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**REPORT ON THE IMPLEMENTATION OF THE JUSTICE
AND PEACE LAW: INITIAL STAGES IN THE
DEMOBILIZATION OF THE AUC AND FIRST
JUDICIAL PROCEEDINGS**

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I. INTRODUCTION AND BACKGROUND

1. Towards the middle of 2006 the Republic of Colombia completed the initial stage of demobilizing the United Self-Defense Forces of Colombia (hereinafter "the AUC")¹, an illegal armed group involved in committing crimes during the armed conflict.² This initial stage consisted of the surrender of weapons by 31,670 individuals identified as members of 38 units of the AUC,³ and other armed groups operating outside the law, in temporary concentration zones, with international verification by the OAS Mission to Support the Peace Process in Colombia (hereinafter the "MAPP/OEA Mission").

2. Now that this stage is over, the process faces challenges in establishing the responsibility of demobilized personnel who committed crimes, and arranging reparations for victims, pursuant to Law 975 of 2005, the "Justice and Peace Law".⁴ Subsequently, that law was challenged as unconstitutional before the Constitutional Court. In response, the Constitutional Court ruled that Law 975 was in general terms constitutional, and it set out conditions for making certain of its provisions compatible with the Constitution.⁵

3. A further fundamental aspect of this process is to ensure the effective dismantling of the armed structures that took part in the demobilization process, and the gradual reintegration of

¹ In 2003 the Government of President Alvaro Uribe reached an agreement with the leaders of the AUC to demobilize the units of that illegal armed group in various parts of the country, in exchange for a resolution issued by the Prosecutor General's office to bar prosecution of demobilized personnel for having simply belonged to an illegal armed group, and the promise to establish alternative penalties for those who had committed crimes as members of such groups. See the "Agreement of Santa Fe de Ralito" to contribute to peace in Colombia, of July 15, 2003. The text of that agreement is available at the web page of the Office of the High Commissioner for Peace: www.altocomisionadoparalopez.gov.co/acuerdos/index.htm

² Over the last 15 years, participants in the internal armed conflict, in particular the AUC and the FARC-EP, have committed massacres as a strategy against the most vulnerable sectors of society such as indigenous peoples, communities of African descent, and displaced persons, and have carried out selective assassinations and kidnappings against human rights defenders, justice workers, labor and social leaders, journalists, and political candidates for election, who have repeatedly been declared military objectives, primarily by the AUC. Dissident armed groups, in particular the FARC-EP, have also carried out indiscriminate bombings and kidnappings in violation of the most basic principles of international humanitarian law, causing numerous victims among the civilian population.

³ See www.altocomisionadoparalopez.gov.co/desmobilizaciones.

⁴ For more than a year and a half the process of demobilization, surrender of weapons and reintegration into civilian life was carried out under existing individual and collective demobilization legislation pursuant to Decree 128 of 2000 and Law 782 of 2002. In June 2005 the National Congress approved Law 975, which came into force on July 22, 2005. On December 30, 2005, Decree 4760 was adopted by the Ministry of Interior and Justice regulating certain aspects of Law 975 dealing with time limits for investigating persons seeking to qualify for benefits under the law (Article 4) and introducing the principle of opportunity in favor of third persons relating to the acquisition, possession, holding, transfer and in general ownership of illicit goods that may be delivered for the reparation of victims (Article 13). On September 29, 2006 Decree 3391 of the Ministry of Interior and Justice was published, regulating portions of Law 975 of 2005.

⁵ Among the parameters for interpretation established by the Constitutional Court were rules to protect victims' participation in the process, and to give them access to full reparations. The judgment also clarifies the obligation to enforce the reduced prison sentence stipulated therein and to introduce legal consequences, such as loss of benefits, if demobilized personnel claiming benefits under the law should withhold information from the judicial authorities. The judgment also made clear that paramilitary activity is a common crime. In short, demobilized personnel who committed crimes during the armed conflict and who apply for the benefits of Law 975 will have to cooperate with justice so that the rights of victims to the truth, to justice, to reparations, and to no repetition can be realized. Constitutional Court, Case D-6032, Judgment C-370/06, made public on July 13, 2006.

their members into society, to ensure that there will be no repetition of crimes under international law, violations of human rights, and grave breaches of international humanitarian law.

4. The Inter-American Commission on Human Rights (IACHR) has given special attention to monitoring the human rights situation in Colombia, and the use of mechanisms for demobilizing participants in the armed conflict and putting an end to the violence that has afflicted the people of Colombia for the last four decades.⁶ Also, since 2004, the IACHR has followed up on the situation as part of its advisory role to the member states of the OAS, the Secretary General of the Organization and the MAPP/OAS Mission.⁷ This report presents the IACHR's conclusions on its *in loco* observations as to the functioning of the demobilization circuits and the first judicial proceedings for implementing the Justice and Peace Law.⁸

5. On August 2, 2007 the Commission transmitted a copy of the draft report to the Colombian State with 30 days to present observations. In a communication dated September 4, 2007 the State submitted its observations.⁹ On September 5, 2007, the State submitted additional observations.¹⁰

6. The first part of this report addresses the results of the initial stages of the demobilization process. It examines the performance of the agencies involved in identifying the members of AUC units and other armed groups that have submitted to the process; the information system organized for this stage, its potential and the lost opportunities in terms of producing relevant information for fulfilling the objectives set for the demobilization process. The second part of the report examines the first judicial proceedings for implementing the Justice and Peace Law. This section examines the persistent uncertainty as to the rules of the game for the process, and how this is affecting the work of State agencies. It also notes the importance of information collected during the initial stage of demobilization, and how some problems from that stage have led to delays and obstructions in the judicial phase. It offers some evaluations as to the initial proceedings by the Prosecutor General's Office, and in particular its role and its institutional capacity to investigate crimes and to verify the legal requirements for eligibility for reduced penalties. The third part of the report addresses the question of participation by victims in the initial

⁶ See IACHR, *Third Report on the Human Rights Situation in Colombia*, of February 1999; Report on the Demobilization Process in Colombia of December 13, 2004; *Statement of the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia, 2006*. OEA/Ser/L/V/II. 125 Doc. 15, 1 August 2006. See also Chapter IV of the IACHR annual reports for the years 1995, 1996, 1999, 2000, 2001, 2002, 2003, 2004, 2005 and 2006.

⁷ OAS Permanent Council, Resolution CP/859 (1397/04), of February 6, 2004 "Support to the Peace Process in Colombia", operative paragraph 3. OEA/Ser. G CP/RES. 859 (1397/04) of 6 February 2004.

⁸ The information was obtained from interviews with entities directly involved and from observations on the ground. The IACHR has monitored those aspects of the process that fall within its competence, through contacts with government entities, organizations and members of civil society in the course of field observations conducted in July 2004 (Bogotá and Medellín), February 2005 (Bogotá), June 2005 (Bogotá, Valledupar and Quibdó), December 2005 (Bogotá), February 2006 (Bogotá), March 2006 (Valledupar), April 2006 (Apartadó), May 2006 (Bogotá), January 2007 (Bogotá and Medellín), and April 2007 (Bogotá, Barranquilla and Medellín). In the course of all those visits the IACHR delegations enjoyed full cooperation from the government, the MAPP/OEA Mission and civil society, as well as from intergovernmental organizations with a presence in Colombia.

⁹ Observations of the Republic of Colombia to the "*Report of Inter-American Commission on Human Rights on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings*". Note DDH No. 45284/2465/07 from the Human Rights and International Humanitarian Law Unit of the Ministry of Foreign Affairs, September 4, 2007.

¹⁰ Additional observations of the Republic of Colombia to the "*Report of Inter-American Commission on Human Rights on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings*". Note DDH No. 45497/2475/07 from the Human Rights and International Humanitarian Law Unit of the Ministry of Foreign Affairs, September 5, 2007.

stages of the process, the availability of mechanisms for protecting victims, witnesses and justice workers, and the problems observed in the reparations system. Finally, the fourth part of the report refers to the challenges of reincorporating demobilized personnel into civilian life. The IACHR concludes its report with a series of observations and recommendations.

7. In the following section, the Commission discusses the results and conclusions from its observation of the conduction and results of two demobilization circuits, together with a series of considerations on the legal framework surrounding the resolution barring prosecution of demobilized personnel for participating in illegal armed groups, and the processes pursued in the context of the Justice and Peace Law.

II. OBSERVATIONS ON THE INITIAL PHASE OF THE DEMOBILIZATION PROCESS

8. Given the importance in terms of clarifying the crimes perpetrated during the armed conflict, the IACHR conducted a series of visits in the designated "concentration zones" for assembling persons for demobilization, in order to observe the work of the entities involved in identifying the members of those structures. For both logistic and substantive reasons, visits were conducted to observe a series of demobilizations in the departments of Cesar¹¹ and Antioquia.¹² Specifically, on February 27, 2006 the delegation observed the demobilization of members of the *Bloque Norte* II and III, led by Rodrigo Tovar Pupo alias "Jorge 40",¹³ of the Autodefensas Unidas de Colombia (AUC) with influence in the departments of Cesar, la Guajira and Atlántico.¹⁴ On April 25, 2006 the delegation observed the demobilization of the Bloque Élmer Cárdenas, led by Freddy Rendón alias "El Alemán", with influence in the area of Urabá Chocoano and Western Antioquia.¹⁵ These IACHR visits, aimed at observing the judicial circuits and the surrendering of weapons in the field, were carried out at the invitation and with the support of the Government of Colombia, which facilitated broad and unrestricted access to all areas and activities of the circuits.

A. Observations on the conduction of two demobilization circuits

9. Prior to the formal act of demobilization and surrender of weapons, members of the illegal armed groups were assembled in "concentration zones" designated for that purpose. The so-called "judicial circuit" for demobilization was intended to identify those who had submitted to

¹¹ IACHR Report N° 71/05 Ever de Jesús Montero Mendiola and Report N° 72/05 Juan Eneñas Daza Carrillo, in IACHR *Annual Report 2005*. I/A Court H.R., Provisional Measures requested by the Inter-American Commission on Human Rights with respect to Colombia, *Pueblo Indígena Kankuamo case*, Resolution of July 5, 2004. On September 23, 2004 the IACHR granted precautionary measures in favor of the leaders of the wayúu indigenous people in the department of La Guajira. On February 4, 2005, the IACHR granted precautionary measures in favor of the members of the wiwa indigenous people of the Sierra Nevada de Santa Marta.

¹² See Report N° 86/06, Operation Genesis, in IACHR, *Annual Report 2006*. On December 17, 1997 the IACHR granted precautionary measures in favor of persons of African descent displaced by the military operation known as "Operation Genesis" in Bajo Atrato, Department of Chocó. See also Inter-American Court, provisional measures requested by the IACHR with respect to Colombia, for members of the communities of African descent of the Community Council of Jiguamiando and the families of Curbarado in the Municipality of Carmen del Darien, Department of Choco, Resolution of March 6, 2003.

¹³ Jorge 40 has been accused *inter alia* of massacring indigenous people of wiwa and wayúu ethnic groups in 2004 and of killing eight persons in Curumaní in December 2005, in violation of a commitment to cease hostilities agreed upon with the Government, a matter for verification by the MAPP/OEA Mission.

¹⁴ Given the great number of persons involved in the demobilization of this unit, estimated at 4,500 individuals, the High Commissioner for Peace and the leaders of the unit agreed to establish, in parallel, two special concentration zones in Chimila (Municipio del Copey) and La Mesa (Corregimiento de Valledupar), both in the Department of Cesar, to facilitate the concentration of persons to be demobilized.

