

Chapter V

Follow-up of recommendations made by the IACHR in its country or thematic reports

Follow-up on the recommendations made by the IACHR in the report entitled Truth, Justice, and Reparation: Sixth Report on the Human Rights Situation in Colombia

CHAPTER V

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

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

I. INTRODUCTION

1. The principal purpose of the present report is to follow up on recommendations made in the Truth, Justice, and Reparation Report: Fifth Report on the Human Rights Situation in Colombia (hereinafter also "Truth, Justice, and Reparation Report" or "the IACHR Report") adopted by the Inter-American Commission on Human Rights (hereinafter "the IACHR" or "the Commission") on December 31, 2013, following the IACHR visit to Colombia in December 2012. Within this framework, the IACHR also keeps track of implementation of the Final Peace Agreement between the Government of the Republic of Colombia and the Revolutionary Armed Forces of Colombia (FARC) reached in November 2016 (hereinafter "Peace Agreement"). Specifically, this section will focus on implementation of Item 6.2 of the Peace Agreement, entitled "Ethnic Perspectives."

2. The Commission monitored compliance with the recommendations formulated in its Truth, Justice, and Reparation Report in Chapter V of its Annual Reports from 2014 to 2019. Over the past three years, the Commission has also been taking into account the efforts made by the State after the signing of the Peace Agreement on the understanding that implementation of the Accord goes hand in hand with fulfillment of the Colombian State's international human rights obligations. The Commission likewise reiterates its conviction that consolidating peace is a prerequisite for respecting, guaranteeing, and achieving effective enjoyment of human rights and full exercise of the rule of law. Based on that understanding, the IACHR reiterates its commitment to achieving peace in Colombia, so that, through this report and the other mechanisms at its disposal, the Commission offers the State and Colombian society as a whole, its cooperation with this process, which will take years to complete.

3. In the Commission's view, Colombia in 2020 continued to exhibit a series of human rights challenges, above all in connection with citizen security. In that regard, the IACHR notes a particular concentration of violence in certain Colombian territories characterized by scant presence of the State, in which the hardest-hit segments are those that historically and structurally have had their rights impaired, such as Indigenous peoples, Afrodescendants, peasants, LGBTI, women, children, and adolescents. One indicator illustrating this is the large number of massacres (66) documented by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in 2020. Likewise, the IACHR reiterates its particular concern regarding the violence faced by human rights defenders and social leaders in Colombia. Finally, since the signing of the Peace Agreement, the United Nations Verification Mission in Colombia has documented the murder of 248 former combatants who signed it, 73 of them killed in 2020, in addition to 55 attempted homicides and 20 disappearances.

4. In its observations on the draft of this report, the State provided information on security measures -with a differential approach- taken by the National Protection Unit (UNP, for

its Spanish initials), regarding to the population that is within the collective evaluation routes, there are 101 beneficiaries with measures, involving 198,000 people through 34,769 actions implemented with a differential approach¹. These measures were provided to 81 leaders, representatives or members of ethnic groups, 10 to victims of violations of human rights or international humanitarian law, 9 to human rights defenders, and the remaining one was implemented in agreement with the n Special Jurisdiction for Peace (JEP, for its Spanish initials). Among 34,769 actions, 31,844 were granted for indigenous leaders; and, 1,126 were issued in favor of representatives of Afro-Colombian communities². In addition, approximately 80% of the 34,769 actions are concentrated in providing security elements such as: distinctive vests (4,233), rubber boots (4,156), cap (3,690), rechargeable flashlight (3,457), raincoat (2,457), raincoat (2,690), waterproof cape (2,457) and a rechargeable flashlight (2,690). 457 waterproof coat (2,993), baton (2,610), canteen (2,359) bag/purse (1,498), scarves (1,457), tent for 1 person (1,351), pants (1,098)³. According to the information, the departments with the highest concentration of measures are Chocó, Cauca, Valle del Cauca and Antioquia⁴.

5. On September 23, 2020, the Commission notified the State that it planned to publish a follow-up report to the recommendations made in the Truth, Justice, and Reparation Report, in which it had decided to focus on the core recommendations in the present report. To that end, it requested information regarding implementation of those recommendations in particular, while continuing to monitor compliance with all the recommendations made in its Truth, Justice, and Reparation Report. On that same date, the IACtHR also asked the Colombian Ombudsperson's Office for information along the same lines, while informing national civil society organizations of its intention to draw up this follow-up report to the recommendations and asking them to provide any information they deemed relevant, with their respective fields, regarding their implementation.

6. The State presented its reply on October 30, 2020. The Commission appreciates and thanks the Colombian State for the information received, which, where applicable, was included in the present report. In addition, the IACtHR thanks civil society organizations for the information they provided.

7. In drawing up this report, the Commission also drew on the information it garnered in the course of its monitoring of the overall situation of human rights in the country; the information received at public hearings; the half-yearly report of the OAS Mission to Support the Peace Process in Colombia (MAPP/OEA, for its Spanish initials); inputs of the precautionary measures mechanism; and requests for information filed pursuant to Article 41 of the American Convention on Human Rights (hereinafter "the American Convention"); as well as information found in other sources in the public domain, and decisions and recommendations of specialized

¹ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACtHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia". Annex 1, p.2.

² Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACtHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia". Annex 1, p.2

³ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACtHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia". Annex 1, p.3.

⁴ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACtHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia". Annex 1, p.5-6.

international organizations and agencies, along with other sources.

8. On February 9, 2021, the IACHR forwarded to the State a copy of the preliminary draft of this report in accordance with Article 59 (10) of its Rules of Procedure, and asked that the State submit its comments. On March 9, 2021, the Commission received the State's observations and comments, which were incorporated, as applicable, into this version. The complete document is attached to the present Report.⁵ The final report was adopted by the Commission on March 26, 2021.

9. The State of Colombia indicated in its report that: "it appreciates its constant interaction with the IACHR and, at the same time, the chance it has to list recent development in Colombia in the area of human rights through its annual monitoring of the recommendations included in the Report." Likewise, the State asked the IACHR to make "a comprehensive assessment of the progress described, particularly by taking into consideration the numerous developments described and the multiple initiatives pursued by the State with respect to honoring its international human rights obligations, so much so that it considers that many of the recommendations exhibit substantial compliance."⁶.

10. This report is divided into four sections: (I) Introduction, (II) The Final Agreement Implementation Process, (III) Follow-up to Recommendations, and (IV) Conclusions. Section III is devoted to consideration of the current situation with respect to the recommendations made by the Commission and the steps taken by the State to implement them. That section is split into eight thematic areas. For each, it analyzes major progress made and any challenges the State is facing with implementation. The last area, on especially vulnerable groups, is, in turn, divided into eight sub-sections. Finally, in Section IV, the Commission presents its conclusions and reiterates the importance of the Colombian State fully complying with the recommendations made in the IACHR report.

II. THE FINAL AGREEMENT IMPLEMENTATION PROCESS

11. The Inter-American Commission on Human Rights reaffirms that consolidating peace is a prerequisite for the free exercise of, and full respect for, the human rights of the Colombian population and, especially of Colombia's ethnic groups,⁷ which have been especially hard-hit by the internal armed conflict.⁸ Accordingly, based on its mandate to observe and defend human rights in the region, the IACHR considers that implementing the Final Agreement to End the Conflict and Build a Stable and Lasting Peace (hereinafter "Peace Agreement"), is a core component for the consolidation of human rights in Colombia⁹. In this way, monitoring the full implementation of the Peace Agreement and pronouncing on the progress and challenges of this process are central actions for the fulfillment of the functions of the IACHR established in Article 41 of the American Convention on Human Rights.

⁵ República de Colombia, Información adicional a la Nota MPC/OEA No.:238/2019 de 15 de marzo de 2019.

⁶ Government of Colombia, Contributions by the Colombian State to Chapter V, October 30, 2020, Introduction.

⁷ The IACHR regards the following as ethnic groups: indigenous peoples and tribal communities containing Black, Afro-Colombian, Raizal and Palenquera communities, as well as the Gypsy or Roma people.

⁸ IACHR, Press Release No. 185/20, IACHR Asks Colombia to Step Up its Efforts to Comprehensively Implement the Final Peace Agreement, July 31, 2020.

⁹ IACHR, Press Release No. 185/20, IACHR Asks Colombia to Step Up its Efforts to Comprehensively Implement the Final Peace Agreement, July 31, 2020.

12. Likewise, the IACHR has analyzed in its annual reports corresponding to the years 2017¹⁰, 2018¹¹ and 2019¹² the implementation of the Peace Agreement, with the understanding that the implementation of the Agreement entails compliance with part of the recommendations made by the Inter-American Commission on Human Rights in its report: Truth, Justice and Reparation: Fourth Situation Report¹³.

13. Four years after the signing of the Peace Agreement between the Colombian State and the FARC-EP, the Commission acknowledges the progress made with implementing it, while nevertheless stressing that there are still structural challenges hampering its implementation. On this, the OAS Mission to Support the Peace Process in Colombia has stated that, even though the Peace Agreement is still nowhere near removing the underlying ("structural") causes that triggered and have continued to fuel armed conflict in Colombia for decades, "it has made it possible to make significant progress toward forging peace, both socially and institutionally."¹⁴

14. Likewise, in its Second Report to Congress on the current state of Progress with Implementing the Peace Agreement 2019-2020, the Attorney General's Office also underscore progress made with implementing the points agreed upon and points out that implementation "[...] continues to be fragmented and heterogeneous, with only limited dialogue with citizens, still incipient efforts to apply differential approaches, and shortcomings with regard to planning, programming, and execution of the resources assigned to implementation."¹⁵

15. Along the same lines, in its recent assessment of the first three years of the Accord, the Kroc Institute for International Peace Studies, of the University of Notre Dame, invited by the signatories to supervise, technically verify, and evaluate implementation, underscored that "the Government's prioritization made major progress possible on some fronts. However, that progress has not always been consistent with the Agreement as a whole."¹⁶

16. The Commission observes that one of the major hurdles for implementing the Agreement is violence against social leaders in Colombia, which is concentrated in population groups and communities that have suffered historical and structural violation of their rights and thrives in territories where the presence of the State is scant and illegal armed groups compete for power and control of a series of illegal economic activities (drug trafficking, illegal mining,

¹⁰ IACHR, Annual Report 2017, OEA/Ser.L/V/II. Doc. 210, 31 diciembre 2017

¹¹ IACHR, Annual Report 2018, OEA/Ser.L/V/II. Doc. 30. 17 de marzo 2019

¹² IACHR, Annual Report 2019, OEA/Ser.L/V/II. Doc. 5 24 febrero 2020

¹³ IACHR, Verdad, justicia y reparación: Cuarto informe sobre la situación, OEA/Ser.L/V/II. Doc. 49/13, 31 diciembre 2013

¹⁴ OAS, MAPP/OEA conmemora 4 años de la firma del Acuerdo Final de Paz y llama a persistir en su implementación, September 26, 2020.

¹⁵ Office of the Inspector General of the Nation (PGN) Segundo Informe al Congreso sobre el estado de Avance de la Implementación del Acuerdo de Paz 2019-2020, September 2020, p. 9

¹⁶ In its report submitted in July 2020, the Institute reckoned that in 2019, overall, 6% of the Accord had been achieved. It also drew attention to a change in the nature of the process. Whereas, in the first 2 years, the focus was on laying down arms and institutional arrangements (*la arquitectura institucional*), in 2019, the emphasis was on developing the latter in the territories most affected by the armed conflict, which requires greater inter-agency coordination and stepped-up deployment at the local level. Cf. Kroc Institute, Three Years After the Signing of the Final Agreement in Colombia: Moving Toward Territorial Transformation, December 2018 to November 2019, June 2020, pp. 15 and 28.

land hoarding, and so on).¹⁷ According to the Technical Secretariat of the International Verification Component, it is there, in those territories, where the chances of cementing stable and lasting peace will play out.¹⁸

17. Many of the social leaders murdered this year in Colombia are members of ethnic communities and their actions involved defending their collective and ethnic-territorial rights.¹⁹ The Kroc Institute underscores the fact that the murders of leaders and former combatants have devastating impacts on the way people perceive implementation of the Agreement and it stresses that the security and protection mechanisms established in points 2 and 3 were implemented sporadically, especially the Comprehensive Security System for the Exercise of Politics (SISEP) and the Intersectoral Commission for Rapid Response to Early Alerts (CIPRAT).²⁰

18. The Commission considers that Peace Agreements offer an opportunity to transform the structural causes underlying the long-standing and current violence in the country. Thus, implementation of the Agreement symbolizes the possibility of advancing the pacification of the country.

19. In that context, through its monitoring work, the Commission has kept track of progress and challenges encountered with implementing the Ethnic Perspective chapter of the Peace Agreement in 2020. That emphasis stems from the Commission's conviction of the opportunity afforded by implementation of the Peace Agreement in terms of repairing the damage done to the rights of the victims of the armed conflict, especially the historical and structural violation of the rights of indigenous peoples and the Afro-descendant persons, as well as other ethnic groups.

1. Comprehensive Rural Reform (CRR)

20. The Commission stresses that including rural reform as the first item in the Peace Agreement underscored the central part played by agrarian issues in the origin, development, and impacts of the armed conflict. On that, the IACHR highlights the fact that rural areas have been home to most of the human rights violations committed against Colombia's inhabitants as a result of the conflict. Moreover, inequality and discrimination in those parts of the country have long triggered widespread informality and legal insecurity with respect to land tenure and territory.

21. According to the Ethnic Commission and the Framework Plan for Implementing the Agreement, key concerns for ethnic communities are: access to land and the Land Fund; implementation of the Development Programs with a Territorial Approach (PDET, for its Spanish initials) and the Regional Transformation Action Plans (PATR, for its Spanish initials); immediate action plans for peoples at risk of physical and cultural extermination; participation in the

¹⁷ IACHR, Press Release 251/20, [IACHR Expresses Concern over Increase in Violence in Colombia in Territories Where Illegal Armed Groups Are Operating](#), October 13, 2020.

¹⁸ Secretaría Técnica del Componente Internacional de Verificación CINEP/PPP-CERAC, [Séptimo informe de verificación de la implementación del Acuerdo Final de Paz en Colombia](#), September 2020.

¹⁹ IACHR, Press Release 251/20, [IACHR Expresses Concern over Increase in Violence in Colombia in Territories Where Illegal Armed Groups Are Operating](#), October 13, 2020.

²⁰ Kroc Institute, [Three Years After the Signing of the Final Agreement in Colombia: Moving Toward Territorial Transformation](#), December 2018 to November 2019, June 2020, p. 14.

National Multipurpose Property Registry System; the strengthening of self-management mechanisms and resolution of land and territory disputes.

22. With respect to comprehensive rural reform, the Framework Plan for Implementation highlights, with regard to access to and use of land, agreement on: (i) 100% response to requests for access to the Land Fund and other land access mechanisms for constituting, rehabilitating, and expanding protections and titling of collective territories; legal security covering all ethnic territories; (iii) the participation of ethnic groups in the property registry (cadaster) information system; (iv) special handling of the Environmental Zoning Plan in the ethnic territories; and (v) resolution of 100% of territorial use and tenure disputes.²¹

23. At the same time, regarding the Development Programs with a Territorial-Based Focus, and Comprehensive Rural Reform (CRR) Plans, the goals and indicators have to with: (i) guaranteeing actual and effective participation by ethnic groups in the design and implementation of the various instruments; (ii) strengthening ethnic groups' own educational systems within the framework of the National Rural Education Plan; (iii) agreeing on National CRR Plans, such as the plan for Roads for Regional Integration, Construction and Home Improvement, Rural Electrification, Rural Connectivity, Risk, and Drainage; (iv) Guaranteeing consultation with, and the participation of, ethnic peoples, and especially ethnic women, in the design and implementation of the various plans in ethnic territories.

1.1 Access to land, including the Land Fund

24. With respect to access to land, the Commission underscores the adoption by the National Land Agency (ANT, for its Spanish initials) of the "Operational Guide for Implementing Community Initiatives with an Ethnic Differential Approach relating to Land Regulation." The purpose of that Guide, covering preparation, implementation, and finalization, as well as guidelines on supervision, follow-up, and document management, is to establish broad operational guidelines on implementing community initiatives with an ethnic differential approach for government officials and/or National Land Agency contractors, private entities, ethnic communities, cooperation agencies, oversight bodies, and the general public.²²

25. The IACHR likewise highlights the setting up of the Land Fund through Decree 902 of 2017, aimed at guaranteeing access to land.²³ In that connection, the Commission welcomes Constitutional Court judgment C-073 of 2018, which included *black, Afro-Colombian, raizal, and palenquera* communities among the Fund's beneficiaries.²⁴

²¹ Comisión Étnica para la Paz y la Defensa de los Derechos Territoriales, 1 Informe de cumplimiento del Capítulo Étnico en el marco de la implementación del Acuerdo Final de Paz entre el Gobierno de Colombia y las FARC-EP, December 2018. pp. 16 and 17.

²² Agencia Nacional de Tierras, Guía operativa para la implementación de iniciativas comunitarias con enfoque diferencial étnico, asociadas al componente de legalización de tierras, July 27, 2018. p. 8

²³ This Fund was conceived as a special account, without legal person status, with a land sub-account for granting territories to ethnic groups. This "sub-account" can receive both monetary resources for formally establishing territories and land subject to expiry of property rights (*extinción de dominio*), provided they are adjacent to the ethnic territories.

²⁴ Corte Constitucional de Colombia, Sentencia C-073/18, fundamento 6.4.1., July 12, 2018: "...based on a comprehensive and systematic reading of the whole content of Article 18, the special legislator (*legislador extraordinario*) sought to include all ethnically differentiated communities as beneficiaries of the "sub-account of land for endowing ethnic communities," thereby not only eliminating any inequality but also guaranteeing the effectiveness of the principles of plurality and cultural diversity. Accordingly, the scope of Article 18 needs to be determined. There is no room for a restrictive

26. On the other hand, the Commission stresses that, according to the Ombudsperson's Office²⁵ and the Technical Secretariat of the International Verification Component²⁶, the land sub-account, which should be a key tool for formalizing the collective property rights of ethnic groups over their territories, is not in fact up and running. Nor has it been regulated within the National Land Agency. The Technical Secretariat of the International Verification Component underscores, moreover, that progress toward guaranteeing access to land for ethnic groups and the other groups prioritized within the framework of the Peace Agreement and Decree 902 of 2017 has been "precarious".²⁷ It pointed out that, as of June 30, 2020, "no piece of land (*predio*) had been entered into the sub-account of land to be given to indigenous communities."²⁸

27. At the same time, the Commission was told that territories entering the Administration sub-account for *administration purposes only* were being reported as progress with implementing the Land Fund.²⁹ That is to say, territories that had already been assigned to ethnic groups before the Peace Agreement, but for which collective ownership had not yet been fully formalized. For example, indigenous reserves³⁰ or land pertaining to the old National Agrarian Fund that had been physically delivered and occupied by communities, but still lacked formal collective ownership title.³¹

28. The IACHR has also taken note of information pointing to a decline in the resources allocated to social regulation of property and the little that has been done to implement such a policy. In that regard, according to data provided by the Office of the Comptroller-General and the Ombudsperson's Office,³² in 2020, the budget appropriation for this pillar was 173,397 million Colombian pesos, much of it (\$103,087 million) for the "Property Register Updating and Management" investment project run by Instituto Geográfico Agustín Codazzi (IGAC). The ANT

interpretation, when the creation of the corresponding sub-account includes communities that, already by virtue of the name given to them, are ethnically differentiated."

²⁵ Defensoría del Pueblo [Ombudsperson's Office], Informe Defensorial el Posacuerdo en los Territorios Étnicos, August 2020, p. 47.

²⁶ Secretaría Técnica del Componente Internacional de Verificación CINEP/PPP-CERAC, Primer informe de verificación de la implementación del enfoque étnico en el Acuerdo Final de Paz en Colombia, September 2020, p.29.

²⁷ Secretaría Técnica del Componente Internacional de Verificación CINEP/PPP-CERAC, Primer informe de verificación de la implementación del enfoque étnico en el Acuerdo Final de Paz en Colombia, September 2020, p.49.

²⁸ Secretaría Técnica del Componente Internacional de Verificación CINEP/PPP-CERAC, Primer informe de verificación de la implementación del enfoque étnico en el Acuerdo Final de Paz en Colombia, September 2020, p.50.

²⁹ Pursuant to Article 22 of Decree 902 of 2017, there is a sub-account in the Land Fund a part of which consists (but only for administration purposes. i.e., without altering the assignment of the property in question to indigenous communities) of a series of territorial categories or typologies that, by virtue of prior regulations on territorial rights were already assigned to specific ethnic groups (indigenous reserves are a case in point).

³⁰ According to Law 160 of 1994, indigenous reserves are types of indigenous territory vested with the following characteristics under Article 63 of the Political Constitution: they cannot be embargoed, title to them does not prescribe under any statute of limitations, and they are inalienable (i.e., cannot be given away or taken away) [inembargabilidad, imprescriptibilidad e inalienabilidad]. Nevertheless, pursuant to Decree 1017 of 2015, the reserves assigned to indigenous communities do not formally constitute collective ownership rights, for which the term "safeguarded or protected area" (*resguardo*) exists; rather, they are (barely) exclusive rights to occupy, use, and enjoy.

³¹ Decree 902 of 2017, Article 22.

³² "According to the Congressional Report on the Peace Process, the Land Fund and, according to the draft budget, the National Land Agency (ANT), will have their budget cut by 19%. That cut is reflected in the budget for ethnic groups." Defensoría del Pueblo [Ombudsperson's Office], Informe Defensorial el Posacuerdo en los Territorios Étnicos, August 2020, p. 47.

budget appropriation was 42,055 million Colombian pesos, 35% less than the allocation for fiscal year 2019.³³

29. The Commission observes that this budget cut is atypical, compared to the deficits historically incurred when it comes to agrarian management for ethnic groups. The IACHR highlights the request by the National Indigenous Territories Commission (CNTI), backed by the Ombudsperson's Office, that the Constitutional Court declare an Unconstitutional State of Affairs with respect to indigenous territorial rights.³⁴ That declaration also needs to take into consideration the collective titling for *black*, *Afro-Colombian*, *raizal* and *palenquera* communities³⁵ ordered by the Inter-American Court of Human Rights.³⁶

30. The IACHR considers that, owing to the failure to abide by the minimum requirements defined in the Peace Accord with regard to access to land, as well as Inter-American standards for recognizing, protecting, and guaranteeing territorial rights, ethnic groups continue to be exposed to the impairments of their rights derived from the ongoing violence in their territories after the signing of the Peace Agreement, including evictions, confinement, and abandonment.

31. Accordingly, the Commission urges the State to redouble its efforts to press forward in a comprehensive manner with the various aspects of Point 1 of the Peace Agreement, given its crucial importance for indigenous peoples and Afro-descendant communities. It further urges the State to forge ahead with the ANT regulation of the land sub-account in such a way as to render it operationally effective, and to distinguish between territories assigned to ethnic communities prior to the Peace Agreement and those formally allocated by virtue of the Agreement.

1.2. Development Programs with a Territorial-Based Focus (PDET)

32. The Commission underscores that "Point 1" of the Peace Agreement also proposed transforming the territories hardest-hit by the armed conflict by fostering social, economic, and productive processes, while endeavoring to narrow the human development gaps mirroring the inequalities cutting across the country's different regions. Accordingly, Decree 893 of 2017 established the Development Programs with a Territorial-Based Focus (PDET) as the principal instrument for planning and implementing sectoral plans and programs geared to the socioeconomic transformation of territories, within the framework of the CRR. The concrete tools for planning execution of the PDET are the Regional Transformation Action Plans (PATR). The

³³ Contraloría General de la República [Office of the Comptroller-General of the Republic], Cuarto informe sobre la ejecución de los recursos y cumplimiento de las metas del componente para la paz del Plan Plurianual de Inversiones. Noviembre de 2016 a 31 de marzo de 2020 - Énfasis Vigencia 2019, July 2020, p. 101.

³⁴ Report signed jointly by the CNTI and the Ombudsperson's Office, Bogotá, September 22, 2020.

³⁵ Indeed, according to the National Planning Department (DNP), by December 2018, 286 applications for collective titling were registered as still pending, in addition to the 889 still pending indigenous applications for constitution, expansion, and regulation (*saneamiento*). DNP, Bases del Plan Nacional de Desarrollo. "Pacto por Colombia, pacto por la Equidad", 2019, p.776.

³⁶ I/A Court H.R. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, par. 86.

idea is that the PATR, which is supposed to be drawn up in a participatory, broad-based, and pluralist fashion, provide a workable framework for implementing each PDET on the ground.³⁷

33. According to civil society organizations, the PDET are, essentially, reparative efforts geared to righting wrongs and restoring historically violated rights via a structural transformation of the rural sector guaranteeing adequate living conditions for the population in rural areas.³⁸ Here, the IACHR takes note that of the 16 regions targeted for the design and implementation of PDET under the Peace Agreement, 15 have ethnic groups in a number of territories. Those data reflect the disproportionately severe impact of the armed conflict on the integrity of ethnic groups and the lack of effective enjoyment of social, economic, cultural, and environmental rights that has historically placed those peoples at such a disadvantage.³⁹

34. In view of the safeguard represented by the Special Consultation Mechanism (SCM), the Commission highlights the conclusion of the 16 PATRs associated with each of the PDETs.⁴⁰ In that regard, the IACHR emphasizes the high levels of participation of the ethnic groups, involving, according to the Ombudsperson's Office some 715 indigenous assemblies (*cabildos indígenas*) and 517 community councils of black communities (*Consejos Comunitarios de Comunidades Negras*).⁴¹ The IACHR pays close heed to the Technical Secretariat's observation regarding the risk posed to the territorial integrity of ethnic groups that is inherent to the way the PDET are designed, which "leads to the fragmentation of ethnic territories, since they do not match the municipal division used in the PDET."⁴² That, in the Commission's analysis, would pose a challenge when it comes to applying the cross-cutting ethnic approach that is supposed to be observed in implementation of the Peace Agreement.

35. Furthermore, according to data published by the Ombudsperson's Office based on information furnished by the Territorial Renovation Agency (*Agencia de Renovación del Territorio -ART*), "in the 16 PATR, 85 ethnic agreements (*pactos étnicos*) were signed, which translated into 8,008 ethnic initiatives and 9,300 initiatives relating to ethnic groups."⁴³

³⁷ Pursuant to Article 4 of [Decree 893 of 2017](#), these PATR comprise at least 10 elements, including territorial, reparational, and differential (ethnic and gender-based) approaches; a chapter on program and projects to guide implementation, based on provisions in the Final Agreement; goals, indicators, and accountability mechanisms, and so on.

³⁸ CODHES, [El Enfoque Reparador en los Programas de Desarrollo con Enfoque Territorial](#), March 2018, p. 18

³⁹ "The IACHR has recognized that States must adopt special and specific measures aimed at protecting, favoring and improving the exercise of human rights by indigenous and tribal peoples and their members. The need for special protection arises from the greater vulnerability of these populations, their historical conditions of marginalization and discrimination, and the deeper impact on them of human rights violations." IACHR, [Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources](#). OEA/Ser.L/V/II. Doc. 56/09, December 30, 2009. Par. 49.

⁴⁰ Corte Constitucional [Constitutional Court], [Sentencia \[Judgment\] C-730 de 2017](#), December 12, 2017, fundamento [ground] 6.12: "That being so, given the links to the Final Agreement and, in particular, to its Ethnic Chapter, a systematic interpretation of [Decree 893 of 2017](#), leads the Court to conclude that the 'special consultation mechanism' contemplated in Article 12 of Decree Law 893 of 2017 constitutes a mechanism for participation in the construction, review, and monitoring of the PDET and the PATR, by virtue of the right of all inhabitants to take part in decisions affecting them (Article 2 of the Political Constitution), but tailored to the particularities of ethnic communities, without prejudice to the right to prior consultation accorded to those communities by law in connection with the actions, measures, and implementation plans associated with PDET and PATR."

⁴¹ Pursuant to [Law 70/1993](#), the black communities' Community Councils are the administrative vehicle typically used by Afrodescendent tribal communities in Colombia.

⁴² Secretaría Técnica del Componente Internacional de Verificación CINEP/PPP-CERAC, [Primer informe de verificación de la implementación del enfoque étnico en el Acuerdo Final de Paz en Colombia](#), September 2020, p.41.

⁴³ Defensoría del Pueblo [Ombudsperson's Office], [Informe Defensorial el Posacuerdo en los Territorios Étnicos](#), August 2020, p. 47.

According to the Presidential Council for Stabilization and Consolidation, in the 170 PDET municipalities in the 16 subregions, agreement was reached on 32,808 initiatives under 8 headings (or "pillars") focusing on the following priorities: Rural Education (1,846); Reconciliation, Peaceful Coexistence (*Convivencia*), and Peace-Building (1,607); Economic Reactivation (1,420); Rural Health (1,005); Social Structures and Policies (*ordenamiento social*) and Soil Use (835); Infrastructure and Land Reclamation (708); Rural Housing (608); and the System for Gradually Guaranteeing the Right to Food (352). Based on the above, 26% of the 32,808 initiatives are endogenous or proper to individual ethnic groups; 28% are common to ethnic groups; and 47% correspond to non-ethnic initiatives.⁴⁴

36. The IACHR takes note of these steps forward and of the institutional commitment to ensure timely, effective, and culturally appropriate implementation of these initiatives. Nonetheless, it notes with concern an observation by the Office of the Comptroller-General of the Nations to the effect that no budget has been allocated for the ART and the absence of a specific cost assessment for each of the ethnic PATR initiatives, which poses a risk with respect to implementing the ethnic component of the PDET.⁴⁵

37. Furthermore, according to information in the public domain, the so-called Single Roadmap (*Hoja de Ruta Única -HRU*) does not envisage the Special Consultation Mechanism (MEC). Likewise, ethnic groups were not consulted regarding the Strategic Zones for Comprehensive Intervention (ZEII), established by Law 1941 of 2018, and there is no evidence of those groups' organizations or authorities participating in the plans published for their implementation.⁴⁶ In this connection, the Commission issues a reminder that it is incumbent upon the State to conduct prior, free, and informed consultations meeting established standards regarding any action that affects Colombia's ethnic groups.

38. The Commission takes note of information that the Amazon region has become a refuge for illegal armed groups and a strategic zone for the illegal mining that those groups fight over; and that, since that region has no specific instrument that would enable it to take part in peace-building from a territorial perspective, it is lagging behind other regions and hit by the new forms of violence.⁴⁷ Accordingly, the IACHR calls upon the State to effectively implement the Immediate Action Plans (PAI) in the Amazon region, abiding by ethnic safeguards with respect to participation and pursuing culturally appropriate actions and strategies.

39. Taking note of the significant progress made in the structuring of the 16 PDETs and their associated PATRs, and the participation of ethnic groups in this process, the IACHR reminds the State of the need to ensure effective and timely implementation of the points agreed

⁴⁴ Consejería Presidencial para la Estabilización y la Consolidación [Presidential Council for Stabilization and Consolidation], Primer informe de avances implementación capítulo étnico del plan marco de implementación, July 1, 2020, p. 57. According to the same document, one proposal is to classify the initiatives in three categories, from an ethnic perspective: "Ethnic Groups' Own Initiatives" ('*Propias Étnicas*'): those autonomously proposed by the ethnic group's authorities themselves; "Initiatives common to ethnic groups" ('*Común Étnicas*'): those arising out of communities' shared general interests; and "Non-ethnic Initiatives" ('*No Étnicas*'): those proposed by non-ethnic communities for implementation outside ethnic territories (...), p. 56.

⁴⁵ Contraloría General de la República [Office of the Comptroller-General of the Republic], Cuarto informe sobre la ejecución de los recursos y cumplimiento de las metas del componente para la paz del Plan Plurianual de Inversiones. Noviembre de 2016 a 31 de marzo de 2020 - Énfasis Vigencia 2019, July 2020, p. 266.

⁴⁶ Secretaría Técnica del Componente Internacional de Verificación CINEP/PPP-CERAC, Primer informe de verificación de la implementación del enfoque étnico en el Acuerdo Final de Paz en Colombia, September 2020, p.5.

⁴⁷ Defensoría del Pueblo [Ombudsperson's Office], Informe Defensorial el Posacuerdo en los Territorios Étnicos, August 2020, p. 43.

upon in those territorial development instruments. The Commission further urges the State to maintain these levels of participation and consultation throughout implementation of these initiatives so as to protect the collective rights of these communities, their visions of their own development, their self-determination, autonomy, and cultural integrity.

2. Participation and Safeguards for Comprehensive Implementation of the Peace Agreement

40. The Inter-American Commission recalls that the participation of ethnic groups constitutes a right through which they shape their own future, freely determine their own development processes, and ensure respect for their cultural, social, and spiritual integrity. Consequently, implementation of the Peace Agreement must be accompanied by full guarantees for the exercise of that right. The IACtHR likewise reaffirms that consultation and the right to self-determination are closely intertwined, given that the latter is a prerequisite for the full exercise of the other, individual and collective, human rights of indigenous peoples, including their rights to their ancestral territories and natural resources. It is also important to underscore that the right of ethnic peoples and communities to prior, free, and informed consultation is also an expression of four closely connected rights: to participation, access to information, due process of law, and self-determination.

41. In this connection, the Commission stresses that, given the links between these last four rights, the Peace Agreement included the duty of the Colombian State to respect the right to prior, free, and informed consultation, expressly declaring it in the principles guiding the Agreement, as well as in the safeguards and guarantees for its implementation. Thus, for the IACtHR, it is essential that the State honor the principal (not subsidiary) nature of prior, free, and informed consultation and the right to cultural objection as a guarantee of non-repetition (of violations), whenever applicable, at all stages of implementing the Peace Accord.

42. The Commission points out that, while it is true that the formulation and inclusion of an ethnic chapter in the body of the Peace Agreement and the wording of the ethnic perspectives chapter itself was the product of political and cultural claims and demands by ethnic groups and organizations, that is to say, strictly speaking, that it did not derive from a prior consultation process, inclusion of the ethnic safeguards system and the prior consultation requirement for implementing almost all parts of the Agreement constitute a major achievement by ethnic groups in connection with the inclusion of those communities as key players in the implementation of the Peace Agreement.

43. In this regard, the IACtHR takes note of the approval, in 2020, of a budget for the operation of the Special High Level Instance with Ethnic Peoples (IEANPE) and urges the State to provide the necessary guarantees to protect the right to effective participation of ethnic groups.⁴⁸ At the same time, the Commission reminds Colombia of its duty to also include an intersectional, gender approach providing for affirmative actions geared to overcoming the structural and historical barriers that ethnic women have encountered when it comes to participation.

44. The IACtHR also highlights the fact that, under the expedited procedure that gave the Executive special powers, Congress adopted 11 laws, five of which were legislative acts. Using its special legislative powers, the Executive also issued 36 decree-laws and 60 decrees. The Commission observes that, reportedly, those acts empowering the legislative and executive

⁴⁸ Gobierno de Colombia, Presidencia de la República, [Government of Colombia, Office of the President of the Republic] [El Fondo Multidoblante de Naciones Unidas aprueba \\$2.000 millones para instancia étnica, en el marco de la política de Paz con Legalidad](#), April 29, 2020.

branches are related to implementation of the Agreement. Of those, the State determined that 16 should be subject to the prior consultation process.⁴⁹ However, the IACHR notes that six stemmed from the Standing Committee for Consensus-Building with Indigenous Peoples (*Mesa Permanente de Concertación con los Pueblos Indígenas*), five of which were formally adopted (*protocolizados*). In the case of Afrodescendent communities, only the bill containing the Statutes of the Special Jurisdiction for Peace was consulted.⁵⁰

45. The IACHR commends the constant efforts by the Government to guarantee for ethnic groups the fundamental right to prior, free, and informed consultation in the design of, and consensus-building attached to, certain components of the Peace Agreement, such as the PDET or PATR, with noteworthy levels of ethnic participation. Nevertheless, it voices its concern at the low levels of implementation exhibited, throughout 2020, by tools such as the PATR or the start-up of the multipurpose property registry, and at the delay in issuing, *inter alia*, the regulation on clarifying titles dating back to colonial and/or republican times.⁵¹

46. The IACHR likewise underscores the importance of the regulatory progress made with decrees 632⁵², 1500,⁵³ and 1232⁵⁴ which mark a significant step forward with respect to protection of the human rights of the indigenous peoples in Colombia and reinforce the goals of the Peace Agreement. In this regard, the Commission recalls that the agreements based on the fundamental right to prior, free, and informed consent are binding and compliance with them is mandatory, in accordance with international principles and standards, including the principles of good faith and non-regression.⁵⁵

47. In 2020, the IACHR was further apprised that the High-Level Consultation agenda and that of the National Forum on Prior Consultation with Afro-descendant communities had made little headway. The Commission highlights the need for the State to find a suitable mechanism for community participation and representation that helps advance Peace Agreement

⁴⁹ Defensoría del Pueblo [Ombudsman's Office], Informe Defensorial el Posacuerdo en los Territorios Étnicos, August 2020, p. 85.

⁵⁰ Secretaría Técnica del Componente Internacional de Verificación CINEP/PPP-CERAC, Primer informe de verificación de la implementación del enfoque étnico en el Acuerdo Final de Paz en Colombia, September 2020, p.25. Decree 902 of 2017, which was crucial, never was consulted with black communities. Nevertheless, in much of its content, the Constitutional Court used the qualified constitutionality concept (*la figura de la constitucionalidad condicionada*) to correct potential asymmetries vis-a-vis indigenous peoples, such as, for instance, guaranteed participation in the subaccount allocating territories to ethnic communities.

⁵¹ The multipurpose property registry and the decree clarifying colonial safeguards are reported as measures of compliance with point 1 of the Peace Agreement and the ethnic chapter. According to civil society organizations, the State had appeared to be reluctant to consult the multipurpose property registry, arguing that it had been consulted during the drawing up of the 2018-2022 National Development Plan.

⁵² Issuing fiscal and other regulations needed for indigenous territories to start functioning in the non-municipalized areas of Amazonas, Vaupés, and Guainía.

⁵³ Redefining the ancestral territory of the Arhuaco, Kogui, Wiwa, and Kankuamo peoples in Sierra Nevada de Santa Marta, consisting of the set of sacred "Black Line" spaces, as a traditional, especially protected area, of great spiritual, cultural, and environmental value, in accordance with the principles and basic tenets of the Origin Act (Ley de Origen) and Law 21 of 1991, and issuing further provisions.

⁵⁴ To establish special prevention and protection measures to safeguard the rights of Indigenous Peoples Living in Isolation or in their Natural State and creating and organizing the National Prevention and Protection System to Safeguard the rights of Indigenous Peoples Living in Isolation or in their Natural State.

⁵⁵ In Judgment T-002 of 2017, ground 4.2.4, of January 17, 2017, the Constitutional Court pointed out that prior consultation agreements in general (i.e. including those in the Peace Agreement) constitute a binding multilateral pact, which reinforces the ethnic chapter safeguards.

implementation, while at the same time bearing in mind the specific time frame envisaged in the Agreement.

48. In the case of the Standing Committee for Consensus-Building with Indigenous Peoples, during 2020 and even despite the pandemic, the Commission takes note of the progress made with agreeing on the methodology to be followed for reincorporating and dealing harmoniously with indigenous former combatants; the prior consultation of the Royalties bill before it is brought to Congress; issuance of the Decree establishing the National Indigenous Women's Committee⁵⁶; and the decree clarifying titles dating back to colonial and/or republican titles.⁵⁷ On the other hand, there has been little substantive progress with issuing the multipurpose property registry; regulation of the land sub-account in the National Land Agency (ANT); prior consultation regarding the National Comprehensive Program for the Substitution of Illicit Crops (PNIS); or the alternative sentencing mechanism for small-scale producers, despite their being vital for enhancing the human rights of ethnic groups under the Peace Agreement.

49. The IACHR was also apprised of a circular issued by the Ministry of the Interior, identified as CIR2020-29-DMI-1000 of March 27, 2020, geared to making headway with prior consultation processes in the COVID-19 context. However, the Office of the Inspector-General (PGN) issued a statement declaring that administrative tool contrary to the Constitution and the jurisprudence of the Constitutional Court⁵⁸ with respect to prior consultation processes in a COVID-19 setting. Here, the IACHR warned that, owing to structural discrimination, a large number of ethnic groups lack access to the Internet,⁵⁹ so that imposing and implementing consultation processes via digital platforms would constitute violation of these collectives' right to real and effective participation.⁶⁰

50. The IACHR issues a reminder that it is an obligation of the State to guarantee the right to prior, free, and informed consultation with regard to possible regulatory frameworks issued to regulate that right in a country, and to refrain from engaging in administrative acts without consultation or fostering legislative initiatives aimed at regulating this fundamental right that have not been submitted for mandatory consultation with ethnic groups. The Commission likewise stresses that the drawing up by ethnic groups of their own prior consultation protocols is an important measure by which they exercise their right to self-determination recognized in

⁵⁶ The methodological roadmap for reincorporating and dealing harmoniously with indigenous former combatants will help the National Reincorporation Agency (ARN) move ahead with prior, free, and informed consultation of the policy for reincorporating ethnic groups. The methodological roadmap includes territorial encounters and the hiring of a team of advisors for indigenous organizations. Likewise, consultation of the Royalties Bill (*proyecto de ley de regalías*) secured the participation of the ethnic organizations in the establishment of mechanisms and percentages of funds [*Tr. CORRECT SPANISH to recursos?*] allocated to ethnic territories for oil and gas mining. Finally, the issuance of the Decree establishing the National Indigenous Women's Committee seeks to bolster the part played by women in participation and decision-making forums with the National Government through at least two meetings a year (Decree 1097 of 2020).

⁵⁷ Finally, and several months after signing and sealing prior consultation requirements, on December 31, 2020, the National Government issued Decree 1824 of 2020, establishing the procedure for clarification of titles dating back to colonial times.

⁵⁸ Procuraduría General de la Nación [Office of the Inspector General - PGN], Circular externa CIR2020-29-DMI-1000 del 27 de marzo del 2020 del Ministerio del Interior, April 2020.

⁵⁹ IACHR, States of the Region must Accelerate Universal Internet Access Policies during the COVID-19 Pandemic and Adopt Differentiated Measures to Incorporate Groups in Vulnerable Situations, August 31, 2020.

⁶⁰ IACHR, Press Release 103/20, IACHR Warns of the Specific Vulnerability of Indigenous Peoples to the COVID-19 Pandemic, Calls on States to Adopt Targeted, Culturally Appropriate Measures that Respect These Peoples' Land, May 6, 2020.

international covenants on rights (ICCPR, ICESCR) and reinforced by the Declarations on the Rights of Indigenous Peoples of the United Nations (2007) and the OAS (2016).

51. At the same time, the IACHR observes that, despite the upsurge in violence and the effects of the pandemic in the territories of the ethnic groups, the number of requests to start prior consultations in those territories has not abated.

52. The IACHR further observes that the Special Transitory Peace Circumscriptions (*Circunscripciones Transitorias Especiales de Paz*, CTEP) established in the Agreement have still not been approved.⁶¹ The ethnic chapter establishes, as a safeguard, the adoption of measures to guarantee the inclusion of ethnic group candidates on the CTEP lists when the district coincides with their territory: a step that presupposes approval of those districts.⁶² Accordingly, the Inter-American Commission considers that the delays in approving them could disproportionately impair the political participation of the ethnic peoples and calls upon the State to approve the districts.

53. As regards the gender, family, and generational perspective, the IACHR takes note of information to the effect that the State acknowledges, in connection with Point 1 of the Peace Agreement, that it would not be possible to assert in a report that Afrodescendent or indigenous women took part in the drawing up of the Development Programs with a Territorial-Based Focus (PDET), so that the Commission suggests that the measurement be based on the initiatives implemented with a gender perspective and targeting Afro-descendant communities.⁶³ The IACHR also underscored, with concern, the lack of participation by Afrodescendent women, who filed a demand to be included on an equal footing in the election of a delegate and alternate delegate in the Special Women's Unit (*Instancia Especial de Mujeres*), established to guarantee incorporation of the gender perspective.⁶⁴

54. In this connection, the IACHR urges the State to redouble its efforts to forge ahead, in consultation with ethnic groups, with the procedural and institutional mechanisms for consultation, embracing it as a fundamental right and as a safeguard of the cultural integrity of ethnic groups, with a view to honoring the commitments derived from the ethnic chapter of the Peace Agreement.

3. Protection and Security Guarantees for Ethnic Territories and Groups

⁶¹ The Special Transitory Electoral Districts for Peace (CTEP) were established by the Peace Agreement to ensure representation in the National Congress of the territories hardest hit by the internal armed conflict. Thus, the Chamber of Representatives would have 16 additional representatives in the 2018-2022 and 2022-2026 constitutional terms: one elected in each of the CTEP. Most of those 16 districts coincide with ethnic territories and the ethnic chapter stipulates that ethnic groups shall participate in each of the lists that they draw up for elections in any given district. However, Legislative Bill No. 017/2017 for the Chamber of Representatives and 005/2017 for the Senate, authorizing the temporary establishment of those seats, was not passed by Congress, due to lack of support from the Government and its elected representatives in the National Capitol.

⁶² Secretaría Técnica del Componente Internacional de Verificación CINEP/PPP-CERAC, Primer informe de verificación de la implementación del enfoque étnico en el Acuerdo Final de Paz en Colombia, September 2020, p.68.

⁶³ Secretaría Técnica del Componente Internacional de Verificación CINEP/PPP-CERAC, Primer informe de verificación de la implementación del enfoque étnico en el Acuerdo Final de Paz en Colombia, September 2020, p.58.

⁶⁴ Consejo Nacional de Paz Afrocolombiano[Afro-Colombian National Peace Council], Balance de la implementación del Acuerdo de Paz, March 2020, p. 39.

55. The Inter-American Commission emphasizes that the Peace Agreement brought a renewed sense of security to Colombia. Even though the signing of the Peace Agreement brought only temporary respite for ethnic territories and groups, subsequent violence has surged precisely in those peoples' collective territories, wreaking havoc with lives and the physical, cultural, and organizational integrity of communities.

56. In that regard, the IACHR stresses that, based on the information it has received through the Early Alerts System of the Ombudsman's Office, between November 2016 and April 2020, 163 leaders of ethnic peoples and communities were murdered: 126 were indigenous and 36 Afro-descendants. Moreover, in 2019 alone, that same Early Alerts System recorded 251 acts violating the rights of human rights defenders, indigenous people leaders and leaders of Afro-descendent communities. They included 40 homicides, 198 threats, and 13 attacks, making 2019 the worst year since the signing of the Peace Agreement.⁶⁵

57. In the same vein, according to data of the Development and Peace Research Institute (*Instituto de Estudios para el Desarrollo y la Paz* -INDEPAZ), at least 17 Afrodescendent leaders were murdered in 2020, above all during quarantines ordered on account of the COVID-19 pandemic. The department in which most of the above-mentioned human rights violations occurred was Cauca, where, as of the date of publication of this report, the number of indigenous leader or defender victims totaled 94.⁶⁶ Here, the Commission points out that the department of Chocó has been one of those hardest hit by the armed conflict in Colombia. In early 2020, the IACHR was apprised of the confinement imposed on approximately 6,000 inhabitants of the municipality of Bojayá, in the department of Chocó, almost all of them members of the Afrodescendent and indigenous population, due to alleged clashes among illegal armed groups in the region. The Commission takes note of the alert issued by the Ombudsman's Office in November 2020, underscoring the fact that in the municipality of Lloró, Chocó, Afrodescendent and indigenous communities are at enormous risk of being forcibly displaced due to the stepped-up armed presence of the Gaitanista Self-Defense Forces of Colombia (AGC) in the community of Boraudó, including the orchestration of violent acts by the municipality of that district to be executed in the rest of the territory.⁶⁷ The alert also points out that the ethnic-territorial authorities reported that, as of mid-October 2020, there had been individual forced displacements to the municipality's Nuevo Lloró district and to the municipality of Quibdó, which had not been publicized because of threats, reprisals, and the affected population's fear of denouncing the displacements, which makes them difficult to quantify.⁶⁸

58. The Commission underscores the State's efforts, through the Office of the Ombudsman's Early Alerts System to prevent conduct violating human rights and international humanitarian law. Nevertheless, it takes note of the observation made by the United Nations Special Rapporteur on the Situation of Human Rights Defenders regarding an alleged failure on

⁶⁵ Defensoría del Pueblo [Ombudsman's Office], Informe Defensorial el Posacuerdo en los Territorios Étnicos, August 2020, p. 66.

⁶⁶INDEPAZ, Informe de masacres en Colombia durante el 2020, December 13, 2020.

