira 2014. Integral action of the Office of the Ombudsperson in the Department' in which they denounced human rights violations with respect to access to water, food, health and education for the indigenous inhabitants of the region, which would have generated a large number of children deaths.³⁶²

199. It is important to highlight that the IACHR received a report prepared by the following organizations of civil society: Women's Link Worldwide, *Dejusticia*, *Corporación Humanas*, *La Mesa por la Vida y la Salud de las Mujeres*, and *Casa de la Mujer* in which they exposed some areas of concern detected in the actions of the State to accomplish the strengthening of the health systems.³⁶³ Because their observations on the area of health are related with the situation of sexual violence against women, these will be addressed in the section corresponding to women in the context of the armed conflict (see *infra* II. I. 4).

200. On June 9, 2015 the National Development Plan 2014-2018 "*Todos por un Nuevo país*" was issued, through Law 1753.³⁶⁴ According to the Colombian State, the Plan contains a cross-cutting element on Equity in which it "proposes to reduce poverty and consolidate the middle class by strengthening social inclusion through an articulated and focused offer of social protection and promotion; and to foster a real, productive inclusion with effective mechanisms of income generation and employment."³⁶⁵ The Plan also contains a proposal for strengthening the System of Social Promotion with the objective of guaranteeing vital minimums and to promote social and productive inclusion, including: (i) provide supplements to the income of the population in a major situation of poverty and vulnerability; (ii) foster the generation of income to overcome poverty; (iii) reduce hunger and malnutrition, especially in the population in a major situation of poverty and vulnerability, and ethnic groups; (iv) to improve the efficiency and opportunity of services to overcome extreme poverty; (v) guarantee the social inclusion of persons with disabilities; (vi) improve the efficiency and opportunity of services for overcoming extreme poverty.³⁶⁶ The State of Colombia indicates that in order to fulfill the last requirement it will apply a method of integral targeting, both geographic and demographic; it will design and implement a System of Social Information to guarantee the integration and rationalization of the social offer; and it will facilitate the access to the offer of services through RED UNIDOS by identifying the population and their needs.³⁶⁷

201. The State presented information on the Program of Promotion of Access to Social Interest Housing "*Mi Casa Ya*" ("My Home Now"), that has the objective to facilitate to Colombian households the purchase of a house and it is directed to those households with income between 2 to 4 minimum salaries, through an initial subsidy in the purchase price of their house and the granting of a 4 point coverage over the credit interest rate of the house they contract.³⁶⁸ The program aims to benefit 130,000 families between 2015 and 2018.³⁶⁹ The State also reported that the Ministry of Agriculture is working on an adjustment of its rural housing policy, earmarking 150,000 million pesos for the victim population.³⁷⁰ In connection with this,

³⁶² See Office of the Ombudsperson, [Crisis humanitaria en La Guajira 2014. Acción integral de la Defensoría del Pueblo en el departamento](#), 2014.

³⁶³ Women's Link Worldwide, *Dejusticia*, *Corporación Humanas*, *La Mesa por la Vida y la Salud de las Mujeres* and *Casa de la Mujer*. *Follow up on the compliance of the recommendations of the Report Truth, Justice and Reparation – Colombia*, September 2015.

³⁶⁴ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 49.

³⁶⁵ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 16.

³⁶⁶ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 17.

³⁶⁷ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 17.

³⁶⁸ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 20.

³⁶⁹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 20.

³⁷⁰ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 24.

the Commission notes the State's initiative for working on the situation of the right to housing in rural regions and not only with middle-class families in intermediate cities.³⁷¹

202. The IACHR was also informed by the State about the issuance of Decree 1077 of 2015 or "*Decreto Único Reglamentario del Sector de Vivienda, Ciudad y Territorio*" ("Regulatory Decree of the Housing, City and Territorial Sector"), which defines the requirements and conditions of the implementation of and access to family housing subsidies, 100 per cent in-kind in the context of the Free Housing Program ("*Programa de Vivienda Gratuita*").³⁷² This Decree also defines the conditions of the beneficiaries of the "*Mi Casa Ya*" program and the benefit of the coverage of the interest rate to facilitate the new financing of social interest housing for urban areas through the mortgage credit and housing leasing contracts.³⁷³ Likewise, the State of Colombia has continued with the implementation of the Free Housing Program with the first-stage objective of delivering one hundred thousand houses totally subsidized for the population in a situation of major vulnerability, such as the victims of forced displacement, those covered by extreme-poverty programs, households affected by natural disasters, public calamities or emergencies and/or inhabiting non-mitigatable high-risk areas.³⁷⁴ The State indicates that during the first semester of 2015 the program had 39,324 beneficiaries.³⁷⁵

203. The State also informed that the UARIV has defined a policy for targeting social housing, focusing mainly in the allocation and implementation of an "In-kind Family Housing Subsidy" ("*Subsidio Familiar de Vivienda en Especie*" – SFVE).³⁷⁶ In order to allocate the SFVE, there is a previous mechanism of screening and selection of potential beneficiaries and it also defines the guidelines and criteria of prioritization of access to housing for the population that are victims of the armed conflict.³⁷⁷ The information submitted to the IACHR states that during the first semester of 2015, 9,103 households benefited, of those 774 belonged to the "*Red Unidos*" ("Together Network").³⁷⁸ During this period, the State reports the allocation of 117 housing subsidies for the displaced population through the FONVIVIENDA, worth \$1,933 million Colombian pesos.³⁷⁹

204. The State also reported that after carrying out 283 projects in 29 of the country's departments, it handed over 100,000 cost-free homes in November 2015 in El Salado, Bolívar department, to 100,000 vulnerable families, of whom 70% had been displaced, 15% were living in extreme poverty, and 15% had been affected by natural disasters.³⁸⁰

³⁷¹ IACHR, [Annual Report 2014. Chapter V. Follow-up of recommendations issued by the IACHR in its country or thematic reports](#), para. 165.

³⁷² Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 19.

³⁷³ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 19.

³⁷⁴ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 19.

³⁷⁵ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 19.

³⁷⁶ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 20.

³⁷⁷ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 20.

³⁷⁸ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 20.

³⁷⁹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 20.

³⁸⁰ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 24.

205. The IACHR acknowledges the actions implemented by the State of Colombia to guarantee the enjoyment of the economic, social and cultural rights for the victims of forced displacement. Nevertheless, the IACHR notes with concern the information of public knowledge indicating that according to the Survey on the Effective Enjoyment of Rights at least six out of every ten displaced persons would be living in poverty and three out of every ten in extreme poverty.³⁸¹ Likewise, the information would indicate that six out of every 10 displaced persons suffer severe food insecurity and only eight per cent would have secured their food.³⁸² Even though the situation remains critical, the State of Colombia has indicated there is an important reduction in the situation of poverty of displaced households because even though 33 per cent of households are in extreme poverty, 77 per cent were in extreme poverty in 2010.³⁸³ With regard to the right to housing, the State indicates that 19.5 per cent of the displaced households enjoy that right, without overcrowding, with access to public services and built with adequate materials, and these do not have legal ownership of the house or do not have a written leasing contract.³⁸⁴

206. The Commission, therefore, maintains its recommendations and urges the State to continue adopting the necessary public policies and devoting efforts to ensure the effective enjoyment of human rights in conditions of equality and non-discrimination, in particular economic, social and cultural rights, for the inhabitants subject to its jurisdiction.

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.
- 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.

207. In the section on Afro-descendant, Raizal, and Palenquero persons in its country report, the IACHR established that these populations are still rendered invisible, are victims of racial discrimination and are disproportionately affected by violence, forced displacement, poverty and social exclusion.

208. In August 2015, a delegation of the IACHR conducted a working visit to Colombia in order to receive information on the human rights situation of Colombian citizens.³⁸⁵ The Rapporteur on the Rights of Persons of African Descent noted the positive attitude and engagement of the Colombian authorities who

³⁸¹ *El Tiempo*, [6 de cada 10 desplazados viven en la pobreza](#), January 16, 2015.

³⁸² *El Tiempo*, [6 de cada 10 desplazados viven en la pobreza](#), January 16, 2015.

³⁸³ UARIV, [Mejora situación de población desplazada en Colombia](#), February 16, 2015.

³⁸⁴ UARIV, [Mejora situación de población desplazada en Colombia](#), February 16, 2015.

³⁸⁵ IACHR, Press Release No. 95/2015, [IACHR Visits Colombia to Receive Information on the Situation of Persons of African Descent](#), August 27, 2015.

recognize the historical debt of their country's society to persons of African descent.³⁸⁶ During the working visit it was noted that there are many programs in place aimed at improving the situation of human rights of Afro-descendants in Colombia, such as the special national plan for the development of the Pacific region (*Todos somos PAZcífico*), the promotion of culture and fight against discrimination in the City of Cali, the development of policies for inclusion, and the creation and funding of governmental entities at the national and local levels to address some of the issues.³⁸⁷ However, it is still necessary that the State undertakes measures to ensure that such programs and policies are implemented expeditiously and effectively.³⁸⁸

209. In the context of this working visit, the IACHR received troubling information on the continuation of a pattern of violence that affects the Afro-descendant community, particularly in their quest to defend their rights to their ancestral and communal lands.³⁸⁹ The violence and killings of persons in the Afro-descendant community continue to be very high despite plans by the State to address this situation.³⁹⁰ The Commission was also informed that Afro-descendant people continue to be the victims of displacement, disproportionately so, as a result of the armed conflict in their ancestral territories and by projects of extractive industries.³⁹¹

210. With regard to the situation of violence against Afro-descendant persons, the IACHR is profoundly concerned about the continuity of attacks against Afro-descendant human rights defenders and leaders, particularly those in the Colombian Pacific region.³⁹² For example, according to information received by the IACHR, on August 3, 2015, Gilmer Genaro García Ramírez – leader of the “*Consejo Comunitario de Alta Mira y Frontera*” (“Community Council of Alta Mira and Frontera”) and member of the “*Red de Consejos Comunitarios del Pacífico Sur (RECOMPAS)*” (“Network of Community Councils of the South Pacific”) – died as a result of being shot by a group of armed individuals in the Municipality of Tumaco, Department of Nariño.³⁹³ The IACHR again calls upon the Colombian authorities to act urgently to identify, prosecute and punish the responsible persons, as well as to adopt the necessary measures to protect the life and physical integrity, and guarantee the security, of the Afro-descendant defenders and leaders.³⁹⁴ In this regard, in the hearing on reports of discrimination against people of African descent, the State provided information regarding the arrest of two persons allegedly linked to the murder of Gilmer Genaro García Ramírez, and indicated that other 6 arrest warrants have already been issued.³⁹⁵ It later reported that it had captured the four perpetrators and the mastermind behind it.³⁹⁶

³⁸⁶ IACHR, Press Release No. 95/2015, [IACHR Visits Colombia to Receive Information on the Situation of Persons of African Descent](#), August 27, 2015.

³⁸⁷ IACHR, Press Release No. 95/2015, [IACHR Visits Colombia to Receive Information on the Situation of Persons of African Descent](#), August 27, 2015. See also UN, CERD, unedited version, *Concluding Observations on the Fifteenth and Sixteenth periodic report of Colombia*, CERD/C/COL/CO/15-16, August 28, 2015, para. 4. (Unofficial translation). Information presented by the State during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

³⁸⁸ IACHR, Press Release No. 95/2015, [IACHR Visits Colombia to Receive Information on the Situation of Persons of African Descent](#), August 27, 2015.

³⁸⁹ IACHR, Press Release No. 95/2015, [IACHR Visits Colombia to Receive Information on the Situation of Persons of African Descent](#), August 27, 2015.

³⁹⁰ IACHR, Press Release No. 95/2015, [IACHR Visits Colombia to Receive Information on the Situation of Persons of African Descent](#), August 27, 2015.

³⁹¹ IACHR, Press Release No. 95/2015, [IACHR Visits Colombia to Receive Information on the Situation of Persons of African Descent](#), August 27, 2015. See also UN, Human Rights Council, [Annual report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia](#), January 23, 2015, A/HRC/28/3/Add.3, para. 9.

³⁹² IACHR, Press Release No. 94/2015, [IACHR Condemns Killing of Afro-descendant Leader in Colombia](#), August 25, 2015.

³⁹³ IACHR, Press Release No. 94/2015, [IACHR Condemns Killing of Afro-descendant Leader in Colombia](#), August 25, 2015.

³⁹⁴ IACHR, Press Release No. 94/2015, [IACHR Condemns Killing of Afro-descendant Leader in Colombia](#), August 25, 2015.

³⁹⁵ Information presented by the State during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

³⁹⁶ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GA/ID-15-120799, received December 9, 2015, p. 27.

211. The Commission notes with profound concern the information received of the alarming situation reported in March and April 2015 in the area of Alto Andágueda (rural area of Bagadó – Chocó), as a result of the military operations against the ELN (National Liberation Army) and this group's actions.³⁹⁷ In this context approximately 1,000 Afro-Colombian and indigenous persons were affected, who were limited in their free movement, and had to suspend their subsistence activities, generating a situation of confinement.³⁹⁸ Likewise, damages to houses in the indigenous community of Quimpará were reported as well as in the Afro-Colombian community of Piedra Honda and their situation of confinement generated impacts on their mental and psychosocial health.³⁹⁹ OCHA reported on the actions carried out to address the situation. In that regard, OCHA stressed that it is imperative that military operations are implemented taking into consideration their impact on the ethnic territories, and the need to seek alternative measures that do not generate humanitarian consequences for the population.⁴⁰⁰

212. During the hearing on reports of discrimination against people of African descent in Colombia the requesting organizations indicated their concern for the increase in murders of Afro-Colombian persons in rural and urban areas.⁴⁰¹ For example, in Cartagena, an increase of 117% of aggressions against population of African descent was registered between 2007 and 2014, while the increase of aggressions against non-afro-descendant population was of 85%. Additionally, they pointed out that according to a report of the Office of the Bogotá District Mayor, 14 murders of afro-descendant young men were registered only up to May 2015, all of them victims of forced displacement.⁴⁰² They presented information regarding the sub-representation of victims of African descent in the RUV, which would be of more than 1 million according to civil society organizations and approximately 700,000 for the State.⁴⁰³

213. The IACHR would like to emphasize that during the hearing, the Colombian State indicated that in Buenaventura –which has a mainly Afro-Colombian population– more prosecutors and assistants had been assigned to investigate the incidents of violence against afro-descendant population. It indicated that in 2014 and 2015 there was no record of more cases of dismembering.⁴⁰⁴ However, it should be indicated that according to Human Rights Watch, in spite of the efforts of the State, the situation of violence, forced displacement, disappearances and murders still affected the population of Buenaventura.⁴⁰⁵ They also indicated that incidents of dismembering continue to being recorded during 2015.⁴⁰⁶

³⁹⁷ OCHA, [Colombia – Confinamiento y desplazamiento masivo en zona rural de Bagadó \(Chocó\)](#), Flash Update No. 1, April 27, 2015.

³⁹⁸ OCHA, [Colombia – Confinamiento y desplazamiento masivo en zona rural de Bagadó \(Chocó\)](#), Flash Update No. 1, April 27, 2015.

³⁹⁹ OCHA, [Colombia – Confinamiento y desplazamiento masivo en zona rural de Bagadó \(Chocó\)](#), Flash Update No. 1, April 27, 2015.

⁴⁰⁰ OCHA, [Colombia – Confinamiento y desplazamiento masivo en zona rural de Bagadó \(Chocó\)](#), Flash Update No. 1, April 27, 2015.

⁴⁰¹ Information presented by the requesting organizations during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴⁰² Information presented by the requesting organizations during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴⁰³ Information presented by the requesting organizations during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴⁰⁴ Information presented by the State during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴⁰⁵ HRW, [Colombia: New Killings, Disappearances in Pacific Port](#), Mach 4, 2015.

⁴⁰⁶ HRW, [Colombia: New Killings, Disappearances in Pacific Port](#), Mach 4, 2015.

214. Further, during the hearing the requesting organization informed about the forced disappearance on September 6, 2015 of José Alberto Montaña who was found dead on September 18, 2015.⁴⁰⁷ In this regard, the State informed that the Sectional Prosecutor 23 of the city of Bogota is already undertaking an investigation.⁴⁰⁸

215. Regarding arbitrary police behavior, the petitioning organizations indicated that the Afro-Colombian population was disproportionately affected by it; and in cities such as Cali, the police forces are using racial profiling.⁴⁰⁹ They highlighted that despite the considerable increase in murders of Afro-Colombians and the incidents of arbitrary police behavior, the State has failed to respond adequately.⁴¹⁰ According to the organizations, the police officers were not properly trained and the State was not recognizing that all of these acts have a basis in racial discrimination.⁴¹¹ The organization emphasized their concern for the situation of the Río Ciego community in El Chocó, affected by the constant confrontations between the insurgency and the paramilitary groups, and urgently requested the State to take the necessary measures to guarantee their life and personal integrity.⁴¹² During the hearing, the organizations further indicated that the situation of Afro-descendant women victims of the armed conflict was especially serious, as it was heightened by sexual violence, forced displacement and other forms of violence.⁴¹³ Furthermore, they mentioned the forced disappearance of young Afro-Colombians, especial in the neighborhood of Decepaz in the City of Cali, and the lack of effective investigations.⁴¹⁴

216. The situations described above reflect the existence of structural discrimination against Afro-Colombian persons. The United Nations Committee on the Elimination of Racial Discrimination (CERD) has expressed its concern for the “persistent structural discrimination and invisibility that Afro-Colombian people face, which is manifested in the breach of inequality in the exercise of the economic, social and cultural rights of the Afro-Colombian with regards to the rest of the population.” It must be stressed that according to the information of CERD, the highest levels of poverty are documented in the areas where there is a larger concentration of Afro-descendant people.⁴¹⁵

217. The report presented by the Colombian State⁴¹⁶ indicates that as part of the regional strategy for the formulation of the National Development Plan 2014-2018, regional and national organizations were convened to participate in the dialogue tables, aiming to formulate public policy with a differential approach.⁴¹⁷ The State noted the existence of Decrees 4633, 4634 and 4635 of 2011, in relation to the Law of

⁴⁰⁷ Information presented by the requesting organizations during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴⁰⁸ Information presented by the State during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴⁰⁹ Information presented by the requesting organizations during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴¹⁰ Information presented by the requesting organizations during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴¹¹ Information presented by the requesting organizations during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴¹² Information presented by the requesting organizations during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴¹³ Information presented by the requesting organizations during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴¹⁴ Information presented by the requesting organizations during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴¹⁵ UN, CERD, unedited version, *Concluding Observations on the Fifteenth and Sixteenth periodic report of Colombia*, CERD/C/COL/CO/15-16, August 28, 2015, para. 13. (Unofficial translation)

⁴¹⁶ Report presented jointly about indigenous peoples and afro-descendant communities.

⁴¹⁷ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 22.

Victims, stating that they recognize indigenous peoples and Afro-descendant communities as subjects of collective rights and their members individually, as victims of human rights violations.⁴¹⁸ Nevertheless, the State did not submit information of specific actions implemented during the first semester of 2015 to fully implement these decrees.

218. With regards to land restitution of Afro-descendant communities, the IACHR was informed that it is planned that *Alto Mira* and *Bajo Mira* Community Councils start the prior consultation process in order to establish damage, within the strategy for prioritization of administrative and judicial proceedings by the Land Restitution Unit.⁴¹⁹ On the other hand, the State informed the Commission that one of the existing decisions of ethnic restitution was issued in favor of the Black Revival (*Renacer Negro*) Community Council whose ancestral territory is in the Timbiquí Municipality, Cauca Department.⁴²⁰ The Colombian State also stated that there are 22 cases of ethnic communities –as part of 18 suits for restitution- that are pending before the Restitution Judges by the Land Restitution Unit, which represents land rights of approximately 8,000 families over 210.000 hectares (including Afro-Colombian, *raizal*, *palanquero*, and indigenous communities).⁴²¹

219. The IACHR was informed about efforts to adopt protocols that allow effective participation of ethnic communities and peoples, within the framework of Order 0388 of 2013 and in accordance with Title IX of Decree Law 4633, Chapter III of Title VI of Decree Law 4635, and Chapter III of Title V of Decree Law 4634.⁴²² In this regard, the State informed that the Unit for Victim Support and Reparations (*Unidad para la Atención y Reparación Integral a las Víctimas*) carried out a meeting with organizations from the national forum that clusters AFRODES (Association for the Afro-Colombian Displaced -*Asociación de Afrocolombianos Desplazados*), CIMARRON, CNOA (National Coordination of Afro-Colombian Organizations -*Coordinadora Nacional de Organizaciones Afrocolombianas*) and PCN (Black Communities Process -*Proceso de comunidades Negras*).⁴²³ An agreement to carry out methodology and trainings by zone was reached as a result of said meeting, in which 300 victims of the internal armed conflict from urban areas and collective territories participated.⁴²⁴

220. In the *Report Truth, Justice and Reparation*, the IACHR indicated that the Afro-descendant communities' right to prior consultations and consent was frequently violated in conjunction with megaprojects relating to infrastructure and natural resource exploitation.⁴²⁵ It also noted that large-scale projects have led to the appropriation of Afro-Colombian's collective territories, and have resulted in "brutal forced displacements, massive violence and selective assassinations"⁴²⁶.

⁴¹⁸ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 22.

⁴¹⁹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 23.

⁴²⁰ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 24.

⁴²¹ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation.* Note S-GAIIID-15-120799, received December 9, 2015, p. 25.

⁴²² Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 23.

⁴²³ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 23.

⁴²⁴ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 23.

⁴²⁵ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II. Doc.49/13, 31 December 2013, para. 655.

⁴²⁶ CIDH, [Verdad, justicia y reparación: Cuarto informe sobre la situación de derechos humanos en Colombia](#), OEA/Ser.L/V/II. Doc.49/13, 31 de diciembre de 2013, párr. 652; IACHR, Press Release No. 95/15, [IACHR Visits Colombia to Receive Information on the Situation of Persons of African Descent](#), August 27, 2015.