¹⁵ The delegation visited the "concentration zone" in "El Cuarenta" in the Municipio of Apartadó and observed the demobilization of 150 of the 484 members of the second group of that unit, who went through the judicial circuit.

demobilization, leave a record their membership of the illegal armed structure,¹⁶ and verify their judicial record for purposes of issuing a resolution (*resolución inhibitoria*) whereby the national prosecutor's office would be barred from prosecuting them for the crime of sedition, under Law 782 of 2002.¹⁷

10. The State indicated in its observations to the present report that the procedure to fill in and accept the listings of the demobilized is ruled by Decree 3360 of 2003, pursuant to Article 53 of Law 418 of 1997, extended and modified by Law 548 of 1999, and by Article 21 of Law 782 of 2002 which provides that the connection to the illegal armed group shall be evidenced *inter alia* by "the express recognition of the leaders and representatives of the group". The State indicates that the listings of the demobilized filled in and accepted pursuant to Decree 3360 of 2003 have been "sent timely, for the pertinent effects", by the Office of the High Commissioner for Peace to the following authorities and competent entities: Ministry of Interior and Justice, High Counsel for the Social and Economical Reintegration of Individuals and Armed Groups, Office of the General Procurator, Office of the General Prosecutor and Superior Counsel for the Judiciary.¹⁸

11. According to the interviews conducted with officials of the Office of the High Commissioner for Peace, the leaders of the units were supposed to identify members of the armed unit under their command who had agreed to demobilization. In practice, this list was prepared and expanded in the concentration zone at the time of demobilization, as the High Commissioner and the MAPP/OAS Mission facilitated the arrival of these persons in the concentration zone. The Office of the High Commissioner for Peace had an estimate of persons to be demobilized, provided by military intelligence.

12. IACHR observed that failure to present this list, encouraged persons who did not necessarily belong to the armed unit in question to participate of the demobilization circuits. The incentive was the social and economic benefits offered as part of the demobilization process by officials of the Office of the High Commissioner for Peace. Every demobilized person received a subsidy of 358,000 pesos for 18 months. In the concentration zone, information was provided indicating that in some cases the leaders had encouraged noncombatant civilians to participate of the demobilization circuits and claim membership in the paramilitary group in order to obtain economic benefits and then reward the leader with a percentage of the amount received from the Government. For its part, the State indicates in its observation that the Office of the High Commissioner for Peace did not receive information nor had any knowledge regarding these circumstances. It adds that, in any case, the AUC were required to dismantle their entire illegal structure, including its net of supporters and financiers.¹⁹

¹⁶ The "circuits" were conducted in the "temporary concentration zone" established for these purposes by resolution of the Ministry of Defense and of the Interior and Justice. The circuits began a few days before the formal act of demobilization and involved participation by a series of government institutions and international bodies. The officials present in the concentration zone were interviewed by the delegation during the visit for purposes of gathering information on the role of each entity, the methodology used, and the results obtained.

¹⁷ On the scope and application of Law 782 of 2002, see IACHR, *Report on the Demobilization Process in Colombia* (2004), para. 62. Law 782 qualifies participation in unlawful armed groups in terms of committing the crime of *concierto para delinquir* ("criminal conspiracy"). The prosecutors involved in the demobilization reported that the qualification used in the no-prosecution resolution has been changed to that of "sedition", so as to make it equally applicable to members of paramilitary groups as well as to those of guerrilla groups seeking to join the demobilization process. See also Decree 4436 of December 11, 2006, regulating Law 782 of 2002.

¹⁸ Observations of the Republic of Colombia to the "*Report of Inter-American Commission on Human Rights on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings*". Note DDH No. 45284/2465/07 from the Human Rights and International Humanitarian Law Unit of the Ministry of Foreign Affairs, September 4, 2007, page 3.

¹⁹ Observations of the Republic of Colombia to the "*Report of Inter-American Commission on Human Rights on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings*".

13. During its visit to the demobilization circuits in the Department of Cesar, the IACHR observed that many persons claiming demobilization status did not appear to be combatants.²⁰ In the Chimila and La Mesa circuits, the delegation was concerned at the low number of combatants compared to the number of persons who said they were radio operators, food distributors, or laundresses.²¹ These persons had been for the most part living in the nearby Villa Germania, and a third of them were women. They repeatedly claimed that they were following direct orders of the "maximum leader" of Bloque Norte, Jorge 40, and they provided no information to identify lower-ranking officers of the armed unit, thus undermining the credibility of their statement.

14. The delegation was told that these demobilized persons, although they were not combatants, were members of the "social support fronts" of the unit in question.²² On this point, the IACHR confirmed that there were no mechanisms for determining which persons really belonged to the unit, and were therefore entitled to social and economic benefits, nor for establishing consequences in case of fraud. In all cases, the Office of the High Commissioner for Peace had approved all the lists of demobilized personnel prepared in the context of the demobilizations effected.

15. In contrast to what was observed in the Department of Cesar, the demobilization conducted in the Department of Antioquia involved for the most part men, and a few women, who seemed clearly to be combatants.²³ In effect, at the circuit proceedings observed in El Cuarenta, the vast majority of persons to be demobilized declared that they were combatants, and that they had belonged to the unit for at least three years. Only a minority were members of the social support network for the unit.

16. The following State agencies were present at the demobilization circuits visited by the IACHR: (1) Office of the High Commissioner for Peace; (2) National Registrar; (3) Technical Investigations Core (CTI); (4) Office of the Prosecutor General (*Fiscalía*); (5) Administrative Department of Security (DAS) and (6) Colombian Institute of Family Welfare (ICBF).²⁴ The MAPP/OAS Mission and the International Organization for Migrations (IOM) were also present.

17. The first step in the circuit involved a presentation to the candidates for demobilization on the benefits to be received when complying with the requirement of being truthful in their statements to the officials. Officials from the Office of the High Commissioner for Peace

...continuation

Note DDH No. 45284/2465/07 from the Human Rights and International Humanitarian Law Unit of the Ministry of Foreign Affairs, September 4, 2007, page 12.

²⁰ Data published by the High Commissioner for Peace on March 9, 2006 indicate that of the persons demobilized in Chimila, only 880 were members of the shock force and 1335 belonged to "social support fronts" in the departments of Atlantico, Magdalena and Cesar. Information from the High Commissioner for Peace, *Reporte Desmovilización Primer Grupo de Integrantes del Bloque Norte de las Autodefensas*. Bogotá, March 9, 2006. Available at the website of the Office of the High Commissioner for Peace.

²¹ In total, there were 2215 demobilized persons in Chimila, of whom 880 were members of the shock forces and 1335 were members of the social support fronts active as producers in the departments of Atlantico, Magdalena and Cesar. Information available at the website of the Office of the High Commissioner for Peace.

²² Information provided by the Office of the High Commissioner for Peace.

²³ Information made public by the High Commissioner for Peace on April 30, 2006 shows that a total of 480 men and women were demobilized in El Cuarenta. Information from the High Commissioner for Peace, *Reporte Desmovilización Primer Grupo de Integrantes del Bloque Norte de las Autodefensas*. Bogotá, 30 April 2006. Available at the website of the Office of the High Commissioner for Peace.

²⁴ The ICBF was present only in the concentration zones where juveniles were included in the groups to be demobilized.

explained the features of the process to the persons seeking demobilization, including the legal, social and economic benefits at stake, in return for cooperation in determining the truth.

18. Secondly, to allow demobilization candidates to participate in the circuit, the registrar's office (as the official identification agency) issued identity documents for people who had none.²⁵

19. Third, the Technical Investigations Corps (CTI) took fingerprints, dental records and DNA samples from persons to be demobilized, for identification purposes.²⁶ Should this information be properly conserved it will play an important role in identifying and linking individuals to criminal investigations.

20. Fourth, the Prosecutor General's Office took voluntary statements (*versiones libres*) from the persons who appeared at the circuit hearings. The purpose was to verify whether the individual did indeed belong to an armed group that had agreed to collective demobilization, so that a ruling could be issued exempting him/her from prosecution for sedition.²⁷ Proceedings before the prosecutors concluded with signature of a voluntary surrender document and a promise by the candidate not to break the law for the next two years.

21. With respect to the performance of the prosecutors in the judicial circuits, the IACHR noted that those assigned were frequently commissioned only hours before they were dispatched to the concentration zone from various parts of the country. According to information received, they did not belong to any special unit nor did they receive any specific training for the task. Indeed, they normally worked in units investigating crimes such as kidnapping or terrorism. Only in one case did the prosecutor interviewed belong to the National Unit of Human Rights and International Humanitarian Law. In no case did the prosecutors belong to the Justice and Peace Unit.

22. The questions put by the prosecutors during the voluntary statements given in the judicial circuit consisted of a standard questionnaire that was used in all demobilizations. The questions asked about the name of the illegal armed group to which the person belonged and the date he/she joined it; use of weapons of any kind and their characteristics; use of an alias or nickname; training to join the organization; time spent with the group, where and when he/she traveled; places where the group operated; name of persons belonging to the group; structure of the group, reasons for demobilizing; activities performed within the group; possible mention of his/her participation or that of other persons of the group and other crimes; names of his superiors in the organization; knowledge of persons kidnapped by the group; knowledge of property acquired by the group or organization during its activities.

²⁵ Their status was recorded in the lists, and they were given color bracelets for identification purposes.

²⁶ The form for recording fingerprints from both hands includes information on the person's name; type and number of ID document; civil status and name of spouse; name of parents; date and place of birth; sex, age, RH and height; race, distinguishing between white, black, Oriental, mestizo and indigenous; address; occupation; and Social Security, together with a detailed description of complexion, skin, hair, eyes, beard or mustache, distinguishing features, and legal record. The dental card includes the following information: name; type and number of ID document; civil status and name of spouse; name of parents; date and place of birth; sex, age, RH and height; race, distinguishing between white, black, Oriental, mestizo and indigenous; address; occupation; and Social Security. CTI officials in the concentration zone expected that the information gathered in the circuit would be turned over to the Prosecutor's Office for use in resolving cases of impersonation and recidivism. It should be noted that the CTI did not have specialized personnel in the circuits for gathering genetic material from demobilization candidates.

²⁷ The Seventh Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS) indicates that in the identification and documentation process conducted during the judicial circuits, the MAPP/OAS Mission concluded that 26% of those demobilized did not give a voluntary statement. See *OEA/Ser.G/CP/doc.4148/06* of August 30, 2006.

23. Given the characteristics and the formats used in the questionnaire, the taking of statements was a purely formal procedure. The prosecutors sent to the concentration zones had no instructions to investigate any links that the candidates for demobilization passing through the circuit might have to crimes committed in the area, or to compile information in advance on pending cases that might involve members of AUC units participating in the demobilization.

24. In its observations, the State emphasizes that the model questionnaire “was merely a guide to be considered by the prosecutors, but that in no way was meant to limit the autonomy of the officials to lead the deposition to a happy conclusion”. It also indicates that this procedure “did not have the purpose of having the demobilized reveal other members of the armed unit, let alone acknowledge the crimes committed”.²⁸

25. Fifth, the Administrative Department of Security (DAS) verified the police record of persons to be demobilized. Specifically, the DAS checked the police records of persons who had an ID document, consulting the Unified National Archive System, by fax. In cases where candidates had no police record, the DAS provided them with a document (with a photograph and fingerprints) certifying that, at that date, the bearer was not the subject of any national or international arrest warrant for pending proceedings. In cases where a pending proceeding was identified, the DAS issued temporary certificates (valid for one year), recording the status of those persons. In cases where there was an arrest warrant for participation in the armed group, the candidates were “put on hold”, and were then taken to Santa Fe de Ralito or another concentration zone specially constituted in the demobilization zone “to the effect of keeping them at the disposal of the judicial authorities.”²⁹ Presumably these persons would eventually appear on the lists that the High Commissioner for Peace would send to the Justice and Peace Unit of the Prosecutor General's Office, for purposes of enforcing the Justice and Peace Law.³⁰

26. Sixth, officials of the MAPP/OAS Mission verified the circulation of demobilization candidates through the judicial circuit and interviewed them about their membership in the armed unit that was demobilizing.