⁶⁷ "Communities located alongside the Atrato river, in Boraudo, Chanchadó, Boca de Capa, Guaitadó, Currupá, and Lloró; in Andágueda, the communities of La Vuelta, Canalete, Ogodó, Villanueva, Las Hamacas, San Jorge, Calle Larga, Tapera Lloró; along the Capa river, the communities of Villa Claret, El Llanito, Perico; and along the Tumutumbudó river, the communities of Bocas de Tumutumbudó, Puerto Moreno, Nipurdú, Yarumal, El Llano, La Gegorá, and Playa Alta. And the indigenous reserves of the Embera Dobida and Embera katio peoples: Egorá, Wachiradó, Mumbú, Lana, or Capá (Toldas, Cuma, Lana, Platino, Hurtado, Peña, india), Tocolloró and Guadualito." Defensoría del Pueblo [Ombudsman's Office], Alerta Temprana No. 049 de 2020, November 19, 2020, p. 2.

⁶⁸ Defensoría del Pueblo [Ombudsman's Office], Alerta Temprana No. 049 de 2020, November 19, 2020, p. 5.

the part of local authorities to respond to those alerts and to take timely, well-coordinated steps to deal with the issues raised.⁶⁹

59. As regards individual and collective measures, the Commission stresses that the Agreement provides for differential measures for ethnic groups and established the National Protection Unit as the entity responsible for risk assessment and for establishing measures. Between 2016 and 2019, there were reportedly 2,171 individual risk assessments for indigenous and Afro-Colombian leaders and 75 collective risk assessments, with most revealing that the applicants faced extraordinarily high risks.⁷⁰ The IACHR reiterates its call to the State to ensure that policies such as the "The Comprehensive Security and Protection Program for Communities and Organizations in the Territories" embody the ethnic perspective and translate into specific measures for these groups, including actions to strengthen indigenous and Maroon guards.

60. In addition, the Inter-American Commission reiterates the need to ensure an effective institutional response imbued with the renewed concept of security developed by the Peace Agreement, via more in-depth contextual analysis when it comes to assessing risk and adopting protection measures incorporating an approach that is sensitive to the differences in the specific circumstances of the population requiring protection and of the places they work, while making sure that the beneficiaries agree with those measures. In particular, it is important to incorporate an ethnic, collective, and gender perspective in prevention and protection measures.⁷¹

61. The IACHR recognizes the measures adopted to strengthen the indigenous guards in certain territories of the country, developed in coordination between the State and indigenous peoples' organizations.⁷² However, it points out that, according to the Ombudsperson's Office, no institutional steps have yet been taken to bolster the "Maroon Guard" (Guradía Cimarrona, Original name in Spanish).⁷³ Accordingly, the Commission urges the State to extend those communication and reinforcement efforts to Afrodescendent communities as well.

62. At the same time, with respect to protection of territory, the IACHR takes note of the information furnished by the Office of the High Commissioner for Peace, pointing out that due to the ongoing surges in conflict in Colombia, the havoc wrought by anti-personnel mines varies, so that the consolidated data on their impact is updated on a yearly basis in information system databases.⁷⁴

⁶⁹ OHCHR, End of mission statement by the United Nations Special Rapporteur on the situation of human rights defenders, Michel Forst on his visit to Colombia, 20 November to 3 December 2018, p.16.

⁷⁰ Secretaría Técnica del Componente Internacional de Verificación CINEP/PPP-CERAC, Primer informe de verificación de la implementación del enfoque étnico en el Acuerdo Final de Paz en Colombia, September 2020, p.8.

⁷¹ IACHR, Human Rights Defenders and Social Leaders in Colombia, OEA/Ser.L/V/II. Doc. 262, December 6, 2019, par. 314.

⁷² Reserves (*resguardos*) in Alto Andagueda, Mondó Mondocito, Catrú Dubá Ancosó and Río Jurubida-Chorí (Chocó), the Indigenous Regional Council of Cauca [*Consejo Regional Indígena del Cauca –CRIC*] and the Association of Indigenous Assemblies of Northern Cauca [*Asociación de Cabildos Indígenas del Norte del Cauca –ACIN*].

⁷³ Defensoría del Pueblo [Ombudsperson's Office], Informe Defensorial el Posacuerdo en los Territorios Étnicos, August 2020, p. 69.

⁷⁴ Consejería Presidencial para la Estabilización y la Consolidación [Presidential Council for Stabilization and Consolidation], Primer informe de avances implementación capítulo étnico del plan marco de implementación, July 1, 2020, p. 134.

63. The Inter-American Commission takes note of the fact that, in 2020, none of the prioritized territories was de-mined, purportedly because they were not safe enough to permit humanitarian demining operations. Nevertheless, in 2020, approaches were reportedly made to the Nukak people, resulting in plans to conduct projects geared to educating Afrodescendent communities in the Unión Río Chagüí Community Council about the risks posed by mines.⁷⁵

64. The Commission underscores the need to move ahead with the demining and anti-personnel mines and unexploded ordnance (APM/UXO) clearance program for the territories of ethnic peoples and territories prioritized in Point 6.2.3 of the Peace Agreement,⁷⁶, while guaranteeing the fundamental right to prior, free, and informed consultation and inclusion of the differential and intersectional approach with respect to children and women, as well as of harmless action using pedagogical risk reduction tools tailored to the cultural and territorial particularities of each ethnic group, especially peoples living in voluntary isolation, initial contact, and semi-nomadic peoples. It likewise calls for stepped-up efforts to implement the Peace Agreement, so that the conditions required for exercising defense of communities' rights are given throughout the territory.⁷⁷

65. Given the relentless violence against ethnic groups, manifested in the ongoing murders, massacres, attacks on people's lives and bodily integrity, harassment, confinement, forced displacements and other gross human rights violations targeting ethnic territories in particular, the IACHR urges the State to engage in a massive institutional effort to safeguard and protect ethnic territories, characterized by timely responses, the incorporation of approaches and measures sensitive to differences, and in-depth understanding of the specific contexts and risks in these communities, which includes strengthening and helping these peoples implement self-protection systems, such as indigenous and Maroon guards.

66. In its observations on the draft report, the State referred to the Human Rights Commission for Indigenous Peoples (CDDHHPI), created by Decree 1396 of 1996, whose purpose is to promote spaces for dialogue between representatives of the State and delegates of indigenous organizations in order to develop actions to prevent violations of both individual and collective human rights⁷⁸. Between 2015 and 2018, through an agreement signed with UNDP, specific actions were determined to strengthen and improve the functioning of the Commission. Currently, activities related to the accompaniment and intervention in special cases; verification, monitoring and dissemination of the agreements generated within the framework of the CDDHHPI; making the situation of indigenous peoples visible at the national and international level, for which the design and implementation of an observatory is proposed⁷⁹. Likewise, the

⁷⁵ Consejería Presidencial para la Estabilización y la Consolidación [Presidential Council for Stabilization and Consolidation], Primer informe de avances implementación capítulo étnico del plan marco de implementación, July 1, 2020, p. 134.

⁷⁶ (i) Pueblo Emberá in the municipalities of Puerto libertador (Córdoba) and Ituango (Antioquia); (ii) Pueblo Jiw in the municipality of San José del Guaviare (Guaviare); (iii) Pueblo Nukak in the department of Guaviare, and in the municipalities of Mapiripán and Puerto Concordia (Meta) and Río Chagüí (Cauca); (iv) Pueblo Awá in the department of Nariño; and of the (v) Alto Mira and Frontera Community Councils, and Río Chagüí in Cauca, and in the municipality of Buenos Aires.

⁷⁷ IACHR, Human Rights Defenders and Social Leaders in Colombia, OEA/Ser.L/V/II. Doc. 262, December 6, 2019, par. 310.

⁷⁸ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia". P.2

⁷⁹ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia". P.3

State informed that, in the framework of the joint session between the CDDHPI and the Permanent Roundtable of Agreement, it was agreed to formulate an emergency plan for the guarantee of the human rights of indigenous peoples, which would be prepared by the organizations and should be submitted to the Ministry of the Interior⁸⁰.

4. Solving the Illicit Drugs Problem

67. The Inter-American Commission underscores the fact that illicit drugs in the territories of ethnic groups are a problem that arose in the context of the historically scant presence of State institutions (*una limitada presencia institucional*) that these peoples have suffered from. Accordingly, as noted in Constitutional Court Rulings 004 and 005 of 2009 and in Ruling 266 of 2017, these territories are fertile ground for the expansion of illicit crops and for bringing ethnic groups into the illegal economic circuits associated with drug trafficking, which ends up curtailing ethnic groups' use and enjoyment of their land, territories, and natural resources.⁸¹

68. The IACHR highlights the fact that the Peace Agreement thought of the drugs problem as a complex factor with international repercussions, which in the case of the country's rural areas, triggers violence and harms both territories and communities. In that context, the ethnic chapter incorporated safeguards to protect the rights and integrity of ethnic territories and groups in connection with any solution to the drugs problem, by maintaining "recognition of the ancestral and traditional uses of the coca leaf, as part of the cultural identity of the indigenous community and the possibility of use of crops used for illicit purposes for medical or scientific purposes and other legitimate uses that are established."⁸²

69. In the Commission's opinion, the implementation of this component needs to apply the safeguards with respect to participation and consultation of both the National Comprehensive Program for the Substitution of Illicit Crops (PNIS) and the Demining and Anti-personnel Mines and Unexploded Ordnance (APM/UXO) Clearance Program and to prioritize peoples at risk of physical and cultural extermination, including four territories especially hard-hit by violence and conflict: the Nukak (Guaviare) and Quebrada Cañaveral (Córdoba) indigenous reserves and the Jiguamiandó and Curvaradó (Chocó) and Alto Mira y Frontera (Nariño) collective territories.

70. As regards compliance with "Point 4", the Commission takes note of the establishment of the National Comprehensive Program for the Substitution of Illicit Crops (PNIS) as a strategy for resolving the crops-for-illicit-use problem that acknowledges that the illicit drugs economy feeds on pre-existing structural defects, such as the scant presence of the State and high levels of extreme poverty.⁸³

71. The Commission takes close note of the fact that Decree-Law 896 of 2017, establishing the PNIS, was not consulted with ethnic groups. On the other hand, the Commission was apprised that the State is reportedly working on a proposal under which voluntary crop

⁸⁰ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia". P.4

⁸¹ Constitutional Court of Colombia, Sentencia [Judgment] C-073/17, ground 24.1.1., Monday, June 12, 2017:

⁸² Final agreement to End the Armed Conflict and Build a Stable and Lasting Peace in Colombia, November 24, 2016, p. 100 in the Spanish text, p. 106 in the English translation [<https://www.peaceagreements.org/viewmasterdocument/1845>]

⁸³ Constitutional Court of Colombia, Ruling [Auto] 004 of 2009, ground 1. January 26, 2019.

substitution guidelines will be developed in a participatory and consensus-building manner with indigenous peoples, authorities, and organizations.⁸⁴

72. The Ombudsperson's Office has pointed out that, despite not guaranteeing the fundamental right to prior, free, and informed consultation, the State has reached agreements with persons pertaining to ethnic groups on individual substitution within the framework of regional agreements that include the ethnic population, as is the case with regard to the Collective Agreement of the municipality of Miranda, Cauca. Thus, there would appear to be no agreements under the PNIS framework that have been reached with an ethnic group as a collective subject, be it as a people, a native reserve, or an ethnic organization. The Ombudsperson's Office further points out that, while there had been opportunities for dialogue with some ethnic groups, such as the Awá or Nasa peoples, the path proposed by the communities for arriving at agreements with a collective perspective never materialized.⁸⁵

73. Accordingly, the Commission concludes that clarification is needed on this matter of individual agreements in collective ethnic territories, agreements with non-ethnic individuals located in collective territories, or agreements with non-ethnic persons with family ties to ethnic groups. Institutions such as the High-level Council for Stabilization and Consolidation and the United Nations Office on Drugs and Crime (UNODC) do not possess precise information regarding the ethnic status of the families that signed agreements within the PNIS framework.⁸⁶ For example, in the department of Guaviare, the program was reportedly implemented mainly with campesino communities, without first ascertaining whether they were, or were not, in fact exploiting their occupation (*ejerciendo dinámicas de ocupación*) of indigenous reserves. Such situations reportedly exacerbated intercultural conflicts among ethnic groups and campesino communities.⁸⁷ In addition, these kinds of procedures without collective agreements allegedly impaired food security for other groups not covered by the PNIS.

74. In this connection, the Commission calls for progress to be made with ethnic groups regarding prior, free, and informed consultation of the decree regulating the PNIS, as per the indicators in the Framework Plan for Implementation (PMI) and one of the safeguards in Point 4 of the Peace Agreement. The IACtHR likewise underscores the need to achieve greater articulation among the various instruments in Point 1 of the Peace Agreement relating to Comprehensive Rural Reform and those relating to a solution of the illicit drug problem, with a view to overcoming the structural conditions conducive to the emergence and consolidation of drug trafficking in the areas hardest-hit by violence, such as the ethnic territories.

75. At the same time, the Commission commends the fact that, at the 34th regular meeting of the Sub-Committee on Health of the Standing Committee (*Mesa Permanente*) for Consensus-Building with Indigenous Peoples and Organizations, on December 11 to 13, 2019, the Ministry of Health reached a consensus on the document entitled "Guidelines for Preserving the

⁸⁴ Consejería Presidencial para la Estabilización y la Consolidación [Presidential Council for Stabilization and Consolidation], Primer informe de avances implementación capítulo étnico del plan marco de implementación, July 1, 2020, p. 138.

⁸⁵ Defensoría del Pueblo [Ombudsperson's Office], Informe Defensorial el Posacuerdo en los Territorios Étnicos, August 2020, p. 56.

⁸⁶ Secretaría Técnica del Componente Internacional de Verificación CINEP/PPP-CERAC, Primer informe de verificación de la implementación del enfoque étnico en el Acuerdo Final de Paz en Colombia, September 2020, p.88.

⁸⁷ Defensoría del Pueblo [Ombudsperson's Office], Informe Defensorial el Posacuerdo en los Territorios Étnicos, August 2020, p. 57.

Spiritual Harmonies and Thinking of Indigenous Peoples and Communities"⁸⁸ scheduled to enter into force as of 2020. Nevertheless, the IACtHR issued an appeal to the State to ensure that all policies to prevent drug trafficking and protect (ancestral and traditional) consumption guarantee the fundamental right to the Prior, Free, and Informed Consultation of ethnic groups, because, according to the Technical Secretariat, "ethnic considerations are nowhere to be seen in their design, nor in the National Government's 'Ruta Futuro' Comprehensive Policy to Tackle the Drug Problem. The same can be said of the point relating to the solution of the narcotic drugs production and marketing phenomenon."⁸⁹

76. Finally, the IACtHR draws attention to the fact that, based on the information at its disposal, the bill envisaging differential penalties for small-scale farmers based on the differential ethnic perspective of the PMI was not adopted by Congress. Accordingly, the Commission takes note of the views of the Technical Secretariat for Verifying Implementation of the Peace Agreement, which asserts that, without that law, it is impossible to gage the extent to which differential penalties were applied and hence to verify application of that benefit to small-scale farmers growing illicit crops, who signed agreements under the National Comprehensive Program for the Substitution of Illicit Crops (PNIS), including the population pertaining to ethnic groups.⁹⁰

5. "Comprehensive System for Truth, Justice, Reparation, and Non-Recurrence - SIVJRNR"

77. "Point 5" of the Peace Agreement establishes the Comprehensive System for Truth, Justice, Reparation, and Non-Recurrence (hereinafter SIVJRNR or Comprehensive System), which comprises the Special Jurisdiction for Peace, the Truth, Coexistence and Non-Recurrence Commission (CEV, for its Spanish initials), and the Search Unit for Missing Persons (UBPD, for its Spanish initials). The Comprehensive System seeks to focus on victims of the armed conflict and their rights, espousing, in particular, a territorial, differential, and gender perspective, by attending to the specific needs of territories and particular segments of the population, especially women victims, children, the poorest and most vulnerable groups and collectives hardest hit by the conflict.

78. In its observations on the draft of this report, the State highlighted the implementation of the law on amnesty, pardon and special criminal treatment (Law 1820 of 2016) and its contribution to the legal security of former members of the FARC-EP. Pursuant to this law, 6,000 former combatants were granted amnesty exclusively for political and related de jure crimes. Once the Special Jurisdiction for Peace (JEP) was in operation, the Amnesty or Pardon Chamber (SAI) assumed the competence to hear requests for amnesty and the transitory benefit of conditional release. In addition, it emphasized that during its operation, about 5,000 judicial decisions on the merits have been issued, among which approximately 350 correspond to the granting of the definitive benefit of amnesty for political and related crimes (de jure and de sala);

⁸⁸ Ministry of Health, Lineamientos para el cuidado de las armonías espirituales y del pensamiento de los pueblos y comunidades indígenas, December 2019.

⁸⁹ Secretaría Técnica del Componente Internacional de Verificación CINEP/PPP-CERAC, Primer informe de verificación de la implementación del enfoque étnico en el Acuerdo Final de Paz en Colombia, September 2020, p.39.

⁹⁰ Consejería Presidencial para la Estabilización y la Consolidación [Presidential Council for Stabilization and Consolidation], Primer informe de avances implementación capítulo étnico del plan marco de implementación, July 1, 2020, p. 149.

about 2,000 correspond to the rejection of such benefit; at least 300 favorable decisions of conditional release, and about 2,000 unfavorable rulings⁹¹.

79. As regards the Special Jurisdiction for Peace, the IACHR takes note of the steps taken in connection with the seven macro cases investigated so far.⁹² The Commission highlights, first, the accreditation by the JEP of 308,141 individual victims and collective bodies and the holding of a series of briefings about the JEP that have reached 30,397 participants.⁹³ As of November 30, 2020, 12,705 people had agreed to be bound by JEP rules, 77% of whom are reported to have been members of the former Revolutionary Armed Forces of Colombia – People's Army (FARC-EP), 22% members of the security forces, 0.9% State agents who are not members of the security forces and third parties, and 0.1% persons in the JEP owing to social protests (*personas por protesta social*).⁹⁴ Those appearing before JEP have reportedly volunteered more than 525 accounts of events (*versiones voluntarias*)⁹⁵, while victims' organizations and State institutions have allegedly delivered 328 reports to the Jurisdiction.⁹⁶ In addition, the IACHR was apprised that, thanks to joint efforts by the JEP, the Public Prosecutor's Office, and the Forensic Medicine Institute, the bodies of 5 disappeared persons were handed over in a dignified fashion to family members.⁹⁷

80. For its part, the Unit for the Search for Missing Persons, for its Spanish initials) published the National Search Plan - which includes 430 searchers, 112 organizations, and 12 entities- and drew up 14 Regional Search Plans.⁹⁸ The institution currently comprises 23 territorial teams covering 800 municipalities. According to a balance sheet drawn up on December 21,⁹⁹ it has received 9,058 requests for searches and 258 unsolicited tips (information). 2,556 dialogues were conducted with victims with a view to informing them about processes in the territories and guaranteeing their right to participate. The IACHR was also told that the UBPD, along with other agencies, had managed to coordinate the dignified return of the bodies of 97 disappeared persons to their families as well as reunite three living, formerly missing, individuals with their families.

81. Concerning the Truth, Coexistence and Non-Recurrence Commission (CEV), during a public hearing on December 8, 2020, the CEV summarized for the IACHR some of what

⁹¹ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p.4-5

⁹² JEP [Special Jurisdiction for Peace], JEP en cifras, December 24, 2020, p.3.

⁹³ JEP, Comunicado 175 de 2020 'Rendición de cuentas 2020: La JEP avanza con acción y resultados', December 11, 2020.

⁹⁴ JEP [Special Jurisdiction for Peace], JEP en cifras, December 24, 2020, p.2.

⁹⁵ JEP [Special Jurisdiction for Peace], JEP en cifras, December 24, 2020, p.1.

⁹⁶ JEP [Special Jurisdiction for Peace], JEP en cifras, December 24, 2020, p.1.

⁹⁷ El Espectador, JEP identificó uno de los cuerpos encontrados en Dabeiba y sería un falso positivo, February 14, 2020; JEP, Comunicado 163 de 2020 'La JEP reporta 17 nuevos hallazgos forenses en Dabeiba', November 17, 2020.

⁹⁸ El Espectador, Arranca el Plan Nacional de Búsqueda de Desaparecidos en el conflicto, May 6, 2020; UBPD, Avanzan las acciones humanitarias de la Unidad de Búsqueda de Personas dadas por Desaparecidas en Colombia, December 21, 2020; UBPD, Avanzan las acciones humanitarias de la Unidad de Búsqueda de Personas dadas por Desaparecidas en Colombia, December 21, 2020.

⁹⁹ UBPD, Avanzan las acciones humanitarias de la Unidad de Búsqueda de Personas dadas por Desaparecidas en Colombia, December 21, 2020.

it had managed to achieve since it began operating toward the end of 2018.¹⁰⁰ It mentioned, inter alia, having interviewed at least 16,000 people either individually or via collective forums made up of victims, witnesses and family members, armed actors, experts and collective entities (*sujetos colectivos*). In addition, despite the challenges posed by the health emergency, the CEV pointed out that it had adapted its modus operandi and had managed to organize some 720 activities, such as ceremonies acknowledging responsibility, preparatory encounters with victims, meetings with the participation of regional leaders, and so on. The Truth Commission emphasized, also, that it had made sure to incorporate a territorial, gender-sensitive, ethnic, and psychosocial perspective in the way it structured and went about its work.

82. The CEV also told the IACtHR about various challenges it faces in pursuing its mandate, particularly difficulty accessing information closely guarded by certain State institutions.¹⁰¹ Of the obstacles encountered, the CEV singled out the refusal to allow it direct access to documentation, and the delivery of fragmented, incomplete, and extemporaneous answers. At the time, the IACtHR voiced its concern about the impact such challenges could have on the drafting of the Final Report that the Truth Commission is supposed to deliver in 2021. The IACtHR added that it had sent the State a letter asking for information regarding the above-mentioned hurdles.

83. The IACtHR underscores the important part played by the CEV as a mechanism for facilitating insight into the truth of what happened to victims and Colombian society as a whole and it calls upon the Colombian State to support the full exercises of the Commission's mandate, by immediately providing, in full, the information requested of it, in accordance with inter-American access to public information standards.

84. The IACtHR likewise observes that, in the consolidation of the Comprehensive System (SIVJNR), substantive safeguards were ordered regarding the participation of ethnic groups in the design and implementation of the various components, as well as regarding respect, recognition, and coordination among the ethnic groups' own justice mechanisms, forums, authorities, and systems, based on the institutional arrangements created under "Point 5," which includes both judicial and extrajudicial mechanisms and entities. Given that it considers the System for contributing to truth and justice for victims -- especially victims pertaining to ethnic groups that have disproportionately borne the brunt of the effects and impacts of the armed conflict and widespread violence -- is one of the major steps forward derived from the Agreement,¹⁰² the Commission particularly highlights those efforts, along with the challenges pointed out by civil society in this area. In this regard, the Commission takes note of the core components of the System, encompassing matters relating to the preservation of memory, the quest to find the disappeared, reparation, and non-recurrence.

85. Overall, the IACtHR takes note of the efforts made by the SIVJNR to articulate and embrace a differential approach in its various instruments and procedures. Exercise of the fundamental right to prior, free, and informed consultation fostered a rapprochement between

¹⁰⁰ IACtHR, Public Hearing, 178th Period of Sessions [virtual], "Truth, Coexistence and Non-Recurrence Commission of Colombia: outcomes and challenges", December 8, 2020.

¹⁰¹ IACtHR, Public Hearing, 178th Period of Sessions [virtual], "Truth, Coexistence and Non-Recurrence Commission of Colombia: outcomes and challenges", December 8, 2020.

¹⁰² "With almost 1.2 million victims (not counting those since the signing of the Agreement), black, Afro-Colombian, *raizal* and *palenquera* (NARP) communities, indigenous peoples and communities, and the Roma or gypsy people, were especially and disproportionately hit by the armed conflict. Ethnic women constituted more than half the victims (52.32%). Secretaría Técnica del Componente Internacional de Verificación CINEP/PPP-CERAC, Primer informe de verificación de la implementación del enfoque étnico en el Acuerdo Final de Paz en Colombia, September 2020, p.94.

the entities making up the SIVJRNR¹⁰³ and ethnic organizations and territories. It is important to continue striving to articulate reparation policy and to bring it into line with the Peace Agreement: an aspect in which the Victim Assistance and Comprehensive Reparation Unit (UARIV) has a crucial part to play. Comprehensive reparation for victims is vital within the framework of a process involving transitional justice, reconciliation, and non-recurrence guarantees. The IACHR accordingly calls for more robust coordination between the UARIV and the Special Jurisdiction for Peace, particularly as regards attention to, and prioritization of, the cases admitted in the jurisdiction, and observance of Ruling 266 of 2017 and Judgment C-588 of 2019 of the Constitutional Court.¹⁰⁴

86. In its observations on the draft of the present report, the State indicated that UARIV and the JEP articulated to carry out: i) orientation days in the national territory and abroad; ii) make information on the Integral System available to victims through the attention points and centers; iii) support the victim accreditation days in some cases, such as kidnapping. As reported by the State, Resolution No. 4237 of August 30, 2018 issued by the UARIV establishes the guidelines for the internal procedure for the attention and response to judicial requirements related to the JEP and requirements or written requests sent by the Truth Commission and the Unit for the Search Unit for Missing Persons. According to the information provided by the State, an average of 8 to 15 requests from the JEP are sent to the UARIV, mainly requests for information on inclusion in the RUV and progress in collective reparation projects¹⁰⁵. The State also indicated that spaces have been developed with the purpose of making visible the progress and challenges in the articulation of the SIVJRNR with the participation of magistrates of the First Instance Section for Cases of Recognition of Truth and Responsibility, representatives of the CEV, the UBPD, the UARIV and the support of the Corporación Excelencia en la Justicia (Excellence in Justice Corporation). In this regard, the UARIV has developed actions related to information agreements, orientation sessions for victims of the UARIV and the JEP, individual and collective victimization map¹⁰⁶.

87. Finally, the IACHR underscores the importance of the work being done by the entities and initiatives created thanks to the Victims Law to implement comprehensive reparation measures and calls for closer coordination between the National System for Comprehensive Victim Assistance and Reparation (SNARIV) and the entities provided for in the Peace Agreement.

5.1. Justice component

88. The JEP, as the principal organ of the System with respect to justice, was established by Legislative Act 01 of 2017, and the overall framework of its spheres of competence and procedures was regulated by Statutory Act 1957 of 2019. The IACHR welcomes the

¹⁰³ The entities comprising the SIVJRNR are: The Special Jurisdiction for Peace (JEP), the Truth, Coexistence and Non-Recurrence Commission (CEV), the Unit for the Search for Persons deemed to be Missing (UBPD), and the Victim Assistance and Comprehensive Reparation Unit (UARIV).

¹⁰⁴ In *Ruling (Auto) 266 of 2017*, the Constitutional Court ordered harmonization of the safeguard plans for indigenous peoples and the specific plans for Afro-Colombian communities, ordered in Rulings 004 and 005 of 2009 with the collective reparation plans and the comprehensive care for victims policy. In *Judgment (Sentencia) C-588 of 2019*, it likewise ordered that the comprehensive care for victims policy be brought in line with the contents of the Peace Agreement.

¹⁰⁵ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”., p.6

¹⁰⁶ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”., p.6

information that the general Rules of Procedure of the JEP explicitly point out its duty to coordinate with the Special Indigenous Jurisdiction and Other Ethnic Justice Systems and provide for specific mechanisms for including and applying the ethnic perspective pursuant to the peace jurisdiction's constitutional mission, in keeping not just with express indications given in Legislative Act 01 (differential and special measures for those deemed to be entitled to special constitutional protection), but also with one of the principal safeguards under Point 5 of the Peace Agreement (inter-jurisdictional participation and coordination).

89. The IACHR likewise celebrates the establishment, within the JEP, of the Ethnic Commission, geared primarily to counseling the various Court divisions as to how to approach and process cases involving ethnic groups, and made up of the Chair, magistrates pertaining to ethnic groups, the Office of the Director of the Investigation and Indictment Unit (UIA), and the Executive Secretariat. In addition, the "Protocol for coordination, interjurisdictional articulation, and intercultural dialogue between the Special Indigenous Jurisdiction (JEI) and the Special Jurisdiction for Peace (JEP),¹⁰⁷ promoted by the Ethnic Commission,¹⁰⁸ constitutes a major step forward for forging ties with the indigenous peoples.

90. The Commission underscores that the inclusion of the ethnic approach in the JEP is also manifested in the participation of ethnic groups in judicial proceedings and in the ethnic emphasis visible in three of the cases (Nariño - Case 002; Urabá - Case 004, and Cauca - Case 005) out of the seven so far initiated before the Acknowledgment of Truth and Responsibility Division (SRVR) that have involved engaging in coordination, interjurisdictional articulation, and intercultural dialogue.¹⁰⁹

91. In that regard, the 2020-2021 Statistical Report published by the JEP stated that more than 314 people participated in JEP-JEI coordination talks with regard to Case 004; 68 people pertaining to the Cofán people took part in JEP-JEI traditional knowledge talks (*diálogo de saberes JEP-JEI*); along with 77 members of the Indigenous Regional Council of Caldas, among other activities involving participation with indigenous communities. In addition, in the case of black and Afro-descendent communities, intercultural dialogue and inter-justice-system coordination sessions were conducted with representatives of Tumaco, Barbacoas, and Ricaurte community councils.¹¹⁰

92. In its observations on the draft of the present report, the State reported that in Case 05, dialogues have been held with the communities that make up the Regional Indigenous Council of Cauca (CRIC), the Regional Indigenous Organization of Valle del Cauca (ORIVAC), the Association of Community Councils of Northern Cauca (ACONC) and more than 20 community

¹⁰⁷ Jurisdicción Especial para la Paz (Special Jurisdiction for Peace - JEP), Protocolo para la coordinación, articulación interjurisdiccional y diálogo intercultural entre la jurisdicción especial indígena y la jurisdicción especial para la paz, July 24, 2019.

¹⁰⁸ The Ethnic Commission, as a standing body, comprises its Chair, magistrates pertaining to ethnic groups, the Office of the Director of the Investigation and Indictment Unit (UIA), and the Executive Secretariat.

¹⁰⁹ Secretaría Técnica del Componente Internacional de Verificación CINEP/PPP-CERAC, Primer informe de verificación de la implementación del enfoque étnico en el Acuerdo Final de Paz en Colombia, September 2020, p.101.

¹¹⁰ Jurisdicción Especial para la Paz (Special Jurisdiction for Peace -JEP), Informe estadístico 2020-1, January 2020. p. 125.

councils of Southern Valle, in addition to inter-jurisdictional coordination actions with the indigenous authorities of Cauca¹¹¹.

93. According to the report, in 2020 the JEP also announced the accreditation of more than 20,000 Afro-Colombian victims in Case 004, covering the Urabá region pertaining to the four community councils of Curvaradó, Los Manatíes, Puerto Girón and Larga - Tumaradó. That recognition will enable them to play an active part at all stages of the proceedings, submit evidence, pursue remedies, and present observations regarding the versions of the facts volunteered by persons appearing in court.¹¹² As the IACtHR sees it, rapprochement with the authorities and with extrajudicial decision-making mechanisms is becoming, as far as Afro-descendent communities are concerned, a key factor for forging peace in the ethnic territories along Colombia's Pacific and Caribbean coasts.

94. At the same time, the IACtHR welcomes the news that the JEP will extend until September 22, 2021, the deadlines for the presentation of reports by ethnic, victims', and human rights organizations, given the 6 months-and-7-day reprieves granted because of the COVID-19 health emergency.¹¹³

95. In this regard, the IACtHR recommends redoubling efforts to build partnerships with international cooperation agencies and/or domestic human rights institutions, such as the Ombudsman's Office, with a view to being able to ensure that ethnic groups can count on technical and budgetary support with drawing up and submitting reports.

96. Likewise, the Commission stresses that the opportunity afforded by JEP in coordination with ethnic jurisdictions in general, and the indigenous jurisdiction in particular, can be seized as a chance to bolster indigenous jurisdiction activities by allocating them sufficient resources. The JEP itself has stated that the JEI lacks the budget appropriation it needs to be able to operate and invest, which translates into limitations on its ability to gather, organize, and process information regarding investigations into events prior to December 1, 2016 related to acts committed in connection with the armed conflict.¹¹⁴

97. The IACtHR emphasizes that, in the case of black, Afro-descendent, *raizal*, and *palenquera* communities and other ethnic justice systems contemplated in the constitutional and legal provisions governing the workings of the JEP, the idea is also to develop and actually apply on an equal footing the right of all ethnic groups in Colombia to preserve and exercise their own justice systems.

98. That being so, the IACtHR calls for steps to be taken to fully fund the Special Jurisdiction of ethnic groups in accordance with LO Convention 169, by facilitating, on the basis of respect for, and recognition of, ethnic groups' own justice systems, harmonious coordination between those own justice systems, the regular justice system, and the JEP, within a framework

¹¹¹ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACtHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 7

¹¹² Rodeemos el diálogo, Pueblos étnicos en la Jurisdicción Especial para la Paz Snapshot de Justicia Transicional #9, May 26, 2020.

¹¹³ Jurisdicción Especial para la Paz (Special Jurisdiction for Peace -JEP), Comunicado 121-2020 - La JEP amplía el plazo para que las organizaciones de víctimas entreguen sus informes, September 15, 2020.

¹¹⁴ JEP, Auto [Ruling] No. 94, June 16, 2020, p. 4.

of culturally appropriate prior consultation processes. It further recommends forging ahead with the 2017-2027 Ten-Year Justice Plan and overcoming, in particular, the challenge of funding it.

99. The Commission issues a reminder of the urgent need to strengthen the JEP, especially given the fact that in 2020 there were four massacres in Tumaco and Ricaurte, in which most of the victims of those gross human rights violations were members of ethnic groups and of the Awá people, in particular.¹¹⁵ The IACtHR recalls that the Awá are among the indigenous peoples protected by precautionary measures since 2011,¹¹⁶ and by JEP Ruling (*Auto*) 079 of 2019,¹¹⁷ so that, within the framework of the protection measures granted by the National Protection Unit (UNP), there is a pressing need to strengthen individual protection arrangements and to guarantee collective protection measures for actors and communities engaged in proceedings before the JEP.

100. Finally, the Inter-American Commission issues a reminder that the State has a duty to investigate -- with an ethnic/racial perspective -- human rights violations committed against indigenous peoples and against Afro-descendent communities, to punish the perpetrators and instigators, and to make individual and collective reparation to the victims.

5.2. Truth component

101. The Inter-American Commission underscores that the two instruments established with the participation of the ethnic groups, namely, the "Methodology of the Ethnic Approach and against Racism, Racial Discrimination, and Related Forms of Intolerance"¹¹⁸ and the "Protocol governing relations with authorities and victims pertaining to indigenous, black, Afro-Colombian, Raizal, Palenquera, and Roma communities,"¹¹⁹ constitute substantive progress toward inclusion of the differential approach, but also, and above all, a benchmark for institutional adaptation in the Truth, Coexistence and Non-Recurrence Commission (CEV).

102. Also on this topic, the IACtHR is pleased to underscore information regarding the efforts and outcomes associated with the ethnic truth cycles of encounters: the drawing up and presentation of 32 ethnic reports. It further highlights the fact that, during the ethnic truth encounter in October 2020, the paramilitary commander Salvatore Mancuso admitted to Martha Cecilia Domicó, Kimy Pernía's daughter, that that indigenous leader had been murdered on orders, according to Mancuso, of the paramilitary commander Carlos Castaño, because of the opposition, headed by Kimy Pernía, to construction of the Urrá dam.¹²⁰ In that framework, the Commission calls for resolute progress to be made toward prompt acknowledgment of the truth

¹¹⁵ INDEPAZ, Informe de masacres en Colombia durante el 2020, December 13, 2020.

¹¹⁶ IACtHR, PM 61/11, March 16, 2020.

¹¹⁷ JEP, Auto No. 079 de 2019, November 12, 2019.

¹¹⁸ Comisión para el Esclarecimiento de la Verdad, la Convivencia y la no Repetición [Truth, Coexistence and Non-Recurrence Commission -CEV], Metodología del enfoque étnico y contra el racismo, la discriminación racial y formas conexas de intolerancia, October 30, 2018.

¹¹⁹ JEP [Special Jurisdiction for Peace], indígena y la jurisdicción especial para la paz
indígena y la jurisdicción especial para la paz, July 24, 2019.

¹²⁰ Comisión para el Esclarecimiento de la Verdad, la Convivencia y la no Repetición [Truth, Coexistence and Non-Recurrence Commission -CEV], Salvatore Mancuso reconoce haber asesinado al líder indígena Kimy Pernía Domicó, October 23, 2020.

in ethnic territories, including in situations in which the conflict is still very much alive, as such acknowledgment of the truth acts as a deterrent and provides some redress for victims.

103. Additionally, the IACHR values the CEV's actions to listen to and recognize the victims of the armed conflict who are in exile. According to information released by the institution, testimonies have been taken from more than 1,200 victims abroad in 23 different countries through different processes and with psychosocial accompaniment¹²¹.

104. Despite the efforts of the CEV, the IACHR observes the need for such actions to be extended so as to cover more remote areas and regions that have historically been downplayed in connection with the armed conflict and have a strong ethnic component. Cases in point are the departments of Amazonas, Vaupés, and Guainía, which were converted from prefectures and provinces (*intendencias y comisarías*) into departments with the promulgation of the Political Constitution of 1991.

105. In its observations on the present draft report, the State indicated that the CEV, in agreement with the Directorate of Territories, implemented a strategy of outreach to the departments of Amazonas, Vaupés and Guainía consisting of virtual and face-to-face activities in these departments¹²².

106. Regarding the Search Unit for Missing Persons, the IACHR underscores the efforts made to move ahead with prior consultation of the instruments entitled "Protocol governing relations and coordination between the UBPD and the indigenous peoples of Colombia"¹²³ and "Protocol for coordinating and arranging comprehensive, restorative, and transformational reparation for the indigenous peoples of Colombia"¹²⁴

107. The IACHR likewise welcomes the information that, in 2020, the UBPD established and installed the Body for Dialogue and Coordination with the indigenous movement and paved the way for progress in prior consultation with the Roma people and the 11 kumpany. Also worth highlighting is the inclusion of "Indigenous Peoples and Black, Afro-Colombian, Raizal and Palenquera Communities" as part of the process of implementing a Protocol governing Relations and Coordination between that entity and the indigenous peoples.¹²⁵

108. Nevertheless, based on the Peace Agreement and the safeguards it expressly establishes, the Inter-American Commission stipulates that it is important to ensure that the criteria for activating the search for missing persons adopt a differential and territorial approach, because, for instance, demographic density varies among ethnic groups, which makes numeric criteria problematic, and smaller groups, such as the Amazonian indigenous peoples, may be more severely impacted. The Commission also stresses the need to tighten ties with the UARIV,

¹²¹ CEV, ¿Cómo se cuenta el exilio?, 22 de diciembre de 2020.

¹²² Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia". P.8

¹²³ Missing Persons Search Unit, Protocolo de Relacionamiento y Coordinación entre la UBPD y los Pueblos Indígenas de Colombia, January 19, 2019.

¹²⁴ ONIC [National Indigenous Organization of Colombia], Instrumentos de relacionamiento entre los Pueblos Indígenas y el Sistema Integral de Verdad, Justicia, Reparación y No Repetición, protocolizados en la Mesa Permanente de Concertación – MPC, January 19, 2019.

¹²⁵ Secretaría Técnica del Componente Internacional de Verificación CINEP/PPP-CERAC, Primer informe de verificación de la implementación del enfoque étnico en el Acuerdo Final de Paz en Colombia, September 2020, p.99.

particularly regarding the psychosocial care and assistance that the authorities need to provide with exhumation procedures, by seeking to observe each ethnic group's world view (*cosmovisiones*) and funeral rites.

109. In its comments on the draft of this report, the State indicated that the UBPD is currently working on the promotion of differential, gender (women and LGTBI) and territorial approaches¹²⁶.

110. The Commission observes cuts in the budget allocated to the SIVJRN¹²⁷ and reminds the State of its international responsibilities under the Peace Agreement. It urges it to take resolute steps to implement the ethnic chapter.¹²⁸ In that connection, while acknowledging the substantial progress made with "Point 5" of the Agreement, the IACtHR calls upon the State to boost the budgetary resources needed for the System as a whole to function properly, with a view to providing full guarantees for effective enjoyment of the rights of ethnic groups to truth and justice.

111. The IACtHR likewise calls for more robust intersectionality in the approaches taken to establishing historical truth, taking into account the specific, different and disproportionately severe impacts on women, older adults, and children, which require the adoption of a holistic and multidimensional approach to the conflict: one that analyzes such variables as forced displacement, recruitment, selective assassination, sexual violence, and others, to which the aforementioned segments of the population are subjected.

6. Comprehensive Reparation for Ethnic Groups Pursuant to Decree-Laws 4633 and 4635 of 2011

112. With respect to comprehensive reparation, the IACtHR took note of Judgment C-588 of 2019, in which the Colombian Constitutional Court resolved the suit claiming that the Article in Law 1448 of 2018 which predated the entry into force of the policy of making comprehensive reparation to victims of the armed conflict was unconstitutional. Based on the principle of progressivity and the guarantee of non-regression, the Court found that, based on Article 2 of Legislative Act 02 of 2017, the transitory amendment "remains in effect until completion of three full presidential terms following the signing of the Final Agreement, that is to say, until August 7, 2030."¹²⁹

113. The Commission also notes that, for the Constitutional Court, "that fixed point in time is an unavoidable constitutional benchmark for establishing the minimum period during

¹²⁶ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACtHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia". P.9

¹²⁷ Comisión para el Esclarecimiento de la Verdad, la Convivencia y la no Repetición [Truth, Coexistence and Non-Recurrence Commission -CEV], Comunidad Internacional se muestra preocupada por la situación de seguridad en los territorios, July 8, 2019.

¹²⁸ IACtHR, Press Release No. 185/20, IACtHR Asks Colombia to Step Up its Efforts to Comprehensively Implement the Final Peace Agreement, July 31, 2020. "The IACtHR remains convinced that consolidating peace is essential for the exercise and protection of human rights. Thus, the Commission and the Colombian State signed on February 22, 2018 a cooperation agreement to implement and disseminate international human rights instruments. In that document, the parties agreed on the need to pool together their efforts to improve the implementation and dissemination of international human rights instruments. The parties also agreed that it is important for the IACtHR to provide technical assistance during the process of implementing Colombia's Peace Agreement, so that implementation reflects inter-American human rights standards."

¹²⁹ Corte Constitucional [Constitutional Court], Sentencia [Judgment] C-588 de 2019, December 5, 2019.

which the special rules governing the protection of victims shall remain in force. Consequently, at least until then, that period is backed by the Constitution.¹³⁰ The same argument was made regarding the extension of the period for which the three Decree-Laws for Ethnic Group Victims - 4633, 4634, and 4635 of 2011 - remain in force.

114. The IACHR's interpretation is that the "deferred unenforceability/invalidity" (*inexequibilidad diferida*) decision taken by the Constitutional Court based on the above-mentioned considerations is accompanied by an exhortation to the National Government and the Congress of the Republic to "adopt, before Law 1448 of 2011 and Decrees 4633, 4634, and 4635 (all of 2011) expire, the requisite decisions regarding their extension, or adopt victim protection rules that adequately safeguard their rights." Thus, unless that path is followed, Law 1448 of 2011 and Decrees 4633, 4634, and 4635 of 2011 shall be construed to expire once that period ends, or, to put it another way, shall remain in force until August 7, 2030, without prejudice to legal argument 70 of that ruling.

115. In this regard, the Commission takes note of the effective application by the Constitutional Court of the progressivity of rights principle, with a view to ensure the protection and effective exercise of the rights of the victims of the armed conflict, in general, and of victims pertaining to ethnic groups, in particular. The IACHR issues a reminder that observance of this principle is mandatory for the States in the Hemisphere, given that it is rooted in the American Convention on Human Rights (Articles 2 and 26), in the Protocol of San Salvador (Article 1), and, again, in the American Declaration on the Rights of Indigenous Peoples (Article XXXI).

116. In September 2020, the IACHR was apprised of the passing of the legislative amendment through which Congress extended the policy of care and comprehensive reparation for victims of the armed conflict for a further ten (10) years, pursuant to the above-mentioned minimum parameters established by the Constitutional Court.¹³¹

117. The Inter-American Commission underscores this legislative progress and the pre-established minimum periods for which legislation will be in force set by the Constitutional Court, which have ensured continuity for Colombia's public policy for attending to and making comprehensive reparation for victims of the armed conflict who pertain to ethnic groups. The extension and its interdependence with the contents, principles, rights, and safeguards of the Peace Agreement and its ethnic chapter offer a valuable opportunity for mutual reinforcement of both processes, squarely focused on victims.

118. The IACHR likewise takes note of the conclusions of the Commission for Follow-up and Monitoring of the Decree-Laws (CSMDL),¹³² regarding the extension of the regulatory instruments and the much-needed debate about what to make of the widespread violence in ethnic territories, how to address it and make reparation for it, and about how best to continue striving to overcome the long, dark night of violence in Colombia.¹³³ Against that backdrop, the IACHR urges the State to work with ethnic groups and the organizations representing them,

¹³⁰ Corte Constitucional [Constitutional Court], Sentencia [Judgment] C-588 de 2019, December 5, 2019.

¹³¹ Senado de la República [Senate], Aprobada prórroga Ley de Víctimas por 10 años más y se creará un proyecto para campesinos vulnerables segundos ocupantes de predios, September 2, 2020.

¹³² Made up of the Office of the Inspector General, the Office of the Comptroller-General of the Republic, the Ombudsman's Office, and representatives of ethnic groups. The Commission was established simultaneously in 2011 by Articles 180 of Decree Law 4633; 109 of Decree Law 4634, and 143 of Decree Law 4635.

¹³³ CSMDL. Octavo informe de seguimiento y monitoreo a la implementación del Decreto Ley 4635 de 2011 para los pueblos y comunidades negras, afrocolombianas, raizales y palenqueras víctimas del conflicto armado, August 20, 2020. p.31.

within the framework of inter-American standards of participation and consultation, on lasting solutions to the ongoing structural challenges encountered for effective implementation of comprehensive reparation for the victims of the armed conflict pertaining to those peoples. One major challenge will be working out the specific costs of financing the extension of the Decree-Laws and finding the necessary resources. Certainly, it would be best not to repeat the experience of the first 10 years in which these Decrees were in place, when no costing and funding were provided for in the Compes 3726 document of 2011 on "Guidelines, execution work plan for meeting targets, the budget, and follow-up mechanism for the national plan for comprehensive care and reparation for victims," issued by the National Economic and Social Policy Council.¹³⁴

119. In addition to making, in consultation with the ethnic groups, a properly substantiated estimate of resources needed, which should include a calculation of the number of ethnic victims still to be assisted, and of the sources of financing, it will be necessary to revert the steady downward trend in funding pointed out by the CSMDL, according to which "Resources exclusively allocated to care, assistance, and comprehensive reparation for ethnic groups, particularly in the case of indigenous peoples between 2016 and 2020, have tended to decline. In 2020, especially, they fell by 6% compared to fiscal year 2019."¹³⁵ On this matter, the IACHR urges the State to guarantee the sustainability of all components of assistance, protection, and collective reparation processes, and to raise the risk ratings for ethnic groups in circumstances such as those observed in 2020 . marked by a resurgence and reconfiguration of the armed conflict in their territories.

120. Limited progress has been made with collective reparation for ethnic groups. The IACHR notes that the reports and figures published by the Comprehensive Victim Assistance and Reparation Unit (UARIV) point to major progress with respect to the inclusion of ethnic collective entities (*sujetos colectivos étnicos*) in the registry: it reported that, by June 2020, 538 ethnic collective entities had been included in the Consolidated Victims Registry (*Registro Único de Víctimas*). Of them, 346 are collective entities pertaining to indigenous communities; 191 to Afro-Colombian, black, Raizal or Palenquera communities, and 1 to the gypsy or Roma people.

121. However, as of June 2020, 70% of comprehensive collective reparation plans were still at the initial -- identification and preparatory -- stages. Thus, and according to statements made at the technical session of the CSMDL on September 25, 2020, with officials and public servants from the Nariño Pacific Coast, "only 10% of those plans are actually being implemented and none has been completed"¹³⁶.