221. According to the report submitted by the State once the National Environmental Office receives a request for an environmental license for exploration, exploitation, hydrocarbon transportation and refinery, mineral exploitation, dam construction, energy production (thermic and hydric), and electric energy transmission lines projects, it verifies and demands that those who are interested provide the information required by Decree 2041 of 2014, that is to say, that they submit all the certificates about the existence, or not, of territories legally entitled to indigenous reserves or collective titles belonging to Afro-Colombian communities in the area influenced by the project, in compliance with Decree 1320 of 1998.⁴²⁷ This information allows them to verify if it is required to proceed earlier with the prior consultation for a determined project.⁴²⁸ The State also informed that on April 16 and 17, 2015, training was conducted for 275 people in education at the risk of mines to Afro-descendant families in the Municipality of Vigía del Fuerte, Antioquia.⁴²⁹

222. The IACHR acknowledges the normative progress made by Colombia to assure the right to prior consultation for Afro-Colombian communities; however, there is also information stating that the right to prior consultation is still “widely ignored”.⁴³⁰ According to the OUNHCHR-Colombia, the lack of political participation in decisions affecting those living in areas of mineral exploitation, especially indigenous and Afro-Colombian communities, continues to lead to social unrest.⁴³¹ CERD has expressed its concern about the lack of effective implementation of the right to prior consultation, mainly as the consultations are carried out without adequate information, in a hurry, or without taking into account the concerns of Afro-descendants.⁴³² Likewise, CERD regretted that the National Development Plan (2014-2018) had not been consulted with the Afro-Colombian peoples.⁴³³ The situation of vulnerability of Buenaventura’s population, which is approximately 90% Afro-Colombian, is of special concern to CERD, in the absence of prior consultation on the promotion of the port expansion, the building of touristic projects, the high violence rates linked to different illegal groups, the cases of forced disappearance and the operation of “chop houses” (*casas de pique*).⁴³⁴

223. During the hearing the requesting organizations also mentioned the lack of guarantees to the right to previous, free and informed consultation and consent of the afro-descendant communities.⁴³⁵ They indicated that the Direction of Previous Consultation of the Ministry of Interior had contradicted reality when it had indicated in several occasions that there was no presence of ethnic communities in areas influenced by projects, constructions and activities.⁴³⁶ Additionally, they highlighted the lack of consultation of laws and

⁴²⁷ The State indicated that Decree 1320 of 1998 governs prior consultation with indigenous and Afro-descendant communities for the exploitation of natural resources in their territories. Decree 2613 of 2013 adopts the Interinstitutional Coordination Protocol for Prior Consultation and Presidential Order No. 10, establishes guidelines for its implementation.

⁴²⁸ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 27.

⁴²⁹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, pp. 29-30.

⁴³⁰ UN, Human Rights Council, [Addendum of Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia](#). January 23, 2015, A/HRC/28/3/Add.3, para. 26.

⁴³¹ UN, Human Rights Council, [Addendum of Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia](#). January 23, 2015, A/HRC/28/3/Add.3, para. 26.

⁴³² UN, CERD, Unedited version, *Concluding observations of the fifteenth and sixteenth periodic reports of Colombia*, CERD/C/COL/CO/15-16, August 28, 2015, para. 4.

⁴³³ UN, CERD, Unedited version, *Concluding observations of the fifteenth and sixteenth periodic reports of Colombia*, CERD/C/COL/CO/15-16, August 28, 2015, para. 21.

⁴³⁴ The “casas de pique” (chop houses) are places where persons are dismembered. UN, CERD, Unedited version, *Concluding observations of the fifteenth and sixteenth periodic reports of Colombia*, CERD/C/COL/CO/15-16, August 28, 2015, para. 29.

⁴³⁵ Information presented by the requesting organizations during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴³⁶ Information presented by the requesting organizations during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

national policies, such as the Development Plan.⁴³⁷ The State also reported that between July 2014 and May 2015, prior consultation agreements with 130 Afro-Colombian and *raizal* communities were formalized, which the State believes demonstrates its commitment to the right of prior consultation.⁴³⁸

224. The Commission received information about the situation of Afro-descendants in Tumaco and Nariño. It was informed that mining performed on the Pacific side of Nariño by people that do not belong to the community, with the support or acquiescence of armed groups, has generated various consequences such as the increase of violence, social disintegration and the weakening of participatory processes.⁴³⁹ On the other hand, in Tumaco, information was received stating that Afro-descendants have been severely affected by the spill of crude oil in their territory and its expansion through the *Mira* River, coming from the trans-Andean pipeline of Ecopetrol.⁴⁴⁰ The Afro-descendant peoples of the Colombian Pacific coast have also been affected by illicit crops, as well as by the production and marketing of by-products, which has generated the arrival of illegal groups; fumigations have also impacted their territories environmentally and culturally.⁴⁴¹

225. It is important to highlight that the Working Group on Women and Armed Conflict has stated that “racism prevailing in Colombian society is present in the way armed actors reproduce practices, in their relationship with Afro-Colombian women which are excluding, discriminatory and ignorant of the differences.”⁴⁴²

226. The IACHR reiterates to the State its recommendation regarding the need to ensure that in the forthcoming population census, qualified personnel and adequate financial resources are secured, as well as to ensure that appropriate channels are in place to enable civil society to participate and the categories used in the self-identification are properly assembled. In this regard, the CERD stated in its 2015 concluding observations on Colombia that it noted with concern the lack of information that would reflect appropriately the demographic composition of the Colombian population. It was of special concern to the CERD that there is a discrepancy between the official State data and data from other sources in relation to indigenous, Afro-Colombian, blacks, *palenquero* and *raizal* peoples.⁴⁴³ In the aforementioned hearing, the State indicated that the next population and housing census would be preceded by consultation and dialogue processes with ethnically differentiated communities; the DANE and the Ministry of Interior are now working in the construction of a methodology.⁴⁴⁴

227. The State indicated during the hearing that the National Agency for Overcoming Extreme Poverty is addressing the needs for the afro-descendant population with a differential approach through the program AfroUnidos.⁴⁴⁵ Additionally, it indicated they have assigned more than 28 million dollars

⁴³⁷ Information presented by the requesting organizations during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴³⁸ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GA/ID-15-120799, received December 9, 2015, p. 25.

⁴³⁹ CODHES, Case study about the restitution process for territorial rights in the Community Councils of *Alto Mira and Frontera, Tumaco, Nariño*, December, 2014.

⁴⁴⁰ CODHES, Case study about the restitution process for territorial rights in the Community Councils of *Alto Mira and Frontera, Tumaco, Nariño*, December, 2014.

⁴⁴¹ CODHES, Case study about the restitution process for territorial rights in the Community Councils of *Alto Mira and Frontera, Tumaco, Nariño*, December, 2014.

⁴⁴² Women's Link Worldwide, Dejusticia, Corporación Humanas, La Mesa por la Vida y la Salud de las Mujeres, Casa de la Mujer. Follow up of the compliance with the recommendations of the Report Truth, Justice and Reparations-Colombia, September 2015.

⁴⁴³ UN, CERD, Unedited version, *Concluding observations of the fifteenth and sixteenth periodic reports of Colombia*, CERD/C/COL/CO/15-16, August 28, 2015, para. 21.

⁴⁴⁴ Information presented by the requesting organizations during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴⁴⁵ Information presented by the State during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

between 2011 and 2015 to the Especial Educational Credits Funds for Black Communities, administered by Icetex; this has guaranteed the access and continuance in the higher education system of more than 14.000 Afro-Colombian students.⁴⁴⁶ They also mentioned the development of a methodology for accompanying the education of black communities with a multicultural approach.⁴⁴⁷ Regarding employment, they indicated that the Ministry of Labor is addressing the needs of afro-descendant community with programs such as “Skills for Employment” and “40.000 first jobs” that will help them to develop abilities to find and maintain a proper job.⁴⁴⁸ However, the petitioning organizations considers that these measures are not actually benefiting afro-descendant communities or that they are not enough to address all that is needed; they consider that there are not proper positive actions in place to address the discrimination in the exercise of Afro-Colombians to their economic, social and cultural rights.⁴⁴⁹

228. Regarding political participation, the IACHR has continued receiving reports indicating that regardless of the legal existence of two especial seats for Afro-descendant, *raizal* and *palenquero* communities, the elected persons do not necessarily represent said communities and do not look after their interests.⁴⁵⁰

229. Per the aforementioned, the IACHR reiterates its recommendations and urges the State to implement effective public policies and, on the other hand, to adopt urgent measures aimed at overcoming the grave situation of structural discrimination and violence affecting the Afro-descendant population.

2. Violence against children and adolescents

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

230. In the *Report Truth, Justice and Reparation*, the Commission set forth its main concerns regarding the particular vulnerability of children and adolescents to the armed conflict, identified the gravest violations of their rights, and set forth a number of recommendations to prevent such violations and to protect, provide redress for, and fully re-establish those rights. According to the IACHR, the recruitment and use of children and adolescents in connection with the armed conflict is one of the principal troubling aspects thereof, due to the seriousness, systematic nature, and invisibility of this violation of their rights.

231. The IACHR acknowledges the progress made by the Colombian State in terms of recognizing the particular vulnerability of children and adolescents in the context of the armed conflict, especially with regard to children and adolescents who are recruited and used by non-state armed groups. The Commission welcomes the information contributed by the State on the psychosocial support and care for child and

⁴⁴⁶ Information presented by the State during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴⁴⁷ Information presented by the State during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴⁴⁸ Information presented by the State during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴⁴⁹ Information presented by the requesting organizations during the hearing on reports of discrimination against people of African descent in Colombia, October 22, 2015.

⁴⁵⁰ In relation to the information request sent on June 5 2015 by the IACHR to the State, about representation of Afro-descendant population in Congress.

adolescent victims of the armed conflict provided by the ICBF, which reached 1,162 individuals between January and May of 2015, as well as the care provided by the Specialized Program of the ICBF for children and adolescents who have been demobilized from the armed conflict, which served 107 children and adolescents in the same period. In addition, the IACHR presents its compliments to the work performed by the Office of the Presidential Advisor for Human Rights in its capacity as “Technical Secretariat of the Inter-sectoral Commission for the prevention of the recruitment and use of and sexual violence against children” (hereinafter “CIPRUNNA”), in undertaking the fourth prioritization of municipalities for focusing institutional actions on preventing recruitment and the first prioritization for the prevention of sexual violence, as well as in carrying out actions in the prioritized municipalities.⁴⁵¹ The IACHR likewise considers noteworthy the attention that the State has been placing on promoting the participation of children and adolescents in drawing up proposals for the Discussion Commission in Havana, as well as the efforts made between 2014 and 2015 to that end. Furthermore, the IACHR also appreciates other initiatives on transitional justice that the State has been starting to launch with the support of UNICEF, such as the creation of Territorial Transitional Justice Committees and Territorial Action Plans, insuring that children’s rights are included, and emphasizing children and adolescent participation and reconciliation; actions to integrate young people who were separated from their communities and actions for collective reparation; and truth and memory initiatives. The IACHR also lauds the efforts being made towards revising the current path to comprehensive reparation so as to adapt it to the need for child protection.⁴⁵²

232. The IACHR also notes that the State reports reductions between 2004 and 2015 in three of the main registers that record recruitment patterns: the ICBF’s database of separations, the UARIV’s Single Database of Victims, and the municipalities where the risk of recruitment was noted in the risk reports and follow-up notes of the Office of the Ombudsperson’s early alert system.⁴⁵³

233. Although it acknowledges the aforementioned State efforts, the IACHR continues to be concerned about the effectiveness of the current separation policies for children and adolescents associated with illegal armed groups in terms of their ability to reach all of the affected children and adolescents and provide them with comprehensive care. In this regard, structural weaknesses that prevent these types of measures from having a more significant impact on protecting children and adolescents in the armed conflict have been identified, as indicated by the Follow-up and Monitoring Commission of Law 1448 (CSML).⁴⁵⁴ For example, according to the report, there have been limitations in the identification and prioritization of the municipalities most at risk for situations like the recruitment and use of children and adolescents, for the purposes of implementing CIPRUNNA programs, as a result of a failure to fully cover all of the prioritized municipalities and the difficulty of acting and having a presence in the municipalities due to insufficient resources. In addition to these problems, there have been issues with the coordination of and interaction between territorial bodies.⁴⁵⁵

⁴⁵¹ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia* (Progress on the promotion, guarantee, and defense of human rights in Colombia). First half of 2015, Note S-GAIIID-15-088842, received on September 14, 2015, page 35.

⁴⁵² Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia* (Progress on the promotion, guarantee, and defense of human rights in Colombia). First half of 2015, Note S-GAIIID-15-088842, received on September 14, 2015, pages 32 to 35.

⁴⁵³ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR’s Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 25.

⁴⁵⁴ Commission for the Follow-up and Monitoring of Compliance with Law 1448 of 2011. First Report to the 2013-2014 Congress of the Republic, dated August 2014. This Commission is made up of the Office of the Comptroller General of the Republic, the Office of the Procurator General of the Nation, the Office of the Human Rights Ombudsman, and representatives of the National Victims’ Participation Board. Along the same lines: Ombudsman’s Report: “*Justicia transicional: Voces y oportunidades para los niños, niñas y adolescentes en la construcción de la paz en Colombia* (Transitional justice: Voices and opportunities for children and adolescents in building peace in Colombia),” November 2014, pages 110 to 113.

⁴⁵⁵ Commission for the Follow-up and Monitoring of Compliance with Law 1448 of 2011. First Report to the 2013-2014 Congress of the Republic, dated August 2014, pages 110 to 113.

234. The IACHR also continues to be concerned about the scarcity of investigations brought forward on children and adolescents recruited by illegal armed groups. With regard to this point, the State reported that the *Riachuelo case*, involving occurrences between 2001 and 2005 of alleged recruitment, sexual violence and operation of a “school” for recruited teenagers by the Cacique Guanentá Front of the Central Bolívar Bloc of the demobilized self-defense groups, would be furthered, as would the criminal investigation of sexual violence perpetrated by the Golfo de Morrosquillo Front of the AUC.⁴⁵⁶

235. The IACHR appreciates that in 2015, in the context of the peace discussions held between the Government and the FARC-EP, the latter group had made a commitment to put an end to the recruitment of children and adolescents under 17 years of age⁴⁵⁷ and to hand over the children and adolescents in its ranks to the competent authorities, even though it remains for the FARC-EP to adopt a directive to separate these children as well as a strategic plan for handing them over to the State agencies.⁴⁵⁸ The IACHR recalls that all children and adolescents under 18 years of age should be separated from the armed conflict pursuant to the provisions of the Optional Protocol of the United Nations on the Involvement of Children in Armed Conflict, and to Colombian law. The IACHR recalls the importance of guaranteeing a formal separation process for all children and adolescents in FARC-EP ranks, and alerts that any informal separation of children and adolescents would violate the obligation to protect children and adolescents in armed conflicts.

236. The State reports that it is working to provide comprehensive attention to all separated children and adolescents, and that the ICBF has been taking care of children from the post-demobilization criminal structures. It states that 159 children received attention between 1999 and 2014. It also reports that as of November 1, 2015, a total of 7,854 children and adolescents have been included in the RUV as victims of association with illegal armed groups and that 81 of those cases were committed by post-demobilization criminal structures.⁴⁵⁹ In addition, it notes that discussion forums have been set up with separated youths to learn about their experiences and proposals for redress, integration, and reconciliation, to be used to inform proposals for the Havana negotiations.⁴⁶⁰

237. However, notwithstanding the aforementioned advancements, the IACHR is concerned by the fact that the recruitment and use of children and adolescents persist in the country.⁴⁶¹ Early this year there were reports of new recruitments, presumably carried out by illegal armed groups in areas like Urabá,⁴⁶² Chocó, Nariño, Norte de Santander, and Arauca.⁴⁶³ The Office of the Human Rights Ombudsman disclosed that an average of 10 children and adolescents are recruited every month in Colombia, and highlighted the departments of Cauca, Antioquia, Huila, and Arauca as the highest-risk areas for children in terms of recruitment.⁴⁶⁴

⁴⁵⁶ Republic of Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia* (Progress on the promotion, guarantee, and defense of human rights in Colombia). First half of 2015, Note S-GAIIID-15-088842, received on September 14, 2015, page 35.

⁴⁵⁷ El Tiempo. [Farc se comprometen a no reclutar a menores de 17 años](#), February 12, 2015.

⁴⁵⁸ Colmundo Radio. [Las Farc insisten en que no hay “directriz” de esa guerrilla para desvincular a menores](#).

⁴⁵⁹ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR’s Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 27.

⁴⁶⁰ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR’s Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 27.

⁴⁶¹ Similarly see U.N. Committee on the Rights of the Child is similarly concerned. Concluding observations on the combined fourth and fifth periodic reports of Colombia, adopted by the Committee in its 68th period of sessions (January 12-30, 2015), CRC/C/COL/CO/4-5, par.65 b).

⁴⁶² Colmundo Radio. [Las Farc insisten en que no hay “directriz” de esa guerrilla para desvincular a menores](#) and El Espectador. [Directora del ICBF le pide a las Farc dejar en libertad a los menores de edad](#), June 15, 2015.

⁴⁶³ See statements from the Human Rights Ombudsperson. El Espectador. [Las bacrim son los principales reclutadores de niños en Colombia](#), February 12, 2015.

⁴⁶⁴ Colombian Human Rights Ombudsperson. [Cada mes 10 niños, niñas y adolescentes son reclutados por los grupos armados ilegales](#). December 15, 2014.

238. Furthermore, two aspects emphasized by the IACHR in its *Report Truth, Justice and Reparation* as difficulties in the determination of children and adolescents as victims in trials under Law 1448,⁴⁶⁵ still exist today. Specifically, the IACHR mentioned the Law's time limits with regard to demobilization and the possibility of victims of illegal armed groups formed after the demobilization processes and so-called "BACRIM" being able to access the Law's mechanisms for redress. Although the Constitutional Court has ruled on both of these aspects of Law 1448, the IACHR has been informed that administrative obstacles and practical difficulties remain with regard to recognizing these children and adolescents as victims under Law 1448.

239. Namely, Article 3 of Law 1448 establishes that child and adolescent victims of "association with armed groups" will only be recognized as such if they are separated before reaching 18 years of age.⁴⁶⁶ Otherwise, they will be considered combatants, members of an armed group, and will lose their access to all comprehensive reparation measures. The Constitutional Court analyzed this aspect in its March 29, 2012, 253A ruling, concluding that having demobilized after reaching legal age is not grounds for automatically losing victim status. In this regard, the IACHR, in its *Report Truth, Justice and Reparation*, pointed out the need for the State to adopt a broad perspective in determining which victims can access the mechanisms of Law 1448.⁴⁶⁷ In turn, the Office of the Human Rights Ombudsman noted in a recent ombudsman's report that certain barriers to being recognized as victims continue to exist in the practical application of Law 1448 for individuals who were recruited by illegal armed players as children and who demobilized as adults, and consequently, there are individuals who are not being given the attention they need.⁴⁶⁸ The IACHR thus recommended that the internal guidelines be revised so as to guarantee that the decisions of the Constitutional Court are correctly applied, and that all agencies involved adapt their institutional practices as necessary.

240. With regard to child and adolescent victims of criminal groups formed after the paramilitary demobilization process, the IACHR has received troubling information on these groups frequent use of children and adolescents for their criminal activities, which continued to increase in 2015. According to the Office of the Human Rights Ombudsman, this is occurring in 26 of the country's 32 departments, and the BACRIM are now the groups that most use children and adolescents in their actions.⁴⁶⁹

241. In connection with this issue, the IACHR has learned that some adolescents who are used by these criminal structures would be subject to the juvenile criminal justice system, and would not be treated as victims. Likewise, the United Nations Committee on the Rights of the Child⁴⁷⁰ has stated its concern about the increased violence in some regions of the country where the BACRIM have more of a presence, which increases the risks for children and adolescents. The Committee has taken the State to task on the fact that there are complaints to the effect that some of the children and adolescents used by the BACRIM are prosecuted as criminals instead of being treated as victims and are thus not included in specialized actions aimed at separating them from those groups, rehabilitation, or social reintegration.⁴⁷¹ On this point, the Office

⁴⁶⁵ IACHR, Report on "Truth, justice and reparation: Fourth report on human rights situation in Colombia," OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013, pars. 689 to 691.

⁴⁶⁶ Law 1448 of 2011. Victims and Land Restitution Law, which enacts care, assistance, and comprehensive redress measures for victims of the domestic armed conflict, as well as other provisions. Art. 3, para. 3.

⁴⁶⁷ IACHR, Report on *Truth, justice and reparation: Fourth report on human rights situation in Colombia*, December 31, 2013, paragraphs 289 to 291.

⁴⁶⁸ Ombudsman Office. Ombudsman's Report: "*Justicia transicional: Voces y oportunidades para los niños, niñas y adolescentes en la construcción de la paz en Colombia* (Transitional justice: Voices and opportunities for children and adolescents in building peace in Colombia)," November 2014, pages 68 and 69.

⁴⁶⁹ Infobae. [Las bacrim son los principales reclutadores de niños en Colombia](#), February 12, 2015.

⁴⁷⁰ U.N. Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Colombia, adopted by the Committee in its 68th period of sessions (January 12-30, 2015), CRC/C/COL/CO/4-5.