27. Finally, the International Organization for Migrations (IOM) issued documents confirming the identity of demobilized persons who passed through the circuit, and their commitment to surrender their weapons (“*carnetización*”).

28. Besides the institutions that participated in the judicial circuit, the Colombian Institute of Family Welfare (ICBF) was present in the concentration zones where children were recorded as belonging to the units to be demobilized. On this point, Law 975 of 2005 requires that

²⁸ Observations of the Republic of Colombia to the “*Report of Inter-American Commission on Human Rights on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings*”. Note DDH No. 45284/2465/07 from the Human Rights and International Humanitarian Law Unit of the Ministry of Foreign Affairs, September 4, 2007, page 13.

²⁹ Observations of the Republic of Colombia to the “*Report of Inter-American Commission on Human Rights on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings*”. Note DDH No. 45284/2465/07 from the Human Rights and International Humanitarian Law Unit of the Ministry of Foreign Affairs, September 4, 2007, page 14.

³⁰ The IACHR interviewed DAS officials in the La Mesa circuit to learn about the mechanisms for background checks and the outcomes in terms of identifying persons accused or convicted of crimes other than sedition, or of committing crimes not covered by the prosecution ban of Law 782 of 2002. When they were asked about the number of demobilized persons suspected, charged or convicted as perpetrators or participants in crimes as members of the armed unit participating in the demobilization, DAS officials told the delegation that of the roughly 200 people who had passed through their office between March 2 and 3, 2006 only three had police records of any kind.

the group to be demobilized must turn over to the ICBF all juveniles recruited, as one of the requirements of eligibility for the generous benefits and penalty reductions established in that Law.³¹ Consequently, this entity was brought into the concentration zones by the High Commissioner for Peace on the basis of information provided by leaders of the armed group being demobilized. During the IACHR visits to the judicial circuits, the delegation learned that the ICBF was present in the La Mesa concentration zone, for demobilization of the AUC Bloque Norte, and it also observed the presence of adolescents.³² In the judicial circuit for demobilizing the Elmer Cárdenas unit, the ICBF was not present, because that group did not surrender any juveniles.³³

29. The handover of children in the concentration zones was formalized through a so-called "voluntary surrender" document prepared by the ICBF. It should be noted that the ICBF takes under its wing only children who agree to remain in its shelters after voluntary surrender.

30. In parallel with the circuit proceedings (and beyond the symbolic surrender that might take place in the closing session, in the presence of the press and senior Government authorities), officers of the Inter-Agency Antiterrorist Analysis Group (GIAT) received custody of the weapons that were surrendered during the judicial circuit.

31. The report of the High Commissioner for Peace recorded the surrender of 615 firearms³⁴ during the ten days that the demobilization circuit was held in Chimila, Department of Cesar. The IACHR noted that approximately 800 persons had passed through that circuit on the previous day, but only 65 firearms were received. It also noted that from the 200 persons passing through the circuit at La Mesa on the previous day, roughly 25 firearms were received. None of the weapons surrendered were modern or in good condition.

32. The report of the High Commissioner for Peace indicates that in Antioquia the 484 demobilized persons of the second group of the Elmer Cárdenas unit delivered to the Government a total of 359 weapons.³⁵ There, the IACHR observed that the weapons surrendered appeared to be

³¹ Article 10 of Law 975 of 2005, known as the "Justice and Peace Law", establishes the following requirements of eligibility for judicial benefits: the person must be a member of an illegal armed group that has been or may be suspected, accused or convicted of "atrocious acts of ferocity or barbarism, terrorism, kidnapping, genocide, and murder committed outside combat or placing the victim in a condition of defenselessness" (definitions of Law 782) committed while a member of these groups; appear on the list of demobilized personnel that the High Commissioner for Peace sends to the Prosecutor General's office; the group to which the person belongs must have demobilized according to the agreement with the Government; the assets gained from the illegal activity must have been surrendered; delivery of all recruited juveniles to the Colombian Institute of Family Welfare; the group must cease any interference in the free exercise of political rights and public freedoms and any other illegal activity; the group must not have been organized for drug trafficking or illicit enrichment; and all persons kidnapped and held by the group must be released.

³² The problem of juveniles recruited by illegal armed groups and eventually turned over to the Government through demobilization of the unit to which they belonged was the subject of interviews with the ICBF and with the Justice and Peace Unit of the Prosecutor General's Office in Bogotá. On the situation of girls, see the IACHR report on "Violence and Discrimination against Women in the Armed Conflict in Colombia", OEA/Ser.L/V/II. Doc. 67, October 18, 2006.

³³ Information provided by the Office of the High Commissioner for Peace, during the visit to the concentration zone of El Cuarenta, Municipio de Turbo, Department of Antioquia, between April 25 and 27, 2006.

³⁴ The Office of the High Commissioner for Peace provided a breakdown of the 615 long, short and support weapons surrendered: 346 rifles, 31 shotguns, 1 carbine, 3 submachine guns, 163 pistols, 33 revolvers, 5 machine guns, 17 grenade launchers and 16 mortars. In its observations the State identifies 625 weapons surrendered. Observations of the Republic of Colombia to the "Report of Inter-American Commission on Human Rights on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings". Note DDH No. 45284/2465/07 from the Human Rights and International Humanitarian Law Unit of the Ministry of Foreign Affairs, September 4, 2007, page 15.

³⁵ See High Commissioner for Peace, *Reporte Balance de armas entregadas por integrantes del Bloque Elmer Cárdenas de las Autodefensas Campesinas*. Bogotá, April 30, 2006. Available at the website of the office of the High Commissioner for Peace. The GIAT classified the surrendered materials as: 332 rifles, 4 machine guns, 3 pistols, 8 60 mm

neither modern nor, in some cases, in good condition. It also observed that combatants who had not demobilized were standing guard, and that they bore weapons that were modern and in good condition. The State, for its part, indicates in its observations that "a first inspection of the weapons by experts demonstrated that 95% of them was of good quality" and that in any case long weapons had also been decommissioned in rural areas where members of the illegal armed groups were picked up to be transported to the concentration zone, prior to their demobilization.³⁶

33. Subsequent to the formal demobilization of the AUC, the police discovered secret caches of weapons that certain AUC groups failed to hand over when they were demobilized.³⁷ It is hoped that the Colombian Government will investigate these facts and make the results of the investigation public.

B. Observations on the outcome of two demobilization circuits and on the general legal framework

34. Of those demobilized who passed through the demobilization circuit (totaling approximately 28,000) 90% offered no significant information on illegal acts or crimes committed by the paramilitary units to which they belonged. Additionally it was found that only 36% of the total had a police record.³⁸

35. The rest of the demobilized members of illegal armed groups benefited from resolutions relieving them from prosecution when they admitted to the crime of "criminal conspiracy"³⁹, which term was later changed to "sedition", based merely on their participation in the activities of illegal armed groups. However, in a decision adopted on July 11, 2007, the Criminal Chamber of the Supreme Court of Colombia dismissed the equivalence between these two legal conducts by establishing the incompatibility of Article 71 of Law 975 of 2005 with the Constitution, precisely because of the similar treatment afforded to common crimes and political crimes.

36. The IACHR notes that the demobilization circuit presented a suitable opportunity for the judicial authorities to go beyond the issuing of resolutions waiving prosecution for sedition, and to gather elements for establishing whether demobilized members of illegal armed groups were involved in crimes that might be punishable under the Justice and Peace Law, yet as noted above,

...continuation

mortars, 7 40 mm grenade launchers and 5 40 mm MEL grenade launchers. The GIAT also counted 1207 grenades, 289,728 rounds of ammunition of different calibers, and 1121 suppliers.

³⁶ Observations of the Republic of Colombia to the *"Report of Inter-American Commission on Human Rights on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings"*. Note DDH No. 45284/2465/07 from the Human Rights and International Humanitarian Law Unit of the Ministry of Foreign Affairs, September 4, 2007, page 15.

³⁷ See Seventh Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), OEA/Ser.G/CP/doc.4148/06, August 30, 2006.

³⁸ The rest of the demobilized received a certificate indicating that they had no criminal record. See Seventh Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), OEA/Ser.G/CP/doc.4148/06, August 30, 2006, page 9.

³⁹ See Criminal Code (Law 100 of 1980) Title V, Crimes against Public Security. Chapter 1: Conspiracy, Terrorism and Instigation. Article 186 Conspiracy to commit crime (amended by Law 365 of 1997, Article 8): "When several persons conspire to commit crimes, each of them shall be punished for that fact alone, with prison sentences of three to six years. If they were active in the field or with weapons, the penalty shall be three to nine years. When the conspiracy is to commit crimes of terrorism, drug trafficking, kidnapping, extortion, or the formation of death squads, private vigilante groups, or assassination squads, the prison penalty shall be 10 to 15 years, plus a fine of 2000 to 50,000 times the legal minimum monthly wage. The penalty shall be doubled or tripled for those who organize, encourage, promote, direct, lead, constitute or finance conspiracy to commit crime".

in the course of these voluntary statements the prosecutors received no instructions for delving into the crimes perpetrated and the possible applicability of the Justice and Peace Law.

37. Consequently, the voluntary statement gathered during demobilization circuits constituted a lost opportunity for compiling information on the units, their members, and the socioeconomic dynamics that kept them in existence and operating. That information is crucial today for the work of the prosecutors in the Justice and Peace Unit, as well as for representatives of the victims when it comes to enforcing that Law and verifying that the armed structures have been dismantled.

38. As to the legal framework for this stage of the process, for more than a year and a half the demobilization process took place under the aegis of the individual and collective demobilizations legislation applicable to all members of the illegal armed groups who wished to return to civilian life.⁴⁰ That legal framework was based on law 418 of 1997,⁴¹ extended by Congress through Law 782 of December 2002, and then regulated by Decree 128 of 2003.⁴² Accordingly, persons who have benefited from a pardon or a decree staying proceedings may not be prosecuted or tried for the same deeds for which the benefits were granted.⁴³

39. Although the provisions of Decree 128 of 2003 are for the most part intended to regulate access to social benefits, that Decree also refers to the right to legal benefits such as pardon, conditional suspension of sentence, cessation of proceedings, preclusion from investigation, or waiver of prosecution on the basis of the certificate issued by the Weapons Surrender Committee (CODA).⁴⁴ In regulating the provisions of Laws 418 of 1997, 548 of 1999 and 782 of 2002, Decree 128 of 2003 makes it an express condition of the legal benefits that the demobilized person is not under prosecution and has not been convicted for crimes that "according to the Constitution, the law, or international treaties signed and ratified by Colombia are ineligible for this class of benefits".⁴⁵ It should be noted that persons tried or convicted for crimes other than bearing arms against the State cannot benefit from pardon, conditional suspension of sentence, cessation of proceedings, preclusion from investigation or waiver of prosecution, through individual demobilization.

40. Since most of the members of the illegal armed groups responsible for crimes against the civilian population have not given testimony or being declared fugitives, it has been argued that the restriction established in Article 21 of Decree 128 of 2003 allows atrocious crimes to go unpunished if formal proceedings have not yet been initiated. According to that interpretation, certification by the CODA would prevent judicial proceedings against persons who have not been tried or convicted prior to their demobilization.

41. One interpretation of these procedural benefits to which the current legal regime refers might be that they apply only to the crime of conspiracy, based on the demobilized person's

⁴⁰ See *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120 Doc. 60, of December 13, 2004.