122. The IACHR underscores the need to bolster inter-agency coordination, provide sufficient resources, and forge resolutely ahead with the institutional arrangements needed to respond in a culturally appropriate manner to the challenges associated with making comprehensive reparation to ethnic groups in connection with the armed conflict, in which, despite repeatedly declaring that they are neutral and autonomous and as the Constitutional

¹³⁴ CSMDL, Octavo informe de seguimiento y monitoreo a la implementación del Decreto Ley 4633 de 2011 para las víctimas del conflicto armado de los pueblos indígenas, August 20, 2020, p. 13.

¹³⁵ CSMDL, Octavo informe de seguimiento y monitoreo a la implementación del Decreto Ley 4633 de 2011 para las víctimas del conflicto armado de los pueblos indígenas, August 20, 2020, p. 16. The same downward trend in 2020 was also observed for Afrodescendent communities, according to the same Commission: CSMDL. Octavo informe de seguimiento y monitoreo a la implementación del Decreto Ley 4635 de 2011 para los pueblos y comunidades negras, afrocolombianas, raizales y palenqueras víctimas del conflicto armado, August 20, 2020. p. 15.

¹³⁶ Contraloría General de la República; Procuraduría General de la Nación; Defensoría del Pueblo de Colombia, Comisión de seguimiento y monitoreo a la implementación de los Decretos Ley 4633, 4634 y 4635 de 2011, presentation on September 25, 2020

Court stressed in Rulings 004 and 005 of 2009, they have been disproportionately hard-hit, both individually and collectively.

123. Material compensation for damage inflicted is a key part of comprehensive reparation. On that front, the Public Prosecutors' Office and the Office of the Comptroller-General of the Republic have made scant progress. Reportedly, 406, 527 black, Afrodescendent, Raizal and Palanquera people have yet to receive compensation. The IACHR is also worried by information to the effect that if the current pace of funding for this continues (in 2020, the funding sufficed to compensate 8, 296 people) it will take 49 years to honor this right for all victims eligible for compensation.¹³⁷

124. On the other hand, in its observations on the draft of the present report, the State indicated that, in the period from 2013 to 2020, 4,741 reparation actions have been agreed upon in the Comprehensive Collective Reparation Plans and 1,741 have been implemented. Additionally, the State highlighted that the implementation of the plans has been progressive and in the case of ethnic communities is carried out under the guarantee of the fundamental right to prior consultation with each community; for this, 132 consultation procedures have been initiated in order to agree on the measures to be established in the ethnic plans according to the particularities and collective damages identified. Regarding the resources allocated for the compensation of victims, the State reported that the Unit for Victims executed 100% of the resources allocated to grant the compensation measure for a total value of \$937,861 billion, corresponding to 116,125 transfers made throughout the national territory¹³⁸.

125. The IACHR notes that the situation is just as critical with respect to the indigenous peoples; in fact, the projections there are even more alarming: 139,020 indigenous persons have yet to receive compensation. Each year, on average, 2,040 indigenous persons have received compensation. If that trend continues, and assuming no change in the total of eligible persons, it will take 68 years to satisfy this right for all of them.¹³⁹

126. As regards restitution of territorial rights, a core component of the collective, material, and spiritual survival of ethnic groups, as the organs of the inter-American human rights system have repeatedly recognized,¹⁴⁰ the IACHR acknowledges that, ever since the Decree-Laws were passed, the Land Restitution Unit (URT) has worked tirelessly to achieve protection and/or restitution of the territorial rights of ethnic groups. Nevertheless, the IACHR also takes note, *inter alia*, of information to the effect that the vast majority of restitution processes are taking place in formally recognized territories to the detriment of those to which communities still lack formal

¹³⁷CSMDL. Octavo informe de seguimiento y monitoreo a la implementación del Decreto Ley 4635 de 2011 para los pueblos y comunidades negras, afrocolombianas, raizales y palenqueras víctimas del conflicto armado, August 20, 2020. p. 122.

¹³⁸ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”, p. 10-11

¹³⁹ CSMDL, Octavo informe de seguimiento y monitoreo a la implementación del Decreto Ley 4633 de 2011 para las víctimas del conflicto armado de los pueblos indígenas, August 20, 2020, p. 148.

¹⁴⁰ See, *inter alia*: IACHR, Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. OEA/Ser.L/V/II. Doc. 56/09, December 30, 2009. P. 2; I/A Court H.R., Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125, par. 146 ff.

(collective ownership) title; the sharp drop in applications for new precautionary measures; and the scant number of new cases opened in fiscal years 2019 and 2020.¹⁴¹

127. Indeed, one of the biases observed by the IACHR, because of its direct relevance with regard to inter-American standards concerning the nature and scope of ethnic collective ownership, has to do with the disproportionately large share of restitution processes -- be they fully developed appropriations, appropriations under way, or restitution judgments -- occurring in already titled territories. In fact, communal ownership and territorial rights, including restitutions, are clearly based on historical occupancy, with no need for formal titles to substantiate the existence of those rights.¹⁴²

128. Thus, given that both formally titled and untitled territories enjoy equal recognition and protection under inter-American standards, it worries the IACHR that there may be a bias underlying the fact that of the 19 territorial rights restitution judgments (the latest being to Bochoromá Bochoromacito in the department of Chocó),¹⁴³ 15 involved restored territory already titled as a reserve or collective territory of black communities before the URT began processing restitution of territorial rights.

129. In the IACHR's view, already titled lands must be protected and the territorial rights over them affected by the armed conflict restored. Nevertheless, there are numerous ethnic territories for which the right to collective ownership has not been formally recognized, so that it is they that should be prioritized in the implementation of restitution policy.¹⁴⁴

130. The Commission also takes note of the concern voiced by the CSMDL at the fact that, in the first 5 months of 2020, there was a steep drop in the number of new applications for precautionary measures to protect the rights of ethnic groups, even though, in connection with the pandemic, threats to their physical, cultural, and territorial integrity and health had markedly increased¹⁴⁵. Rather, according to the CSMDL, the few protection measures that were elicited throughout 2020 were promoted by the Public Prosecutors' Office. The Commission also takes note of the monitoring done by the URT, which points out, with respect to compliance with precautionary measures, that 98.78% of the orders issued have yet to be complied with, 1.1%

¹⁴¹ CSMDL, Octavo informe de seguimiento y monitoreo a la implementación del Decreto Ley 4633 de 2011 para las víctimas del conflicto armado de los pueblos indígenas, Augut 20, 2020, p. 87.

¹⁴² I/A Court H.R., Case of the Indigenous Community Sawhoyamaxa v. Paraguay. Merits, Reparations, and Costs. Judgment of March 29, 2006. Series C No. 146, par. 128.

¹⁴³ First Civil Court of the Circuit Specializing in Land Restitution of Quibdó, Judgment restoring territorial rights of the Embera Katío indigenous reserve of Bochoromá Bochoromacito, on November 24, 2020, case number 27001-31-21-001-2017-00106-00.

¹⁴⁴ I/A Court H.R., Case of the Indigenous Community Sawhoyamaxa v. Paraguay. Merits, Reparations, and Costs. Judgment of March 29, 2006. Series C No. 146, par. 128. The following conclusions are drawn from the foregoing: 1) traditional possession of their lands by indigenous people has equivalent effects to those of a state-granted full property title; 2) traditional possession entitles indigenous people to demand official recognition and registration of property title; 3) the members of indigenous peoples who have unwillingly left their traditional lands, or lost possession therof, maintain property rights thereto, even though they lack legal title, unless the lands have been lawfully transferred to third parties in good faith; and 4) the members of indigenous peoples who have unwillingly lost possession of their lands, when those lands have been lawfully transferred to innocent third parties, are entitled to restitution thereof or to obtain other lands of equal extension and quality. Consequently, possession is not a requisite conditioning the existence of indigenous land restitution rights."

were canceled or lifted by judges specializing in land restitution, and barely 0.2% were archived due to judges' assessments that they had been complied with.¹⁴⁶

131. On the other hand, the IACHR takes note of the information provided by the State in its observations on the draft of this report, where it notes that the Special Administrative Unit for the Management of Restitution of Divested Lands (UAEGRTD), register for the year 2020, 23 orders granting precautionary measures under Decree Laws 4633 and 4635 of 2011, which means that, historically, it is the year in which the largest number of precautionary measures granted at the request of the entity is reported. The State emphasized that precautionary measures are requested by the UAEGRTD when it is noticed that territorial rights may be violated or threatened by situations associated with the armed conflict in order to prevent imminent damage or stop the damage being caused to the rights of the victim communities and their territories. In relation to compliance with the precautionary measures granted, the State mentioned that these are linked to a multiplicity of entities, who are responsible for complying with the orders of the judicial authority. However, it is the judges who have the competence to lift, revoke, change or modify the measures adopted, depending on the factual and legal circumstances of each case, as well as the degree of effectiveness of the materialization of the measures¹⁴⁷.

132. Even though significant progress has been made, such as the recent legislative approval for extending the comprehensive reparation policy for ethnic groups and the fact that, pursuant to the aforementioned judgment of the Constitutional Court, that policy is supposed to be coordinated with the Peace Agreement, and despite the large number of collective entities eligible for compensation that have now been included in the Unitary Victims' Registry (RUV, for its Spanish initials), the IACHR observes that major budgetary, approach-related, and institutional adaptation challenges still have to be overcome through consultation and participation with ethnic groups within the framework of the national bodies representing them. As far as budgets are concerned, the IACHR has emphasized that the State is obliged to ensure "the funds and resources needed to comply with its constitutional and international obligations with respect to the territorial rights of indigenous and tribal peoples."¹⁴⁸

133. The Inter-American Commission on Human Rights stresses that a primary component of comprehensive reparation for ethnic groups is the right to restitution of territorial rights, since it is the reparation factor "[...] that comes closest to *restitutio in integrum*."¹⁴⁹ Pursuant to applicable inter-American standards, "[...] land restitution is an essential right for cultural survival and for keeping the community together."¹⁵⁰ Here, the IACHR recalls that neither

¹⁴⁶ CSMDL, Octavo informe de seguimiento y monitoreo a la implementación del Decreto Ley 4633 de 2011 para las víctimas del conflicto armado de los pueblos indígenas, August 20, 2020, p. 87.

¹⁴⁷ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia". P. 11.

¹⁴⁸ IACHR, Third Report on the Situation of Human Rights in Paraguay, Doc. OEA/Ser./L/VII.110 doc. 52, March 9, 2001, par. 50 – Recommendation 2.

¹⁴⁹ I/A Court H.R. Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of August 24, 2010, Series C No. 214, par. 281.

¹⁵⁰ IACHR, Second Report on the Situation of Human Rights in Peru. Doc. OEA/Ser.L/V/II.106 Doc. 59, rev.2, June 2, 2000, Chapter X, par. 16.

material possession nor the existence of a formal ownership title are pre-requisites for the right to indigenous ownership of territory.¹⁵¹

7. Implementation and Verification

134. The Inter-American Commission on Human Rights points out that the ethnic groups worked hard during the negotiations in Havana to ensure their participation and have their voice heard and thereby ensure that an ethnic perspective was built into the Peace Agreement. Thus, it notes that the autonomous establishment of the Ethnic Commission for Peace and the Defense of Territorial Rights¹⁵² played a crucial role in the channeling of demands for ethnic participation in the negotiations and managed to achieve not just the inclusion of an ethnic chapter within the Peace Agreement, but also the creation of an Ethnic Forum (*Instancia Étnica*) in implementation and verification mechanisms.¹⁵³

135. At the same time, the establishment of the Special High-Level Forum with Ethnic Peoples (IEANPE), the protection of self-government and ethnic participation bodies, and independent funding for implementing the Peace Agreement separate from other resources derived from budgetary agreements between the National Government and ethnic groups constitute three clear safeguards built into the ethnic chapter, which amount to mechanisms promoting, respecting, and protecting autonomy, self-determination, and the ethnic groups' own development, in line with the general principles espoused in that chapter.

136. Regarding the Special High-Level Forum with Ethnic Peoples established by Decree 1995 of 2016, the IACHR highlights the role assigned to it within the framework of the Peace Agreement as a consultant, representative, and top-level interlocutor of ethnic groups with the Commission for the Follow-up, Promotion and Verification of the Final Agreement (CSIVI) as well as the extensive work it accomplished since it was established, despite the difficulties outlined below. Thus, according to the Presidential Council for Stabilization and Consolidation, that Forum met either in plenary session and/or as its Technical Secretariat 24 times to track implementation of the 97 indicators of the Framework Plan for Implementation (PMI).

137. The IEANPE work plan, established in close coordination with the CSIVI, envisages three main course of action: "(i) Technical reinforcement of IEANPE management; (ii) A prominent ethnic role in forging peace, the dissemination of knowledge and know-how (*difusión de saberes*), and inter-cultural nation – territory dialogue; and (iii) Inter-cultural dialogue with a human rights, gender, women's, family, and generational perspective." The United Nations Multipartner Trust Fund for Sustaining Peace has committed to funding it.

138. Nevertheless, the IACHR takes note of some of the hurdles and challenges the IEANPE has had to face to be able to function properly. It notes, first, the pronouncement made in February 2020 by the Forum itself, in which it pointed out that the State had "systematically failed to live up to its responsibility to ensure that the IEANPE is fully functional and its

¹⁵¹ Indigenous and Tribal Peoples' Rights over their ancestral lands and natural resources. OEA/Ser.L/V/II. Doc. 56/09, December 30, 2009. Par. 125.

¹⁵² Comisión Étnica para la Paz y la Defensa de los Derechos Territoriales [Ethnic Commission for Peace and the Defense of Territorial Rights], Comunicado a la opinión pública nº 002, March 8, 2016.

¹⁵³ Comisión Étnica para la Paz y la Defensa de los Derechos Territoriales, 1 Informe de cumplimiento del Capítulo Étnico en el marco de la implementación del Acuerdo Final de Paz entre el Gobierno de Colombia y las FARC-EP, December 2018, p. 5.

responsibility to the ethnic peoples of Colombia.¹⁵⁴ Similar sentiments have also been voiced by the Afro-Colombian National Peace Council (CONPA) and the Office of the Comptroller-General of the Republic. In that context, the IACtHR calls upon the State to clearly identify budget appropriations and financial implementation, not just to facilitate the monitoring work done by the IEANPE but also in order to honor the third safeguard in the ethnic chapter.

139. Finally, regarding guaranteeing of the right to prior, free, and informed consultation, as a primary guarantee and safeguard provided for in the ethnic chapter, the IACtHR refers to the analysis and recommendations made in section 2.6 on participation and safeguards for comprehensive implementation of the Peace Agreement.

III. FOLLOW-UP OF RECOMMENDATIONS

A. Life, Personal Integrity, and Personal Liberty

I. Right to Life, Personal Integrity, and Liberty

- Adopt, as soon as possible, the measures necessary to prevent State agents from committing violations of human rights and international humanitarian law. Those measures should include: (a) a serious, impartial, and effective investigation into all cases that involve alleged violations of human rights and IHL, as well as of all those persons who have planned, ordered, and/or perpetrated such acts; and (b) intensive training in human rights law and IHL.
- Adopt the appropriate measures for the members of the security forces who are allegedly involved in cases of violations of human rights or IHL to be suspended from active duty until a final decision is issued in the disciplinary or criminal proceedings in such cases.
- Adopt, as soon as possible, the measures necessary to dismantle the Autodefensas ["Self-Defense Forces"] who did not participate in the collective demobilizations from 2003 to 2006, and to dismantle the armed groups that emerged after the demobilization of the paramilitary organizations or that continue to pursue the same objectives. [In the current context, specific information is also requested regarding measures adopted to dismantle illegal armed groups and bring them to justice].
- 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.

140. Regarding the recommendation to **adopt the measures needed to prevent State agents from committing violations of human rights and international humanitarian law including serious, impartial, and effective investigation into all cases that involve alleged violations of human rights and IHL, as well as of all those persons who have planned, ordered, and/or perpetrated such acts; and providing intensive training in human rights law and IHL**, the State reported that the Directorate Specializing in Human Rights Violations of the Office of the Attorney General (FGN) is processing 2,314 cases related to deaths

¹⁵⁴ IEANPE [Special High-Level Forum with Ethnic Peoples], Declaración Instancia Especial de Alto Nivel con Pueblos Étnicos IEAÑPE para la implementación del Acuerdo Final de Paz entre el Estado Colombiano y las FARC-EP, a 3 años de la firma y de la formalización de la IEANPE, June 18, 2020.

illegitimately framed as cases of persons killed in combat, known as "false positives,"¹⁵⁵ a development that the Commission commends.

141. According to information provided by the State, 3,966 victims are involved in these cases, for which 10,949 individuals are under investigation: members of 7 divisions, 36 brigades, and 144 battalions of the National Army. Thus far, 1,749 people have been convicted in connection with these cases, including 165 colonels and lieutenant colonels, 17 of them for aggravated homicide, homicide of a protected person, or other crimes related to those deeds. According to the State, nine persons were convicted in connection with these cases in the past year.¹⁵⁶

142. With respect to the investigations, in its reply the State pointed to Article 79.3.j of Law 1.957 of 2019, containing the Statutes of the Special Jurisdiction for Peace (JEP), which provides as follows: "Given the exclusive competence of the JEP for conduct committed prior to December 1, 2016, as stipulated in transitory Article 5 of Legislative Act 01 of 2017, public bodies and servants continuing prior investigations may only perform acts of inquiry or investigation in accordance with the procedure involved and shall refrain from handing down rulings, detaining, issuing arrest warrants, or complying with previously ordered arrests that involved persons whose conduct falls within the remit of the JEP."

143. Regarding the responsibilities established for conducting investigations allegedly involving State agents, civil society organizations pointed out that Law 1.957 of 2019 also defines the powers of the Office of the Attorney General (FGN) with respect to cases for which the JEP is competent. Here, they pointed out that, in Judgment C-080 of 2016, the Constitutional Court found that the Attorney General's Office remained obliged to investigate until such time as the JEP ordered it to remit the files. Likewise, Circular 003 of July 22, 2019 established that the Office of the Attorney General "retains competence over all cases it is handling related to the armed conflict until the Division for Acknowledgement of Truth, Responsibility and Determination of Facts and Conduct announces that in three months it will present its resolution containing conclusions."¹⁵⁷ Despite that, civil society organizations point out that, de facto, the FGN has suspended investigations into a large number of cases for which competence of the JEP is uncertain, as a result of which numerous cases are not being investigated by either body.¹⁵⁸

144. Civil society further informed the IACtHR that Colombia's Supreme Court had handed down a judgment in which it concluded that the police Mobile Anti-Riot Squad (ESMAD) was responsible for a "systematic, arbitrary, and violent" intervention against protests in November 2019 and that the behavior of the Government and National Police during those protests "violated the constitutional rights of the demonstrators."¹⁵⁹ According to civil society organizations, the Supreme Court ruling includes a series of orders to the Ministry of Defense, such as the establishment of a committee (*mesa de concertación*) to agree on rules governing the

¹⁵⁵ Gobierno de Colombia, Aportes del Estado colombiano al capítulo V, 30 October 2020, p.2 [Government of Colombia, Contributions by the Colombian State to Chapter V, October 30, 2020, p.2]

¹⁵⁶ Gobierno de Colombia, Aportes del Estado colombiano al capítulo V, 30 October 2020, p.2-3 [Government of Colombia, Contributions by the Colombian State to Chapter V, October 30, 2020, pp.2-3]

¹⁵⁷ Information remitted by civil society for inclusion in the 2020 Annual Report.

¹⁵⁸ IACtHR, Public Hearing, 178th period of sessions, "Situation of Human Rights in Colombia," December 9, 2020.

¹⁵⁹ CAJAR [José Alvear Restrepo Lawyers' Association] La Corte Suprema de Justicia protege el derecho a la protesta, September 23, 2020.

use of force in accordance with international and constitutional standards; National Government neutrality -- including non-stigmatization of demonstrators; a public act of apology by the Ministry of Defense for excesses committed since the march of November 21, 2019; and suspension of the use of caliber 12 shotguns, like the one that killed Dilan Cruz in the demonstrations on November 25, 2019.¹⁶⁰

145. In its observations on the present draft report, the State reported that for the events that occurred on November 25, 2019, where Dilan Cruz lost his life, a captain of the National Police is being investigated for the crime of alleged homicide, the process is currently in the preliminary investigation stage¹⁶¹.

146. Nevertheless, the IACHR notes that, in the report sent to help write this chapter, the State did not provide information about investigations and/or measures implemented to address possible human rights violations allegedly committed by State agents, including the Armed Forces and the police. With respect to the military, in 2020 the Commission highlighted reports on alleged illegal spying on journalists, justice operators, human rights defenders, and political leaders, reportedly involving agents in the military cyber-intelligence battalions (Bacib) and the Army's information security counterintelligence battalion (Bacsí), regarding which the Commission issued a communique voicing its profound concern.¹⁶² In addition, during 2020, the IACHR continued to monitor reports of the kidnapping and collective rape of indigenous girls and adolescents by members of the armed forces.¹⁶³ At the same time, the Commission was apprised of cases of misuse of force by the police, including the murder of Javier Ordoñez and police violence against demonstrators protesting that murder.¹⁶⁴ The IACHR likewise voices its concern at the lack of up-to-date information on intensive human rights training for State agents.

147. In its observations on the draft of the present report, the State reported that, in relation to the case of the alleged illegal spying on journalists, justice operators, human rights defenders and political leaders in which members of the Army are allegedly involved, the alleged perpetrators, the crime, and the dates of the events have not yet been established¹⁶⁵.

148. With regard to the reports on the kidnapping and collective rape of indigenous girls and adolescents by members of the armed forces, the State indicated that in the case of the indigenous girls from the Sol de los Pastos Community, Carlosama Resguardo, Nariño, the trial stage is underway and on December 9, the indictment hearing was held against two detainees. The case of a girl victim of sexual violence from the Gito Dokabú reservation, Embera Katio, is at the trial stage and on November 6, 2020, the prosecutor's office filed the corresponding indictment. Regarding the case of a victim of sexual violence of the Nukak Makú indigenous

¹⁶⁰ Information remitted by civil society for inclusion in the 2020 Annual Report.

¹⁶¹ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 15

¹⁶² IACHR, IACHR and its Office of the Special Rapporteur express deep concern over complaints of espionage of journalists, human rights defenders, judges, and political leaders in Colombia, January 16, 2020.

¹⁶³ IACHR, Press Release IACHR Vehemently Condemns Rape of Indigenous Girls and Adolescents and Calls on Colombia to Investigate Events with Due Diligence, No. 166/20, July 17, 2020.

¹⁶⁴ IACHR, Press Release. IACHR Condemns Excessive Use of Police Force, Expresses Concern about Violence During Public Demonstrations in Colombia, No. 219/20, September 16, 2020.

¹⁶⁵ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 15-16

people, the Attorney General of the Nation allegedly assigned this process to the Specialized Directorate against Human Rights Violations¹⁶⁶.

149. With respect to the days of protest that took place between September 9 and 11 following the death of Javier Ordóñez after a police procedure, the State indicated that the Delegate for Citizen Security has identified 42 active cases for events that occurred in Bogotá allegedly attributable to the security forces (ESMAD or Surveillance Police). According to the State, these cases are in the investigation stage and are being prosecuted for the crimes of abuse of authority, personal injury, theft and damage to private property. Additionally, the Delegate for Citizen Security identified 9 active cases that are being pursued with respect to 9 homicide victims that occurred during these days of protest in Bogota and one case with respect to three homicide victims that occurred in the municipality of Soacha, Cundinamarca. Of the 9 cases in Bogota, 4 have been indicted against four patrolmen of the National Police for the crime of homicide and the process that is underway in the Cundinamarca Sectional Directorate has also been indicted and a patrolman of the National Police has been arrested. Likewise, the Specialized Directorate against Human Rights Violations is responsible for the case of the homicide of Javier Ordóñez¹⁶⁷.

150. In addition, the State added that the National Directorate of Schools is the managing unit for the design and implementation of a pedagogical approach for training in Human Rights and International Humanitarian Law in the National Police. Likewise, agents are trained in Human Rights and International Humanitarian Law through the Police Education System, the development of events, complemented with strategies such as the Mobile Police Training Teams EMCAP and Virtual Education¹⁶⁸. The Commission takes note of the information provided by the State in its observations. It also notes the need to continue to make progress in the investigations and to punish the material and intellectual authors of the facts indicated. For this reason, it considers this recommendation to have been partially complied with.

151. Regarding the recommendation that the State **adopt the appropriate measures for the members of the security forces who are allegedly involved in cases of violations of human rights and/or international humanitarian law to be suspended from active duty until a final decision is issued in the disciplinary or criminal proceedings in such cases**, the State said it "respects the decisions of judicial and administrative authorities and has established the communication mechanisms needed to cooperate with due administration of justice."¹⁶⁹ As regards the opening of judicial proceedings, the State provided no further information. Given the dearth of information in this area, the Commission considers that compliance with this recommendation is **still pending**.

152. Regarding the recommendation to adopt **the measures needed to dismantle the was ["Self-Defense Forces"]who did not participate in the collective demobilizations from 2003 to 2006**, the State pointed out that the "Defense and Security Policy for Legality,

¹⁶⁶ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACtHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 16

¹⁶⁷ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACtHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 17

¹⁶⁸ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACtHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 14

¹⁶⁹ Report by the Colombian State on follow-up to IACtHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 3.

Entrepreneurship, and Equity" was issued in 2019 and that one of its components refers to the dismantling of Organized Armed Groups and Organized Crime Groups.¹⁷⁰ The State likewise reported the existence of various institutions devoted to disbanding criminal organizations, such as the Elite Corps of the National Police, the Directorate Specializing in Organized Crime of the Office of the Attorney General (DECOC), along with polices, such as the Strategic Plan of the Defense and Security Sector.¹⁷¹

153. For their part, civil society organizations notified the Commission about the bolstering of paramilitary structures, such as the United Self-Defense Forces of Colombia (AUC) and about the reorganization of the territorial conflict to the constant detriment of entire communities. They point out that in the southern parts of Córdoba and in Antioquia, there are reports of clashes between the two sub-groups of the paramilitary organization Clan del Golfo or Gaitanista Self-Defense Forces of Colombia (AGC), triggered by a battle for territorial control over drug-trafficking and mining areas. In the Chocó, the main dispute is between these groups and the ELN for control over illegal mining.¹⁷²

154. In its observations on the draft of this report, the State reported on the increase in the recompense of the heads of criminal organizations, campaigns to make them visible through the mass media, and the offer of rewards for information leading to their capture¹⁷³. The State also reported that the strategy established by the Criminal Investigation Directorate and INTERPOL to dismantle illegal armed groups is called the National Strategy against Organized Crime (ENCOR), through which, during 2020, five people were arrested in Chocó as members of criminal organizations¹⁷⁴.

155. The Commission acknowledges the State's efforts to dismantle organized armed groups. Nevertheless, the State is not reporting any progress with those strategies or with regard to such organizations in 2020. The IACHR also took note of the early warnings issued by the Ombudsperson's Office, especially AT 041-19, and of the displacement of more than 2,000 people in 2020 from the Alto, Medio, and Bajo Baudó region, as a result of clashes between the AGC and the ELN.¹⁷⁵ At the same time, the IACHR voiced its concern throughout 2020 about the levels of violence in Colombia, especially that associated with illegal armed groups fighting for control over illegal economic activities in territories characterized by the scant presence of the State.¹⁷⁶ In light of the above, the IACHR concludes that compliance with this recommendation has been partial.

¹⁷⁰ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p.4.

¹⁷¹ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p.4.

¹⁷² Communication from Amnesty International to the IACHR in response to the request for its views regarding monitoring of compliance with the recommendations made in the Truth, Justice, and Reparation Report, November 19, 2020.

¹⁷³ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 18

¹⁷⁴ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 20-21

¹⁷⁵ Ombudsperson's Office, press release. [Defensoría pide atención urgente para 450 desplazados en Chocó](#), September 17, 2020.

¹⁷⁶ IACHR, Press Release 251/20, [IACHR Expresses Concern over Increase in Violence in Colombia in Territories Where Illegal Armed Groups Are Operating](#), October 13, 2020.

156. Regarding the recommendation to **adopt the corresponding measures to ensure that extrajudicial executions are investigated in the competent jurisdiction, i.e., the regular jurisdiction**, the State pointed out that cases involving conduct at variance with the constitutional and legal functions entrusted to the security forces (*Fuerza Pública*) shall not be heard by the Specialized Jurisdiction and shall be investigated and tried by public prosecutors and regular jurisdiction judges. It went on to state that when judicial officers of the Military Criminal Jurisdiction have reasonable doubts as to their competence, they shall remit the investigation and all proceedings already conducted to that regular jurisdiction, and in the event of a conflict with respect to competence, it shall be incumbent upon the Higher Council of the Judiciary (CSJ) to rule on those doubts. The State added that the Office of the Attorney General, through its Directorate Specializing in Human Rights Violations, is the body entrusted with processing all applications made by victims regarding cases before the Military Criminal Justice system.¹⁷⁷

157. For its part, the Commission has been monitoring progress with Case No. 003, called "Deaths illegitimately framed by State agents as cases of persons killed in combat" under the Special Jurisdiction for Peace (JEP). On this matter, the IACtHR took note of the testimony of retired Colombian Army officer Gustavo Soto, who declared: "While I was a commander, I accounted for ("di"), if I remember rightly, 83 deaths, the majority of which were illegitimate; very few, say 4 or 5, were totally legal deaths." According to this testimony, which was also rendered before the JEP, members of the Colombian army killed civilians or persons captured in order to present them as killed in combat, in order to claim the benefits and rewards offered in the war against illicit armed groups, which intensified as of 2002.¹⁷⁸ In connection with the exhumations of 17 corpses in Dabeiba as part of Case No. 003, members of the JEP repeatedly stated that most of those deeds "had never been investigated by the regular justice system and those involved who were investigated confessed to crimes never previously prosecuted."¹⁷⁹

158. In its observations on the draft of the present report, the State reported with respect to the deaths illegitimately presented as combat casualties that: "(...) the Military Criminal Justice does not judge investigations on this type of situations, due to the provisions of Article 221[3] of the Political Constitution of Colombia, in line with Article 3[4] of Law 522 and Article 3[5] of Law 1407 of 2010, since they violate humanitarian law and break the functional nexus of the agent of the state. However, after consulting the judicial offices at the national level, one hundred and ninety-three (193) investigations were found for the crime of "homicide" whose circumstances occurred in combat, clarifying that the cases have been referred, due to competence, to the ordinary justice system (...)"¹⁸⁰.

159. In light of this, the Commission notes that there still is a need to continue investigating these events and their various ramifications in order to punish the material and intellectual responsibilities of the executions. Furthermore, according to the information available, the IACtHR considers this recommendation to have been partially complied with and will continue to monitor efforts to combat impunity in cases of extrajudicial executions both in

¹⁷⁷ Report by the Colombian State on follow-up to IACtHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p.5

¹⁷⁸ Agence France-Presse (AFP), Militares confiesan el horror de las ejecuciones extrajudiciales en Colombia, May 13, 2020.

¹⁷⁹ El Heraldo, La JEP desentierra el "horror de la guerra" y recupera 17 cuerpos en Dabeiba, November 18, 2020.

¹⁸⁰ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACtHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia". P. 21-22

the ordinary courts and in cases brought before the Special Jurisdiction for Peace (Jurisdicción Especial para la Paz).

160. Concerning the recommendation 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**, the State reported major progress by the Special Jurisdiction for Peace (JEP).

161. With regard to Case 002, which is investigating gross human rights violations and breaches of international humanitarian law committed in Tumaco, Ricaurtem and Barbacoas (Nariño) between 1990 y 2016, allegedly by the FARC-EP, the security forces, and third parties submitting voluntarily to the jurisdiction, the State reported that, thus far, 58 persons have been called to testify voluntarily and 56 of those proceedings have taken place; 276 judicial inspections have been conducted and additional information gathered to compare and contrast with the voluntary versions and identify new persons to appear in court. Investigations have also been under way into the participation of State agents (members of the security forces) in crimes committed in said territories during the aforementioned periods, whereby members of the security forces were called upon to testify voluntarily through Rulings (*Autos*) 069, 070, 071, and 072 of March 18 2020, so that they can provide their version of what happened. Consideration is currently being given to a new call to members of the security forces to appear and testify.¹⁸¹

162. For above-mentioned Case 003, all in all 269 voluntary testimonies have been obtained, 83 of them from army officers and 178 from non-commissioned officers. In addition, 2,011 active or retired members of the security forces have been identified as having been potentially involved in acts related to this case. The State reports on the participation of victims in this proceeding via a variety of mechanisms, such as accreditation of victims, the presentation of reports, participation in voluntary testimony proceedings, and the presentation of observations. At the same time, the JEP has made filmed records of voluntary versions of what happened available to individuals and entities taking part in the proceedings to enable them to pronounce and comment on assertions made by persons appearing before the Judicial Panel for Acknowledgment of Truth, Responsibility and Determination of Facts and Conduct (*Sala de Reconocimiento*). The State also reported that, in connection with the intercultural and inter-jurisdictional dialogue with ethnic authorities of the Kankuamo and Wiwa people, which began in October 2018, the next of kin of victims of executions illegitimately framed as deaths in combat and the traditional authorities of the Kankuamo indigenous people presented to the Panel their observations on the voluntary versions provided by members of the Colombian National Army.¹⁸²

163. Regarding Case 004, which identifies and categorizes conduct in connection with the armed conflict in Turbo, Apartadó, Carepa, Chigorodó, Mutatá y Dabeiba, El Carmen del Darién, Riosucio, Unguía, and Acandí, including violent deaths, forced disappearances, torture, forced displacement, sexual violence, and other crimes,¹⁸³ most of those acts were committed by members of the FARC-EP, the security forces, State agents not pertaining to the security forces, and civilian third parties. In this case, 35,174 victims have been accredited, pertaining to 103 collective entities, including: 9 Community Councils; 1 trade union; 3 campesino organizations;

¹⁸¹ Report by the Colombian State on follow-up to IACtHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia". October 30, 2020. P. 6.

¹⁸² Report by the Colombian State on follow-up to IACtHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia". October 30, 2020. P. 7-14.

¹⁸³ JEP, Situación territorial de la región de Urabá, Caso 4, posted at: <https://www.jep.gov.co/Especiales/casos> (site visited on January 27, 2021).

19 black ethnic communities; indigenous groups pertaining to 71 communities, 69 ancestral territories, and 4 peoples [Embera (Dobida, Eyabida, Katio), Wounaan, Senu, and Guna Dule]. In addition, 76 individual victims were accredited: 13 LGBTI persons, 7 men, 4 women (1 sexual violence case), 37 inhabitants of the Chinita de Apartadó district, and 15 inhabitants of the village (*vereda*) of Guacamayas. The collective territories recognized as victims of the armed conflict encompass 192.275 hectares. The State reported that, as of August 5, 2020, the office of the Rapporteur for this case, had charged 242 people in connection with the case, including active, retired, and dismissed members of the security forces (National Army), former members of the FARC-EP, and civilian third parties. In addition, five truth-finding dialogue proceedings had been initiated; 193 procedural rulings had been issued, seeking information, the expansion of cases, or inter-agency coordination; judicial inspections had been ordered or carried out in respect of at least 284 files; and 30 reports by victims' and human rights organizations had been incorporated in the file.¹⁸⁴

164. Regarding Case 006, known as "Victimization of Members of Unión Patriótica (UP)" described in the Corporación Reiniciar report entitled "*¡Venga esa mano, país! Memoria viva de una vergüenza nacional*", and the report of the National Historical Memory Center entitled "*Todo pasó frente a nuestros ojos. El genocidio de la Unión Patriótica 1984-2002*", the State indicated that this case had been opened on February 26, 2020. So far, analysis of the information provided in the reports, some 108 of the persons appearing before the court have been identified as allegedly responsible (65 security forces agents, 23 civilian third parties and agents not pertaining to the security forces, and 20 former members of the FARC-EP).

165. With respect to Case 007 on the recruitment and use of children in the armed conflict, which, according to the Public Prosecutors, comprises 8,000 cases, the State reported that a first ruling had been handed down charging 37 of the persons appearing, who had been members of the former FARC-EP guerrillas and summoning 15 of them to testify voluntarily. The State said that 11 "voluntary version" proceedings had been held in the case. The State indicated that, thus far, 112 victims had been accredited in the macro case and a strategy was being devised to promote accreditation and the presentation of reports inside the territory. In addition, 11 reports relating to recruitment and use of minors had been incorporated into the Case 007 file.

166. The State did not provide information regarding Cases 001 and 005.

167. For their part, civil society organizations maintain that, in connection with the transitional Justice and Peace proceeding, there are two judgments (Arnubio Triana Mahecha et al., 2014 and Juan Francisco Prada Márquez et al, Frente Héctor Julio Peinado Becerra AUC, 2020) that acknowledge that paramilitary groups raped, forcibly displaced, murdered, disappeared, and trampled on the dignity of persons with diverse sexual orientations and gender identities. Civil society filed at least 5 reports highlighting armed violence against LGBT persons, covering several territories in Colombia (Costa Pacífica Nariñense, Urabá, Tolima, and Montes de María), and showing that the violence was premeditated and rationalized.¹⁸⁵

¹⁸⁴ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, pp. 69-70.

¹⁸⁵ Communication to the IACHR from the group of GPAZ organizations, comprising Red Nacional de Mujeres, Sisma Mujer, Colombia Diversa, Colombia Humanas, Women's link worldwide, Comisión Colombiana de Juristas, DeJusticia, and Red Nacional de Mujeres, in response to the request for opinions, for monitoring compliance with the Truth, Justice, and Reparation Report, November 2020, p. 31.

168. Civil society organizations have also documented violations of reproductive rights, especially abortions and forced contraception practiced on women and girl combatants forced to join the FARC-EP guerrillas. The report states that this reproductive violence was systematic and widespread in the armed group and constituted not just a gross violation of human rights, but a war crime as well. Accordingly, the organizations are asking the JEP to initiate a national investigation into acts of sexual and reproductive violence and other crimes based on the victims' sexuality committed in connection with the armed conflict and that precise information be provided regarding the methodology and strategies for investigating, trying, and effectively punishing sexual violence, reproductive violence, and other forms of violence based on the victims' sexuality.¹⁸⁶

169. Based on the information received and analyzed, the Commission considers that compliance with the recommendation has been **partial** and will monitor progress made by the JEP in this area.

8. Forced Disappearance, Disappearance, and the Search for Missing Persons Unit (UBPD)

- Adopt the measures necessary for having a registry with public access that is updated, unified, and vetted concerning persons who have been forcibly disappeared in Colombia, with information broken down by age, gender, ethnicity, and people, among others.
- Adopt the relevant measures to guarantee the effectiveness of the Urgent Search Mechanism or any other mechanism that makes it possible to immediately recover disappeared persons.
- Continue making progress in recovering the bodies of the disappeared, identifying them correctly, and appropriately delivering them to their next of kin. [Report in the current context on progress made by the Search for Missing Persons Unit in connection with and because of the armed conflict (UBPD)]

170. Regarding the recommendation to **adopt the measures necessary for having a registry with public access that is updated, unified, and vetted concerning persons who have been forcibly disappeared in Colombia, with information broken down by age, gender, ethnicity, and people, among others**, the State mentioned the National Missing Persons Registry (RND) created in 2000 and implemented in 2007, when the Missing Persons and Corpses Information System (SIRDEC) began operating, making it possible to guide the search for persons reported as missing and investigate unidentified corpses. The State reported that it is coordinating and cross-comparing information with the Search for Missing Persons Unit in connection with and because of the armed conflict (UBPD), the Commission to Search for Missing Persons (CBPD), the Comprehensive Victim Assistance and Reparation Unit (UARIV or Victims' Unit), and the National Historical Memory Center (CNMH), with a view to consolidating and screening the databases on missing persons.¹⁸⁷

¹⁸⁶ Communication to the IACtHR from the group of GPAZ organizations, comprising Red Nacional de Mujeres, Sisma Mujer, Colombia Diversa, Colombia Humanas, Women's link worldwide, Comisión Colombiana de Juristas, DeJusticia, and Red Nacional de Mujeres, in response to the request for opinions, for monitoring compliance with the Truth, Justice, and Reparation Report, November 2020.

¹⁸⁷ Report by the Colombian State on follow-up to IACtHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 18.

171. Using CNMH data, the UBPD finds that the total number of persons whose fate or whereabouts are still unknown is approximately 113,000. Of those, about 72,000 (63%) were classified by the CNMH Memory and Conflict Observatory as forced disappearance, 24,000 (21%) as kidnapping, and the remaining 16% as related to the recruitment and use of children and adolescents. It was also possible to ascertain that 14% of the registered cases involve women, 81% men, and for 5% no information is available. Of the missing persons in this registry, 22% (24,917) were reported for the department of Antioquia.¹⁸⁸ For its part, the State indicates that, despite the progress made, it is not possible to gage the number of missing persons pertaining to ethnic peoples, because of more widespread under-recording of the impacts suffered by these population groups in connection with the conflict.¹⁸⁹ The State affirms that, with further screening, it will be possible to arrive at a consolidated figure for missing persons in Colombia.

172. The Commission underscores the progress made and urges the State to persevere with its efforts to consolidate a single registry of missing persons, with data broken down by age, gender, ethnic origin, and other socio-demographic factors. The Commission considers that compliance with this recommendation has been partial.

173. As regards the recommendation to **guarantee the effectiveness of the Urgent Search Mechanism or any other mechanism that makes it possible to immediately recover disappeared persons**, the State reported that the reference information system (RND) containing data provided by constantly interconnected entities makes it possible to activate the Urgent Search Mechanism (MBU), which is designed above all to ensure that judicial authorities immediately order all steps needed to locate those persons. The State stresses that it is not necessary to wait before requesting activation of the MBU; anyone can request it from a judge or public prosecutor, cost-free. The State likewise pointed out that the Human Rights Directorate in the Ministry of the Interior is continuing to take steps to bolster management in cemeteries where bodies have been exhumed or there are unidentified human remains.¹⁹⁰

174. The State reported that, as of September 30, 2020, the CBPD had been apprised of 248 MBU cases involving 252 missing persons, 42 of who had reappeared alive, 7 had died, and 203 are still missing.¹⁹¹

175. The IACHR has been apprised of 16,000 people reported missing in the past 4 years,. Through December 2020, there were 2,444 complaints of disappeared persons (866 women and 1,578 men) according to the Institute of Forensic Medicine.¹⁹² In addition, the Commission took note of the existence of 25,000 unidentified corpses in Colombian

¹⁸⁸ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 20.

¹⁸⁹ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, pp. 17-21.

¹⁹⁰ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, pp. 23-25.

¹⁹¹ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 24.

¹⁹² Institute of Forensic Medicine. Consultas públicas. Desaparecidos y cadáveres, December 16, 2020

cemeteries.¹⁹³ In light of the above, the IACHR considers that compliance with this recommendation has been partial and urges the State to redouble its efforts in this area.

176. Concerning the recommendation to **recover the bodies of the disappeared, identify them correctly, and deliver them to their next of kin**, the State provided information regarding the crafting of the National Search Plan (PNB) and about Regional Search Plans (PRB), as well as the Strategy for Advancing Identification, which highlighted the need to support and promote identification of the approximately 25,000 corpses currently in the custody of the State.¹⁹⁴

177. The State pointed out that, through September 2020, 20,954 cases had been input into a diagnostic tool developed by the UBPD, which means that said Unit possesses information of forensic interest that can be shared, compared, and built into Regional Search Plans. In addition, the UBPD has updated the information on 11,083 cases in the SIRDEC, thereby enabling the other institutions with access to the National Registry of Missing Persons to dispose of this information.¹⁹⁵ The State pointed out that it is analyzing and geo-tagging information from a variety of sources, tapping data from 1,500 exhumation sites and 60 places of interest for regional search plans, as well as 485 cemeteries.¹⁹⁶ The State also asserted that, between January 2019 and September 2020, the UBPD managed to coordinate the dignified return of 5 individual bodies and one dignified collective return of 78 bodies.¹⁹⁷ The Commission ascertains **partial compliance** with this recommendation.

A. Protection Mechanisms

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

¹⁹³ Semana. Los desaparecidos de la guerra: así es la búsqueda en los cementerios del país, August 8, 2020

¹⁹⁴ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 31.

¹⁹⁵ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, pp. 25-34.

¹⁹⁶ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 35.

¹⁹⁷ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 37.

178. Regarding the recommendation 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 IACtHR and provisional measures ordered by the Inter-American Court**, the State referred to document on Re-engineering of the General Prevention and/or Protection Program run by the National Protection Unit (UNP) and the UNP Strategic Platform. It further stressed that persons subject to risk assessment by the entity take part in it directly, given that the appropriate procedure urges the parties to deliver all the information needed, so that it is taken into account when it comes to weighing the risk matrix. Regarding beneficiaries of UNP protection measures who also have IACtHR precautionary measures, the State underscored that they have the option of going to the Committee for Risk Assessment and Recommendation of Protection Measures (CERREM) and describing their needs and the risks they currently face. Likewise, the beneficiaries of IACtHR precautionary measures are able to come to an agreement with the UNP on the implementation of the measures as well as to propose protection personnel they trust who are imbued with a differential approach.¹⁹⁸

179. Throughout 2020 (*a lo largo del presente año*), the Commission was advised of shortcomings in the protection arrangements proposed for leaders, many of them linked to the difficulty of guaranteeing the victims freedom of movement, the lack of funding to pay for the guards' mobility, and the nature of the tools provided for protection. The Commission underscores the importance of the tasks carried out by the UNP, while at the same time urging the State to bolster the Unit's capabilities. The Commission considers that compliance with this recommendation has been **partial**.

180. Regarding the recommendation that **the National Protection Unit and competent authorities actually apply differential approaches**, the State reported that the UNP does take a differential approach and has implemented protection measures with that perspective, both on an individual basis and collectively (as with the measures taken to protect the NASA people). Such actions strive to strengthen the indigenous guard as protection mechanism proper to those communities. A similar stance is envisaged in agreements No. 540 of 2019 and No. 502 of 2020 between the Indigenous Regional Council of the department of Cauca (CRIC) and the UNP, and in agreements No. 539 of 2019 and No. 0489 of 2020, signed by the Association of Indigenous Assemblies of Northern Cauca (ACIN) and the UNP. These aim to come up with proposals for individual protection measures based on a differential approach and to strengthen indigenous guards with funds and training courses to help them perform their tasks. These actions include 29 indigenous leaders who are beneficiaries of IACtHR precautionary measure PM 301/08 and the reserves that are beneficiaries of PM255/11, namely: Toribio, San Francisco, Tacueyo, and Jambalo. Finally, the State claims that it is providing training in self-protection and security tailored to the needs of communities in their territories.¹⁹⁹

181. The Commission takes note of the measures being adopted by the State to guarantee the application of differential approaches in protection measures provided by the UNP. However, civil society organizations notified the IACtHR of a number of challenges encountered

¹⁹⁸ Report by the Colombian State on follow-up to IACtHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 41.

¹⁹⁹ Report by the Colombian State on follow-up to IACtHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, pp. 42-43.

with implementing differential approaches in the protection measures being provided. They pointed, in particular, to the lack of a gender and differential approach and to the need to analyze the differential impact of risks on women human rights defenders and LGBTI defenders, when it comes to choosing and implementing protection measures.²⁰⁰ As regards the ethnic/racial approach, civil society organizations indicate that collective protection continues to be one of the UNP's main weaknesses. They point out that numerous shortcomings persist that prevent the implementation of the collective protection measures required by social organizations, above all in rural areas; this is due to budgetary constraints or institutional restrictions posed by existing protocols.²⁰¹

182. In its comments on the draft of this report, the State highlighted the centrality of the participation of communities and organizations in the risk assessment. In addition to the above, in the Risk Evaluation and Recommendation of Measures Committee (CERREM), there are delegates who provide feedback on the contexts of the different communities and also the collective CERREM space is developed with the participation of a representative of each of the communities²⁰².

183. On this matter, the Commission has stressed that protection arrangements must take the contexts and specific circumstances of the beneficiaries into account, including displacement, the context of collective risk involving their families, communities, or organizations, cultural factors, and gender issues. In light of the information at its disposal, the IACtHR calls upon the State to press ahead with the implementation of an ethnic/racial, gender-based, differentiated, and intersectional approach that is mindful, *inter alia*, of the conditions of the persons to be protected and the need for appropriately tailored protection measures. In light of the above, the IACtHR considers that compliance with this recommendation is **still pending**.

184. As regards the recommendation to **redouble its efforts to investigate the facts that lead persons to enter and remain in the protection programs**, the State did not provide information, so that it is impossible to analyze progress with its implementation.

IV. CONSTITUTIONAL FRAMEWORK

8.1 Impunity and Obstacles to Justice

- Redouble efforts to overcome the grave situation of impunity in cases of serious human rights violations and breaches of international humanitarian law.
- Foster the articulation, coordination, and reciprocal feedback of the various judicial mechanisms entrusted with investigating cases of serious human rights violations and breaches of international humanitarian law.
- Clarify the human rights violations perpetrated by State agents and persons who have demobilized from the Autodefensas, and determine on a case-by-case basis and in detail the nature and action of the illegal armed groups that came about after the demobilization of paramilitary organizations and their possible connections with State authorities.