⁴⁷¹ Ombudsman Office. Ombudsman's Report: "*Justicia transicional: Voces y oportunidades para los niños, niñas y adolescentes en la construcción de la paz en Colombia* (Transitional justice: Voices and opportunities for children and adolescents in building peace in Colombia)," November 2014, p. 65 b).

of the Human Rights Ombudsman warns that in some cases the administrative authorities are interpreting the resolutions of the Constitutional Court restrictively, to the effect that children and adolescents recruited by the BACRIM are not considered victims.⁴⁷² The IACHR takes heed of the jurisprudential criteria developed by the Constitutional Court on the determination of who is to be considered a victim of the armed conflict under Law 1448. Specifically, the Constitutional Court has concluded that individuals may be considered victims when the acts considered to be associated with the armed conflict were perpetrated by criminal groups and illegal armed groups that emerged after the demobilization.⁴⁷³

242. The Office of the Human Rights Ombudsman has also pointed out the need for the State to strengthen measures to prevent children and adolescents from being associated with the BACRIM, to promote the demobilization of these children and adolescents, and to ensure that they are treated as victims, with a treatment equal to that of the children and adolescents separated from illegal armed groups in terms of the protection of their rights. In connection with this, in July of 2015 the Human Rights Ombudsman brought a suit of unconstitutionality against Article 190 of Law 1448 in the consideration that it establishes a different, unjustified, and discriminatory treatment for children and adolescents who separate from the so-called BACRIM, and requested that children and adolescents demobilized from the BACRIM be given access to reintegration programs.⁴⁷⁴

243. Likewise, the Commission continues also concerned about levels of sexual violence against children and adolescents in the context of the armed conflict, that according to data from the Ombudsman, between 2004 and 2015, 163,216 children and adolescents were victims of sexual offenses.⁴⁷⁵ Regarding girls and adolescents, the Commission notes with concern, as it did in its *Report Truth, Justice and Reparation*, that girls and adolescents who are within the structures of illegal armed groups are usually victims of sexual violence as well as of other violations of their rights. Linking girls and adolescents to these groups in general has been done with the logic of traditional gender roles, with high incidence of various forms of sexual violence against women. The Ombudsman also estimated that children and adolescents linked to BACRIM would be approximately 30% girls and adolescents.⁴⁷⁶ There is also evidence that these criminal groups sexually exploited children and adolescents, especially girls, in addition to using them in other illegal activities such as drug trafficking. According to information from the Ombudsman, girls under 14 years, even 10 to 12 years old are allegedly being kidnapped by criminal gangs for forced sex with members of these gangs being also exposed to pregnancies and sexually transmitted diseases.⁴⁷⁷ Despite efforts made by the State to raise awareness about the problem of violations of the rights of children and adolescents on sexual violence in the context of conflict, making visible its various manifestations, the Commission considers that those actions should be deepened. This, taking into consideration that the State must overcome a culture of violence and structural gender-based discrimination against girls and women, and of stigmatization of victims; factors which continue to contribute to the reproduction of the problem, its invisibility, and render

⁴⁷² Ombudsman Office. Ombudsman's Report: *"Justicia transicional: Voces y oportunidades para los niños, niñas y adolescentes en la construcción de la paz en Colombia"* (Transitional justice: Voices and opportunities for children and adolescents in building peace in Colombia), November 2014, pp. 66 to 69.

⁴⁷³ IACHR, Report on *Truth, justice and reparation: Fourth report on human rights situation in Colombia*, OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013, paragraphs 689 to 691.

⁴⁷⁴ Vanguardia.com. [Defensor pide que desmovilizados de Bacrim accedan a programas de reintegración](#), July 7, 2015.

⁴⁷⁵ CNN. [Niños desmovilizados en Colombia piden tener voz en el diálogo de paz en La Habana](#), September 10, 2015.

⁴⁷⁶ Ombudsman Office. Ombudsman's Report: *"Justicia transicional: Voces y oportunidades para los niños, niñas y adolescentes en la construcción de la paz en Colombia"* (Transitional justice: Voices and opportunities for children and adolescents in building peace in Colombia), November 2014, p. 62. *El Espectador*, [Bandas criminales también están reclutando a menores, según la Defensoría](#), May 4, 2015.

⁴⁷⁷ Ombudsman Office. Ombudsman's Report: *"Justicia transicional: Voces y oportunidades para los niños, niñas y adolescentes en la construcción de la paz en Colombia"* (Transitional justice: Voices and opportunities for children and adolescents in building peace in Colombia), November 2014, p. 62. las BACRIM estarían propiciando un auge en la explotación sexual de niñas y adolescentes; entre los modos de operar se encuentra un fenómeno nuevo denominado "secuestro exprés", mediante el cual niñas y adolescentes son raptadas por algunas horas con fines de explotación sexual, hechos que estarían ocurriendo sobre todo en Buenaventura y en el departamento de Risaralda. *El Espectador*, [Bandas criminales también están reclutando a menores, según la Defensoría](#), May 4, 2015.

difficult aid allocation and adequate reparations to all victims, in particular to girls and adolescents who are in a special situation of vulnerability, due to their age.

244. Allegedly, the Colombian State did not recruit children and adolescents as combatants, but did use them as informants or spies in order to gather intelligence information. According to the Office of the Human Rights Ombudsman, the Colombian State currently maintains this practice through civilian-military activities called *Acciones de Apoyo al Desarrollo* (Actions to Support Development) under the auspices of the Special Group for Psychological Operations (GEOS) of the military forces.⁴⁷⁸ This group was conceived as a “group made up of experts in psychological operations with the purpose of furthering specific psychological-action campaigns in support of tactical, strategic, or peacebuilding operations.”⁴⁷⁹ The IACHR highlights the need for State social and assistance policies to be implemented throughout the country through civilian authorities, thus preventing the civilian population, and in particular children and adolescents, from being exposed to retaliations by non-state armed groups, as well as to the use of children and adolescents in intelligence operations.

245. The IACHR reiterates the recommendations on children and adolescents in the context of the armed conflict set forth in the *Report Truth, Justice and Reparation* underscoring the importance of preventing the recruitment of children and adolescents and strengthening efforts aimed at the demobilization, rehabilitation, and social integration of the demobilized children and adolescents. Along these lines, the IACHR reiterates its recommendation that the demobilized children and adolescents recruited by illegal armed groups and by criminal structures be guaranteed equal treatment in terms of comprehensive protection. The IACHR also notes the importance of the State having information on the approximate number of children and adolescents who could still be associated with the armed conflict and criminal structures and, at the same time, of identifying the number of demobilized children and adolescents who ultimately joined criminal gangs and investigating the reasons why the social reintegration programs are not attaining their goals. The IACHR also recommends improving the processes through which institutions interact and coordinate their actions for the protection of children and adolescents, with an effective, inter-sectoral approach, as well as increasing the prevention, demobilization, rehabilitation, and social reinsertion program coverage, and the human and financial resources. The IACHR recommends that periodic evaluations be conducted on the efficacy of the programs and that the necessary measures for adapting them be taken as required. To this end, it is essential to take into account the voices of the children and adolescents who form part of or participate in these programs of prevention and separation, as well as their opinions on the operation thereof, and their suggestions for improvement. The IACHR recommends that the State cease the civilian-military events in which children and adolescents participate or that are targeted at same. Lastly, the IACHR encourages the State to continue to further the inclusion of child-protection provisions and mechanisms in the peace agreements, particularly with regard to the release and reintegration of children and adolescents associated with the conflict; to reinforce the children’s-rights approach in the transitional justice system; and to promote the participation of children and adolescents in the peace discussions and the application of Law 1448.

3. The armed conflict’s differentiated impact and the indigenous peoples in Colombia

- Intensify efforts to protect the effective enjoyment of the territorial rights of the indigenous peoples and their members as the first step toward safeguarding their fundamental rights in the context of the internal armed conflict, bearing in mind the singular importance that inter-American human rights law has attached to the territorial rights of indigenous peoples and 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

⁴⁷⁸ Ombudsman Office. Ombudsman’s Report: *Justicia transicional: Voces y oportunidades para los niños, niñas y adolescentes en la construcción de la paz en Colombia* (Transitional justice: Voices and opportunities for children and adolescents in building peace in Colombia), November 2014, p. 112. The information from the Office of the Human Rights Ombudsman dates back to November of 2014.

⁴⁷⁹ [Fuerza Aérea Colombiana](#). Colombian Air Force, reviewed November 24, 2014.

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.
- 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.
- Given the suffering that the indigenous peoples 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.
- 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.
- Take the measures necessary to have a reliable record of the indigenous territories affected by aerial spraying and the damage caused, and any measures necessary to have initiatives or procedures by which to redress the harm caused.
- Take determined measures to return displaced indigenous peoples, communities and individuals through a process that ensures respect for traditional forms of participation and organization, security and, especially, protection of traditional indigenous authorities and leaders, and legal and material possession of the land so that the traditional use and exploitation of the territory and its management by the traditional authorities can be restored.
- Bring the process of forming, expanding and clearing the indigenous reserves to a swift conclusion, bearing in mind the inter-American standard on indigenous peoples' right to collective property.
- 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 indigenous victims of the violence and the crimes committed during the armed conflict.

246. Those areas in which the State has made progress will be identified and recognized and finally, certain matters where it is still necessary to continue working will be pointed out.

247. As stated (see *supra* I.1.), in its report⁴⁸⁰ the State pointed to the existence of Decrees 4633, 4634 and 4635 of 2011, all in relation to the Victims Act, establishing that it recognizes indigenous peoples and Afro-descendant communities as collective subjects and their individual members as victims of human rights violations,⁴⁸¹ and about the efforts carried out to adopt protocols for the effective participation of communities and ethnic peoples.

⁴⁸⁰ Report presented jointly about indigenous peoples and afro-descendant communities.

⁴⁸¹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 22.

248. In its 2014 follow-up report, the IACHR pointed out that, on September 23, 2014, the first judgment under Decree 4633 of 2011 was issued in favor of the Embera Katío peoples of Alto Andaguada, restoring 50,000 hectares and benefiting 31 communities, 1454 families and 7270 individuals.⁴⁸² It shall be noted that although the OUNHCHR-Colombia welcomed the first decision of land restitution to an indigenous community and that noted that the return of displaced communities living in Medellín, Antioquia to La Puria, Carmen de Atrato, Chocó, was a good example of coordination between local authorities and the Victims Unit of Chocó, it also noted it was still very important to continue with increased progress in the restitution of lands to ethnic peoples.⁴⁸³

249. On the other hand, the State pointed out that the implementation of orders issued by the Land Restitution Chamber is not limited to the material and legal provision of the territory and includes other institutional measures seeking to ensure both the return to the territory as well as minimum vital conditions such as return, food sovereignty, ethno-education, health, housing, strengthening of self-government, environmental recovery, protection, and guarantees of non-repetition, among other measures to preserve the restoration of their territorial rights.⁴⁸⁴

250. As stated (see *supra* I.1.), the Colombian State submitted information about the ethnic restitution processes in the administrative stage, stating that in the first semester of 2015, 26 ethnic communities were characterized or in the process of being characterized, covering a territory of 1,069,132 hectares and documenting the alleged damages to approximately 11,450 families.⁴⁸⁵ Also, it indicated that there are 22 cases of ethnic communities –as part of twelve suits for restitution - that are pending before the Restitution Judges by the Land Restitution Unit.⁴⁸⁶

251. The Commission recognizes the efforts made by the State of Colombia with regards to complying with the international standards for prior consultation, for such right is established in its internal legal framework which aims to comply with ILO Convention 169, approved and adopted into domestic law by means of Order 21 of 1991. At the same time, an important jurisprudential development has been made by the Colombian Judiciary in this regard.⁴⁸⁷ The State established in its report that during the first semester of 2015, the National Government has complied with Decree 2613 of 2013 and Presidential Order 10 of 2013, which compile the jurisprudential guidelines regarding prior consultation and specify the steps that must be taken in each consultative process for the execution of projects, construction or activities.⁴⁸⁸ Therefore, inter-institutional coordination has been strengthened and the procedure in order to advance duly and in a timely manner with the prior consultation processes has been clarified.⁴⁸⁹ On the other hand, the State reported that the Prior Consultation Direction from the Ministry of Interior has implemented a “training strategy about prior consultation for communities of different ethnic groups, public entities and private executors with the purpose of strengthening the consultation processes and elucidating their guidelines and

⁴⁸² IACHR, [Annual Report 2014. Chapter V. Follow-up of recommendations issued by the IACHR in its country or thematic reports](#), para. 210.

⁴⁸³ UN, Human Rights Council, [Addendum of Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia](#), January 23, 2015, A/HRC/28/3/Add.3, para. 37.

⁴⁸⁴ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 24.

⁴⁸⁵ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 24.

⁴⁸⁶ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 25.

⁴⁸⁷ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 27.

⁴⁸⁸ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 27.

⁴⁸⁹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 27.

scope.”⁴⁹⁰ In addition, it reported that between July 2014 and May 2015, it formalized 664 prior consultation agreements with indigenous communities.⁴⁹¹

252. As stated (see *supra* I.1.), according to the report submitted by the State once the National Environmental Office receives a request for an environmental license for exploration, exploitation, hydrocarbon transportation and refinery, mineral exploitation, dam construction, energy production (thermic and hydric), and electric energy transmission lines projects, it verifies and demands that those who are interested provide the information required by Decree 2041 of 2014, that is to say, that they submit all the certificates about the existence, or not, of territories legally entitled to indigenous reserves or collective titles belonging to Afro-Colombian communities in the area influenced by the project, in compliance with Decree 1320 of 1998.⁴⁹² This information allows them to verify if it is required to proceed earlier with the prior consultation for a determined project.⁴⁹³

253. In relation to the actions of the State in the field of protection of the rights of the civilian population in situations of armed confrontation, the State reported on the use in all training battalions of the Exclusive Teaching Manual (*Manual Único Pedagógico*), which includes the ethnic subject, addressed to members of the security forces so that they know and implement the attention and recognition, prevention and protection policy to communities of indigenous peoples.⁴⁹⁴ Likewise, the State noted that during the first semester of 2015, 428 members of the public forces were trained, including legal advisors and personnel that work in the human rights offices, as well as human rights trainers from the Military Training Centers, with the objective that the latter can have an amplifying effect over all the members of Brigades and Divisions.⁴⁹⁵

254. The IACHR was informed by the State about the participation of the Direction of Comprehensive Action Against Anti-personnel Mines (*Dirección de Acción Integral contra Minas Antipersonal*) in different spaces of agreement and coordination to address the recommendations that have been made by the authorities and indigenous peoples, the Constitutional Court and the IACHR, with the aim of reducing the impact caused by anti-personnel mines in indigenous communities.⁴⁹⁶ For that reason, various activities have been held in the framework of the strategy and campaign to prevent accidents from unexploded ordnance, discarded explosives, makeshift explosive objects, and anti-personnel mines, in particular in the case of ethnic groups: (i) from January 27 to 28, 2015, audio-visual and communication workshops with 24 people in the Embera Katio indigenous population in Tierralta, Córdoba; (ii) on March 4, 2015, 20 leaders from the Barí indigenous community from the municipalities of El Carmen, Convención, El Tarra and Teorama (North of Santander) were trained about secure behavior when faced with anti-personnel mines, unexploded ordnance and makeshift explosive objects; (iii) on March 13, 2015, 25 representatives from the NASA Indigenous Guard from La Palmera village from the Planadas (Tolima) municipality were made aware in education about the risk of mines as amplifiers for subsequent public information on the risk of mines and promotion of secure behavior; (iv) 28 indigenous persons from Embera Dobida of the Guaguandó community

⁴⁹⁰ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 27.

⁴⁹¹ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation.* Note S-GAIIID-15-120799, received December 9, 2015, p. 25.

⁴⁹² The State of Colombia indicated that Decree 1320 of 1998 governs prior consultation with indigenous and Afro-descendant communities for the exploitation of natural resources in their territories. Decree 2613 of 2013 adopts the Interinstitutional Coordination Protocol for Prior Consultation and Presidential Order No. 10, establishes guidelines for its implementation.

⁴⁹³ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 27.

⁴⁹⁴ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 28.

⁴⁹⁵ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 29.

⁴⁹⁶ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 29.

were sensitized; and (v) the signing of an agreement which will be implemented from July to December, 2015, between the Direction of Comprehensive Action Against Anti-personnel mines and the *Asociación de Cabildos y Autoridades Indígenas* from the Arauca Department -ASCATIDAR- in order to work together to pass conceptual and technical capacity in action against anti-personnel mines with an emphasis on education on the risk of anti-personnel mines and as pathway for attention, assistance and reparation to victims, aimed at the Hitnu, Makaguan, Uwa, Sikuani, Inga and Beto indigenous peoples.⁴⁹⁷

255. The IACHR is extremely concerned about the situation of violence which continues to affect indigenous peoples,⁴⁹⁸ as well as assaults, harassment and criminalization against its leaders and women leaders. According to the National Indigenous Organization of Colombia (ONIC), during the first nine months of 2014, ten indigenous persons were killed for reasons related to the armed conflict, and at least 2,819 were victims of forced displacement.⁴⁹⁹ The OUNHCHR-Colombia pointed out that indigenous peoples continue to suffer disproportionately from the impact of displacement.⁵⁰⁰ Particularly worrying information was received on the situation of violence affecting the north of Cauca.⁵⁰¹

256. The information submitted before the Commission indicates that on September 12, 2014, two Embera Dobida indigenous leaders were allegedly killed in the Municipality of Alto Baudó, Department of Chocó by the ELN⁵⁰² Likewise, on April 7, 2015, Fernando Salazar Calvo, defender from the indigenous community Embera Chamí in the Caldas Department, President of the Union Miners Association (*Asociación de Mineros de la Unión*) and vocal of the Miners Association of the Indigenous Reserve of Cañamomo Lomapieta Riosucio and Supía Caldas (ASOMICARS), was killed.⁵⁰³ On the other hand, the IACHR received information about the detention and imprisonment of indigenous leader Feliciano Valencia.⁵⁰⁴ Information was also received about the killing of Carlos Eduardo Barreto Carcamo of the Yukpa peoples, allegedly committed by the national police on June 12, 2015.⁵⁰⁵

257. According to the information received by the IACHR, 144 families from the Indigenous communities of Emberá Eyabida, Antioquia Department, Chigorodó Municipality, have been displaced from areas far from the Polines Indigenous Reserve, because of the armed clashes between the National Army and suspected members of the Úsuga David Clan.⁵⁰⁶ The IACHR was informed of the death of an indigenous

⁴⁹⁷ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, pp. 29-30.

⁴⁹⁸ National Indigenous Organization of Colombia, The right to land and territory is the essence for indigenous peoples to speak of peace (*El derecho a la tierra y el territorio es la esencia del pueblo indígena para poder hablar de Paz*), May 25, 2015.

⁴⁹⁹ Amnesty International, *Report 2014/15: The State of the World's Human Rights*, February 25, 2015, p. 132.

⁵⁰⁰ UN, Human Rights Council, *Addendum of Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*. January 23, 2015, A/HRC/28/3/Add.3, para. 9.

⁵⁰¹ ONIC, Security forces attacked indigenous communities of the Northern Cauca and damaged crop of corn (*Fuerza pública ataca a las comunidades indígenas del norte del Cauca y daña cultivo de maíz*.) May 23, 2015; ONIC, the Cauca indigenous peoples persecuted for activities to release mother earth (*Los pueblos indígenas del Cauca perseguidos por procesos de Liberación de la Madre Tierra*.) May 24, 2015; ONIC, Joint Declaration on Cauca situation (*Declaración conjunta sobre situación Cauca*.) February 28, 2015; Press release of April 16, 2015 published in *Colombia Informa*, Six indigenous villagers killed in the North of Cauca, there are two missing (*Asesinados seis comuneros indígenas en el norte del Cauca, hay dos desaparecidos*;) press article published in *El Tiempo* on March 2, 2014, Government resumes dialogue with indigenous people in Cauca (*Gobierno retoma diálogo con indígenas en Cauca*.)

⁵⁰² Amnesty International, *Report 2014/15: The State of the World's Human Rights*, February 25, 2015, p. 132.

⁵⁰³ IACHR, Press Release No. 70/15. *IACHR condemns murder of human rights defenders in Colombia*, June 12, 2015.

⁵⁰⁴ ONIC, Detention and imprisonment of Feliciano Valencia. Forceful attack on Colombian democracy (*Detención y encarcelamiento de Feliciano Valencia. Contundente atentado a democracia Colombiana*), September 21, 2015; Press article of September 17, 2015 published in *El País*, The detention of an indigenous leader causes polemic in Colombia (*La detención de un líder indígena causa polémica en Colombia*.)

⁵⁰⁵ ONIC, Signaling and stigmatization are causing the killing of indigenous authorities, and leaders (*Por señalamientos y estigmatizaciones están asesinando a autoridades, líderes y lideresas indígenas*.) June 19, 2015.

⁵⁰⁶ ONIC, Request for Urgent Action for Forced Displacement of Embera Eyabida Indigenous persons from Antioquia (*Solicitud de Acción Urgente por Desplazamiento forzado de indígenas Emberá Eyabida de Antioquia*.) August 15, 2015; Press article of August 15,

woman from the Emberá Katío ethnicity caused by bombings carried out by the national army on April 18, 2015 in the indigenous territory of Tahami del Alto Andágueda Reserve and the Community Council of Alto Atrato, Bagadó Municipality.⁵⁰⁷

258. During 2015 the IACHR was informed about the visit made in May 2015 by a committee composed of the vice-human rights ombudsperson, Esiquio Manuel Sánchez Herrera; the Swedish Ambassador in Colombia, Marie Anderson de Frutos; the Representative of the UN High Commissioner for Refugees, Stephane Jaquemet; and the Deputy Representative of the OUNHCHR, Guillermo Fernández-Maldonado.⁵⁰⁸ Said committee visited the indigenous reserve of the Hitnü peoples, in the village Bocas del Ele of the city of Arauca rural area, where it received information about territorial conflicts, the existence of anti-personnel mines, the lack of access to basic services such as health, education, food, and drinking water, as well as the burden they face from armed groups.⁵⁰⁹ The State reported that it had taken various steps to provide this community with redress, such as including its members as victims in the RUV, providing them with humanitarian assistance, etc.⁵¹⁰

259. Also, the IACHR received alarming information about the Emberá indigenous persons that are displaced as a result of the anti-personnel mines that were planted during 2015 in the Municipalities of Urrao, Ituango, Tarazá and Segovia.⁵¹¹ In March, 2015, the IACHR was informed of the situation of the Zenú peoples in the reserves located in Cáceres, Caucasia, Segovia, Zaragoza and El Bagre, who are affected by the anti-personnel mines that are in their territories as well as by the illegal recruitment and confinement of which they are victims.⁵¹²

260. The IACHR takes note of the concern shown by the OUNHCHR-Colombia about the lack of proper recognition and effective coordination between the military forces and the indigenous authorities to face human rights violations caused in the context of the armed conflict.⁵¹³ In this regard, the OUNHCHR recalled the importance of Act 16 of 2006, *Policy for recognition, prevention and protection of indigenous communities*, which provides coordination mechanisms that must be observed by all forces operating in indigenous territories.⁵¹⁴

261. For the aforementioned, the IACHR reiterates the recommendations made and urges the Colombian State to continue working in the effective implementation of the necessary measures to ensure the exercise of the human rights of indigenous peoples without discrimination, especially of those in special situations of vulnerability because of the effects of the internal conflict.