⁴¹ Law 418, December 26, 1997. Official Gazette 43201 of December 26, 1997.

⁴² Decree 128 of January 22, 2003. Official Gazette 45073 of January 24, 2003. These rules established, among other things, that a stay of proceedings, a resolution precluding investigation or a resolution waiving prosecution may be granted in favor of those who confess and have been charged or prosecuted for political crimes and who have not been convicted in a final judgment, provided they agree to participate individually or collectively in a demobilization process.

⁴³ Article 62 of Law 418. However, article 43 makes clear that these benefits will be null and void if the beneficiary commits any crime during the following two years.

⁴⁴ Article 13 of Decree 128 of 2003.

⁴⁵ Article 21 of Decree 128 of 2003.

membership in an illegal armed group. Therefore, the waivers issued in favor of demobilized persons with or without a criminal record at the time of applying for legal benefits should not prevent subsequent investigation and prosecution for crimes other than conspiracy.

42. In short, Law 782 and Decree 128 should not by themselves pose a legal obstacle to investigating crimes against humanity or grave violations of human rights, and the waiver of prosecution contained in that legislation does not have the effect of *res judicata* with respect to criminal investigations that may be opened in the future. However, this interpretation depends on the course of action that the judicial authorities adopt in each case.

43. In light of the foregoing, it may be concluded that the loopholes, the lack of oversight tools and the absence of systematized mechanisms for identifying demobilized personnel and determining their criminal liability meant, in this stage, the loss of an opportunity to gather vitally important information for proceedings under the Justice and Peace Law.

III. THE FIRST JUDICIAL PROCEEDINGS UNDER THE JUSTICE AND PEACE LAW

44. Of the 31,670 persons who demobilized between November 2003 and the middle of 2006, only 2,695 declared their interest in applying for the benefits of the Justice and Peace Law. However, the institutional shortcomings in the demobilization circuits delayed and impeded enforcement of the Justice and Peace Law.

45. Specifically, the number of applicants for benefits under the Justice and Peace Law was made public in the second half of 2006, after the first list delivered by the Government was rejected by the Prosecutor General because it failed to identify a significant proportion of the applicants. In effect, the list included demobilized persons who were not concentrated in Santa Fe de Ralito, as well as persons who had not passed through the demobilization circuits, and even persons who were in Ralito but who sought only the benefits of Decree 128 of 2003 and of Law 782 of 2002, and not those of the Justice and Peace Law.

46. In light of this problem, the Prosecutor General's office and the Justice and Peace Unit called upon persons seeking to benefit under the Justice and Peace Law who had not given a voluntary statement in the demobilization circuit, asking them to fulfill that requirement.⁴⁶ Once those persons gave their statement in accordance with Law 782 and other applicable rules, they would be summoned to appear before the prosecutors to give a statement under the Justice and Peace Law.

47. As to the 2,695 applicants in the second list presented by the Government, the Prosecutor General verified that only a much smaller number could be duly located and summoned to give a statement. The remainder, although they were on the list, could not be located because their address, telephone number or true identity was unknown.

48. In this regard, in its observations the State indicates that the High Counsel for the Social Reintegration (ACR) has developed strategies to fill information gaps. Specifically, it refers to "brigades of documentation and reference" conducted during the first semester of 2007 with the support of the DAS, the Army, the General Attorney's Office, and the Registry Office. It indicates that 28,285 demobilized were in attendance and that 20,380 identification documents (military cards, judicial certificates, identity cards) were issued. The State remarked that "these brigades also received depositions pursuant to Law 782 of 2002 with the participation of Attorney General's

⁴⁶ Information available at the website of the Prosecutor General's office: www.fiscalia.gov.co/justiciapaz/index.html

Office. Likewise, Compromise Agreements were signed by the demobilized within this program and the available information on their situation and their families' was updated, including information on their whereabouts (telephone numbers and addresses)."⁴⁷

A. Uncertainty over the interpretation of the legal framework: retroactive effect of the ruling of the Constitutional Court and Decree 3391

49. As the IACHR maintained in its statement of August 1, 2006, the decision of the Constitutional Court substantially improved the legal framework for the demobilization process, but there is still uncertainty as to the rules that will govern the judicial process. There is in fact debate over the possible retroactive application of various points of the Constitutional Court's ruling, recognizing that such application might eventually violate the principle of favorability or most lenient criminal law. This uncertainty will be gradually overcome during the first judicial decisions that will interpret and apply the Justice and Peace Law in light of the ruling of the Constitutional Court in each particular case.

50. In this context, the adoption of Decree 3391⁴⁸ of September 2006, confirming some of the conditions established in the ruling of the Constitutional Court and regulating other aspects in contradiction to what the court said in that ruling, has generated further confusion over the interpretation of the Justice and Peace Law.

51. In the first place, Decree 3391 provides that any time spent at a detention center before the supervising judge decides on the imposition of preventive detention will be discounted from the corresponding alternative penalty.⁴⁹ This provision has been interpreted in the sense of reestablishing the meaning of Article 31 of the Justice and Peace Law, which had been invalidated by the Constitutional Court. Therefore the time that demobilized persons might have spent in the concentration zone could be discounted from the prison sentence imposed as penalty.

52. On this point, the Constitutional Court, in its ruling, declared Article 31 of the Justice and Peace Law to be unconstitutional⁵⁰, and held:

Even in the framework of an instrument that invokes as its fundamental purpose the establishment of peace in the country, the penalty cannot be stripped of its attribute of just

⁴⁷ Observations of the Republic of Colombia to the "*Report of Inter-American Commission on Human Rights on the Implementation of the Justice and Peace Law: initial stages in demobilization of the AUC and first judicial proceedings.*" Note DDH No. 45284/2465/07 from the Human Rights and International Humanitarian Law Unit of the Ministry of Foreign Affairs, September 4, 2007, page 10.

⁴⁸ Ministry of Interior and Justice, Decree 3391 of 2006, September 29, 2006, partially regulating Law 975 of 2005.

⁴⁹ *Ibid.*, Article 11.

⁵⁰ Constitutional Court Judgment C-370/06 (Case D-6032), paragraphs 6.2.3.3.4.1 to 6.2.3.3.4.6. Article 31 of the Justice and Peace Law provides: "Time spent in concentration zones. The time that members of illegal armed groups involved in the process of collective reintegration into civilian life have spent in a concentration zone decreed by the National Government pursuant to Law 782 of 2002 shall be counted as time served against the alternative penalty, but may not exceed 18 months. The official that the National Government designates, in collaboration with the local authorities as the case may be, shall be responsible for certifying the time spent in concentration zones by the members of the armed groups covered by this Law". The Constitutional Court, in its ruling, held that "the State has the duty to impose and enforce effective sanctions on persons who violate criminal law, and this imperative becomes all the more important in cases of grave criminality. Effective sanctions are those that do not cover up phenomena of impunity, in the sense that they constitute just and adequate State reactions to the crimes perpetrated, taking into account the specific objectives of criminal policy that the law entails. In addition, it must be recalled that the serving of the penalty is one of the most important expressions of State exercise of *jus puniendi*. Under the Rule of Law in a constitutional State, the exercise of *jus puniendi* demands intervention by all branches of government: the legislature, in its configuration; the judges, in its enforcement; and the penitentiary authorities, in its execution".

and adequate reaction to crime, nor can it take place outside the State interventions that the exercise of *jus puniendi* demands in a constitutional State. The first would produce impunity that is undesirable even in the context of a pacification process, and the second would destroy the legitimacy of the sanctioning power of the State. A punitive regime that strays in either of these directions would be contrary to the Constitution.

Under these assumptions, the Court notes that the challenged Article 31 equates the serving of a penalty with the circumstance of being located in a concentration zone, although there was no State measure that required persons to be there. In this respect, it does not constitute a penalty because it does not entail the coercive imposition of a restriction on fundamental rights. Generally speaking, the fact that members of outlaw armed groups remained in a concentration zone as part of the demobilization process reflects a voluntary decision of those persons, which eliminates any possibility of equating the serving of a sentence with such a situation, which precludes and replaces State interventions that characterize the State monopoly of the sanctioning power.⁵¹

For the IACHR it is clear that, beyond any discussion over the temporal scope of the court's decision, it has established that time spent in a concentration zone cannot be equated with time served in prison. This constitutional interpretation on what must be understood as penalty in the Colombian legal system should be decisive for the judges when it comes to determining the alternative penalties for persons eligible for this benefit. Otherwise, the result would be to introduce new reforms to the legal framework, via the regulatory route, that run contrary to the decision of the Court, in an aspect that is essential for examining the international and constitutional legality of the Justice and Peace system, i.e. the possibility of further reductions in calculating alternative penalties.

53. In the second place, with respect to the establishments designated for beneficiaries under the Justice and Peace Law to serve their sentences, the Constitutional Court held that the terms of article 30(2) of that Law would diminish the control of the penitentiary authorities over the conditions under which the penalties would be served. It therefore decided that those establishments must remain fully subject to the rules governing penitentiaries.⁵² On this point, Decree 3391 provides that demobilized persons "may" be held in Justice and Peace confinement sites administered and defined by the INPEC, but it did not clearly establish the characteristics of those sites. The IACHR notes that the uncertainty over the characteristics of the so-called "Justice and Peace confinement establishments" demands clarification to bring them clearly within the jurisdiction of the INPEC, consistent with the decision of the Constitutional Court.

54. In the third place, the Decree provides that if demobilized persons surrender assets for use in economic projects in areas of the country afflicted by violence, for the benefit of displaced persons, peasants and reinserted persons who lack the economic means of subsistence, granting them participation in the ownership and means of production, this will be understood as a collective measure of reparation.⁵³ In March, 2006 only a small number of demobilized persons were involved in projects of this kind, and there was no evidence of broad acceptance by the communities hosting them.⁵⁴

⁵¹ Constitutional Court Judgment C-370/06 (Case D-6032), paragraphs 6.2.3.3.4.5 - 6.2.3.3.4.6.

⁵² Constitutional Court Judgment C-370/06 (Case D-6032), paragraphs 6.2.3.3.4.7 to 6.2.3.3.4.10, referring to Article 30 (2).

⁵³ Ministry of Interior and Justice, Decree 3391 of 2006, September 29, 2006, regulating Law 975 of 2005 in part. Article 17. Judicial determination of reparations, paragraph 1(2).

⁵⁴ See the program for reincorporation into civilian life of persons and groups who have taken up arms. Report submitted to the MAPP/OAS Mission, Bogotá, March, 2006.

55. The IACHR notes that projects of this kind, apart from their general intent, may generate or aggravate tensions between the civilian population and demobilized members of illegal armed groups, in light of the fear of reprisals that persists in vast parts of the country. In fact, it may work as a tool to repopulate certain parts of the country instead of helping the return of the victims displaced by violence, who require reparations.

B. Notification of victims of the conflict to participate in the process

56. In November, 2006, the Prosecutor General's Office issued the first notices to attend the initial depositions from candidates for benefits under the Justice and Peace Law, aimed at persons claiming a right to participate in the different processes as victims of crimes committed by the AUC (hereinafter "the victims").

57. Those notices set a time limit of 20 days, from the date of publication, for the victims to appear in the respective processes. In the case of unnamed or absent victims, the Attorney General's Office shall designate a representative on their behalf until their appearance.⁵⁵ The Prosecutor General's Office published notices in newspapers of broad circulation, in the offices of the Prosecutor General and those of the CTI, and at its website, consistent with its role as legal intermediary for informing victims about the processes. In its observations, the State indicates that thanks to the publication of 1,728 notices in newspapers of national circulation, broadcasted by local radios and disseminated by national, regional and local public entities, 12,354 victims had been contacted as of August, 2007.⁵⁶

58. The IACHR notes, however, that the only newspaper of national circulation is *El Tiempo*, which is not distributed in many of the small towns and villages of various departmental areas. Some of these regions do not even have television or Internet service. It is in those regions where the greatest numbers of victims are to be found who require access to information on their rights and how to enforce them. Consequently, the notices should have been given via local radio stations, regional newspapers, public defenders or representatives and in general through instruments that serve as links between this uninformed population and the State. As well, the IACHR draws attention to the institutions responsible for steering this process, and the need to ensure that they coordinate their work and avoid duplication of functions and actions.