²⁰⁰ Information furnished to the IACtHR by civil society organizations in connection with a technical meeting held on January 22, 2020.

²⁰¹ Comisión Colombiana de Juristas, [El riesgo de defender y liderar: Pautas comunes y afectaciones diferenciales en las violaciones de los derechos humanos de las personas defensoras en Colombia](#), October 2020, p.314.

²⁰² Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACtHR in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”, p. 22

185. Regarding the recommendation to **redouble efforts to overcome the grave situation of impunity in cases of serious human rights violations and breaches of international humanitarian law**, the State pointed out that the Ministry of Justice and Law is working on the National Criminal Policy Law with a view to unifying criteria for establishing prevention and punishment measures within the criminal law framework.²⁰³

186. The State reported on progress made by the JEP and the opening, thus far, of seven "macro" cases addressing the most serious acts committed or most representative conduct or practices up to December 1, 2016 that were related to the armed conflict. The State likewise pointed out that the Ministry of Justice and Law is working on the National Criminal Policy Law with a view to unifying criteria for establishing prevention and punishment measures within the criminal law framework.²⁰⁴ The Commission commends the progress made, which allows it to testify to **partial compliance** with this recommendation.

187. Regarding the recommendation to **foster the articulation, coordination, and reciprocal feedback of the various judicial mechanisms entrusted with investigating cases of serious human rights violations and breaches of international humanitarian law**, the State pointed out that the Higher Council of the Judiciary is responsible for issuing judicial policies and running the judiciary. While the Attorney General's Office (FGN) forms part of the judiciary, the latter is autonomous so that in institutional and procedural aspects investigative activity is separated off from the jurisdictional sphere.

188. For their part, civil society organizations have notified the IACHR that, in cases against members of the security forces, the FGN is allegedly embracing an interpretation of its competence that in practice results in a "freezing" of its role in criminal proceedings under way. That allegedly has to do with discrepancies between the FGN and judicial authorities regarding the competence of the FGN to carry out certain investigative proceedings in cases that may be transferred from the regular justice system to the JEP.²⁰⁵

189. On this, the IACHR observes that efforts have been made to establish criteria for demarcating the different spheres of competence of judicial institutions and providing guidance as to how they act during the transitional process. It also considers, however, that there are still challenges to be overcome to achieve smooth coordination between the various players responsible for investigating and prosecuting cases of gross human rights violations and breach of IHL. In light of the above, the IACHR concludes that compliance with the present recommendation has been **partial**.

190. Regarding the recommendation to **clarify the human rights violations perpetrated by State agents and persons who have demobilized from the Autodefensas**,

²⁰³ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, pp. 44-45.

²⁰⁴ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, pp. 44-45.

²⁰⁵ Corporación Jurídica Yira Castro, Report on "Follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 2020, pp. 6-11 (in the IACHR archives); Comisión Colombiana de Juristas, Boletín # 13. El deber de investigar conductas de posible competencia de la JEP no se suspende en los procesos penales ordinarios, May 14, 2020.

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, the State reported on activities carried out by the JEP in Case 004. The State pointed out that evidentiary proceedings had yielded information reinforcing the body of evidence regarding collusion between the security forces and the paramilitaries and about the participation of members of paramilitary groups in National Army operations in the Urabá region. Moreover, further evidentiary proceedings with former members of paramilitary groups are scheduled for 2020 and 2021.²⁰⁶

191. At the same time, in its reply the State stressed that, in 2019-2020, the Case 004 rapporteur had included in his analysis the macro files of the regular justice system, on account of which the State had been found guilty by the inter-American human rights system for the mass forced displacements of Afrodescendent communities of the Cacarica basin between 1997 and 2004 and the preparatory acts perpetrated in the territories prioritized by Case No. 004 for the massacre of Mapiripán in the department of Meta in 1997. The State said it expected those files to contain major findings about the collusion between National Army troops and paramilitary groups, including joint military and paramilitary operations.

192. The State added that part of the mission of the Transitional Justice Directorate (DJT) of the FGN is to hear and conduct the proceeding contemplated in Law 975 of 2005 involving members of illegal armed groups who disbanded and placed themselves at its orders (*que se desmovilizaron y sometieron a sus disposiciones*) and to investigate third parties who promoted, financed, sponsored, or backed paramilitary activities. The State pointed out that, as of September 30, 2020, there were records of 230,403 people associated with self-defense groups and thus far linked to 324,850 victims. They are still being registered (57,147 in the past 4 years). Of those suspects, 122,219 are still awaiting a judicial decision, indictment, shelving of their case, or the transfer of their case to the regular justice system or another dependency of the FGN, based on legally established grounds and screening of the inventory. As regards the search for missing or dead persons related to these cases and their identification, the State report that, as a result of 3,090 searches, 7,590 corpses had been recovered, 16 of them in 2020.²⁰⁷

193. The Commission commends the work and progress being made by the JEP with a view to overcoming the huge impunity crisis surrounding cases involving gross human rights violations and breaches of IHL. In light of the information furnished in the foregoing paragraphs, the Commission considers that compliance with this recommendation has been partial and will continue to monitor relevant data.

B. Transitional Justice Applied to an Armed Conflict

- Adapt and align (*Adecúe*) the Legal Framework for Peace and the statutory laws that derive from the international human rights standards singled out in this report. [In the current context, information is requested regarding the regulations governing implementation of the mechanisms contemplated in the Peace Agreement in accordance with (*dentro de*) inter-American standards.]

²⁰⁶ Report by the Colombian State on follow-up to IACtHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 46.

²⁰⁷ Report by the Colombian State on follow-up to IACtHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, pp. 47-48.

- 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.

194. The State did not provide specific information regarding measures adopted to bring the Legal Framework for Peace and statutory laws into line with international human rights standards.

195. In its reply to the IACHR, the Colombian State presented figures on the proceedings submitted to this jurisdiction, indicating that 81,724 cases of acts resulting in 154,370 victims are currently being prosecuted. It also stated that since implementation of the Justice and Peace Law, 68 judgments had been handed down, 64 of them against self-defense groups with 650 United Self-Defense Forces of Colombia (AUC) applicants, covering 9,073 prosecuted acts and involving recognition of 55,668 victims.²⁰⁸

196. The Commission, for its part, has received information regarding the insufficiency of the outcomes of the mechanisms implemented since Law 975 of 2005. According to that information, the groups submitted to this jurisdiction allegedly committed at least 238,195 acts, including forced displacements, evictions and theft of land, forced disappearances, extrajudicial executions, sexual violence, and torture.²⁰⁹ Civil society organizations have also pointed to defects in this model, such as the dearth of information regarding cases of armed violence against LGBTI persons in connection with the armed conflict. Thus, while there are records of at least 3,974 such incidents, only two judgments have acknowledged that paramilitary groups raped, forcibly displaced, murdered, disappeared, and trampled on the dignity of persons with diverse sexual orientations and gender identities.²¹⁰

197. Moreover, information sent by Corporación Jurídica Yira Castro highlights the shortcomings of mechanisms prior to the Final Agreement for prosecuting civilians and government officials involved in collaborating with, financing, and supporting paramilitary groups. The organizations therefore demand that the State establish a protocol for the participation of victims and to govern proceedings to investigate conduct involving third parties sharing responsibility with the various self-defense groups operating in the country.²¹¹

198. For years, the IACHR has kept close track of the transitional justice arrangement established by the Justice and Peace Law and of the AUC demobilization process.²¹² It should be

²⁰⁸ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 47.

²⁰⁹ Corporación Jurídica Yira Castro, Report on "Follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia", October 2020, p. 5 (in IACHR archive); El Tiempo, 'Las deudas y aciertos de Justicia y Paz, a 15 años de su creación', July 28, 2020.

²¹⁰ Grupo de Trabajo de Género en la Paz. Seguimiento a la implementación del enfoque de género del Acuerdo de Paz. 2020, (in IACHR archive), p. 31.

²¹¹ Corporación Jurídica Yira Castro, Report on "Follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 2020, p. 6 (in the IACHR archives).

²¹² See Report on the Demobilization Process in Colombia, OEA/Ser. L/V/II.120 Doc.60, December 13, 2004, Follow-up on the Demobilization Process of the AUC in Colombia: Digest of published documents (2004-2007); IACHR and Statement by the Inter-American Commission on Human Rights on the Application and Scope of the Justice and peace Law in Colombia (2006), and annual reports of the IACHR.

noted, too, that the IACtHR has brought the Colombian State's attention to a number of factors conducive to the impunity surrounding the gross human rights violations and breaches of IHL committed in connection with the armed conflict. In particular, the Commission has voiced concern over such matters as the delays with the Law 975 of 2005 proceedings, the exclusion and non-ratification of applicants, the extradition of paramilitary leaders, and other issues.²¹³

199. The IACtHR acknowledges the progress made with the process established as of these regulations and appreciates the efforts that the State of Colombia has gone to install and operate the Special Jurisdiction for Peace. Nevertheless, the Commission observes that progress is needed with judicial responses that address the complexities associated with the actors, dynamics, and dimension of the internal armed conflict and the sheer scope of the different impacts and harm done to victims. Thus, the Commission deems that compliance with this recommendation has been **partial** and calls upon the State to remove the *de jure* and *de facto* obstacles preventing investigation and prosecution of the deeds constituting gross human rights violations and breaches of IHL, and, preventing the punishment, where applicable, of all those responsible and the quest for truth.

200. Regarding the recommendation to **adopt 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**, the State indicated that the Directorate of Transitional Justice at the Ministry of Justice and Law has been working on drawing up a new Plan to Assist Victims of Sexual Violence in connection with the Conflict. It also announced that this plan will be geared to women, children, and persons with diverse sexual identities and will resume actions already pursued by that portfolio in the recent past, but this time for a broader set of persons.²¹⁴

201. The Colombian State did not provide further information regarding the prioritization of the cases mentioned or as to how it has guaranteed due diligence on the part of the justice system.²¹⁵ Nevertheless, mention was made of inter-agency initiatives, such as the Mobile Justice Days (*Jornadas Móviles*) with sessions to counsel victims of the armed conflict and broaden their access to justice. The IACtHR likewise notes the various measures adopted with a view to preventing, in particular, the recruitment and use of children and adolescents, and sexual violence against them. Those measures include, most notably, the adoption of an Action Plan to address this issue, the prioritization of municipalities especially prone to recruit, exploit, and practice sexual violence against that group, and local capacity-building to enforce those public policies.²¹⁶ The IACtHR also takes note of the steps taken by the JEP in connection with the macro trials that have begun, especially Case 007 on the recruitment and exploitation of children in the armed conflict. Measures adopted include the accreditation of victims, the inclusion of reports

²¹³ IACtHR, 2016 Annual Report, Chapter V, Follow-up of the Recommendations Issued by the IACtHR in Its Report on Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, 2017, p. 743-745.

²¹⁴ Report by the Colombian State on follow-up to IACtHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 50.

²¹⁵ Report by the Colombian State on follow-up to IACtHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, pp. 50-52.

²¹⁶ Report by the Colombian State on follow-up to IACtHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, pp. 52-56.

in case files, the summoning of persons to appear in court, and the taking of voluntary testimony.²¹⁷

202. The Commission, for its part, has received extensive statements from civil society organizations stressing the importance of the Special Jurisdiction for Peace when it comes to opening an autonomous macro case to throw light on and prosecute sexual violence practiced by armed actors.²¹⁸ According to information in the public domain, of the 230 reports delivered to the JEP, 40% are about such acts of violence.²¹⁹ For its part, the National Historical Memory Center and the Unit for Victims have records of 32,000 people who are victims of crimes against sexual freedom and integrity, 91% of them being women.²²⁰ In their reports to the IACtHR, civil society organizations have also underscored the various kinds of violation of reproductive right that need to be highlighted, disclosed, and investigated.²²¹ The IACtHR also heard that the Appeals Section of the JEP had also filed a judicial motion with the Acknowledgment of Truth Panel to begin an inquiry into sexual violence during the armed conflict.²²²

203. In light of the above, compliance with this recommendation is still **partial**.

C. Reparation Mechanisms

- Continue moving forward with the implementation of Law 1448 and take the necessary measures to adequately address the challenges, which have been identified. [In the current context, show progress with respect to implementing the National Comprehensive Program for the Substitution of Illicit Crops (PNIS) and the security guarantees being provided to protect the life and personal integrity of those promoting and participating in the Program.]
- Ensure, in practice, implementation of a differential approach for women, children and adolescents, persons with disabilities, indigenous peoples, Afro-descendants, lesbian, gay, bisexual, trans and intersex persons, human rights defenders, among others.
- Ensure effective participation for victims in the bodies set forth in Law 1448, and take into account their expectations, in determining appropriate measures of reparation.

204. Regarding the recommendation to **move forward with the implementation of Law 1448**, ordering measures providing care, assistance, and comprehensive reparation to the victims of the internal armed conflict, the State reported that, as of December 2020, 9,078,038

²¹⁷ Report by the Colombian State on follow-up to IACtHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 16.

²¹⁸ IACtHR, Public Hearing, 175th period of sessions, "Gender and the Peace Agreements, Colombia," March 5, 2020; Grupo de Trabajo de Género en la Paz. Seguimiento a la implementación del enfoque de género del Acuerdo de Paz. 2020, (in IACtHR archives), p. 5; Red Nacional de Mujeres et. al, Riesgo de impunidad para las mujeres víctimas de, violencia sexual en el modelo transicional de Colombia, Request for a Hearing, 175th period of sessions, January 3, 2020 (in IACtHR archives).

El Espectador, Así se proyecta la justicia transicional para 2020, January 14, 2020.

²¹⁹ El Tiempo, Por vacíos, insisten a la JEP que abra caso de violencia sexual, June 27, 2020.

²²⁰ Blu Radio, Más de 32.000 personas han sido víctimas de violencia sexual durante conflicto armado, May 25, 2020.

²²¹ Centro de Derechos Reproductivos, Reporte Violencia Reproductiva en el Conflicto Armado colombiano, 2020 (in IACtHR archives); Grupo de Trabajo de Género en la Paz. Seguimiento a la implementación del enfoque de género del Acuerdo de Paz. 2020 (IACtHR Archive).

²²² El Tiempo, Por vacíos, insisten a la JEP que abra caso de violencia sexual, June 27, 2020.

people had been recognized as victims of the armed conflict and were listed in the Consolidated Victims Registry (RUV). Of them, according to the Victims Unit, the 7,319, 393, meet the requirements needed to access the care and reparation measures established in the Law.²²³ The State also pointed out that, in the past 2 years, 13 entitlement-to-collective-reparation cases had concluded and the Comprehensive Victim Assistance and Reparation Unit (UARIV) had provided almost 1.6 billion Colombian pesos (approximately US\$458,000)²²⁴.

205. The State acknowledges that there are still victims who have not received reparation and, for that reason, reported that it was working on a proposal to extend this law for 10 more years.²²⁵ That measure was finally approved by Congress in December 2020 and adopted on January 8, 2021.²²⁶ The Commission hereby commends the 10-year extension of the period in which the Victims Law shall remain in effect, as a chance to provide redress to the victims of the armed conflict.

206. At the same time, several civil society organization, victims' working groups, and entities entitled to collective reparation notified the IACHR of UARIV data from March 2020 showing that 720 entities entitled to collective reparation had been registered.²²⁷ Nevertheless, the organizations reported that the program was making slow progress and that 53% of the entities entitled to collective reparation were still at the "identification stage," meaning that they were registered but that no steps had yet been taken to proceed toward collective reparation.²²⁸ They also pointed out that 64% of the entities registered in the collective reparation program are ethnic groups, namely those that have made least progress in this process, owing to the fact that none of them has completed implementation of its collective reparation plan.²²⁹ Reportedly, that state of affairs has been exacerbated by the COVID-19 pandemic and new patterns of violence, raising the barriers to effective participation by ethnic groups in reparation processes and undermining reconstruction of the social fabric in those territories.²³⁰

207. Regarding the National Comprehensive Program for the Substitution of Illicit Crops (**PNIS**), the State maintains that, between August 2018 and September 2020, US\$234.5 million were invested through Fondo Colombia en Paz. Linked to this program were 99,097 families, 35,393 of them headed by women. 21,437 families were registered in the program in the past two years.. Over that same time span, according to the State, 16,121 fewer illicit crops had

²²³ Unidad para la atención y reparación integral a las víctimas, December 14, 2020.

²²⁴ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 56.

²²⁵ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 56.

²²⁶ El tiempo, Colombia prorroga por 10 años Ley de víctimas y Restitución de Tierras, January 9. 2021.

²²⁷ IACHR, Public Hearing, 177th period of sessions, "Denuncias de desprotección de los colectivos de víctimas del conflicto armado en Colombia: comunidades indígenas, afrodescendientes y campesinas y líderes sociales", October 5, 2020.

²²⁸ Dejusticia et al., Request for thematic hearing on collective reparation in Colombia for the 177th (virtual) period of sessions from September 28 to October 8, 2020, July 20, 2020, p. 6 (in IACHR archives).

²²⁹ IACHR, Public Hearing, 177th period of sessions, "Denuncias de desprotección de los colectivos de víctimas del conflicto armado en Colombia: comunidades indígenas, afrodescendientes y campesinas y líderes sociales", October 5, 2020; Dejusticia et al., Request for thematic hearing on collective reparation in Colombia for the 177th (virtual) period of sessions from September 28 to October 8, 2020, July 20, 2020, p. 6 (in IACHR archives)

²³⁰ BC Noticias, Alertan sobre incumplimiento de la Ley de Víctimas y Restitución de Tierras, los Decretos Leyes Étnicos y el impacto del covid-19 en víctimas del conflicto armado, August 20, 2020; Dejusticia et al., request for thematic hearing on collective reparation in Colombia for the 177th (virtual) period of sessions from September 28 to October 8, 2020, July 20, 2020, p. 6 (in IACHR archives);

been planted, as part of a voluntary and assisted reduction effort. Since the start of the program, the reduction totals 42,339, with only 0.2% of those territories being replanted. The State further reported that comprehensive technical assistance had been delivered to 61,769 families, along with training in organic agriculture, market gardens, and poultry farming for food security, and that 8,838 investment plans had been worked out with families and productive projects under agreements with the Cocoa and Coffee Federations. It mentioned, too, that temporary employment programs were being provided for workers who used to gather coca leaf.²³¹

208. For their part, civil society organizations notified the IACHR about women in the PNIS program whose pay had been suspended without notice and without observing due process.²³² They further emphasized the importance of the State devising and implementing mechanisms to really guarantee the equal participation of women in the Program because leaving decisions about women's participation up to communities' customs had not ensured effective participation of women in all areas in which the Program was operating.²³³ They likewise point out that there are no clear strategies for ensuring the participation of LGBTI persons in PDET-PNIS consensus-building forums or for taking their concerns into account in the territory.²³⁴

209. With respect to security strategies pursued by the State to protect families taking part in the PNIS, there were reports that, in addition to the actions being undertaken by the National Police, the Ministry of the Interior, UNP, Defender's Offices, municipal Ombudspersons' Offices, provincial governments, and municipalities, the Council for Stabilization and Consolidation is working on a plan to bolster security for the population engaged in the program, strengthen inter-agency coordination, and reduce the vulnerability of leaders.²³⁵ Under this plan, based on inputs garnered in workshops with civil society and national and international agencies, 16 actions have been devised for implementation in all the territories: Five involve inter-agency coordination, 4 prevention and protection, 3 strengthening effective access to justice (*apoyo a la judicialización efectiva*), and 3 developing a women's and gender approach.²³⁶

210. Regarding guarantees for the security of participants in the PNIS, the Commission took note of official information and information provided by civil society pointing to a particularly marked concentration of violence in the municipalities in which Development Programs with a Territorial Approach (PDET) and the PNIS are being implemented. Thus, between July 2019 and June 2020, the homicide rate in municipalities implementing the PDET was 44.3 violent deaths per 100,000 inhabitants, and in those covered by the PNIS 57.9 per

²³¹ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, pp. 57 and 58.

²³² Grupo de Trabajo de Género en la Paz. Seguimiento a la implementación del enfoque de género del Acuerdo de Paz. 2020, (in IACHR archive), p. 18.

²³³ Grupo de Trabajo de Género en la Paz. Seguimiento a la implementación del enfoque de género del Acuerdo de Paz. 2020, (in IACHR archive), p. 19.

²³⁴ Grupo de Trabajo de Género en la Paz. Seguimiento a la implementación del enfoque de género del Acuerdo de Paz. 2020, (in IACHR archive), p. 22.

²³⁵ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 62.

²³⁶ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 64.

100,000 inhabitants:²³⁷ that is to say, 190% and 259% more, respectively, than the national average homicide rate of 23.33 per 100,000 inhabitants.²³⁸

211. The IACHR welcomes the progress made with implementation of the PNIS in a manner agreed upon with the communities and, where applicable, with an ethnic approach. Nevertheless, the Commission shares the concern voiced by MAPP-OAS regarding the fact that coca growing is still the backbone and mainstay of the economy in a number of municipalities.²³⁹ According to MAPP-OAS, there are numerous reasons for this, chief among them being the advantages and profits of illicit, as opposed to legal, crops. MAPP-OAS accordingly points out that the main challenge for transforming these territories lies in guaranteeing food security, promoting productive programs and projects, and building the infrastructure needed for trade and improving standards of living for this population.²⁴⁰

212. The Commission underscores the importance of guaranteeing economic, social, cultural, and environmental rights on the path to peace: a prerequisite for building the conditions for development and well-being in these territories. Within that context, the IACHR joins the MAPP-OAS in calling for a broad process of dialogue encompassing all dimensions of the phenomenon and including all sectors that are competent, interested and affected by it, in such a way as to foster a definitive transformation of these territories.²⁴¹

213. In light of the above, the Commission considers that compliance with this recommendation has been partial and **urges** the State to redouble its efforts to implement Law No. 1.448, especially as regards reparation and land restitution for victims. It likewise urges the State to guarantee the security of those leading implementation of the PNIS, safeguard the livelihoods of those forming part of the program, and sponsor broad-based dialogue geared to transforming life in their territories.

214. As regards the recommendation to **ensure, in practice, implementation of a differential approach for women, children and adolescents, persons with disabilities, indigenous peoples, Afro-descendants, lesbian, gay, bisexual, trans and intersex persons, human rights defenders, among others, as well to ensure effective participation for victims in the bodies set forth in Law 1448, and take into account their expectations, in determining appropriate measures of reparation**, the State provided a detailed report on activities under way. It pointed out, for instance that the Office of the Presidential Advisor for Children and Adolescents (CPNA) is responsible for articulating and coordinating public policies for early childhood, childhood, and adolescence, whereby its actions tie in with others, such as those detailed in the National Development Plan (PND) and the Territorial Management Model (MGT) sponsored by the Office of the Director of the National Family Welfare System. These programs are being implemented in the 81 territorial entities selected by the MGT on the basis of such indicators as multidimensional poverty, the risk of children and adolescents being recruited, and other dimensions. The State reports that the idea is, at a later stage, to generate intersectoral

²³⁷ Congress of the Republic. *¿En qué va la paz a 2 años del gobierno Duque?* August 4, 2020, p. 4.

²³⁸ Office of the President of the Republic. [Colombia registró en el primer semestre del 2020 la tasa de homicidios más baja de los últimos 46 años: Policía Nacional](#). July 1, 2020

²³⁹ MAPP-OAS. Twenty-eighth Report of the Mission to Support the Peace Process in Colombia of the Organization of American States, p.21.

²⁴⁰ MAPP-OAS. Twenty-eighth Report of the Mission to Support the Peace Process in Colombia of the Organization of American States, p.21.

²⁴¹ MAPP-OAS. Twenty-eighth Report of the Mission to Support the Peace Process in Colombia of the Organization of American States, p.22.

dialogue among different agents in the National Family Welfare System and jointly plan actions, and then, in a third phase, move ahead with implementation.²⁴²

215. The Commission also takes note of the decision by the Constitutional Court to recognize children and adolescents forcibly recruited by armed actors and then killed in combat as victims and to include their families in the Consolidated Victims' Registry (RUV).²⁴³ The IACHR observes that, as part of that judgment, the CC also instructed the UARIV to update the Handbook on Evaluation Criteria (*Manual de Criterios de Valoración*) and to adopt the administrative procedures needed to rule on related applications. At the same time, the IACHR was apprised that persons forcibly recruited by the FARC who then left that group are reportedly having difficulty accessing the reparation measures guaranteed by law in their dealings with the Victim Assistance and Comprehensive Reparation Unit.²⁴⁴

216. In its observations on the draft of this report, the State reported that children and adolescents who were recruited by armed groups and who have not reached the age of 18 are considered victims of the armed conflict and can be included in the Unified Registry of Victims. This situation only changes if they reach the age of majority and continue to belong to the armed group²⁴⁵.

217. As regards the gender perspective, the State reported that, as of 2012, it had been mainstreamed into the organizational model of the Unit for Victims and was geared to guaranteeing special protection for victims at greater risk owing to their life style, gender, sexual orientation, gender identity, disability, and so on.²⁴⁶ The State also maintained that the Office of the Presidential Advisor on Women's Equity (*Consejería Presidencial para la Equidad de la Mujer -CPEM*) is part of the Program to Prevent Violations of and Protect the rights to life, liberty, integrity, and security of persons, groups, and communities at special or extreme risk as a direct result of going about their activities or performing public, political, social, or humanitarian functions, or by virtue of exercising the position they hold," and that that Program has a specific protocol for women at risk.²⁴⁷

218. At the same time, the IACHR observes that, in December 2019, the Constitutional Court (CC) handed down a judgment recognizing as a victim a woman who had been forcibly recruited by the FARC when she was an adolescent and whose reproductive rights were

²⁴² Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, pp. 65-72.

²⁴³ RCN Radio, Familiares de menores de edad reclutados y muertos en combate también son víctimas: Corte, December 19, 2020; El Tiempo, Menores que murieron reclutados son víctimas del conflicto: Corte, January 2, 2021.

²⁴⁴ El Espectador, Víctimas de reclutamiento forzado luchan para que el Estado las repare, January 5, 2021.

²⁴⁵ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 23

²⁴⁶ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 73.

²⁴⁷ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, pp. 86-87.

violated.²⁴⁸ In that judgment, the Court instructed the State "to guarantee specialized care and assistance to women, girls, and female adolescents and older adults who are survivors of sexual violence perpetrated by armed actors. That entails an obligation to provide immediate, comprehensive, and specialized care to these victims, with a differential approach and for as long as is needed for them to overcome the physical and psychological harm done to them by their aggressors." Nevertheless, one year after that judgment was issued, according to information in the public domain, the Victim's Unit had still not included the woman directly benefited by that judgment in the Consolidated Victims Registry.²⁴⁹

219. Regarding persons with disability, the State pointed out that, based on self-identification, the registry includes persons with disability prior to the victimizing act and those who, as a result of that act, became disabled or whose disability was exacerbated by that act. As of August 31, 2020, the Victims Registry contained the names of 392,855 persons with disabilities (4.3% of the total). In 2020, 70,269 persons with disabilities received administrative compensation.²⁵⁰ The State likewise reported steps taken to guarantee the right to health of persons with disabilities,²⁵¹ psychological and emotional care, and social inclusion of persons with disabilities who are victims of the armed conflict.²⁵² The Commission underscores the importance of the Community-based Rehabilitation Strategy and commends the State's efforts to develop a supportive system to enable persons with disabilities to live a life in community.

220. With respect to the ethnic approach, the State asserted that the Colombian Family Welfare Institute (ICBF) pursues five policies focusing on families and communities pertaining to ethnic groups: indigenous peoples; black communities, Afro-Colombians, Palenqueros, and the Gypsy or Roma people. Those policies are: ethnic territories with wellbeing (*territorios étnicos con bienestar*); the strategy to address and prevent malnutrition in the first 1,000 days; the strategy to Address and Prevent Malnutrition – Comprehensive Recovery Centers for children under 5; own and intercultural way of life (*modalidad propia e intercultural*); and ethnic generations with wellbeing seeking to guarantee the right to early childhood education. Through these initiatives, as of August 31, the ICBF had reached out to 109,802 persons pertaining to ethnic groups.²⁵³

²⁴⁸ Corte Constitucional [Constitutional Court], Sentencia SU599/19, December 11, 2019; Women's Link Worldwide, Las mujeres y niñas víctimas de violencia sexual en las filas de grupos armados ilegales deben ser consideradas víctimas del conflicto en Colombia y tienen derecho a la reparación, December 12, 2019.

²⁴⁹ El Espectador, Director de la Unidad de Víctimas, en desacato por no cumplir orden de la Corte Constitucional, November 9, 2020.

²⁵⁰ Report by the Colombian State on follow-up to IACtHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 74.

²⁵¹ Report by the Colombian State on follow-up to IACtHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, pp. 88-100.

²⁵² Report by the Colombian State on follow-up to IACtHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, pp. 74-86.

²⁵³ Report by the Colombian State on follow-up to IACtHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, p. 112.

221. In its comments on the draft of this report, the State added information indicating that these initiatives, in addition to early childhood, have also served 12,102 families belonging to ethnic groups in the Ethnic Territories with Well-being program²⁵⁴.

222. During the hearing on "Complaints regarding failure to protect collective entities of victims of the armed conflict in Colombia: indigenous, Afrodescendent, and campesino communities, and social leaders," the IACHR received information regarding institutional hurdles in the reparation process for ethnic groups. The persons requesting the hearing mentioned ongoing stereotypes when it came to addressing processes for making reparation to those groups, the lack of funding for implementing the ethnic decree-laws, and failure to build prior consultation into the ethnic roadmap for collective reparation, and other snags.²⁵⁵

223. At the same time, according to the Commission for Follow-up and Monitoring of the Implementation of this law, the Land Restitution Unit (URT) has received 308 applications for restitution of territorial rights: 238 corresponding to indigenous peoples and 70 to Afro-Colombian communities. The URT has finished processing 75 applications for land restitution that are accompanied by descriptive reports that have been adopted and inscribed in the Forcibly Dispossessed and Abandoned Land Registry (RTDAF). Of those, 21 pertain to Afro-Colombian communities.²⁵⁶ The Commission highlights and encourages these efforts. However, it voices its concern at the fact that, of the 349 collective territories of ethnic communities for which restitution is being sought, only 5% have received a judicial ruling.²⁵⁷ In addition, according to information in the public domain, the URT has returned 380.455 hectares in all, benefiting 70, 277 persons, or 9% of restitution applications. Furthermore, some institutions have pointed out that, even though the judgments order that access be given to the dwelling and to productive projects, in a number of cases those instructions have not been followed.²⁵⁸

224. In the observations to the draft of the present report, the State informed that, as of September 30, 2020, there is a total of 754 territories that have a request for registration in the Registry of Forcibly Abandoned and Divested Lands (RTDAF), of these, 539 have a preliminary study adopted, 78 of these did not recommend characterization either because of the lack of delimitation or because the community desisted from continuing with the process. Likewise, 151 characterization reports have been prepared; these processes have ended in the administrative phase with 153 registrations in the RTDAF, corresponding to 160 collective territories. Additionally, a total of 125 lawsuits have been filed, benefiting 54,134 families in 3,132,342 registered hectares. Regarding these 19 sentences, restitution has been ordered: 17 for

²⁵⁴ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 23

²⁵⁵ IACHR, Public Hearing, 177th period of sessions, "Denuncias de desprotección de los colectivos de víctimas del conflicto armado en Colombia: comunidades indígenas, afrodescendientes y campesinas y líderes sociales", October 5, 2020.

²⁵⁶ Commission to Follow up on and Monitor Implementation of Law 4635 of 2011. [Informe de seguimiento y monitoreo a la implementación del Decreto Ley 4635 de 2011 para pueblos y comunidades negras, afrocolombianas, palenqueras y raizales víctimas del conflicto armado](#), August 20, 2019, p. 67

²⁵⁷ MAPP-OAS. Twenty-eighth Report of the Mission to Support the Peace Process in Colombia of the Organization of American States, p.24.

²⁵⁸ Semana. [Es un hecho: Ley de Víctimas se prorrogó por 10 años más](#). November 12, 2020.

indigenous peoples and communities and 2 for black and afro-descendant communities, benefiting 11284 families and recognizing their right to restitution of 226,023 hectares²⁵⁹.

225. In light of the above, the IACHR concludes that compliance with the present recommendation has been **partial**.

226. Regarding the recommendation to **ensure effective participation for victims in the bodies envisaged in Law 1448, and take into account their expectations, in determining appropriate measures of reparation**, the State referred to the Effective Participation of Victims Committees provided for in Law 1.448 and stated that in November 2019, the National Committee had been installed, 56 representatives elected, and a coordinator appointed. Currently, work was being done on drawing up an Effective Participation Protocol.²⁶⁰

227. The Commission considers that compliance with this recommendation has been partial and will monitor developments in the new bodies formed. At the same time, it issues a reminder that the victims have a right to participate and the State has an obligation to guarantee it.

D. Forced Internal Displacement

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

228. Regarding the obligation to **adopt the necessary measures to prevent forced displacement, including instances attributed to illegal armed groups subsequent to the demobilization of paramilitary organizations**, the State provided information about measures adopted in 2020.²⁶¹ In particular, it underscored the "Coexistence and Citizen Security Framework Policy," aimed at bolstering the police and coordination with the military in order to enhance security and coexistence in regions in which organized armed groups are operating.²⁶²

²⁵⁹ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 24

²⁶⁰ Report by the Colombian State on follow-up to IACHR recommendations made in the country report entitled "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020, pp. 113-115.

²⁶¹ Government of Colombia, Diplomatic Note No. MPC/OEA 1669/2020 - Follow-Up to Recommendations made by the IACHR in the Report "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia," October 30, 2020.

²⁶² Government of Colombia, Diplomatic Note No. MPC/OEA 1669/2020 - Follow-Up to Recommendations made by the IACHR in the Report "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia", October 30, 2020. p. 117.

The State also reported that said policy is based on the "Future Zones" strategy for expediting the delivery of social services to the hardest-hit regions with a shortage of government institutions.²⁶³ It pointed out, too, that the action plans include a preventive component, especially in zones where criminal activities against the population are likely to continue. Thus, account would be taken of such risk factors as the presence of Organized Armed Groups, illicit economies, and land disputes.²⁶⁴ The State likewise mentioned ongoing implementation of the "Strategy for the Protection of Vulnerable Populations" (ESPOV) and the "Armed Forces and National Police Early Warnings System."²⁶⁵

229. According to figures published by the Office of the United Nations High Commissioner for Refugees (UNHCR), in this decade Colombia is the country with the largest number of displaced persons in the world: 8 million.²⁶⁶ For its part, the Internal Displacement Monitoring Centre (IDMC) registered 139,000 new internal displacements in 2019 caused by the conflict and violence.²⁶⁷ The Commission observes that forced displacements continued, even in the COVID-19 context, despite confinement measures. Thus, between January and June, the IDMC registered 19,000 new internal displacements in connection with the conflict.²⁶⁸ As of September 30, 2020, the Consolidated Victims' Registry had registered 8,070,112 victims of forced displacement.²⁶⁹.

230. Likewise, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) in Colombia documented 21,052 persons displaced by violence between January and October 2020.²⁷⁰ The displacements occurred in connection with 79 major events, mainly in Nariño, Chocó, and Antioquia.²⁷¹ Afro-Colombians and indigenous persons were particularly hard hit.²⁷² OCHA also found that the principal causes of displacement were: i) clashes between outlawed armed groups (60%); and ii) threats and other attacks against civilians (35%), which

²⁶³ Government of Colombia, Diplomatic Note No. MPC/OEA 1669/2020 - Follow-Up to Recommendations made by the IACtHR in the Report "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia", October 30, 2020, p. 118.

²⁶⁴ Government of Colombia, Diplomatic Note No. MPC/OEA 1669/2020 - Follow-Up to Recommendations made by the IACtHR in the Report "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia", October 30, 2020, p. 117.

²⁶⁵ Government of Colombia, Diplomatic Note No. MPC/OEA 1669/2020 - Follow-Up to Recommendations made by the IACtHR in the Report "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia", October 30, 2020, p. 118.

²⁶⁶ UNHCR, Internally displaced people over the past decade, 24 June 2020. See also: Internal Displacement Monitoring Centre, Global Report on Internal Displacement 2020, p. 52. Unidad para la atención y reparación integral a las víctimas, Colombia, Más de un millón y medio de víctimas de desplazamiento en Colombia han avanzado hacia soluciones duraderas, según informe del Observatorio Global del Desplazamiento Interno, April 27, 2020.

²⁶⁷ Internal Displacement Monitoring Centre, Colombia – Country Information, April 2020.

²⁶⁸ Internal Displacement Monitoring Centre, 2020 Mid-year Update August 2020, p. 35.

²⁶⁹ In particular, through September 30, 2020, the RUV registered 37,846 internally displaced persons, 19,511 of whom were women and girls. Of the total number of victims, 15,932 are children and adolescents, 9,125 are persons of African descent, 4,434 are indigenous, 447 Palenqueros, and 23 Raizales. See: Unidad para la atención y reparación integral a las víctimas, Colombia, Víctimas Conflicto Armado, September 30, 2020. Unidad para la atención y reparación integral a las víctimas, Colombia, Registro único de víctimas – víctimas por hecho victimizante por año – enfoque diferencial, September 30, 2020.

²⁷⁰ OCHA, Emergencias humanitarias octubre 2020, 6 November 2020.

²⁷¹ OCHA, Emergencias humanitarias octubre 2020, 6 November 2020.

²⁷² OCHA, Emergencias humanitarias octubre 2020, 6 November 2020.

tended to increase towards the end of the year compared to the first few months of 2020.²⁷³ In a press release on October 13, the Commission drew attention to the fact that forced displacement is one of the consequences of the high levels of violence in certain territories in Colombia.²⁷⁴

231. Apart from displacements, there were also cases of confinement (restrictions on freedom of movement), and accidents caused by anti-personnel mines (APMs), unexploded ordnance (UXO), and improvised explosive devices (IEDs). Regarding confinement, through October 2020, OCHA had registered 65,298 victims of restrictions on their movement in Norte de Santander and Chocó, owing to clashes between non-State armed groups.²⁷⁵ A majority of those affected were Afrodescendent and Indigenous communities (15% and 28%, respectively).²⁷⁶ Regarding APM, UXO, and IED-related accidents, as of September 30, the National "Descontamina Colombia" Program had registered 128 victims.²⁷⁷

232. Specifically as regards prevention of forced displacement, in 2020 the IACtHR monitored continuity of agricultural and livestock projects and contingency plans. The agricultural and livestock projects are geared to supporting initiatives and helping reduce the population's vulnerability to the armed conflict by delivering such inputs as seeds, tools, and fish fry for hatcheries²⁷⁸. According to official data, as of September 30, agricultural and livestock aid amounted to 585 million Colombia pesos, benefiting 846 households.²⁷⁹ The contingency plans provide counseling and technical support for strengthening and enhancing the institutional response capabilities of territorial entities to deliver immediate humanitarian assistance and care.²⁸⁰ According to official information, as of September 30, the Comprehensive Victim Assistance and Reparation Unit (UARIV) had lent assistance to 840 municipalities.²⁸¹

233. The Commission takes note of measures adopted by the State to comply with this recommendation; however, it observes that numerous mass forced displacements continued in 2020, increasing the number of displaced persons. In light of the above, the IACtHR considers that compliance with this recommendation has been **partial**. Consequently, the Commission urges the State to bolster the measures thus far implemented to prevent the forced displacement of persons by focusing on preventing the root causes of displacement.

234. As regards the recommendation to: i) **Implement the appropriate measures to ensure the protection and security of persons returning to the territories from which**

²⁷³ OCHA, Colombia - Impacto humanitario y tendencias entre enero y septiembre de 2020, October 27, 2020.

²⁷⁴ IACtHR, Press Release 251/20, IACtHR Expresses Concern over Increase in Violence in Colombia in Territories Where Illegal Armed Groups Are Operating, October 13, 2020.

²⁷⁵ OCHA, Colombia - Impacto humanitario y tendencias entre enero y septiembre de 2020, October 27, 2020.

²⁷⁶ OCHA, Colombia - Impacto humanitario y tendencias entre enero y septiembre de 2020, October 27, 2020.

²⁷⁷ Oficina del Alto Comisionado para la Paz, Colombia, Estadísticas de Asistencia Integral a las Víctimas de MAP y MUSE, September 30, 2020.

²⁷⁸ Unidad para la atención y reparación integral a las víctimas, Colombia, Boletín Fichas Estadísticas Nacional - Prevención - Proyectos Agropecuarios, September 30, 2020.

²⁷⁹ Unidad para la atención y reparación integral a las víctimas, Colombia, Boletín Fichas Estadísticas Nacional - Prevención - Proyectos Agropecuarios, September 30, 2020.

²⁸⁰ Unidad para la atención y reparación integral a las víctimas, Colombia, Boletín Fichas Estadísticas Nacional - Prevención - Planes de Contingencia, September 30, 2020.

²⁸¹ Unidad para la atención y reparación integral a las víctimas, Colombia, Boletín Fichas Estadísticas Nacional - Prevención - Planes de Contingencia, September 30, 2020.

they were displaced, including demining of territories; and ii) apply a differential approach in displaced person prevention and protection policies, the State reported that the Ministry of National Defense contributes to the protection and security of persons returning to the territories from which they were displaced by checking out how safe the territory is.²⁸² Its findings are compared with those of other territorial entities and, if secure conditions are in fact in place, the go-ahead is given (*se imparte la aprobación al principio de seguridad*) for return or resettlement (*reubicación*).²⁸³ The Colombian State added that the territorial authorities, together with the Victims' Unit, evaluate the choice of zones where a return or resettlement is planned.²⁸⁴ Their assessment is then submitted to the Transitional Justice Territorial Committee, along with the aforementioned security findings.²⁸⁵

235. The Commission also noted that in 2020 the Return and Resettlement Group of the Reparation Directorate of the UARIV adopted the Instructions for presentation of Special Community Support Arrangements (*Esquemas Especiales de Acompañamiento Comunitario - EEAC*).²⁸⁶ That instrument aims to help territorial entities with the return, resettlement, and local reintegration processes within the EEAC formulation, implementation, and monitoring framework,²⁸⁷ as a way of contributing to the restitution of this population's rights.²⁸⁸ As of September 30, 753 return and resettlement plans had been approved.²⁸⁹ With respect to the special arrangements to support return, the UARIV executed a series of actions linked mainly to: i) the "Familias en su Tierra" (Families on their Land - FEST) policy of the Directorate of Special Programs of the Administrative Department for Social Prosperity - Social Prosperity²⁹⁰; ii)

²⁸² Government of Colombia, Diplomatic Note No. MPC/OEA 1669/2020 - Follow-Up to Recommendations made by the IACHR in the Report "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia", October 30, 2020, p.119.

²⁸³ Government of Colombia, Diplomatic Note No. MPC/OEA 1669/2020 - Follow-Up to Recommendations made by the IACHR in the Report "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia", October 30, 2020, p.119.

²⁸⁴ Government of Colombia, Diplomatic Note No. MPC/OEA 1669/2020 - Follow-Up to Recommendations made by the IACHR in the Report "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia", October 30, 2020, p.119.

²⁸⁵ Government of Colombia, Diplomatic Note No. MPC/OEA 1669/2020 - Follow-Up to Recommendations made by the IACHR in the Report "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia", October 30, 2020, p.119.

²⁸⁶ "Special support arrangements" (*esquemas especiales de acompañamiento -EEA*) refers to all supplementary actions taken to benefit the returned or resettled population, especially the provision of housing, food security, income, and work, with the support of the entities making up the National System for Comprehensive Victim Assistance and Reparation (SNARIV). The goal pursued by the EEA is to complement, harmonize, and, where necessary, adapt state strategies for advancing socio-economic stability and comprehensive reparation for the beneficiaries. See: Unidad para la atención y reparación integral a las víctimas, Colombia, Instructivo para la presentación de Esquemas Especiales de Acompañamiento Comunitario - EEAC - Marzo de 2020, June 4, 2020.

²⁸⁷ Unidad para la atención y reparación integral a las víctimas, Colombia, Instructivo para la presentación de Esquemas Especiales de Acompañamiento Comunitario - EEAC - Marzo de 2020, June 4, 2020, p.2

²⁸⁸ Unidad para la atención y reparación integral a las víctimas, Colombia, Instructivo para la presentación de Esquemas Especiales de Acompañamiento Comunitario - EEAC - Marzo de 2020, June 4, 2020, p.2

²⁸⁹ Unidad para la atención y reparación integral a las víctimas, Colombia, Boletín Fichas Estadísticas Nacional - Planes de retorno y reubicación, September 30, 2020.

²⁹⁰ "Familias en su Tierra" (Families on their Land - FEST) is a program contributing to the socio-economic stability of households that are victims of forced displacement, who have been returned or resettled, through a comprehensive set of measures to strengthen human and social capital, food security, living and housing conditions, and the generation or bolstering of productive projects. Source: Prosperidad social, Colombia, Familias en su Tierra.

income generation; iii) reduction of housing shortages; iv) social and community infrastructure; and v) environmental sustainability and food security.²⁹¹

236. Regarding land restitution, according to official data as of September 30, 2020, 1,854 million Colombian pesos (or 100% of the planned budget) had been allocated to that end.²⁹² In addition, according to information provided by the Land Restitution Unit (URT), as of the same date), 84,126 applications (out of a total of 126,322) had completed the required administrative procedures.²⁹³ Of them, 29,265 had been registered, and 22,531 had been submitted by the URT to the competent judges.²⁹⁴ All in all, 5,421 pieces of land covering 384,988 hectares have been granted a judicial restitution order, benefiting 32,935 persons.²⁹⁵

237. In its observations to the draft of this report, the State indicated that, in addition to what was executed by the UARIV, \$248,880,937,090 was allocated to the budget of the Specialized Administrative Unit for the Management of the Restitution of Dispossessed Lands (UAEGRTD, by its Spanish acronym). Additionally, the State reported that of the 384,988 hectares that have a restitutive judicial decision, 159,861 of them correspond to the individual route for the benefit of 31,717 as of September 30, 2020²⁹⁶.

238. With regard to demining of the territories, the Office of the High Commissioner for Peace adopted the 2020-2025 Strategic Plan, aimed at ridding them of APMs and UXO,²⁹⁷ and hence contributing to the human, socio-economic, and sustainable development of the communities, especially those most infested by such devices.²⁹⁸ The Plan's components include humanitarian demining, education in the risks posed by mines, comprehensive assistance to victims, and territorial (including information) management.²⁹⁹ Under that plan, as of September 30, 407 municipalities had been declared zones free from APMs and UXO and 159 more were being de-mined.³⁰⁰ Nevertheless, as of that same date, 128 victims of APMs and UXO had been registered.³⁰¹

239. With respect to application of a differential approach in prevention and protection policies for displaced persons, the State told the IACtHR that the prevention measures adopted by the Ministry of National Defense targeted the population as a whole, so that "no

²⁹¹ Unidad para la atención y reparación integral a las víctimas, Colombia, Boletín Fichas Estadísticas Nacional - Reparaciones - Retorno y reubicaciones - Esquemas especiales de acompañamiento al retorno, September 30, 2020.

²⁹² Unidad para la atención y reparación integral a las víctimas, Colombia, Boletín Fichas Estadísticas Nacional - Gestión Interinstitucional Territorial, September 30, 2020.

²⁹³ Unidad de Restitución de Tierras, Colombia, Estadísticas de Restitución, October 2020.

²⁹⁴ Unidad de Restitución de Tierras, Colombia, Estadísticas de Restitución, October 2020.

²⁹⁵ Unidad de Restitución de Tierras, Colombia, Estadísticas de Restitución, October 2020.

²⁹⁶ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACtHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 25

²⁹⁷ Office of the High Commissioner for Peace, Colombia, Plan Estratégico 2020-2025.

²⁹⁸ Office of the High Commissioner for Peace, Colombia, Plan Estratégico 2020-2025.

²⁹⁹ Office of the High Commissioner for Peace, Colombia, Plan Estratégico 2020-2025.

³⁰⁰ Office of the High Commissioner for Peace, Colombia, Estadísticas de Desminado Humanitario, Cut-off date: September 30, 2020.