2015 published in El Diario, Denouncement of the displacement of 710 indigenous persons in Colombia for fear of combat ([Denuncia desplazamiento de 710 indígenas en Colombia por temor a combates](#))

⁵⁰⁷ ONIC, Reactivation of bombing kills indigenous woman in Alto Adagueda ([Por reactivación de bombardeos es asesinada mujer indígena en el Alto Andágueda](#).) April 23, 2015.

⁵⁰⁸ El Tiempo, Humanitarian Committee verified the critical situación of indigenous peoples in Arauca ([Comisión humanitaria verificó situación crítica de indígenas en Arauca](#).) May 11, 2015.

⁵⁰⁹ El Tiempo, Humanitarian Committee verified the critical situación of indigenous peoples in Arauca ([Comisión humanitaria verificó situación crítica de indígenas en Arauca](#).) May 11, 2015.

⁵¹⁰ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 29.

⁵¹¹ RCN Radio, Committee will visit the Antioquia área where indigenous persons were displaced by anti-personnel mines ([Comisión visitara zona de Antioquia donde indígenas fueron desplazados por minas antipersonal](#).) July 8, 2015.

⁵¹² Red Noticias, Indigenous from Bajo Cauca are surrounded by mines ([Indígenas del Bajo Cauca están cercados por minas](#);) March 19, 2015.

⁵¹³ UN, Human Rights Council, [Addendum of Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia](#). January 23, 2015, A/HRC/28/3/Add.3, para. 44.

⁵¹⁴ UN, Human Rights Council, [Addendum of Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia](#). January 23, 2015, A/HRC/28/3/Add.3, para. 37.

4. Women in the framework of armed conflict

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

262. In its *Report Truth, Justice and Reparation*, the Commission established its concern about the precariousness of the human rights situation of women in the context of armed conflict, especially of Afro-Colombian women, as this situation exacerbates and deepens their vulnerability to become victims of human rights violations, including forced displacement, violence, discrimination and obstacles in their access to justice, health and education. The IACHR's recommendations are aimed at improving the situation of women and girls in the context of armed conflict, which it followed up on in its 2014 report.

263. The Office of the Human Rights Ombudsperson reports acts of sexual violence in 49% of the cases that were attended by the delegated Ombudsperson for the rights of women and gender issues.⁵¹⁵ However, it is important to note that these crimes were not only committed in the context of the armed conflict, but that "they are part of the closer contexts of women, especially in their teens."⁵¹⁶ The information received by the IACHR points out that "when sexual violence in the context of armed conflict occurs in the middle of territories in dispute, it is linked with torture actions and serious breaches of the integrity of the women."⁵¹⁷ On the other hand, in areas where there is some kind of control, sexual violence is linked to forms of sexual exploitation.⁵¹⁸ The Office of the Human Rights Ombudsperson paid special attention to the cases that took place in the areas of illegal mining where women "are treated as an object, rather, as a resource that can be exploited, used, indiscriminately."⁵¹⁹

⁵¹⁵ Office of the Human Rights Ombudsperson (Colombia), 22nd Report from the Ombudsman to the Congress of the Republic ([Vigésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#)), January-December 2014, paras. 331-332.

⁵¹⁶ Office of the Human Rights Ombudsperson (Colombia), 22nd Report from the Ombudsman to the Congress of the Republic ([Vigésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#)), January-December 2014, paras. 331-332.

⁵¹⁷ Office of the Human Rights Ombudsperson (Colombia), 22nd Report from the Ombudsman to the Congress of the Republic ([Vigésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#)), January-December 2014, para. 334.

⁵¹⁸ Office of the Human Rights Ombudsperson (Colombia), 22nd Report from the Ombudsman to the Congress of the Republic ([Vigésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#)), January-December 2014, paras. 334.

⁵¹⁹ Office of the Human Rights Ombudsperson (Colombia), 22nd Report from the Ombudsman to the Congress of the Republic ([Vigésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#)), January-December 2014, paras. 334.

264. The IACHR highlights that by means of Decree 1480 of 2014, May 25th was declared to be the National Day for the Dignity of Women Victims of Sexual Violence in the Armed Conflict.⁵²⁰ The State informed that in 2015 this day was commemorated for the first time, and for this reason the national government with the support of the Presidential Counsel for Women's Equity; Office for the Equality of Women, the Ministry of Defense, "El Tiempo" newspaper and the Mayor of Bogotá, joined the campaign "It's not time to Shut up" (*No es Hora de Callar*), directed by the journalist Jineth Bedoya. By means of this campaign several activities were held to give visibility, empowerment, and participation to women who had been victims of gender violence and especially sexual violence in the context of the armed conflict.⁵²¹ Also, on the celebration of this day, the Victims Unit reported that around 8,996 women have suffered aggressions against freedom and sexual integrity in the context of the armed conflict, being 966 black or Afro-Colombian and 150 indigenous women.⁵²² As of November 1, 2015, an accumulated total of 12,092 people affected by crimes against sexual integrity and freedom had been registered. Of that total, 10,850 were women and 1,192 of them were Afro-Colombian women.⁵²³

265. According to publicly known information, the SRV registered, in the context of the armed conflict, 284 crimes against freedom and sexual integrity in 2014 and ten of those crimes were reported up to May 2015.⁵²⁴ On the other hand, according to the National Institute of Health, 5,243 cases of sexual violence were registered in general in the country up to May, 2015.⁵²⁵ In 2014, official statistics recorded a total of 383 crimes against sexual integrity and freedom during the armed conflict, with 352 of the victims being women. As of November 1, 2015, a total of 76 such crimes had been reported, with women victims in 74 of those cases.⁵²⁶

266. According to the information provided by civil society organizations, sexual violence continues largely affecting women, as according to the National Institute of Legal Medicine and Forensic Sciences, in 2014, 21,115 medical-legal exams were performed in relation to alleged sexual crimes in Colombia, 85.09% of them to women.⁵²⁷ Likewise, they pointed out that to June 1, 2015, the SRV had a total of 10,137 victims who had reported crimes against freedom and sexual integrity in the armed conflict between 1985 and 2015.⁵²⁸ Of them, 9,082 were women (90%), 823 were men, 34 would be part of the LGBTI population and 198 do not report on gender.⁵²⁹ It should be noted that the majority of victims of sexual violence in armed conflict are Afro-descendant and indigenous women. For example, according to the

⁵²⁰ UN, Human Rights Council, [Addendum of Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia](#), January 23, 2015, A/HRC/28/3/Add.3, para. 38.

⁵²¹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 38. Information presented in the hearing of right to health and justice for victims of sexual violence in Colombia, October 22, 2015.

⁵²² El Universal, Around nine thousand women have been victims of sexual violence in Colombia (*Cerca de 9 mil mujeres han sido víctimas de violencia sexual en Colombia*), May 24, 2015; Cf. [Unit for the Attention and Comprehensive Redress of Victims](#).

⁵²³ [Unit for the Attention and Comprehensive Redress of Victims](#).

⁵²⁴ El País, Every day 38 women are victims of sexual violence in Colombia (*Cada día, 38 mujeres son víctimas de violencia sexual en Colombia*), May 25, 2015.

⁵²⁵ El País, Every day 38 women are victims of sexual violence in Colombia (*Cada día, 38 mujeres son víctimas de violencia sexual en Colombia*), May 25, 2015; El Heraldo, More than 5 thousand cases of sexual violence against women in 2015: Ombudsperson (*Van más de 5 mil casos de violencia sexual contra las mujeres en lo corrido de 2015: Defensoría*), May 25, 2015.

⁵²⁶ [Unit for the Attention and Comprehensive Redress of Victims](#).

⁵²⁷ Women's Link Worldwide, Dejusticia, Corporación Humanas, La Mesa por la Vida y la Salud de las Mujeres, Casa de la Mujer. Follow up of the compliance with the recommendations of the Report Truth, Justice and Reparations-Colombia, September 2015.

⁵²⁸ Women's Link Worldwide, Dejusticia, Corporación Humanas, La Mesa por la Vida y la Salud de las Mujeres, Casa de la Mujer. Follow up of the compliance with the recommendations of the Report Truth, Justice and Reparations-Colombia, September 2015.

⁵²⁹ Women's Link Worldwide, Dejusticia, Corporación Humanas, La Mesa por la Vida y la Salud de las Mujeres, Casa de la Mujer. Follow up of the compliance with the recommendations of the Report Truth, Justice and Reparations-Colombia, September 2015.

Forensis 2014 Report, in the Departments of Chocó and Cauca –featuring a population predominantly Afro-descendant- 70% of the alleged victims of sexual violence were women.⁵³⁰

267. In keeping with information from Amnesty International, during 2014 authorities continued to apply the Constitutional Court's Order 092 of 2008, which instructs authorities to put an end to rape and other forms of sexual violence, especially against women and girls, and prosecute those responsible.⁵³¹ In June 2015, the OUNHCHR and UN Women issued a press release expressing its concern about “high levels of impunity in cases of sexual violence against women, especially those committed in the framework of the armed conflict and called for the justice administration system in Colombia and the State as a whole to prioritize the cases of sexual violence against women in the context of the armed conflict, particularly of those who have been victims of multiple forms of violence. This with the aim to investigate, prosecute and sanction those responsible and also to drive measures preventing the repetition of these serious crimes.”⁵³²

268. In its prior report, the State explained that Act 1719 of 2014 established measures to guarantee access to victims of sexual violence to justice, particularly in the context of armed conflict.⁵³³ This year, the Colombian State informed that on April 8, 2015 the second committee meeting on this act was held and the General Attorney's Office, the National Institute of Legal Medicine and Forensic Sciences, the Colombian Institute of Family Welfare, the Family Police precincts, the National Police, the Superior Council of the Judiciary, the Human Rights Ombudsperson and the Health Ministry presented their developments with regards to the implementation of the Act.⁵³⁴ The State indicated that in October 2015, the first consolidated report on the implementation of Acts 1719 of 2015 and 1257 of 2008 would be presented.⁵³⁵

269. In relation to healthcare for victims of sexual violence, the IACHR received information from civil society organizations,⁵³⁶ stating that, although there was progress in this regard, like the adoption of a mandatory protocol for healthcare to victims of sexual violence by the Health and Social Protection Minister, these measures suffered setbacks that have hindered their implementation. They stated that “infringing the principle of progressivity, Article 23 of Act 1719 of 2014, about sexual violence especially in the framework of armed conflict, stripped the protocol of its mandatory nature, making it optional.”⁵³⁷ In this regard, they noted the persistence of certain barriers to access to healthcare for victims of sexual violence in Colombia, among which it is to highlight the following: (i) lack of available information that allows victims to know which institutions or places can they go to receive healthcare; (ii) lack of knowledge by healthcare and administrative personnel of the paths that shall be followed to ensure the completeness of care, including measures for physical and mental health; (iii) negligence by hospitals and clinics to receive and properly care for victims of sexual violence; (iv) requirement for payments to access health care services, although the law may provide for exemption from payment; (v) absence of differential approaches to assist Afro-descendants,

⁵³⁰ Institute of Legal Medicine and Forensic Sciences, [Forensis 2014. Datos para la Vida. Herramienta para la interpretación, intervención y prevención de lesiones de causa externa en Colombia](#), June 2015, cited in Women's Link Worldwide, Dejusticia, Corporación Humanas, La Mesa por la Vida y la Salud de las Mujeres, Casa de la Mujer. Follow up of the compliance with the recommendations of the Report Truth, Justice and Reparations-Colombia, September 2015.

⁵³¹ Amnesty International, [Report 2014/15: The State of the World's Human Rights](#), February 25, 2015, p. 135.

⁵³² OACNUDH y ONU Mujeres, [ONU Derechos Humanos y ONU Mujeres expresan preocupación por altos niveles de impunidad en violencia sexual contra las mujeres](#), 11 de junio de 2015.

⁵³³ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 39.

⁵³⁴ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 39.

⁵³⁵ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 39.

⁵³⁶ Women's Link Worldwide, Dejusticia, Corporación Humanas, La Mesa por la Vida y la Salud de las Mujeres, Casa de la Mujer. Follow up of the compliance with the recommendations of the Report Truth, Justice and Reparations-Colombia, September 2015.

⁵³⁷ Women's Link Worldwide, Dejusticia, Corporación Humanas, La Mesa por la Vida y la Salud de las Mujeres, Casa de la Mujer. Follow up of the compliance with the recommendations of the Report Truth, Justice and Reparations-Colombia, September 2015.

indigenous peoples, LGBTI, persons with disability, children and adolescents and; (vi) re-victimizing practices from medical and psychology professionals.⁵³⁸

270. As regards the Protocol, the Ministry of Health has also indicated its concern regarding the provision set out in Article 23 of Law 1719 of 2014, and it has said that if it is not ruled unconstitutional, “the actions taken by the Ministry of Health and Social Protection will lose all their binding nature.” It reports that the provision was amended by a plenary session of the Senate of the Republic, which was a cause of concern for the public officials, who consider it very important, but that they would continue to enforce the Protocol on a mandatory basis.⁵³⁹

271. Regarding access to justice, during the hearing on right to health and access to justice for victims of sexual violence, the requesting organizations noted that the prevailing impunity in sexual violence cases sends a message of tolerance to perpetrators and generates the re-victimization of the survivors.⁵⁴⁰ The organizations indicated that they have presented to the Negotiating Table of La Habana a proposal for a differential treatment to sexual violence in transitional justice, which requests, among other aspects, the “express and immediate commitment with the eradication of sexual violence”; the establishment of a especial technical commission for the investigation of sexual violence, to guarantee the rights of victims to justice, truth and reparation.⁵⁴¹ Furthermore, regarding health care, the organizations reiterated that nowadays women victims of sexual violence do not receive timely, quality care and information about the Mandatory Health Care Protocol for Sexual Violence Victims, which is optional and not mandatory.⁵⁴² In that regard, the organizations informed the IACHR that they submitted an unconstitutionality claim before the Constitutional Court so that the Protocol for Sexual Violence Victims becomes mandatory again; in July, 2015 they informed that the claim has been admitted.⁵⁴³

272. On the other hand, the State of Colombia also informed of the development of an inter-institutional strategy to fight against impunity in the cases of violence based on gender in the context of armed conflict and attention to victims, especially of victims of sexual violence.⁵⁴⁴ The strategy is led by the Presidential Counsel for Human Rights, the Office of the Attorney General, and the Presidential Counsel for Women’s Equity, and aims to “strengthen the institutional coordination to improve the response of the State’s guarantee of the right to access to justice, and the implementation of the measures of prevention, care and reparation, national or territorial, violence based on gender in the context of the armed conflict, in particular sexual violence.”⁵⁴⁵ In the first semester of 2015, the State reported that obstacles, recommendations and commitments acquired in a national and territorial level had been identified, mainly with María la Baja

⁵³⁸ Women’s Link Worldwide, *Dejusticia, Corporación Humanas, La Mesa por la Vida y la Salud de las Mujeres, Casa de la Mujer*. Follow up of the compliance with the recommendations of the Report Truth, Justice and Reparations-Colombia, September 2015.

⁵³⁹ Information presented by the State at the hearing on the right to health and justice of victims violence of sexual, October 22, 2015; and Republic of Colombia. Note No. S-GAIIID-15-108672, November 3, 2015. Input document for the IACHR thematic hearing on the “Right to Health and Justice of Victims of Sexual Violence in Colombia.

⁵⁴⁰ Information presented during the hearing of right to health and justice for victims of sexual violence in Colombia, October 22, 2015.

⁵⁴¹ Information presented during the hearing of right to health and justice for victims of sexual violence in Colombia, October 22, 2015.

⁵⁴² Information presented during the hearing of right to health and justice for victims of sexual violence in Colombia, October 22, 2015.

⁵⁴³ *Dejusticia*, [Constitutional Court Accepts Case to Guarantee Medical Attention to Survivors of Sexual Assault](#), 6 julio 2015.

⁵⁴⁴ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 40.

⁵⁴⁵ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 40.

Bolívar; Tumaco – Nariño; Buenaventura – Valle del Cauca; Quibdó-Chocó; Barrancabermeja – Santander; Mocoa – Putumayo; Norte de Santander; and Arauca.⁵⁴⁶

273. The IACHR recognizes the efforts made by the State to strengthen the work of the Ombudsperson in terms of the promotion and protection of the rights of women. The IACHR received information about the creation of the Delegate Ombudsperson on the Rights of Women and Gender Issues, by means of Order 063 of January 20, 2014.⁵⁴⁷ Because of this, gender teams or duplets have been brought in to several regional ombudsperson offices and they are composed by a lawyer and a psychologist. The so-called gender duplets have among their main functions to: (i) implement actions at the regional level for the prevention of gender-based violence, including actions of training and forming and support to organizations, groups or collectivities; (ii) provide care, advice, guidance and psychological or legal accompaniment to women, victims of discrimination or gender based violence; (iii) carry out regional diagnosis on the human rights situation of women; and (iv) participate in inter-agency spaces at the regional level that improve the routes for the care, protection and defense of the human rights of women.⁵⁴⁸

274. The State of Colombia informed the IACHR about the actions carried out in the first semester of 2015 to follow up on the Conpes Action Plan 161.⁵⁴⁹ This information indicates that the Ministry for the Equality of Women has continued to provide technical assistance to national and territorial public entities in the development of public policy and prevention and treatment of violence against women.⁵⁵⁰ Until June 2015, the technical assistance to approximately twenty entities on the national agenda and twenty-five on the territorial agenda would be reported.⁵⁵¹ On the other hand, in response to the Comprehensive Plan for Guaranteeing Women a Life Free of Violences, the Commission received information of the strengthening of family police precincts through the design of technical tools and standardization of its work on the protection of victims of family violence, seeking thereby to “strengthen these entities as a point of entry to justice for women victims during 2015.”⁵⁵²

275. The IACHR acknowledges that in 2015 *the Comisión Intersectorial para la implementación de la Política Pública Nacional de Equidad* (Inter-sectoral Commission for the Implementation of the National Public Policy of Equity) has focused its attention in generating recommendations for the inclusion of a gender perspective in the Development Plan 2014-2018, based on the requests made by women’s institutions and organizations.⁵⁵³ The State of Colombia expressed that the Inter-sectoral commission had created a sub-committee on gender-sensitive budgeting in order to propose methodological tools for the implementation of gender-sensitive budgets, as well as guidelines for incidents in areas of decision-making and of identification of policy settings and budget processes.⁵⁵⁴

⁵⁴⁶ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 40.

⁵⁴⁷ Office of the Human Rights Ombudsperson (Colombia), 22nd Report from the Ombudsman to the Congress of the Republic ([Vigésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#)), January-December 2014, para. 323.

⁵⁴⁸ Office of the Human Rights Ombudsperson (Colombia), 22nd Report from the Ombudsman to the Congress of the Republic ([Vigésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#)), January-December 2014, para. 324.

⁵⁴⁹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 36.

⁵⁵⁰ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 36.

⁵⁵¹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 36.

⁵⁵² Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 37.

⁵⁵³ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 37.

⁵⁵⁴ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 37.

276. Regarding the progress reported in the Conpes 3726, the State indicated that it had implemented a strategy for participation of ethnic women in the processes of care and integral reparations with an emphasis on the Ethnic Decree-Laws and the collective reparation subjects.⁵⁵⁵ The Commission also received information indicating that 3,330 women had been compensated for sexual violence acts and 71 fiduciary trusts were established in favor of children for the same grounds.⁵⁵⁶

277. As for the Monitoring Committee to the Act 1257 of 2008 against violence against women, Colombia informed that in 2015 it would give priority to the Regionalization Plan from the Monitoring Committee, in order to know the state of compliance with the law in different cities of the country, facilitating the participation of women's organizations.⁵⁵⁷ Likewise, the fifth session of the regional committee was held in Cartagena, aiming to receive information about the state of compliance with Act 1257 from all the entities in charge of prevention and attention of different forms of violence against women.⁵⁵⁸ According to the information provided by the State, two additional regional committees in Barranquilla and Popayán still need to be developed.⁵⁵⁹

278. The Commission takes note of the implementation of the 155 line, which works since 2013. The State has informed that it is a line for orienting women who are victims of violence, it is from the Presidency of the Republic and operated by the National Police.⁵⁶⁰ The police officers use a protocol for care and a script prepared by the Presidential Counsel for Women's Equity in coordination with all the relevant entities in the path of attention.⁵⁶¹

279. With regards to strategies to protect women who are human rights defenders, the IACHR recognizes that on June 24, 2015 the ceremonial launch of the Comprehensive Guarantees Program for Women Leaders and Human Right Defenders took place.⁵⁶² According to the State, this Program aims at giving a comprehensive meaning to the protection by means of early prevention (political empowerment, participation and incidence, training, strengthening of the organizations, institutional strategies for the prevention of violations with a gender and differentiated approach, and psychosocial support), the urgent prevention (material measures of protection, generation of income, housing, education, health) and guarantees of non-repetition (investigation of the violation of their rights, fight against impunity, recovery and construction of a historical memory.)⁵⁶³ The Commission also urges the State to pass the draft Decree "by which an inter-sectorial guarantees commission for women leaders and human rights defenders and

⁵⁵⁵ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 37.

⁵⁵⁶ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 37.

⁵⁵⁷ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 39.

⁵⁵⁸ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 39.

⁵⁵⁹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 39.

⁵⁶⁰ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 40.

⁵⁶¹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 40.

⁵⁶² Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 20.

⁵⁶³ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, pp. 40-41.

regulates aspects related to the Comprehensive Guarantee Program for women leaders and human rights defenders.”⁵⁶⁴

280. The IACHR welcomes the information provided by the State concerning the passing on July 6, 2015 of Act 1761 of 2015 by the President of the Republic. By means of this law, the crime of femicide⁵⁶⁵ was created as an autonomous crime that must be investigated *ex officio* in any case where there is clear evidence or suspicion of its occurrence.⁵⁶⁶ Also, it stands out that this law includes measures that intend to incorporate a gender perspective in elementary and middle education and the adoption of a national system of statistics about gender-based violence.⁵⁶⁷ The Commission urges the State to make all efforts necessary to adequately implement this law, as during 2015 it learned about the existence of killings and violence against women based on gender.⁵⁶⁸

281. In its report to the Commission, the State mentioned the measures implemented by the Ministry of National Defense as part of its zero tolerance to sexual violence policy.⁵⁶⁹ These include: (i) the issuance of the second edition of the protocol of the armed forces and National Police for the Prevention and Response to Sexual violence, particularly in relation to the armed conflict; (ii) the creation of an operational manual or guideline on how to prevent and address cases of sexual violence, especially in relation with armed conflict; (iii) the delivery of certificates of non-sexual violence in the context of the conflict to eight members of the security forces; and (iv) the holding of the First Seminar of No Sexual Violence against women.⁵⁷⁰

282. It should be noted that organizations reported to the IACHR about the situation of special vulnerability faced by indigenous and Afro-descendant women. These women continue to be the most

⁵⁶⁴ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 42.