59. The initiation of the depositions generated a major debate about attendance by victims, given the difficulties of traveling to the cities where the hearings were to take place. The legitimacy of the process remains dependent on the way those problems are resolved, and on the guarantee of transparency in all judicial stages of the process.

C. Meaning or nature of the depositions

60. The IACHR notes with concern that there is no agreement in the judiciary and especially among the prosecutors, on the meaning and nature of the depositions taken under the Justice and Peace Law. Indeed, this procedural requirement of the Justice and Peace Law has been confused with the suspect's statement in ordinary criminal proceedings. This has had

⁵⁵ Information available at the website of the Prosecutor General's office: www.fiscalia.gov.co/justiciapaz/index.html. See for example www.fiscalia.gov.co/justiciapaz/edictos/maribel%20galvis.html

⁵⁶ Observations of the Republic of Colombia to the "Report of the Inter-American Commission on Human Rights on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings". Note DDH No. 45284/2465/07 from the Human Rights and International Humanitarian Law Unit of the Ministry of Foreign Affairs, September 4, 2007, page 19.

consequences with respect to the role of the prosecutors, the rights of those who seek to benefit from the Law of Justice and Peace, and the participation of victims and their legal representatives.

61. In the Colombian criminal proceedings, and specifically in Article 324 of the Code of Criminal Procedure,⁵⁷ there are provisions governing the hearing of statements by the suspect in the initial stage of a criminal investigation. That statement may be given, although it is not indispensable, before the investigation is formally initiated. The suspect may give his statement of his own free will, or upon summons by the prosecutor. The suspect, who has not yet been charged,⁵⁸ has the opportunity at that time to give his version of the facts, demonstrating guilt or innocence. If the facts narrated point to guilt, this will be taken as a confession. At this stage the prosecutor does not necessarily have an active role, although he may pose questions, especially in cases where a possible confession is involved. However, generally speaking, the initiative lies with the suspect. In many cases this proceedings gives rise to a formal process, or to a resolution relieving the suspect from prosecution, which closes the investigation temporarily.

62. In the voluntary deposition and confession hearing established in the special Justice and Peace procedure,⁵⁹ the demobilized person voluntarily applies for the benefits of the Law and presents his own version of the facts. It is presumed that, because the suspect has applied for the benefits of this Law, he has committed punishable conduct the narration of which will be the purpose of this hearing. The assigned prosecutor, then, must begin his procedural role by interrogating the candidate about all the facts of which he may have knowledge, in order to establish the truth about what has happened. Hence this stage is known as "deposition and confession".

63. The two procedures –that of ordinary proceedings and that of the voluntary deposition under the special Justice and Peace procedure— differ as to their method, the procedural timing, the type of procedure, and above all the activity of the prosecutor. Given this dichotomy, in December, 2006 the Prosecutor General's Office established guidelines for taking voluntary deposition in matters within the purview of the National Prosecution Unit for Justice and Peace in order to proceed with taking the first statements.⁶⁰ Those guidelines have to do with: (1) the procedure prior to receipt of the voluntary deposition and confession; (2) the allocation of chambers for taking the voluntary deposition; (3) the summons to give a voluntary deposition; (4) the procedure itself; (5) access for victims to the chambers; (6) and the number of victims' representatives, which is limited in case of dispute to two representatives.

64. With respect to the voluntary deposition, this consists of two stages that include a first session, where the candidate present his version of the facts, and a second session in which the prosecutor interrogates the candidate to extract information on each of the facts for which the alternative penalty is requested. The minimum information required from the candidate consists of the date, place, the motive, other perpetrators or participants, victims and other circumstances that

⁵⁷ Code of Criminal Procedure, Legis 2006 - Law 906 of 2004 and Law 60 of 2000.

⁵⁸ Constitutional Court, Judgment C-033/03 of January 28, 2003. Suspect and Accused. Constitutionally valid distinction. The differentiation made in the legislation between suspect and accused cannot in itself be held contrary to the Constitution, for not only does the term varies according to the stage of the investigation but moreover, this difference is reasonable and indeed works in favor of the defendant. In effect, the reproach directed at the accused during the preliminary investigation is much less severe than the questioning of the accused at trial, for in the latter event there are elements of judgment that will engage the responsibility of the defendant to a greater degree. Recognition of the person as subject or not to proceedings also depends on this distinction.

⁵⁹ Article 5 of Regulatory Decree 4760 of 2005.

⁶⁰ Resolution 0-3998 of December 6, 2006, Official Gazette 46,481, establishing guidelines for the procedure of taking voluntary depositions in matters under the competence of the National Prosecutors Unit for Justice and Peace, pursuant to Law 975 of 2005 and its Regulatory Decrees 4760 of 2005, 2898 and 3391 of 2006.

will clarify the truth. In the second session the victim or his representative and the public attorney may seek clarifications or verifications, present evidence, and report what they deem pertinent in relation to the respective conduct.

65. Despite these guidelines, the IACHR has observed some confusion over the concept of voluntary deposition, in terms of the distinction between the two modalities described, namely that established in ordinary legislation and that provided in the Justice and Peace Law. The statement given under ordinary procedures, as explained, takes place in the preliminary investigation stage where the prosecutors play a passive role. It is of concern that the prosecutors participating in the voluntary depositions in the context of the Justice and Peace Law assume that their role is similar to that under ordinary procedures. The IACHR stresses the need to take effective measures to ensure that the taking of depositions and confessions is conducted by the prosecutors in a manner consistent with the object and purpose of the special procedure, which seeks to establish the truth of what happened in the armed conflict. The IACHR also considers that the prosecutor should take an active role in interrogation in order to comply with the mandate to verify the requirements of the special law.

D. Publicity of the voluntary deposition

66. In December, 2006 the list of 2,695 candidates for benefits under the Justice and Peace Law was divided into 761 candidates with arrest warrants, custody measures or prison orders against them, and 1,934 free candidates with no criminal background, as well as 23 representatives.⁶¹ In that same month the first candidates for benefits under the Justice and Peace Law, including the leader Salvatore Mancuso, gave their voluntary statements before the prosecutors appointed from the Justice and Peace Unit.

67. In January 2007 the Prosecutor General's office declared that it had no objections to radio and television broadcasting of the voluntary depositions by candidates for benefits under the Justice and Peace Law.⁶² On the basis of Government's and the Prosecutor General's Office's initiative to broadcast the statements taken from the demobilized persons, the National Television Company (CnTV) arranged for the transmission of the hearings of members of the demobilized paramilitary groups via the channel known as *Señal Colombia Institucional*.⁶³

68. On this point, in February, 2007 the Prosecutor General's Office issued resolution 0387⁶⁴ authorizing each delegated prosecutor to order preparation of a technical recording of the voluntary depositions to be made public, once this procedure was over and the work of verification and investigation was completed.⁶⁵ That resolution also provided that, in order to assure victims of their right to justice, the taking of the statement would be transmitted direct to the chamber arranged for them.⁶⁶ Moreover, the resolution opened the possibility for the responsible prosecutor

⁶¹ Information provided by the Prosecutor General's office to the IACHR during its visit to Colombia in January, 2007.

⁶² Resolution of January 18, 2007 of the Prosecutor General's Office, available at the website: www.fiscalia.gov.co.

⁶³ Presidency of the Republic of Colombia, Press Secretary, January 24, 2007, *CNTV reglamenta transmisiones de audiencias de paramilitares desmovilizados*. Information available at: www.presidencia.gov.co.

⁶⁴ Prosecutor General's office, resolution 0-0387 of February 12, 2007, establishing guidelines for broadcasting the taking of voluntary statements on matters within the competence of the National Prosecutors' Unit for Justice and Peace pursuant to Law 975 of 2005 and its regulatory Decrees 4760 of 2005, 2898 and 3391 of 2006, and 315 of 2007.

⁶⁵ *Ibid.*, Article 3, clarification or supplementary information in the technical records of the voluntary depositions.

⁶⁶ *Ibid.*, Article 4. Broadcasting of the taking of voluntary depositions.

to impose restrictions on transmitting the deposition whenever the candidate's statements might pose a threat to the victims or other persons, to the interest of justice or of the investigation, or to the collection of proof, evidence or information legally obtained, the privacy, honor and good name of individuals; and national defense and sovereignty; and also when the victims were juveniles or had suffered sexual violence.⁶⁷ The resolution ordered as well that the communications media accredited before the prosecutor five days in advance of the date set for the hearing could place no more than two reporters in the victims' chamber.⁶⁸

69. The IACHR notes the need to strengthen the presence of the regional and national media in this new stage of the demobilization process in order to guarantee transparency. It is essential, then, to remember that during the demobilization circuits and the surrender of weapons by the illegal armed groups there was little information published about what happened in each of the concentration zones where the units assembled and surrendered their weapons. The present stage of the AUC demobilization process demands transparency, and this can only be guaranteed by allowing victims access to both of the voluntary deposition sessions, and ensuring that in the second session there is a real possibility to question the candidates and learn the truth.

E. Eligibility of demobilized members of illegal armed groups and formal accusation

70. The Justice and Peace Law sets the requirements of eligibility for collective and individual demobilization so that, by complying with those requirements, candidates can receive the benefits established in that Law. In the case of collective demobilizations, the Law conditions the granting of benefits upon compliance with the following requirements: (1) the organized armed group in question must have demobilized and have been dismantled as provided in the agreement with the National Government; (2) surrender of the assets gained from the illegal activity; (3) delivery of all recruited juveniles to the Colombian Institute of Family Welfare (ICBF); (4) the cessation of any interference by the group in the free exercise of political rights and public freedoms, and of any other unlawful activity; (5) the group itself must not have been organized for the purpose of drug trafficking or illicit enrichment; (6) release of persons kidnapped and held by the group, under the understanding that information about the fate of missing persons must be given in each case.⁶⁹ The Constitutional Court added to the final requirement the need to report on missing persons, inasmuch as "it would be unconstitutional for the State to grant a reduced penalty to those responsible for forced disappearances without requiring them not only to demobilize under the law but to reveal, from the very moment their eligibility is being determined, the whereabouts of the missing persons."⁷⁰

71. With respect to individual demobilization, the law imposes the following conditions on benefits: the applicant must (1) provide information on or cooperate in dismantling the group to which he belonged; (2) have signed a commitment with the National Government; (3) have demobilized or laid down his arms according to the terms established by the national government; (4) cease all unlawful activity; (5) turn over all assets gained from illegal activities, to benefit the victims; and (6) have not been involved in drug trafficking or illicit enrichment.⁷¹ In addition, only

⁶⁷ *Ibid.*, Article 7, Restrictions on the publicity of voluntary depositions.

⁶⁸ *Ibid.*, Article 5, Restrictions on access to the chambers for voluntary depositions and for victims.

⁶⁹ Law 975 of 2005, Articles 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, and Constitutional Court Judgment C-370/06 (Case D-6032), decision 8, page 211.

⁷⁰ Constitutional Court Judgment C-370/06 (Case D-6032), decision 8 and 22, page 212.