³⁰¹ Office of the High Commissioner for Peace, Colombia, Estadísticas de Asistencia Integral a las Víctimas de MAP y MUSE, September 30, 2020.

differential approach is discernible.³⁰² The State did, however, explain that the military and the police act in accordance with ministerial guidelines that are geared to respect for the rights of persons needing special protection, such as children, indigenous persons, and Afrodescendants.³⁰³

240. The Commission also notes that the National Planning Department (DNP) continued allocating a specific budget to assist, provide care for, and make reparation to displaced segments of the population.³⁰⁴ The 2020 budget for "Public Policy Targeting the Population of Victims of Forced Displacement" contains an appropriation for the human rights of displaced persons.³⁰⁵ It also includes programming criteria, above all with respect to "demographics and gender" to ensure women's participation in the measures, and with regard to "degree of vulnerability," which takes into consideration the intersectionality of such factors as disability, gender, and age.³⁰⁶ The budget also contemplates the circumstances of persons suffering prolonged displacement, food shortages, or extreme poverty (*Red Unidos*), those living in especially violent municipalities, and those who are beneficiaries of social programs (SISBEN).³⁰⁷ In addition to the above, in October, the National Planning Department (DNP) certified the registration of projects and programs aimed at helping victims of the internal armed conflict and displacement in 2021.³⁰⁸

241. The Commission takes into consideration the measures implemented by the State to guarantee protection and security for persons returning to the territories from which they were displaced. The IACHR likewise welcomes the steps being taken to demine the territories. It also takes note of the implementation of policies and programs with a differential approach to internally displaced persons. Nonetheless, the Commission observes the ongoing risks to life and personal integrity still faced by victims of forced displacement. Those risks have a deeper, different, and disproportionate impact on indigenous, Afrodescendent and campesino communities in Colombia. In addition, the IACHR notes that people's lives and bodily integrity are also still endangered by anti-personnel mines and unexploded ordnance.

242. The Commission concludes that compliance with its recommendation has been **partial**, and it urges the State to reinforce the measures implemented to protect displaced persons returning to their territories. Likewise, the IACHR calls upon the State to continue embracing a differential approach to displaced persons. Finally, the Commission appeals to the State to persist with the demining of territories where APMs, UXO, and IEDs are still found.

³⁰² Government of Colombia, Diplomatic Note No. MPC/OEA 1669/2020 - Follow-Up to Recommendations made by the IACHR in the Report "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia", October 30, 2020, p. 119.

³⁰³ Government of Colombia, Diplomatic Note No. MPC/OEA 1669/2020 - Follow-Up to Recommendations made by the IACHR in the Report "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia", October 30, 2020, p. 119.

³⁰⁴ Departamento Nacional de Planeación [National Planning Department], Informe Presupuestal de la Política Pública Dirigida a la Población Víctima del Desplazamiento Forzado 2019-2020, 2019, p. 28.

³⁰⁵ Departamento Nacional de Planeación [National Planning Department], Informe Presupuestal de la Política Pública Dirigida a la Población Víctima del Desplazamiento Forzado 2019-2020, 2019, p. 34.

³⁰⁶ Departamento Nacional de Planeación [National Planning Department], Informe Presupuestal de la Política Pública Dirigida a la Población Víctima del Desplazamiento Forzado 2019-2020, 2019, p. 36.

³⁰⁷ Departamento Nacional de Planeación [National Planning Department], Informe Presupuestal de la Política Pública Dirigida a la Población Víctima del Desplazamiento Forzado 2019-2020, 2019, p. 36.

³⁰⁸ Departamento Nacional de Planeación, Colombia, Nota Nro. 20204321506641, October 26, 2020.

243. Finally, as regards the recommendation about **moving forward in the prosecution of cases of forced disappearance, in order to help to raise awareness about them**, the State reported that, as of October 1, 2020, the Transitional Justice Directorate had 8,272 investigations under way into forced displacement.³⁰⁹ It pointed out that that figure was 36.2% below the number of investigations in 2017. It added that those investigations are spread over 73 public prosecutor's offices in 14 headquarters where the Directorate operates, classified for the most part by armed actor and specific region³¹⁰.

244. The State provided information about the progress made in three cases processed by the Special Jurisdiction for Peace, in which gross human rights violations, including forced displacement, are being investigated.³¹¹ Mention was also made of the work of the Directorate Specializing in Human Rights Violations in the Office of the Attorney General (FGN).³¹² In particular, the State pointed out that, between July 2017 and October 2020, 2,431 related action resolutions (*resoluciones de conexidad*) had been issued as part of an effort to understand displacements due to the involvement of criminal organizations at certain times and places (*involucradas por temporalidad o georreferenciación*).³¹³ That made it possible to relate investigations under way in different proceedings or for the same facts, but with different victims.

245. In addition, according to official data, 3,248 proceedings involving the crime of forced displacement were initiated in 2020 and were ongoing as of November 2.³¹⁴ According to reports in the public domain, alleged members of the "Limonar 1"³¹⁵ and "Los Morrochispas" or "Los Conejos" criminal organizations³¹⁶, both of which specialized in forced displacements as well as other crimes, were brought to trial in October.³¹⁷ In November, an elite team of public prosecutors, investigators, and analysts from the Valle Departmental Directorate working in conjunction with the Special Investigation Unit (UEI) managed to prosecute 37 alleged members

³⁰⁹ Government of Colombia, Diplomatic Note No. MPC/OEA 1669/2020 - Follow-Up to Recommendations made by the IACHR in the Report "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia", October 30, 2020, p. 122.

³¹⁰ Government of Colombia, Diplomatic Note No. MPC/OEA 1669/2020 - Follow-Up to Recommendations made by the IACHR in the Report "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia", October 30, 2020, p. 122.

³¹¹ Government of Colombia, Diplomatic Note No. MPC/OEA 1669/2020 - Follow-Up to Recommendations made by the IACHR in the country report "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia", October 30, 2020, p. 121.

³¹² Government of Colombia, Diplomatic Note No. MPC/OEA 1669/2020 - Follow-Up to Recommendations made by the IACHR in the country report "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia", October 30, 2020, pp. 119-120.

³¹³ Government of Colombia, Diplomatic Note No. MPC/OEA 1669/2020 - Follow-Up to Recommendations made by the IACHR in the country report "Truth, Justice, and Reparation: Fourth Report on the Human Rights Situation in Colombia", October 30, 2020, pp. 119-120.

³¹⁴ Fiscalía General de la Nación, Colombia [Office of the Attorney General of the Nation - FGN], Datos abiertos de la Fiscalía General de la Nación - Conteo de Procesos, updated to November 2, 2020.

³¹⁵ Noticias Medellín, Judicializan a 9 presuntos integrantes del grupo delincuencial Limonar 1, October 28, 2020.

³¹⁶ Fiscalía General de la Nación [Office of the Attorney General of the Nation - FGN], Colombia, Judicializados presuntos cabecillas e integrantes de la estructura delincuencial Los Morrochispas que tienen injerencia en la zona centro oriental de Medellín, October 30, 2020.

³¹⁷ Noticias Medellín, Judicializan a 9 presuntos integrantes del grupo delincuencial Limonar 1, October 28, 2020. See also: Fiscalía General de la Nación [Office of the Attorney General of the Nation - FGN], Colombia, Judicializados presuntos cabecillas e integrantes de la estructura delincuencial Los Morrochispas que tienen injerencia en la zona centro oriental de Medellín, October 30, 2020.

of the "La Local" criminal organization.³¹⁸ Those proceedings threw light on two major forced displacements that occurred in November 2018.³¹⁹ That same month, in 2020, 10 alleged members of the "La Carbonera" criminal organization were jailed after being indicted for forced displacement, as well as other offenses.³²⁰

246. The Commission takes notes of the progress being made with the prosecution of forced displacement cases in Colombia. Thanks to that, the IACHR considers that there has been **partial compliance** with its recommendation and urges the State to continue investigating and prosecuting the crime of forced displacement, as well as implementing comprehensive reparation measures for the victims.

E. Economic, Social, Cultural and Environmental Rights (ESCER)

- Continue to adopt measures for reducing poverty and extreme poverty

247. Regarding the recommendation to continue adopting measures to eradicate poverty and extreme poverty in order to guarantee economic, social, cultural and environmental rights (ESCER), the Commission and its REDESCA (Special Rapporteurship on ESCER) note that Colombia continues to exhibit worrisome poverty and inequality rates that are being further exacerbated by the health-related and socio-economic impacts of the COVID-19 pandemic, acts of corruption, and difficulties with forging stable and lasting peace.

248. Understanding that poverty is a structural problem that translates into impairments of the exercise and enjoyment of human rights,³²¹ the Commission and its Special Rapporteurship highlight the efforts undertaken and measures adopted by the State to address both poverty as such, and extreme poverty in particular, by coming up with programs for economically vulnerable persons barely able to access their right to housing, water, and income, as well as other rights. The following programs stand out: "100%-subsidized housing" for those living in extreme poverty, prioritizing the victims of forced displacement, with a view to granting them cost-free housing³²²; the "My house right now" (*Mi casa ya*) program offering housing subsidies to households based on their purchasing power³²³; the "Future Owners" (*Semillero de Propietarios*) program that seeks to benefit households living in informally rented or overcrowded dwellings and to reward household savings³²⁴; along with the "Decent Home, Decent Life (*Casa Digna, Vida Digna*) program for improving homes and their surroundings that has reportedly so far benefited 383,933 households.³²⁵

³¹⁸ Radio Santa Fe, Fiscalía judicializó a 52 presuntos integrantes de bandas delincuenciales en el Cauca, November 1, 2020.

³¹⁹ Radio Santa Fe, Fiscalía judicializó a 52 presuntos integrantes de bandas delincuenciales en el Cauca, November 1, 2020.

³²⁰ Fiscalía General de la Nación [FGN], Colombia, Fiscalía desmanteló la banda La Carbonera, dedicada a la extorsión y al desplazamiento forzado en Cali, November 3, 2020.

³²¹ IACHR, Poverty and Human Rights, OEA/Ser.L/V/II.164, September 7, 2017

³²² Ministerio de Vivienda, Ciudad y territorio de Colombia [Ministry of Housing, City, and territory of Colombia] Viviendas 100% subsidiadas.

³²³ Ministerio de Vivienda, Ciudad y territorio de Colombia, Mi Casa Ya, October 9, 2020

³²⁴ Ministerio de Vivienda, Ciudad y territorio de Colombia, semillero de propietarios, November 14, 2020

³²⁵ Ministerio de Vivienda, Ciudad y territorio de Colombia, casa digna vida digna, November 20, 2020

249. Regarding the right to water, the IACtHR and its Special Rapporteurship note the continuation of the "Guajira Azul" program to increase drinking water and sanitation coverage and quality, by extending the availability of running water (from 9 to 16 hours) in urban areas, and expanding coverage by 66% (from 4% to 70%) in rural areas of the department hardest-hit by water shortages in the country.³²⁶ The Commission also highlights the "Water to the Countryside" (*Agua al Campo*) program designed to increase aqueduct and sewer services,³²⁷ together with the "in-house connections" to foster the construction or improvement of connections in and between homes.³²⁸

250. In connection with the pandemic, of particular note is the Solidarity Income (*Ingreso Solidario*) program benefiting poor, extremely poor, or otherwise economically vulnerable households, which, while excluding those already benefiting from the State's social programs, such as Families in Action (*Familias en Acción*), Social Protection for Older Adults (*Protección Social al Adulto Mayor – Colombia Mayor*), Youth in Action (*Jóvenes en Acción*), and others, guarantees unconditional cash transfers. According to the State, in this program's first cycle, transfers were made to more than 2 million households in the amount of US\$87 million.³²⁹ In its comments to the draft of this report, the State updated this data and informed that, in its 9 payment cycles, 3 million households were reached, with a total investment of 1.2 billion, which means an average of 400 USD per household in the year³³⁰. This program also highlights the attention given to the middle class, which is economically vulnerable in the face of the public health emergency. The Colombian government also stated that it would allocate resources to strengthen existing social programs and additional monetary transfers to beneficiaries³³¹. Finally, as a support measure, the implementation of the VAT (value added tax) refund scheme for the most economically vulnerable households was accelerated³³².

251. Along the same lines, as part of the measures adopted to ensure income and/or means of subsistence for everyone, the State reportedly granted subsidies for people who lost their jobs during the emergency (76,000 beneficiaries of the mechanism to protect those losing employment) and subsidies to companies to enable them to pay wages, which apparently benefited more than 6 million workers.³³³ In addition, with respect to housing and public utilities, drinking water connections were established for households behind in their payments (more than 274,000 families); subsidies amounting to more than US\$268 million were reportedly paid to help the poorest households pay electricity and natural gas bills; eviction orders were suspended; and financial relief was provided to help more than 300,000 families with their home

³²⁶ Viceministerio de Agua y Saneamiento [Vice Ministry of Water and Sanitation], Guajira Azul, September 17, 2020

³²⁷ Viceministerio de Agua y Saneamiento, Guajira Azul, September 28, 2020

³²⁸ Viceministerio de Agua y Saneamiento, Guajira Azul, September 16, 2020

³²⁹ Gobierno de Colombia, Nota Diplomática [Government of Colombia, Diplomatic Note] No. S-DIDHD-20-000053 , June 1, 2020

³³⁰ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACtHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 26

³³¹ The State provided information on the programs Families in Action (2.6 million families in total with 4.4 million children and adolescents; including 126 thousand indigenous households, 138 thousand Afro-descendant households and 870 thousand households that have been victims of displacement), Youth in Action (428,779 young people) and Older Colombia (1.7 million older adults). Ibid.

³³² Ibid.

³³³ Ibid.

loans.³³⁴ In addition, the Department of Social Prosperity reportedly ensured that payments for the nutritional and educational components of the Familias en Acción program for children and adolescents were kept up to date.³³⁵

252. In its observations on the draft of the present report, the State added that, among the measures developed for the care of the population in the context of the COVID-19 pandemic, the following programs would be included: strategy "My hands teach you", the delivery of rations and pedagogical kits, the follow-up of the care strategies, and the adaptation of the programs "Generations Sacúdete (Generations 2.0)", "My Family" and "Ethnic Territories with Well-being" to the context of the pandemic³³⁶.

253. The Commission and its Special Rapporteurship for Economic, Social, Cultural, and Environmental Rights take note of those measures, as well as those implemented to ensure the provision of health care during the health emergency triggered by COVID-19, inasmuch as they sought to comply with the human right to health and its core, social determinants, which in turn relate to other rights, such as access to drinking water and decent housing.³³⁷ Moreover, that economic and financial assistance, and the provision of subsidies, reportedly also addressed, in part, the needs of persons living in poverty and extreme poverty in Colombia, who are recognized as being at special risk vis-a-vis the health emergency.³³⁸

254. The above notwithstanding, the Commission and SRESCER once again draw attention to the country's high poverty indices. Thus, while reportedly in 2019 multidimensional poverty in Colombia fell by 1.6 percentage points compared to 2018 (from 19.1% to 17.5%), the figures encompass a large percentage of the population, whereby those living in remote towns and rural areas are especially affected, because the multidimensional poverty figure there is 34.5%, compared to 12.3% in the country's capital cities.³³⁹ For its part, monetary poverty increased from 34.7% in 2018 to 35.7% nationwide in 2019 (47.5% in remote towns and rural areas and 32.3% the country's capital cities).³⁴⁰ Over the same period, extreme monetary poverty increased from 8.2% to 9.6% nationwide and encompassed 19.3% of the population in remote towns and rural areas and 6.8% of the population in the country's capital cities.³⁴¹

255. For the Commission and its SRESCER, it is important to point out that, with respect to the 2019 multidimensional poverty index, the indicator showing the highest percentage nationwide was informal labor, with 72.9%.³⁴² As for educational achievement ratios, they were low for 44% of the population, while the educational lag index was 25.8%.³⁴³ Those figures are particularly worrisome because it was in that context of widespread informality and significant challenges in the education sector that the COVID-19 health emergency struck. For that

³³⁴ Ibid.

³³⁵ Diario de Yucatán. Colombia se une al cierre de escuelas por Covid-19, March 15, 2020

³³⁶ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 26-29

³³⁷ IACHR, Pandemic and Human Rights in the Americas, Resolution No. 1/2020, April 10, 2020, par. 4

³³⁸ Ibid.

³³⁹ Dane, Pobreza Multidimensional en Colombia 2019 y 2018, Press Release, July 14, 2020

³⁴⁰ Dane, Pobreza monetaria y multidimensional en Colombia 2019, October 13, 2020

³⁴¹ Dane, Pobreza monetaria y multidimensional en Colombia 2019, Boletín Técnico, October 13, 2020

³⁴² Dane, Pobreza Multidimensional en Colombia 2019 y 2018, Press Release, July 14, 2020

³⁴³ Ibid.

reason, the outlook means that enormous efforts on the part of the State will be required, because this scenario has reportedly exacerbated the social and economic impacts of the pandemic, and, thereby, the challenges that will need to be overcome to address poverty and extreme poverty in the country. Here, as the Committee on Economic, Social, and Cultural Rights (CESCR) has pointed out, the right to education constitutes the main path by which children and adolescents and adults living in economically and socially vulnerable circumstances can emerge from poverty.³⁴⁴

256. As of the health emergency, there are estimates of a 5.5 million increase in the number of poor persons in Colombia (to around 19 million): a ten-year setback.³⁴⁵ There are also reports that nearly a quarter of the population (23%) now eats twice, instead of three times, a day,³⁴⁶ while 52.4% of the population is experiencing food insecurity and more than 2.7 million Colombians suffer chronic hunger.³⁴⁷ And that is the truth of the matter, despite the various government programs to address the pandemic and all the efforts to protect persons living in poverty and extreme poverty.

257. As regards the health system, acts of corruption, and their bearing on poverty, the Commission and its SRESCER note that, although, after declaring a state of emergency on March 17, 2020, the government promulgated a series of economic measures costing some US\$15 billion to mitigate the crisis unleashed by the COVID-19 pandemic -- including loans, subsidies, and funding for the health system --³⁴⁸ there have been a significant number of complaints of overcharging and of the use of unsuitable contractors to handle the health emergency.³⁴⁹ Similarly, since the start of the health emergency, the Office of the Inspector-General has reported 837 disciplinary proceedings against, inter alia, 417 mayor's offices, 26 local governor's offices, and 32 municipal councils.³⁵⁰ That being so, the IACHR and its SRESCER call upon the authorities to address those complaints and investigate those acts. As the IACHR has previously asserted, State corruption hits the poorest hardest and therefore not only curtails the general population's guaranteed access to ESCER, but above all that of persons living in poverty, because the latter's enjoyment of human rights is especially restricted by day-to-day acts of corruption and systemic corrupt practices.³⁵¹

258. In light of the above, the IACHR and its SRESCER acknowledge the measures taken by Colombia to implement the recommendation. Nevertheless, in view of the major socio-economic impacts of the health emergency triggered by COVID-19 and the challenges they pose with respect to inequality and the protection of ESCER, they consider that compliance with the recommendation has been **partial** and will continue to monitor its implementation.

F. Groups acutely Affected in Contexts of armed Conflict

³⁴⁴ CESCR, General Comment No. 13, The Right to Education, E/C.12/1999/10, 8 December 1999.

³⁴⁵ Redmas. ¡Colombia tendría 19 millones de pobres después de la pandemia! August 28, 2020

³⁴⁶ Ibid.

³⁴⁷ Infobae, 2,7 millones de colombianos sufren de hambre crónica, October 15, 2020

³⁴⁸ Infobae, Colombia lanza medidas económicas por USD 15.000 millones para enfrentar pandemia, March 18, 2020

³⁴⁹ El Espectador, Hasta julio contratación para atender COVID-19 sumaba \$2,5 billones, August 18, 2020

³⁵⁰ Portafolio, La corrupción en Colombia, un mal más grave que el coronavirus, October 4, 2020.

³⁵¹ IACHR, Corruption and Human Rights in the Americas: Inter-American Standards, OEA/SER.L/V/II, December 6, 2019.

1. The Invisibility of People of African descent, Raizales, and Palenqueras

- Adopt urgent measures to overcome the structural discrimination that the Afro-Colombian population endures, as well as affirmative measures to eliminate racial discrimination and guarantee that people of African descent are able to exercise their rights on an equal footing with the rest of the population.
- Have specialized personnel and financial resources for the forthcoming population census, and make certain that appropriate channels are in place to enable civil society to participate and thereby ensure that the categories used in the self-identification questions are properly drafted. The question on self-identification should be among the first questions asked on the basic questionnaires.
- Implement adequate mechanisms for prior consultation on all measures affecting people of African descent and guarantee that communities can enjoy and make use of their territories, free from interference.
- Move forward in the effective implementation of multiple policies and programs created to guarantee the rights of the Afro Descendant population by guaranteeing adequate mechanisms for participation and representation.

259. With regard to the recommendation to adopt urgent measures to overcome the structural discrimination that the Afro-Colombian population endures, as well as affirmative measures to eliminate racial discrimination and guarantee that people of African descent are able to exercise their rights on an equal footing with the rest of the population, the State described a study called *Los colores de la escuela* (“School Colors”) done by the Ministry of the Interior’s Observatory against Racial Discrimination and Racism (OCDR) and the International Organization for Migration (OIM). The main purpose of the study is to collect lessons and put together an action program to tackle stereotypes through the basic education curriculum. The State also noted that the OCDR is developing guidelines for a public policy to combat and eliminate racial discrimination, racism, and all forms of discrimination against the black, Afro-Colombian, raizal, and palenquera population³⁵².

260. For its part, the United Nations Committee on the Elimination of Racial Discrimination expressed its concern about the persistent structural and historical discrimination faced by members of indigenous peoples and communities of African descent, as reflected in high levels of poverty and social exclusion compared with the rest of the population. It also expressed its concern regarding the impact of discrimination on the right to work and the obstacles to the labor inclusion of these population groups; the right to health, the lack of accessibility to health care, and the overrepresentation of ethnic communities in cases of childhood malnutrition; the right to education and the low levels of formal education compared with the rest of the population; and the difficulties that these groups face in gaining political participation and their lack of adequate representation at all levels of public administration³⁵³.

261. Along these same lines, civil society informed the Commission about the use of racial profiling by State institutions. The IACHR received complaints regarding the murders of

³⁵² Report of the Colombian State in follow-up to IACHR recommendations issued in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”. October 30, 2020, p. 138

³⁵³ CERP, Observaciones finales sobre los informes periódicos 17º a 19º combinados de Colombia, 22 de enero de 2020.

Anderson Arboleda³⁵⁴, Harold Morales³⁵⁵, and Julián Mauricio González³⁵⁶, which were reportedly carried out by agents of the Colombian National Police. In addition, on July 26, 2020, in the municipality of Arboletes (Antioquia), a young Afro-Colombian gay man died in police custody, and the circumstances of his death have yet to be clarified by the authorities³⁵⁷.

262. The Afro-Colombian population is also overrepresented among the victims of the violence that affects certain parts of the country in particular, in both urban and rural areas. The Commission took note of the massacre that occurred in the Llano Verde neighborhood of Cali, where five Afrodescendent males between the ages of 14 and 18 were tortured and murdered. It further notes that 28 children and adolescents between the ages of 12 and 17 were murdered in the city of Cali in the first six months of 2020.

263. The Commission is also particularly concerned about the risk faced by Afro-Colombian social leaders. According to records kept by INDEPAZ, 17 leaders of African descent were killed in 2020, and in several of these cases, they were members of Community Councils³⁵⁸. The Commission also received a number of complaints about threats and attacks against Afro-Colombian social leaders, including Yaneth Mosquera³⁵⁹ and Leyner Palacios³⁶⁰.

264. The IACHR considers that there has been partial compliance with this recommendation and urges the State to investigate all these acts of violence and develop policies that address the structural causes and policies that prevent all forms of violence against children and adolescents. The Commission has stated that violence is a complex, multidimensional problem, and it calls on the State to implement measures that look at intersectionality with regard to the victims of this violence, in other words, the intersection between their ethnic/racial identity, the socioeconomic situation, and the territory in which these incidents occur.

265. Regarding the recommendation to have specialized personnel and financial resources for the forthcoming population census, and make certain that appropriate channels are in place to enable civil society to participate and, specifically, that the question on self-identification is among the first questions asked on the questionnaires, in its response to the request for information the State laid out in detail the existing regulations on this matter and the steps taken to comply with them. In line with the differentiated approach, the National Administrative Department of Statistics (DANE) carried out prior consultation with different ethnic groups. In the case of the black, Afro-Colombian, raizal, and palenquera communities, this consultation took place in the context of the National Forum for Prior Consultation (Espacio Nacional de Consulta Previa, ENCP) on general legislative and administrative measures that may

³⁵⁴ BBC News, [Anderson Arboleda: la muerte de un joven negro tras una presunta golpiza policial que desató un debate sobre el racismo en Colombia](#), 4 junio de 2020.

³⁵⁵ El Espectador, [Harold Morales soñaba con ser futbolista y murió por una bala de la Policía en Cartagena](#), 1 de septiembre de 2020

³⁵⁶ Vorágine, [Dígale a mi mami que la amo: el último suspiro de Julián, asesinado por la Policía](#), 15 de septiembre de 2020.

³⁵⁷ Caribe Afirmativo, [Muere Juan Luis Guzmán, hombre gay, en la estación de policía de Arboletes, Antioquia](#), 10 de Agosto de 2020

³⁵⁸ INDEPAZ. [Líderes sociales y defensores de derechos humanos asesinados en 2020](#).

³⁵⁹ IACHR. [Expresa su profunda preocupación por el ataque cometido con un artefacto explosivo contra la líderesa Yaneth Mosquera](#), 29 de julio de 2020

³⁶⁰ IACHR. [Expresa preocupación ante el asesinato de Arley Hernán Chalá el 4 de marzo de 2020 en la ciudad de #Cali, departamento del Valle del Cauca. Arley se desempeñaba como escolta del líder social de #Chocó, Leyner Palacios](#), 5 de marzo de 2020.

directly affect black, Afro-Colombian, raizal, and palenquera communities³⁶¹. Formal agreements with the ENCP, which covered the questionnaire and census procedures, communication, transportation, and personnel operations, were signed on February 19 and 20³⁶². In addition to the self-identification question, which came out of the prior consultations with the various ethnic groups, these agreements also led to the inclusion of questions on ethnic territory, the incorporation of new categories for the question on language, four direct ethnic-related questions, and three response categories to other questions, designed to shed light on the social and demographic circumstances of the ethnic population through statistical data³⁶³.

266. Additionally, ethnic and civil society organizations filed an action for protection (tutela), admitted on November 21, 2020, by the Twenty-First Administrative Circuit Court of Bogotá, in which they claim that the rights of the Afro Descendant population had been violated as a result of how the 2018 census was implemented³⁶⁴. These organizations argue that methodological problems led to an undercount of the black, Afro-Colombian, raizal, and palenquera population, which decreased by 30.8% in the period between censuses, from 4,311,757 people in 2005 to 2,982,224 in 2018³⁶⁵. According to these organizations, the problems were rooted in the wording of the self-identification question; the logistical difficulties in reaching certain areas; the refusal to participate in the census by residents in areas where people of African descent have had a historical presence; and problems related to hiring and training staff³⁶⁶. The plaintiffs believe that the undercounting of people of African descent violates their rights to equality and nondiscrimination, as well as their economic, social, and cultural rights and their right to information³⁶⁷. In addition, the self-identification question appeared as number 34 on the census form³⁶⁸.

267. The State reported that it has established, in accordance with adjustments made to the sampling frame of the National Quality of Life Survey, that the official population of black, Afro-Colombian, raizal, or palenquera people is in the vicinity of 4,671,160. In addition, DANE is in the process of doing new studies on the sociodemographic dynamics of this population group³⁶⁹.

³⁶¹ Report of the Colombian State in follow-up to IACtHR recommendations issued in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”. October 30, 2020, p. 139-146

³⁶² Report of the Colombian State in follow-up to IACtHR recommendations issued in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”. October 30, 2020, p. 139

Report of the Colombian State in follow-up to IACtHR recommendations issued in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”. October 30, 2020, p. 140

³⁶³ Report of the Colombian State in follow-up to IACtHR recommendations issued in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”. October 30, 2020, p. 140

³⁶⁴ El Espectador. Admiten acción de tutela por disminución de censo de población afro en 2018. 23 de noviembre de 2020.

³⁶⁵ DANE, Población Negra, Afrocolombiana, Raizal y Palenquera, 6 de noviembre de 2019, p. P. 16

³⁶⁶ ILEX Acción jurídica. ABC tutela invisibilidad estadística de la población afrodescendiente en el censo de 2018. 30 de noviembre de 2020.

³⁶⁷ Asuntos Legales, Admiten tutela contra el Dane por disminución de población afro en el censo de 2018, 21 de noviembre de 2020.

³⁶⁸ DANE, Población Negra, Afrocolombiana, Raizal y Palenquera, 6 de noviembre 6 de 2019, p. 9.

³⁶⁹ Report of the State of Colombia in follow-up to IACtHR recommendations issued in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”. October 30, 2020, p. 145

268. In its comments on the draft of this report, the State highlighted the research that it has been conducting on variations in the population's self-recognition in the intercensal period: first, it referred to the "analysis of the intercensal dynamics of self-recognition in the black, Afro-Colombian, Raizal and Palenquera population in the 2005-2018 period"; second, the State highlighted the determination of a growth trajectory of the Raizal, Palenquera, black, mulatto, Afro-descendant and Afro-Colombian population, according to the components of their demographic dynamics (fertility, mortality and migration), in the period 2005-2018 and by geographic-cultural regions. Thirdly, through various statistical instruments, the State mentioned the factors underlying the intercensal variations in self-recognition³⁷⁰.

269. The Commission underscores the importance of having disaggregated statistical information that makes it possible to highlight the situation of the various population groups, in order to develop public policies to remedy different harms and inequities. The Commission also notes the importance that the methodology used to collect the information is developed in agreement between the State and the organizations representing the Afro-Colombian, black, raizal, and palenquera communities. In this context, the IACHR finds that there is partial compliance with this recommendation and will continue to monitor these issues.

270. Regarding the recommendation to implement adequate mechanisms for prior consultation on all measures affecting people of African descent and guarantee that communities can enjoy and make use of their territories, free from interference, the State indicated that it is in the process of carrying out actions in accordance with the Constitutional Court and its unified judgment [sentencia de unificación] on prior consultation, SU 123 of November 15, 2018. The ruling establishes the need to adopt the relevant measures to regulate matters related to certifying the presence of and impacts on ethnic communities, so as to give effect to the right to prior consultation, as well as to make the necessary adjustments so that the institution responsible for certifying the presence of and impacts on ethnic communities have administrative and financial autonomy and independence. In this context, the State, through Decree 2353 of 2019, created within the Ministry of the Interior the Office of the National Authority on Prior Consultation (Dirección de la Autoridad Nacional de Consulta Previa), consisting of the Technical Sub-Directorate, in charge of determining the applicability and opportunity for prior consultation; the Management Sub-Directorate, responsible for leading and coordinating consultation processes; and the Corporate Sub-Directorate, which supports the agency's human resources, contractual, and administrative management³⁷¹.

271. The State also reported that it is drafting a statutory law on prior consultation and effective mechanisms to guarantee and protect the rights of ethnic communities. In addition, the State reported that it may introduce a bill regulating the fundamental right of prior consultation, to bring together administrative measures and sub-regulations that the Constitutional Court has handed down in judgments in order to advance the prior consultation process³⁷².

272. Civil society organizations, for their part, informed the Commission about various failures to comply with Afro-Colombian communities' right to prior consultation. First of

³⁷⁰ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 30-36

³⁷¹ Report of the Colombian State in follow-up to IACHR recommendations issued in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia". October 30, 2020, p. 146

³⁷² Report of the Colombian State in follow-up to IACHR recommendations issued in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia". October 30, 2020, p. 146-148

all, they indicated that based on Constitutional Court Judgment T-063 of 2019, the right to free, prior, and informed consultation implies seeking the consent of the ethnic communities. According to the Constitutional Court, “the purpose of the consultation is to try to obtain, through genuine and intercultural dialogue, the consent of the indigenous and tribal communities regarding any measures that may affect them (that is, rules and regulations, policies, plans, programs, projects, etc.). The idea is that these populations ‘participate in the design of policies that, based on their substance, may concern them.’ It is incumbent upon the State to ‘take the necessary measures to reduce the real power disparities that ethnic peoples may have.’”³⁷³ The civil society organizations believe that there has been a systematic failure to comply with this point. Secondly, civil society indicated that there are prior consultations being done that lack adequate means for effective participation and that, moreover, these consultations are not culturally appropriate. To support this claim, they noted that procedures for free, prior, and informed consultation to seek consent have included holding a hearing in a place not necessarily located in the affected area and setting up two ways to participate in the hearing by telephone³⁷⁴. According to the organizations, these procedures are not in line with the spirit of Convention 169 of the ILO or with the judgments of the Constitutional Court related to genuine and intercultural dialogue, nor are there evident measures designed to reduce real disparities between the State and ethnic peoples.

273. The Commission reminds the State that procedures for free, prior, and informed consultation to obtain consent from ethnic peoples are an essential mechanism for these groups’ right to free self-determination. It therefore urges the Colombian State to develop mechanisms to guarantee the effective participation of the black, Afro-Colombian, raizal, and palenquera population and the country’s other ethnic communities, and to ensure that these procedures are culturally appropriate. Based on this, the IACHR finds that there is partial compliance with this recommendation.

274. With regard to the recommendation to move forward in the effective implementation of multiple policies and programs created to guarantee the rights of the Afrodescendent population by guaranteeing adequate mechanisms for participation and representation, the State reported that the Ministry of the Interior’s Directorate of Black, Afro-Colombian, Raizal, and Palenquera Community Affairs has been working on the institutional strengthening of territorial entities on issues related to ethnic rights and a differentiated approach. The State indicated that this office has also been training and strengthening organizations in Afro-Colombian communities, supporting them and providing assistance in the preparation of development plans, in addition to offering forgivable loans from the Special Educational Loan Fund for Black Communities (FECECN) to new aspirants to higher education. In addition, the State created the Social Leaders Training School, which aims to strengthen leadership and governance in the country by preparing leaders of Community Action Boards (Juntas de Acción Comunal), local officials, political parties or movements, human rights defenders, clergy, indigenous peoples, Roma people, black, Afro-Colombian, raizal, and palenquera communities, the LGBTI population, women, young people, persons with disabilities, and caregivers³⁷⁵.

275. During the bilateral meeting on “Afrodescendent, Indigenous, and Peasant People of Chocó, Colombia,” held during the Commission’s 176th Period of Sessions, civil society

³⁷³ Corte Constitucional, Sentencia T-063/19, 15 de febrero de 2019.

³⁷⁴ Autoridad Nacional de Licencias Ambientales. Edicto LAM 0793, 16 de abril de 2020. P. 7

³⁷⁵ Report of the Colombian State in follow-up to IACHR recommendations issued in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”. October 30, 2020, p. 148-149.

organizations informed the IACHR about the situation being experienced by members of the country's Afro-Colombian communities who are in leadership roles. They expressed their concern regarding the delays in risk assessment and implementation of measures ordered by the National Protection Unit, as well as the suspension of some sections of the Committee on Risk Assessment and Recommendation of Measures (CERREM). They also pointed to the unsuitability of the measures provided and the need to implement collective measures for protection; in addition, they alleged that there was a failure to comply with the Office of the Ombudsperson's early warnings and a failure by the institutions in charge to respond.

276. According to the organizations that participated in this hearing, these structural situations have been exacerbated due to the escalation of the armed conflict and the mitigation measures for the COVID-19 pandemic, which especially affected the mobility and security of social leaders. In this context, in addition to the violence against people in leadership roles, the organizations reported that thousands of people had been forcibly displaced³⁷⁶, consistent with the early warnings issued by the Ombudsperson's Office³⁷⁷.

277. The civil society organizations also reported that the social, economic, health, and environmental situation experienced by the country's Afro-Colombian communities had deteriorated. They reported that the failure to implement the Peace Agreement meant that the COVID-19 pandemic had a greater impact on these communities, mainly because persistent health problems result in frequent deaths from malaria, respiratory diseases, and diarrhea due to poor water quality. On this last point, the organizations indicate that the increase in illegal mining activity in Chocó has affected the quality of the water, which reportedly contains large concentrations of mercury in a region where the main source of the water supply and food comes from rivers and arroyos. According to the civil society organizations, the magnitude of the economic crisis caused by the mitigation measures for the COVID-19 pandemic and the characteristics of the social policies have had an impact on people's access to food and are producing a profound social crisis. Finally, the organizations also reported that there are difficulties involving access to the educational system, especially at the secondary and tertiary level.

278. The Commission is mindful that the safety of social leaders is an essential requirement to ensure adequate mechanisms for participation and representation, as well as for the development of activities to defend the human rights of black, Afro-Colombian, raizal, and palenquera communities. The IACHR also understands that it is necessary to move forward in the implementation of the Peace Agreement and, along with that, in the implementation of actions to guarantee the economic, social, cultural, and environmental rights of Afro-Colombian and other ethnic communities in the country. The IACHR finds that there is partial compliance with this recommendation.

9. Violence against Children and Adolescents

- Conduct the necessary investigations to obtain full and truthful information on the children and adolescents recruited by illegal armed groups and then informally separated.

³⁷⁶ COCOCAUCA. Alarmante crisis humanitaria por reclutamiento del conflicto armado en la costa pacífica del Cauca. 1 de junio de 2020

³⁷⁷ Defensoría del Pueblo. Defensoría pide atención urgente para 450 desplazados en Chocó, 17 de septiembre de 2020.

- Ensure equal treatment of demobilized children and adolescents and adopt mechanisms for their full reintegration into civilian life, including specific measures for demobilized girls.

279. Regarding the recommendation to conduct investigations to obtain full and truthful information on the children and adolescents recruited by illegal armed groups and then informally separated, the Colombian State provided information on the investigations conducted from 1998 to the present on the recruitment of children and adolescents. The State indicated that the victimization of children and adolescents by various organized armed groups and organized criminal groups goes beyond everyday criminal activity; it is part of a phenomenon of collective violence approaching "macro-criminality," which professionals have studied and discussed from an interdisciplinary standpoint in order to truly understand the context of victimization and violence³⁷⁸.

280. Specifically, the State reported that in the period in question, at least 415 children and adolescents were illegally recruited by the National Liberation Army (Ejército de Liberación Nacional, ELN) and its substructures, and are part of the investigations into this matter by the Support Office for Investigations and Analysis on Organized Crime³⁷⁹. Most of the children and adolescents recruited have reportedly been male, and the youngest illegally recruited boy was said to be only 7 years old³⁸⁰. The activities that the children and adolescents are forced to engage in range from doing field labor to carrying out hit jobs, practicing prostitution, standing guard, growing drugs, collecting protection money from farmers and ranchers, and transporting weapons, for which they receive military-style training in the use of arms and explosives, combat tactics, and even torture³⁸¹.

281. According to the information available to the IACtHR, dissident groups or remnants of the FARC-EP continue to recruit and conscript children and adolescents in the departments of Arauca, Caquetá, Norte de Santander, Guaviare, and Meta³⁸². Children and adolescents from indigenous, Afrodescendent, and peasant communities are conscripted into these groups in the departments of Cauca, Valle del Cauca, Putumayo, and the Nariño Pacific Coast, through deceit and financial promises, and in some cases, through threats against them or their relatives. For their part, the ELN and its substructures continue to recruit and conscript children and adolescents in the departments of Antioquia, Cauca, Chocó, Norte de Santander, Valle del Cauca, Nariño, La Guajira, and Arauca³⁸³.

³⁷⁸ Ministry of Foreign Affairs of Colombia, Follow-up Report on Recommendations of the IV Country Report Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, Emphasis 2020, pg. 151.

³⁷⁹ Ministry of Foreign Affairs of Colombia, Follow-up Report on Recommendations of the IV Country Report Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, Emphasis 2020, pg. 151.

³⁸⁰ Ministry of Foreign Affairs of Colombia, Follow-up Report on Recommendations of the IV Country Report Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, Emphasis 2020, pg. 154.

³⁸¹ Ministry of Foreign Affairs of Colombia, Follow-up Report on Recommendations of the IV Country Report Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, Emphasis 2020, pg. 151.

³⁸² Misión de Apoyo al Proceso de Paz en Colombia, Vigésimo noveno Informe del Secretario General al Consejo Permanente sobre la Misión de Apoyo al Proceso de Paz en Colombia de la Organización de los Estados Americanos (MAPP/OEA), 10 de diciembre de 2020, pág. 9.

³⁸³ Misión de Apoyo al Proceso de Paz en Colombia, Vigésimo noveno Informe del Secretario General al Consejo Permanente sobre la Misión de Apoyo al Proceso de Paz en Colombia de la Organización de los Estados Americanos (MAPP/OEA), 10 de diciembre de 2020, pág. 9.

282. According to the Special Representative of the UN Secretary-General for Children and Armed Conflict, figures show that 559 children and adolescents have been recruited and used by armed groups in Colombia, 186 have been victims of murder and mutilation, 17 of rape, and 16 of kidnapping, and there were at least 24 attacks on schools and hospitals where children and adolescents were present³⁸⁴. At the same time, the Ombudsperson's Office reported that from December 2017, when Decree No. 2124 took effect, through March 2020, it issued 102 early warnings identifying risk situations involving the recruitment and illegal exploitation of children and adolescents by armed groups³⁸⁵. This represents a nearly twofold increase since May 2019, when the number of early warnings was at 63³⁸⁶.

283. For his part, the High Commissioner for Peace, Miguel Ceballos, indicated in April 2020 that ELN guerrillas had close to 2,500 children and adolescents under their command, while "FARC dissident groups" and the Clan del Golfo reportedly had more than 200³⁸⁷. The increase in reported recruitment cases in 2020 prompted the OAS Mission to Support the Peace Process in Colombia (MAPP/OAS) to warn about the forced recruitment of children and adolescents by armed groups in Colombia in June and in December 2020³⁸⁸. The MAPP/OAS noted that "illegal armed groups continue to conscript, forcibly recruit, use, and commit sexual violence against children and adolescents, greatly affecting the rights of children and youths in Colombia."³⁸⁹

284. The Commission learned that the JEP opened Case No. 007, "Recruitment and use of girls and boys in the armed conflict," in the Chamber for the Acknowledgement of Truth, Responsibility and Determination of Facts and Conduct (SRVR) through Resolution (auto) 029 of 2019³⁹⁰; the case addresses events that occurred between January 1, 1971, and December 1, 2016, in Colombia. After the publication of its 2019 Annual Report, the IACtHR received information indicating that the JEP Panel for Acknowledgement of Truth formally linked 85 former FARC-EP combatants to the case and summoned 37 of them to provide voluntary statements. On August 19, 2020, the panel initiated the voluntary statement hearings of 15 former members of the FARC-EP, including those of its General Staff Command (Estado Mayor Central) and Secretariat (Secretariado)³⁹¹.

³⁸⁴ Application for a thematic hearing on the situation of children and adolescents in Colombia in the context of COVID-19. 178 Period of Sessions, 22 September 2020, pág. 12.

³⁸⁵ Defensoría del Pueblo de Colombia, "Dinámica del reclutamiento forzado de niños, niñas y adolescentes en Colombia: Retos de la política pública de prevención", julio de 2020, pág. 27.

³⁸⁶ IACtHR, Annual Report 2019, Cap. V, "Seguimiento de recomendaciones formuladas por la CIDH en el Informe Verdad, Justicia y Reparación: Quinto informe sobre la situación de derechos humanos en Colombia", párr. 182.

³⁸⁷ Semana, "En 20 años, cerca de 14.000 niños han sido reclutados por grupos ilegales", 25 de abril de 2020.

³⁸⁸ Infobae,, "La OEA alertó sobre reclutamiento forzado de menores por grupos armados en Colombia", 20 de junio de 2020.

³⁸⁹ Misión de Apoyo al Proceso de Paz en Colombia, "Vigésimo noveno Informe del Secretario General al Consejo Permanente sobre la Misión de Apoyo al Proceso de Paz en Colombia de la Organización de los Estados Americanos (MAPP/OEA)", 10 de diciembre de 2020, pág. 3.

³⁹⁰ IACtHR, Annual Report 2019, Cap. V, "Seguimiento de recomendaciones formuladas por la CIDH en el Informe Verdad, Justicia y Reparación: Quinto informe sobre la situación de derechos humanos en Colombia", párr. 180

³⁹¹ Corte Penal Internacional, Informe sobre las actividades de examen preliminar 2020, "Capítulo III, Situaciones en la Fase 3 (Admisibilidad) – Colombia", 14 de diciembre de 2020, párr. 134.

285. The State also informed the Commission about two cases related to the crime of illegal recruitment of children and adolescents. The cases were based on information provided by the Protection Directorate of the Colombian Family Welfare Institute (ICBF), which put together lists of children and adolescents involved in the program to serve minors who have left or were rescued from illegal armed groups³⁹². One of the cases (No. 110016099145201700007) involved events in which elements of the ELN allegedly recruited children and adolescents between 2005 and 2017 in the departments of Antioquia, Chocó, and Bolívar. That case led to the capture of a member of the ELN and the procedural separation of the investigations; then, by direct request of the Directorate on Organized Crime, the proceeding was joined to an existing investigation in that agency. The other case (No. 110016099145201700010) was initiated through an executive report, which includes an analysis of information collected by the ICBF concerning children and adolescents who were registered in a program run by the Protection Directorate until 2017 for separated participants whose victimizers were not connected to guerrilla or self-defense groups³⁹³. On this matter, the State reported that it had identified the last administrative authority responsible for advancing the process of verification and restoration of rights for the 90 victims linked to the investigation, and had issued the respective orders to the judicial police to inspect and obtain copies of the proceedings for restoration of rights³⁹⁴.

286. Likewise, in its observations on the draft of the present report, the State has informed that in all cases, the administrative authorities (ombudspersons, commissioners for families, police inspectors, traditional indigenous authorities, depending on the case) must file the corresponding criminal complaints when they become aware of a child or adolescent who has left a GAO or GDO, either because he or she voluntarily surrendered or because they have been recovered by the security forces, in addition to opening the corresponding administrative process for the restoration of rights³⁹⁵.

287. On another matter, the health emergency situation created by the COVID-19 pandemic has exacerbated the vulnerability of children and adolescents in Colombia, exposing them to even greater risk of forced recruitment by armed groups³⁹⁶. On that point, the IACHR received information indicating that 128 minors were recruited or conscripted by armed groups in the first five months of 2020. According to figures from the Children and Armed Conflict Observatory (ONCA) of the organization COALICO, there were 40 recruitment incidents in the country in the first half of 2020, which affected some 190 children and adolescents, representing a 500% increase over the same period in 2019, when the same organization's records show that 38 minors were affected³⁹⁷. According to information the Commission has received, the suspension of in-person classes due to the health emergency has put children and adolescents at greater risk of forced recruitment. The MAPP/OAS also reported that the closure of schools, which

³⁹² Ministry of Foreign Affairs of Colombia, Follow-up Report on Recommendations of the IV Country Report Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, Emphasis 2020, pg. 150.

³⁹³ Ministry of Foreign Affairs of Colombia, Follow-up Report on Recommendations of the IV Country Report Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, Emphasis 2020, pg. 150.

³⁹⁴ Ministry of Foreign Affairs of Colombia, Follow-up Report on Recommendations of the IV Country Report Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, Emphasis 2020, pg. 150.

³⁹⁵ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 37

³⁹⁶ Application for a thematic hearing on the situation of children and adolescents in Colombia in the context of COVID-19. 178 Period of Sessions, 22 September 2020, pág. 9

³⁹⁷ Application for a thematic hearing on the situation of children and adolescents in Colombia in the context of COVID-19. 178 Period of Sessions, 22 September 2020, pág. 10..

operated as “spaces for protecting children and adolescents,” has facilitated forced recruitment by armed groups³⁹⁸. It is of particular concern to the IACHR that this forced recruitment is regarded in some communities as “voluntary,” a decision made by the children and adolescents themselves, and not as a violation of their rights³⁹⁹.

288. In addition, the IACHR learned of the adoption in 2018 of Decree No. 1434, which established the obligation to create an Action Plan to implement the public policy on preventing recruitment, use, and sexual violence against children and adolescents. Civil society organizations indicated that this plan has yet to be created, and the budget allocated by the State to implement this public policy is not clearly known⁴⁰⁰. In this regard, the State reported that in the framework of the 2020–2022 Action Plan of the Intersectoral Commission for the Prevention of Recruitment, Use, and Sexual Violence against Children and Adolescents by illegal armed groups and organized criminal groups (CIPRUNNA), the Ministry of the Interior’s Directorate of Human Rights is participating along two strategic lines: (a) supporting the offices of the governors and mayors in 20 departments to include recruitment prevention actions in their Comprehensive Protection Plans; and (b) creating guidelines for adapting the public policy on the prevention of recruitment, use, and sexual violence against children and adolescents in all municipalities in the country⁴⁰¹.