⁵⁶⁵ Law 1761 of 2015, art.2: “Femicide. Anyone causing the death of a woman, for being a woman or due to her gender identity, or when any of the following circumstances are met, shall be convicted to imprisonment of two hundred and fifty (250) months to five hundred (500) months.

a) Have or have had a family, intimate, cohabitation, friendship, companionship or working relationship with the victim, and be perpetrator of a cycle of physical, sexual, psychological or patrimonial violence, which preceded the crime against her.

b) Undertake gender manipulation or sexual acts over the body and life of the woman, or actions of control and oppression over her vital decisions and sexuality.

c) Commit the crime taking advantage of the power relations exercised on the woman, expressed in the personal, economic, sexual, military, political or sociocultural hierarchy.

d) Commit the crime with the object of generating terror or humiliating the person considered as enemy;

e) There is a history or evidence of any kind of violence or threat in the domestic, family, labor or school environment from the perpetrator against the victim, or of gender violence committed by the perpetrator against the victim, regardless of whether the fact was or not reported.

f) The victim was uncommunicated or deprived of her freedom of movement, whatever the time period prior to her death.”

⁵⁶⁶ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 42.

⁵⁶⁷ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 43.

⁵⁶⁸ Press article of July 12, 2015 published in El País, “Why are they killing women in Cali?” ([¿Por qué están asesinando a las mujeres en Cali?](#)); Press article of August 10, 2015 published in Vanguardia, “In less than 24 hours two women are killing in Bucaramanga” ([En menos de 24 horas asesinan a dos mujeres en Bucaramanga.](#))

⁵⁶⁹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 42.

⁵⁷⁰ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 42.

affected by the internal conflict,⁵⁷¹ they are affected by poverty in greater proportion and lack adequate access to health, education and justice.⁵⁷² In relation to health services, for example, the situation of guarantees for the rights of pregnant indigenous and Afro-descendant women is very worrisome.⁵⁷³ In that regard, during 2014, departments like Magdalena, Bolívar and Chocó – which have elevated numbers of indigenous and Afro-descendant peoples – registered the highest rates of extreme maternal morbidity.⁵⁷⁴

283. The Commission calls for the Colombian State to continue with the efforts made to eradicate violence against women and to double the efforts to eradicate socio-cultural discriminatory patterns based on sex, race and ethnicity. According to the II Study of Social and Institutional Tolerance *vis a vis* Violences against Women (*II Estudio de Tolerancia Social e Institucional frente a las Violencias hacia las Mujeres*), a large survey conducted in December 2014 in ten Colombian cities (Bogotá, Buenaventura, Medellín, Tumaco, Barranquilla, Cartagena, Florencia, Popayán, Villavicencio and Pasto), although the tolerance of Colombians to violence against women has significantly decreased, there are still deeply rooted prejudices against the rights of women which are reflected in the attitudes of officers responsible for responding to victims.⁵⁷⁵ According to the findings of the survey, 23% of the public employees agree that “if women continue to be with their partners after they have been hit, it’s because they like it” and 11% thinks that “if a woman does not resist it, it can’t be said that it was rape.” With regards to the people interviewed, it was detected that 24% considers that “women who mess up with violent men should not complain if they are hit” and 18% maintain that “real men are able to control their women.”

284. From the aforementioned, the Commission reiterates its recommendations and urges the Colombian State to continue implementing the public policies adopted and, on the other hand, adopt the necessary measures aimed at overcoming the situation of discrimination and violence against women.

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 to the right of freedom of expression.
- Compile detailed, disaggregated criminal statistics on violence against journalists and the criminal prosecution of these crimes.
- Carry out diligent, impartial, and effective investigations of the murders, attacks, threats, and acts of intimidation committed against journalists and media workers. This entails the creation of specialized units and special investigative protocols, as well as the identification and exhaustion of all possible case theories related to the professional work of the victim.
- Prosecute under impartial and independent courts, within the standards established by international law, the persons responsible for the crimes committed in retaliation for the exercise of the right of freedom of expression, and make adequate reparation for their victims and family members.

⁵⁷¹ Republic of Colombia, Constitutional Court, Special Chamber for the Follow-up of Judgement T-025 of 2004, Order 009 of 2015, January 27, 2015.

⁵⁷² UN, CERD, Unedited version, *Concluding observations of the fifteenth and sixteenth periodic reports of Colombia*, CERD/C/COL/CO/15-16, August 28, 2015, para. 31; Women’s Link Worldwide, Dejusticia, Corporación Humanas, La Mesa por la Vida y la Salud de las Mujeres, Casa de la Mujer. Follow up of the compliance with the recommendations of the Report Truth, Justice and Reparations-Colombia, September 2015.

⁵⁷³ Women’s Link Worldwide, Dejusticia, Corporación Humanas, La Mesa por la Vida y la Salud de las Mujeres, Casa de la Mujer. Follow up of the compliance with the recommendations of the Report Truth, Justice and Reparations-Colombia, September 2015.

⁵⁷⁴ Women’s Link Worldwide, Dejusticia, Corporación Humanas, La Mesa por la Vida y la Salud de las Mujeres, Casa de la Mujer. Follow up of the compliance with the recommendations of the Report Truth, Justice and Reparations-Colombia, September 2015.

⁵⁷⁵ Presidential Counsel for Women’s Equity, “Today Colombia tolerates much less violence against women, but efforts have to be doubled to eradicate this problem ([Hoy Colombia tolera mucho menos las violencias contra las mujeres, pero hay que redoblar esfuerzos para erradicar este problema.](#)) March 5, 2015.

285. The Inter-American Commission has repeatedly expressed its concern over the killings and aggressions committed against journalists and media workers for reasons that could be linked to the exercise of their freedom of expression⁵⁷⁶ and has made reference to the chilling and dissuasive effect caused by said attacks. The Commission recalls that the aggressions committed against journalists and media workers diminish the right of societies and citizens to search for and receive information of any kind.⁵⁷⁷

286. The Commission acknowledges that during recent years the number of murders of journalists related to their industry has been reduced, as well as the efforts of the State reflected in the maintenance of the protection program and the decision to give priority to a process of collective reparations to journalists, media workers, and media, in accordance with the guidelines for reparations of collective subjects established in the Act 1448 and in charge of the Special Administrative Unit for Victim Support and Reparations.⁵⁷⁸ According to the information submitted by the State, five regional meetings have been planned to further explore the armed conflict's damage or impact on journalists as a collective; among the reparation measures proposed to date by the State are the following: (i) protective measures, (ii) measures for justice and against impunity, (iv) strengthening measures for the practice of journalism, and (v) group identity measures.⁵⁷⁹

287. Similarly, the Commission takes note of the progress in the investigations of some emblematic cases, as well as the judicial decisions rendered throughout 2015 in which perpetrators of attacks against journalists have been condemned. As established by the State, in the first quarter of 2015 as part of the strategy to fight against impunity in crimes against journalists, the Office of the Attorney General created a "group of special tasks with exclusive dedication to investigate threats sent by electronic means against specific sectors of the population on the reason or the occasion of their work, as is the case with journalists and communicators."⁵⁸⁰ The Commission encourages the State to continue the efforts led by the Office of the Attorney General to train its officers in the field of standards of freedom of expression, most notably the workshop on "International standards for the right of free expression of the IACHR," which was attended by 30 prosecutors and investigators attached to cases in which journalists are the victims.⁵⁸¹ The Commission values the cooperation with the civil society organizations in order to give greater guarantees of access to justice for journalists and communicators where victims of aggressions. According to the information furnished by the State, one example of this is the "Work panel for access to justice by journalists and communicators who have suffered violence on account of their professions," which was established at the request of civil society organizations. That panel interconnects the work of different directorates of the Attorney General's Office and is intended to add to the efforts for access to justice by journalists and communicators; to date, the panel has enabled (i) exchanges of information, (ii) prioritization workshops, and (iii) protection actions.⁵⁸²

288. The Commission recognizes the commitment of the State in the formulation of public policy on freedom of expression, which seeks to give greater guarantees to those who exercise their right to express

⁵⁷⁶ IACHR. Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II. Doc. 49/13. December 31, 2013.

⁵⁷⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II/CIDH/RELE/INF.12/13 31 December, 2013.

⁵⁷⁸ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 44.

⁵⁷⁹ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation.* Note S-GAIIID-15-120799, received December 9, 2015, pp. 32 and 33

⁵⁸⁰ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 45.

⁵⁸¹ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation.* Note S-GAIIID-15-120799, received December 9, 2015, p. 33.

⁵⁸² Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation.* Note S-GAIIID-15-120799, received December 9, 2015, p. 35.

themselves. In the process of public policy formulation, 20 State entities, 23 civil society organizations and 8 universities have participated.⁵⁸³ The Commission encourages the efforts of the State in this matter.

289. Notwithstanding the foregoing, the Commission notes that there are still some challenges in terms of freedom of expression, as will be explained further, violence against journalists and media workers is still latent, there are still obstacles in the investigation of attacks as well as drawbacks in the operability and sustainability of the protection mechanism in the last year.

a. Attacks on the life and physical integrity of, and threats and harassment against, journalists and media workers

290. On February 14, in the Municipality of Dolcello, Caquetá journalist Luis Peralta was killed.⁵⁸⁴ Peralta had received threats in previous years and days before his assassination had alerted the authorities about the death threats he had received recently. His wife, Sofía Quintero, was also gravely injured and after 5 months in intensive care died on July 31. Peralta was the owner and director of the radio station El Linda Stereo and was known for his allegations of corruption within the public institutions of the Municipality and the Department.⁵⁸⁵

291. The man who shot them was captured days after the murder. When the legalization of the capture was taken before the judge of guarantees, failures in the issuance of the arrest warrant were found and therefore the person captured was released; however, the Police re-captured him and he was again brought before the judicial authorities.⁵⁸⁶ Currently, the perpetrator of the crime is deprived of liberty;⁵⁸⁷ according to information furnished by the State, the presumed materially responsible would be under custody and was charged with the crime of homicide with the aggravating factor of having been committed with respect to a journalist, as provided for in law.⁵⁸⁸

292. On March 2nd, journalist Edgar Quintero was murdered in Palmira, Valle del Cauca. The journalist was the director of “Noticias y algo más”, a program on *Radio Luna* where he worked for more than 20 years.⁵⁸⁹ According to information available in the media, the perpetrator of the crime was arrested and confessed to the murder of the journalist, and he said it was grounded on personal reasons and not linked to

⁵⁸³ Presidency of the Republic. President Santos during the I International Encounter with Independent Press (*Presidente Santos durante el I Encuentro Internacional de Prensa Independiente*) May 13, 2015. Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 43.

⁵⁸⁴ IACHR. Press Release No. R 13/15. *Office of the Special Rapporteur condemns murder of journalist in Colombia*. UNESCO. *Unesco urge a investigar asesinato del periodista Luis Carlos Peralta* CPJ. *Journalist killed, Luis Carlos Peralta Cuéllar Linda Stereo February 14, 2015, in Doncello, Colombia*.

⁵⁸⁵ El Espectador. February 15, 2015. *Sicarios asesinan al periodista Luis Peralta en Caquetá*. El Universal. February 14, 2015. *Asesinan a periodista Luis Peralta Cuellar en Caquetá* El Espectador. February 17, 2015. *Periodista asesinado en Caquetá había sido amenazado*. La Nación. July 31, 2015. *Falleció en Neiva esposa del periodista asesinado Luis Peralta* Diario del Huila. July 31, 2015. *Falleció esposa de periodista huilense asesinado en Caquetá*

⁵⁸⁶ El Espectador. March 3, 2015. *Capturan a presunto homicida de periodista, Luis Antonio Peralta Cuellar*. Noticias UNO. March 5, 2015. *A la cárcel presunto homicida de periodista en Caquetá* El Espectador. March 4, 2015. *Recapturan al presunto homicida del periodista Luis Antonio Peralta*. El Nacional. March 3, 2015. *Detienen a presunto asesino del periodista colombiano Luis Peralta Cuéllar*.

⁵⁸⁷ República de Colombia. *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia. Primer Semestre de 2015*, Nota S-GAIIID-15-088842, 14 de septiembre de 2015, pág. 45; RCN Radio.com. Agosto 16 de 2015. *El martes se realizará la audiencia preparatoria de juicio contra el presunto autor material del homicidio del periodista Luis Peralta*.

⁵⁸⁸ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, pp. 33 and 34.

⁵⁸⁹ IACHR. Press Release No. R 25/15. *Office of the Special Rapporteur condemns killing of journalist in Colombia*. Reporters without borders -RSF Colombia. *Edgar Quintero, segundo periodista asesinado en Colombia en 2015*. The University of Texas at Austin. Journalism in America. *Dos asesinatos en un mes hacen aumentar preocupación por seguridad de periodistas en Colombia*. *El Tiempo*. March 3, 2015. *Asesinan al periodista radial Édgar 'Quintín' Quintero en Palmira*.

his profession, and the responsible authorities will continue investigating the case to find the masterminds.⁵⁹⁰ According to the information provided by the State, he is currently deprived of his liberty.⁵⁹¹ The IACHR reiterates, as it has done on other occasions in cases of killings of journalists, that the line of investigation related to the journalistic profession must be exhausted.⁵⁹²

293. On September 10th, journalist Flor Alba Núñez was killed in Pitalito, Huila. Flor Alba was the presenter of the news program on radio station *La Preferida FM*, a correspondent for the regional newspaper *La Nación* and for the *Nación TV*. According to local media, she had informed colleagues that she had received threats. Also, according to the press, one of the hypotheses related to the crime's motive was that she had recently reported about drug trafficking criminal organizations. Another possible motive was the reporting about the local electoral process that was to be held on October 25.⁵⁹³

294. After her death, the authorities offered a 100 million Colombian pesos reward (about US \$32,500) to find the perpetrators of the crime. On September 26, the local press made it known that the man who had shot her was captured and brought before judicial authorities.⁵⁹⁴

295. On the other hand, the IACHR has had knowledge of arbitrary arrests, assaults and threats, received by journalists and media workers during 2015. The cases include threats received by journalist Ana Cristina Restrepo;⁵⁹⁵ the kidnapping of journalist Juan Diego Restrepo;⁵⁹⁶ in December 2014, a pamphlet signed by the criminal organization *Águilas Negras* (Black Eagles) threatened the channels *Telesur* and *Canal Capital*, as well as the organization Reporters without Borders;⁵⁹⁷ in January, by means of a pamphlet signed by the *Autodefensas Gaitanistas*, leaders and journalists of the Departments of Magdalena and Atlántico in the

⁵⁹⁰ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIID-15-088842, September 14, 2015, p. 45; *El Espectador*. March 3, 2015. [Las hipótesis de la Fiscalía por el homicidio del periodista, Edgar 'Quintín' Quintero](#). *El País*. March 4, 2015. [Capturan a alias Chocolate, señalado de asesinar al periodista Edgar Quintero](#).

⁵⁹¹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIID-15-088842, September 14, 2015, p. 46.

⁵⁹² IACHR. Office of the Special Rapporteur for Freedom of Expression. Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II.CIDH/RELE/INF.12/13 31 December, 2013.

⁵⁹³ IACHR. Press Release No. R 102/15. [Office of the Special Rapporteur condemns murder of journalist Flor Alba Núñez in Colombia](#); September 14, 2015; *Opa Noticias*. September, 2015. [\\$70 millones de recompensa para capturar a asesinos de Flor Alba Núñez](#); *Minuto 30*. September, 2015. [Autoridades ofrecen \\$70 millones de recompensa por información de asesinos de periodista en Huila](#) *Revista Semana*. September, 2015. [Periodista asesinada en Huila había recibido amenazas](#); *Caracol*. September, 2015. [Asesinan a la periodista Flor Alba Núñez](#); *La Nación*. September, 2015. [Flor Alba Núñez, la flor que nunca se marchitará](#); *Fundación para la Libertad de Prensa*. September, 2015. [FUIP rechaza el asesinato de la periodista Flor Alba Núñez Vargas en Pitalito - Huila](#); Knight Center. September, 2015. [Joven periodista asesinada en Colombia había recibido amenazas](#); Reporters without borders. September, 2015. [ASESINAN A LA PERIODISTA FLOR ALBA NÚÑEZ FRENTE A LAS OFICINAS DE LA RADIO DONDE TRABAJABA](#); *Fecolper*. September, 2015. [Asesinan a periodista Flor Alba Núñez. Fecolper repudia este crimen y pide a las autoridades esclarecer este hecho](#); *El Mundo*. September, 2015. [Asesinan a la periodista colombiana Flor Alba Núñez cuando entraba en la emisora en la que trabajaba](#); *El Tiempo*. September, 2015. [Periodista fue asesinada frente a una emisora en Huila](#); *El Colombiano*. September, 2015. [El asesinato de flor alba núñez nos hace sangrar a todos](#).

⁵⁹⁴ *El Espectador*. September 26, 2015. [Capturan "posible autor material" del asesinato de periodista Flor Alba Núñez](#). *Revista Semana.com*. September 25, 2015. [Estos serían los responsables del homicidio de la periodista Flor Alba Núñez](#). *Radio Nacional*. September 27, 2015. [Capturan a asesino de periodista](#). *El Tiempo*. September 26, 2015. [Cayó sicario que disparó contra la periodista Flor Alba Núñez](#).

⁵⁹⁵ BBC Mundo. [Amenazan a conocida columnista colombiana](#). Comité para la Protección de Periodistas CPJ. [Journalist threatened after reporting on gangs in Colombia](#).

⁵⁹⁶ *Verdadabierta.com*. May, 2015. [EPL retuvo durante seis horas al editor de Verdad Abierta, Juan Diego Restrepo](#). *Caracol Radio*, May, 2015. [Guerrilla del EPL retiene periodista en el Catatumbo](#). *Fecolper*. May, 2015. [EPL retuvo durante seis horas al editor de Verdad Abierta, Juan Diego Restrepo](#).

⁵⁹⁷ *El País.com.co*. December, 2014. ['Águilas Negras' amenazan al Canal Capital, Telesur y Reporteros Sin Fronteras](#). Reporters without Borders. [Periodistas amenazados en Colombia: "No nos callarán"](#); *Canal Capital.com*. [Canal Capital recibe amenazas de muerte por parte del grupo paramilitar Águilas Negras](#).

northern coast of Colombia, were threatened.⁵⁹⁸ The IACHR also notes the aggressions committed by agents of the security forces and protesters against journalists who were covering social protest during 2015.⁵⁹⁹ In addition, the IACHR had news of the surveillance experienced by journalist Claudia Julieta Duque, and her next of kin as well as her attorney right at moments when there was progress in the investigation of her case.⁶⁰⁰

b. Investigations of crimes against journalists and media workers for exercising the right to freedom of expression

296. The IACHR values the judgments that sentenced the intellectual authors of a journalist's murder. On December 31, 2014, the Seventh Specialized Court in Bogotá, sentenced former Mayor of Magangué, Bolívar Department, Jorge Luis Alfonso, for ordering the assassination of journalist Rafael Prince in February 2005. The latter used to question the local administration and denounced irregularities by the Mayor through his newspaper.⁶⁰¹

297. Furthermore, on June 24, 2015 the Manizales High Court, in a second-instance ruling, sentenced the intellectual authors of the murder of journalist Orlando Sierra, which took place in February 2002, to 36 years in prison.⁶⁰² According to the judgment from the High Court, for the murder of the journalist a "criminal enterprise" was formed. It was led by former congressman Ferney Tapasco. The judgment highlights the link between the journalist's murder and the columns that he had written against acts of corruption by the former congressman.⁶⁰³ In December 2013, the case suffered a setback when the trial judge acquitted and freed Tapasco, who is now a fugitive from justice.⁶⁰⁴

298. Another development in the justice procurement was the conviction of María del Pilar Hurtado and Bernardo Moreno, for illegal telephone interceptions. The case became known popularly as the "Chuzadas", made by the defunct Administrative Department of Security (DAS) between 2007 and 2008 to journalists, judges and political leaders of the opposition of the government of the time. María del Pilar Hurtado, who was the Director of DAS, was sentenced to 14 years in prison for the offences of abuse of authority in the public service, ideological misrepresentation in a public document, conspiracy to commit a crime, aggravated embezzlement by misappropriation and unlawful violation of communications. For his part, Bernardo Moreno, former Secretary of the Presidency of the Republic and the person who knew first-hand information obtained illegally by officials of the DAS, was sentenced to eight years in prison.⁶⁰⁵

⁵⁹⁸ El Espectador. January, 2015. [Aparece panfleto amenazante de Autodefensas Gaitanistas](#). El Mundo.com. January, 2015. [Panfleto amenazante contra 38 periodistas y defensores de DD.HH. en la Costa Atlántica](#). El Herald.com. January, 2015. [Autodefensas Gaitanistas amenazan con panfletos a periodistas y líderes de víctimas](#).

⁵⁹⁹ FLIP. [Primer balance de 2015: Un asesinato y 15 amenazas contra periodistas y Segundo balance de 2015: 31 ataques a la libertad de prensa](#).

⁶⁰⁰ U.N. OHCHR Colombia. [Oficina de la ONU para los Derechos Humanos preocupada por caso de periodista y defensora Claudia Julieta Duque](#). AWID derechos de las mujeres. [Colombia: Hostigamiento de Claudia Julieta Duque y su abogado al acercarse el inicio del juicio del DAS](#). Caracol Radio. [Claudia Julieta Duque denuncia nuevos hostigamientos en su contra](#). Equipo Nizkor. [Con nuevos ataques y hostigamientos intentan frenar batalla de Claudia Julieta Duque por obtener justicia en su causa contra el DAS](#).

⁶⁰¹ El Herald.com. December 31, 2014. [Condenado a 39 años hijo de la Gata por matar a periodista](#). El Colombiano. December 31, 2014. [Condenan a hijo de "la gata" por asesinato de periodista](#) El Tiempo. December 31, 2014. [39 años de cárcel a hijo de la 'Gata' por asesinato de periodista](#).