⁷¹ Law 975 of 2005, Articles 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, and Constitutional Court Judgment C-370/06 (Case D-6032), decision 8, page 211.

persons whose names and identities are reported by the national government to the Prosecutor General's office may apply for benefits under this law.⁷²

72. The IACHR understands that benefits will not be granted to demobilized persons who fail to meet the eligibility requirements established by the Justice and Peace Law. During the taking of voluntary depositions, candidates must declare under oath their commitment to comply with the eligibility requirements.⁷³ However, the validity of the statements must be considered in light of the obligation of the judicial authorities, and other State agencies, to collaborate in verifying fulfillment of the eligibility requirements.⁷⁴

73. The assigned prosecutors are responsible for taking the voluntary depositions, for investigations in the areas of influence of each of the demobilized units, and for interviewing victims in those places. On this point, the IACHR is concerned about two specific aspects. First, there are 35 groups being investigated by the Justice and Peace Unit. Consequently, each prosecutor must investigate, on average, the activities of two or three AUC groups. The number of prosecutors assigned to the Justice and Peace Unit is 22, distributed as follows: eight in Bogotá, five in Barranquilla, and nine in Medellín. Each prosecutor must conduct all his assigned investigations with the support of only three or four CTI investigators and two or three judicial assistants.⁷⁵ Secondly, the lack of security surrounding the prosecutors in performance of their functions is of concern. They have to venture into remote areas in order to corroborate information, collect evidence, attend judicial proceedings, and compile archives, without the means of transport to perform these tasks efficiently. Moreover, according to information received by the IACHR, there are criminal gangs of every description operating in these areas.

74. On this point, the IACHR highlights the need to strengthen the support provided to the Justice and Peace Unit of the Prosecutor General's Office. The varied nature of the demands placed by the Law require not only great working capacity but also strong logistical support that will allow the prosecutors to perform their work safely.

75. The IACHR understands that, during the voluntary statements, demobilized persons must declare under oath their commitment to fulfill the eligibility requirements established in the Justice and Peace Law.⁷⁶ In any case, this declaration must be considered in light of the obligation of the judicial authorities and other State agencies to verify compliance with those requirements in a reliable manner.⁷⁷ In this respect, as the IACHR understands it, the demobilization oath in no way relieves the authorities of their duty to verify the requirements for access to the benefits of reduced penalties.

76. The IACHR reiterates the need for the Prosecutor General's Office and the Tribunal of Justice and Peace to enforce strictly the eligibility requirements of the Justice and Peace Law for

⁷² Law 975 of 2005, Article 11, final paragraph.

⁷³ Ministry of Interior and Justice, Decree 423 of February 16, 2007, regulating Articles 10 and 11 of Law 975 of 2005 on Justice and Peace. See article 6. Oath of compliance with eligibility requirements.

⁷⁴ *Ibid.*, Article 4. Additional information. See also Regulatory Decree 4760 of 2005, Article 3(6).

⁷⁵ Given the number of prosecutors and the number of armed groups investigated on average each prosecutor must investigate the activities of three or four groups, or else a single group that has a great many members. It can be inferred from this information that each prosecutor would be responsible for approximately 100 processes. As well, the IACHR received information indicating that the prosecutors might be investigating as many as 2,000 deeds per group. Visit of the IACHR to Colombia, January, 2007.

⁷⁶ Ministry of Interior and Justice, Decree 423 of February 16, 2007, regulating Articles 10 and 11 of Law 975 of 2005 on Justice and Peace. See article 6. Oath of compliance with eligibility requirements.

⁷⁷ *Ibid.*, Article 4. Additional information. See also Regulatory Decree 4760 of 2005, Article 3(6).

access to the benefits of reduced penalty, and to rule out any suspicion of a candidate's involvement in drug trafficking or illegal businesses before deciding whether he qualifies for benefits under the Law.⁷⁸ This would contribute to a diligent and exhaustive investigation of the crimes committed.⁷⁹ As well, State institutions must exhaust the means of investigation in order to determine the historic process by which the illegal armed groups were formed.

77. Proper enforcement of the legal framework demands an adequate definition of the nature and meaning of some of the key procedural formalities, such as the voluntary deposition in the Justice and Peace Law. It also demands effective measures to strengthen the role of the prosecutors and reinforce mechanisms for participation and oversight by victims and public opinion as a safeguard of transparency and regularity in proceedings. Clearer and uniform criteria are also needed on the role of the prosecutors and on the publicity of proceedings, in order to ensure consistent behavior of the prosecutors in the various processes and avoid discrepancies in the information received by victims and by society, as the result of divergent individual decisions of the assigned prosecutors.

IV. PARTICIPATION BY VICTIMS AND REPARATIONS

78. Publicity of first notices constituted the first notification to victims relating to the processing of AUC members pursuant to the Justice and Peace Law. As indicated earlier, the way in which those notices were issued merely allowed victims still living in the areas of influence of the illegal armed groups to be aware of the taking of voluntary depositions and to attend the hearing.

79. The IACHR appreciates the efforts made by the prosecutors to cover the greatest number of regions and to inform possible victims scattered throughout the national territory. According to information received by the IACHR, from November, 2006 to April, 2007 the Prosecutor General's Office received some 50,000 submissions from victims. However, it stresses the need to continue efforts to make these notices public nationwide through media that are accessible to the regional community, other than newspapers of national circulation.

80. Colombian legislation, and in particular Articles 4 and following of the Justice and Peace Law, Articles 11 and following of the Code of Criminal Procedure,⁸⁰ and rulings of the Constitutional Court,⁸¹ confirm the right of victims to participate actively in judicial proceedings. The active participation of victims involves a series of rights, among others, to be recognized as parties to the proceedings; to present, request and dispute evidence; to have access to procedural information; and to obtain full compensation with a view to achieving truth, justice and reparations.

81. Decree 315 of 2007⁸² regulated the intervention of victims, and provided that they have the right of personal and direct access, or through their attorney, to the taking of statements, formulation of indictments and charges and other procedural steps in the context of Law 975, relating to the events that caused the damage.⁸³ Despite this, it has been found that victims must

⁷⁸ See "Statement of the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia". OEA/Ser/L/V/II. 125 Doc. 15, 1 August, 2006, para. 30.

⁷⁹ *Ibid.*

⁸⁰ Code of Criminal Procedure, Law 906 of 2004 and Law 600 of 2000.

⁸¹ Among others, Judgment C-228 of 2002 of the Constitutional Court.

⁸² Ministry of Interior and Justice, Decree 315 of February 7, 2007, regulating intervention by victims in the investigation stage of justice and peace proceedings in accordance with Law 975 of 2005.

⁸³ *Ibid.*, Article 1.

go to great effort to attend these sessions, and they may lack the money to cover the expenses involved.

82. Another obstacle to victims' participation is the impossibility of questioning candidates, directly or through their representatives, about matters of interest to them in the different phases of the voluntary statement hearing. Questioning by victims is confined to the second phase of the hearing, but it takes place through an indirect mechanism, where the questions are incorporated into a form that is delivered to members of the CTI, who in turn deliver it to the prosecutor. It must be noted that the prosecutor is in a different room from that where the victims are. The prosecutor transmits to the candidate only those questions from the victims that he deems pertinent. The victims and their representatives have no possibility to raise new questions, to seek clarifications for further details, or to cross-examine. This indirect mechanism severely restricts the possibility of the victim to use questioning as a suitable means of obtaining the truth of the facts. Moreover, the prosecution thereby loses a valuable strategy for comparing the voluntary depositions and verifying compliance with the legal requirements for access to benefits.

83. The IACHR also notes with concern the restrictions on victims' access to legal counsel and representation in judicial proceedings. A great number of victims have encountered various difficulties in being represented at the voluntary deposition hearings, and in finding adequate legal counsel.

84. The IACHR welcomes the fact that the Procurator's Office has clarified the role of the Ombudsman's Office in representing victims, but it regrets the time lost in the disputes regarding their respective competence in this area. The situation not only hindered many victims from access to the first voluntary depositions sessions, but has also meant that the Ombudsman's Office could not immediately design a work plan for providing victims with adequate representation and protection.

85. The IACHR also notes that Decree 315 provides that, if the victim does not enjoy the professional services of a particular lawyer, the Prosecutor General will request that Ombudsman's Office appoint a public defender to represent him or her, upon request and demonstration of need.⁸⁴ The IACHR views this regulation as a measure to guarantee victims' participation, and hopes that it will be implemented in this light. In its observations, the State indicates that Ombudsman's Office has provided legal advice to 9,765 victims of violence and legal representation to 2,307 victims in the criminal proceedings of the Justice and Peace Law.⁸⁵

86. The IACHR understands that the Ombudsman's Office has assigned an official to monitor enforcement of the Justice and Peace Law. However, that action plan was available months after the voluntary deposition hearings began.

⁸⁴ Ministry of Interior and Justice, Decree 315 of February 7, 2007, regulating intervention by victims in the investigation stage of justice and peace proceedings in accordance with Law 975 of 2005, Article 1(2). Article 2 establishes, moreover, that: "in order to give effect to the rights stipulated in Article 37 of Law 975 of 2005, the victims or their representatives may: access chambers separate and independent from those where the voluntary statement is being given; provide the prosecutor of the Justice and Peace Unit with the information and means of proof needed to clarify the facts that have caused them direct damage; report on the assets that may be destined for reparations; suggest to the prosecutor questions to put to the person giving the statement, that are directly related to the facts under investigation; and request information on the facts that gave rise to direct damage. Without prejudice to other rights that the Constitution and the law confer upon victims.

⁸⁵ Additional Observations of the Republic of Colombia to the "Report of the Inter-American Commission on Human Rights on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings." Note DDH No. 45497/2475/07 from the Human Rights and International Humanitarian Law Unit of the Ministry of Foreign Affairs, September 5, 2007, page 5.

87. The IACHR reiterates that the participation of victims with security guarantees is a crucial aspect of the judicial process and of protecting the right to truth, justice and reparations.⁸⁶ There are still many areas of the country where victims are terrorized by violence committed by criminal gangs, non-demobilized members of the AUC, new armed groups, and existing ones that have been strengthened, and this deters them from appearing and asserting their rights.

88. The IACHR has expressed its repudiation of the murder of Mrs. Yolanda Izquierdo, who had appeared as a victim of the armed conflict in Colombia at the hearings in the case of the paramilitary leader Salvatore Mancuso, in accordance with the procedure established in the Justice and Peace Law.⁸⁷ Mrs. Izquierdo was shot and killed on January 31, 2007 at the entrance to her home, in a district of the city of Montería. She was a leader in the complaints lodged by hundreds of small farmers over the seizure of their land by members of the AUC in the Department of Córdoba and, having received death threats since December, 2006, she had repeatedly requested the judicial authorities to protection for her, without receiving any response. The IACHR called upon the Colombian State to conduct a judicial investigation into this crime and urgently to adopt the measures required to afford due protection to the victims of the conflict and their representatives in the exercise of their fundamental rights.⁸⁸

89. The IACHR also condemned the killing of Judith Vergara Correa on April 23, 2007 when she was traveling on a public bus, on the Circular Coonatra route, on her way home from work.⁸⁹ Mrs. Vergara Correa was serving as president of the community action board in the neighborhood of El Pesebre, Comuna 13 of Medellín, was a member of various peace and social development organizations, and had been following up on the hearings conducted in Medellín under the Justice and Peace Law. Mrs. Vergara Correa was a leader and adviser for the NGO *Corporación para la Paz y el Desarrollo Social* (CORPADES), the *Asociación de Madres de la Candelaria*, and REDEPAZ, and worked in particular with juveniles and children.