289. In its observations on the draft of this report, the State reported on the implementation of the “Súmate por mí” project, a strategy aimed at strengthening protective environments for the prevention of recruitment, use, utilization and sexual violence against children and adolescents in 86 municipalities prioritized by CIPRUNNA⁴⁰². This initiative depends on the Presidential Council for Human Rights together with the Office of the First Lady of the Nation, the Colombian Institute for Family Welfare (ICBF), 22 state entities, the United Nations Children's Fund (UNICEF), the International Organization for Migration (IOM) and the United States Agency for International Development (USAID)⁴⁰³.

290. The IACHR reiterates to the State that it must adopt all the measures established in Article 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, to prevent the recruitment and use of children and adolescents by illegal armed groups. On that point, the State informed the IACHR about its recruitment prevention activities. It indicated that CIPRUNNA had developed a “municipal prioritization” model to monitor and track the risk dynamics associated with the conscription of children and adolescents into illegal armed groups and organized criminal groups, and had updated the “Public Policy on the Prevention of Recruitment, Use, and Sexual Violence against

³⁹⁸ Misión de Apoyo al Proceso de Paz en Colombia, Vigésimo noveno Informe del Secretario General al Consejo Permanente sobre la Misión de Apoyo al Proceso de Paz en Colombia de la Organización de los Estados Americanos (MAPP/OEA), 10 de diciembre de 2020, pág. 9.

³⁹⁹ Misión de Apoyo al Proceso de Paz en Colombia, Vigésimo noveno Informe del Secretario General al Consejo Permanente sobre la Misión de Apoyo al Proceso de Paz en Colombia de la Organización de los Estados Americanos (MAPP/OEA), 10 de diciembre de 2020, pág. 9.

⁴⁰⁰ Application for a thematic hearing on the situation of children and adolescents in Colombia in the context of COVID-19. 178 Period of Sessions, 22 September 2020, pág. 10.

⁴⁰¹ Ministry of Foreign Affairs of Colombia, Follow-up Report on Recommendations of the IV Country Report Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, Emphasis 2020 pgs. 160-161.

⁴⁰² Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”, p. 37

⁴⁰³Consejería Presidencial para los Derechos Humanos y Asuntos Internacionales (Presidential Council for Human Rights and International Affairs). Gobierno Nacional pone en marcha estrategia “Súmate por mí” para prevenir reclutamiento infantil en territorios de alto riesgo, 29 de julio de 2020.

Children and Adolescents.”⁴⁰⁴ Specifically, the State indicated that on November 18, 2019, the executive branch issued Decree 2081 of 2019, changing CIPRUNNA’s structure and operations and adopting the new Public Policy Guidance on the Prevention of Recruitment, Use, and Sexual Violence against Children and Adolescents.⁴⁰⁵

291. With regard to the information provided by the State, the IACHR takes note of the Colombian State’s investigations into the recruitment of children and adolescents, and will continue to follow the development of the cases before the Special Jurisdiction for Peace, as well as specific efforts in the context of the health emergency. Accordingly, the IACHR finds that there is partial compliance with this recommendation.

292. In relation to the recommendation to ensure equal treatment of demobilized children and adolescents and adopt mechanisms for their full reintegration into civilian life, including specific measures for demobilized girls, the State provided information on the Comprehensive Prevention Plans, which have served as local planning mechanisms focused on mitigating the risks of recruitment, use, and sexual violence against children and adolescents⁴⁰⁶. The State reported on the activities that the Ministry of Interior’s Directorate of Human Rights carried out in 2018 and 2019 to prevent such recruitment and violence in a total of 21 municipalities in 10 departments, to the benefit of more than 3,600 children and adolescents during this period⁴⁰⁷.

293. The State also indicated that the national government, in an effort to ensure the equal treatment of demobilized children and adolescents, implemented a program called Camino Diferencial de Vida [A Different Life Path] to attend to and work on the life goals of minors (under age 18) who have left the FARC-EP⁴⁰⁸.

294. The State further noted that, within this framework, the fourth pillar of the reincorporation process laid out in Resolution No. 4309 of 2019 establishes the “reincorporation roadmap,” which includes family support guidelines and support networks, education on health and responsible sexuality, and academic and work training, as well as financial resources

⁴⁰⁴ Ministry of Foreign Affairs of Colombia, Follow-up Report on Recommendations of the IV Country Report Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, Emphasis 2020, pg. 163.

⁴⁰⁵ Línea de Política de Prevención del reclutamiento, uso, y utilización y violencia sexual de niños, niñas y adolescentes disponible en: <http://www.derechoshumanos.gov.co/Prensa/2019/Documents/191119-Linea-politica-Prevencion-RUUVS.pdf>

⁴⁰⁶ Ministry of Foreign Affairs of Colombia, Follow-up Report on Recommendations of the IV Country Report Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, Emphasis 2020, pg. 155.

⁴⁰⁷ Ministry of Foreign Affairs of Colombia, Follow-up Report on Recommendations of the IV Country Report Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, Emphasis 2020, pg. 155-157.

⁴⁰⁸ This program has four phases: (i) exit and transfer of children and/or adolescents, delivered by the International Committee of the Red Cross (ICRC) to the United Nations Children’s Fund (UNICEF), from September 11, 2016 to September 11, 2017; (ii) restoration of rights, from September 11, 2016 to September 18, 2020, date on which the last of the young people placed in the modalities of the Specialized Care Program for Children and Adolescents who have disengaged from the FARC- EP graduated from the measure; (iii) comprehensive reparation; and (iv) reincorporation and social inclusion. The ICBF, the Unit for Attention and Comprehensive Reparation to Victims (UARIV), and the Agency for Reincorporation and Normalization (ARN) participate in these processes to facilitate the transit of demobilized children and adolescents between the different processes within each of the state entities. Ministry of Foreign Affairs of Colombia, Follow-up Report on Recommendations of the IV Country Report Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, Emphasis 2020, pg. 164.

management and scenarios related to participation and relationship to the land⁴⁰⁹. That resolution and Resolution No. 1279 of 2020 establish a transition phase, through January 30, 2020, for implementing the operational mechanisms needed to launch the roadmap and start laying out the priority steps to be followed. The State added that in 2020 it had moved forward with eight working groups, enabling it to: (i) monitor the admittance into the Agency for Reincorporation and Normalization (ARN) of those who completed the process of restoration of rights; (ii) monitor the processes in place under the program; (iii) have a monthly status report on the comprehensive reparation process for young people going through reincorporation; and (iv) schedule and hold a videoconference on June 19, 2020, which brought together area teams from the three entities in the six departments where the modalities of service delivery are different from those used in the familiar ICBF approach.⁴¹⁰

295. With regard to the specific measures for children and adolescents separated from illegal organized armed groups, the State mentioned a series of actions that it has been carrying out⁴¹¹.

296. The State reported that the Colombian Family Welfare Institute (ICBF) has attended to 6,944 children and adolescents between 1999 and January 31, 2021⁴¹². It also indicated that of the total number of children and adolescents served by the program, 70% are men and 30% are women; of these, 8% are of African descent, 12% are indigenous and 80% have no reported ethnicity. Regarding the form of entry to the program, 83% entered voluntarily and 17% by recovery of the public forces⁴¹³. For its part, the "Camino Diferencial de Vida" program maintained the same scope it had by November 2019, having initiated reincorporation processes with 124 young people, 103 of whom were under 18 years of age. Of these 103 NNA, 67 were

⁴⁰⁹ Ministry of Foreign Affairs of Colombia, Follow-up Report on Recommendations of the IV Country Report Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, Emphasis 2020, pg. 169.

⁴¹⁰ Ministry of Foreign Affairs of Colombia, Follow-up Report on Recommendations of the IV Country Report Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, Emphasis 2020, pg. 171.

⁴¹¹ Among the actions indicated, the following are included: encouraging the recognition of the importance of unlearning violent interaction models (asymmetrical, domination and subordination) present in their personal, family and social environments throughout their life history; encouraging the recognition of the meanings that adolescents have attributed to their experiences and emotions, reflecting on how these affect or have affected the construction of their identity; accompany the adolescent in identifying and understanding the beliefs, imaginaries, social practices, upbringing patterns, socialization contexts and lifestyles that have significantly influenced the construction of her gender and/or ethnic identity in her life history; to promote the identification and reconstruction of meanings regarding values and attributes traditionally given to gender and ethnic identities and roles; to guarantee the recognition and reflection on their experiences and bodily experiences, as well as on the values, prejudices, aesthetics and discriminatory forms that occur in cultural contexts regarding the body; to reflect on the experiences of rights with children and adolescents, among others. Ministry of Foreign Affairs of Colombia, Follow-up Report on Recommendations of the IV Country Report Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, Emphasis 2020, pg. 173.

⁴¹² Ministry of Foreign Affairs of Colombia, Follow-up Report on Recommendations of the IV Country Report Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia, Emphasis 2020, pg. 173. IACR, Annual Report 2019, Cap. V, "Seguimiento de recomendaciones formuladas por la CIDH en el Informe Verdad, Justicia y Reparación: Quinto informe sobre la situación de derechos humanos en Colombia", párr. 191.

⁴¹³ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 37..

placed in specialized ICBF care modalities, namely: Foster homes (1), House of Protection (29), Home manager (29), and Substitute guardian home (8)⁴¹⁴.

297. In its observations on the draft of this report, the State emphasized that in addition to ICBF programs, so-called "reintegration policies" also involve the actions carried out with this population by the Agency for Reincorporation and Normalization and the Unit for Attention and Comprehensive Reparation of Victims. In addition, the State pointed out that the ICBF has also had the following programs aimed at the population belonging to ethnic groups: the Ethnic Generations with Well-Being program of the Directorate of Adolescence and Youth and Ethnic Territories with Well-Being⁴¹⁵.

298. Meanwhile, data from the UN Verification Mission show that through September 25, 2020, the High Commissioner for Peace and the National Reincorporation Council made progress in tracing 263 former combatants who were children at the time they laid down their weapons, in order to include them in the Camino Diferencial de Vida program⁴¹⁶. According to this information, the total number of children disengaged from the FARC-EP now stands at 406 (217 boys and 189 girls)⁴¹⁷. The Mission also noted that in 2020, "no major advances were made in former territorial areas for training and reintegration lacking child-friendly spaces," and that the ICBF's efforts to register former combatants' children have been delayed owing to the COVID-19 pandemic⁴¹⁸. For this same reason, the technical working group on children of the National Reincorporation Council has not been convened since July 2019.

299. In its observations on the draft of this report, the State reported that the ICBF has been making progress with the care of children of persons undergoing reincorporation through different programs, strategies and services. In total, 1,929 children and adolescents, children of persons undergoing reincorporation, have benefited⁴¹⁹.

300. The IACHR observes that there has been significant progress in complying with this recommendation related to reintegrating demobilized children and adolescents into civilian life, and at the same time it reiterates that reintegration policies should be broad enough to include all demobilized children and adolescents, regardless of whether the demobilization process is formal or informal and regardless of what armed group they may have belonged to. In this regard, the Commission learned that in December 2020 the ICBF unveiled the draft operational guidelines of the Office on Children's Ethnic Generations and Welfare Program, which aims to promote comprehensive protection and life goals of children and adolescents who may

⁴¹⁴ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 37.

⁴¹⁵ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 39

⁴¹⁶ Misión de Verificación de Naciones Unidas en Colombia (United Nations Verification Mission to Colombia), Informe del Secretario General, S/2020/943, 25 de septiembre de 2020, párr. 75.

⁴¹⁷ Misión de Verificación de Naciones Unidas en Colombia, Informe del Secretario General, S/2020/943, 25 de septiembre de 2020, párr. 75.

⁴¹⁸ Misión de Verificación de Naciones Unidas en Colombia, Informe del Secretario General, S/2020/943, 25 de septiembre de 2020, párr. 76.

⁴¹⁹ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 38

belong to or self-identify as part of an ethnic community⁴²⁰. Based on the foregoing, the IACtHR finds that there is substantial partial compliance with this recommendation.

10. The Armed Conflict's Differentiated Impact and the Danger of Extinction Looming over the Indigenous Peoples of Colombia

- Intensify efforts to protect the effective enjoyment of the territorial rights of 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 given that their ancestral territories have been at the center of the violation of their rights as a result of armed conflict, economic interests, and dispossession.
- Investigate human rights violations committed against indigenous peoples and their members, punish the perpetrators and masterminds, make individual and collective reparations to victims. [In the current context, report on measures adopted to protect members of the indigenous guards and on investigations into acts of violence committed against them.]
- Prevent assaults and harassment against traditional indigenous authorities and leaders when the State has knowledge of real and imminent risk; conduct a serious investigation of the facts brought to its attention; and, where appropriate, punish the parties responsible and provide adequate reparation to the victims, regardless of whether the acts were the work of State agents or private individuals.
- Take decisive measures for the return of displaced indigenous peoples, communities, and families 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 traditional use and management of the territory by traditional authorities can be restored.
- Bring the process of forming, expanding, and clearing the indigenous reserves to a swift conclusion, bearing in mind inter-American standards on indigenous peoples' right to collective property.

301. Regarding the recommendation to protect the effective enjoyment of the territorial rights of indigenous peoples and their members, the State reported on progress made in the registration of geographic information, legalization requests, and other documentation related to ethnic communities' lands in the Integrated Land System (Sistema Integrado de Tierras, SIT). It also informed the Commission about mechanisms that the National Land Agency (ANT) has in place for engaging with indigenous and Afro-Colombian communities to keep track of requests for collective land titling and land acquisitions. The State also provided information on budget allocations for investment projects related to land legalization and promotion of rural development for indigenous and Afro-Colombian communities⁴²¹. It reported on various actions

⁴²⁰ ICBF, “JCBF socializa borrador el Lineamiento Operativo del programa Generaciones Étnicas con Bienestar Dirección de Infancia”, 15 de diciembre de 2020.

⁴²¹ Informe de seguimiento a recomendaciones del IV Informe país “Verdad, Justicia y Reparación: Cuarto Informe sobre la Situación de Derechos Humanos en Colombia (20 October 2020), párrs. 781-784.

taken by the ANT's Directorate of Ethnic Affairs, which include: responding to recommendations made by the Intersectoral Commission for Rapid Response to Early Alerts (CIPRAT) as they relate to indigenous peoples; implementing protection measures by mutual agreement between the National Protection Unit and ethnic communities (including measures on verification of boundaries, and studies for the titling and expansion of indigenous lands); and developing, in conjunction with the Victims Unit, a roadmap for coordinating the acquisition or formalization of properties in the development of plans for the return or relocation of ethnic communities that are victims of the armed conflict. On this last point, the State reported that 31 cases were proposed for this roadmap, of which 6 have been completed and 25 are still underway⁴²². The State also reported on its efforts related to the development of statutory legislation on prior consultation, based on Convention 169 guidelines and case law of the Constitutional Court⁴²³.

302. The IACHR welcomes the information provided by the State on the efforts to respond to requests for legalization of indigenous lands; however, as will be seen below, it takes note of the little progress made in processes related to establishing and expanding indigenous territories and rehabilitating the land. It is also concerned about information regarding constant threats to the effective enjoyment of the territorial rights of indigenous peoples in the context of legal and illegal activities that continue to be carried out in their territories. It has been reported that in the Amazon region, more than 76,000 hectares of forests were cut down in the first half of 2020 due to activities associated with ranching, agribusiness, and illegal economic activities such as land hoarding and the planting of illicit crops. This deforestation affected the Nukak -Maku and Llanos del Yari-Yaguara II indigenous reserves, where 4,000 hectares of primary forest were deforested⁴²⁴. With respect to the specific situation of indigenous peoples in the pan-Amazon region, the IACHR has stressed the need for States to expedite measures to demarcate and title the ancestral lands and territories of indigenous peoples and undertake decisive actions to combat impunity for human rights violations committed in the context of business-related or illegal activities in the pan-Amazon region, by means of thorough investigations and punishment of the perpetrators and masterminds, and individual and collective redress for the victims⁴²⁵.

303. With respect to the information provided by the State on the development of statutory legislation on prior consultation, the IACHR reiterates that it is fundamentally important for any mechanism governing this right to be subject to consultation with the indigenous and Afro-Colombian peoples and to take into account their own initiatives and proposals on the matter. In this regard, the IACHR takes note of the development of consultation protocols by the indigenous peoples.

304. Furthermore, as mentioned above, the IACHR learned of the circular issued by the Ministry of the Interior promoting the use of virtual media for prior consultation in the context of the COVID-19 pandemic⁴²⁶. The IACHR notes that the Office of the Inspector General declared that this circular went against the Constitution and violated ethnic groups' right to prior

⁴²² Informe de seguimiento a recomendaciones del IV Informe país “Verdad, Justicia y Reparación: Cuarto Informe sobre la Situación de Derechos Humanos en Colombia (October 20 2020), párrs. 786-794.

⁴²³ Informe de seguimiento a recomendaciones del IV Informe país “Verdad, Justicia y Reparación: Cuarto Informe sobre la Situación de Derechos Humanos en Colombia (October 20 2020), párrs. 795-6.

⁴²⁴ Revista Semana, 2020, un año catastrófico para los bosques amazónicos de Colombia, 21 de junio de 2020.

⁴²⁵ IACHR, Pueblos indígenas y tribales en la Panamazonía, OAS/Ser.L/V/II. Doc. 176, 29 septiembre 2019, párrs. 419.8, 419.9.

⁴²⁶ Ministerio del Interior – Colombia, Circular Externa CIR2020-29-DMI-1000 (27 de marzo de 2020).

consultation, and suggested that it be revoked. The circular was later invalidated⁴²⁷. The IACHR once again recommends that States refrain from promoting legislation and/or authorizing extractive projects or development in or around the territories of indigenous peoples, given that it is impossible to conduct free, prior, and informed consultation procedures in line with international standards because of the need to adopt social distancing measures⁴²⁸.

305. Therefore, the IACHR notes that there is partial compliance with this recommendation and calls on the State to continue strengthening measures for the protection of indigenous peoples' territorial rights and the observance of the right to free, prior, and informed consent and consultation.

306. Regarding the recommendation to investigate human rights violations committed against indigenous peoples and their members, punish the perpetrators and masterminds, make individual and collective reparations to victims, and report on measures adopted to protect members of the indigenous guards and on investigations into acts of violence committed against them, the State informed the Commission about various coordination activities of the Human Rights Group and Section Offices of the Office of the Attorney General (FGN). It reported on investigations into crimes committed by organized criminal structures against indigenous peoples in Cauca, which resulted in the identification and arrest of some members of residual organized armed groups. The State informed the Commission about measures to cooperate and coordinate with indigenous jurisdiction authorities in Cauca and Putumayo, including with respect to finding and communicating with victims and witnesses of events under investigation, training indigenous authorities and guards in investigative matters, and providing support for indigenous authorities through the use of logistical resources. It also reported that 13 investigations were being conducted into crimes committed against guards, ancestral authorities, and indigenous leaders and that working groups had been established to monitor these investigations⁴²⁹.

307. In that regard, the IACHR remains concerned about the high levels of violence that indigenous peoples have faced since the signing of the Peace Agreement, as was emphasized earlier in this report. The IACHR takes note of Early Alert 040 issued by the Ombudsperson's Office in August 2020, which indicated that indigenous authorities in the municipality of Caldono-Cauca, including coordinators and members of the indigenous guard, are at particular risk given the current situation in the municipality, which was described as a corridor for movement of illegal armed groups and drug trafficking activity; a place where dissident factions of the FARC-EP, the ELN, and the group calling itself Segunda Marquetalia are consolidating and expanding; and a setting for the expansion of illegal crops and laboratories for processing base paste⁴³⁰.

308. Because of the foregoing, the IACHR urges the State to redouble its efforts to investigate the human rights violations committed against members of indigenous peoples and to establish mechanisms for cooperation and coordination with indigenous authorities on these

⁴²⁷ Procuraduría General de la Nación, [Circular externa CIR2020-29-DMI-1000 del 27 de marzo del 2020 del Ministerio del Interior](#), abril de 2020

⁴²⁸ IACHR, Press Release 103/20, [IACHR Warns of the Specific Vulnerability of Indigenous Peoples to the COVID-19 Pandemic, Calls on States to Adopt Targeted, Culturally Appropriate Measures that Respect These Peoples' Land](#), May 6, 2020.

⁴²⁹ Informe de seguimiento a recomendaciones del IV Informe país "Verdad, Justicia y Reparación: Cuarto Informe sobre la Situación de Derechos Humanos en Colombia (October 20 2020), párrs. 797-837.

⁴³⁰ Defensoría del Pueblo, [Alerta Temprana No. 040/20](#), 23 de agosto de 2020, p. 3, 7

matters. The Commission also considers that the State should provide more information on any penalties that have been imposed on the perpetrators and masterminds of these incidents.

309. The IACHR has also expressed its concern regarding the possible existence of a pattern of acts of sexual violence against indigenous children and adolescents committed by members of the security forces. The Colombian Army announced that since 2016, at least 118 military personnel have been identified as having been involved in cases of alleged sexual abuse. The Deputy Attorney General reportedly announced that the Attorney General's Office would be investigating nine other cases of sexual violence against indigenous girls. In the course of 2020, the IACHR learned of several cases, including the kidnapping and subsequent rape of an indigenous teenage girl from the Nukak Maku people in September 2019 and the kidnapping and rape of an Embera-Chami indigenous girl in June 2020⁴³¹. Likewise, it was reported that there were five more cases in which indigenous Nukak girls were raped by members of the security forces⁴³². The IACHR reiterates that the State must consider the multiple forms of discrimination and the different risk and violence factors faced by indigenous women and girls in the context of conflict and violence experienced in their territories. The Commission also reminds the State that violations of the rights of indigenous girls and women not only affect them individually but also have negative repercussions on the social fabric of their communities, increasing the sense of defenselessness and impunity. Therefore, it again calls on the State to guarantee access to justice for all women and to continue investigating these events with enhanced due diligence, ensuring conditions of equality and nondiscrimination from an intersectional perspective⁴³³.

310. The IACHR therefore finds that there has been partial compliance with this recommendation.

311. In terms of the recommendation to prevent assaults and harassment against traditional indigenous authorities and leaders when the State has knowledge of real and imminent risk; conduct a serious investigation of the facts brought to its attention; and punish the parties responsible and provide adequate reparation to the victims, the State's response addresses progress made by the Attorney General's Office on the development of specific strategies and methodologies to investigate homicides of human rights defenders. The State also informed the Commission about the defense and security policy of the Ministry of Defense, which encourages cooperation with indigenous authorities and differentiated strategies with regard to security issues in ethnic territories. The State also reported that members of the security forces had received training on issues related to indigenous peoples, and on Permanent Directive No. 186 of 2009, designed to strengthen prevention and protection measures for indigenous peoples on the part of military forces. With respect to the Ministry of the Interior, the State reported on the creation of an emergency chat system to which State authorities and five indigenous organizations belong, which will serve as a mechanism for engagement to coordinate and promote urgent preventive actions and immediate responses to risk situations that may affect indigenous peoples. The State also reported that in 2020 the Banco SIEMBRA was launched as an initiative to fund projects to mitigate risks that may affect social leaders, 50% of whom are from ethnic communities. Finally, the State reiterated the role of the Attorney General's Office and the

⁴³¹ IACHR, Press Release 153/20, IACHR Condemns the Kidnapping and Gang Rape of a 12-Year-Old Indigenous Girl in Colombia and the Lack of an Adequate Investigation into This Crime, 29 June 2020. Also: IACHR, Press Release 166/20, IACHR Vehemently Condemns Rape of Indigenous Girls and Adolescents and Calls on Colombia to Investigate Events with Due Diligence, 17 July 2020.

⁴³² IACHR, Press Release 166/20, IACHR Vehemently Condemns Rape of Indigenous Girls and Adolescents and Calls on Colombia to Investigate Events with Due Diligence, 17 July 2020.

⁴³³ IACHR, Press Release 153/20, IACHR Condemns the Kidnapping and Gang Rape of a 12-Year-Old Indigenous Girl in Colombia and the Lack of an Adequate Investigation into This Crime, 29 June 2020

National Protection Unit with regard to the investigation of victimizing incidents and the sanctioning and granting of protection measures, which will also include requests for protection channeled through the Office of Indigenous, Rom, and Minority Affairs⁴³⁴.

312. The IACHR observes that the situation of violence that indigenous peoples have faced since the signing of the Peace Agreement has been exacerbated in the context of the COVID-19 pandemic, which has led to an increase in the conditions of vulnerability and risk from illegal armed groups that continue to have a presence and violently compete for control of the territories. The IACHR has received information about well-known indigenous leaders who have become national voices in defense of their peoples and who suffered attacks on their lives and personal integrity over the course of 2020⁴³⁵.

313. The presence of an array of armed actors in indigenous territories is a source of ongoing risk, bearing in mind the indigenous peoples' neutral posture toward the armed actors in their territories. In this regard, the IACHR is concerned about complaints made by indigenous organizations indicating that they were stigmatized and targeted as being infiltrated by dissident groups of the FARC-EP during the October 2020 Minga Indígena, an indigenous march held to protest the worsening of the conflict in indigenous territories and murders of leaders, authorities, and members of the indigenous guards⁴³⁶.

314. The IACHR considers that it needs more information on results of the various programs, trainings, and policies that the State mentioned with respect to the rights of indigenous peoples and measures to mitigate and prevent the risks that they face. It also believes that the FGN, the UNP, and other relevant institutions must better coordinate and work more closely with leaders and other members of indigenous peoples who require protection measures, to ensure that the procedures to investigate and determine such measures take a differentiated ethnic/cultural approach and are effective in practice. Along these lines, it is necessary to give greater recognition to and strengthen the indigenous guards as mechanisms in their own right for collective protection and security. The Commission recalls that the measures with an ethnic approach implemented by the UNP, described in the introduction to this report, must be carried out in concert with the indigenous peoples. The IACHR reminds the State of its obligations to redouble its efforts so that indigenous leaders and other members of indigenous peoples can freely carry out their activities to defend human rights; avoid and respond to acts intended to criminalize their work; protect them if they are at risk, which may include complying with precautionary measures issued by the IACHR; and investigate, clarify, prosecute, and punish crimes committed against them⁴³⁷.

315. In its observations on the draft of this report, the State reported that the Delegate for Citizen Security of the FGN carried out events in which she received criminal complaints from

⁴³⁴ Follow-up report on the recommendations of the IV Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia (October 20, 2020), par. 838-854.

⁴³⁵ ONIC, La ONIC rechaza las amenazas contra la vida y nuestros procesos organizativos, 19 de octubre de 2020. El Tiempo, Qué se sabe del atentado al senador Feliciano Valencia, 29 de octubre de 2020. Noticias RCN, En el Chocó a diario hay muertos que no están reportados: líder social, 15 de febrero de 2020.

⁴³⁶ Consejo Regional Indígena del Cauca, La Minga del Suroccidente es alta política por la vida y la paz, 17 de octubre de 2020. Revista Semana, La minga indígena responde: "La movilización no está infiltrada", 13 de octubre de 2020.

⁴³⁷ IACHR, Personas Defensoras de Derechos Humanos y líderes sociales en Colombia, OEA/Ser.L/V/II. Doc. 262 6 December 2019, pár. 173.

members of indigenous peoples of the department of Cauca regarding damages caused by residual armed structures operating in the sector⁴³⁸.

316. The IACHR therefore finds that there is partial compliance with this recommendation.

317. With regard to the recommendation to take decisive measures for the return of displaced indigenous peoples, communities, and families, the State reported that dialogues were held with indigenous communities to develop plans for returns and relocations. The State reported that between March 17 and September 11, 2020, the UARUC completed 70% of an assessment of the ethnic communities that have an approved return and relocation plan⁴³⁹. In this regard, it informed the Commission that the Ministry of the Interior has accompanied the dialogue process related to the return of Embera and Katio families currently in Bogotá, and organized a meeting with members of the Risalda Regional Council (CRIR) to coordinate steps for the return of these families to their respective reserves⁴⁴⁰.

318. The Commission welcomes the dialogues held with indigenous communities on the development of return and relocation plans and will continue to pay close attention to any information on the implementation of these plans. At the same time, it observes serious situations of ongoing displacement due to the presence of armed actors in indigenous territories. The IACHR learned of the forced displacement of more than 800 people from four indigenous communities which occurred in December 2020 in Bahía Solano, Chocó, in the wake of the murder of a community leader⁴⁴¹. Added to the humanitarian situation these individuals find themselves in because of their displacement and confinement is the serious risk of massive COVID-19 exposure in the places where they have taken refuge⁴⁴². In addition to the measures the State must adopt to support the return of this displaced population, it must implement agreed-upon measures to address the humanitarian and health situation with a differentiated approach⁴⁴³.

319. The Commission is concerned to observe a situation stemming from displacement and other violations suffered by indigenous peoples in connection with land restitution, in the context of comprehensive reparation of victims of the armed conflict under the three Decree-Laws for Ethnic Group Victims: Decree-Laws 4633, 4634, and 4635 of 2011. The IACHR recognizes that throughout the time these decree-laws have been in effect, the Land Restitution Unit (URT) has worked tirelessly to achieve protection and/or restitution of the territorial rights of ethnic groups. However, the IACHR also takes note, *inter alia*, of the conclusions of the Commission for Follow-Up and Monitoring of the Decree-Laws (CSMDL), which indicates that most restitution processes are taking place in formally recognized territories

⁴³⁸ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”, p.40

⁴³⁹ Follow-up report on the recommendations of the IV Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia (October 20, 2020), para. 856.

⁴⁴⁰ Follow-up report on the recommendations of the IV Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia (October 20, 2020), paras. 856-859.

⁴⁴¹ *El Tiempo*, Alerta en Chocó por desplazamiento masivo tras crimen de líder, 05 de diciembre de 2020.

⁴⁴² ONIC, ONIC emite Alerta Epidemiológica y Humanitaria No. 2, por riesgo masivo de contagio de la comunidad indígena El Brazo (Bahía Solano, Chocó), 7 de diciembre de 2020.

⁴⁴³ IACHR, Press Release 103/20, La CIDH alerta sobre la especial vulnerabilidad de los pueblos indígenas frente a la pandemia de COVID-19, 6 de mayo de 2020.

to the detriment of those to which communities still lack formal (collective ownership) title⁴⁴⁴. Thus, in the context of these comprehensive reparation processes, the State should pay equal attention to the right to restitution in the case of indigenous communities with formal title to lands as in those that lack formal title. The IACHR reminds the State that indigenous peoples' right to communal property and their ancestral lands and to restitution for the involuntary loss of their lands is based on historical occupancy, with no need for formal titles to substantiate the existence of those rights. As the Inter-American Court has found, the territorial rights of indigenous and tribal peoples are not conditioned to their express recognition by the State, and the existence of a formal title to property is not a requirement for the existence of the right to indigenous territorial property under Article 21 of the Convention⁴⁴⁵.

320. In its observations to the draft of this report, the State emphasized that the Colombian legal system protects the restitution of lands of indigenous communities whose territorial rights had not been formalized at the time they were affected by situations associated with the armed conflict. Regarding the restitution of territorial rights, the State informed that the UAEGRTD processes the requests according to 7 territorial typologies: (i) indigenous *resguardos* (a legal and social institution protecting communal property of indigenous peoples, originating Spanish colonial rule era) that had been constituted or expanded; (ii) lands over which administrative procedures for the establishment or expansion of indigenous *resguardos* are underway; (iii) *resguardos* of colonial origin and lands of ancestral and historical occupation that indigenous peoples and communities occupied on December 31, 1990; (iv) communal lands of ethnic groups; v) lands that must be titled or expanded into indigenous reserves by a final national or international judicial or administrative decision; vi) lands acquired by Incora or Incoder for the benefit of indigenous communities and owned by the National Agrarian Fund; and vii) lands acquired by public or private entities with their own resources or with resources from international cooperation for the benefit of indigenous communities that must be titled as part of the establishment or expansion of *resguardos*. One of the factors analyzed for the annual confirmation of the Ethnic Action Plan of the UAEGRTD, in light of the criteria of gradualness and focus, is related to those collective territories without formalization, since this represents a low level of legal security regarding their territorial rights, which may favor the configuration of territorial affectations of abandonment, dispossession, confinement and limitation to the use and enjoyment of territorial rights. The State emphasized that these considerations are subject to respect for the principle of self-determination of the ethnic peoples and communities, which is why the UAEGRTD is always consulted on the interest in carrying out the process of restitution of territorial rights, prior to and during the development of the process⁴⁴⁶.

321. In view of the foregoing, the Commission finds that there is partial compliance with the recommendation.

322. In relation to the recommendation to bring the process of forming, expanding, and clearing the indigenous reserves to a swift conclusion, bearing in mind inter-American standards on indigenous peoples' right to collective property, the State reported on actions taken by the Directorate of Ethnic Affairs, including the development of draft strategies for the issuance of collective ownership titles to ethnic communities. According to the State, the Directorate of

⁴⁴⁴ CSMDL, Octavo informe de seguimiento y monitoreo a la implementación del Decreto Ley 4633 de 2011 para las víctimas del conflicto armado de los pueblos indígenas, 20 de agosto de 2020, p. 102.

⁴⁴⁵ IACHR Court, Caso Comunidad Indígena Sawhoyamaxa Vs. Paraguay. Fondo, Reparaciones y Costas. Sentencia de 29 de marzo de 2006. Serie C No. 146, párr. 128.

⁴⁴⁶ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", p. 40-41

Ethnic Affairs has reported the following steps forward: the approval and registration with the Office of Registration of Public Instruments (ORIP) of nine proceedings for the establishment of indigenous reserves, covering an area of 10,610 hectares and benefiting 619 families; the approval by the ANT of eight procedural steps for the establishment of indigenous reserves in 2020, with an area of 38,826 hectares, benefiting 1,477 families; the approval of seven procedural steps related to expanding reserves, with an area of 23,090 hectares, which would benefit 2,846 families; and the issuance of seven resolutions granting collective ownership title to communities of African descent, with an area of 1,051 hectares, which would benefit 199 families. The State also reported that visits to territories were reactivated beginning in August 2020, to be able to continue procedures related to the establishment, expansion, demarcation, and rehabilitation of 21 indigenous reserves. The State also informed the Commission about the “Community Initiatives” program of the DAE-ANT, which provided support to 212 indigenous families for projects to promote their own food and agricultural systems, cultural practices, and forms of social organization⁴⁴⁷.

323. The IACHR welcomes the progress reported by the State with regard to the territorial rights of indigenous peoples. At the same time, it notes with concern that indigenous peoples continue to face obstacles due to situations involving forced displacement; the presence of armed actors and activities associated with illicit crops and with extraction and agribusiness projects; and the failure to have their fundamental right to prior consultation guaranteed, as mentioned above.

324. In the context of the implementation of the Peace Agreement, the Commission observes little progress with respect to access to lands for ethnic groups, as indicated in the first section of this report. The IACHR takes note of information indicating that the State has not put into operation the land sub-account for ethnic communities, in accordance with Decree 902/2017, whereby measures are adopted to implement the Comprehensive Rural Reform established in the Peace Agreement, specifically with regard to the process for access to and formalization of land ownership through the Land Fund. The IACHR has learned that for 2020 the Land Fund and the National Land Agency saw a 19% budget reduction, which was reflected in the budget allocation for ethnic groups⁴⁴⁸. Moreover, the Secretariat of the International Verification Component (Secretaría del Componente Internacional de Verificación) noted that as of June 30, 2020, no piece of land had been entered into the sub-account of land for indigenous communities created under Decree 902/2017⁴⁴⁹. However, that same entity indicated that lands that had previously been assigned to ethnic communities but not yet formalized were being reported as progress in the implementation of the Peace Agreement⁴⁵⁰.

325. The IACHR notes that the State must intensify its efforts toward related to forming, expanding, and clearing indigenous reserves, while also addressing the need to implement the component of the Peace Agreement on access to land, which includes allocating sufficient resources and the necessary regulation and operation of the land sub-account by the ANT. Therefore, the IACHR finds that there is partial compliance with this recommendation.

⁴⁴⁷ Follow-up report on the recommendations of the IV Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia (October 20, 2020), para. 864.

⁴⁴⁸ Defensoría del Pueblo, Informe Defensorial el Posacuerdo en los Territorios Étnicos, agosto de 2020. p. 47.

⁴⁴⁹ Secretaría Técnica del Componente Internacional de Verificación CINEP/PPP-CERAC, Primer informe de verificación de la implementación del enfoque étnico en el Acuerdo Final de Paz en Colombia, septiembre de 2020, p. 49.

⁴⁵⁰ Secretaría Técnica del Componente Internacional de Verificación CINEP/PPP-CERAC, Primer informe de verificación de la implementación del enfoque étnico en el Acuerdo Final de Paz en Colombia, septiembre de 2020, p. 50

11. Women and the Armed Conflict

- Implement and strengthen measures to comply with the duty to act with due diligence to prevent, punish, and eradicate violence and discrimination against women, exacerbated by the armed conflict, including specific efforts to fulfill its four obligations: prevention, investigation, punishment, and reparation of violations of women's human rights.
- 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; make services and resources available to women whose rights have been violated; and ensure legal consequences for the perpetrators.
- Develop and adopt policies that take into account the specific needs of indigenous and Afro-Colombian women within the armed conflict with respect to health, education, justice, and livelihoods. Domestic policies designed to promote the rights of all women must consider the specific needs of Afro-Colombian and indigenous women and have a comprehensive vision as to how to address important issues like health, education, and justice. In addition, national policies geared toward improving the situation of indigenous and Afro-Colombian communities must include the particular needs of women.
- Ensure that the legal framework and demobilization programs are consistent with international principles and norms pertaining to the rights of victims to truth, justice, and reparation, and as such, address the specific needs of women.

326. As to the recommendation to implement and strengthen measures to comply with the duty to act with due diligence to prevent, punish, and eradicate violence and discrimination against women, in terms of prevention, investigation, punishment, and reparation of human rights violations, the Colombian State has implemented special measures in the context of the COVID-19 pandemic, a time when the figures on gender-based violence have increased.

327. In terms of prevention measures, the IACHR welcomes the issuance of Decree 460 of March 22, 2020, which handed down measures to ensure the provision of service by Family Commissions (Comisarías de Familia) through the declaration of a state of economic, social, and environmental emergency created by the COVID-19 pandemic. Under this decree, Family Commissions must begin to operate again, giving priority to providing protection in cases involving domestic violence and adopting urgent measures to provide comprehensive protection to children and adolescents. The IACHR also recognizes the measures designed to train staff at the Family Commissions on judicial police functions, an effort that has reached 300 staff members connected with 135 municipalities in 24 departments⁴⁵¹.

328. In previous years, the IACHR has recognized the Colombian State's efforts to encourage a gender perspective in judicial proceedings. Specifically, the Commission has underscored the key role that the Attorney General's Office (FGN) has played in incorporating a gender perspective in the investigation and prosecution of cases involving violence against women and girls.

⁴⁵¹ Report of the State as follow-up on the recommendations of the IV Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia (October 20, 2020), Pag. 23 y 25.

329. Specifically, the IACHR reiterates the importance that the State adopt its 2016-2020 Strategic Plan, which establishes that cases involving sexual or intrafamily violence, femicides, and gender-based violence in the context of the armed conflict will be given priority⁴⁵². In this regard, the IACHR notes the importance of collecting updated, disaggregated data, based on quantifiable indicators, in order to monitor the plan's effectiveness throughout its implementation. The Commission is pleased to note that during the pandemic, the priorities established in the FGN Strategic Plan have been adapted to the context of confinement and limited mobility related to COVID-19. Specifically, the IACHR recognizes the adoption of key measures that enable effective coordination among agencies involved in providing a comprehensive response to sexual and gender-based violence, such as the Citizen Security Delegate and the Family Commissions⁴⁵³.

330. The IACHR recognizes the State's efforts to adopt effective measures designed to prevent, investigate, and punish violence against women, particularly crimes of sexual violence and femicide. Specifically, the Commission is pleased to learn that line #122 has been made available to receive complaints, along with the "Adenunciar" app⁴⁵⁴. However, the Commission expresses its particular concern regarding the increased levels of sexual and gender-based violence in the context of the preventive isolation measures taken during the COVID-19 pandemic. According to the Colombian Observatory on Women, the period from March 25 to July 2, 2020, saw an increase of 130% in the number of calls to line #155, which is set up to receive complaints about acts of violence. A breakdown of the data shows that the number of calls to #155 to report acts of domestic violence went up by 5,318, a 148% increase over the same period in 2019⁴⁵⁵.

331. The IACHR also expresses its concern over the lack of progress in the investigations and punishment of those responsible for cases of sexual violence against children, adolescents, and women allegedly committed by members of the Colombian National Army. Of the 118 investigations opened against members of the military for alleged sexual abuse, 13 have resulted in convictions and 11 of these cases were archived by means of a disciplinary decision⁴⁵⁶. The Commission reiterates its serious concern that these cases are part of a possible pattern of conduct by members of the Colombian Army⁴⁵⁷.

332. The IACHR took note of the demands of civil society organizations regarding the need to make visible this pattern of sexual violence against children, adolescents, women and gender-persons during the armed conflict, by means of a specific case in the SJP. Civil society organizations consider that the opening of this case, in addition to punishing those responsible and making full reparations to the victims, would contribute to the cultural transformations necessary for the non-repetition of these acts.

⁴⁵² Report of the State as follow-up on the recommendations of the IV Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia (October 20, 2020) Pág. 23 y 25.

⁴⁵³ Report of the State as follow-up on the recommendations of the IV Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia (October 20, 2020). Pág. 24.

⁴⁵⁴ Report of the State as follow-up on the recommendations of the IV Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia (October 20, 2020) Pág. 24.

⁴⁵⁵ Observatorio Colombiano de las Mujeres, Décimo quinto boletín sobre la atención de líneas de atención telefónica a mujeres en el contexto de medidas de aislamiento preventivo por CovSar2 en Colombia, 6 de julio del 2020.

⁴⁵⁶ El tiempo, Solo 10% de militares procesados por abuso a menores fueron condenados. Documento del Ministerio de Defensa revela detalles sobre estos casos, 8 de noviembre de 2020

⁴⁵⁷ IACHR, Press Release, La CIDH expresa su enérgica condena por la violación sexual de niñas y adolescentes indígenas y llama a Colombia a investigar los hechos con la debida diligencia, No. 166/20, 17 de julio de 2020

333. The Commission observes that in addition to the formal State-run mechanisms, there is an urgent need to establish preventive measures that involve raising awareness and promoting cultural change among boys and men. Likewise, such measures should include a gender and ethnic/racial approach. The Commission therefore finds that there has been partial compliance with this recommendation.

334. Regarding the recommendation to implement dissemination measures and campaigns for the general public regarding the duty to respect the rights of women; make services and resources available to women whose rights have been violated; and ensure legal consequences for the perpetrators, the Commission notes that the campaign for the “National Movement to Unlearn Machismo” (Movimiento Nacional por el Desaprendizaje del Machismo) was launched in November 2020. It will offer resources, virtually, to all citizens to learn new behaviors that promote gender equity⁴⁵⁸. Likewise, the Commission welcomes the launch of the “Don’t You Dare” campaign (No se atreva), which aims, among other things, to expand services to women who are victims of any type of aggression and to ramp up the investigation of the types of behavior that affect them⁴⁵⁹. The Commission recognizes the progress made by the State in complying with this recommendation; however, the IACtHR has consistently emphasized the need to adopt a diverse approach that reaches and represents the plurality of women. This should include an ethnic/racial and linguistic perspective and be national in scope. In view of that, the Commission finds that there is substantial partial compliance with this recommendation.

335. In terms of the recommendation to develop and adopt policies that take into account the specific needs of indigenous and Afro-Colombian women within the armed conflict with respect to health, education, justice, and livelihoods, the State presented measures included in its strategy for comprehensive collective protection with an ethnic/racial approach. The Commission recognizes the Colombian State’s efforts to achieve equity and reduce social gaps and inequalities, particularly with regard to indigenous peoples and communities of African descent. However, the Commission is concerned to see a lack of information related to strategies implemented from an intersectional perspective that would include an effective consideration of what impacts the implementation of these policies have on the lives of indigenous and Afro-Colombian women, young girls, and teenage girls. In this regard, the Commission finds this recommendation to be pending compliance.

336. In terms of the recommendation to ensure that the legal framework and demobilization programs are consistent with international principles and norms pertaining to the rights of victims to truth, justice, and reparation, and as such, address the specific needs of women, the State presented information regarding steps it has taken toward compliance. The Commission specifically takes note of the self-protection measures for candidates of the FARC Party, developed by the Agency for Reincorporation and Normalization (ARN). According to information provided by the State, the booklet that was produced contains specific guidance to help female candidates protect themselves⁴⁶⁰. The Commission recognizes the importance of these measures, particularly for combatting gender-based political violence. It also stresses the need to expand comprehensive measures to prevent, respond to, and punish individual or

⁴⁵⁸ Presidencial para la Equidad de la Mujer (Presidential Advisory for the Equality of Women, , A desaprender el machismo: Gobierno lanzará campaña nacional, 4 de noviembre de 2020.

⁴⁵⁹ Fiscalía General de la Nación, Campaña de la Fiscalía para la eliminación de la violencia contra las mujeres, 19 de noviembre de 2020.

⁴⁶⁰ Report of the State as follow-up on the recommendations of the IV Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia (October 20, 2020). Pág. 42.

collective acts of harassment and/or political violence toward women, to ensure that they can fully exercise their political rights.

337. Likewise, the Commission notes that the “Coordination Plan to reinforce security for the population served by the National Comprehensive Program for the Substitution of Illicit Crops (PNIS)” includes a specific chapter focused on the challenges faced by women in the context of illicit crop substitution in the country. The Commission calls on the State to establish a roadmap, along with objective indicators, to be able to monitor and assess the impact of the program on the rights of these women.

338. The Colombian State also presented information on the strengthening and training of women’s organizations in rural areas, particularly with regard to access to justice and gender equality. Along these lines, during the first half of 2020 the Ministry of Justice provided training on gender, and 840 women leaders, human rights defenders, and equity conciliators participated⁴⁶¹.

339. While the IACHR welcomes the efforts made by the State to develop a differentiated approach for the implementation of protection programs, it notes that this approach must be applied consistently, comprehensively, and extensively throughout its whole strategy of stabilization for peace. In this sense, it is essential to promote measures to train all personnel from different agencies, so that this can be applied on an ongoing basis. The Commission therefore finds that there is partial compliance with this recommendation.

12. 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, where necessary, the adoption of operation manuals or guidelines regarding respect for the right to freedom of expression.
- Compile detailed, disaggregated crime 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 investigative protocols, as well as the identification and exhaustion of all possible case theories related to the victim’s professional work.
- Prosecute, through impartial and independent courts, within the standards established by international law, the persons responsible for the crimes committed in retaliation for the exercise of the right to freedom of expression, and make adequate reparation to the victims and family members.

340. The IACHR and its Office of the Special Rapporteur for Freedom of Expression found that 2020 continued to see a troubling pattern of death threats against journalists because of their reporting, threats that in some cases forced them to leave the cities where they lived. Also

⁴⁶¹ Informe del Estado colombiano en seguimiento a recomendaciones de la CIDH emitidas en el Informe de País “Verdad, justicia y reparación: Cuarto informe sobre la situación de derechos humanos en Colombia”. 30 de octubre de 2020. Pág. 23.

of particular concern are stigmatizing statements, as well as the use of judicial actions by public officials to directly or indirectly violate the right to freedom of expression.

341. The IACHR was also sent reports alleging that journalists, media outlets, activists, and political opponents were being surveilled and profiled by State intelligence agencies. In June 2020, the IACHR and UN Rapporteurs for Freedom of Expression sent a letter to the Colombian State requesting its urgent attention to allegations that military intelligence capabilities had been used improperly to surveil and create profiles on various groups of people between February and December 2019. The State sent a response, in which it reiterated that its transparency policy does not allow any actions that would compromise the legality and legitimacy of the activities of the security forces. The State also provided information about the investigations and administrative proceedings against those responsible for acts that contravene that policy, including the appointment of new people in charge of intelligence procedures and military counterintelligence⁴⁶².

342. On another matter, the IACHR and its Office of the Special Rapporteur welcome the judicial decisions adopted by the State of Colombia with a view to ensuring the effective exercise of the right to protest, as well as those judgments designed to remedy violations of the right to freedom of expression, among other rights, directed against reporters for carrying out their profession. These decisions represent important steps forward in the procurement of justice.