⁶⁰² La Patria. June 25, 2015. [2002: asesinato Orlando Sierra 2015: condenado Tapasco](#). Revista Semana.com. June 25, 2015. [El político que pagará 36 años de cárcel por el crimen de Orlando Sierra](#). El Tiempo. June 26, 2015. [Las claves de la condena de 36 años contra Ferney Tapasco](#).

⁶⁰³ Manizales High Court. Criminal decision chamber. Judge Rapporteur Antonio Toro Ruiz. Manizales, June 24, 2015. Case: 2012-00012-02 Accused: Francisco Ferney Tapasco González Fabio López Escobar Jorge Hernando López Escobar Henry Calle Obando Crimes: *Homicidio agravado Concierto para delinquir* Matter: Second-instance decision.

⁶⁰⁴ El Tiempo. [Ferney Tapasco se suma a los políticos prófugos de la Justicia](#). Vanguardia.com. [Familiares de Tapasco dicen que salió de Colombia](#). Radio Nacional. [Ferney Tapasco no se entregará a la justicia](#).

⁶⁰⁵ El Tiempo. April 30, 2015. [Condena de 14 años para Hurtado y 8 para Bernardo Moreno por chuzadas](#). BBC Mundo. April, 2015. [Colombia: condenan a María del Pilar Hurtado, exdirectora de inteligencia](#). Revista Semana.com. April, 2015. [Corte condena al](#)

299. The IACHR notes some progress throughout 2015 in the case of journalist Claudia Julieta Duque. On March 24, Jorge Armando Rubiano Jiménez was convicted for aggravated torture committed against the journalist.⁶⁰⁶ On the other hand, the beginning of the trial against Rafael Noguera, former director of DAS and who was also involved in the “chuzadas” case, and against former intelligence directors of said entity, Giancarlo Auqué de Silvestri and Enrique Alberto Ariza Rivas (both fugitives from justice),⁶⁰⁷ was affected by the non-appearance of Noguera before the court in charge of the case.⁶⁰⁸ There is an arrest warrant pending for Auqué and Ariza.⁶⁰⁹

300. On May 27, the Prosecutor’s Office 49 for human rights, who is in charge of the case, concluded the investigation and freed Alejandro Cárdenas Orozco,⁶¹⁰ one of the persons linked to the case of Jineth Bedoya as a perpetrator. Three days after the prosecutor’s decision was made public, the Attorney General’s office informed that said decision was going to be revoked since substantive and objective errors were found in it.⁶¹¹ On the other hand, on June 3 a preparatory hearing was held in the case against Mario Jaimes Mejía, another of the paramilitaries linked to the case of the journalist. However, on July 13, the date for which the trial hearing was convened, the trial had to be postponed because the accused did not have a defense attorney to assist him.⁶¹² According to the information provided by the State on September 25, 2015, charges were made against another two suspects, and an appeal has been filed against that decision.⁶¹³

301. On June 9, the decision of the Office of the Attorney General was made public, in which the FGN denied the request made by the family of the journalist Jaime Garzón for the crime to be ruled a crime against humanity.⁶¹⁴ The FGN has four years in which to locate the persons who planned the crime before statutory limitations are triggered in the case. Jaime Garzón was a comedian and journalist who had denounced corruption, drug trafficking, and the paramilitaries. He was murdered on August 13, 1999, and his death had a major impact on Colombian society.

302. The IACHR continues to be concerned about the application of the statute of limitation in the cases of murder against journalists, during 2015 it was applied to four cases. According to the information provided to the IACHR, the investigations of threats and attacks against journalists would be in a situation of impunity much worse than in regular homicide cases. According to the information provided by the State, of

exsecretario de la Presidencia y a la exdirectora del DAS. El Espectador. April, 2015. [Corte Suprema condenó a 14 años de prisión a María del Pilar Hurtado por ‘chuzadas’](#).

⁶⁰⁶ Second Specialized Criminal Court of Bogotá. Bogotá D.C. March 24, 2015. Marzo veinticuatro (24) de dos mil quince (2015). [Sentencia Radicado:110013107002201400051](#). Accused: Jorge Armando Rubiano Jiménez. Crime: Aggravated torture.

⁶⁰⁷ FLIP. [Inicia juicio contra autores de amenazas y tortura psicológica agravada contra la periodista Claudia Julieta Duque](#). El Mundo.com. [Inicia juicio por tortura psicológica contra periodista](#).

⁶⁰⁸ Periódico El Turbiom.Com. July, 2015. [Dilatan juicio del caso de Claudia Julieta Duque](#). Caracol Radio. July, 2015. [Se dilata juicio a José Miguel Narváez por posible tortura a Claudia Duque](#)

⁶⁰⁹ Caracol Radio. June, 2015. [Ordenan captura internacional exjefe de inteligencia del DAS por tortura](#). Diario del Huila. [Por tortura, ordenan captura internacional exjefe de inteligencia del DAS](#).

⁶¹⁰ Comité para la Protección de Periodistas- CPJ. June 4, 2015. [Colombia libera a sospechoso de ataque contra periodista Jineth Bedoya](#). Oxfam International. June, 2015. [Repudio por la liberación de Alejandro Cárdenas Orozco, alias JJ, investigado en el caso de los múltiples crímenes contra Jineth Bedoya](#). El Espectador. June, 2015. [Fiscalía precluyó investigación a implicado en abuso sexual a la periodista Jineth Bedoya](#). El Mundo. Com. June, 2015. [Santos dice que libertad de alias “JJ” va en contrasentido a la reparación de víctimas](#).

⁶¹¹ Revista Semana. June, 2015. [El ‘reversazo’ de la Fiscalía en caso Jineth Bedoya](#). Radio Santa Fe. June, 2015. [Fiscalía revocó decisión de dejar en libertad a implicado en caso de Jineth Bedoya](#). Colmundo Radio. June, 2015. [Fiscalía revocó libertad de alias JJ y anuncia investigación a Fiscal por caso Jineth Bedoya](#). El País. [Fiscalía ordena recaptura de alias JJ en caso Jineth Bedoya](#).

⁶¹² FLIP. [Primera audiencia en el caso de Jineth Bedoya se aplazó por dilaciones de la defensa](#). El Tiempo. July, 2015. [Aplazan primera audiencia del juicio contra ‘El Panadero’](#).

⁶¹³ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR’s Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 34.

⁶¹⁴ FGN. June 9, 2015. [Murder of comedian Jaime Garzón was not a crime against humanity](#). El Tiempo. June 2015. [‘Killing of Jaime Garzón not a crime against humanity’: Attorney General](#). El País. June 2015. [Case of Jaime Garzón not a crime against humanity: FGN](#).

the 49 journalist and communicators killings that have happened in the past ten years and are reported in the criminal system, 33 investigations are inactive and 16 are active.⁶¹⁵

c. Protection Mechanism

303. In 2015 the Program for Protection of Journalists reached 15 years of age, the IACHR values the efforts made by the Colombian State to implement the program which was a pioneer in the hemisphere and undoubtedly has decreased the rate of killings of journalists. According to information provided by the State of Colombia, 137 journalists receive some protection within this structure.⁶¹⁶

304. Years 2014 and 2015 have been marked by budget deficits and corruption scandals in the interior of the National Protection Unit (UNP), the entity responsible for the administration and management of the protection mechanism, which even led the President, Juan Manuel Santos, to change the person in charge of its direction in December 2014.⁶¹⁷ The financial and administrative problems that the entity faces have affected the functioning of the protective measures. One of the issues that has most affected journalists has to do with restrictions on travel expenses for journeys of the protected with their schemes, forcing journalists and communicators to choose between covering the news by going alone or simply not covering the news. This situation led to the journalist Rodrigo Callejas, who is a beneficiary of the UNP and also has precautionary measures from the IACHR, to submit a *tutela* action against the UNP so allowances would be authorized and he could go to places where he had to do journalistic coverage.⁶¹⁸

305. Civil society organizations have stated other drawbacks, including the delay in the implementation of the measures and the lack of institutional coordination in particular with the Office of the Attorney General, which would be reflected in the absence of progress in the investigations carried out in cases of aggression or threats against those who are currently beneficiaries of protection measures.⁶¹⁹ According to the *Federación Colombiana de Periodistas (FECOLPER)*, 75% of the journalists who have some kind of protective measure have expressed that they do not work properly.⁶²⁰ According to the organizations

in these 15 years, the State has opted to direct protection to the custody of journalists, escorting them, but leaving aside justice, as well as prevention as an elimination of the risk. The attacks against the press continue unabated and from the 338 threats against journalists that the Office of the Attorney General had registered to August 2014, just in one case were those responsible convicted.⁶²¹

306. In lieu of the aforementioned information, the IACHR deems it appropriate to reiterate its recommendation to the Colombian State to continue adopting prevention mechanisms to prevent violence against communicators, including the public condemnation of any act of aggression, training and education to

⁶¹⁵ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 47.

⁶¹⁶ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 49.

⁶¹⁷ Revista Semana. December 2015. [Andrés Villamizar renuncia a la Unidad de Protección](#). Vanguardia.com. December 2015. [Andrés Villamizar renunció a la dirección de la Unidad Nacional de Protección](#). Radio Nacional de Colombia. January 2015. [Diego Fernando Mora asume como nuevo director de la Unidad Nacional de Protección](#). El Colombiano. January 2015. [Diego Fernando Mora asumió como director de la UNP](#).

⁶¹⁸ Council of State. Contentious-Administrative Chamber, Second Section-Subsection B.; Dr. Gerardo Arenas Monsalve. Bogotá D.C., January 15, 2015. File No.: 11001-03-15-000-2014-03081-00. *El Tiempo*. February, 2015. [Rodrigo Callejas Bedoya logró que el Estado cubra los viáticos de sus escoltas en desplazamientos](#). *El Nuevo día*. February, 2015. [Consejo de Estado falla a favor de periodista tolimense](#).

⁶¹⁹ FLIP. [Informe anual 2014. 60 años de espionaje a periodistas en Colombia](#), pp. 45-50.

⁶²⁰ Federación Colombiana de Periodistas –Fecolper and Reporters without borders– RSF. Colombia: [Actividad periodística en riesgo](#). 2014.

⁶²¹ FLIP, Federación Colombiana de Periodistas –Fecolper and Reporters without borders– RSF. Joint communiqué. [COLOMBIA: El programa de protección de periodistas debe ser reformado](#). August 27, 2015.

public officials and in particular, police forces or security and, if necessary, the issuance of guidelines of conduct or guidelines of respect for this right, as well as to continue with the collection of detailed and disaggregated criminal statistics on violence against journalists and the criminal prosecution of these crimes.

307. The IACHR calls for the State to continue adopting effective protection measures to guarantee the safety of those who are subjected to a special risk due to the exercise of their right of freedom of expression. The State should continue to strengthen the "program of prevention and protection of the rights to life, liberty, integrity and security of persons, groups and communities," therefore ensuring their financial sustainability, as well as accelerate, in the most suitable technical conditions, risk measurement processes and ensure that protection and prevention measures taken to benefit journalists and social communicators take into account the specific needs of this group of people. The IACHR recalls that it is necessary for the protection mechanism to work in a coordinated manner with the authorities in charge of conducting criminal investigations to prevent the repetition of these threats.

308. The IACHR recommends that the State continue promoting diligent, impartial and effective investigations of the murders, attacks, threats, and intimidation acts against journalists and media workers and that it punishes those responsible for the crimes committed as retaliation for the exercise of the right of freedom of expression via impartial and independent courts, within the standards set by international law, and that it repairs damages to the victims and their next of kin adequately. Finally, the IACHR urges Colombia to continue advancing in the implementation of a Collective reparation program in favor of journalists and media and in the drafting of a public policy for journalists.

6. Discrimination against lesbian, gay, bisexual, trans and intersex persons

- Design and adopt the measures necessary to prevent acts of violence and discrimination against lesbian, gay, bisexual, trans and intersex persons, to protect them from these abuses, and to act with due diligence when responding to these acts, whether committed by State agents, third persons, or armed groups, throughout the national territory.
- 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 of preventing cases of police abuse. Consider adopting additional measures not only to train and raise the awareness of staff in the area of 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 the disciplinary investigations and proceedings can go forward against public servants who perform acts of verbal or physical violence against LGBTI persons.
- Design, adopt, and implement a comprehensive national public policy for protecting the rights of LGBTI persons.

309. With regards to the rights of LGBTI persons, the IACHR identified in its *Report Truth, Justice and Reparation* a situation of historical discrimination and violence motivated by perceptions of different gender identities and sexual orientations. It also concluded that the armed conflict exacerbates this situation and identified flaws in the prevention of police violence and the implementation of Directive 006 of 2010. On the other hand, the IACHR took note of serious shortcomings in the investigation of murders and acts of violence against LGBT people. In particular, the Commission noted that the killings of LGBTI people continued to be qualified prematurely as crimes of passion, hindering an effective investigation, which, as the IACHR has established, tends to situations of impunity. The Commission noted that even though there was some progress in terms of availability of official information, there is still the need to compile data with centralized

official information systems, the lack of which renders invisible the situations of violence against LGBTI people. Finally, the Commission noted that a public policy on the subject has not been passed.⁶²²

310. In this report, the IACHR highlights the advances introduced in Colombia during the year 2015, in follow-up to the various recommendations that the Commission included in its *Report Truth, Justice and Reparation*, among which are the following: (i) the enactment on June 9, 2015 of Act 1753 of 2015, which launches the National Development 2014-2018 entitled “*Todos por un nuevo país*” (All for a new country);⁶²³ (ii) forty-nine processes of awareness-raising and training in coordination with institutions of national and territorial order (INPEC, National Police, Office of the Prosecutor General of the Nation, among others) by the Ministry of Interior; (iii) progress related to political and citizen participation of LGBTI persons and leaders (IV Course of management of electoral campaigns for LGBTI people in Colombia; Departmental Meeting on Sexual Diversity and Gender); (iv) support and participation in the LGBTI marches in Medellín, Cali and the activity “*Mi Orgullo*” (My Pride) which took place in Bogotá; and (v) the accompaniment by the Ministry of Interior to the second meeting of LGBTI in Putumayo and the LGBTI working group in Armenia within the framework of the drafting a document of characterization of LGBTI persons in said municipality, among others.

311. The Commission also finds significant progress in administrative and jurisprudential matters addressing discrimination and violence against LGBT persons.⁶²⁴ The IACHR considers the application of these developments in the area of education and school harassment - based on prejudice against sexual orientations and diverse gender identities - of vital importance. Also, the same is the case for issues related to the human rights of transgender persons, such as access to work, military ID card, access to corporal transformations by means of the health system, and non-pathological administrative procedures to change the sex field in the Civil Register. However, the Commission notes that serious situations of human rights violations against LGBT people in Colombia persist, in addition to a generalized climate of impunity in cases of violence against LGBT people.

312. In relation to the recommendation to adopt and implement a national public policy with regard to the protection of this sector of the population, the State informed the IACHR that as of September 2015, the results of an analysis of data collected by the Ministry of Interior (General Framework, Diagnosis, Institutional Offer, Social and Private Offer) was being validated, as they are an integral part of the document of national public policy as well as the document “*Batería de Indicadores*” (Battery of Indicators) and the draft proposal “*Plan de Acción*” (Action Plan), related to the same. In addition, the State informed that the Ministry of Interior is working with the Presidential Counsel for Human Rights on the adoption of guidelines for the public policy, and that once they finish with the sharing of the draft public policy and its content is validated by the Ministry of Interior and the Presidential Counsel for Human Rights, they “shall ensure the participatory and inclusive space of social sectors and relevant political actors.”⁶²⁵

313. The IACHR recognizes the efforts made by the State to strengthen the work of the Ombudsperson in terms of the promotion and protection of the rights of LGBTI people. The IACHR received information about the creation of the Delegate Ombudsperson on the Rights of Women and Gender Issues, by means of Order 063 of January 20, 2014.⁶²⁶ Because of this, gender teams or duplets have been brought in to several regional ombudsperson offices and they are composed by a lawyer and a psychologist. The so-called gender duplets have among their main functions to: (i) implement actions at the regional level for the prevention of gender-based violence, including actions of training and forming and support to organizations,

⁶²² IACHR, *Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*. December 31, 2013.

⁶²³ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 49.

⁶²⁴ During this period the IACHR did not receive information about intersex persons.

⁶²⁵ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, pp. 49-50.

⁶²⁶ Office of the Human Rights Ombudsperson (Colombia), 22nd Report from the Ombudsman to the Congress of the Republic ([Vigésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#)), January-December 2014, para. 323.

groups or collectivities; (ii) provide care, advice, guidance and psychological or legal accompaniment to LGBTI persons, victims of discrimination or gender based violence; (iii) carry out regional diagnosis on the human rights situation of LGBTI persons; and (iv) participate in inter-agency spaces at the regional level that improve the routes for the care, protection and defense of the human rights of LGBTI people.⁶²⁷

314. In addition, the State reported on the working group created by the FGN to identify and analyze cases of violence motivated by sexual orientation and/or gender identity, to train prosecutors, and to prepare guidelines on strengthening due investigations of violence of that kind and on the differentiated investigation strategies to be followed.⁶²⁸

315. Notwithstanding these advances, the Commission has received information that reflects an institutional context where a prejudice based on sexual orientations and gender identities still prevail to deny rights to LGBT persons. Particularly, in a meeting with the Working Group on urgent matters, an official from the INPEC referred to possibility of the use of wigs by transwomen to hide dangerous implements and to the lack of “decency” of LGBT persons to excuse the denial of rights in the interior of prisons; and, when making reference to the cases of violence against transwomen, an agent of the National Police expressed that these murders could be linked to the dangerous nature of the victims, ruling out the possibility that they were motivated by the prejudice or other grounds related to gender identity.⁶²⁹

a. Jurisprudential advances from the Constitutional Court

316. The Commission takes note of the Public Hearing “to reinforce the academic and democratic debate and compile more information that will allow a decision to be made,”⁶³⁰ held by the Constitutional Court on July 30, 2015 and requested by organizations of civil society. The following were invited to this hearing: the petitioners, the defendants, public institutions, non-governmental organizations, experts, who were invited per the request of the organization *Colombia Diversa*, magistrates and judges in other jurisdictions, international and national experts, experts requested by Counsel Clara Lucía Sandoval, a Congresswoman, a Counsel per her request, and persons carrying out studies on the subject as well as universities.⁶³¹

317. Likewise, the IACHR learnt about the judgment which ordered the Ministry of Defense and the General Command to promulgate an information protocol and an educational campaign for trans women to learn about their rights when called to normalize their military situation, the limits of the law in the military situation and the military authority’s duty to respect the rights of trans persons.⁶³² The Commission highlights the work of the Constitutional Court in the case of Sergio Urrego, a student who faced an irregular disciplinary procedure, which had an effect in his decision to end his life.⁶³³ The Court recognized that there was discrimination on the part of the school and ordered a public act of the school he attended, ordered the Ministry of education to review coexistence manuals in the country with the aim of respecting students gender identity and sexual orientation, and the implementation of a public policy of school coexistence to verify with the establishment of a National Committee of school coexistence providing a path of care for

⁶²⁷ Office of the Human Rights Ombudsperson (Colombia), 22nd Report from the Ombudsman to the Congress of the Republic ([Vigésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#)), January-December 2014, para. 324.

⁶²⁸ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR’s Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 35.

⁶²⁹ Caribe Afirmativo, *Se reunió en Sincelejo la Mesa de Casos Urgentes para la garantía de derechos de personas LGBTI*, November 8, 2015.

⁶³⁰ Constitutional Court of Colombia. *Auto Ref. Expediente T-4.167.863 AC. Magistrado Ponente: Jorge Ignacio Pretelt Chaljub*, July 16, 2015.

⁶³¹ Constitutional Court of Colombia. *Auto Ref. Expediente T-4.167.863 AC. Magistrado Ponente: Jorge Ignacio Pretelt Chaljub*, July 16, 2015.

⁶³² Constitutional Court of Colombia. *Sentencia T-099 de 2015. Magistrada Ponente: Gloria Stella Ortiz Delgado*, March 10, 2015.

⁶³³ Constitutional Court of Colombia. *Sentencia T-478. Magistrada Ponente: Gloria Stella Ortiz Delgado*, August 3, 2015.

students who face bullying, verify that all schools have committees of school coexistence and to take other measures to overcome structural failures in protecting children from bullying.

318. In addition, the Constitutional Court protected the human rights of Absalón Segundo, who identifies as an Afro-descendant, homosexual trans person when deciding a lawsuit for discrimination and harassment in an university. The Court recognized the intersection of these identities as relevant in the legal analysis in the lawsuit.⁶³⁴ It also ordered the educational institution to apologize, create a space for dialogue between the claimant and the university, the reinstatement of Absalón to the institution, not to interfere with the development and expression of genre, and to design a “plan to adapt the education service that it provides its students belonging to ethnic groups and sexual minorities.”⁶³⁵ Likewise, it associated the Ministry of Education so that it adjusts the Guidelines “Inclusive Education Policy” issued by the Ministry, to consider specifically the situation of the persons who suffer from racial and genre discrimination, including those belonging to sexual minorities.⁶³⁶

b. Situation of trans persons

319. This year the IACHR congratulated Colombia for Decree 1227 of 2015, which allows for the rectification of the sex component in the Civil Registry of Birth through a simple administrative procedure before a notary public, submitting only an affidavit with simple copies of the civil registration of birth and an identity card. The Commission welcomes this measure as a result of a dialogue held between the government and civil society organizations which defend the human rights of trans persons, in particular the Aquelarre Trans coalition.⁶³⁷ In addition, the IACHR urged Colombia to enact a law on gender identity that ensure greater protection to trans persons, since it continues to receive information on trans people in Colombia who are victims of multiple violations of their human rights by reason of violence and discrimination, in particular in relation to access to employment, education and health. In this sense, even though these measures constitute significant progress, the IACHR urged Colombia to adopt comprehensive measures, in legislation and public policy, to address effectively the situation of discrimination and violence that trans persons face, particularly those who are living outside capital cities.⁶³⁸ Also, the IACHR notes the ruling from the Constitutional Court by which it recognizes that change of sex through judicial procedures of voluntary jurisdiction are in violation of the human rights of trans persons, inasmuch as there are other processes to perform the procedure in an administrative way. In 2015, the Court protected the rights of a trans woman

⁶³⁴ Constitutional Court of Colombia. Sentencia T- 141 de 2015. Magistrada Ponente: Maria Victoria Calle, March 27, 2015. The IACHR considers it necessary to highlight the decision of the Constitutional Court in this regard, when recognizing: “the way that Absalom lives and exteriorizes to others the gender identity is not through the permanent assumption of a female identity, but transiting between the female and male identities, through the transformation of the clothing and the staging of a female identity, without this implying to leave behind a name, and other attributes associated with the masculine gender. The way in which the claimant experiences the identity unsettles the binary logic that has traditionally operated as a qualifying principle, according to which, it is assumed, a person is male or female, *tertium non datur*. Those who, like Absalón, are not fixed in one of these extremes, but live their humanity going between them, perhaps recognizing somewhere, are facing incomprehension, usually accompanied by rejection and hostility from those people accustomed to recognize and accept the other if this is left to defining them into any of these extremes and reproduces clearly and unambiguously, the attributes that allow to identify the person as male or female, without more. But in addition to transgressing the heteronormative order with the gender identity, this young person also challenges it when recognized and accepted as a homosexual. Is not the same to assume this identity and sexual orientation for a person who is born in the bosom of a family that accompanies and supports their life experience, and provide material and emotional support to cope with foreseeable difficulties that will faced along the way, but when being a young person with scarce resources, orphan of both parents, who grew up in the care of a sister who also serves as the foster mother and whose initial reaction, when she learned of the sexual orientation of Absalom, was to withdraw support to continue Absalom’s studies. A young person, a native of the Department of Chocó, now lives in a social environment that values as a commendable attribute having “white porcelain” as skin color.”