90. To the cases of Mrs. Izquierdo and Mrs. Vergara must be added the death on February 7, 2007 of Mrs. Carmen Cecilia Santana Romaña in the Municipio de Apartado, Department of Antioquia, when she was leading and promoting participation by victims of the conflict in efforts to recover lands lost by displaced peasants, and in helping victims to take advantage of the mechanisms of the Justice and Peace Law.⁹⁰

91. During *in loco* visits, the IACHR has received information regarding numerous victims of the conflict who are living in areas of influence of the demobilized units, and who claim that they are still receiving threats and are subject to violence, intimidation and local control.

92. The Prosecutor General's Office has considered that the potential beneficiaries of the victim and witness protection program should be persons with formal links to a judicial proceeding.⁹¹ Given the context in which the Justice and Peace Law is being applied, this concept should include

⁸⁶ *Statement of the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia*, OEA/Ser/L/V/II. 125 Doc. 15, 1 August 2006, pages 13-19.

⁸⁷ Press Release 4/07. "IACHR Expresses Its Condemnation of the Murder of Victim Seeking Reparation under the Justice and Peace Law in Colombia", Washington, DC, February 2, 2007.

⁸⁸ *Ibid.*

⁸⁹ Press Release 25/07. "IACHR Expresses Its Condemnation of Judith Vergara Correa", Washington, DC, April 30, 2007.

⁹⁰ Information received by the IACHR during its visit to Colombia in April of 2007.

⁹¹ Office of Victim and Witness Protection of the Prosecutor General's Office.

not only victims formally linked to the process but also those persons who want to participate in order to contribute information for clarifying the truth.⁹²

93. Another issue of special concern in the relationship with victims is the reparation procedure (*incidente de reparación*). On this point, the IACHR notes that that procedure, including the need to attend a conciliation hearing with the perpetrator, could pose an additional risk for victims. This question leads us to link the problem of victim protection with the difficulties of the exclusively judicial mechanism for access to reparations established in the Justice and Peace Law.

94. The IACHR has repeatedly welcomed the Colombian Government's intention that those responsible for crimes must bear the cost of economic reparations from their own assets, licit or illicit. Yet the IACHR believes that this important objective must not depend on the initiative of the victim, nor can it serve as an excuse for delaying or, in the worst case scenario, directly impeding effective access to reparations. In short, beyond the information that the victims may contribute, the State has greater resources and capacities than the victims to secure the recovery of assets from demobilized persons in order to pay reparations.

95. The IACHR notes with concern that the Justice and Peace Law and its regulatory decrees placed upon the perpetrators and, in the end, the units to which they belonged the responsibility for paying reparations, relegating the State to a secondary and essentially marginal role. Furthermore, the criminal justice system has been established as the only route for claiming economic reparations, and this will undoubtedly mean that many victims will be denied access to reparations, because of their own problems in accessing the justice system, difficulties in providing evidence, and the strict criteria for criminal liability employed in criminal proceedings. This situation could also produce serious inequalities in effective access to reparations, to the prejudice of victims who are members of the most vulnerable groups of Colombian society, and could undermine the credibility and effectiveness of the process as a real mechanism for reconciliation and for restoring social peace in the areas affected by violence.

96. In this respect, it is important to indicate that the National Commission for Reparations and Reconciliation (CNRR) has recommended the judicial authorities the following criteria at the moment of evaluating whether the effective participation of victims in the proceedings has been guaranteed: i) access of the victim or their families to the proceedings; ii) access of victims to the judicial files of the case; iii) access to the information relating to the facts investigated; iv) effective opportunity to be heard by the judicial authorities; and v) effective opportunity to produce evidence on the facts and the consequences suffered.⁹³

97. In any case, the issue is particularly delicate, because in terms of the balances that the Justice and Peace Law seeks to strike as an instrument of transitional justice, the victims are obliged to renounce a considerable portion of their expectations for justice, through the substantial reduction in penalties for atrocious crimes, in exchange for achieving peace, obtaining the truth, and effective access to reparations. It is not reasonable, then for the State, having established a legal framework for the process and guaranteed its fate, to refuse to assume, in the case of reparations to victims, the same key role that it has assumed for other elements of the equation: the enforcement of criminal justice, the truth, preservation of collective memory and the effective

⁹² In its April 2007 visit to Colombia, the IACHR raised the issue of the definition of victim with the Prosecutor General, in regard to the case of Yolanda Izquierdo. The Prosecutor General expressed his willingness to broaden the concept of victim and to seek funding to extend the protection programs to all victims.

⁹³ Observations of the Republic of Colombia to the "Report of the Inter-American Commission on Human Rights on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings". Note DDH No. 45284/2465/07 from the Human Rights and International Humanitarian Law Unit of the Ministry of Foreign Affairs, September 4, 2007, page 25.

dismantling of illegal groups. The Inter-American Court of Human Rights has held that in cases of human rights violations the duty to provide reparations lies with the State, and consequently while victims and their relatives must also have ample opportunities to seek fair compensation under domestic law, this duty cannot rest exclusively on their initiative and their private ability to provide evidence.⁹⁴

98. The IACHR considers that, beyond the established legal system, the State has a key role and a primary responsibility to guarantee that victims of crimes against international law will have effective access under conditions of equality to measures of reparation, consistent with the standards of international law governing human rights. Access to reparations for victims of crimes against humanity must never be subject exclusively to determination of the criminal liability of the perpetrators, or the prior disposal of their personal goods, licit or illicit.

99. The IACHR considers that, beyond the available criminal justice route, the State must define a policy on reparations designed to resolve injury caused by paramilitary violence, consistent with its budgetary possibilities, and based on the standards of international human rights law, by providing streamlined and low-cost administrative routes for accessing economic reparations programs. This should be without prejudice to other forms of intangible reparations, collective reparations, and social programs and services that might be established for the population affected during the conflict. In its observations, the State indicates that the National Commission for Reparations and Reconciliation “has been working on a proposal for a National Reparations Program that will be characterized by comprehensive nature, meaning that it will include individual and collective as well as symbolic and material reparation measures”.⁹⁵

100. Participation by victims in all stages of proceedings under the Justice and Peace Law is essential in seeking the truth. The IACHR reiterates the need for a special protection program, both for victims of the conflict and for witnesses seeking to appear at proceedings in order to provide information for clarifying the truth. It urges the State to adopt measures to guarantee the adequate representation of victims in court proceedings, and to strengthen the mechanisms so that they can effectively enforce their right to reparations.

V. RETURN TO CIVILIAN LIFE AND DISMANTLING OF THE AUC

101. The IACHR notes that an important element in the demobilization process, both collective and individual, is the process of reintegration into civilian life. The weakness of policies for reintegrating the roughly 30,000 collectively demobilized persons and the roughly 10,000 individually demobilized persons remains a source of concern, and stands in contrast to reports of the re-arming of members of armed groups who had demobilized and the possible emergence of new groups in zones of influence of those who had surrendered their weapons. The IACHR has repeatedly held that reintegration of demobilized personnel into civilian life is a guarantee against repetition of the grave crimes committed during the activities of the illegal armed groups.

⁹⁴ I-A Court, *Massacre of La Rochela* case, Judgment on the merits and reparations, May 11, 2007. Series C, No. 153, para. 220.

⁹⁵ Observations of the Republic of Colombia to the “Report of the Inter-American Commission on Human Rights on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings”. Note DDH No. 45284/2465/07 from the Human Rights and International Humanitarian Law Unit of the Ministry of Foreign Affairs, September 4, 2007, page 32.

A. Return to civilian life

102. A number of "economic projects" have been launched to provide employment for demobilized persons as part of the Government program for reintegrating demobilized from illegal armed groups into civilian life. According to information provided by the Government, demobilized persons can participate in these projects after 12 to 18 months have elapsed since their demobilization.⁹⁶ In 2006 a series of economic projects were launched in the sub-regions of Cordoba, Antioquia and Casanare.⁹⁷ In Córdoba, those projects consisted of livestock raising and the growing of acacia, rubber and cocoa, with the participation of demobilized personnel, displaced persons, and small farmers.⁹⁸ In Casanare, the projects were devoted to wood and agricultural products and opal,⁹⁹ and involved only demobilized members of illegal armed groups.¹⁰⁰ Finally, in Antioquia there are projects in intensive livestock raising, the growing and processing of yucca, cocoa, bananas and timber, fish farming and banana wastes, where only the planting and processing of yucca, cocoa, bananas and timber involve demobilized persons, displaced persons and small farmers, with the others reserved exclusively for the demobilized.¹⁰¹ Economic projects require a Government assessment of their potential before they are implemented.

103. Moreover, the reintegration program includes comprehensive education activities to provide academic and occupational training for demobilized persons. However, in 2006 no more than 6,000 demobilized persons were enrolled in education and training.¹⁰² The problems associated with reintegrating thousands of demobilized persons into civilian life have been reflected in the low coverage of education, the high dropout rate in formal education, and the abandonment of programs that offer immediate remuneration, such as those for civic auxiliaries or manual

⁹⁶ According to information confirmed by the government, there are currently 2628 demobilized persons engaged in formal and informal work, as civic auxiliaries, and in productive projects. With respect to productive projects, the government figure shows a total of 365 demobilized persons working in these projects throughout the country. 62% of the demobilized personnel are engaged in informal work, i.e. activities that do not entail a labor contract and are of temporary duration, in such areas as farming and livestock raising, various trades, construction and retail sales. See the Program for Reintegration of Individuals and Armed Groups into Civilian Life, Report presented to the MAPP/OEA Mission, Bogotá, March 2006, page 29.

⁹⁷ The general requirements set by the Government for participating in productive projects are: (1) location: preferably at sites with communication routes in place or guaranteed in the short term; with housing, health, education and recreation facilities; with a government presence and in areas that offer security and tranquility for persons engaged in productive projects; on lands contributed by businesses, small farmers, demobilized persons or the government (awarded by INCODER); or through alternative forms of access, such as renting or leasing, provided they are absolutely clear and transparent; a title and ownership search, and certificate of non-encumbrance and transferability; when the land has been purchased in recent years, there is a special search by the competent authorities. (2) participants: demobilized persons, displaced persons, and persons residing in the region as permanent workers or co-owners, but participating voluntarily; demobilized persons without a clean legal record may not participate in the businesses organized; demobilized persons must be covered by a waiver of prosecution from the Ministry of Interior and Justice, and must also present a valid judicial certificate; displaced persons in the region or seeking to return to their region of origin and who are registered with the Social Security Network; peasants and small farmers with or without land residing in the region; private entrepreneurs as co-owners, members, operators or advisers; in the selection process, participants are expected to have interests, attitudes and aptitudes for farming suitable to the productive projects to be undertaken.

⁹⁸ Program for Reintegration of Armed Individuals and Groups into Civilian Life, Report presented to the MAPP/OEA Mission, Bogotá, March 2006, page 34.

⁹⁹ Opal is a fine textile of cotton, similar to batiste, but dense and smooth.

¹⁰⁰ Program for Reintegration of Individuals and Armed Groups into Civilian Life, Report presented to the MAPP/OEA Mission, Bogotá, March 2006, page 35.

¹⁰¹ *Ibid*, page 36.

¹⁰² Program for Reintegration of Individuals and Armed Groups into Civilian Life, Report presented to the MAPP/OEA Mission, Bogotá, March 2006, page 25. Table 6, number of persons in each training area, by status, distributed by the Reference an Opportunity Center. Source: OIM-MIJ, SAME, March 2006.

eradicators.¹⁰³ The proportion of demobilized persons with links to jobs is low: only 4,402 of the approximately 40,000 persons who have been demobilized collectively or individually.¹⁰⁴

104. In the face of this situation, the Special Adviser for the Social and Economic Reintegration of Armed Individuals and Groups was created as a means to speed the process of reintegration.¹⁰⁵ The IACHR welcomes this initiative and hopes that it will produce concrete results that will translate into the return of demobilized personnel to civilian life.