343. With regard to the recommendation to adopt adequate preventive mechanisms in order to avert violence against media workers, the State indicated that ever since it issued Decree 2137 of November 19, 2018, creating the Timely Action Plan (PAO) for prevention and protection of the individual and collective rights to life, liberty, integrity, and security of human rights defenders, social and community leaders, and journalists, it has taken on and maintained an absolute commitment to the protection of these groups. Along these lines, it added that in the framework of implementing the PAO strategy, it is in the process of developing a Public Policy on Comprehensive Protection and Guarantees for Social and Community Leaders, Journalists, and Human Rights Defenders. According to the information provided by the State, this policy takes a differentiated approach with an equity, ethnic, and territorial focus, and will incorporate the relevant guidelines for the protection of journalists, among other population groups, in order to protect the right to freedom of expression and access to information. The State also indicated that the participatory component was also been ensured in the drafting process, and that it had convened organizations of journalists and/or advocates for freedom of expression, through the Colombian Federation of Journalists (Fecolper)⁴⁶³. The IACHR and its Office of the Special Rapporteur value the efforts made by the State to adopt and strengthen prevention and protection policies for journalists who may be exposed to serious risk as a result of their work.

344. In terms of the Public Policy on Comprehensive Protection and Guarantees for Social and Community Leaders, Journalists, and Human Rights Defenders, civil society organizations have cautioned that this policy ignores the structural context in which the threats and attacks against journalists and freedom of expression occur. They also indicated that the policy does not specifically mention “the particular risk associated with the practice of journalism

⁴⁶² State of Colombia, Verbal Note DCHONU 1074/20, August 5, 2020.

⁴⁶³ Report of the Colombian State in follow-up to IACHR recommendations issued in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”. October 30, 2020. Pages 235 and 236.

and the problems of corruption at the national and local level, which are one of the main sources of risk for journalists and members of the media.”⁴⁶⁴

345. In 2020, the IACHR and its Office of the Special Rapporteur for Freedom of Expression observed a trend of growing threats against members of the press in Colombia who investigate highly sensitive issues such as corruption and drug trafficking. Thus, for example, on Thursday, February 13, a journalist from the TV station CNC Noticias in Arauca, Wilfer Moreno, received a call from a man identified with the pseudonym “Marcos,” who ordered him to suspend his news broadcast during the 72 hours scheduled for a guerrilla-led armed shutdown announced by the National Liberation Army (ELN), which was to begin the next day.⁴⁶⁵ When the journalist refused, the unidentified individual declared him to be a military target and warned him that he had one hour to leave the city. After the threat, the journalist had to leave the municipality immediately to save his life. Based on what the Office of the Rapporteur was able to learn, the act of intimidation took place after the journalist had repeatedly denounced and covered ELN criminal activities.

346. Journalists Gonzalo Guillén, Julián Martínez, Diana López Zuleta, and Daniel Mendoza Leal also are reported to have received death threats. According to publicly available information, they received a call on March 10 from a senator who warned about an alleged plot against their lives by a criminal organization.⁴⁶⁶

347. According to publicly available information, on August 8, eight journalists from the department of Magdalena received death threats from alleged members of the ELN guerrilla group.⁴⁶⁷ On August 7, the journalists received a pamphlet, signed by the ELN, declaring them to be “military targets” and warning them that they had 48 hours in which to leave the country with their families or else “face the consequences.” The reporters mentioned in the pamphlet had denounced acts of corruption by the departmental government. According to a press release from the Foundation for Press Freedom (FLIP), the journalists affected were Lina María Peña (El Artículo), Cipriano López (Radio Magdalena), Yannis Moscote (Contraportada), Víctor Polo (Caracol Radio), Miguel Martínez (El Mono TV), Víctor Rodríguez (Opinión Caribe), Aristides Herrera (Revista 7), and Leopoldo Díaz Granados (Seguimiento).

348. The IACHR and its Office of the Special Rapporteur are concerned that leaving the area where they work should still have to be an option for journalists receiving death threats. Indeed, throughout the year several journalists left their cities to protect their lives and safety and those of their families. In April, for example, the journalist Eder Narváez Sierra, founder and

⁴⁶⁴Federación Colombiana de Periodistas (Felcoper). [Escudo de plumas. Informe 20 años de protección a periodistas en Colombia](#). August 18, 2020.

⁴⁶⁵ El Epectador. [El amenaza a periodista de Arauca por no cerrar su medio de comunicación durante el paro armado](#); Confidencial Colombia. February 14, 2020. [ELN declara objetivo militar a periodista que se negó a acatar paro armado en Arauca](#); El País. [Periodista fue forzado a salir de Arauca tras ser amenazado presuntamente por el ELN](#). February 14, 2020; FLIP. [Periodista de Arauca tuvo que abandonar el departamento por amenazas](#). February 14, 2020.

⁴⁶⁶ FLIP. [¡Alerta! Senador advierte sobre plan criminal para asesinar a periodistas que publicaron información sobre José Guillermo “Ñeñe” Hernández](#). March 20, 2020; FLIP. [Denuncian plan para asesinar a 4 periodistas colombianos por investigaciones](#). March 21, 2020; La Nueva Prensa. March 20, 2020; [La Nueva Prensa. CIDH exige protección para Gonzalo Guillén, Julián Martínez, Diana López y Daniel Mendoza](#). March 21, 2020.

⁴⁶⁷ Noticias Caracol. [Amenazan a ocho periodistas en Santa Marta y les dan 48 horas para abandonar el país](#). August 8, 2020; La Vanguardia. [Denuncian que la guerrilla del ELN amenaza a ocho periodistas colombianos](#). August 9, 2020.; RCN Radio. [Ocho periodistas del Magdalena fueron amenazados](#). August 8, 2020; W Radio. [Denuncian que ELN amenazó a ocho periodistas; guerrilla lo niega](#). August 8, 2020; FLIP. [Ocho periodistas de Magdalena fueron amenazados a través de un panfleto](#). August 7, 2020.

director of NP Noticias and a correspondent for Teleantioquia in Bajo Cauca (Antioquia), was forced to leave his place of residence due to the constant death threats. On April 13, the journalist received death threats from someone who identified himself as Manuel, commander of “Los Caparrapos”⁴⁶⁸. The threat arrived after the journalist published a news item on the murder of two men that had happened the day before in the Loma Fresca neighborhood in Caucasia. Narváez was told through WhatsApp messages that he should “stop talking so much,” that the recent killings (which the messenger took credit for) were “only the beginning,” and that “the only news you’re going to hear in a few days is that they killed the guy from NP.” Narváez, who had received death threats before because of his reporting, filed a criminal complaint with the Attorney General’s Office and also sought assistance from the National Protection Unit.

349. On the morning of July 17, it was reported that journalist Juan Alejandro Loaiza, from the community station Nueva Era Algeciras, was intercepted and threatened with death when he was on his way to downtown Algeciras, in the department of Huila⁴⁶⁹. As the journalist recounted, an unidentified man on a motorcycle stopped him and warned him that he should leave Algeciras or else he would pay with his life. Two days later, he left the town to protect his life and safety. Juan Alejandro Loaiza participates in the morning news program on the radio station Nueva Era, where he has criticized the leadership of some municipal council members and has reported on the difficult public security situation.

350. In mid-November 2020, journalist Arlex Piedrahíta, from Noticias Caracol, had to go into exile after receiving new death threats over his work in the departments of Cauca and Valle del Cauca, in the southeastern part of the country⁴⁷⁰. According to the information that is available, on October 16, the journalist received a text message on his cell phone declaring him a military target and threatening him and his family with death. The journalist had already been the target of threats and harassment in 2019, reportedly in relation to his coverage of judicial matters, law and order, and drug trafficking. At that time, Arlex Piedrahíta also had to leave his place of residence due to the lack of security guarantees for him and his family and the failure of the authorities to respond in a diligent, timely manner.

351. Civil society organizations have called into question the studies done on level of risk, as well as the evaluation of the criteria used to assign protection measures for journalists who work in the capital, Bogotá, as opposed to those working in the rest of the country⁴⁷¹.

352. Finally, on this point, the IACtHR has carefully monitored the impact of gender violence on female journalists in Colombia. A study done by the Democracy Observatory in the University of the Andes’ Department of Political Science and by the initiative No es hora de callar [“This is no time to keep quiet”], published in November 2020, revealed that at least six of every

⁴⁶⁸ Caracol Radio. [Amenazan de muerte a periodista del Bajo Cauca](#). April 15, 2020; FLIP. [Periodista del Bajo Cauca Antioqueño se encuentra en una situación de riesgo inminente](#). April 14, 2020; 20 de abril de 2020. [Periodista colombiano recibe amenazas de muerte luego de informar sobre asesinatos](#). April 20, 2020.

⁴⁶⁹ FLIP. [Periodista comunitario tuvo que salir de Algeciras, Huila, después de recibir amenazas](#). July 24, 2020.; RCN Radio. [Periodista de emisora comunitaria en el Huila denunció amenazas de muerte](#), July 18, 2020; La Nación. [Por amenazas periodista salió desplazado de Algeciras](#). July 25, 2020; Agencia de Periodismo Investigativo. [Periodista denuncia amenaza de muerte en Algeciras, Huila](#). July 19, 2020.

⁴⁷⁰ El Comercio. [Un periodista colombiano se exilia tras recibir nuevas amenazas de muerte](#). November 30, 2020; RNC Radio. [Periodista caleño tuvo que salir del país por amenazas de grupos armados](#). November 30, 2020; Deutsche Welle (DW). [Colombia: Arlex Piedrahíta se exilia tras amenazas de muerte](#). December 1, 2020; El Tiempo. [Camarógrafo tuvo que huir del país por amenazas contra su vida](#). December 3, 2020.

⁴⁷¹ FLIP. [Informe: El Estado ante la violencia contra la prensa. Respuesta de la Unidad Nacional de Protección y la Fiscalía General de la Nación ante situaciones de riesgo y violencia](#). July 3, 2020.

ten women journalists in Colombia had experienced gender-based violence⁴⁷². The report said that only a small percentage of the participants believed they have mechanisms or means to make a complaint and to receive support in their workplaces. The researchers found that the complaint mechanisms in place do not tend to be specific protocols for handling gender-based violence, which may contribute to revictimization or to impunity. The report also showed that many women journalists had to stop covering issues or sources or had to leave their workplaces due to situations involving gender-based violence. The IACHR believes that, indeed, gender-based violence against women journalists implies a violation of the right to freedom of expression and the right of society as a whole to receive information. In its report Women Journalists and Freedom of Expression, the IACHR called on the States to adopt positive measures to combat all discriminatory practices and, in particular, to strengthen and implement legal, public-policy, and other measures that promote and protect women's leadership in society and their participation in the public discourse under equal conditions, including in the practice of journalism and media management. Among other recommendations, it also urged the States to integrate a gender perspective into all initiatives aimed at creating and maintaining a safe environment that is conducive to free and independent journalism⁴⁷³.

353. In line with the same recommendation mentioned above, specifically regarding the public condemnation of all acts of aggression, the State reported that the focus of the government's priority actions was to "strongly condemn the attacks, threats, and homicides to which [social leaders, journalists, and human rights defenders] have fallen victim; order all pertinent State agencies to conduct investigations to clear up what happened and punish those responsible, and continue to strengthen security; publicly recognize social leaders and human rights defenders (including journalists) as having an essential role in consolidating democracy...."⁴⁷⁴

354. On this point, the IACHR reiterates its concern over statements made by high-level authorities to target, denigrate, and call into question journalists and media outlets, in some cases accusing them of being "opponents," in order to intimidate them and avoid accountability on matters of public interest⁴⁷⁵. These types of statements create a heightened risk environment for members of the media going about their work.

355. Likewise, during its 177th Period of Sessions, the IACHR received information from a series of human rights organizations and some legislators who said they had been victims of smear campaigns based on alleged profiling and surveillance methods using technological tools. They also indicated that coordinated actions had been seen against media outlets, journalists, and political opponents⁴⁷⁶.

⁴⁷² Observatorio de la Democracia de la Universidad de los Andes. Violencia de género en contra de las mujeres periodistas en Colombia. November 2020.

⁴⁷³ IACHR. Mujeres periodistas y libertad de expresión. OEA/Ser. L/V/II. CIDH/RELE/INF.20/18. October 31, 2018. Par. 166 and 167.

⁴⁷⁴ Report of the Colombian State in follow-up to IACHR recommendations issued in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia". October 30, 2020. Page 235.

⁴⁷⁵ FLIP. Alcalde de Medellín presionó a medios de comunicación para obstruir una publicación sobre violencia sexual. June 24, 2020.; FLIP. Néstor Humberto Martínez estigmatiza a la prensa para desviar los cuestionamientos a su gestión. November 30, 2020.

⁴⁷⁶ IACHR. 177 Period of Sessions. Hearing: Prácticas de interceptaciones ilegales en Colombia. October 5, 2020.

356. In that regard, the State indicated that if such allegations were to be proved in court, this would not be a matter of systematic illegal tracking but rather individual conduct outside and in breach of the institutional policy of the military forces. It also noted that since December 2019, the Minister of Defense ordered the Army command to conduct a strategic review and an audit of the intelligence activities carried out in the past 10 years, which resulted in the decision to retire 12 officials from active service. Representatives of the State also maintained that intelligence and counterintelligence activities in Colombia are carried out in accordance with the provisions established in Statutory Law 1621 of 2013, which the Constitutional Court found to be constitutional by means of Judgment C-540 of July 12, 2012. They therefore stressed that these are procedures which are lawful and subject to judicial oversight, and which mainly aim to protect human rights and ensure the national security, sovereignty, integrity, and functioning of the democratic system of government.

357. With regard to the training of public officials, particularly police and security forces, and, where necessary, the adoption of operation manuals or guidelines regarding respect for the right to freedom of expression, the IACHR is concerned to note that there have been a number of incidents of aggression by State security forces against journalists who were doing their work.

358. For example, according to publicly available information, on June 15, approximately three photojournalists were arrested by the National Police in Medellín while they were covering demonstrations against measures to address the COVID-19 pandemic and also against cases involving corruption and police abuse. The members of the media were assaulted physically, and some of their equipment was damaged by the police forces⁴⁷⁷. Juan Carlos Londoño, one of the reporters who was arrested, described the police as “totally out of control.”

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359. According to the observations issued by the State regarding the draft of this report, in relation to the aforementioned incident, a preliminary inquiry is underway, filed in the National Police Legal System - SIJUR - No. P-MEVAL-2020-507, opened on October 1, 2020. This procedure seeks to gather information to determine the identity of the alleged perpetrator and disciplinary responsibility. Likewise, the State pointed out that, regarding criminal investigations currently ongoing before the Military Criminal Justice, once the consultation to the judicial offices attached to the National Police based in the city of Medellín was made, there was no evidence of military criminal investigations for these facts⁴⁷⁹.

360. The IACHR and its Office of the Special Rapporteur were especially concerned to learn of the death on August 13 of Abelardo Liz, a reporter for the indigenous radio station Nación

⁴⁷⁷ FLIP. Reporteros gráficos que fueron detenidos en Medellín denuncian abusos policiales y violación al debido proceso. June 18, 2020; Fundamedios. Policía colombiana detiene a reporteros gráficos que cubrían protesta en Medellín. June 17, 2020; El Tiempo. Marcha de estudiantes en Medellín terminó en disturbios con la Policía. June 15, 2020.; RT Actualidad. Protestas contra las medidas del gobierno colombiano durante la pandemia terminan con detenciones y represión en Medellín. June 15, 2020; Cuenta de Twitter de AquinoTicias (@Aquinoticias1). June 15, 2020.

⁴⁷⁸ CPJ. Three photographers arrested while covering protests in Medellín, Colombia. July 7, 2020.

⁴⁷⁹ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”. 2020. P. 43

Nasa, who died after being shot several times while he was covering a demonstration of indigenous peoples in the municipality of Corinto, in the department of Cauca⁴⁸⁰.

361. According to the observations issued by the State regarding the draft of this report, there is an investigation currently underway in regard to the homicide of Abelardo Liz is⁴⁸¹.

362. According to information published by the Committee to Protect Journalists (CPJ), a community spokesperson said that soldiers had “fired indiscriminately” at demonstrators and had shot Abelardo Liz in the chest. The spokesperson added that the hospital in Corinto lacked the equipment to operate on him, and so he died in an ambulance on the way to another hospital in the city of Cali.

363. Army spokespersons told the media that “Army troops never fired their service weapons at the indigenous community; to the contrary, they responded to the disproportionate attack that members of the ‘Dagoberto Ramos Ortiz’ residual organized armed group unleashed on the troops in disregard of the civilian population present.”⁴⁸² FLIP dismissed a National Army press release for failing to recognize the impacts on civil society during the operation and failing to clarify the causes of the reporter’s death.⁴⁸³

364. The IACHR also learned of attacks on and insults to journalists by members of the police during the demonstrations that took place in September in various places to protest police abuse for the death of the lawyer Javier Ordóñez. According to the information the Commission received, at least eight journalists were attacked and insulted during the protests of September 9-10 and September 21⁴⁸⁴. The journalists reportedly included Julián Gómez, reporter for ABC Noticiero Virtual; Juan Pablo Pino of Publimetro; Óscar Pérez and José Vargas of El Espectador; Javier Jiménez Rojas, a reporter for Colombia Informa; freelance photographer Juan Camilo Rubiano; and Fabián Yáñez and César Posada of Revista Semana.

365. According to the observations issued by the State regarding the draft of this report, three investigations had been opened into the allegations made by six journalists⁴⁸⁵.

366. Nevertheless, the IACHR and its Office of the Special Rapporteur were pleased to learn of the important Supreme Court decision ordering the authorities to take various steps to

⁴⁸⁰ Telesur. [Asesinan a comunicador indígena en región del Cauca, Colombia. August 15, 2020](#); La Opinión. [Muertos dos indígenas por Ejército; periodista, una de las víctimas. August 14, 2020.](#); CPJ. [El periodista colombiano José Abelardo Liz muere durante ataque militar contra grupo indígena. August 20, 2020.](#)

⁴⁸¹ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”. p.43.

⁴⁸² El Tiempo. [No cesa polémica: Ejército negó ser responsable de muerte de indígenas. August 19, 2020.](#)

⁴⁸³ FLIP. [La FLIP le exige al Ejército Nacional que esclarezca las circunstancias del asesinato del reportero Abelardo Liz. August 13, 2020.](#)

⁴⁸⁴ FLIP. [Graves violaciones a la libertad de prensa en jornada de protestas en Bogotá por el asesinato del ciudadano Javier Ordóñez. September 10, 2020](#); RCN Radio. [Radican tutela para garantizar derecho a la protesta ante ola de violencia en Bogotá. September 14, 2020](#); FLIP. [Tres violaciones más a la libertad de prensa durante las manifestaciones del 21 de septiembre. September 23, 2020.](#)

⁴⁸⁵ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”. Annex 1, p.10

ensure the right to peaceful protest⁴⁸⁶. The ruling by the Supreme Court's Civil Cassation Chamber accepted an action for protection [tutela] filed by a number of citizens who affirmed that the State, from 2005 to the present, "has engaged in constant, repeated, and persistent conduct to undermine, discourage, and weaken their right to express themselves without fear" in peaceful protests or demonstrations, and demanded policy changes from the government and the National Police. Among other measures, the majority judgment ordered the National Police, the Office of the Attorney General, and the Office of the Inspector General to issue protocols on preventive, concomitant, and subsequent actions that are compatible with human rights standards, to be called the "Statute on Reaction, Use, and Verification of Legitimate State Force and Protection of the Right to Peaceful Citizen Protest." It also ordered that the use of 12-caliber shotguns by the National Police Mobile Anti-Riot Squads (Escuadrones Móviles Antidisturbios, ESMAD) be suspended; that the government establish a working group to restructure guidelines on the use of force in response to peaceful demonstrations, to listen and respond to the suggestions of anyone interested in the issue; that the national executive branch remain neutral in the context of nonviolent demonstrations; and that it refrain from stigmatizing protesters.

367. On October 20, the government issued Resolution 1139 of 2020, establishing a social protest protocol to take effect immediately. This measure came in response to a judgment for protection issued by the Administrative Court of Cundinamarca on September 24, which ordered the President of Colombia, the Minister of Defense, and the Director of the National Police to draft a protocol in the short term establishing urgent measures to guarantee citizens' right to demonstrate publicly⁴⁸⁷. According to the information the Commission has received, this protocol—labeled "express"⁴⁸⁸—was issued to urgently address the situation, even though the government is reportedly working on a more complete and structural protocol to comply in detail with the Supreme Court's orders⁴⁸⁹.

368. According to the observations issued by the State regarding the draft of this report, the IACtHR was informed about the training "Virtual Seminar on Press Freedom and Police Function in Ibero-America" on freedom of press created by the National Police in coordination with the Foundation for Press Freedom - FLIP. Since its inception in 2019, the State has trained more than 2,600 officers from different backgrounds such as the Mobile Anti-Riot Squads, National Model of Community Policing by Quadrants, among others. Likewise, the State indicated that, within the framework of the days of protests, a sequence of instruction has been provided to the police personnel related to the treatment to be applied to journalists, missions of international organizations that monitor human rights (UN, MAPP-OAS and ICRC), civil society and non-governmental organizations, as well as general population. The General Inspectorate

⁴⁸⁶ República de Colombia, Corte Suprema de Justicia, Sala de Casación Civil. September 22, 2020. [STC7641-2020](#); El Tiempo. [Corte ordena proteger derecho a protesta ante agresiones sistemáticas](#). September 22, 2020; BBC. [El inédito fallo de la Corte Suprema en Colombia que le ordena al gobierno garantizar la protesta pacífica y pedir perdón por excesos de la policía](#). September 23, 2020; France 24. [La Corte Suprema pide al Gobierno de Colombia que respete el derecho a la protesta pacífica](#). September 23, 2020; El País. [El Supremo de Colombia insta al Gobierno a pedir perdón por la represión de las protestas de 2019](#). September 23, 2020.

⁴⁸⁷ Infobae. [Ordenan al Gobierno y a la Policía crear un protocolo 'express' para las protestas del 21 de octubre](#). October 7, 2020; Semana. [Tribunal pide protocolo 'expres' para garantizar protestas del 21 de octubre](#). October 7, 2020.

⁴⁸⁸ El Espectador. [Así es el protocolo expres para protestas expedido por el Gobierno Nacional](#); RCN Radio. October 20, 2020. [Lo que debe saber del protocolo expres para la protesta social expedido por el Gobierno](#). October 20, 2020.

⁴⁸⁹ Universidad de los Andes. [ABC del 'protocolo expres' para la protesta social](#). October 21, 2020.

also opened disciplinary investigations into irregular actions by uniformed members of the Institution in the context of social protests⁴⁹⁰.

369. Considering that this recommendation is one that entails progressive compliance, and bearing in mind the progress made, the Commission concludes that there is partial compliance. It reminds the Colombian State of the importance of adopting mechanisms for prevention and of “the urgent need that the State establishes, as State policy in the short-, mid- and long term, investigation as a measure of prevention.”⁴⁹¹

370. As the Office of the Special Rapporteur for Freedom of Expression has reiterated in several of its reports, Colombia continues to have high levels of impunity with respect to crimes and attacks committed against journalists for reasons connected with their reporting. It has been observed that in many cases, the reason these crimes tend to go unpunished is related to excessive delays in the investigations beyond the statutes of limitations.

371. With regard to the recommendation to compile detailed, disaggregated crime statistics on violence against journalists and the criminal prosecution of these crimes, the State reported that the Attorney General's Office so far has prosecuted 82 cases involving homicides of journalists, of which 7 have resulted in convictions⁴⁹².

372. The IACHR finds that while the information that has been submitted is valuable, it is not proportional to the scope of the phenomenon of violence and the impunity in the prosecution of these crimes, and therefore compliance with this recommendation remains pending. The Commission also urges the State to redouble its efforts to unify parameters for compiling detailed, disaggregated crime statistics on violence against journalists.

373. As to the recommendation to carry out diligent, impartial, and effective investigations of the murders, attacks, threats, and acts of intimidation committed against journalists and media workers, the State did not provide information on progress or challenges in this area.

374. The IACHR and the Office of the Rapporteur were pleased to receive several of the judicial decisions issued in 2020 that constitute significant progress for the pursuit of justice. In August, the Administrative Court of Cundinamarca determined that the Administrative Department of Security (DAS), the Attorney General's Office, and the Ministry of the Interior are responsible for the harm caused to the journalist Claudia Julieta Duque Orrego and her family members, as a consequence of the kidnapping, threats, and psychological torture to which she fell victim⁴⁹³. The ruling ordered these agencies to compensate the victims. It also ordered the Attorney General's Office to: (i) develop a manual to publicize and analyze the State's

⁴⁹⁰ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”. 2020. P. 42-43.

⁴⁹¹ IACHR. Annual Report 2015. Capítulo V. Seguimiento de recomendaciones formuladas por la CIDH en sus informes de país o temáticos. Seguimiento de recomendaciones formuladas por la CIDH en el informe Verdad, justicia y reparación: Cuarto informe sobre la situación de derechos humanos en Colombia. OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Par. 85.

⁴⁹² Report of the Colombian State in follow-up to IACHR recommendations issued in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”. October 30, 2020. Page 236.

⁴⁹³ El Espectador. El Estado es responsable de la tortura psicológica a Claudia Julieta Duque: Tribunal. August 8, 2020; El Tiempo. Condenan a la Nación por caso de periodista Claudia Julieta Duque. August 10, 2020; Federación Internacional de Periodistas (IFJ) Colombia: la Justicia encuentra culpable al Estado por torturar psicológicamente a una periodista. August 11, 2020.

responsibility as outlined in the judgment; and (ii) design policies and guidelines to pursue criminal investigations in the shortest possible time, in order to bring an end to the continued violations to the fundamental rights related to the practice of journalism.

375. The journalist had filed suit against the State for direct reparation in 2012 in relation to the illegal actions taken against her, as well as the lack of protection and the delays in the judicial investigations. The persecution suffered by Claudia Julieta Duque was such that in the course of nine years, she had to leave the country in exile three times. In its judgment, the court said, “The State not only failed to protect the plaintiff from these acts of interference or attacks, but it was the official institutions themselves that carried out these arbitrary and illegal acts of interference into the private life of Claudia Duque. Not only because it intercepted her telephone calls and examined her e-mails but because it infiltrated human sources in her security detail, built an entire database with unauthorized intelligence information, tracked the plaintiff’s movements inside and outside the country, and in general, because of the harassment to which she was victim.”

376. Despite the progress that has been mentioned, the Commission and its Office of the Special Rapporteur are concerned to observe the decision of the First Municipal Criminal Court of Tumaco (Nariño) releasing two of the individuals prosecuted for the kidnapping and murder of Javier Ortega, Paúl Rivas, and Efraín Segarra, a news team from the newspaper *El Comercio*, in March 2018, on the border between Colombia and Ecuador. Gustavo Alonso Ospina, aka Barbas, and Gustavo Angulo Arboleda, aka Cherry, were released from prison in June and August 2020, respectively, because the legal terms for initiating the trial phase had expired⁴⁹⁴. Reporter Javier Ortega, photographer Paúl Rivas, and driver Efraín Segarra had been kidnapped on March 26, 2018, in Mataje, an Ecuadorian town on the border with Colombia, by the Oliver Sinisterra Front, a dissident faction of the FARC led by Walter Patricio Arízala Vernaza, aka Guacho. Two years after this happened, the relatives of the men are still awaiting a response from the States of Ecuador and Colombia.

377. Among other judicial decisions that undermine the investigation, punishment of perpetrators, and reparation of victims by the State, in 2020 the Attorney General’s Office precluded the investigation of Jhon Jairo Velásquez Vázquez, aka Popeye, as an alleged co-perpetrator of the murder of the journalist and editor of *El Espectador*, Guillermo Cano Isaza. According to the investigating body, “the death of Velásquez Vásquez having been established (February 6, 2020), the State loses the power to punish, given that the case cannot proceed against him.”⁴⁹⁵ Still, it ordered that investigative efforts continue, in order to determine other perpetrators or participants in the journalist’s murder. Velásquez Vásquez and Gustavo Adolfo Gutiérrez Arrubla, aka Maxwell, are reportedly the only ones under investigation so far for the murder of Guillermo Cano Isaza.⁴⁹⁶

378. A February 2020 report by FLIP noted that, with the exception of a few documented successes, in 2019 the climate for pursuing justice is generally negative and that the

⁴⁹⁴ *El Comercio*. Otro procesado por secuestro del equipo de EL COMERCIO queda libre. August 10, 2020; FLIP. La verdad sigue cautiva: Juzgado otorga libertad a otro de los implicados en el secuestro del equipo de El Comercio. August 10, 2020; RCN Radio. En libertad procesado por secuestro y asesinato de los periodistas del diario El Comercio. August 11, 2020; GK. Dos procesados por el secuestro y asesinato del equipo de El Comercio quedaron en libertad en Colombia. August 25, 2020; Infobae. En libertad dos vinculados al asesinato de periodistas ecuatorianos en Colombia. August 25, 2020.

⁴⁹⁵ *El Espectador*. Fiscalía precluyó investigación contra alias Popeye, por el magnicidio de Guillermo Cano. September 11, 2020.; Cuenta de Twitter de la FLIP (@FLIP_org). 11 de septiembre de 2020.

⁴⁹⁶ *El Universal*. El proceso judicial por el que Popeye regresó a prisión. February 6, 2020; FLIP. El asesinato de Guillermo Cano, 34 años después. December 15, 2020.

number of journalist cases that remain in impunity is still very high, at 88 such cases, in addition to the cases that continue to expire⁴⁹⁷.

379. Moreover, on December 10, 2020, several civil society organizations presented a report to the Truth, Coexistence, and Non-Recurrence Commission (Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición, CEV) documenting six cases of serious human rights violations⁴⁹⁸. These include that of the journalist and comedian Jaime Hernando Garzón Forero, who was killed by two hitmen on August 13, 1999, in Bogotá, near the radio station where he worked, Radionet. More than 20 years later, the entire chain of criminals involved in his murder has yet to be convicted⁴⁹⁹. The report by this group of organizations documents various findings that could help to clear up these crimes. It also maintains that in all the investigations that were pursued, there were mechanisms of impunity, preceded by “long inactivity by the Attorney General’s Office, repeated reassessments to different investigation units, reluctance to link State agents or formulate lines of investigation that would point in that direction and to identify those most responsible, in addition to an inadequate methodology in the investigation.”

380. The IACHR has indicated repeatedly that the killing of journalists constitutes the most extreme form of censorship and that States have a positive obligation to identify and punish the perpetrators of these crimes. The IACHR considers it essential for States to fully, effectively, and impartially investigate the killing of journalists, clarify the motives, and judicially determine any possible connection they may have with journalism and freedom of expression. The authorities should not rule out the practice of journalism as a motive for the murder or assault before the investigation is completed, and should provide adequate resources and specialized personnel to the institutions responsible for investigating these types of matters. The IACHR is especially concerned that, according to the available information, there are many cases in which killings and serious attacks against journalists remain unpunished, and in other emblematic cases, there has reportedly been no identification or punishment of the masterminds behind the crimes.

381. Finally, with regard to the obligation to prosecute, through impartial and independent courts, within the standards established by international law, the persons responsible for the crimes committed in retaliation for the exercise of the right to freedom of expression, and make adequate reparation to the victims and family members, the State maintained that because it has a democratic and republican form of government, with separation of powers, “the judicial branch acts autonomously and independently of whether the perpetrator of a particular criminal act is a member of the State or of civil society.” The State also indicated that because judges in the Republic of Colombia have been granted independence and autonomy under the Constitution, it is very clear that their actions fully embody the mandates of Articles 8 and 25 of the American Convention on Human Rights and other international treaties on the subject. The State also noted that under the Colombian legal system, judicial officials are subject

⁴⁹⁷ El Espectador. [Estamos volviendo al pasado: FLIP sobre violencia contra periodistas](#). February 9, 2020.

⁴⁹⁸ Comisión Colombiana de Juristas. [La Comisión de la Verdad recibió informe sobre patrones del terrorismo de Estado contra personas defensoras de derechos humanos en los años 80 y 90 en Colombia](#). December 10, 2020; Programa Somos Defensores. [Comisión de la Verdad recibió informe sobre agresiones contra personas defensoras de derechos humanos](#). December 10, 2020; El Tiempo. [El enemigo interno, nuevo informe que llegó a Comisión de la Verdad](#). December 11, 2020.

⁴⁹⁹ FLIP. [21 años sin Jaime Garzón](#). August 12, 2020.

to impediments and challenges, “which makes it possible to guarantee the impartiality of the judge’s actions, there being a procedural tool to ensure that judicial activities are proper.”⁵⁰⁰

382. The IACHR and its Office of the Special Rapporteur are concerned about the lack of judicial progress in the investigation into the alleged irregular use of military intelligence capabilities, reportedly carried out by members of intelligence units within the Colombian military, to surveil and profile journalists, human rights defenders, social leaders, judges, and labor union members, among others. Based on what the IACHR has learned, surveillance tasks included the illegal interception of communications and tracking via “Stingray”—mobile tactical equipment that intercepts cellphone calls—and the “Invisible Man” platform, which reportedly makes it possible to gain access to personal computers, intercept calls and conversations on instant messaging services, and obtain information without being detected.⁵⁰¹

383. For its part, civil society cautioned about the limited access to information regarding the investigations by the Attorney General’s Office. According to publicly available information, in August the Attorney General’s Office stated, in response to a right of petition, that contrary to what Revista Semana had published, “there were not 130 targets of illegal monitoring, tracking, interceptions, profiling, special tasks by the National Army; rather, the number of individuals is no greater than 20,” something that does not seem to be in line with the proceedings of the Supreme Court and the Office of the Inspector General.⁵⁰²

384. In May 2020, the IACHR called on the Colombian State to use all legal and institutional mechanisms at its disposal to ensure an independent and impartial investigation⁵⁰³. However, according to the information that has been documented, the investigations have yet to make significant headway.

385. Based on the information it has analyzed, the IACHR concludes that there is partial compliance with both recommendations.

⁵⁰⁰ Report of the Colombian State in follow-up to IACHR recommendations issued in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”. October 30, 2020. P. 236.

⁵⁰¹ El Espectador. Fiscalía le pone la lupa a denuncias de “chuzadas” desde inteligencia del Ejército. January 13; France 24.. Comienzan las investigaciones en la Fiscalía tras el regreso de las “chuzadas” en Colombia. January 14, 2020; El País. La Fiscalía de Colombia investiga al exjefe del Ejército por espionaje. January 14, 2020; El Diario.es. Revelan un entramado de espionaje a periodistas, políticos y activistas por parte del Ejército colombiano. May 4, 2020.

⁵⁰² Semana. Carpetas Secretas, camino a la impunidad en la Justicia. September 8, 2020.

⁵⁰³ IACHR. La CIDH y su Relatoría Especial para la Libertad de Expresión exhortan al Estado de Colombia a establecer una investigación diligente, oportuna e independiente respecto a las denuncias sobre espionaje ilegal a periodistas, operadores de justicia, personas defensoras de derechos humanos y líderes políticos. Comunicado 118/2020. May 21, 2020.

13. Discrimination against Lesbian, Gay, Bisexual, Trans, Gender-Diverse, 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 parties, or armed groups, throughout the national territory.
- As regards the rights of LGBTI persons, the State brought the Commission up to date on the implementation status of the Action Plan for Decree No. 762-2018, the "Public policy to ensure the effective exercise of the rights of persons who belong to the LGBTI social sectors of persons with diverse sexual orientations and gender identities." The plan includes measures to guarantee the rights of LGBTI persons, as well as to prevent and respond to acts of violence and discrimination.

386. With respect to the rights of LGBTI persons, the State updated the Commission on the status of implementation of the Plan of Action of Decree 762-2018 "Public policy to guarantee the effective exercise of the rights of persons who are part of the LGBTI social sectors of persons with diverse sexual orientations and gender identities", which contains measures to guarantee the rights of LGBTI persons, as well as to prevent and react to acts of violence and discrimination⁵⁰⁴.

387. The State emphasized that the plan includes actions to meet the State's obligation to defend and respect the rights of LGBTI persons, including adapting institutions; forging connections between institutions; training personnel from State institutions; preventing rejection, discrimination, and repudiation of LGBTI persons; and adopting affirmative actions. The State also indicated that this policy has an Urgent Cases Working Group to address cases that violate the rights to life, security, and integrity of members of the LGBTI community and people with diverse sexual orientations and gender identities. According to the information provided to the Commission, in 2020 the Urgent Cases Working Group received and handled 49 applications, in addition to holding three regular sessions for coordination and follow-up⁵⁰⁵.

388. In terms of responding to acts of violence and discrimination, the State informed the Commission that it had incorporated a diversity perspective within the Special Jurisdiction for Peace (JEP), which includes a Gender Committee. According to the information provided by the State, this has enabled cooperation with civil society organizations that advocate for the rights of LGBTI persons⁵⁰⁶, as well as the launch of media campaigns and the presentation of academic activities.

389. The Commission further notes that the academic and promotional activities that have been reported are consistent with the State's duty to make specialized training available for justice operators (including judges, prosecutors, and public defenders) on the human rights of LGBTI persons, so as to prevent discrimination, even within the justice sector. In that regard, the

⁵⁰⁴ State of Colombia, Follow-up report on recommendations of the IV country report "Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia" emphasis 2020, par. 990- 994.

⁵⁰⁵ State of Colombia, Follow-up report on recommendations of the IV country report "Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia" emphasis 2020. Par. 990-1005.

⁵⁰⁶ The State highlighted the publication of an academic article in conjunction with the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) related to the issue of access to justice for LGBTI persons in the JEP.

IACHR expresses its concern regarding the decisions of a judge in Cartagena who blocked access to marriage for a couple made up of two women, arguing that it would violate Christian morals⁵⁰⁷.

390. Notwithstanding the progress made, the Commission is deeply concerned regarding the continued reports of acts of violence and discrimination against individuals who self-identify as LGBTI, those who are perceived as such, and those who advocate for the human rights of LGBTI persons in Colombia. This situation of risk has been recognized by various national institutions, including the Ombudsperson's Office, which issued Early Alert 37-2020⁵⁰⁸ on this issue.

391. In fact, according to information from the Ombudsperson's Office, in 2020, particularly in the context of the pandemic, there was an alarming increase in crimes against LGBTI persons, with 63 acts of deadly violence reported through September 2020. Information compiled by civil society also reflects the prevalence of acts of violence against LGBTI persons in Colombia⁵⁰⁹.

392. The IACHR first of all voices its profound concern about the human rights situation of trans women in Colombia, who continue to be victims of acts of violence and structural discrimination that prevent the effective exercise of their human rights, including economic, social, cultural, and environmental rights such as the rights to health, work, and education. This situation has been made especially evident during the COVID-19 pandemic.

393. As an example, the Commission draws attention to reports concerning the death of Alejandra Monocuco, who, according to publicly available information, died at her home on May 29, 2020, after emergency personnel refused to take her to a hospital, in the context of the COVID-19 pandemic⁵¹⁰. The IACHR notes that there are investigations underway into the circumstances of Alejandra's death⁵¹¹, which include allegations—denied by the Bogotá Mayor's Office⁵¹²—that her transfer to a hospital was denied based on an alleged waiver by the patient and the fact that the first responders learned that she was HIV-positive⁵¹³.

394. The Commission underscores that the case of Alejandra Monocuco—a trans woman and sex worker who had HIV and who ultimately, according to the information available, did not receive timely medical care in the context of the pandemic—exemplifies the circumstances of heightened vulnerability that mark the life experiences of trans women,

⁵⁰⁷ Pulzo, ["No puedo casar a pareja homosexual porque va contra mis principios"](#). September 1, 2020.

⁵⁰⁸ Defensoría del Pueblo, [Alerta temprana 37-2020](#). August 13, 2020.

⁵⁰⁹ Colombia Diversa, [Herramienta de Visualización de las cifras de violencia LGBTI](#), consulted on December 10, 2020 with values adjusted to "January 1, 2020 - December 10, 2020", reflecting that from January to July 2020, 37 reports of violence against 43 victims were recorded.

⁵¹⁰ RCN Radio, [La Historia de Alejandra, la mujer trans que murió sospechosa de COVID y no fue atendida](#). June 1, 2020.

⁵¹¹ El Tiempo, [Abren tres investigaciones por caso de muerte de mujer trans en Bogotá](#). June 26, 2020.

⁵¹² Alcaldía de Bogotá. [Distrito adelanta investigación frente al caso de Alejandra Monocuco](#). June 3, 2020.

⁵¹³ Yahoo Noticias. [Miles de personas claman contra la violencia contra personas trans en Bogotá, 4 de julio de 2020](#) y según información aportada directamente a la Relatoría sobre los Derechos de las Personas LGBTI de la CIDH por la organización "Red Comunitaria Trans". June 19, 2020.

especially taking into account the intersection with gender⁵¹⁴, along with other factors such as engagement in sex work, ethnic/racial background, and nationality. This vulnerability translates, as a result, into a particular risk of suffering acts of violence, and therefore the Commission calls on the State to address the underlying and structural causes of inequality faced by trans and gender-diverse persons in the country as a measure to prevent violence.

395. In this vein, and still in the context of the pandemic, the IACHR points out that trans, non-binary, and gender-diverse persons have expressed alarm over the adoption of anti-contagion measures in some cities that designate certain days in which people can freely circulate, depending on whether they are women or men. In that regard, the Commission notes that even though provisions were included to ensure that trans and non-binary persons could move about, there were complaints about acts of discrimination and violence during the implementation of these measures⁵¹⁵. The IACHR reiterates that these types of measures, in and of themselves, are discriminatory against trans and gender-diverse persons⁵¹⁶ and may lead to other acts of this nature. It calls on the State to investigate, with due diligence, any acts of violence that may have been committed in this context.

396. Beyond that, the Commission notes that trans women have been victims of discrimination and violence in the context of interventions by State law enforcement agents. In that regard, the Commission took note of the allegations of police abuse against Emma Hidalgo in the Medellín Metro system⁵¹⁷ and condemned the killing of Juliana Giraldo Díaz, a trans woman, from a shot fired by a member of the Third National Army Division in Cauca⁵¹⁸. The Commission issued a similar reaction to reports that trans women sex workers in Bogotá were injured during a police action on June 21 in the context of measures to contain the pandemic.

397. The Commission notes that in both cases, the authorities have opened the respective investigations⁵¹⁹. It reiterates that the State must work to prevent similar incidents in the future by strictly applying inter-American standards on the use of the security forces.

398. In a similar vein, the IACHR also condemned the murders of Ariadna Barros Ojeda and Brandy Carolina Brown⁵²⁰ and it received information on the murders of Luiza Valentina Rincón, Eilyn Catalina, Shantall Escalona⁵²¹, Michel Ramos⁵²², Patricia Dumon⁵²³, and

⁵¹⁴ IACHR, Inter-American Commission on Human Rights. Special Rapporteurship on Unit Economic, Social, Cultural and Environmental Rights. Report on trans and gender-diverse persons and their economic, social, cultural and environmental rights. (OAS. Official records. August 7, 2020. Par. 77.

⁵¹⁵ El Espectador. Burlas, discriminación y puñaladas: la violencia que revela el Pico y Género. May 3, 2020; El Espectador, Hombre que apuñaló a mujer trans en el Sur de Bogotá fue enviado a la cárcel. May 7, 2020.

⁵¹⁶ IACHR, La CIDH llama a los Estados a garantizar los derechos de las Personas LGBTI en la respuesta a la pandemia del Covid-19. April 20, 2020.

⁵¹⁷ Caracol TV, Denuncian abuso policial a mujer trans en metro de Medellín. July 26, 2020.

⁵¹⁸ According to the press release published by the Colombian Army, indicating that "a woman was killed by a gunshot by a member of the Force." Also: France 24, Mujer trans muere a manos de militar en una Colombia sacudida por violencia policial, September 24, 2020.

⁵¹⁹ El Tiempo. Trabajadoras sexuales denuncian violencia policial en Bogotá. June 21, 2020.

⁵²⁰ El Espectador. Alerta por crímenes contra mujeres trans en Costa Caribe pese a cuarentena. June 14. 2020.

⁵²¹ Fundación Paz y Reconciliación PARES. Ser una persona trans en Colombia es una sentencia de muerte. July 8, 2020.

⁵²² El Universal. Cuatro Miembros de la Comunidad LGBT han muerto en actos violentos. October 13, 2020.

⁵²³ Opinión Caribe, Comunidad LGBT pide acciones que permitan su protección. August 21, 2020.

Johana Morena Mayor⁵²⁴, as well as on the attacks suffered by Valery Dayana Almeida⁵²⁵, Leudor Ángel Soto Vega⁵²⁶, and Yuliana Martínez⁵²⁷ and the disappearance of Dayana Grajales⁵²⁸, among other cases related to the life and physical integrity of trans women. The Commission also took note of the prevalence of prejudiced discourse against trans women who actively participate in public life in the country and advocate for the rights of LGBTI persons and persons who engage in sex work. The IACHR notes that the exposure and tolerance by the State of these types of prejudiced statements can have impacts on the personal safety of trans persons, as well as on their personal integrity and mental health and the exercise of their right to work and to fair, equitable, and satisfactory conditions⁵²⁹.

399. The Commission also received information about a troubling number of acts of violence, including sexual violence, against lesbians or bisexual women, including the cases of Madeleine Montes Castillo⁵³⁰, Kelly Carolina Perez⁵³¹, Pierangelly Hugueth⁵³², Esther Camargo⁵³³, Lidia Gamero, Miladis Martínez⁵³⁴, and a woman raped by a male nurse in Barranquilla⁵³⁵. The issue of violence against lesbian, bisexual, and trans women in Colombia was analyzed by the Commission during a regional hearing held during the 177th Period of Sessions⁵³⁶, in which the IACHR called on States to work toward a cultural change that respects the rights of women.

400. The Commission also took note of acts of violence against gay or bisexual men⁵³⁷ (12 cases, according to information from the Ombudsperson's Office), including the killings of Alid Machado Polanco in Cartagena⁵³⁸, Haiver Fontalvo in Santa Marta⁵³⁹, Dagoberto Perafán

⁵²⁴ Blu Radio. [Comunidad LGBTI rechaza asesinato de mujer trans en Cali](#). December 2, 2020.

⁵²⁵ El Quindiano. [Atacada integrante de la Comunidad LGBTI en Armenia](#). September 29, 2020.

⁵²⁶ El Informador. [Hieren con arma blanca a integrante de la comunidad LGBTI](#). October 18, 2020.

⁵²⁷ Radio Nacional. [Alerta por casos de violencia y transfobia en Quindío](#). September 30, 2020.

⁵²⁸ Aquí. [Buscan a Dayana Grajales, mujer trans de Yumbo](#). August 14, 2020.

⁵²⁹ El Espectador. [Defensores de DDHH rechazan transfobia contra Secretaria de la Mujer de Manizales](#). January 15, 2020.

⁵³⁰ Caribe Afirmativo. [Asesinan a mujer lesbiana en Baranoa](#). September 23, 2020.

⁵³¹ Cabilenoticias. [Con dos balazos le quitaron la vida a una mujer lesbiana en Soledad](#). September 2, 2020.

⁵³² Opinión Caribe. [Comunidad LGBT pide acciones que permitan su protección](#). August 21, 2020.

⁵³³ Opinión Caribe. [Comunidad LGBT pide acciones que permitan su protección](#). August 21, 2020.

⁵³⁴ Caribe Afirmativo. [Asesinan a mujer lesbiana en extrañas circunstancias](#). March 23, 2020.

⁵³⁵ La FM. [Presunto abuso a joven en clínica de Barranquilla genera indignación en población LGBTI](#). November 7, 2020.

⁵³⁶ IACHR. [Anexo Comunicado de Prensa 253/20](#). October 15, 2020.

⁵³⁷ According to media reports and publicly available information.

⁵³⁸ Caracol. [Sin esclarecerse homicidio en miembro de la comunidad LGBT en Cartagena](#). January 31, 2020.

⁵³⁹ Caribe Afirmativo. [Un hombre gay es asesinado en Santa Marta](#). July 29, 2020.

Torres⁵⁴⁰ and Jesús Orozco Sánchez⁵⁴¹ in Medellín, Joan Andrés Quinaguas Barreto in Palmira⁵⁴², and Jhony Menco Galvis, a person with a hearing disability, in Managué⁵⁴³.

401. Likewise, the IACHR reiterates its deepest consternation about acts of violence against adolescents who self-identify as LGBTI or who are perceived as such. In that regard, the Commission takes note of the death by strangulation of a 17-year-old teen in Medellín⁵⁴⁴ and an act of violence in which one adolescent attacked another with a machete, cutting off part of his arm.

402. Along those same lines, the Commission draws attention to the death of Juan Luis Guzmán, an Afrodescendent gay man and artist, which occurred inside the police station in Arboletes, Antioquia. According to the earliest information available, this was a death by suicide; however, the IACHR notes that a legal medical certificate concluded that the cause of death was homicide by strangulation⁵⁴⁵.