⁶³⁵ Constitutional Court of Colombia. [Sentencia T- 141 de 2015. Magistrada Ponente: Maria Victoria Calle](#), March 27, 2015.

⁶³⁶ Constitutional Court of Colombia. [Sentencia T- 141 de 2015. Magistrada Ponente: Maria Victoria Calle](#), March 27, 2015.

⁶³⁷ IACHR, Press Release No. 75/15: [IACHR congratulates México and Colombia for measures recognizing identity of trans persons](#), July 1, 2015.

⁶³⁸ IACHR, Press Release No. 75/15: [IACHR congratulates México and Colombia for measures recognizing identity of trans persons](#), July 1, 2015.

and ordered a notary to register the change of sex in a public deed by means of an administrative procedure.⁶³⁹

320. The Commission also received worrying information of a request for an annulment of Decree 1227 of 2014 before the Council of State, submitted by an entity that has other constitutional duties monitoring compliance with administrative acts and the protection of human rights,⁶⁴⁰ particularly the Attorney General's Office.⁶⁴¹ Human rights civil society organizations expressed their concern about a possible suspension of the effects of the Decree until the State Council makes a decision on the merits (a decision which could take a few years), since it would leave in a legal limbo and juridical uncertainty those people who have already made the change of sex in their civil registrations, it would violate the principle of progressivity of human rights, and could discourage efforts by other State institutions to formulate policies that promote and protect the right of LGBTI people.⁶⁴² The IACHR recognizes the importance of the autonomy and independence of the different branches of power in a democracy and urges the State Council not to suspend the effects of the Decree, at least until it makes a decision on the merits as there could be violations of the acquired rights that are under discussion and that could aggravate the difficult situation already faced by trans people.

321. On the other hand, the IACHR has received alarming information about the consequences of the lack of access to corporal transformations via the health system and the grave consequences that this brings to trans women. In the Santa Fe neighborhood, in the city of Bogotá, a place where some trans women are engaged in sex work, an investigation showed that 96% of the trans women had performed corporal transformations using informal mechanisms, 55.4% had been performed in the house of a friend, 13.8% in garages and uncertified clinics, and 62% repeated these practices more than 4 times. The same investigation found out that the substances that are used for these procedures are cooking oil, Johnson's oil, industrial oil (used for airplanes), paraffin, animal fat and liquid silicone. Among the physical complications were reported necrosis, stretch marks, itching, sensation of heat, muscular pain, cysts, abscesses, infections, problems in joints, deformations, effects on genitals and even death.⁶⁴³ In addition, the Commission received information on the death of a trans woman, Luisa Toscano, who reportedly died after she underwent a cosmetic procedure to increase the size of her buttocks.⁶⁴⁴ The Commission notes three decisions from the Constitutional Court where the corporal transformation of trans persons is protected.⁶⁴⁵

c. Situation of violence against LGBT and its investigation

322. The Organization *Colombia Diversa* recorded 824 killings of LGBT persons between 2006 and 2014.⁶⁴⁶ Between 2013 and 2014 a total of 164 murders were reported. In 2013, 83 murders were

⁶³⁹ Constitutional Court. *Sentencia T-063 de 2015. Magistrado Ponente: Maria Victoria Calle*, February 13, 2015.

⁶⁴⁰ Information submitted to the Commission in September, 2015 by the coalition of organizations working for the rights of trans persons, Aquelarre Trans.

⁶⁴¹ Article 277 (1) and (2). Political Constitution of Colombia, 1991.

⁶⁴² Information submitted to the Commission in September, 2015 by the coalition of organizations working for the rights of trans persons, Aquelarre Trans.

⁶⁴³ Pachón, N. E., & Cruz, K. J. (2013). [Uso de modelantes estéticos, como proceso de la transformación corporal de mujeres transgeneristas](#). Obtained from *Tábula Rasa: Revista de Humanidades*.

⁶⁴⁴ *El Heraldo*: [Muere mujer trans luego de someterse a procedimiento estético](#). November 5, 2014.

⁶⁴⁵ See Constitutional Court of Colombia. *Sentencia T-876 de 2012. Magistrado Ponente: Nilson Pinilla*, October 29, 2012, where the right of a trans man to a surgery of sexual affirming and "other necessary medical procedures"; Constitutional Court. *Sentencia T-918 de 2012. Magistrado Ponente: Jorge Iván Palacio*, November 8, 2012, where it ordered "that a medical board be convened, which must evaluate the procedures of feminization of the voice, facial feminization surgery, laser hair removal and liposuction, in order to determine its suitability, based on sound reasons of health and not merely aesthetic"; and Constitutional Court. *Sentencia T-771 de 2013. Magistrado Ponente: Maria Victoria Calle*, November 7, 2013, where it ordered where a mammoplasty procedure was ordered with augmentation of the prosthesis as "the physical modifications don't can't a merely aesthetic significance, since they are an essential part of gender identity which is protected by the Constitution."

⁶⁴⁶ Colombia Diversa, *Informe de derechos humanos de personas LGBT en Colombia, 2013- 2014: Cuando la Guerra se va, la Vida Toma su Lugar*, June 12, 2015.

reported and in 2014, 81. Most of the victims were identified as trans women (37), followed by gay men (17), lesbian women (3) and a bisexual woman (1). In the remaining cases it was not possible to establish with precision the gender identity or sexual orientation of the victim (106). The largest number of cases were registered in Antioquia (51), Valle del Cauca (32) and Bogotá D.C. (18). From the total, 30 cases were reportedly motivated by prejudice towards sexual orientation or the victim's gender identity. Of the 164 cases of murder against LGBT persons between 2013 and 2014, there have been only 5 convictions, while several processes are under investigation without any reported progress in the stage and trial and sentencing.⁶⁴⁷

323. For the aforementioned, the IACHR reiterates the recommendations made and urges the Colombian State to continue working in the effective implementation of the necessary measures to ensure the exercise of the human rights of LGTBI persons.

7. Persons Deprived of Liberty

- Adopt the administrative, legal and judicial measures necessary – short-, medium- and long-term - aimed at stabilizing and reducing the growth of the prison population, within a period of five years. This endeavor 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.
- 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.
- Adopt the administrative, judicial and legislative measures needed to ensure that the pre-trial detention of persons who have not been convicted with a final judgement is used as the measure of last resort and for the shortest possible time, in keeping with 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 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.
- 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 prison.
- 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.

⁶⁴⁷ Colombia Diversa, *Informe de derechos humanos de personas LGBT en Colombia, 2013- 2014: Cuando la Guerra se va, la Vida Toma su Lugar*, June 12, 2015.

- Ratify the Optional Protocol of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

324. The Inter-American Commission issued a series of recommendations in its *Report Truth, Justice and Reparation* due to the worrying situation of persons deprived of liberty in Colombia. The IACHR recognizes the work done by the State to deal with this situation but it remains concerned about the human rights violations that continue to occur.

325. In its Twenty-Second Report to the Congress of the Republic, the Human Rights Ombudsperson highlighted the existence of a prison crisis in Colombia.⁶⁴⁸ The Ombudsman considered that the reform of the penitentiary and prison code was just a starting point to solve the problem, so it should be accompanied by other measures, such as the adjustment of the accusatory criminal system and the construction of more prisons.⁶⁴⁹ During 2014, the Ombudsman expressed his concern about the prison situation and denounced several incidents, including: the alleged mistreatment in *Picaleña de Ibagué* Prison; the tragedy in the *Modelo de Barranquilla* Prison; the structural failures in the Quibdó Prison; the crisis in the jails in Armenia; and the death of five prisoners in the *Picaleña* Prison, in Tolima, for lack of protection barriers.⁶⁵⁰ It also requested the National Government declare a social emergency “to confront the intolerable levels of overcrowding and its serious effects on the guarantee of fundamental rights of the prison population.”⁶⁵¹ In June 2014, the Office of the Human Rights Ombudsperson spoke out on the situation of the Special Handling Units in the capital of the Atlantic, as reportedly “there were protruding failures in the lighting and ventilation systems, an absence of permanent drinking water, deficient electrical installations and outbreaks of skin infections.”⁶⁵²

326. The OUNHCHR in Colombia also stated its concern over the situation of the prison system, stemming from the fact that the prisoners live with unacceptable levels of overcrowding and insufficient sanitary conditions.⁶⁵³ In its 2014 report, the OUNHCHR stressed that, according to the statistics of INPEC, in October 2014 there was a 49.3% of overcrowding in the penitentiary jails.⁶⁵⁴ The OUNHCHR-Colombia recommended that the State ratify the Optional Protocol of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to create the national mechanism to prevent torture that is established therein, as a positive measure to deal with the prison crisis.⁶⁵⁵ According to information of public knowledge, for example, in the Bellavista prison, overcrowding of 160% is registered and the persons deprived of liberty do not have health services, a situation that is intensified for those who need specialized health professionals, such as oncologists.⁶⁵⁶

⁶⁴⁸ Office of the Human Rights Ombudsperson (Colombia), 22nd Report from the Ombudsman to the Congress of the Republic ([Viésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#)), January-December 2014, p. 29.

⁶⁴⁹ Office of the Human Rights Ombudsperson (Colombia), 22nd Report from the Ombudsman to the Congress of the Republic ([Viésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#)), January-December 2014, p. 29.

⁶⁵⁰ Office of the Human Rights Ombudsperson (Colombia), 22nd Report from the Ombudsman to the Congress of the Republic ([Viésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#)), January-December 2014, pp. 30-31.

⁶⁵¹ Office of the Human Rights Ombudsperson (Colombia), 22nd Report from the Ombudsman to the Congress of the Republic ([Viésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#)), January-December 2014, pp. 30-31.

⁶⁵² Office of the Human Rights Ombudsperson (Colombia), 22nd Report from the Ombudsman to the Congress of the Republic ([Viésimo Segundo Informe del Defensor del Pueblo al Congreso de la República](#)), January-December 2014, p. 32.

⁶⁵³ UN, Human Rights Council, [Addendum of Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia](#), January 23, 2015, A/HRC/28/3/Add.3, para. 74.

⁶⁵⁴ UN, Human Rights Council, [Addendum of Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia](#), January 23, 2015, A/HRC/28/3/Add.3, para. 74.

⁶⁵⁵ UN, Human Rights Council, [Addendum of Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia](#), January 23, 2015, A/HRC/28/3/Add.3, para. 78.

⁶⁵⁶ El Colombiano, [Overcrowding at Bellavista Prison is at 160%](#); September 10, 2015. Cf. INPEC. [Statistical charts](#).

327. The State informed of the publishing of the Conpes No. 3828 on “*Política Penitenciaria y Carcelaria*,” on May 19, 2015 and stated that one of the goals of said document is to “give a new focus to the prison policy by means of coordination with a criminal policy that is coherent and effective.”⁶⁵⁷ According to the State’s report, this document emphasizes human rights protections for persons deprived of liberty. Likewise, it aims to “reduce the practice of prison sentences and offer solutions to the problems faced by those in pre-trial detention;” “improve re-socialization programs and the efficiency of the Prison Treatment System;” and “improve the conditions of detention and reduce prison overcrowding.”⁶⁵⁸ The IACHR acknowledges the goals established in the document Conpes No. 3828 and recommends that the State monitor adequate compliance therewith.

328. The IACHR notes that Act 1760 of July 6, 2015 was passed and enacted. This Act establishes that the term of pre-trial detention may not exceed one year, and can only be extended in special cases related to the jurisdiction of specialized criminal justice, if there are three or more defendants, or if it concerns a corruption investigation or trial.⁶⁵⁹ In general, it establishes that judges have an obligation to demonstrate that detention is a required measure for securing the purposes intended and to assess whether the defendant is a danger to the community.⁶⁶⁰ It also establishes procedural terms that must be observed and fulfilled between the submission of the accusation and the beginning of the hearing in the oral phase (maximum 120 days), and between the start of the hearing in the oral phase and the reading of the decision (maximum 150 days.)⁶⁶¹ The Commission urges the State to ensure the implementation of this law and the development of other measures facilitating a decrease in the number of persons subjected to pre-trial detention.

329. According to the information provided by the Colombian State, in view of the planned changes to the Act 1709 of 2014, during the first semester of 2015, it discussed and approved the Draft Regulatory Decree regulating the health service of persons deprived of liberty.⁶⁶² As of the date of submission of the State’s report, the draft regulatory decree would reportedly be agreed between the entities and would then await signature by the Ministry of Finance and Public Credit.⁶⁶³ The IACHR was informed that this new Decree includes differential treatment for the provision of health service for women, children under the age of three who are with their mothers in prison, pregnant and lactating women, seniors, persons with disabilities, persons with health conditions, persons with mental pathologies and consumers of psychoactive substances.⁶⁶⁴ According to the State, the model laid down in the Decree seeks to facilitate and expedite the provision of health services to persons deprived of liberty, since the intermediation of the health promoting entities and the National Health Fund, which contracts for the provision of services internally and externally,

⁶⁵⁷ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 55.

⁶⁵⁸ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 56.

⁶⁵⁹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 56.

⁶⁶⁰ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 57.

⁶⁶¹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 57.

⁶⁶² Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 57.

⁶⁶³ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 57.

⁶⁶⁴ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 57.

is not required.⁶⁶⁵ According to the State, it is planned that during 2016 this new scheme will start working in a progressive way for persons deprived of liberty.⁶⁶⁶

330. In its 2014 Report, the IACHR took note that Act 1709 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, and verifying that healthcare provision units have the necessary infrastructure and inputs.⁶⁶⁷ In 2015, Decree 1606 of August 10, 2015 was published and established the composition, organization and functioning of the Commission to Monitor Prison Conditions.⁶⁶⁸ From August 14 to 31, 2015 a call for experts and non-governmental organizations which wanted to be part of the Commission to Monitor Prison Conditions, was opened.⁶⁶⁹ The IACHR acknowledges the efforts made by the State in this aspect and urges it to continue with the implementation of this mechanism.

331. Again, the IACHR recognizes the work of the Colombian Constitutional Court, which in the past and now again in 2015, has rendered judgments that guarantee the rights of persons deprived of liberty. On March 26, 2015, for example, it issued judgment T-126/15 to protect the right to health of the claimant.⁶⁷⁰ In addition, the Commission especially recognizes the judgment rendered by the Revision Chamber of the Constitutional Court, which declared that the prison system is in an unconstitutional state and ordered that the Ministry of Justice and the National Prison Institute adopt immediate measures to improve the grave situations that exist in the following prisons: Barrancabermeja, Cúcuta, Tramacúa (Valledupar), La Modelo (Bogotá), Bellavista (Medellín), and San Isidro (Popayán).⁶⁷¹ The State reported on a series of actions for the enforcement of that judgment, chiefly as regards the definition of a public policy for the adoption of structural measures.⁶⁷²

332. In terms of training and sensitization of prison personnel, the State informed the IACHR that the INPEC, through its training school, is working on the construction of a module on gender and sexual diversity.⁶⁷³ In addition, the State reported that, as part of the process "Inclusive Work Environments" that is carried out with the support of the Direction of Sexual Diversity of the District Secretary, in the first semester of 2015, sensitization was performed in the Bogotá Prison (Modelo) and the Women's Prison (Buen Pastor), and for the rest of the year trainings are planned for the *Complejo Carcelario y Penitenciario Metropolitano de Bogotá –COMEB* (Picota).⁶⁷⁴ The IACHR urges the State to continue these trainings and sensitizations and expand them to other regions of the country.

⁶⁶⁵ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 57.

⁶⁶⁶ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 57.

⁶⁶⁷ Ministry of Justice and Law, [Abecé de la Ley 1709](#), January 20, 2014.

⁶⁶⁸ Ministry of Justice and Law, [Decreto número 1606 de 10 de Agosto de 2015](#). By which the conformation, organization and functioning of the Commission to Monitor Prison Conditions created by Articles 93 and 94 of Act 1709 of 2014 is established.

⁶⁶⁹ Ministry of Justice and Law, [Abierta convocatoria para expertos y ONGs que quieran ser parte de la comisión de seguimiento a las condiciones de reclusión en Colombia](#), August 14, 2015.

⁶⁷⁰ Constitutional Court of Colombia, [Sentencia T-126/15](#).

⁶⁷¹ Constitutional Court of Colombia, [Sentencia T-388/13](#). See also, El Tiempo. [Ultimátum de Corte Constitucional al Gobierno por crisis carcelaria](#); April 20, 2015, El Espectador. [La sentencia contra el hacinamiento carcelario](#), March 24, 2015, Vanguardia. [Ordenar tramitar libertades en seis prisiones del país por hacinamiento](#), March 24, 2015.

⁶⁷² Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation.* Note S-GAIIID-15-120799, received December 9, 2015, p. 37.

⁶⁷³ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 57.

⁶⁷⁴ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, pp. 57-58.

333. The State informed the IACHR that the proposal of draft reform of the 0011 Agreement of 1995, by which the General Rules to be followed by the internal rules of the prisons, is pending revision by the Board of Directors, headed by the Ministry of Justice and the Law.⁶⁷⁵ The Commission hopes that the reform process be completed in the near future.

334. With regard to the implementation of the Act 1709 of 2014, the State submitted information on progress made during the period between January 2014 and June 2015, using the following chart:

CONSOLIDATED REPORT ACT 1709
PERIOD: JANUARY 21, 2014 TO JUNE 12, 2015

Processed	ACUMMULATED		
	2014	2015	Total
Suspension of the sentence	4,584	1,210	5,794
Release on probation (<i>Libertad condicional</i>)	19,965	6,347	26,312
House arrest	5,334	2,587	7,921
Sentence served	5,158	2,020	7,178
GENERAL TOTAL	35,041	12,164	47,205
Granted	2014	2015	Total
Suspension of the sentence	3,876	1,031	4,907
Release on probation (<i>Libertad condicional</i>)	14,152	4,397	18,549
House arrest, controlled by periodic visits	3,694	8,505	12,199
PERIOD TOTAL	21,722	13,933	35,655
Granted other reasons	2014	2015	Total
Sentence served	4,791	1,785	6,576
Other	16,566	2,500	19,066
SUBTOTAL	21,357	4,285	25,642
TOTAL DECREASE	43,079	18,218	61,297
Prison population	2014	2015	Variation

⁶⁷⁵ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIID-15-088842, September 14, 2015, p. 58.

January 21/2014 - January 1,2015	120,506	113,613	-6.893
December 2014 - June 12, 2015	113,623	120,705	7,082
Variation	-6,883	7,092	209

Prisoners	2014	2015	Total
Increase	36,196	25,310	61,506
Decrease	43,079	18,218	61,297
Variation	-6,883	7,092	209

335. The Commission acknowledges the efforts made by the State to comply with the recommendations and to build a prison system according to international human rights standards. As the situation of persons deprived of liberty continues to be worrisome, the IACHR reiterates its recommendations and urges the Colombian State to continue with the measures that it has implemented and to develop others that allow, among other things, a decrease in the use of pre-trial detention, securing non-discriminatory treatment by prison personnel, and guaranteeing the enjoyment of economic, social and cultural rights in prisons, especially the right to access water and health services.

8. Aggravated risk to human rights defenders

- 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 and 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 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 right defenders who are the beneficiaries of the measures in question in all procedures to adopt, implement, monitor or lift special measures of protection. In particular, the Commission recommends to the State that it ensure that the personnel who participate in the security schemes for human rights defenders are designated with the participation of and coordinating with the beneficiaries so as to build confidence.
- 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.

336. During 2015, the IACHR has continued to receive information about the persistence of murders, intimidation, and harassment of human rights defenders in Colombia. 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, fuel impunity and prevent the rule of law and democracy from being fully realized.

337. During 2014, the civil society organizations that comprise the *Programa Somos Defensores* (“We are Defenders” Program) recorded 626 attacks against defenders, including 488 threats, 55 murders, 41 attempted murders, 23 arbitrary arrests, 10 information thefts, eight cases of arbitrary use of the criminal system, and one suspected disappearance.⁶⁷⁶ According to the information collected by the *Programa Somos Defensores*, 2014 was the year where the most number of attacks were reported in the last five years, registering a 71% rise in comparison with 2013, where 366 attacks were reported. However, according to these numbers, there was important progress in the reduction of murders of human right defenders between 2013 and 2014.⁶⁷⁷

338. In the first half of 2015, the *Programa Somos Defensores* recorded 399 attacks against defenders, marking a 105% percent increase compared with the number registered in the first half of 2014.⁶⁷⁸ Those 399 attacks included 332 threats (an increase of 216% compared with the same period in 2014), 34 murders (an increase of 15%),⁶⁷⁹ 25 attempted murders, four arbitrary arrests, three cases of arbitrary abuse of the criminal system, and one information theft.⁶⁸⁰ In addition, during the first half of 2015, the *Programa Somos Defensores* recorded five murders of LGBTI human rights defenders, which is consistent with a very serious tendency of utmost concern noted by the Commission, which has identified a growing wave of high levels of violence against these defenders, in particular towards trans persons who denounce acts of police violence addressed at trans persons who are sex workers.⁶⁸¹

339. In addition, according to *Programa Somos Defensores*, between January 2009 and June 2015, 317 murders of human rights defenders were committed in Colombia.⁶⁸² On the other hand, summing up the number of murders (34) for the first half of 2015 as recorded by *Programa Somos Defensores*, with those murders of political and social leaders, Fabrizio Hochschild, Resident Humanitarian Coordinator of the UN in Colombia, concludes that between January and July, 2015 there were reportedly 69 killings of human rights defenders in Colombia.⁶⁸³ This amount marks an increase of 97% in comparison with the amount calculated by the UN in 2014, which recorded 35 killings of human rights defenders.