105. The IACHR notes that little information has been published on the process of reintegrating demobilized persons. There is a persistent discrepancy between the figures published by the Special Adviser for Social and Economic Reintegration and the ministers responsible for the issue. The IACHR stresses the need to improve mechanisms for informing the public about the results of the reintegration programs now being pursued by the Special Adviser, as well as information on the beneficiaries of those programs.

B. Dismantling of the AUC, rearmament and appearance of new gangs

106. The IACHR notes that little information has been made public on those demobilized persons not participating in the reintegration process who have re-armed or have formed new gangs and remain engaged in violence. Information published in the sixth, seventh and eighth reports of the Secretary General to the OAS Permanent Council has revealed the existence of violence subsequent to the demobilizations that concerned the MAPP,¹⁰⁶ in various forms: (1) the regrouping

¹⁰³ See Seventh Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), OEA/Ser.G/CP/doc.4148/06, August 30, 2006.

¹⁰⁴ The available information indicates that 536 demobilized combatants have been captured; 236 have been killed or died accidentally, 39 have been wounded and there is no information on 141. See *Plataforma de Organizaciones de Desarrollo Europeas en Colombia. Proceso de desmovilización de los grupos paramilitares en Colombia. Apoyo de la cooperación europea. Cuadernos de Cooperación y desarrollo*. Year 3, November 2006, No.2. See also, *Primer Informe de control y monitoreo a los desmovilizados, Policía Nacional*, July, 2006. Information available at the web site: www.altocomisionadoparalapaz.gov.co In its observations, the State indicates that up until August, 2007 there were 11,448 demobilized studying, 971 involved in technical or technological education, 243 enrolled on higher education, and 279 scholarship were available to pursue higher education. Regarding preparation for employment, a necessary requirement to get a job or to initiate their own business, until August 22, 2007 there were 7,370 demobilized that had access to the programs and 4,389 were studying. Observations of the Republic of Colombia to the "Report of the Inter-American Commission on Human Rights on Implementation of the Justice and Peace Law: Initial Stages in Demobilization of the AUC and First Judicial Proceedings". Note DDH No. 45284/2465/07 from the Human Rights and International Humanitarian Law Direction of the Foreign Affairs Ministry, September 4, 2007, page 38.

¹⁰⁵ Presidency of the Republic, Decree 3043 of 2006, September 7, 2006 creating in the Administrative Department of the Presidency of the Republic a Special Adviser for the Social and Economic Reintegration of Armed Individuals and Groups. Among the main functions of the special adviser are the following: (1) to advise the President of the Republic on matters relating to the policy for the return to civilian life of armed persons or groups organized outside the law, who demobilize voluntarily, either individually or collectively"; (2) design, execution and evaluation of government policy for these persons, in coordination with the Ministry of Defense, the Ministry of Interior and Justice, and the Office of the High Commissioner for Peace; (3) to advise the Colombian Institute of Family Welfare (ICBF) on the definition of policies and strategies for preventing recruitment and reintegration of juveniles into illegal armed groups; (4) coordinating the initiatives of regional and local entities for developing plans of social and economic reintegration for those who demobilized; and (5) securing resources from national and international cooperation, in coordination with the Presidential Agency for Social Action and International Cooperation and the Ministry of Foreign Affairs. The Special Adviser program includes humanitarian assistance to demobilized persons, health services, technical and vocational training, access to education, and coaching for jobseekers. In addition, the Special Adviser is responsible for implementing productive projects for demobilized combatants, victims, peasants and displaced persons. Meeting with the Special Adviser for Social and Economic Integration of Armed Individuals and Groups, IACHR visit to Colombia between January 16 and 20, 2007.

¹⁰⁶ See Sixth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), OEA/Ser.G/CP/doc.4075/06, February 16, 2006. See also Seventh Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), OEA/Ser.G/CP/doc.4148/06, August 30, 2006; and Eighth Quarterly Report of the Secretary General to the Permanent

of demobilized persons into criminal gangs that exert control over specific communities and illegal economic activities;¹⁰⁷ (2) holdouts who have not demobilized;¹⁰⁸ and (3) the emergence of new armed players and/or the strengthening of those that already existed in areas abandoned by demobilized groups.¹⁰⁹

107. The Colombian Government has recognized this situation and has warned that if demobilized persons return to arms they will forfeit the benefits of Law 975 of 2005.¹¹⁰ The IACHR has also received information from the Government about the creation of a search squad against the *Aguilas Negras* gang, for purposes of dismantling the criminal gangs that have emerged in parts of the country.¹¹¹ The Government's warning about the loss of benefits as a result of reverting to illegality is significant. However, these consequences will affect only those who applied for benefits under the Justice and Peace Law, and they account for only 8.7% of the 31,000 demobilized AUC members. In addition, there is uncertainty as to whether all members of the AUC have actually joined the demobilization process, and so there is no information on a significant portion of the membership of these gangs. In its observations, the State emphasizes its position that they do not belong to a "group of self-defense but they are rather a band of common criminals." It adds that "the self-defense groups as an expression of a complex phenomenon in Colombian history are not echoed in the current Government".¹¹²

...continuation

Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), OEA/Ser.G/CP/doc.4176/07, February 14, 2007.

¹⁰⁷ Sixth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), OEA/Ser.G/CP/doc.4075/06, February 16, 2006, pages 7-8. The affected zones are the following: (a) municipality of Palmito, Sucre department (the former area of influence of the Héroe Montes de María group), where a group of some eight demobilized combatants controls the population and, in particular, the urban area. (b) In the Mojana subregion, specifically in the municipalities of Majagual, Guaranda, and Sucre (the former area of influence of the Frente la Mojana), a group of seven individuals – including a former Front commander – are extorting several local traders. Reports and complaints also indicate that the group is carrying out "social cleansing." (c) In Montelíbano municipality, in the department of Córdoba (the former area of influence of the Bloque Sinú y San Jorge), a group of around 25 individuals, including some demobilized combatants, controls the illegal drugs trade and is intimidating the civilian population. (d) In the village of La Cristalina in Puerto Gaitán, Meta (the former area of influence of the Autodefensas Campesinas de Meta y Vichada), a group of five demobilized combatants extorts money from the transportation of foodstuffs. (e) In districts of Buenaventura, Valle del Cauca (the former area of influence of the Bloque Calima), the capture of one demobilized combatant led to an outbreak of violence that ended with the death of 14 demobilized combatants. (f) In rural areas of Palmira and in Florida, Valle (also formerly controlled by Bloque Calima), a group of demobilized combatants is engaged in extortion. (g) In Tumaco, Nariño (the former area of influence of the Bloque Libertadores del Sur), there have been reports of demobilized combatants controlling a part of the drugs trade.

¹⁰⁸ *Ibid.* These groups are an organic part of the armed structures of the demobilized units and they continue to pursue the same illegal activities in their zones of influence. Those zones detected by the Mission are the following: Córdoba, Meta, Sucre and Bolívar. In the Sixth Report of the Secretary General, the MAPP/OEA called upon these groups to join the peace process, to surrender their arms, and to cease their criminal activities.

¹⁰⁹ *Ibid.* This phenomenon has appeared in particular in places where there is a flourishing illegal economy: a) Valle del Cauca, b) Choco, c) Nariño, d) Norte de Santander, e) Antioquia, and f) Cundinamarca. The emergence of new armed groups reflects varying interests, and remains of concern to the Mission, particularly in light of the risk of co-opting demobilized personnel and recruiting new combatants.

¹¹⁰ *Ibid.*

¹¹¹ Information received by the IACHR from the Permanent Mission of Colombia to the OAS in Note 079 of January 23, 2007. That squad comprises the police, the army, the Administrative Department of Security (DAS) and the Technical Investigations Core (CTI) of the Prosecutor General's Office, and is supported by the Gaula (Anti-Kidnapping and Extortion) Group and the Mobile Squad of Carabineros (EMCAR) which, together with units from the 30th Brigade, will be responsible for operations.

¹¹² Additional Observations of the Republic of Colombia to the "Report of the Inter-American Commission on Human Rights on the Implementation of the Justice and Peace Law: Initial Stages in Demobilization of the AUC and First Judicial Proceedings." Note DDH No. 45497/2475/07 from the Human Rights and International Humanitarian Law Unit of the Ministry of Foreign Affairs, September 5, 2007, page 9.

108. The IACHR notes that steps have been taken to improve the outcomes of the programs for reintegrating demobilized persons into civilian life, and it hopes that efforts will continue to strengthen those programs so that they can produce concrete outcomes that will result in the return of demobilized personnel to civilian life. The IACHR remains concerned over the phenomenon of rearmament and the formation of new gangs, and reiterates the need for the Colombian Government to implement effective measures to disrupt the AUC structures and to pursue its efforts to dismantle criminal gangs.

VI. CONCLUSIONS AND RECOMMENDATIONS

109. With respect to implementation of the Justice and Peace Law, the initial stages of the AUC demobilization process, and the first judicial proceedings, the IACHR concludes that:

1. The Colombian State deserves recognition for the efforts taken to achieve pacification and to ensure that judicial proceedings are as transparent as possible.
2. The demobilization circuits of members of the AUC suffered from a lack of systematic mechanisms to identify and determine criminal responsibility during collective demobilizations. The gaps and inaccuracies generated in this first stage are having negative repercussions on investigations under the Justice and Peace Law, and are contributing to impunity for non-confessed crimes or those that are not judicially investigated.
3. It has still not been decided how to implement the ruling of the Constitutional Court relating to Law 975, and the regulatory decrees issued before and after that ruling. Of particular concern is the matter of fulfilling the eligibility requirements for the benefits under Law 975.
4. It is unclear whether the armed paramilitary structures have been effectively dismantled and whether the members of the AUC are genuinely participating in the demobilization process. While the number of demobilized members of illegal armed groups who have received legal and economic benefits increasingly exceeds the estimated number of AUC members, the phenomenon of illegal armed groups persists in the same areas of the country.

110. The IACHR still has some concerns over the situation and participation of victims, and implementation of the Justice and Peace Law, and it offers the following recommendations to the State:

1. Strengthen the work of the institutions that are supposed to implement the Justice and Peace Law, particularly the units of the Prosecutor General's Office that play an essential role in investigation. These agencies require logistical support and adequate human resources to complete the tasks assigned to them. The State must also ensure the protection of its officials so that they can carry their investigations seriously. The judicial clarification of crimes perpetrated against the victims of then armed conflict by the demobilized who seek to benefit from this legislation must not be put in jeopardy.
2. Give an active role to the prosecutors during the taking of voluntary depositions, both to help produce the information essential for determining the truth of the events and to verify effective compliance with the requirements for reduced penalties.

3. Provide transparent mechanisms for taking decisions relating to eligibility requirements for benefits under Law 975. Prior to the formal indictment stage under the Justice and Peace Law, there needs to be broad publicity for the decisions taken on compliance with each of the eligibility requirements for each of the demobilized groups, and for their members in the case of individual demobilization, and on those disqualified as not meeting the requirements.
4. Guarantee that victims of the conflict, witnesses and human rights defenders will have the opportunity to participate in the process. Victim participation requires adequate legal assistance, as well as support from the Ombudsman's Office as from the initial hearings stage.
5. Provide mechanisms to protect and guarantee the safety of victims of the conflict, witnesses, and human rights defenders who join the process so that they can participate in the investigation and trial of those seeking benefits under the Justice and Peace Law.
6. Consider revising the currently established reparations system, where the criminal procedures route is the only access. The State must play a primary, rather than a secondary, role in guaranteeing victims' access to reparations in accordance with the standards of international law. The IACHR recommends that a reparations program be adopted that offers an alternative to the criminal court route and is supplementary to other reparations of a collective nature and to the social programs and services targeted at people who have suffered violence in Colombia.