403. Furthermore, the Commission took note of acts of violence against LGBTI human rights defenders, including threats, attacks, and murders. Among them are the threats received by Aurora Iglesias⁵⁴⁶ and the attempt on the life of Jhon Restrepo on March 25, 2020, which was condemned by the Commission; according to publicly available information, the human rights defender had previously reported receiving threats⁵⁴⁷. The IACHR also repudiated the murder of the human rights defender Jhon Jairo Beltrán in Bogotá⁵⁴⁸ and condemned the killing of the trans leader Mateo López Mejía in Quindío⁵⁴⁹. The Commission also issued a condemnation of the murder of Leidy Padilla, a trans leader, which happened on July 11 in Valledupar⁵⁵⁰, while also noting the murder of the lawyer and human rights defender Pierangelly Hugeth, mentioned above⁵⁵¹, and of the defender Danny Chacón in Antioquia⁵⁵².

404. The IACHR recognizes the State's efforts to initiate investigations in order to punish the perpetrators of acts of violence and/or provide redress for acts of discrimination against LGBTI persons, including the progress it has made in the case of Ariadna Barros Ojeda⁵⁵³

⁵⁴⁰ Alerta Paisa. [A integrante de la población LGBTI lo mataron en su casa en Medellín](#). October 24, 2020.

⁵⁴¹ La FM. [Integrante de la comunidad LGBTI fue asesinado a puñaladas en Medellín](#). October 11, 2020.

⁵⁴² El País. [Líderes LGBT piden investigar crimen contra hombre apuñalado y quemado en Palmira](#). September 17, 2020.

⁵⁴³ Caribe Afirmativo, [Asesinan a hombre gay en Managué](#). July 19, 2020.

⁵⁴⁴ Alerta Paisa. [Estrangulan a dos jóvenes de la Población LGBTI en Medellín](#). November 11, 2020.

⁵⁴⁵ Caribe Afirmativo. [¿Quién asesinó al joven gay Juan Luis Guzmán?](#). October 16, 2020.

⁵⁴⁶ Caquetá Al Día. [Amenazan con Arma de Fuego a reconocida lideresa LGBTI por su trabajo en Caquetá](#). September 28, 2020.

⁵⁴⁷ Caribe Afirmativo. [Atentado contra Jhon Restrepo, líder social LGBTI de la Comuna 8 de Medellín](#). March 25, 2020.

⁵⁴⁸ Caracol. [Investigan asesinato de líder social en Bogotá](#). April 15, 2020.

⁵⁴⁹ RCN. [Mientras realizaba labor social, líder trans fue asesinado en Quindío](#). July 5, 2020.

⁵⁵⁰ Caribe Afirmativo. [Asesinan en Valledupar a Leidy Padilla](#). July 11, 2020.

⁵⁵¹ TeleSur TV. [Asesinan a defensora de los DDHH en Ciénega](#). June 9, 2020.

⁵⁵² Últimas Noticias. [Denuncian asesinato de dos líderes en Colombia](#). December 10, 2020.

⁵⁵³ Caracol Radio. [Fiscalía capturó a hombre que asesinó de 58 puñaladas a mujer trans](#). October 29, 2020.

and of Emma Hidalgo García⁵⁵⁴. However, given the alarming reports on the number and types of violence recorded in 2020, the Commission calls on the State to take decisive efforts to strengthen the investigations to ensure punishment and reparation for each of the incidents reported.

405. Based on the foregoing, the Commission recognizes the significant efforts undertaken by the State to design and adopt the measures necessary to prevent acts of violence and discrimination against LGBTI persons, exemplified in the regulation of the public policy. However, considering the alarming number of acts of violence and discrimination reported in 2020 that have had a particular impact on trans and gender-diverse persons, as well as human rights defenders, the Commission considers that compliance with this recommendation has been partial.

14. Persons Deprived Of Liberty

- Adopt the administrative, judicial, and legislative measures needed to ensure that pretrial detention of persons who have not been convicted with a final judgment is used as the measure of last resort and for the shortest possible time, in keeping with the international standards presented in this report, so as to bring about a reduction in the number of persons subjected to this precautionary measure.
- Adopt effective measures to ensure the delivery of adequate medical and psychiatric care at every prison and jail in the country. Implement external supervision and monitoring mechanisms for 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 to family members of those who have died as a result of this situation.
- Urgently adopt effective measures to guarantee the supply of drinking water and water to meet other needs of persons in prisons, in keeping with the international minimum standards set forth in this report.
- Ratify the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

406. In terms of the recommendation to adopt measures to use pretrial detention as a measure of last resort and for the shortest possible time, the State provided information about the rules and regulations for applying the precautionary measure in question. It also informed the Commission that the national government has been working on the National Criminal Policy Plan, which aims to standardize criteria to determine prevention and punishment measures under criminal law⁵⁵⁵. According to the State, this plan would enable pretrial detention to be established as a last resort and thus help to relieve congestion in the courts, which tend to have a large caseload during the resolution of conflicts and imposition of penalties⁵⁵⁶.

⁵⁵⁴ Infobae. Mujer trans ganó tutela interpuesta contra la policía y metro de Medellín. November 10, 2020.

⁵⁵⁵ Ministry of Foreign Affairs of Colombia Follow-up report on recommendations of the IV country report “Truth, Justice, and Reparation: Fourth report on the human rights situation in Colombia”. October 30, 2020.

⁵⁵⁶ Ministry of Foreign Affairs of Colombia Follow-up report on recommendations of the IV country report “Truth, Justice, and Reparation: Fourth report on the human rights situation in Colombia”. October 30, 2020.

407. Meanwhile, the Commission was informed about Directive No. 0001, issued by the Attorney General's Office on June 4, 2020, which establishes guidelines for requesting measures to ensure appearance at trial (medidas de aseguramiento)⁵⁵⁷. Specifically, the directive determines that priority should be given to persons' liberty while investigations are underway. It also indicates that these measures may be requested only in exceptional cases once the prosecutor handling the case has done a thorough assessment⁵⁵⁸. In this regard, prosecutors should opt for home detention and use incarceration as a last resort to meet the objectives. According to the Attorney General's Office, the implementation of these guidelines would enable an effective application of justice and comply with national jurisprudence and international standards⁵⁵⁹.

408. In the context of the COVID-19 pandemic, on April 14, 2020, the State adopted Colombian Legislative Decree No. 546-2020, which established the possibility of substituting the penalty of imprisonment and the precautionary measure of pretrial detention with temporary home confinement and house arrest for individuals at greater risk for COVID-19⁵⁶⁰. In a press release on September 9, the IACHR mentioned the decree in question as one of the initiatives adopted by States seeking to apply alternatives to deprivation of liberty in the context of COVID-19⁵⁶¹.

409. With regard to the application of this measure, the Follow-Up Committee on Judgment T-388 of 2013—a decision that declared the existence of an unconstitutional situation in the prison system—maintains that the alternative measures adopted by means of Decree No. 546-2020 are insufficient because they exclude the majority of persons deprived of liberty and include several provisions that limit their effectiveness in reducing overcrowding⁵⁶². Civil society organizations likewise indicate that these limitations are exacerbated by enforcement judges' restrictive interpretations of liberty and by delays in decision-making⁵⁶³. In addition, according to public information, five months after the adoption of Decree No. 546, only 958 people had reportedly benefited from it⁵⁶⁴. This contrasts significantly with the Ministry of Justice's own estimates that nearly 5,000 people could benefit⁵⁶⁵.

⁵⁵⁷ Fiscalía General de la Nación, Directiva No 0001 "Por medio de la cual se establecen lineamientos generales respecto a la solicitud de medidas de aseguramiento". June 4, 2020.

⁵⁵⁸ Fiscalía General de la Nación, Directiva No 0001 "Por medio de la cual se establecen lineamientos generales respecto a la solicitud de medidas de aseguramiento". June 4, 2020.

⁵⁵⁹ Fiscalía General de la Nación, Nota de prensa "Fiscal General de la Nación, Francisco Barbosa Delgado, establece lineamientos para el uso de las medidas de aseguramiento", Boletín 33573. June 4, 2020.

⁵⁶⁰ República de Colombia. Ministerio de Justicia y del Derecho, Decreto Legislativo 546 de 2020. April 14, 2020.

⁵⁶¹ IACHR, Press Release 66/20 - Frente a la pandemia del COVID-19, la CIDH manifiesta preocupación por la situación especial de riesgo que enfrentan las personas privadas de libertad en la región. September 9, 2020.

⁵⁶² Comisión de Seguimiento de la Sentencia T-388 de 2013 (CSS), Revisión de constitucionalidad del Decreto Legislativo 546 del 14 de abril de 2020, por el cual se adoptan medidas de deshacinamiento en el marco del Estado de Emergencia Económica, Social y Ecológica. May 12. P. 2.

⁵⁶³ Red Europea de Hermandad y Solidaridad con Colombia, Carta abierta al pueblo colombiano, a los pueblos solidarios del mundo, a las organizaciones defensoras de los Derechos Humanos, a las Organizaciones populares, sociales y sindicales, a las Iglesias, a todos aquellos comprometidos con la defensa de la vida, al gobierno nacional. August 26, 2020.

⁵⁶⁴ Semana Noticias, Nota de prensa: "Decreto de excarcelación por covid-19 solo otorgó libertad a 956 presos: Procuraduría". October 6, 2020.

⁵⁶⁵ Eurosocial, Webinar: Medidas alternativas a la privación de libertad en tiempos Covid-19. Retos para el futuro. June 5, 2020.

410. In the observations to the draft of the present report, the State informed that the Penitentiary and Prison System in January 2020 had a population of 124,188 persons deprived of liberty, with an overpopulation of 44,032 persons and an overcrowding index of 54.9%. On April 14, 2020, the President of the Republic signed Decree Law 546, whose objective is to grant measures to substitute the prison sentence and the preventive detention in penitentiary and prison establishments, for house arrest and transitory house arrest in the place of residence to persons who are in a situation of greater vulnerability with respect to COVID-19. Under this decree 989 persons received the transitory substitution of intramural deprivation of liberty⁵⁶⁶.

411. Taking that analysis into account, the IACHR understands that compliance with this recommendation is still pending. It therefore encourages the State to redouble its efforts to reduce the use of pretrial detention and to apply it as an exception, as its nature demands, in accordance with the principles of legality, proportionality, necessity, and reasonableness.

412. With regard to the recommendation to adopt effective measures to ensure the delivery of adequate medical and psychiatric care, ensure external monitoring of health services, and make adequate reparation to persons who have suffered harm stemming from the deficient provision of health services, the State provided information about the Administrative Technical Manual developed by the Penitentiary and Prison Services Unit (USPEC) and the National Penitentiary and Prison Institute (INPEC)⁵⁶⁷. The IACHR observes that the manual in question establishes, among other things, procedures for the delivery of health care services in prisons, including the handling of appointments, the creation of lists of people requesting medical care, and procedures to authorize medical services. According to the State, these procedures show that USPEC has developed effective measures to deliver the medical care required by persons deprived of liberty⁵⁶⁸. However, the State indicates that the necessary corrective measures have yet to be implemented in the national prison system⁵⁶⁹.

413. In the observations sent by the State regarding the draft of this report, it was reported that on the updating of the "Technical Administrative Manual for the implementation of the health care model for the population deprived of liberty under the responsibility of INPEC"⁵⁷⁰.

414. Regarding mental health services specifically, the State reported that work is being done on a model for a prospective payment system to contract out comprehensive psychological services, which would make it possible to expand coverage⁵⁷¹. Meanwhile, according to the Eighth Semiannual Report of the National Government, issued by the Office of the President of the Republic, there continue to be limitations in terms of providing mental health

⁵⁶⁶ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia". 2021. P. 44

⁵⁶⁷ Ministry of Foreign Affairs of Colombia Follow-up report on recommendations of the IV country report "Truth, Justice, and Reparation: Fourth report on the human rights situation in Colombia". October 30, 2020.

⁵⁶⁸ Ministry of Foreign Affairs of Colombia Follow-up report on recommendations of the IV country report "Truth, Justice, and Reparation: Fourth report on the human rights situation in Colombia". October 30, 2020.

⁵⁶⁹ Ministry of Foreign Affairs of Colombia Follow-up report on recommendations of the IV country report "Truth, Justice, and Reparation: Fourth report on the human rights situation in Colombia". October 30, 2020.

⁵⁷⁰ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia". P. 45

⁵⁷¹ Ministry of Foreign Affairs of Colombia Follow-up report on recommendations of the IV country report "Truth, Justice, and Reparation: Fourth report on the human rights situation in Colombia." October 30, 2020.

services for persons deprived of liberty, with on-site prevention and promotion activities and psychological services particularly lacking⁵⁷².

415. In terms of the monitoring of health services, the State noted that the Institutional Management System (SIGI) has two forms for tracking on-site health services: M4-S2-FO-23, Monitoring Tool for Intramural Public Health Promotion and Prevention for Persons Deprived of Liberty; and M4-S2-FO-24, Verification Form for the Provision of Intramural Health Services to Persons Deprived of Liberty⁵⁷³. Finally, with regard to the reparation process, the State indicated that as of the date of its response, USPEC had not been notified of any lawsuits filed due to the delivery of health services to persons deprived of liberty, whether using the mechanism of simple nullification, nullification and restoration of rights, repetition, or any other control mechanism. However, the State indicated that if direct responsibility is established through the courts, USPEC must act in accordance with its obligations as a State entity and provide reparation to the person deprived of liberty and his or her family members, under the terms of the law⁵⁷⁴.

416. For its part, the Follow-Up Committee on Judgment T-388 of 2013 notes that structural problems continue to exist in the country's prison system, particularly weaknesses in health services⁵⁷⁵. Likewise, civil society organizations state that Colombian prisons continue to be characterized by a lack of timely medical care and basic medical services⁵⁷⁶.

417. In the specific context of the emergency surrounding the COVID-19 pandemic, the State reported that since February 2020, the National Penitentiary and Prison Institute (INPEC) has adopted prevention and disinfection measures within the national prisons and has developed guidelines and measures so that these can be implemented by the regional directors of prison facilities⁵⁷⁷. These measures reportedly include the provision of separation alternatives, awareness and education campaigns on measures to prevent the virus, and the delivery of hundreds of biosecurity supplies. According to INPEC, the implementation of these measures has reduced the spread of the virus and helped increase the number of people who have recovered⁵⁷⁸.

418. In the observations sent by the State regarding the draft of this report, it was indicated that the initial care for the entire population deprived of liberty is provided by the health provider contracted by the PPL Health Care Fund Consortium. If more complex care is required, the person is transferred to the External Hospital Network. In addition, the State presented with regard to the supplies and personal protection elements that INPEC makes the

⁵⁷² Presidencia de la República, Octavo Informe semestral del gobierno nacional al Estado de cosas institucional del sistema penitenciario y carcelario, June 9, 2020. P. 58, p. 60.

⁵⁷³ Ministry of Foreign Affairs of Colombia Follow-up report on recommendations of the IV country report "Truth, Justice, and Reparation: Fourth report on the human rights situation in Colombia". October 30, 2020.

⁵⁷⁴ Ministry of Foreign Affairs of Colombia Follow-up report on recommendations of the IV country report "Truth, Justice, and Reparation: Fourth report on the human rights situation in Colombia". October 30, 2020.

⁵⁷⁵ Comisión de Seguimiento de la Sociedad Civil a la Sentencia T-388 de 2013 (CSS), Solicitud de medidas urgentes frente al COVID-19 en el Sistema Penitenciario y Carcelario, March 20, 2020. P. 1.

⁵⁷⁶ Red Europea de Hermandad y Solidaridad con Colombia, Carta abierta al pueblo colombiano, a los pueblos solidarios del mundo, a las organizaciones defensoras de los Derechos Humanos, a las Organizaciones populares, sociales y sindicales, a las Iglesias, a todos aquellos comprometidos con la defensa de la vida, al gobierno nacional, August 26, 2020.

⁵⁷⁷ Ministry of Foreign Affairs of Colombia Follow-up report on recommendations of the IV country report "Truth, Justice, and Reparation: Fourth report on the human rights situation in Colombia". October 30, 2020.

⁵⁷⁸ INPEC, Comunicado de prensa "El INPEC continúa comprometido con la recuperación de sus funcionarios y la población reclusa frente a la pandemia del COVID-19 en las cárceles del país", Boletín No. 079. September 8, 2020.

projection of the same, according to the number of inmates and whether or not there are persons deprived of liberty who have tested positive to the COVID-19 test. Likewise, the State indicated that, on a weekly basis, those responsible for the health area in each of the regions under the responsibility of INPEC follow up and verify the delivery and inventory of personal protection elements for persons deprived of liberty and, in the event that there is evidence of a shortage of protective elements, these must be provided immediately by the Consortium⁵⁷⁹.

419. The Follow-Up Committee on Judgment T-388 of 2013 maintains that the COVID-19 containment measures adopted by the government have not been sufficient and have not been coordinated nationally throughout the prison system⁵⁸⁰. Specifically, this Follow-Up Committee noted the inability to implement hand-washing, given the limited access to water, and the lack of separation, given the high levels of overcrowding. It called on the various State agencies to develop a comprehensive contingency plan that would include the necessary measures to guarantee the life, health, and integrity of persons deprived of liberty⁵⁸¹. In addition, according to publicly available information, the health system in prisons does not have the capacity it needs to address situations of widespread contagion, as with COVID-19⁵⁸².

420. In the observations sent by the State regarding the draft of this report, it was indicated that first level or low complexity health services are provided inside the prisons, including general medicine, nursing, general dentistry, oral hygienists, dental assistants, clinical laboratory sampling and permanent supply of medicines through logistical operators in accordance with their pathologies. Psychiatric care is provided through contracted institutions, as well as for inmates living with the human immunodeficiency virus (HIV). The State affirmed that these services are part-time, full-time and 24-hour services, depending on the number of inmates, installed capacity and security profile of the ERON⁵⁸³.

421. The IACHR therefore finds that there is partial compliance with the recommendation. It reiterates that States have a special obligation to adopt immediate, urgent measures to protect the life, health, and integrity of persons in their custody.

422. In relation to the recommendation to adopt effective measures to guarantee the supply of drinking water in prisons, the State provided information on its plans to intervene in matters related to plumbing, water treatment, and facility maintenance at the 132 prisons in the country⁵⁸⁴. However, it cautioned that the current budget would not cover all the needs that have

⁵⁷⁹ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”. P. 45-46

⁵⁸⁰ Comisión de Seguimiento de la Sociedad Civil a la Sentencia T-388 de 2013 (CSS), Solicitud de medidas urgentes frente al COVID-19 en el Sistema Penitenciario y Carcelario. March 20, 2020. P. 2.

⁵⁸¹ Comisión de Seguimiento de la Sociedad Civil a la Sentencia T-388 de 2013 (CSS), Solicitud de medidas urgentes frente al COVID-19 en el Sistema Penitenciario y Carcelario. March 20, 2020. P. 4.

⁵⁸² Red Europea de Hermandad y Solidaridad con Colombia, Carta abierta al pueblo colombiano, a los pueblos solidarios del mundo, a las organizaciones defensoras de los Derechos Humanos, a las Organizaciones populares, sociales y sindicales, a las Iglesias, a todos aquellos comprometidos con la defensa de la vida, al gobierno nacional. August 26, 2020. See also, Agencia Informativa Latinoamericana, Denuncian falta de médicos y más coronavirus en cárceles de Colombia. July 23, 2020.

⁵⁸³ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”. P. 47

⁵⁸⁴ Ministry of Foreign Affairs of Colombia Follow-up report on recommendations of the IV country report “Truth, Justice, and Reparation: Fourth report on the human rights situation in Colombia,” October 30, 2020.

been identified, based on assessments done on each facility. In addition, the State reported on steps that have been taken through a “needs plan” that is presented to the USPEC, which includes the systems that provide drinking water to inmates, as well as the maintenance and operation of potable water treatment plants and the structural features of each of the facilities. In this context, the State indicated, the water supply in each correctional facility is subject to the circumstances in each municipality, and noted that the Institute promotes access to and continuity of this service for the incarcerated population⁵⁸⁵.

423. The IACHR takes note of the observations of the Follow-Up Committee on Judgment T-388 of 2013 on the importance of the water supply in prisons, particularly in the context of COVID-19⁵⁸⁶. On that point, the Follow-Up Committee points to the lack of access to sufficient water for washing hands and cleaning surfaces, one of the main hygiene measures to prevent infection from the virus⁵⁸⁷. Along these same lines, the organization Comité de Solidaridad con los Presos Políticos (CSPP) has expressed its concern about the insufficient measures to mitigate infection, especially the lack of a steady water supply⁵⁸⁸. The IACHR also takes note of statements made to the press by legislative representatives, indicating that nearly 35 prisons do not have a permanent source of water and that at least 15 fail to meet the standard of providing at least 150 liters per month of water for each person who is incarcerated⁵⁸⁹.

424. Based on the foregoing, the IACHR concludes that there is partial compliance with this recommendation and reminds the Colombian State that failure to supply drinking water is a grave violation of its duty to ensure the rights of persons in its custody.

425. Finally, with respect to the recommendation to ratify the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the State reported that consultations have moved forward with the relevant entities but they have yet to come to a unanimous decision to incorporate that international instrument into the domestic legal framework⁵⁹⁰. The State thus believes that ratification of the Optional Protocol would not be necessary at this time, particularly because it has developed mechanisms that fulfill similar functions. In view of the foregoing, the IACHR concludes that compliance with this recommendation is still pending.

15. The Aggravated Risk to Human Rights Defenders

- Step up its efforts to consolidate a culture of respect for those who defend human rights, both at the different levels of the State and among the citizenry in general, through promotional and educational activities aimed at publicly recognizing the contribution of human rights defenders to upholding human rights in the context of

⁵⁸⁵ Ministry of Foreign Affairs of Colombia Follow-up report on recommendations of the IV country report “Truth, Justice, and Reparation: Fourth report on the human rights situation in Colombia”. October 30, 2020.

⁵⁸⁶ Comisión de Seguimiento de la Sociedad Civil a la Sentencia T-388 de 2013 (CSS), Solicitud de medidas urgentes frente al COVID-19 en el Sistema Penitenciario y Carcelario. March 20, 2020. P.5.

⁵⁸⁷ Comisión de Seguimiento de la Sociedad Civil a la Sentencia T-388 de 2013 (CSS), Solicitud de medidas urgentes frente al COVID-19 en el Sistema Penitenciario y Carcelario. March 20, 2020. P.2.

⁵⁸⁸ Fundación Comité de Solidaridad con los Presos Políticos (CSPP), Nota de prensa “El CSPP inicia visitas de verificación de DDHH en las cárceles colombianas”. June 19, 2020.

⁵⁸⁹ Agencia Informativa Latinoamericana, Denuncian falta de médicos y más coronavirus en cárceles de Colombia. July 23, 2020.

⁵⁹⁰ Ministry of Foreign Affairs of Colombia Follow-up report on recommendations of the IV country report “Truth, Justice, and Reparation: Fourth report on the human rights situation in Colombia,” October 30, 2020.

the armed conflict and in seeking peace and the consolidation of democracy in Colombia.

- Ensure that the authorities of the State or private persons do 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 human rights organizations act improperly or unlawfully because of their work to promote and/or defend human rights.
- Continue designing and implementing comprehensive and effective public policies for protecting human rights defenders at risk, with special attention to those groups of defenders who may be especially vulnerable. As part of this policy, the Commission considers that in addition to material measures of protection, the State should effectively investigate the sources of risk to human rights defenders with the aim of defusing them.
- Guarantee the effective participation of the human rights defenders who are the beneficiaries of the measures in question in all procedures to adopt, implement, monitor, or lift special measures of protection. In particular, the Commission recommends to the State that it ensure that the personnel who participate in the security arrangements for human rights defenders are designated with the participation of and coordinating with the beneficiaries so as to build confidence.
- Develop a public policy aimed at fighting impunity in cases involving violations of the rights of human rights defenders through exhaustive and independent investigations that make it possible to punish both the direct perpetrators and those who planned and ordered the violations. The Commission recommends as part of this policy that the State establish specialized protocols for coordination among prosecutors and, as the case may be, unify the investigations into crimes committed against the same civil society organizations or the same human rights defenders to give impetus to the investigations and possibly determine patterns of attacks, other acts of aggression,

426. With respect to the general situation of vulnerability that human rights defenders face, the Commission recommended to the State that it step up its efforts to consolidate a culture of respect for those who defend human rights, both at the different levels of the State and among the citizenry in general, through promotional and educational activities aimed at publicly recognizing the contribution of human rights defenders to upholding human rights in the context of the armed conflict and in seeking peace and the consolidation of democracy in Colombia.

427. In its response to the IAC, the State recognized the important role played by human rights defenders and their contribution to strengthening the social rule of law, democratic coexistence, and the human rights of all Colombians⁵⁹¹. The State notes that the mission of the Timely Action Plan (PAO) is to “ensure that there are sufficient guarantees for human rights defenders, social and community leaders, and journalists to carry out their work, this by properly

⁵⁹¹ Government of Colombia, Diplomatic Note No. S-GAID-20-021537, Aportes de Colombia para la elaboración del Annual Report de la CIDH – Capítulo IV, Sección A “Panorama anual sobre la situación de los Derechos Humanos por país”, related to 2020. P. 10.

coordinating and managing the existing regulatory mechanisms and agencies in place for promotion, prevention, and protection while issuing guidelines to shape the State's actions.”⁵⁹²

428. The State also indicated that in August 2020 it launched a communication strategy, through a campaign called “#LiderEsColombia,” designed to create a positive perception—among public agencies, private companies, and the general public—of social leaders and human rights defenders by telling their life stories, using different communication tools, in order to reduce the stigma associated with social leadership activities in the country⁵⁹³. The State mentioned various acts of public acknowledgment held to draw attention to the important work of human rights defenders, including women defenders⁵⁹⁴.

429. For their part, civil society organizations have expressed doubts about this campaign, noting specifically that it does not take into account the demands made by human rights organizations in the context of the National Guarantees Working Group (MNG). They believe that these demands, whether to prevent stigmatization or strengthen protection, have not been reflected in the campaign; to the contrary, they see the launch of the campaign as a mere media strategy⁵⁹⁵. The organizations also informed the Commission that this campaign is the result of a court order, that the campaign was not developed in conjunction with civil society organizations, and that they are not familiar with its content⁵⁹⁶.

430. The Commission welcomes the State’s recognition of the importance of the work done by human rights defenders and the steps it has taken to promote the importance of the activities they carry out in defense of human rights. In this regard, it reminds the State that its authorities must refrain from making denigrating statements or spreading negative views about the work of human rights defenders, and underscores the importance of their work in terms of strengthening and consolidating the rule of law. In view of the foregoing, the Commission finds that there is substantial compliance with this recommendation.

431. With regard to the criminalization and stigmatization of human rights defenders, the Commission recommended that the State ensure that the authorities of the State or private persons do not use the punitive power of the State and its organs of justice to criminalize human rights defenders in retaliation for their activities protecting human rights. It also recommended that the State ensure that its officials refrain from making statements that stigmatize human rights defenders or that suggest that human rights organizations act improperly or unlawfully because of their work to promote and/or defend human rights.

432. On this point, the State informed the Commission about the progress being made on the development of a national policy on respecting and protecting the work of human rights defenders. It indicated that it has held various workshops with the participation of civil society

⁵⁹² Government of Colombia, Diplomatic Note MPC/OAS No. 1669/2020, Follow-up Report on Recommendations of the IV Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia” emphasis 2020. October 30, 2020. Par. 1088.

⁵⁹³ Government of Colombia, Diplomatic Note MPC/OAS No. 1669/2020, Follow-up report on recommendations of the IV Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”, emphasis 2020. October 30, 2020. P. 262.

⁵⁹⁴ Government of Colombia, Diplomatic Note MPC/OAS No. 1669/2020, Follow-up report on recommendations of the IV Country Report “Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia”, emphasis 2020. October 30, 2020. P. 263.

⁵⁹⁵ Programa Somos Defensores, El virus de la violencia, November 20, 2020. P. 60.

⁵⁹⁶ Information presented by civil society organizations during a technical meeting held on January 22, 2020.

organizations and territorial authorities, to receive their input and incorporate it into the policy guidelines. It also indicated that it has taken steps to coordinate the guidelines established in the framework of the Public Policy on Comprehensive Protection and Guarantees for Social and Community Leaders, Journalists, and Human Rights Defenders with the processes to formulate the territorial development plans of the new municipal and departmental administrations for 2020–2023⁵⁹⁷.

433. The Commission reminds the Colombian State that criminalizing human rights defenders is a complex obstacle, as it has a multifaceted impact on the free exercise of the defense of human rights⁵⁹⁸. In this regard, the Commission appreciates the progress made on the development of a national policy to protect the work of human rights defenders, and views as positive a reduction in the use of punitive power and of judicial bodies to criminalize human rights defenders. Based on its analysis, the Commission finds that there is substantial compliance with this recommendation.

434. With respect to the recommendation to the State to continue designing and implementing comprehensive public policies for protecting human rights defenders at risk, the State reported that the main objective laid out in the Timely Action Plan is to seek out and establish guarantees for the defense of human rights, by coordinating and guiding the implementation of suitable, timely, and effective prevention and protection mechanisms for human rights defenders, social and community leaders, and journalists⁵⁹⁹. The State also indicated that this plan seeks to “ensure that no human rights defenders, social and community leaders, or journalists are killed for doing their work, and ensure that the necessary guarantees are in place for this population to be able to do its work.”⁶⁰⁰ The State has not provided any further information on the progress made in implementing this policy, which it had explained in the context of the 2019 follow-up report⁶⁰¹.

435. Likewise, the State pointed to the progress made in the process of developing the national policy on respecting and protecting the work of human rights defenders. It mentioned that workshops were held in 2020 with civil society and territorial authorities to receive input on the development of the public policy, although it also indicated that this process was truncated due to current pandemic-related restrictions⁶⁰². The State also reported that this

⁵⁹⁷ Government of Colombia, Diplomatic Note MPC/OAS No. 1669/2020, Follow-up Report on Recommendations of the IV Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia" emphasis 2020. October 30, 2020. Par. 1121 and 1122.

⁵⁹⁸ IACR, Verdad, justicia y reparación: Cuarto informe sobre la situación de derechos humanos en Colombia, OEA/Ser.L/V/II. 31 December 2013. Par. 1193.

⁵⁹⁹ Government of Colombia, Diplomatic Note MPC/OAS No. 1669/2020, Follow-up Report on Recommendations of the IV Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia" emphasis 2020. October 30, 2020. P. 261.

⁶⁰⁰ Government of Colombia, Diplomatic Note MPC/OAS No. 1669/2020, Follow-up report on recommendations of the IV Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", emphasis 2020. October 30, 2020. Par. 1089.

⁶⁰¹ IACR, Annual Report 2019, Capítulo V, Seguimiento de recomendaciones formuladas por la CIDH en sus informes de país o temáticos. Seguimiento de recomendaciones formuladas por la CIDH en el informe Verdad, Justicia y Reparación: quinto informe sobre la situación de derechos humanos en Colombia, párr. 289.

⁶⁰² Government of Colombia, Diplomatic Note MPC/OAS No. 1669/2020, Follow-up report on recommendations of the IV Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", emphasis 2020. October 30, 2020. Par. 1121.

policy was being developed in coordination with the territorial plans for the 2020–2023 period⁶⁰³.

436. Civil society organizations continue to express their concern regarding various aspects of the Timely Action Plan. In addition to issues already mentioned in the 2019 follow-up report, they stressed that this policy gives more weight to the actions of the Armed Forces than to other State institutions⁶⁰⁴. The organizations indicate that the State's strategy has been focused on a military strategy that appears to be at the heart of the security and protection measures, one which the organizations claim is not creating guarantees and, to the contrary, is increasing violations of the rights of the civilian population in the territories. They point out that this was evidenced in the first half of 2020, according to their records, by a 157% increase in attacks against human rights defenders by the security forces⁶⁰⁵.

437. In addition, Amnesty International points out that the violence against human rights defenders specifically targets members of indigenous peoples and communities of African descent, people who defend the right to the land and the environment, and those who defend the implementation of the Peace Agreement. The organization indicates that the dynamics of targeted violence follow common patterns with respect to the profiles of those who are killed and the areas where the killings occur, adding that the territories in dispute between paramilitary groups and other illegal armed actors are where there are more killings of people defending the land⁶⁰⁶. In that regard, the MAPP/OAS noted the persistence of impacts on social leaders and, in particular, on ethnic/territorial authorities, as a result of the presence and operations of illegal armed groups during the first half of 2020⁶⁰⁷.

438. The Commission is concerned to observe that attacks on human rights defenders continued to occur in 2020. In the course of the year, the Commission continued to receive pressing information regarding a large number of murders of human rights defenders, particularly social, indigenous, and Afrodescendent leaders. The IACR is concerned that, according to information provided by civil society, the number of attacks recorded just in the first half of 2020 represented an increase of 61% over the first half of 2019⁶⁰⁸.

439. State figures show that 53 human rights defenders were murdered from January to December 2020⁶⁰⁹. For its part, the Office of the United Nations High Commissioner for Human Rights (OHCHR) reported that as of December 15, 2020, there had been 120 killings of human

⁶⁰³ Government of Colombia, Diplomatic Note MPC/OAS No. 1669/2020, Follow-up report on recommendations of the IV Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", emphasis 2020. October 30, 2020. Par. 1122.

⁶⁰⁴ Programa Somos Defensores, El virus de la violencia, November 20, 2020, p. 73; Comisión Colombiana de Juristas, El riesgo de defender y liderar: Pautas comunes y afectaciones diferenciales en las violaciones de los derechos humanos de las personas defensoras en Colombia, October, 2020. P. 323.

⁶⁰⁵ Programa Somos Defensores, El virus de la violencia, November 20, 2020, p. 60.

⁶⁰⁶ Report provided by Amnesty International to the IACR on November 19, 2020, on file with the IACR.

⁶⁰⁷ OAS, Vigésimo Noveno Informe del Secretario General al Consejo Permanente sobre la Misión de Apoyo al Proceso de Paz en Colombia de la Organización de los Estados Americanos (MAPP/OEA), OEA/Ser.G CP/doc.5668/20. December 10, 2020. P. 12.

⁶⁰⁸ Programa Somos Defensores, El virus de la violencia, November 20, 2020.

⁶⁰⁹ Government of Colombia, Diplomatic Note MPC/OAS No. 0043/21 received on January 21, 2020.

rights defenders, 53 of which were confirmed⁶¹⁰. Meanwhile, the Somos Defensores Program reported that there had been 135 killings of human rights defenders through September 2020⁶¹¹.

440. Moreover, the Commission has observed that the current context created by the COVID-19 pandemic has laid bare the ongoing vulnerability and risk that human rights defenders face from illegal armed groups that are reportedly taking advantage of the pandemic to strengthen their presence in the territory by killing social leaders in various parts of the country. The IACR expressed its concern that many of the killings perpetrated during the first half of 2020 reportedly occurred while the victims were isolated, in compliance with the measures adopted by the State to address the pandemic⁶¹². For its part, the Colombian Ombudsperson's Office, in its Early Alert 18-20, pointed to the impact that violence by illegal armed groups has had on the work of defending human rights in the context of the pandemic, particularly because of the isolation measures that were ordered⁶¹³.

441. With regard to threats, the IACR observes that according to information provided by civil society, during the first half of 2020 there were 274 cases of individual threats reported, with this category being the only one to show a decline, of 43%, when compared with 2019⁶¹⁴. For its part, the MAPP/OAS identified individual and collective threats as an intrinsic risk in the work of leadership and noted that most of these incidents take place in departments such as Bolívar, Cauca, Cesar, Norte de Santander, Putumayo, and Valle del Cauca⁶¹⁵. The Commission notes that threats are intimidating warnings about possible attacks that would endanger the physical and mental capacity of human rights defenders. That is why the State must diligently take on these types of aggressions, both from a prevention standpoint, by conducting effective investigations, and in its reaction to them, by granting appropriate and effective protection measures⁶¹⁶.

442. The Commission reiterates that one of the main issues required to address the situation of violence faced by defenders is for the State to keep records of the different types of attacks perpetrated against human rights defenders and social and community leaders. In that regard, the State reported on efforts undertaken by the Presidential Council on Human Rights and International Affairs to harmonize the information, specifically the statistics on homicides of social and community leaders and human rights defenders in Colombia. It pointed to quarterly reports that identify the contexts, territories, and classification of types of leaders most affected

⁶¹⁰ OHCHR, Bachelet insta a Colombia a aumentar la protección de la población debido al aumento de la violencia en zonas rurales, December 15, 2020.

⁶¹¹ Programa Somos Defensores, El virus de la violencia, November 20, 2020.

⁶¹² IACR, Press Release No. 174/20, CIDH expresa su preocupación por asesinatos contra personas defensoras de derechos humanos y líderes sociales durante el primer semestre del año en Colombia, July 23, 2020.

⁶¹³ Defensoría del Pueblo Colombia, Alerta Temprana N° 018-2020. April 30, 2020. P. 12.

⁶¹⁴ Programa Somos Defensores, El virus de la violencia. November 20, 2020. P. 118.

⁶¹⁵ OAS, Vigésimo Noveno Informe del Secretario General al Consejo Permanente sobre la Misión de Apoyo al Proceso de Paz en Colombia de la Organización de los Estados Americanos (MAPP/OEA), OEA/Ser.G CP/doc.5668/20. December 10, 2020. P.14.

⁶¹⁶ IACR, Informe sobre la situación de personas defensoras de derechos humanos y líderes sociales en Colombia, OEA/Ser.L/V/II. Doc. 262, December 6, 2019. Par. 129.

by human rights violations, as well as the main steps the State has taken in the area of prevention, protection, and investigation⁶¹⁷.

443. The Commission welcomes these types of measures implemented by the State to keep better records of attacks on human rights defenders. While these quarterly reports refer to information collected by civil society organizations and the Ombudsperson's Office, the Commission notes that in the case of murders of human rights defenders, the reports use only the numbers provided by the OHCHR, which may not reflect all the cases that have occurred. The IACHR reiterates the importance of classifying the murder victims as human rights defenders; thus, it is essential to cross-check the official figures available with those provided by civil society organizations.

444. In that regard, the Commission has indicated to the State that it is important to take into consideration the records kept by civil society organizations and the Ombudsperson's Office on killings of defenders, and emphasized the importance of classifying the victims of killings; thus, it is essential to cross-check the official figures available with those provided by civil society⁶¹⁸. The Commission also notes that it is important to keep complete, detailed records of the attacks in order to determine the motives behind them, any patterns they have in common, and the extent of the violence, and then adopt prevention, investigation, and protection measures for human rights defenders and leaders.

445. The Commission takes note of the information provided by the State in its observations on the draft of this report, regarding the plan presented by the Presidential Advisory Office for Human Rights and International Affairs (CPDDHIA) to the Intersectoral Commission for Human Rights and International Humanitarian Law, which contains the Methodological Route for the construction of the National Plan of Action on Human Rights and International Humanitarian Law⁶¹⁹.

446. Based on the foregoing, the Commission observes that the information submitted by the State does not make it possible to identify concrete measures that would be reflected in a decrease in attacks against human rights defenders in 2020. The Commission reminds the State that the defense of human rights can be exercised freely only when human rights defenders are not victims of threats or any type of physical, psychological, or moral aggression or other forms of harassment, reprisals or improper pressure⁶²⁰. Therefore, the Commission finds that compliance with this obligation is still pending.

447. In its report, the Commission recommended that the State guarantee that human rights defenders who are the beneficiaries of special measures of protection can effectively participate in all procedures to adopt, implement, monitor, or lift these measures. In particular, it recommended that the State ensure that the personnel who participate in the security

⁶¹⁷ Government of Colombia, Contributions of Colombia for the preparation of the Annual Report of the IACHR - Chapter IV, Section A "Annual overview of the human rights situation by country" for 2020. Par. 45.

⁶¹⁸ IACHR, Informe sobre la situación de personas defensoras de derechos humanos y líderes sociales en Colombia, OEA/Ser.L/V/II. Doc. 262, December 6, 2019. Par. 168.

⁶¹⁹ Observations of the Colombian State on the draft annual report in follow-up to the recommendations made by the IACHR in the Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia". P. 47

⁶²⁰ IACHR, Informe sobre la situación de personas defensoras de derechos humanos y líderes sociales en Colombia, OEA/Ser.L/V/II. Doc. 262, December 6, 2019. Par. 200.

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

448. In that regard, the State reported that the UNP was being overhauled in an effort to strengthen and enhance the sense of commitment and purpose of the human talent toward the populations they serve, with knowledge, understanding, and improved competence on human rights matters and differentiated approaches, so as to build increasingly better relationships with those they are protecting⁶²¹. The State also reported, with regard to the protection measures provided by the National Protection Unit (UNP), that there are currently 3,686 social leaders with protection arrangements in place, 1,235 human rights defenders with these same measures, and 458 former FARC combatants with security arrangements⁶²². It also reported that regional offices have been strengthened, protection arrangements have implemented differentiated approaches, and collective protection arrangements have been fortified. It noted that there had been a significant increase in financial resources for the protection program, which went from 32,022,069,174 Colombian pesos in 2019 (US\$8 million) to 939,365,926,632 pesos (\$255 million) in 2020⁶²³.

449. For their part, civil society organizations informed the Commission about various challenges that have arisen within the UNP. They said that the process of conducting risk assessments was backed up, leading to delays in the implementation of protection measures⁶²⁴. They also believe that the implementation of protection measures with a differentiated gender or ethnic approach is still in its very early stages, which they said results in inadequate measures being implemented. The organizations also stress that collective protection continues to be one of the UNP's main weak points, claiming that there are limitations in terms of implementing the collective protection measures required by social organizations, especially in rural areas⁶²⁵.

450. The Commission has not received information regarding the effects that the budget increase would have in the implementation of protection measures. Nor has it received information on the progress made in the overhaul plan and any effects that might have on the operation of the protection mechanisms. Based on the information it received, the IACtHR considers that compliance with this obligation is still pending.

451. Regarding the recommendation to develop a public policy aimed at fighting impunity in cases involving violations of the rights of human rights defenders, the State indicated that since 2016, the Attorney General's Office (FGN) has had a specific strategy for investigating and prosecuting crimes against human rights defenders in the country. It said that beginning in 2020, three fundamental aspects have been emphasized: the strengthening of the Special Investigation Unit; the appointment of regional prosecutors in the areas where human rights

⁶²¹ Government of Colombia, Diplomatic Note MPC/OAS No. 1669/2020, Follow-up report on recommendations of the IV Country Report "Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia", emphasis 2020, October 30, 2020, par. 179.

⁶²² Government of Colombia Contributions of Colombia for the preparation of the Annual Report of the IACtHR - Chapter IV, Section A "Annual Overview of the Human Rights Situation by Country" Corresponding to 2020, par. 50.

⁶²³ Government of Colombia Contributions of Colombia for the preparation of the Annual Report of the IACtHR - Chapter IV, Section A "Annual Overview of the Human Rights Situation by Country" Corresponding to 2020, par. 53.

⁶²⁴ Race and equality, Unidad Nacional de Protección no está protegiendo a dos lideresas afrocolombianas en riesgo extremo, December 31 2020.

⁶²⁵ Comisión Colombiana de Juristas, El riesgo de defender y liderar: Pautas comunes y afectaciones diferenciales en las violaciones de los derechos humanos de las personas defensoras en Colombia, October 2020, p. 313 and 314.

defenders are most affected; and the consolidation of investigation projects that prioritize crimes against this population attributable to criminal organizations⁶²⁶.

452. In terms of homicides that are investigated in the regular jurisdiction, the State reported that the Attorney General's Office has made progress in clearing 59.8% of cases. The FGN has a case load of 398 homicides, given that 6 cases are under the jurisdiction of military justice and 13 under indigenous jurisdiction. The State also reported that as of September 16, 2020, the Attorney General's Office had obtained convictions in 61 homicides of human rights defenders and social leaders that occurred from 2016 to 2020⁶²⁷.

453. The State has explained that violations of the rights of human rights defenders in Colombia are perpetrated mainly by organized armed groups, are not seen throughout the territory, and are focused in regions with a presence of illicit crops or illegal mineral extraction⁶²⁸. In this regard, civil society has indicated that although the Colombian government, through the Attorney General's Office, has a history of carrying out complex investigations into organized crime, including drug trafficking, "it has not applied the same techniques and attention to the murder of human rights defenders. Rather, efforts to investigate the murder of defenders have been hampered by political interference in investigations. Some progress has been made in investigating the direct perpetrators of the crimes, but authorities have not regularly investigated the masterminds."⁶²⁹ Civil society organizations also informed the IACtHR that progress in the investigations has centered on punishing those who carried out the crimes rather than investigating those who planned them. They also reported on the lack of investigation into threats against human rights defenders⁶³⁰.

454. The IACtHR has established that as part of their obligation to protect, States must take timely and diligent steps to investigate, establish patterns, and punish any aggression committed against human rights defenders because of their work, so as to prevent other actions from being taken against them. In its Report on the Situation of Human Rights Defenders and Social Leaders in Colombia, published in December 2019, the Commission urged the State to continue to take steps to conduct serious, prompt, thorough, independent, and impartial investigations of the masterminds and perpetrators of attacks and prosecute and punish them in accordance with the law and with inter-American human rights standards⁶³¹. This should include developing lines of investigation that follow the theory that these murders could have been committed in connection with the person's work of defending human rights. Specifically, the Commission reminds the State that it should continue to incorporate a differentiated

⁶²⁶ Government of Colombia Contributions of Colombia for the preparation of the Annual Report of the IACtHR - Chapter IV, Section A "Annual Overview of the Human Rights Situation by Country" Corresponding to 2020, par. 46 and following.

⁶²⁷ Government of Colombia Contributions of Colombia for the preparation of the Annual Report of the IACtHR - Chapter IV, Section A "Annual Overview of the Human Rights Situation by Country" Corresponding to 2020, par. 46 and following.

⁶²⁸ Government of Colombia Contributions of Colombia for the preparation of the Annual Report of the IACtHR - Chapter IV, Section A "Annual Overview of the Human Rights Situation by Country" Corresponding to 2020, para. 44.

⁶²⁹ Center for Human Rights, American Bar Association (ABA), Informe preliminar sobre el Plan de acción para la protección de los defensores de derechos humanos en riesgo. July 2020. P. 3 IACtHR's archives.

⁶³⁰ Information presented by civil society organizations during a technical meeting held on January 22, 2020.

⁶³¹ IACtHR, Informe sobre la situación de personas defensoras de derechos humanos y líderes sociales en Colombia, December 6, 2019. p. 76

ethnic/racial and gender perspective in the investigation, prosecution, punishment, and reparation of these crimes⁶³².

455. The Commission recognizes the progress made by the State in investigating crimes against human rights defenders. Nevertheless, it observes that challenges remain with regard to reducing impunity for these crimes. In this regard, it calls on the State to continue to conduct thorough, serious, and impartial investigations that make it possible to identify and punish not only those who carry out the killings but also the masterminds. Therefore, the IACHR finds that compliance with this obligation is still pending.

V. CONCLUSIONS

456. The Commission recognizes the efforts the State has made to develop public policies on human rights to address the complex circumstances of victims of the conflict, its efforts to serve and protect people at risk, and the significant investment in human and financial resources in these areas.

457. Nevertheless, based on the information and considerations laid out in this report, the Commission reminds the State of Colombia of the need to continue to deploy every effort to comply with the recommendations included in the report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia, as well as to develop and sustain the results achieved so far.

458. The Commission expresses its concern regarding the continuing violence that has a particular impact on groups that historically and structurally have experienced violations of their human rights; these include indigenous peoples, Afro-Colombians, children and adolescents, women, LGTBI persons, and particularly human rights defenders and social leaders. The IACHR reminds the State that defenders, leaders, and ethnic authorities are fundamental to the rule of law, and it urges the State to redouble its efforts to protect their rights to life, personal integrity, liberty, and other fundamental guarantees. In this regard, the Commission reiterates the need to allocate more resources to strengthen the prevention and protection systems, such as timely responses to the Early Alert Systems and the adoption of protection measures that take an ethnic/racial, gender, or intersectional approach. The Commission also calls on the State to continue advancing the investigation of crimes committed against human rights defenders, especially with regard to the masterminds of these crimes.

459. The IACHR calls on the State to redouble its efforts to comprehensively implement the Peace Agreement, understanding that it represents an opportunity and a path to address the structural causes of violence in the country.

460. The Commission will continue to work with the State in the quest for solutions to the problems and challenges identified in this report and will accompany, within the scope of its mandate, the implementation and monitoring of the measures that the State has deployed, under the Peace Agreement, as part of its efforts to effectively address the obstacles faced by the victims of human rights violations in Colombia and comply with its international obligations.

⁶³² IACHR, Informe sobre la situación de personas defensoras de derechos humanos y líderes sociales en Colombia, December 6, 2019. p. 94 and following.