⁶⁷⁶ Programa Somos Defensores, [Informe Anual 2014: La divina comedia](#), February, 2015, p. 50.

⁶⁷⁷ In 2013, 78 murders against defenders were recorded and in 2014, 55. Programa Somos Defensores, [Informe Anual 2014: La divina comedia](#), February, 2015, p. 50.

⁶⁷⁸ As established in the 2014 Annual Report, during the first semester of 2014, civil society organizations recorded 194 attacks against defenders, which marked a 20% increase with respect to the same period in 2013.

⁶⁷⁹ The Commission received information about the situation of: Senén Namundia (indigenous leader); Camila Flores (LGBTI leader); Carlos Alberto Pedraza Salcedo (social leader); José Joaquín Herrera Utría (LGBTI leader); Nicasio Sánchez Guanay (peasant leader); Jaminton Andrés Ávila (community leader); Jesús Alberto Trillos Roján (LGBTI leader); Heriberto Narváez Hoyos (peasant leader); Emiliano Silva (indigenous leader); Gerardo Velasco (indigenous leader); Héctor William Cabrera Suárez (community leader); Luis Peralta Cuellar (community and journalistic leader); Gersaín Fernández (indigenous leader); Édgar Quintero (civic and journalistic leader); Ever López (union and peasant leader); Luis de Jesús Rodríguez Parada (community leader); Elizabeth Méndez Sánchez (community leader); José Joaquín Pinzón (indigenous leader); Herlen de Jesús Barriosnuevo Posso (victim’s leader); Wallis del Carmen Barriosnuevo Posso (victim’s leader); Fernando Salazar Calvo (mining and indigenous leader); Edward Alexis Granados Flores (union leader); Siberston Guillermo Pavi Ramos (indigenous leader); Luis Fernando Wolff Isaza (social leader); Nelson de Jesús Ríos Santamaría (attorney, human rights defender); Viviana Agudelo Zapata (community leader); Gustavo Bañol Rodríguez (indigenous leader); Edwin Bañol Álvarez (indigenous leader); Juan David Quitana Duque (youth leader); Alex Fabián Espinosa Carvajalino (union and victim’s leader); María Luz Lucero Figueroa (community leader); Ernesto Pejendino Pejendino (indigenous leader); Eder Manual Mielles Tejada (LGBTI leader); and Sandro Arley González (LGBTI leader.)

⁶⁸⁰ Programa Somos Defensores, [Informe Enero – Junio 2015: Los Nadies](#), August, 2015. See also, IACHR, Press Release No. 70/15, [IACHR Condemns murder of human rights defenders in Colombia](#), June 12, 2015.

⁶⁸¹ Colombia Diversa, [Colombia Diversa rechaza panfletos amenazantes en Bogotá](#), March 13, 2015.

⁶⁸² Programa Somos Defensores, [Informe Enero – Junio 2015: Los Nadies](#), August, 2015, p. 49.

⁶⁸³ AFP, [En 2015 han sido asesinados 69 defensores de derechos humanos en Colombia: ONU](#), El Espectador, August 19, 2015; see also, AFP, [Durante 2015 han asesinado a 69 activistas en Colombia](#), El Economista, August 19, 2015.

340. The IACHR notes that great majority of these threats and intimidations are allegedly committed by illegal armed groups. In 72% of the cases of the attacks recorded between January and June 2015, paramilitary groups have been identified as allegedly responsible; 22% is related to unknown persons and five per cent to State agents.⁶⁸⁴ The paramilitary groups include the “Águilas Negras,” who have allegedly threatened 67 defenders between January and June, 2015, 47 by the “Rastrojos”, nine by the “Urabeños” (also known as “El Clan Úsuga”) and 59 defenders by other groups.⁶⁸⁵ Said groups were purportedly using emails and pamphlets to distribute their threats in most of the cases reported between 2010 and 2014.⁶⁸⁶ According to the information received by the IACHR, during 2015 these paramilitary groups continue identifying human rights defenders as military targets and, as consequence, as legitimate targets.⁶⁸⁷ In addition, in the context of its 154 Period of Sessions, the IACHR received information submitted by petitioner organizations about stigmatization by the State of human rights defenders who denounce extrajudicial executions.⁶⁸⁸

341. In the hearing regarding the situation of human rights defenders who advocate for land restitution, it was informed that the legal and institutional difficulties encountered in the implementation of Law 1448 of 2011 to provide an effective restitution of land the requesting organizations denounced the murders of 70 leaders of land claimants during 2007-2015, and stressed that in the Department of Antioquia alone 19 of those murders were committed.⁶⁸⁹

342. Even though it is difficult to limit to one cause the increase of threats recorded in 2014 and during the first half of 2015, according to experts and civil society organizations, it is due in great part to the Havana peace talks intended to put an end to the armed conflict – a process that has provoked some polarization among sectors of society - as well as the participation of the victims in said peace talks.⁶⁹⁰ In this regard, the Commission notes that in 2015 it was reported that, between September and December 2014, there were 15 massive threats against human rights defenders participating in the peace talks in Havana. Emails and pamphlets containing the threats were distributed in the cities and delivered to the houses of those threatened. The perpetrators of the massive threats are allegedly the paramilitary groups called “Águilas Negras”, “los Rastrojos”, “los Urabeños”, “Ejército Anti Restitución”, as well as someone identified as “José Peralta.”⁶⁹¹

343. The State reported that the FGN has been following up on the killings of land restitution leaders reported at that hearing, with a total of 44 investigations under Law 1448 of 2011. It stated that nine of those were with the National Directorate of Sectionals and Citizen Security, that a conviction had been handed down in one, and that two were still at the trial stage. It also reported on the arrest of the hitman from the *Anti Restitución* criminal organization who had been charged with the murder of Isa Olmos Cabrera, a leader of claimants of forcibly seized lands.⁶⁹²

⁶⁸⁴ [Sistema de Información sobre Agresiones contra Defensores de Derechos Humanos en Colombia](#).

⁶⁸⁵ Programa Somos Defensores, [Informe Enero – Junio 2015: Los Nadies](#) (2015), p. 50.

⁶⁸⁶ Programa Somos Defensores, [Informe Anual 2014: La divina comedia](#), February, 2015, p. 60-61.

⁶⁸⁷ IACHR, Press Release No. 7/15, [“IACHR Condemns killings and threats against human rights defenders and journalists in Colombia”](#), January 30, 2015.

⁶⁸⁸ IACHR, Hearing on denounces of extrajudicial executions and impunity in Colombia, 154 Period of Sessions, March 19, 2015.

⁶⁸⁹ IACHR. Information presented by the requesting organizations in the hearing about the situation of human rights defenders who advocate for land restitution in Colombia, October 22

⁶⁹⁰ See, for example: Programa Somos Defensores, [Informe Anual 2014: La divina comedia](#), February, 2015, p. 62.

⁶⁹¹ Programa Somos Defensores, [Informe Anual 2014: La divina comedia](#), February, 2015, p. 56; see also: AI, Urgent Action: [“Otra Amenaza de Muerte contra Defensores y Defensoras”](#), December 15, 2014; Efe, [Piden al Gobierno medidas eficaces para cortar amenazas a defensores de DD.HH.](#), October 26, 2014; and María Florez, [“Amenazas empañaron el día nacional de DD.HH.”](#), El Espectador, September 11, 2014.

⁶⁹² Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GA/ID-15-120799, received December 9, 2015, p. 39.

344. It further noted the creation in February 2015 of special task forces within the National Directorate of the CTI, to investigate and prosecute attacks on rights defenders made using electronic media.⁶⁹³ It also reported on the creation in August of similar groups for the prioritization of situations in which defenders were victimized, with emphasis on three situations: (i) murder, attempted murder, and threats against indigenous and Afro-Colombian defenders, (ii) murder, attempted murder, and threats against claimants and state agents involved in land restitution processes, and (iii) collective threats against human rights defenders.⁶⁹⁴ It said that as a result, priority had been placed on eight cases of murder in Antioquia and Córdoba related to land restitution processes in Urabá.⁶⁹⁵

345. The Commission values these State's efforts and reiterates 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.⁶⁹⁶

346. In that regard, in its report, the Commission made a number of recommendations to the State calling on it to ensure that it does not use its punitive power and its organs of justice to criminalize human rights defenders in retaliation for their activities protecting human rights, and ensure that its officials refrain from making statements that stigmatize human rights defenders. The Commission recognizes that the State reported in its prior observations that it did not accept this recommendation because the Office of the Attorney General has the obligation to investigate the existence of a crime, and that it would be a mistake to state *a priori* that there is some criminalization when there are ongoing investigations in civilian lawsuits.⁶⁹⁷ Also, the State mentioned that it understands the recommendation in the sense that "the duty to investigate cannot be understood as an undue use of criminal law," and that according to the Colombian legal norms, the Attorney General's Office has the duty to investigate the claims that are submitted about alleged behaviors that constitute a crime, "regardless of the quality, profession or activity of both the complainant and the respondent."⁶⁹⁸

347. In that respect, 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.⁶⁹⁹ 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.⁷⁰⁰ In addition, the State should ensure that authorities in charge of investigating crimes collect the

⁶⁹³ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 39.

⁶⁹⁴ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 39.

⁶⁹⁵ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 39.

⁶⁹⁶ IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, December 31, 2013, para.1141 and IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/SER.L/V/II/Doc.66, December 31, 2011, paras. 7-8.

⁶⁹⁷ 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, pág. 393.

⁶⁹⁸ Observations of Colombia on the Draft of Chapter 4 of the Annual Report of the IACHR 2014. Note S-GAIIID-15-017750, 26 February 2015, p. 34.

⁶⁹⁹ 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, paras. 96 and 97. See also Report No. 55/97, Case 11.137, admissibility, Juan Carlos Abella, Argentina, November 18, 1997, para. 392.

⁷⁰⁰ 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.

necessary evidence to show the existence of wrongdoing before pressing charges,⁷⁰¹ 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.⁷⁰²

348. 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 pronouncement by the Minister of Interior, Juan Fernando Cristo, who stated before the Congress House of Representatives on May 27, 2015 his rejection of the attacks against human rights defenders and stated that “we must unmask these criminals who are engaged through networks of pamphlets in threatening and generating uncertainty for human rights defenders and their next of kin, so we are committed to catch them.”⁷⁰³ At the same time, he stressed the commitment of the Government to guarantee the right to defend human rights in Colombia.⁷⁰⁴

349. 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, and armed groups operating outside the law could consider that the acts of violence aimed at silencing defenders enjoy the acquiescence of governments.⁷⁰⁵ 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.⁷⁰⁶

350. In the same line of the promotion of the right to defend human rights, the Commission values the efforts made by the State to hold a public act of acknowledgment of its international responsibility and to apologize to the relatives of Jesús María Valle Jaramillo, a criminal lawyer and human rights defender who was killed for his activities as a defender in February, 1998, to comply with the reparations ordered by the I/A Court in its judgement issued on the basis of these facts.⁷⁰⁷ It also appreciates the information submitted on the commemoration of International Human Rights Day on December 9, 2015, through the national forum on “Nonstigmatization and Construction of Peace,” to foster understanding of the individual and collective responsibility of promoting equality and nondiscrimination among the State and society.⁷⁰⁸

351. Also, as stated by the Commission last year, it salutes the steps implemented by the State in this area to formally value the work of defenders and social leaders, for example, the “acts of public recognition” in order to “support and spotlight the importance of the job of the human rights defense.”⁷⁰⁹ The

⁷⁰¹ 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.

⁷⁰² 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.

⁷⁰³ El País.com.co. [Gobierno pide resultados para conocer autores de amenazas a defensores de derechos humanos](#), May 27, 2015.

⁷⁰⁴ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 61.

⁷⁰⁵ IACHR, [Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II.124., Doc. 5 rev.1, 2006 para. 170.

⁷⁰⁶ IACHR, [The Inter-American Legal Framework regarding the Right to Freedom of Expression](#), OEA/Ser.L/V/II/ICIDH/RELE/INF.2/09/, December 30, 2009, par. 203.

⁷⁰⁷ Consejería Derechos Humanos de Colombia, [Estado colombiano realiza Acto Público de Reconocimiento de Responsabilidad Internacional y pide perdón a los familiares de Jesús María Valle Jaramillo](#), February 27, 2015; see also: Cancillería de Colombia, [Cancillería participa en el acto de reconocimiento de responsabilidad internacional del Estado en cumplimiento de la sentencia de la Corte IDH en el caso de Jesús María Valle Jaramillo](#), February 27, 2015.

⁷⁰⁸ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR’s Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, p. 38.

⁷⁰⁹ IACHR, Annual Report 2014, Chapter V, Colombia, para. 59.

Commission considers that this is an important effort to achieve that human rights defenders work be recognized by society and by State agents as a legitimate activity that is necessary for democracy and peace building. However, it is worth mentioning that the Commission received complaints about the absence of the State at the ceremony convened by the State on January 29, 2015 to recognize the work of human rights defenders.⁷¹⁰ Regarding this matter, the State reported that there was no such absence, given the presence of representatives from all the entities that participate on the National Panel of Guarantees for Human Rights Defenders; what did happen was the Minister of the Interior was delayed in arriving at the recognition ceremony, as a result of which the organizations left the venue and the event could not take place.⁷¹¹ In light of this, the Commission recommends that the state strengthen measures to have a closer, constructive and participatory relationship with civil society organizations and those who work in the defense of human rights.

352. The Commission also urges the State to adopt comprehensive public policies and to continue progressing with the effective implementation of those policies that already exist, with the aim of protecting human rights defenders at risk, as well as to investigate the violations that they have suffered and to punish those responsible. In this regard, the Commission values the passing of Order 249 of February 19, 2015 by the Office of the Attorney General by which a special task group was created to investigate punitive behaviors related to threats made using electronic means against members of unions, human rights defenders, journalists, or State agents that work for the Judicial branch or the Prosecutors Office based on the role they play.⁷¹²

353. Civil society organizations have recognized the importance of the creation of technical subgroups and have stated that these have allowed for the development of a specialized dialogue with authorities and persons directly involved and responsible for protection and investigation.⁷¹³

354. 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.⁷¹⁴ In this regard, the State claimed that 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 standing members of the National Roundtable on Guarantees; holding “acts of public recognition for the work of defenders,” the Evaluation Committee of Risk and Recommendation of Measures (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 territory.”⁷¹⁵ 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 with 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. In this regard, the Commission

⁷¹⁰ FCSCPP, Comité Permanente por la Defensa de los Derechos Humanos – Valle del Cauca, Unión de Ciudadana de Colombia-Seccional Cali, Ruta Pacífica de las Mujeres, Valle del Cauca, Procesos de Comunidades Negras, Palenque Regional el Congal, Madres por la Vida, MOVICE, Capítulo Valle del Cauca, Departamento de Derechos Humanos CUT – Valle, SINTRAUNICOL – Subdirectiva Cali, Fundación Guagua – Galería de la Memoria Tiberio Fernández Mafla, Cabildo Indígena Rural Nasa Alto Buena Vista, Corporación para el Desarrollo Regional, Foro Nacional por Colombia, Capítulo Valle, Asociación Hombres y Mujeres de Triana, Comité de Mujeres Corteras de la Caña, Asociación ECATE, Asociación NOMADESC, Asociación Centro Mujer Taller Abierto, Organización Rostros & Huella del Sentir Humano, Delegados Techo Común, Nodo suroccidente de la CCEEU, [Ausencia estatal en el Acto de reconocimiento a Defensoras y defensores de Derechos Humanos](#), January 29, 2015.

⁷¹¹ Republic of Colombia. *Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation*. Note S-GAIIID-15-120799, received December 9, 2015, pp. 38 and 39.

⁷¹² Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 60.

⁷¹³ Programa Somos Defensores, [Informe Especial Protección "Al Tablero"](#), 2014.

⁷¹⁴ Programa Somos Defensores, [Informe Especial Protección "Al Tablero."](#) 2014.

⁷¹⁵ 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. 34.

values that, to the end of 2014, 25 CERREMs were held in the Departments of Antioquia, Chocó, Putumayo and Cauca.⁷¹⁶

355. 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.⁷¹⁷ 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.

356. Another recommendation from the Commission to the Colombian State is that it guarantees 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. As part of said recommendation, the Commission called for the State to ensure that the personnel who participate in the security schemes for human rights defenders are designated with the participation of and coordinating with the beneficiaries so as to build confidence. The Commission acknowledges that the State has previously stated that it guarantees the effective participation of defenders who are beneficiaries and that National Protection Unit even changes personnel in cases where security escorts fail to inspire confidence.⁷¹⁸ However, as indicated (see *supra* II.B.) the Commission has continued to receive information that alludes to the existence of serious faults in terms of the functioning of the internal mechanism of preventive measures due in large part to the lack of adequate finance.

357. In the context of the fight against impunity, the State has indicated that during 2015 the National Direction of Sectional Prosecution Units and Citizen Security of the General Attorney's Office included in its action plan the topics of human rights defenders, union workers, and journalists as criteria for follow up and evaluation of the performance of Sectional directors. According to the State, the topics aim to: identify the cases for each of the sectional units; update the information systems; and definition by the Sectional Prosecution Unit of the strategies that would allow for effective progress of the investigations in the different subject matters related to human rights violations.

358. The State informed in its reply that, throughout 2015, activities to promote the investigations have been carried out, and Technical Juridical Committees have been formed to follow up on cases, generating strategies involving the use of contextual research tools. In addition, the State reported that in the DINAC there are nine investigations under Act 906 of 2004 for threats against union members. According to the State, these investigations are in the preliminary investigation stage.⁷¹⁹

359. The Commission notes, however, that many of the attacks against human rights defenders in Colombia remain in impunity. In terms of the numbers of impunity, a report from *Programa Somos Defensores* concludes that the analysis of 219 cases of killings of human rights defenders committed between 2009 and 2013 shows that 95% of the cases remain uninvestigated. As of July 2015, it is stated that the impunity number for these cases are 100% given the lack of actions promoted by the Prosecutor's Office. It is alleged

⁷¹⁶ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 61.

⁷¹⁷ Office of the Advisor on Human Rights, [Gobierno reactivó la Mesa Nacional de Garantías para Defensores de Derechos Humanos](#), October 21, 2014.

⁷¹⁸ 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, pág. 394.

⁷¹⁹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015.* Note S-GAIIID-15-088842, September 14, 2015, p. 61.

that there are no results in cases of murders of defenders in the last five years.⁷²⁰ On this point, even though the Commission takes into account the new information provided by the State on the implementation of activities aimed at the promotion of the investigation and the creation of technical legal committees,⁷²¹ the IACHR deems that this persistence, the increase in attacks against defenders and the lack of investigation constitute indicators that the State must: (a) continue monitoring and redesigning the public policies already implemented with the aim to ensure that the objectives are fully met and; (b) implement new policies aimed at complying with the recommendations made by the IACHR.

360. Last, 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.⁷²² 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.⁷²³ However, the Commission has received information of concern in the sense that as of mid-2015, the Advisory Committee had met very few times, and, together with other challenges, seems to be making very slow progress towards fulfilling its mandate.⁷²⁴

361. In the same line, the Commission expresses concern regarding mechanisms to intercept communications, which were being used by the National Police of Colombia and the Attorney General's Office, among other State authorities.⁷²⁵ Despite the guarantees that they may have, these surveillance systems have operating weaknesses as in some cases they lack scrutiny and effective controls, which can lead to the misuse of such systems. In this sense, the Commission urges the Follow-up Legal Commission to the activities of Intelligence and counterintelligence of the Republic's Senate to take all necessary measures to fulfill its mandate and that in doing so, it carries out investigations to determine: (a) the nature, type, and number of monitoring activities that are carried out by the police, as well as other State intelligence entities and; (b) if the guarantees established by Act 1621 of 2013 are sufficient to prevent unlawful practices. This Commission must assure the access to information regarding its activities and investigations, according to the international standards set in this matter.

362. In view of the above, the Commission maintains its recommendations and calls on the Colombian State to effectively implement the policies adopted and, on the other hand, to adopt the urgent necessary measures to adequately protect the life and personal integrity of human rights defenders and their families to support the work they do.

III. CONCLUSIONS

1. 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*, and to develop and keep up the work thus far achieved.

⁷²⁰ Programa Somos Defensores, [Informe Enero – Junio 2015: Los Nadies](#), August, 2015, p. 31.

⁷²¹ Republic of Colombia. *Progress in the promotion, guarantee and defense of Human Rights in Colombia. First semester of 2015*. Note S-GAIIID-15-088842, September 14, 2015, p. 61.

⁷²² 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.

⁷²³ See: Ministry of the Interior, [Sociedad civil eligió su representante para la Comisión de depuración de datos y archivos de inteligencia](#), June 24, 2014.

⁷²⁴ See *e.g.*, Diana Carolina Durán, “[Al DAS también le ofrecieron el cuestionado software espía](#)”, *El Espectador*, July 18, 2015 (citing Senator Carlos Fernando Galán, President of the Advisory Commission, who explains that the Commission is in stand-by as they are waiting for the approval of some protocols for the management of sensitive information by Congress.)

⁷²⁵ Programa Somos Defensores, [Informe Enero – Junio 2015: Los Nadies](#), August, 2015, pp. 40-41; Privacy International, [Un estado en la sombra: vigilancia y orden público en Colombia](#), August, 2015, pp. 7-9.

2. 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 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 this 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.

3. The Commission reaffirms its commitment to work with the Colombian State to find solutions to problems and challenges identified, and to 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.